

MINUTES

JOINT COMMITTEE ON ADMINISTRATIVE RULES AND REGULATIONS

March 29, 2004
Room 241-N—Statehouse

Members Present

Senator Dwayne Umbarger, Chairperson
Senator Karin Brownlee
Senator Stan Clark
Representative Jerry Henry
Representative Carl Holmes
Representative Jan Pauls
Representative Candy Ruff
Representative Sharon Schwartz
Representative Dan Williams

Members Absent

Senator Don Betts
Senator Chris Steineger
Representative Andrew Howell

Staff Present

William G. Wolff, Kansas Legislative Research Department
Raney Gilliland, Kansas Legislative Research Department
Kenneth Wilke, Revisor of Statutes Office
Judy Glasgow, Secretary

Others Present

Patricia Long, Social and Rehabilitation Services
Cathy Hubbard, Social and Rehabilitation Services
Nialson Lee, Social and Rehabilitation Services
John Badger, Social and Rehabilitation Services
Dennis Priest, Social and Rehabilitation Services
Jeanice Schieferecke, Social and Rehabilitation Services
Kathy Valentine, Social and Rehabilitation Services
Robert Mealy, Hein Law Firm
Linden Appel, Kansas Department of Corrections
Bill Brady, Kansas Governmental Consulting
Deletria Nash, Kansas Insurance Department
Bill Sneed, State Farm
Faith Loretto, Department of Administration

Kraig Knowlton, Department of Administration
Tracy Diel, Kansas Racing and Gaming Commission

Morning Session

Chairman Umbarger called the meeting to order at 10:35 a.m., March 29, 2004. He recognized Dennis Priest to speak to the proposed rules and regulation noticed for hearing by the Department of Social and Rehabilitation Services (SRS). KAR 30-4-50, assistance eligibility, general and KAR 30-6-91, youth formerly in foster care.

Mr. Priest stated that KAR 30-4-50 is now a temporary regulations and would become permanent as a result of HB 2727. That bill has passed the House and is awaiting action by the Senate. If the bill is not passed, the agency will need to withdraw the rule and regulation at the June hearing. The Committee stated it would continue to check on the status of the bill.

Mr. Priest stated that KAR 30-6-91 is a new regulation which will continue to provide medical assistance for youth who are in foster care at age 18 until age 21.

Nialson Lee was recognized by Chairman Umbarger, to speak to the proposed rule and regulation noticed for hearing by SRS. KAR 30-5-64, prior authorization. Mr. Lee explained the proposal adds influenza vaccines - Flumist, to the list of drugs that require prior approval. There were no further questions and Mr. Lee and Mr. Priest were thanked for their presentations.

Chairman Umbarger introduced Cathy Hubbard to speak to the proposed rules and regulations noticed for hearing by SRS. KAR 30-46-10, definitions; KAR 30-46-13, right to interview; KAR 30-46-15, notice of decision; KAR 30-46-16, child abuse and neglect central registry; and KAR 30-46-17, expungement of name of substantiated perpetrator from central registry.

Ms. Hubbard stated that KAR 30-46-10 changed the definitions and listed them in alphabetical order. A member suggested that on page 3, the word "precocious" be changed to a more commonly used word. She stated that she would take this recommendation back to the Department for consideration.

Staff noted that on page 5, in subsection (h), the word "sexual" should be inserted to read "any sexual act committed". Ms. Hubbard stated the Department had already made this discovery and would add the word. It also was suggested that since KSA 38-1502 deals with the crimes, that section should be added to the history section. Further, in KAR 30-46-13, the history section should be amended to add KSA 38-1522, and this reference should be added to all of the proposed rules and regulations.

Committee members asked what happened to expunged records. Unlike court records that go to the KBI, Ms. Hubbard did not believe that these records were kept anywhere. Once they were off the list there was no need to keep track of them.

There being no further questions, Cathy Hubbard was thanked by the Chairman for her presentation.

Chairman Umbarger asked for action on the minutes from meetings held December 16, February 2, February 11, and February 18. It was noted that the minutes of the December meeting should be amended to correct "Duane" to Dwayne" on page 1 and "Homes" to "Holmes" and "Clarke" to "Clark" on page 5. *Representative Pauls moved to approve the December 16 minutes as*

amended, the February 2, February 11, and February 18 minutes as presented. Representative Holmes seconded the motion. The motion carried.

