

**MINUTES**

**JOINT COMMITTEE ON ADMINISTRATIVE RULES AND REGULATIONS**

January 8, 2009  
Room 446-N—Statehouse

**Members Present**

Senator Vicki Schmidt, Chairperson  
Representative Carl Holmes, Vice-Chairperson  
Senator Karin Brownlee  
Senator Ralph Ostmeyer  
Senator Chris Steineger  
Representative John Faber  
Representative Joe Patton  
Representative Jan Pauls  
Representative Arlen Siegfried  
Representative Ed Trimmer

**Members Absent**

Senator Donald Betts  
Representative Mark Treaster

**Staff Present**

Raney Gilliland, Kansas Legislative Research Department  
Corey Carnahan, Kansas Legislative Research Department  
Kenneth Wilke, Office of the Revisor of Statutes  
Nobuko Folmsbee, Office of the Revisor of Statutes  
Judy Glasgow, Committee Assistant

**Others Present**

Brenda Kuder, Kansas Health Policy Authority  
Scott Bears, Kansas Health Policy Authority  
Travis Lowe, Pinegar, Smith and Associates  
Ashley Dopha, Pinegar, Smith and Associates  
Mary Greb-Hall, Department of Administration  
Sean Miller, Capitol Strategies  
Barend Koops, Hein Law Firm  
Cheryl Magathan, Real Estate Appraisal Board

Walt Schoenk, Kansas Health Policy Authority  
Bill Sneed, Polsinelli Law Firm  
John Wine, Kansas Insurance Department  
Larry Bruning, Kansas Insurance Department  
Linda Sheppard, Kansas Insurance Department  
Susan Ellmaker, Kansas Insurance Department  
Richard Cram, Department of Revenue  
Randy Forbes, Board of Pharmacy  
Dave Starkey, Department of Agriculture  
Dave Barfield, Department of Agriculture  
Constantine Cotsoradis, Department of Agriculture  
Norma Phillips, Kansas Housing Resources Corporation  
Ryan Vincent, Kansas Housing Resources Corporation  
Susan Somers, Kansas Board of Accountancy  
Helen O'Brien, Kansas Board of Accountancy  
Diane Minear, Secretary of State's Office  
Ivan Weichert, Kansas Information Technology Office  
Greg Reser, Kansas Department on Aging  
Vera VanBruggen, Kansas Department on Aging  
Janet Chubb, Secretary of State's Office  
Gilbert Cruz, Kansas Ombudsman  
Brian Vazquez, Kansas Health Policy Authority  
Walt Schoemaker, Kansas Health Policy Authority  
Dustin Moyer, Kansas Health Policy Authority

### **Morning Session**

Chairperson Vicki Schmidt called the meeting to order at 9:00 a.m.

The Chairperson recognized Brenda Kuder to address the proposed rules and regulations noticed for hearing by the Kansas Health Policy Authority. KAR 30-5-151, revoked and KAR 129-5-151, scope of covered hospital services for MediKan program recipients.

The Committee had concerns about (b) severe acute traumatic injury, and the fact that there was no definition for this term and it could be subject to interpretation. The Committee also suggested that the agency clarify (c) by adding a definition. Ms. Peters stated that she would take these suggestions back to the agency for consideration. There being no further comments from the Committee, the Chairperson thanked Ms. Peters for her appearance before the Committee.

The Chairperson requested action on the minutes from the November 6 and 7, 2008, meeting. *Senator Steineger moved that the minutes be approved as presented, Representative Faber seconded the motion, motion passed.*

Cheryl Magathan was recognized by the Chairperson to speak to the proposed rules and regulations noticed for hearing by the Real Estate Appraisal Board. KAR 117-1-1, definitions; KAR 117-2-2a, licensed classification; experience supervision requirements; KAR 117-3-2a, general classification; experience supervision requirements; KAR 117-4-2a, residential classification; experience supervision requirements; KAR 117-5-2, provisional classification; supervised experience

requirements; KAR 117-5-2a, provisional classification; supervisor requirements; KAR 117-7-1, fees; and KAR 117-10-1, reinstatement of certificate or license to active status; continuing education.

Ms. Magathan stated that the definition of "good standing" was being added to KAR 117-1-1, the definitions and was being removed from KAR 117-2-2a, 117-3-2a; 117-4-2a and 117-5-2a.

