

MINUTES

JOINT COMMITTEE ON ADMINISTRATIVE RULES AND REGULATIONS

April 25, 2006
Room 519-S—Statehouse

Members Present

Senator Vicki Schmidt, Chairperson
Representative Carl Holmes, Vice Chairperson
Senator Karin Brownlee
Representative Jan Pauls
Representative Arlen Siegfried
Representative Sharon Schwartz
Representative Josh Svaty
Representative Mark Treaster

Members Absent

Senator Donald Betts
Senator Ralph Ostmeyer
Senator Chris Steineger
Representative Lance Kinzer

Staff Present

Raney Gilliland, Kansas Legislative Research Department
Melissa Calderwood, Kansas Legislative Research Department
Kenneth Wilke, Revisor of Statutes Office
Diana Lee, Revisor of Statutes Office
Judy Glasgow, Secretary

Others Present

Lindsey Douglas, Hein Law Firm
Cheryl Magathan, Real Estate Appraisal Board
Robin Kempf, Kansas Board of Regents
Laurie Pickle, Kansas Corporation Commission
Nialson Lee, Division of Health Policy and Finance, Department of Administration
Reid Stacey, Division of Health Policy and Finance, Department of Administration
Jeanine Schieferecke, Division of Health Policy and Finance, Department of Administration

Sharon Wenger, Kansas Department of Health and Environment
Daric S. Smith, Kansas Department of Health and Environment
Allen Mayer, Kansas Department of Health and Environment
Karl Milhon, Kansas Department of Health and Environment
Derek Coppedge, Kansas Department of Health and Environment
John Mitchell, Kansas Department of Health and Environment
Rick Fleming, Office of the Securities Commissioner
Gail Bright, Office of the Securities Commissioner
Steve Wasson, Office of the Securities Commissioner
Kathy Diehl, Office of the Securities Commissioner
Alan Ford, Office of the Securities Commissioner
Bobbi Mariani, Kansas Department of Social and Rehabilitation Services
Charles Bartlett, Kansas Department of Social and Rehabilitation Services
Ralph Walden, Kansas Department of Health and Environment
Murray Balk, Kansas Department of Health and Environment

Morning Session

The meeting was called to order by Senator Vicki Schmidt, Chairperson, at 9:05 a.m. on April 25, 2006.

The Chairperson recognized Cheryl Magathan, to address the proposed rules and regulations noticed for hearing by the Real Estate Appraisal Board. KAR 117-5-1, provisional classification; education requirements; and KAR 117-8-1, uniform standards of professional appraisal practice.

Ms. Magathan explained the need for the changes by the Board. The Committee had no questions on the proposed rules and regulations, and the Chairperson thanked Ms. Magathan for her appearance before the Committee.

Robin Kempf, Associate General Counsel, was introduced by the Chairperson to speak to the proposed rules and regulations noticed for hearing by the Kansas Board of Regents. KAR 88-15-1; KAR 88-15-2; KAR 88-16-1; KAR 88-16-1b; KAR 88-16-2; KAR 88-16-5; KAR 88-16-5b; KAR 88-16-6; KAR 88-16-8; KAR 88-23-1; KAR 88-23-2; KAR 88-23-2a; KAR 88-23-3a; KAR 88-23-4; KAR 88-23-5; KAR 88-23-6; KAR 88-23-7, be revoked; KAR 88-28-1, definitions; KAR 88-28-2, minimum requirements; KAR 88-28-3, certificates of approval; KAR 88-28-4, on-site visits to degree-granting institutions; KAR 88-28-5, registration of representatives; KAR 88-28-6, certification and registration fees; KAR 88-28-7, enrollment agreement; and KAR 88-28-8, student records upon closure of an institution.

Ms. Kempf stated that these proposed rules and regulations are promulgated under the Kansas Private and Out-of-State Postsecondary Educational Institution Act which authorizes the Board to approve private career training institutions. The Board also is proposing the revocation of the rules and regulations which Article 28 replaced.

