

MINUTES

JOINT COMMITTEE ON ADMINISTRATIVE RULES AND REGULATIONS

November 16, 2016
Room 152-S—Statehouse

Members Present

Senator Vicki Schmidt, Chairperson
Senator Tom Hawk
Senator Michael O'Donnell (replacing Senator Love for this meeting)
Senator Ralph Ostmeyer
Representative Steve Huebert
Representative Jerry Lunn
Representative Janice Pauls
Representative Ed Trimmer
Representative Jim Ward

Members Absent

Representative Sharon Schwartz, Vice-chairperson
Senator Oletha Faust-Goudeau
Representative Valdenia Winn

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
Jenna Seematter, Office of Revisor of Statutes
Shirley Jepson, Committee Assistant

Conferees

Katy Lenahan, Administrator/Manager, Public Resource Section, Division of Workers
Compensation, Kansas Department of Labor
Jassina Washington, Kansas Department of Labor
Athena Andaya, Deputy Attorney General, Legal Opinions and Government Counsel
Division, Kansas Office of the Attorney General
Loreena Steelman, Director, Child Care Licensing Section, Kansas Department of Health
and Environment
Mary Murphy, Kansas Department of Health and Environment
Bob Corkins, Director, Office of Administrative Hearings
Zack Miller, Executive Officer, Kansas Board of Examiners in Fitting and Dispensing of
Hearing Instruments
Erik Wisner, Executive Director, Kansas Real Estate Commission

Other Attendees

[See attached list.](#)

Morning Session

The meeting was called to order at 10:00 a.m. by Chairperson Vicki Schmidt.

Representative Huebert moved to approve the September 6, 2016, minutes as written. The motion was seconded by Senator Hawk. The motion was approved on a voice vote.

Review and Comment on proposed rules and regulations noticed for hearing by the Kansas Department of Labor, Division of Workers Compensation.

KAR 51-9-7, fees for medical and hospital services.

Katy Lenahan, Administrator/Manager, Public Resource Section, Division of Workers Compensation, Kansas Department of Labor, and Jassina Washington, Kansas Department of Labor, appeared before the Committee to address the proposed rule and regulation ([Attachment 1](#)). Ms. Lenahan explained the schedule of medical fees adopted by the proposed rule and regulation updates the workers compensation schedule of medical fees by increasing the reimbursement for most physician services by three percent; changes the outpatient and ambulatory surgical center's reimbursement to a prospective payment system from billed charges; and revises fees for independent medical exams, testimony and review of medical records, and trauma activation levels. Ms. Lenahan noted that the regulation would become effective on January 1, 2017.

Responding to questions from the Committee, Ms. Lenahan noted that there will be an increase of 3 percent in fees for some services and an increase for review of medical records, but there would be an expected overall savings of \$2 million. With regard to prescription drug prices, Ms. Washington indicated the agency does not follow Medicaid reimbursement rates and said rates are currently based upon the average wholesale price of drugs. Ms. Washington indicated this procedure may be reviewed in the future.

Review and Comment on proposed rules and regulations noticed for hearing by the Kansas Office of the Attorney General.

KAR 16-9-1, revocation; KAR 16-16-1, definitions; KAR 16-16-2, curriculum; KAR 16-16-3, training requirement.

Athena Andaya, Deputy Attorney General, Legal Opinions and Government Counsel Division, Kansas Office of the Attorney General, appeared before the Committee to address the proposed rules and regulations. Ms. Andaya explained KAR 16-9-1, which governed contracts between the Attorney General and contractors for collecting debts owed to district courts or restitution owed under an order of restitution, is being revoked due to legislation passed during the 2015 Legislative Session that moved responsibility to the Judicial Administrator ([Attachment 2](#)).

Ms. Andaya further explained KAR 16-16-1, KAR 16-16-2, and KAR 16-16-3 are new regulations to implement requirements in 2016 SB 367 ([Attachment 3](#)). New Section 14 (KSA 2016 Supp. 75-763) requires the Attorney General to promulgate rules and regulations creating skill development training for law enforcement officers primarily assigned to a school and for superintendents or such superintendent's designee. The law requires the regulations to be in effect by January 1, 2017.