Linden Appel, Chief Counsel, Department of Corrections, was introduced by Chairman Umbarger to address the proposed rules and regulations noticed for hearing by the Department of Corrections. KAR 44-4-115, service fees; KAR 44-7-104 inmate visitation; KAR 44-7-113, religious activity; KAR 44-12-313, sexually explicit materials; and KAR 44-12-601, mail.

Mr. Appel stated that these regulations are already temporary rules and regulations as of March 18, 2004. Committee members suggested in KAR 44-5-115 page 1, (b) (1) that the fourth line be changed to read "a maximum of \$25.00 per month" to be consistent with the rest of the regulations. A suggestion was made that, on page 3, subsection (e), should list each category on a separate line.

A member also questioned KAR 44-7-104, page 3 regarding the deletion of (B) and (C). The member believed that visits by state legislatures, judges of Kansas state courts, among others, should be reinserted in the regulations. Concerning the inmates visitors list, a member thought the approved list of visitors should be updated monthly or at least quarterly. The Committee noted in KAR 44-12-313 page 1, paragraph (1), the sentence structure should be changed to read "Contains nudity for the purpose of sexual arousal or gratification; or nudity which shall. . . ." Committee members suggested that the spelling of the word "bestiality" should be checked on page 2 in subsection (c).

After answering questions related to the proposed regulations, Mr. Appel was thanked for his presentation before the Committee.

Chairman Umbarger introduced Clinton Patty, of Frieden, Haynes, and Forbes, to speak to the proposed rules and regulations noticed for hearing by the Kansas Board of Examiners in Optometry. KAR 65-4-3, fees; and KAR 65-5-11, biennial renewal and KAR 65-8-5, revoked. It was pointed out that the economic statement did not reflect the total amount of additional fees that would be generated per year from this increase. Mr. Patty stated that this could be included before the May hearing.

Afternoon Session

The meeting resumed at 1:10 p.m., with the Chairman recognizing Deletria Nash, staff attorney for the Kansas Insurance Department, to speak to the proposed rules and regulations noticed for hearing by the Kansas Insurance Department (Attachment 1). KAR 40-1-50, insurance scoring; definitions; requirements; KAR 40-2-27, minimum reserve liabilities and nonforfeiture benefits; and KAR 40-3-20, revoked.

Ms. Nash and Bill Sneed answered questions raised by members concerning the difference between personal and commercial lines of insurance. In response to questions about "underwriting," Mr. Sneed stated that this activity is limited in accordance with the statutes. A question was raised by staff concerning KAR 40-1-50, page 2 subsection (d)(3), concerning trade secrets and whether the wording of the regulation exceeds the statutory authority related to how trade secrets are defined and protected. Ms. Nash said she would look into this question. There being no other questions, Ms. Nash and Mr. Sneed were thanked for their comments.

Chairman Umbarger introduced Rodney J. Bieker, General Counsel for the Kansas State Department of Education, to explain the proposed rules and regulations noticed for hearing by the

Kansas State Department of Education. KAR 91-1-68a; KAR 91-1-68b, KAR 91-1-68c, KAR 91-1-68d revoked, KAR 91-1-230, institutional accreditation and program approval definitions; KAR 91-1-231, procedures for initial accreditation of teacher education institutions; KAR 91-1-232, on-site visits; recommendation; appeal; KAR 91-1-235, procedures for initial approval of teacher education programs; and KAR 91-1-236, procedures for renewing approval of teacher education program.

Mr. Bieker responded to general questions from Committee members concerning the proposed rules and regulations. A member noted that in KAR 91-1-230, subsections (c) and (d), the words "rules and" should be added before "regulations". In response to questions on KAR 91-1-236 pertaining to fiscal notes, Mr. Bieker stated that schools are required to submit the program report on a seven-year basis now so there would be no additional costs and there might even be a savings. The Chairman thanked Mr. Bieker for his presentation.

Chairman Umbarger recognized Tracy Diel, to speak to the proposed rules and regulations noticed for hearing by the Kansas Racing and Gaming Commission. KAR 112-10-5, authorized medications; KAR 112-10-6, breeder list; and KAR 112-10-6a, furosemide list.