In response to a question by the Committee, Ms. Kempf stated that as a result of KAR 88-28-2, the minimum standards for the private institutions are the same as for the public institutions and that no institution has been disqualified because of failure to meet the minimum requirements. Committee members noted that KAR 88-28-7 (a) (2), as written, seemed to indicate that the contract

would be tailored to each individual student and should be clarified if the intention was to have a universal basic contract readily understood by prospective students and parents. Ms. Kempf stated that the Board would look at this matter. After answering questions of a general nature from the Committee, the Chairperson thanked Ms. Kempf for her presentation before the Committee.

The Chairperson recognized Laurie Pickle, Assistant General Counsel, to speak to the proposed rule and regulation noticed for hearing by the Kansas Corporation Commission. KAR 82-4-3a, hours of service.

Ms. Pickle stated that the rule and regulation is necessary to bring the state into compliance with the Federal Motor Carrier Safety Regulations. The state is at risk of losing federal funding and programming if the state is found to be out of compliance with these federal regulations. In response to a question from the Committee, Ms. Pickle stated that this regulation was adopted as a temporary regulation on March 21, 2006. There were no other questions from the Committee and Ms. Pickle was thanked by the Chairperson for appearing before the Committee.

Bobbi Mariani was introduced by the Chairperson to speak to the proposed rule and regulation noticed for hearing by the Kansas Department of Social Rehabilitation Services. KAR 30-4-90, eligibility factors specific to the GA program.

Ms. Mariani explained that these changes will result in earlier access to Medicaid benefits as this change will be tied to the Presumptive Disability Determination process. Ms. Mariani responded to Committee questions about eligibility and benefits determination and the current number of GA cases. Chairperson Schmidt thanked Ms. Mariani for her presentation before the Committee.

Charles Bartlett, Project and Policy Coordinator with Addiction and Prevention Services, was introduced by the Chairperson to address the rule and regulation noticed for hearing by the Kansas Department of Social Rehabilitation Services (Attachments 1 and 2). KAR 30-31-1, adoption by reference; and revocations.

Mr. Bartlett stated that current treatment standards were written approximately 30 years ago, with the last revision taking place in 1993. He stated that the current standards do not accurately reflect practice in the state or changes that have taken place in the field of substance abuse treatment.

Committee members had questions concerning KAR 30-31-1, and requested that the agency provide copies of the Standards for Licensure/Certification of Alcohol and/or Other Drug Abuse Treatment Programs that the agency was adopting by reference to the Committee and staff, and that this hearing be continued at the next Committee meeting. Mr. Bartlett noted that he would provide copies of this document. Staff stated that the hearing would be rescheduled for the next meeting of the Committee, which will be in May.

Chairperson Schmidt introduced Nialson Lee, to speak to the proposed rule and regulation noticed for hearing by the Division of Health Policy and Finance. KAR 129-5-1, prior authorization.

Mr. Lee noted that the following drugs will require prior authorization: antirheumatics: abatacept; all growth hormones and growth hormone stimulating factors, including the following: mescasermin reinfabate; drugs for the treatment of obesity: phentermine; narcotic analgesics: fentanyl lozenge; tramadol and all opioids, opioid combinations, and skeletal muscle relaxants, at any dose greater than the maximum recommended dose in a 31-day period.

There were no questions from the Committee members concerning this proposed rule and regulation.

Mr. Lee continued with his explanation of proposed rules and regulations noticed for hearing by the Division of Health Policy and Finance. KAR 129-5-118, scope of federally qualified health center services; KAR 129-5-118b, cost reimbursement principles for federally qualified health center services and other ambulatory services; KAR 129-6-38, rights of applicants and recipients; KAR 129-6-77, poverty-level pregnant women and children; determined eligibles; KAR 129-6-151, presumptive eligibility; KAR 129-6-152, presumptive eligibility to be determined by qualified entities; KAR 129-7-65, notice to recipients of intended action; KAR 129-14-22, rights of applicants and recipients; KAR 129-14-27, financial eligibility; KAR 129-14-51, presumptive eligibility for healthwave; KAR 129-14-52, healthwave presumptive eligibility to be determined by qualified entities; and revocations.