Responding to questions from the Committee, Ms. Andaya indicated the school district superintendent or the superintendent's designee will be involved in the training. She noted this is a one-time training session. The legislation does not allocate additional funding to the school district to cover the cost of the training. The Committee voiced concern this lack of funding may pose a hardship on some districts, particularly smaller school districts. Ms. Andaya stated the superintendent's designee could be someone from the local police or sheriff's office.

Natalie Scott, Office of Revisor of Statutes, noted the fiscal note on the legislation is broad and did not specify a fiscal amount for this portion of the bill. Kansas Legislative Research Department staff verified no appropriation had been made for this purpose.

Review and Comment on proposed rules and regulations noticed for hearing by the Kansas Department of Health and Environment.

KAR 28-4-114a, initial and ongoing professional development training;
KAR 28-4-118, medication administration and reporting suspected child abuse or neglect; KAR 28-4-428, staff requirements; KAR 28-4-428a, education and training requirements.

Loreena Steelman, Director, Child Care Licensing Section, Kansas Department of Health and Environment (KDHE), appeared before the Committee to address the proposed rules and regulations, noting the proposed rules and regulations pertain to day care homes, group day care homes, preschools, and child care centers. The rules and regulations were developed cooperatively with the Kansas Department for Children and Families and implement federal requirements pertaining to the Child Care and Development Fund State Plan. The amended regulations add new subject areas to the existing health and safety training requirements for applicants and new providers, and new requirements for training in medication administration. The number of required annual professional development training hours for providers is increased.

Ms. Steelman said KAR 28-4-118 pertains to day care homes and group day care homes and addresses the administration of medication and reporting of suspected child abuse or neglect; each provider becomes a mandated reporter of abuse or neglect

Ms. Steelman further explained staff training requirements have been removed from KAR 28-4-428 as these requirements are now covered in detail in KAR 28-4-428a. A requirement for the program director to submit an annual report to KDHE has also been removed.

Committee members voiced concern with regard to the number of unlicensed day care facilities in their communities. Ms. Steelman indicated KDHE does not have authority regarding unlicensed day care facilities; she stated KDHE can investigate reported concerns and provide the results to local authorities. Ms. Steelman noted some local authorities take action and some

do not. KDHE is aware of the problem and tries to educate operators of unlicensed facilities, the public, and local authorities.

Responding to a question from the Committee with regard to the proposed removal of the definitions of “infants” and “toddlers” from KAR 28-4-428, Mary Murphy, KDHE, indicated the definitions have not changed and are in KAR 28-4-420.

Review and Comment on proposed rules and regulations noticed for hearing by the Office of Administrative Hearings.

KAR 133-1-1, definitions; KAR 133-1-2, assignment of administrative law judges; KAR 133-1-3, conduct of proceedings; KAR 133-1-4, electronic filing.

Bob Corkins, Director, Office of Administrative Hearings (OAH), appeared before the Committee to address the proposed rules and regulations. Mr. Corkins thanked the Legislature for the passage of 2016 SB 19, which authorized the use of electronic filing.

Mr. Corkins indicated the proposed rules and regulations replace KAR 1-39-1 through 1-39-4 which are proposed for repeal. The proposed new regulations, KAR 133-1-1 through KAR 133-1-4, will permit parties to administrative hearings to submit by means of electronic transmission evidence and other filings relevant to their cases. Affected parties are private individuals, businesses, and governmental agencies engaged in dispute proceedings that are presided over by administrative law judges on staff at OAH. He noted proposed KAR 133-1-4 will address procedures if a party believes a system error has caused a filing to not be timely.

Responding to a question from the Committee, Mr. Corkins stated there are no changes for paper filing. Mr. Corkins indicated all of OAH's fees come from client agencies. He stated OAH will require a cash carryover to pay for system implementation and there will be an annual expense of approximately \$20,000 for the system.

Review and Comment on proposed rules and regulations noticed for hearing by the Kansas Board of Examiners in Fitting and Dispensing of Hearing Instruments.

KAR 67-2-4, examinations; KAR 67-5-5, fees.

