

## **MINUTES**

### **JOINT COMMITTEE ON ADMINISTRATIVE RULES AND REGULATIONS**

November 16, 2015  
Room 152-S—Statehouse

#### **Members Present**

Representative Sharon Schwartz, Chairperson  
Senator Vicki Schmidt, Vice-chairperson  
Senator Oletha Faust-Goudeau  
Senator Tom Hawk  
Senator Ralph Ostmeyer  
Representative Jerry Lunn  
Representative Janice Pauls  
Representative Ed Trimmer  
Representative Jim Ward  
Representative Valdenia Winn

#### **Members Absent**

Senator Garrett Love  
Representative Steve Huebert

#### **Staff Present**

Raney Gilliland, Kansas Legislative Research Department  
Jill Shelley, Kansas Legislative Research Department  
Whitney Howard, Kansas Legislative Research Department  
Natalie Scott, Office of Revisor of Statutes  
Tamera Lawrence, Office of Revisor of Statutes  
Jenna Seematter, Office of Revisor of Statutes  
Shirley Jepson, Committee Assistant

#### **Conferees**

Rhonda Boose, Facilities Reimbursement Manager, Kansas Department for Aging and Disability Services  
Brian Vasquez, Attorney, Kansas Department of Health and Environment  
Randy Forbes, General Counsel, Kansas Dental Board  
Martin Eckhardt, Manager, Statewide Agency Audits and Municipals, Office of the Chief Financial Officer, Department of Administration  
Joe House, Executive Director, Kansas Board of Emergency Medical Services  
Ted Smith, Kansas Department of Revenue  
Patsy Congrove, Kansas Department of Revenue  
Kathleen Smith, Kansas Department of Revenue  
Susan Somers, Executive Director, Board of Accountancy  
Robert Large, Chief Legal Counsel, Kansas Department of Agriculture

Orrin Feril, Groundwater Management District No. 5, Stafford County  
Tim Boese, Groundwater Management District No. 2, Harvey County  
Lane Letourneau, Division of Water Resources, Kansas Department of Agriculture  
Trisha Thomas, Child Support Services Director, Department for Children and Families

### **Other Attendees**

[See attached list.](#)

### **Morning Session**

The meeting was called to order at 10:00 a.m. by Chairperson Sharon Schwartz.

The Committee members expressed their congratulations to Chairperson Schwartz on the celebration of her 56<sup>th</sup> wedding anniversary.

### **Review and Comment on proposed rules and regulations noticed for hearing by the Kansas Department of Health and Environment – Division of Health Care Finance.**

KAR 30-10-19, revocation (was rates, effective dates); KAR 129-10-18, *per diem* rates of reimbursement; KAR 129-10-19, *per diem* rates, effective dates.

Rhonda Boose, Facilities Reimbursement Manager, Kansas Department for Aging and Disability Services (KDADS), appeared before the Committee to address the proposed rules and regulations for the Department of Health and Environment ([Attachment 1](#)). Ms. Boose indicated KAR 30-10-19 is being revoked and replaced with KAR 129-10-19. In addition, KAR 129-10-19 is being amended to clarify and modify the guidelines for determining Medicaid reimbursement *per diem* rates for new and existing nursing facilities. The proposed amendment removes reference to the current quarterly rate-setting cycle and enacts a semi-annual rate-setting process, with rates effective July 1 and January 1 of each state fiscal year. KAR 129-10-18 also is being amended to allow the Secretary for Aging and Disability Services to modify nursing facility reimbursement rates in exceptional circumstances. The reason for the revocation of KAR 30-10-19 is to align the agency with the state agency organization changes of Executive Reorganization Order (ERO) No. 41. The agency believes the revocation, amendment, and addition of the regulations previously noted will result in no change to rate-setting methodology and will allow for a more streamlined rate-setting process, making the overall KanCare rate-setting procedure more efficient, accurate, and less burdensome.