The Committee noted that the items in KAR 117-1-1 are not in alphabetical order. Ms. Magathan stated that the Board would correct this before the public hearing. Staff suggested that in KAR 117-5-2, (c) and (f) the word should be "provisionally" in front of "licensed." Staff also suggested that in (h) it would be appropriate to refer to KAR 117-2-2 and not go into subsections and paragraphs. After answering all questions from the Committee, Ms. Magathan was thanked by the Chairperson for appearing before the Committee.

Chairperson Schmidt welcomed John Wine, Staff Attorney, to speak to the proposed rule and regulation noticed for hearing by the Kansas Insurance Department (Attachment 1). KAR 40-2-28, Pre-need insurance contracts; minimum standards for determining reserves.

Staff had some questions about the material that was adopted by reference and suggested that the agency may want to clarify subsection 5. Mr. Wine stated that the agency had discussed this, and it was to be addressed at the public hearing when agency officials would discuss how industry would like to have this handled.

Mr. Wine continued to speak to the proposed rule and regulation noticed for hearing by the Kansas Insurance Department (Attachment 2). KAR 40-4-36, accident and sickness insurance; conversion policies; reasonable notice of right to convert.

Mr. Wine stated this rule and regulation is being amended to comply with SB 81, passed by the 2008 Legislature. SB 81 now requires that employers, not insurers, provide reasonable notice to former employees and their covered dependents of their right to continuation of group accident and sickness insurance coverage.

The Committee had several questions about the change made by SB 81 and did not believe that this was the intent of the Legislature. Mr. Wine stated that the Insurance Department was not at the meeting when this amendment was added. Bill Sneed, representing the insurance industry, stated that the amendment was offered at the time of the Conference Committee and there was little discussion about what changes this would cause in the industry. The amendment was offered to bring state law into compliance with federal law. After a thorough discussion, it was the *consensus of the Committee members that a bill be prepared by staff to change the requirement back to having the insurance company provide notice to employees and to collecting the premium*. The Committee recommended that KAR 40-4-36 be withdrawn by the Insurance Department with the introduction of the new bill.

Staff noted that the history section of the proposed regulation needed to be amended to include KSA 40-3215.

After responding to all questions from the Committee, the Chairperson thanked Mr. Wine for his presentation before the Committee.

Richard Cram was introduced by the Chairperson to speak to the proposed rules and regulations noticed for hearing by the Department of Revenue. KAR 92-26-1, definitions; and KAR 92-26-4, filing of quarterly reports; deadline.

Mr. Cram stated that the agency has an incentive program for the production of ethyl alcohol in the State of Kansas. Mr. Cram stated that there are 12 ethyl alcohol producers in the state and that seven of these qualify to receive the incentive payments. Each producer is to file a report quarterly during the fiscal year and the Department has been making incentive payments quarterly based on these reports. This has resulted in payments being made on different *pro rata* bases. After consulting with the producers, the Department is proposing to amend KAR 92-26-4, to provide for payment to be calculated at the end of the year after all quarterly reports have been made.

The Committee members were concerned that KAR 92-16-4 would penalize a producer who missed sending in one quarterly report. Mr. Cram stated that the only penalty for not filing a quarterly report was not being eligible for the incentive payment. Several Committee members expressed concern that under the old regulation if they failed to file a quarterly report they were not reimbursed for that quarter but under the proposed regulation they would not be reimbursed for the entire year. The Committee recommended that they only be penalized for the quarters that they did not file a report in a timely manner. Mr. Cram stated that the agency would consider this. In response to a question from a Committee member, Mr. Cram stated that the information on total gallons produced is shared with the Department of Commerce and the Department of Agriculture.

After responding to all questions from the Committee, Mr. Cram was thanked by the Chairperson for appearing before the Committee.

Chairperson Schmidt welcomed Randy Forbes, counsel for the Board of Pharmacy, to address the proposed rule and regulation noticed for hearing by the Kansas Pharmacy Board. KAR 68-20-23, N-Benzylpiperazine included in Schedule I.

Mr. Forbes stated that the Pharmacy Board was contacted by the county attorney of Geary County indicating that its law enforcement officers had been finding N-Benzylpiperazine (BZP) on suspected drug abusers and drug users and wanted to prosecute. They requested that BZP be classified as a Schedule I under emergency procedures under KSA 65-4102(e). It was stated that the KBI also called the Pharmacy Board about BZP. The Board initiated a temporary regulation which was adopted by the Board and approved on November 6, 2008. The Board also initiated a permanent regulation at the same time. Mr. Forbes stated that a report is to be sent to the President of the Senate and the Speaker of the House notifying them of new drugs to be included in Schedule I. If legislation is initiated and passed during the 2009 Session, then this rule and regulation can be rescinded.