Mr. Lee explained that these proposed rules and regulations are the result of KSA 2005 Supp. 75-7413 which transferred specific powers, duties and regulatory authority of the Secretary of Social and Rehabilitation Services to a new Division of Health Policy and Finance within the Department of Administration created under KSA 2005 Supp. 75-7406, effective July 1, 2005. Staff had questions concerning KAR 129-14-27, paragraph (b) and the meaning of the term "secretary." Mr. Lee stated that the term originally was referring to the Secretary of Social and Rehabilitation Services. It was agreed by the Committee and Mr. Lee that this would need to be reviewed since this rule and regulation is no longer under that department. Staff had questions concerning the reference to Chapter 30 Rules and Regulations, since they are in use by Social and Rehabilitation Services and suggested that the agency review all references to be sure they are needed by the Division of Health Policy and Finance. After responding to all Committee questions, Chairperson Schmidt thanked Mr. Lee for his presentation before the Committee.

Chairperson Schmidt recognized Sharon Wenger, Bureau Director, Bureau of Epidemiology to address the proposed rule and regulation noticed for hearing by the Kansas Department of Health and Environment. KAR 28-1-26, protection of confidentiality of information regarding individuals with HIV infection.

In response to a Committee question, Ms. Wenger stated that the proposed rule and regulation reflects what the agency has actually been doing since 1999. A Committee member had a question concerning the disclosure policy between public health agency personnel and ambulance service personnel. Ms. Wenger stated that she would look into this and get back to the Committee. The Chairperson thanked Ms. Wenger for her appearance before the Committee.

Ralph Walden, Bureau of Air and Radiation, was recognized by the Chairperson to speak to the proposed rule and regulation noticed for hearing by the Kansas Department of Health and Environment. KAR 28-19-350, prevention of significant deterioration (PSD) of air quality.

Mr. Walden stated that this regulation would bring Kansas into compliance with the federal new source review reform requirements for major stationary air emission sources. Mr. Walden answered questions from Committee members concerning the federal regulations and stated that he would provide a list of permits that had been issued to date. The Chairperson thanked Mr. Walden for appearing before the Committee.

The Chairperson noted that the Committee had minutes from the March 29, 2006, meeting and asked for action. *Representative Pauls moved that the minutes be approved as presented. Representative Holmes seconded the motion. The motion carried.*

John Mitchell, Division of Environment, Bureau of Environmental Field Services, was recognized by the Chairperson to address the proposed rule and regulation noticed for hearing by the Kansas Department of Health and Environment (Attachment 3). KAR 28-16-28g, surface water register.

Mr. Mitchell reviewed the changes that had been recorded in the *Kansas Surface Water Register*, which had been adopted by reference in KAR 28-16-28g. (A copy of the *Kansas Surface Water Register* is available at the Department of Health and Environment.) Mr. Mitchell answered questions from Committee members on the classification of specific items in the report and stated that he reviewed those classifications again. After Committee discussion, it was suggested that KDHE provide a map by county showing the major streams, lakes, and wetlands by name and their classifications to assist the public in understanding the *Register*. Staff noted that the history section needed to be updated to include additional references.

Chairperson Schmidt thanked Mr. Mitchell for appearing before the Committee.