Responding to questions from Committee members, Ms. Boose indicated the reason for the changes are to ensure those individuals requiring ventilator services are adequately served, trained staff are available, and the program is administered in the proper way. Ms. Boose stated only one provider within the state currently meets the criteria for ventilator services. Ms. Boose noted a requirement has been added to the regulation to require a facility to document the minutes a patient is using the ventilator service, noting this must be 24 hours for state reimbursement through this service. The program is available for those who are completely dependent on the ventilator service.

The Committee expressed concern the one facility providing ventilator service within the state has not been involved in the discussion of the proposed rules and regulations. Ms. Boose

noted the agency does not anticipate any adverse effects to providers with the revised regulations and stated the regulations formalize current practice.

Brian Vasquez, Attorney, Kansas Department of Health and Environment, also appeared before the Committee to assist in addressing some of the concerns about the reimbursement rates.

The Committee requested the following additional information:

- A list of any out-of-state providers who provide ventilator services to Kansas citizens and are paid by the state;
- The total number of residents across the state on ventilators in all facilities; and
- Whether federal regulations allow reimbursement when a ventilator is used less than 24 hours per day.

#### **Review and Comment on proposed rules and regulations noticed for hearing by the Kansas Dental Board.**

KAR 71-6-5, duty to notify board.

Randy Forbes, General Counsel, Kansas Dental Board, appeared before the Committee to address the proposed rule and regulation. Mr. Forbes noted the proposed rule and regulation amends current rule and regulation pertaining to certification of training for coronal scaling of teeth. Mr. Forbes indicated the new regulation places the “burden of proof” upon the dentist who is supervising or hiring an individual for coronal scaling of teeth to ensure the individual has the appropriate training.

Responding to a question from a Committee member, staff indicated the effective date of the rule and regulation would be 15 days after publication in the *Kansas Register*.

#### **Review and Comment on proposed rules and regulations noticed for hearing by the Kansas Department of Administration.**

KAR 1-16-4, date and hour of departure and return; KAR 1-16-8, use of privately owned or operated conveyance, limitations, reimbursement for transportation and subsistence expenses; KAR 1-16-15, reduced allowances; KAR 1-16-18, subsistence allowance; KAR 1-16-18a, designated high-cost geographic areas, exceptions, conference lodging.

Martin Eckhardt, Manager, Statewide Agency Audits and Municipals, Office of the Chief Financial Officer, Department of Administration, appeared before the Committee to address the proposed rules and regulations. Mr. Eckhardt noted that the rules and regulations define the method used for reimbursing employees of the State of Kansas when they travel on state business. The current methodology establishes rates set by Department of Administration policy based on geographic areas or categories of travel. In addition, the current methodology reimburses travelers based on a meals allowance also set by Department of Administration

policy. The proposed rules and regulations propose to adopt federal subsistence rates effective January 1, 2016. The adoption of these rates will result in subsistence reimbursement which aligns closely with actual travel locations and costs.

Responding to questions from Committee members, Mr. Eckhardt said the rules and regulations apply to the executive branch of state government. In cases of a dispute concerning the reimbursement, Mr. Eckhardt indicated the secretary of the agency, no longer the Secretary of Administration, will make the final determination.

#### **Review and Comment on proposed rules and regulations noticed for hearing by the Kansas Board of Emergency Medical Services (EMS).**

KAR 109-5-1, continuing education; KAR 109-5-1a, emergency medical responder (EMR) continuing education; KAR 109-5-1b, emergency medical technician (EMT) continuing education; KAR 109-5-1c, emergency medical technician-intermediate, emergency medical technician-defibrillator, emergency medical technician intermediate who is also certified as an emergency medical technician-defibrillator, and advanced emergency medical technician, continuing education; KAR 109-5-1d, paramedic continuing education; KAR 109-5-2, revocation (was documentation for continuing education); KAR 109-8-1, examination.