It was suggested by a member of the Committee that a search be conducted to find out whether the federal Drug Enforcement Agency has any other drugs that are listed as Schedule I that Kansas does not have listed. Mr. Forbes stated that he would take this back to the Board for its action. The Chairperson requested that a follow-up be made on a previous request concerning having a pharmacist in charge at indigent clinics.

The Chairperson asked Ken Wilke, Revisor of Statutes Office, to explain the bill that the Committee had requested concerning the transfer of cancer drugs (Attachment 3). Mr. Wilke stated that this bill was requested by the Committee at the November 7, 2008, meeting to allow the donation and acceptance of drug in compliance with the provisions of the cancer drug repository program and the donation and transfer of any drug in compliance with the Unused Medications Act. Mr. Forbes stated that the Board approves the bill as drafted. It was the consensus of the Committee that the bill be prefiled in the Senate.

The Chairperson thanked Mr. Forbes for appearing before the Committee.

Dave Starkey, Chief Counsel, was introduced by the Chairperson to speak to the proposed rules and regulations noticed for hearing by the Division of Water Resources, Department of Agriculture. KAR 5-3-4a, hearing before issuance of an order; KAR 5-14-3, orders; and KAR 5-14-3a, hearing procedure.

A Committee member expressed concern about KAR 5-14-3, page 3, (b), allowing the Chief Engineer's designee to issue assessment of civil penalty. The Committee felt that only the Chief Engineer should have that designation and the phrase "or the chief engineer's designee" should be stricken. Staff called attention to KAR 5-14-3a concerning the time before the prehearing needs to be further defined. Staff also noted that on page 5, (2) (B) a reference should be made to KSA 35-107 to clarify which holidays are included. A Committee member noted the fact that on page 4 (3) no time frame was given for a party to object to allowing a person to participate by telephone. It was the Committee's suggestion that a specific time be included. It was noted by a Committee member that on page 7, someone besides the presiding officer review the *ex parte* communication that may have rendered the presiding officer no longer qualified.

Mr. Starkey responded to all questions from the Committee and was thanked for his presentation by Chairperson Schmidt.

The Chairperson recognized Dave Barfield, Chief Engineer, to address the proposed rules and regulations noticed for hearing by the Division of Water Resources, Department of Agriculture. KAR 5-20-1, intensive groundwater use control area; public hearings; KAR 5-20-2, formal review of intensive groundwater use control area orders; and KAR 5-20-3, initiation of an intensive groundwater use control area within a groundwater management district by the chief engineer.

Mr. Barfield gave the Committee background information concerning these three rules and regulations and noted that there had been a bill in the 2008 Legislature, but it did not pass. These rules and regulations are taken from the Senate bill and the parties have been working to find a common ground. A Committee member questioned whether or not they had statutory authority to do this, and Mr. Barfield stated that they did have an Attorney General's opinion stating that they did have this authority.

Staff noted that when KSA 74-5-10a was passed, it was passed in the context of looking at the Chief Engineer's permanent staff, not someone hired from the outside. Staff noted that this was making policy changes from what the statute allows and it would seem that it should go before the Legislature.

It was the Committee's recommendation that the agency go forward with the public hearing on KAR 5-20-1 and KAR 5-20-2 on February 12, 2009 and that KAR 5-20-3 be withdrawn from public hearing giving time for a bill to be prepared and introduced in the 2009 Legislative Session so there could be hearings in both houses and all parties would have input. Mr. Barfield stated that they would do this to give time for the Legislature to act on the bill. It was the consensus of the Committee to have a bill prepared and filed in the House. The staff will notify the Chairpersons, Vice-Chairpersons, and Ranking Minority Members of the House Agriculture and Natural Resources Committee, Senate Natural Resources Committee, and Senate Agriculture Committee concerning the filing of this bill.

After responding to all questions from the Committee, Mr. Barfield was thanked for his presentation before the Committee.

Scott Hesse was welcomed by Chairperson Schmidt to speak to the proposed rule and regulation noticed for hearing by the Board of Healing Arts. KAR 100-69-10, license renewal; continuing education.