Afternoon Session

Chairperson Schmidt reconvened the meeting at 1:30 p.m. and introduced Murray Balk, Bureau of Environmental Remediation, Surface Mining Section, to speak to the proposed rules and regulations noticed for hearing by the Kansas Department of Health and Environment. KAR 47-2-75, definitions; adoption by reference; KAR 47-3-2, application for mining permit; adoption by reference; KAR 47-4-14a, administrative hearing procedure; KAR 47-5-5a, civil penalties; adoption by reference; KAR 47-6-1, permit review; KAR 47-6-2, permit revision; KAR 47-6-3, permit renewals; adoption by reference; KAR 47-6-4; permit transfers, assignments, and sales; adoption by reference; KAR 47-6-6, permit conditions; adoption by reference; KAR 47-6-8, termination of jurisdiction; adoption by reference; KAR 47-6-9, exemption for coal extraction incident to government-financed highway or other construction; adoption by reference; KAR 47-6-10 exemption for coal extraction incident to the extraction of other minerals; adoption by reference; KAR 47-6-11, post-permit issuance requirements; adoption by reference; KAR 47-7-2, coal exploration; adoption by reference; KAR 47-8-9, bonding procedures; adoption by reference; KAR 47-9-1, adoption by reference; KAR 47-9-4, interim performance standards; adoption by reference; KAR 47-10-1, adoption by reference; underground mining; KAR 47-11-8, small operator assistance program; adoption by reference; KAR 47-12-4, lands unsuitable for surface mining; adoption by reference; KAR 47-13-4, training and certification of blasters; adoption by reference; KAR 47-14-7, employee financial interest; adoption by reference; KAR 47-15-1a, inspection and enforcement; adoption by reference; KAR 47-16-10, exclusion of certain noncoal reclamation sites; and KAR 47-16-12, surface mining section's procedures for reclamation projects receiving less than 50 percent government funding.

Mr. Balk stated that these proposed rules and regulations are the result of a letter dated August 23, 2000 which required Kansas to bring their regulations in compliance with the Office of Surface Mining Reclamation and Enforcement. These amendments are the adoption by reference of the July 1, 2001 Federal Regulations.

The Committee suggested that in KAR 47-2-75, that the Washington, D.C., website address be included as well as the physical address. In KAR 47-4-14a, it was suggested that the address of the Kansas Department of Administration be included for the appeals process since it was different from the agency address. Staff noted that in KAR 47-5-5a, page 2, (d), the agency should review

the procedure to make certain that this would be within the authority of the agency to access these penalties at the agency level. It also was noted the formula for determining the amount of penalty under the federal guideline which exceeds the amount of the penalty allowed in the state statute. Also on page 3, (2) the amount may be greater than the amount that is allowed in the statute. Staff noted that in KAR 47-14-7, (2), the penalties may be outside the scope of the act, according to the Governmental Ethics Act. Staff also noted that for future amendments, the agency should update the act by reference to a date certain.

The Chairperson thanked Mr. Balk for his presentation before the Committee.

Rick Fleming, General Counsel, was introduced by Chairperson Schmidt to address the proposed rules and regulations noticed for hearing by the Kansas Securities Commission. KAR 81-2-1, forms and adoptions by reference; KAR 81-3-1, registration procedures for broker-dealers and agent; KAR 81-3-2, broker-dealer and agents; registration fees; KAR 81-3-5, sales of securities at financial institutions; KAR 81-3-6, dishonest or unethical practices of broker-dealers and agents; KAR 81-3-7, supervisory, financial reporting, recordkeeping, net capital, and operational requirements for broker-dealers; KAR 81-14-1, registration procedures for investment advisers and investment adviser representatives; KAR 81-14-2, investment advisers, investment adviser representatives, and federal covered investment advisers; registration fees; KAR 81-14-3, investment adviser contracts; KAR 81-14-4, recordkeeping requirements for investment advisers; KAR 81-14-5, dishonest and unethical practices of investment advisers, investment adviser representatives, and federal covered investment advisers; KAR 81-14-6, electronic filing for investment advisers and investment adviser representatives; KAR 81-14-7, notice filing requirements for federal covered investment advisers; KAR 81-14-9, custody of client funds or securities; safekeeping; financial reporting; minimum net worth; bonding; and KAR 81-14-10, operational requirements for investment advisers; supervisory procedures; brochure delivery and revocation.