Joe House, Executive Director, EMS, appeared before the Committee to address the proposed rules and regulations. Mr. House explained the proposed rules and regulations further define continuing education for EMS attendants and educators.

Responding to questions from Committee members, Mr. House noted the proposed rules and regulations will more accurately align the state with federal regulations and are commensurate with expansion of scope of practice for the various levels of emergency medical services providers. Committee members expressed concern with the availability of training in rural areas possibly imposing a hardship on EMS employees and the additional costs of backfilling shifts of paid EMS employees who are away for training. Mr. House stated some of the training may be taken through online courses. Mr. House indicated the effective date of the new requirements is January 31, 2017, allowing current employees two years to complete the additional training.

#### **Review and Comment on proposed rules and regulations noticed for hearing by the Kansas Department of Revenue (ignition interlock devices).**

KAR 92-56-4, installation, inspection, and calibration standards.

Ted Smith, Kansas Department of Revenue (KDOR), appeared before the Committee to address the proposed rule and regulation by KDOR. Mr. Smith stated the proposed rule and regulation removes an unneeded subsection reference and a reference to a subsection that previously was removed from KAR 92-56-2, an exception to a requirement for all drivers for whom ignition-interlock devices are required to visit their ignition-interlock device providers every 30 days for calibration. These changes were requested by the Committee when the agency appeared at the August 2015 Committee meeting.

**Review and Comment on proposed rules and regulations noticed for hearing by the Kansas Department of Revenue (bingo and raffles).**

KAR 92-23-9, revocation (was persons conducting bingo games); KAR 92-23-10, revocation (was verification of winners); KAR 92-23-11, revocation (was handing of hard cards); KAR 92-23-12, revocation (was communication of numbers needed to win prohibited); KAR 92-23-13, revocation (was display of numbered objects used in conducting games); KAR 92-23-14, revocation (was schedule of bingo games); KAR 92-23-15, revocation (was bingo trust accounts); KAR 92-23-16, revocation (was cashing of prize checks); KAR 92-23-17, revocation (was bond required for bingo distributors); KAR 92-23-18, revocation (was due date of tax return by bingo distributors); KAR 92-23-19, revocation (was bingo, persons selling refreshments or performing janitor work); KAR 92-23-20, revocation (was bingo, house rules); KAR 92-23-21, revocation (was bingo, reduction in value of prizes); KAR 92-23-22, revocation (was bingo, limitations on number of games and daily prize limit); KAR 92-23-23, revocation (was bingo, procedure for correction if wrong number called); KAR 92-23-25, revocation (was bingo, multiple winners); KAR 92-23-30, revocation (was bingo, instant bingo); KAR 92-23-31, revocation (was bingo, use of hard cards commencing July 1, 2003); KAR 92-23-37, revocation (was bingo, sufficiency of notice to licensee); KAR 92-23-38, revocation (was bingo, books and records, inspection and preservation); KAR 92-23-38a, revocation (was disputed bingo game); KAR 92-23-39, revocation (was bingo, filing of returns, notice, hearings, and revocation); KAR 92-23-40, revocation (was advertising); KAR 92-23-41, definitions, persons conducting games of bingo, restrictions; KAR 92-23-42, bond required for distributors; KAR 92-23-43, bingo trust bank accounts; KAR 92-23-44, schedule of games of bingo; KAR 92-23-45, handling of reusable bingo cards; KAR 92-23-46, bingo, house rules; KAR 92-23-47, display of numbered objects used in conducting games of bingo; KAR 92-23-48, bingo, procedure for correction if wrong number called; KAR 92-23-49, bingo, persons selling refreshments or performing janitorial work; KAR 92-23-50, communication of numbers needed to win prohibited; KAR 92-23-51, disputed game of bingo; KAR 92-23-52, bingo, multiple winners; KAR 92-23-53, verification of winners; KAR 92-23-54, bingo, reduction in value of prizes; KAR 92-23-55, cashing of prize checks; KAR 92-23-56, bingo, instant bingo; KAR 92-23-57, bingo, records, inspection, preservation; KAR 92-23-58, bingo, filing of returns, notice, hearings, license; KAR 92-23-59, due date of tax return by distributors; KAR 92-23-70, definitions; KAR 92-23-71, licensing requirements, renewals; KAR 92-23-72, charitable raffle ticket requirements; KAR 92-23-73, conduct of charitable raffle; KAR 92-23-74, awarding charitable raffle prizes; KAR 92-23-75, reporting requirements, record keeping.