Mr. Hesse reviewed the rule and regulation for the Committee. There were no questions, and the Chairperson thanked Mr. Hesse for his appearance before the Committee.

Chairperson Schmidt recognized Jim Hays, Superintendent, Kansas Veterans Home, Winfield, Kansas to address the proposed rules and regulations noticed for hearing by the Kansas Commission on Veterans Affairs. KAR 97-1-1, KAR 97-1-2, KAR 97-1-3, KAR 97-1-4, KAR 97-1-5, KAR 97-2-1, KAR 97-2-2, KAR 97-2-3, KAR 97-2-4, KAR 97-2-5, KAR 97-2-6, KAR 97-2-7, KAR 97-2-8, KAR 97-3-1, KAR 97-3-2, KAR 97-3-3, KAR 97-3-4, KAR 97-3-5, KAR 97-3-6, KAR 97-3-7, KAR 97-3-8, KAR 97-3-9, Revoked; KAR 97-1-1a, definitions; KAR 97-1-2a, administrative oversight; KAR 97-1-3a, eligibility; KAR 97-1-4a, application for membership; KAR 97-1-5a, priority for admission; KAR 97-1-6a, approval or denial of application, notification to applicant, and right of reconsideration; right of hearing; final decision; KAR 97-2-1a, charges; KAR 97-2-2a, comfort money; KAR 97-3-2a, personal conduct; guests; KAR 97-3-2a, pets and service or therapeutic animals; hunting prohibition; KAR 97-3-3a, passes; and KAR 97-4-1a, disciplinary actions; discharge.

Mr. Hays reviewed the rules and regulations for the Committee, stating that these all deal with the two veterans homes in Kansas. In KAR 97-1-1, the Committee had a question on page 2 (2) as to whether the terms "pistol" and "revolver" were needed since it stated "any firearm," which would cover both terms. Staff noted that on page 2, line 4 and line 10, the apostrophe is not needed in "veterans." Staff called attention to KAR 97-1-3a, page 2, that the Alcoholism and Intoxication Treatment Act has been changed to the Alcohol or Other Drug Addiction Treatment Act and the statute would be KSA 65-4024d. Staff noted a typing error in KAR 97-1-5a, the history section should read "KSA 76-1908 and 76-1954." In KAR 97-1-6a, paragraph (3) staff called attention to the time frame of at least ten calendar days before the hearing and noted that if the agency wanted this to include Saturday and Sunday, it would have to change the time frame to 11 days or more; this also would apply to KAR 97-4-1a. A Committee member suggested that "video conference" be added for potential future use. In KAR 97-3-1a, a Committee member noted that the word "state" be added in paragraph (2) before statute and regulation.

The Chairperson thanked Mr. Hays for appearing before the Committee.

Chairperson Schmidt recessed the Committee for lunch until 1:30 p.m.

### **Afternoon Session**

Chairperson Schmidt reconvened the meeting at 1:30 p.m.

Ryan Vincent, General Counsel, was recognized by the Chairperson to speak to the proposed rules and regulations noticed for hearing by the Kansas Housing Resources Corporation. (Attachment 4). KAR 127-2-1, definitions; KAR 127-2-2, installation standards; and KAR 127-2-3, liability insurance requirement.

Mr. Vincent reviewed the rules and regulations and answered questions raised by the Committee. Chairperson Schmidt thanked Mr. Vincent for his presentation before the Committee.

The Chairperson welcomed Janet Chubb, Assistant Secretary of State, to address the proposed rules and regulation noticed for hearing by the Secretary of State. KAR 7-41-1, definitions; KAR 7-41-2, original registration; renewal; expiration; KAR 7-41-3, registration forms; KAR 7-41-4, evidence of financial security; KAR 7-41-5, certification practice statement; KAR 7-41-6, Amendments and material changes; KAR 7-41-7, recordkeeping and retention of certification authority documents; KAR 7-41-8 and KAR 7-41-09, revoked; KAR 7-41-10, procedure upon discontinuance of certification authority business; KAR 7-41-11, recovery against financial security; KAR 7-41-12, reciprocity; KAR 7-41-13, use of subscriber information; KAR 7-41-14, state agency; compliance; KAR 7-41-15, registration authority, local registration authority, and local registration authority's trusted partner; compliance; KAR 7-41-16, registration authority, local registration authority, and local registration authority's trusted partner; general responsibilities; KAR 7-41-17, registration and authority, local registration authority, and local registration authority's trusted partner; certification; KAR 7-41-18 through 7-41-19, revoked; KAR 7-41-30, identification and authentication; certificate security levels; KAR 7-41-31, revoked; KAR 7-41-32, agreements; registration authority; local registration authority; local registration authority's trusted partner; certificate applicant; KAR 7-41-33, picture identification credentials; KAR 7-41-34, certificate; format and name; and KAR 7-41-35, certification authority; ITEC certificate policy.