Mr. Diel stated that these changes are being made to conform with the rules and regulations used in most other jurisdictions. In response to a question concerning the use of different measurement terms, Mr. Diel stated that these measurements were taken directly from federal standards and recommended by veterinarians. There being no further questions, Chairman Umbarger thanked him for his presentation before the Committee.

Kraig Knowlton was introduced by Chairman Umbarger to speak to the proposed rule and regulation noticed for hearing by the Department of Administration. KAR 1-9-4, vacation leave.

Mr. Knowlton stated that this regulation allows state employees to change annual leave to sick leave from 20 hours to 40 hours at the end of the last payroll period each fiscal year. He stated that on page 4 in subsection (h), the effective date should be changed to June 5, 2004. There were no questions and Mr. Knowlton was thanked for his presentation.

Chairman Umbarger recognized Mark Stafford, to speak to the proposed rules and regulations noticed for hearing by the Board of Healing Arts. KAR 100-11-1, amount; KAR 100-54-5, fees; and KAR 100-55-4, fees.

Mr. Stafford stated that these regulations reflect a reduction in fees for applications processed on-line and which result in a reduction in manpower and paperwork by the agency. The Committee members commended the Board on the thoroughness of its economic statement. There were no questions, and Chairman Umbarger thanked Mark Stafford for appearing.

Chairman Umbarger introduced Linda J. DeCoursey, Administrator, State Employees Health Care Commission, to address the proposed rule and regulation noticed for hearing by the Commission (Attachment 2). KAR 108-1-4, local unit of government employee health care benefits plan.

Ms. DeCoursey stated that this rule and regulations was the result of the State Librarian's request to include employees of libraries in the state health care insurance plan. She stated that 400 qualified employees indicated an interest in participating in the State of Kansas health care benefit. Staff reminded members that the Committee had heard from the State Librarian earlier on this topic.

COMMENTS ON PROPOSED RULES AND REGULATIONS

Kansas Racing and Gaming Commission. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning authorized medications, breeder list, and furosemide list. After discussion, the Committee had no comment.

Insurance Department. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning insurance scoring, minimum reserve liabilities and nonforfeiture benefits, and fire and casualty insurance - arbitration provisions. After discussion, the Committee expressed the following comment.

- KAR 40-1-50. In subsection (d)(3), does the language related to "all underwriting guidelines" being considered trade secrets exceed the statutory authorization?

Department of Social and Rehabilitation Services. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning prior authorization of pharmaceutical products, public assistance program - assistance eligibility, medical assistance program - youth formerly in foster care, and child abuse and neglect. After discussion, the Committee had no comment on the pharmacy, public assistance and medical assistance regulations, but expressed the following comments on the child abuse and neglect regulations.

- KAR 30-46-10. In subsection (e)(4), find a better word than "precocious." And, subsection (h), insert the word "sexual" before "act." The Committee suggests the Department give serious consideration to either adding KSA 38-1502 to the regulation or cite directly the criminal code statutes.

Department of Corrections. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning service fees, inmate visitations, religious activity, sexually explicit materials, and mail. After discussion, the Committee expressed the following comment.

- KAR 44-5-115. In subsection (b), insert a "\$" in lieu of the written amount. In subsection (e), rewrite splitting out various pieces of the paragraph (see subsection (c) for example).
- KAR 44-12-313. Rewrite subsection (b)(1) for clarity.

Board of Examiners in Optometry. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning biennial renewal and fees. After discussion, the Committee expressed the following comment.

- KAR 65-4-3. Is the wording in subsection (g) correct?
- Economic Impact. Correct the economic impact statement to reflect the total impact of fee change, *i.e.*, \$43,200.

Department of Education. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning institutional accreditation and program approval. After discussion, the Committee had no comment on the rules and regulations, but suggested that the Department's internet address be included in the notice of hearing on all rules and regulations.

Department of Administration. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning vacation leave. After discussion, the Committee had no comment.

State Employee Health Care Commission. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning local unit of government employee health care benefits plan. After discussion, the Committee had no comment.

Board of Healing Arts. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning fees. After discussion, the Committee had no comment on the proposed rules and regulations, but expresses its appreciation for the completeness of the fiscal impact statement and the willingness of the Board to move to electronic filing. The Committee would appreciate a report on the implementation of the electronic filing.

The meeting was adjourned at 2:10 p.m.

Prepared by Judy Glasgow
Edited by William G. Wolff

Approved by Committee on:

May 27, 2004
(date)