Mr. Fleming stated that the Kansas Securities Act was repealed effective July 1, 2005, and replaced by a new act the Kansas Uniform Securities Act (KUSA) and as a result all of the rules and regulations must be updated. In response to a question by the Committee, Mr. Fleming explained the term "improper hypothecation" as referred to in KAR 81-5-6. Staff noted that the history section of KAR 81-3-2 and KAR 81-14-2 need to be updated to include the 2005 Supplement. Upon answering all questions from the Committee, the Chairperson thanked Mr. Fleming for his appearance before the Committee.

Chairperson Schmidt recognized Rod Bieker, General Counsel, to speak to the proposed rules and regulations noticed for hearing by the Kansas State Department of Education. KAR 91-1-201, type of licensure; KAR 91-1-202, endorsements; and KAR 91-1-205, licensure renewal requirements.

Mr. Bieker stated that KAR 91-1-201, is amended to expand the early childhood options for licensure. These changes are intended to increase the supply of early childhood teachers prepared by Kansas institutions and to accommodate out-of-state applicants. Mr. Bieker answered questions of a general nature for the Committee. Chairperson Schmidt thanked Mr. Bieker for his presentation before the Committee.

The Chairperson noted that the next meeting would be on *Sine Die*, May 25, 2006. The Committee then discussed dates for meetings to be held during the interim. The following dates were set:

July 10 and 11, with July 10 as the primary date;
August 22 and 23, with August 22 as the primary date;
October 2 and 3, with October 2 as the primary date;
November 13 and 14, with November 13 as the primary date;
December 11 and 12, with December 11 as the primary date; and
January 8, 2007, in the morning.

Committee Comments on Proposed Rules and Regulations

Kansas Department of Social and Rehabilitation Services. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning eligibility factors specific to the GA program; adoption by reference; and revocations and had the following comment.

Concerning the eligibility factors specific to the GA program regulation, the Committee had no comment. With respect to the adoption by reference of the "standards for licensure/certification of alcohol and/or other drug abuse treatment programs," the Committee requests a copy of the document proposed for adoption and also requests that representatives of the agency appear again on this regulation after the members of the Committee have had an opportunity to review the proposed changes.

Kansas Department of Education. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning type of license; endorsements; and licensure renewal requirements and had no comment.

Kansas Real Estate Appraisal Board. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning provisional classification, education requirements; and uniform standards of professional appraisal practice and had no comment.

Kansas Corporation Commission. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning hours of service and had no comment.

Division of Health Policy and Finance. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning prior authorization; revocations; rights of applicants and recipients; rights of applicants and recipients; revocation; scope of federally qualified health center services; revocation; cost reimbursement principles for federally qualified health center services and other ambulatory services; revocations; poverty-level pregnant women and children, determined eligibles; presumptive eligibility; presumptive eligibility to be determined by qualified entities; notice to recipients of intended action; financial eligibility; presumptive eligibility for healthwave; and healthwave presumptive eligibility to be determined by qualified entities and had the following comments.

General Comment. The Committee expresses concern about the manner in which these regulations have been provided to the public as part of the notice for public hearing to the Committee. For example, several of the paragraph heads refer to

"prior authorization" which is not the topic of the regulation being repealed. In addition, several regulations contain a cover letter which references numerous regulations, some of which are not contained in the packet.

KAR 129-14-27. In subsection (b), reference is made to the "secretary." The Committee is concerned that this reference is to the Secretary of Social and Rehabilitation Services. Please correct the reference to the position of authority within the Kansas Health Policy Authority.