Ms. Chubb stated that in KAR 7-41-1, the word "registered" was removed from "registered certification authority." Now the term is just "certification authority." The Committee expressed concern that the term "registered" was in the statute and that this was one of the requirements that the Secretary of State was to perform. Staff made the suggestion that there should be some reference to the unlawful act provision that would require certification authorities to register before engaging in business. In KAR 7-41-5, staff had a concern about (d) the term "certificate applicant" and suggested that a definition of the term should be provided. A Committee member questioned the title in KAR 7-41-6 and the fact that the term "material" is not defined. Staff had concerns about the terms "RA, LRA and LRA's trusted partner" are defined in such a way that they cover both individuals outside of state agencies, as well as those within which makes for confusion in KAR 7-41-1; this is true throughout the KAR 7-41 series. Ms. Chubb stated that this would have to be addressed before the Secretary of State went ahead with the regulation. Staff suggested that KAR 7-41-35, needs to be reorganized to make it more clear.

After discussion by the Committee, the members felt that there needed to be clarification in the statutes requiring the Secretary of State to regulate all certification authorities. A provision for unlawful acts was suggested to provide the agency with enforcement penalties. The Chairperson asked for the Committee's wishes concerning these regulations. *On a vote of 4 to 3, the Committee adopted the motion to have staff prepare a bill to be introduced in the Senate by a committee other than Administrative Rules and Regulations.* Representative Patton asked that the record show that he voted no on the measure.

In response to a question from the Committee, Ms. Chubb stated that she did not believe that the Kansas Department of Transportation (KDOT) and the University of Kansas are complying with these rules and regulations. After discussion, the Committee requested that a letter be sent to the Kansas Department of Transportation, the University of Kansas, and the Board of Regents requesting that the agencies appear at the next meeting to explain their position.

After responding to all questions from the Committee members, Chairperson Schmidt thanked Ms. Chubb for her presentation before the Committee.

Susan Somers, Executive Director, was welcomed by the Chairperson to address the proposed rules and regulations noticed for hearing by the Board of Accountancy. KAR 74-4-7, continuing professional education requirements; KAR 74-4-8, continuing professional education

programs; requirements; KAR 74-5-2, definitions; KAR 74-5-2a, definitions of terms in the AICPA professional standards; KAR 74-5-101, independence; KAR 74-5-102, integrity and objectivity; KAR 74-5-103, commissions and referral fees; KAR 74-5-201, general standards; KAR 74-5-202, compliance with standards; KAR; 74-5-301, confidential client information; KAR 74-5-302, retention of client records; 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 names; KAR 74-7-4, notification; firm registration; sole proprietors; and KAR 74-11-6, definitions.

Ms. Somers responded to all questions from the Committee. She was thanked by the Chairperson for her appearance before the Committee.