Zack Miller, Executive Officer, Kansas Board of Examiners in Fitting and Dispensing of Hearing Instruments, appeared before the Committee to address the proposed rules and regulations. Mr. Miller stated KAR 67-2-4 explains the application and scoring process for written and practical examinations. The written examination will be graded by the International Hearing Society, subject to approval by the Board. Proposed KAR 67-5-5 will increase practical examination and annual renewal fees.

Responding to a question from the Committee, Ms. Scott stated the use of the International Hearing Society's written examination is not a delegation of agency authority. Mr. Miller indicated the term of a temporary license, issued before an applicant passes the exam, cannot exceed 16 months. Examinations are given in the spring and fall. In response to another question, Mr. Miller indicated the increased fees is being used to set up a website; the agency has not had a website to date.

Review and Comment on proposed rules and regulation noticed for hearing by the Kansas Real Estate Commission.

KAR 86-1-5, fees.

Erik Wisner, Executive Director, Kansas Real Estate Commission, appeared before the Committee to address the proposed rule and regulation. Mr. Wisner stated the proposed regulation will eliminate fees being charged for several business processes. In addition, the proposed regulation will increase the fee for approval of an original course of instruction from \$50 to the statutory maximum of \$75. The purpose of these amendments is to more accurately associate resource costs incurred by the Commission with revenue received through license fees. He also stated the rule and regulation is being revised to allow an applicant or licensee to pay fees associated with a background investigation to the Commission or directly to an entity collecting fingerprints on behalf of the Kansas Bureau of Investigation.

COMMITTEE DISCUSSION AND COMMENTS

Kansas Department of Labor, Division of Workers Compensation. The Joint Committee on Administrative Rules and Regulations reviewed for comment rules and regulations concerning KAR 51-9-7, fees for medical and hospital services. After discussion, the Committee had the following comment.

Comment. According to testimony presented to the Committee, prescription reimbursements for this program are based on average wholesale price. However, federal-program reimbursements are now tied to acquisition costs. The Committee recommends the agency explore, with the National Council on Compensation Insurance, whether a shift to using actual acquisition cost or another cost methodology would be beneficial for future schedules of medical fees.

Kansas Attorney General. The Joint Committee on Administrative Rules and Regulations reviewed for comment rules and regulations concerning KAR 16-9-1, revocation (was administrative costs). After discussion, the Committee had no comments.

Kansas Attorney General. The Joint Committee on Administrative Rules and Regulations reviewed for comment rules and regulations concerning KAR 16-16-1, definitions; KAR 16-16-2, curriculum; KAR 16-16-3, training requirement. After discussion, the Committee had the following comment.

Comment. The Committee is concerned this set of rules and regulations is an unfunded mandate to those law enforcement agencies and unified school districts with employees required to attend and complete the mandatory skill development training.

Kansas Department of Health and Environment. The Joint Committee on Administrative Rules and Regulations reviewed for comment rules and regulations concerning KAR 28-4-114a, initial and ongoing professional development training; KAR 28-4-118, medication administration and reporting suspected child abuse or neglect; KAR 28-4-428, staff

requirements; KAR 28-4-428a, education and training requirements. After discussion, the Committee had no comments.

Office of Administrative Hearings. The Joint Committee on Administrative Rules and Regulations reviewed for comment rules and regulations concerning KAR 133-1-1, definitions; KAR 133-1-2, assignment of administrative law judges; KAR 133-1-3, conduct of proceedings; KAR 133-1-4, electronic filing. After discussion, the Committee had the following comment.

Comment. The Committee wishes to commend the agency for the revised proposed rules and regulations on electronic filing.

Kansas Board of Examiners in Fitting and Dispensing of Hearing Instruments. The Joint Committee on Administrative Rules and Regulations reviewed for comment rules and regulations concerning KAR 67-2-4, examinations; KAR 67-5-5, fees. After discussion, the Committee had the following comment.

Comment. The Committee encourages the agency to continue to develop a website to provide information to the regulated community and the public.

Kansas Real Estate Commission. The Joint Committee on Administrative Rules and Regulations reviewed for comment rules and regulations concerning KAR 86-1-5, fees. After discussion, the Committee had no comments.

The meeting was adjourned at 11:15 a.m. The next meeting of the Committee is scheduled for January 3, 2017, at 10:00 a.m.

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

Approved by the Committee on:

January 3, 2017
(Date)