Patsy Congrove, KDOR, appeared before the Committee to address the proposed rules and regulations concerning the Charitable Gaming Act. Ms. Congrove explained that KARs 92-23-9 through 92-23-23, 92-23-25, 92-23-30, 92-23-31, and 92-23-37 through 92-23-40 are being revoked due to new legislation passed during the 2015 Session pertaining to the Charitable Gaming Act (Senate Sub. for HB 2155). The bill repealed all existing bingo statutes and enacted new bingo statutes, requiring new rules and regulations. It is anticipated the changes may cause

a slight increase in revenue for bingo due to the unlimited times an organization may sponsor bingo and the removal of limitations on when a premise may host bingo. KAR 92-23-41 through KAR 92-23-59 are new rules and regulations addressing the game of bingo and replacing the prior rules and regulations.

Ms. Congrove explained KARs 92-23-70 thru 92-23-75 also are new rules and regulations as a result of passage of HB 2155, which granted authority to KDOR to adopt rules and regulations governing the conduct of charitable raffles by nonprofit religious, charitable, fraternal, educational, and veterans' organizations. Staff noted proposed raffle rule and regulation 92-23-75 would state records be kept for three years but proposed bingo rule and regulation 92-23-57 would require records be kept for "at least" three years.

Ms. Congrove responded to questions from Committee members. Members expressed concern that changes, additions, or revisions were not noted in the document, allowing the Committee members to see what is actually being changed.

Kathleen Smith, KDOR, also was present to respond to questions from the Committee.

Committee members requested KDOR note the changes and deletions in the proposed rules and regulations regarding bingo and return to the Committee at the next Committee meeting with clarifications.

Committee members noted this legislation does not address "poker runs," which will be addressed in additional legislation. The Committee also noted the new legislation instructs the agency to return to the Legislature after three years to address concerns or any proposed revisions to the legislation pertaining to charitable raffles by nonprofit religious, charitable, fraternal, educational, and veterans' organizations.

The Committee was recessed at 12:10 p.m.

### **Afternoon Session**

The meeting reconvened at 1:30 p.m.

### **Review and Comment on proposed rules and regulations noticed for hearing by the Kansas Board of Accountancy.**

KAR 74-1-3, retaking the examination and granting of credits; KAR 74-1-4, transfer of examination credit; KAR 74-2-7, concentration in accounting; KAR 74-4-8, continuing professional education programs, requirements; KAR 74-4-9, continuing professional education controls and reporting; KAR 74-5-2, definitions; KAR 74-5-2b, applicability of AICPA professional standards; KAR 74-5-101, independence; KAR 74-5-102, integrity and objectivity; KAR 74-5-103, commissions and referral fees; KAR 74-5-104, contingent fees; KAR 74-5-201, general standards; KAR 74-5-202, compliance with standards; KAR 74-5-203, accounting principles; KAR 74-5-301, confidential client information; KAR 74-5-401, acts discreditable; KAR 74-5-403, advertising; KAR 74-5-405a, certified public accountants who own a separate business; KAR 74-5-406, firm or professional names; KAR 74-5-407, cooperation with the board; KAR 74-

11-6, definitions; KAR 74-11-7, renewal of a firm's registration; KAR 74-15-1, adoption of the uniform accountancy act.