Kansas Department of Health and Environment. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning protection of confidentiality of information regarding individuals with HIV infection; prevention of significant deterioration (PSD) of air quality; surface water register; definitions, adoption by reference; application for mining permit, adoption by reference; application for mining permit, adoption by reference; administrative hearing procedure; civil penalties, adoption by reference; permit review; permit revision; permit renewals, adoption by reference; permit transfers, assignments, and sales, adoption by reference; permit conditions, adoption by reference; termination of jurisdiction, adoption by reference; exemption for coal extraction incident to government-financed highway or other construction, adoption by reference; exemption for coal extraction incidental to the extraction of other minerals, adoption by reference; post-permit issuance requirements, adoption by reference; coal exploration, adoption by reference; bonding procedures, adoption by reference; adoption by reference; interim performance standards, adoption by reference; adoption by reference, underground mining; small operator assistance program, adoption by reference; lands unsuitable for surface mining, adoption by reference; training and certification of blasters, adoption by reference; employee financial interest, adoption by reference; inspection and enforcement, adoption by reference; contractor responsibility; exclusion of certain noncoal reclamation sites; and surface mining section's procedures for reclamation projects receiving less than 50 percent government funding and had the following comments.

General Comment. With respect to the regulations dealing with the protection of confidentiality of information dealing with HIV, the Committee would like to express its appreciation to the agency for updating its regulations to reflect the current practice.

With regard to the regulation dealing with the *Kansas Surface Water Register*, the Committee requests that in the future, the *Register* contain maps indicating where the stream segments, including the identifying HUC numbers, are located within counties.

With regard to the regulations dealing with mined land, the Committee had several comments. In subsection (a)(4) of KAR 47-2-5, the Committee requests the inclusion of a website address for the Office of Surface Mining. In KAR 47-4-14a, the Committee suggests the inclusion of the mailing address for the Department of Administration. Also, in subsection (d)(9)(C), the Committee suggests the addition of the word "a." In KAR 47-5-5a, the Committee suggests a review of the adoption by reference which appears to permit a civil penalty of \$5,500 when the statutory maximum is \$5,000. Please review this issue and make the appropriate changes. In subsection (a)(1) of KAR 47-12-4, the Committee requests that the agency rework this subsection to make the language in the quotation marks clearer and suggests the use of single quotation marks around the words "we, us, and our." In KAR 47-14-7, the Committee suggests that the agency review this regulation for potential conflict

with the Kansas Governmental Ethics Act. Finally, with respect to this set of regulations, the Committee has a general comment. The Committee is concerned with the references in the Mined-Land Conservation and Reclamation Act, KSA 49-401, to the National Surface Mining Control and Reclamation Act of 1977 (Public Law 95-87). These references do not appear to allow the agency to implement subsequent substantive amendments to the federal Act. Corrective legislation may be needed. The Committee requests that the agency review this issue and respond accordingly.

Office of the Securities Commissioner. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning forms and adoptions by reference; registration procedures for broker-dealers and agents; broker-dealer and agent registration fees; sales of securities at financial institutions; dishonest or unethical practices of broker-dealers and agents; supervisory, financial reporting, recordkeeping, net capital, and operational requirements for broker-dealers; registration procedures for investment advisers and investment adviser representatives; investment advisers, investment adviser representatives, and federal covered investment advisers, registration fees; investment adviser contracts; recordkeeping requirements for investment advisers; dishonest and unethical practices of investment advisers, investment adviser representatives, and federal covered investment advisers; electronic filing for investment advisers and investment adviser representatives; notice filing requirements for federal covered investment advisers; custody of client funds or securities, safekeeping, financial reporting, minimum net worth, bonding; and operational requirements for investment advisers, supervisory procedures, brochure delivery and had no comment.

Kansas Board of Regents. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning revocations; definitions; minimum requirements; certificates of approval; on-site visits to degree-granting institutions; registration of representatives; certification and registration fees; enrollment agreement; and student records upon closure of an institution and had the following comment.

KAR 88-28-7. The Committee is concerned with the requirement in subsection (a)(2) that the enrollment agreements be written so that they can be understood by a number of individuals, including the prospective student. The Committee suggests that the requirement be limited to only the prospective student in order to avoid issues with other individuals who may not understand the enrollment agreement. The Committee suggests this regulation be reviewed and rewritten.

The Chairperson adjourned the meeting at 3:45 p.m.

Edited by Melissa Calderwood and Raney Gilliland

Approved by Committee on:

May 25, 2006

(date)

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