Susan Somers, Executive Director, Board of Accountancy, appeared before the Committee to address the proposed rules and regulations. Ms. Somers noted the purpose of these amendments is for clarification purposes and to update materials adopted by reference. Responding to a question from a Committee member, Ms. Somers noted it is a difficult exam; the revisions will allow the individual to take the exam in sections as opposed to all at one time.

For clarity in KAR 74-5-2b, staff recommended the addition of "regardless of" before the word "whether the person."

### **Approval of Minutes**

*Representative Pauls moved for approval of the meeting minutes of September 28, 2015, as written. Motion was seconded by Senator Ostmeyer. Motion carried.*

### **Review and Comment on proposed rules and regulations noticed for hearing by the Kansas Department of Agriculture, Division of Water Resources.**

KAR 5-1-1, definitions; KAR 5-12-1, aquifer storage and recovery permitting; KAR 5-22-7, safe yield; KAR 5-25-21, alternative method for calculating the amount of water deposited in a multiyear flex account.

Robert Large, Chief Legal Counsel, Kansas Department of Agriculture, appeared before the Committee to address the proposed rules and regulations. Mr. Large introduced Orrin Feril, Groundwater Management District No. 5 (GMD), Stafford County, and Tim Boese, Groundwater Management District No. 2 (GMD), Harvey County. Also in attendance was Lane Letourneau, Division of Water Resources, Kansas Department of Agriculture.

Mr. Large explained KAR 5-12-1 relates to the storage of water in an aquifer storage and recovery system for the purposes of artificial recharge. KAR 5-1-1 is being amended to include definitions as used in KAR 5-22-7. This change, while requested by the City of Wichita, will be applied statewide. The agency believes it will be beneficial to others across the state. The proposed changes to KAR 5-12-1 will allow the minimum water level to be defined by the bedrock elevation as opposed to the current definition of the water level that occurred within ten years prior to the application filing or longer period. The proposed amendments to KAR 5-22-7 will modify recharge rates to be used in safe yield calculations in two areas of concern in the Equus Beds GMD No. 2. KAR 5-25-21 is a draft rule and regulation proposed by GMD No. 5 and will allow an additional method to calculate the amount of water which may be deposited in a multiyear flex account (MFYA). The proposed method will allow 5 times 90 percent of the annual authorized quantity to be enrolled in a MYFA, or 450 percent of the base water right's authorized quantity to be enrolled into a MYFA.

Responding to a question from a Committee member concerning the lowest water level to be defined by the bedrock elevation, Mr. Letourneau noted the current definition of lowest water level was defined ten years ago and does not reflect current levels of water in the aquifer. Mr. Large stated he is not aware of any other GMDs requesting exceptions at this time.

Tim Boese, Groundwater Management District No. 2, Harvey County, indicated the regulations in KAR 5-22-7 apply to all areas of GMD No. 2, except McPherson County.

Staff noted groundwater management districts have the authority to promulgate their own rules and regulations through the Chief Engineer, Division of Water Resources.

### **Review and Comment on proposed rules and regulations noticed for hearing by the Kansas Department for Children and Families.**

KAR 30-44-2, standardized cost recovery fee; KAR 30-44-6, support arrears forgiveness; KAR 30-46-10; definitions.

Trisha Thomas, Child Support Services Director, Department for Children and Families (DCF), appeared before the Committee to address the proposed rules and regulations ([Attachment 2](#)). Ms. Thomas explained the changes would: give DCF the option to reduce or eliminate collection fees for those they serve; and secondly, to clarify that the Secretary for Children and Families can forgive child support arrears. Ms. Thomas explained child support payments currently made to custodial parents in non-public-assistance cases include a 4 percent enforcement fee payable to DCF. The 4 percent fee generated approximately \$2.5 million in 2015. The agency is required to transmit 66 percent of these fees to the federal government, leaving approximately \$800,000 with the agency. Ms. Thomas indicated most of the \$800,000 retained by the agency is spent in support of other children's programs.

Committee members expressed concern about how the agency would replace the approximately \$800,000 generated by the fees in its budget.

## **COMMITTEE COMMENTS AND RECOMMENDATIONS**

### **Department of Health and Environment**

After discussion, the Committee had the following comments:

KAR 129-10-18. The Committee expresses concern about the Secretary's discretion with regard to rate modification in subsection (j). The Committee requests clarification on this process and wonders if there should be a review mechanism to ensure consistency among providers. It also asks whether, in the last sentence of paragraph (j)(2), the increase in the *per diem* rate or the adjusted rate was intended as the amount that cannot exceed the state average rate for reimbursement, and whether a rate could be adjusted downward as well as increased.

KAR 129-10-18. Regarding subsection (g), the Committee would like to know whether the state pays any out-of-state providers for ventilator services.

### **Dental Board**

After discussion, the Committee had no comments.



## **Department of Administration**

After discussion, the Committee had no comments.

## **Board of Emergency Medical Services**

After discussion, the Committee had the following comments and request.

KAR 109-5-1a. The Committee expressed concern the additional time proposed for continuing education may be a burden on volunteer emergency medical responders. The agency did not include in the Economic Impact Statement the cost to those individuals who must meet the proposed continuing education requirements or costs to agencies with paid staff who must backfill responder spots during the additional training. The Committee suggests this information be included.

KAR 109-5-1c. In subsection (d), the Committee suggests the addition of the word “have” after “shall.”

Request. The Committee is interested in the comments the agency has received thus far on these proposed rules and regulations. In particular, the members of the Committee are interested in those comments from lower population areas with respect to the proposed increase in the number of hours for continuing education. The Committee also is interested in the rationale for increasing the number of continuing education hours.

## **Department of Revenue**

After discussion, the Committee had no comments.

## **Department of Revenue**

After discussion, the Committee had the following comments:

Comment. The Committee wishes to thank the agency for postponing the review of the proposed changes in the portion of the proposed rules and regulations dealing with charitable gaming bingo until a comparison can be made between those rules and regulations being revoked and the new ones being proposed. The review of the proposed rules and regulations on charitable gaming bingo will take place at the Committee’s meeting on January 7, 2016.

KAR 92-23-70. The Committee suggests including the word “raffle” in the title of this rule and regulation.

## **Board of Accountancy**

After discussion, the Committee had the following comment:

KAR 74-5-2b. The Committee suggests placing “regardless of” before the word “whether,” for clarity.

## **Department of Agriculture, Division of Water Resources**

After discussion, the Committee had the following comment:

KAR 5-22-7. The Committee suggests the new language in paragraph (a)(5)(C) concerning well spacings near the North Fork of the Ninnescah River be separated from the existing language so this new requirement is not confused with the language regarding McPherson County.

## **Department for Children and Families**

After discussion, the Committee had the following comments:

KAR 30-44-2. The Committee expresses a concern that if child support payments made to custodial parents in non-public assistance cases do not include a 4 percent enforcement fee to the agency, the State would have \$800,000 less to administer the program. The Committee is curious to know what the \$800,000 is currently funding.

The Committee also is concerned with the discretionary authority given to the Secretary in subsection (c). The Committee suggests clarity with respect to how the Secretary would determine whether the funds for support enforcement services are sufficient and the criteria to determine whether these funds would pay for some or all of the associated costs. The Committee also is concerned that the basic rate for all non-PA cases may be reduced by the Secretary, giving the Secretary total discretion without limitations. The Committee suggests the agency review and rewrite this paragraph.

## **Adjournment**

The meeting was adjourned at 3:40 p.m. The next meeting of the Committee is scheduled for January 7, 2016.

Prepared by Shirley Jepson  
Edited by Raney Gilliland, Jill Shelley, and  
Whitney Howard

Approved by the Committee on:  
January 7, 2016  
(Date)