The Chairperson recognized Vera VanBruggen, Director, to speak to the rules and regulations noticed for hearing by the Kansas Department on Aging. KAR 26-39-100, definitions; KAR 26-39-101, licensure of adult care homes; KAR 26-39-102, admission, transfer, and discharge rights of residents in adult care homes; KAR 26-39-103, resident rights in adult care homes; KAR 26-39-104, receivership of adult care homes; KAR 26-39-105, adoptions by reference: general; KAR 26-39-114, 26-39-243, 26-39-278, 26-39-427, revoked; KAR 26-41-101, administration; KAR 26-41-102, staff qualifications; KAR 26-41-103, staff development; KAR 26-41-104, disaster and emergency preparedness; KAR 26-41-105, resident records; KAR 26-41-106, community governance; KAR 26-41-200, resident criteria; KAR 26-41-201, resident functional capacity screening; KAR 26-41-202, negotiated service agreement; KAR 26-41-203, general services; KAR 26-41-204, health care services; KAR 26-41-205, medication management; KAR 26-41-206, dietary services; KAR 26-41-207, infection control; KAR 26-42-101, administration; KAR 26-42-102, staff qualifications; KAR 26-42-103, reserve; KAR 26-42-104, disaster and emergency preparedness; KAR 26-42-105, resident records; KAR 26-42-106, reserve; KAR 26-42-200, resident criteria; KAR 26-42-201, resident functional capacity screening; KAR 26-42-202, negotiated service agreement; KAR 26-42-203, general services; KAR 26-42-204, health care services; KAR 26-42-205, medication management; KAR 26-42-206, dietary services; KAR 26-42-207, infection control; KAR 26-43-101, administration; KAR 26-43-102, staff qualifications; KAR 26-43-103, staff development; KAR 26-43-104, disaster and emergency preparedness; KAR 26-43-105, resident records; KAR 26-43-106, community governance; KAR 26-43-200, resident criteria; KAR 26-43-201, resident functional capacity screening; KAR 26-43-202, negotiated service agreement; KAR 26-43-203, general services; KAR 26-43-204, health care services; KAR 26-43-205, medication management; KAR 26-43-206, dietary services; KAR 26-43-207, infection control; KAR 28-39-145a, 28-39-146, 28-39-147, 28-39-148, 28-39-240, 28-39-241, 28-39-242, 28-39-243, 28-39-244, 28-39-245, 28-39-246, 28-39-247, 28-39-248, 28-39-249, 28-39-250, 28-39-251, 28-39-252, 28-39-253, 28-39-275 Through 28-39-288, 28-39-425 through 28-39-436, revoked.

The Committee had a concern about KAR 26-39-100 and the the definition of "Physician" used which includes "licensed physician assistant or licensed advanced registered nurse practitioner." After discussion by the Committee, Ms. VanBruggen stated that the agency would change this. Staff noted in KAR 26-39-104, "secretary" needs to be defined. A Committee member had questions concerning KAR 26-41-102, page 1, (3) the term "in an adult care home" and that this was perhaps too restrictive. The Committee recommended that this be clarified. Staff noted that KAR 26-41-205, page 5, line 8, a comma is needed after KSA 65-1642. This also would be needed in KAR 26-42-205 and KAR 26-43-205.

After responding to all Committee questions, Ms. VanBruggen was thanked for her appearance before the Committee.

Raney Gilliland handed out a report to Committee members showing agency responsiveness to the Committee's comments (Attachment 5).



## Committee Comments on Proposed Rules and Regulations

**Kansas Board of Healing Arts.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning license renewal, continuing education. After discussion, the Committee had no comment.

**Kansas Department of Revenue.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning definitions; filing of quarterly reports, deadline. After discussion, the Committee had the following comments.

KAR 92-26-4. The Committee believes that those producers who fail to report should be penalized only for the quarter in which they were untimely in their reporting. In addition, the Committee believes that the Department should consider "extenuating circumstances" which could have prevented a producer from reporting on a timely basis.

**Kansas Division of Water Resources, Kansas Department of Agriculture.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning:

- Hearing before issuance of an order; orders; hearing procedure
- Intensive groundwater use control area, public hearings; formal review of intensive groundwater use control area orders; and initiation of an intensive groundwater use control area within a groundwater management district by the chief engineer.

After discussion, the Committee had the following comments.

KAR 5-14-3. The Committee is concerned that the civil penalty could be imposed by a designee of the Chief Engineer, rather than by just the "Chief Engineer."

KAR 5-14-3a. In subsection (f), the Committee believes that there should be a time frame established for those who wish to participate by telephone. In subsection (h), the Committee believes that the agency should clarify whether the ten calendar days includes Saturdays, Sundays, and holidays. Please review other proposed regulations for this same language and provide the same clarification. In subsection (j), the agency should consider some sort of time frame for the withdrawal of a pending matter when a presiding officer has received an ex parte communication. Also, please consider whether there should be a mechanism for determining whether the hearing officer should be disqualified.

KAR 5-20-3. The Committee asks the agency to withhold this regulation until July 1 in order to give the Legislature the opportunity to pass legislation to address the issue of the initiation of an intensive groundwater use control area. If the Legislature has not acted to clarify the policy, then the Committee believes the agency should proceed with the regulation. Copies of this correspondence will be sent to members of the appropriate committees of the Legislature.

**Kansas Insurance Department.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning accident and sickness insurance, conversion policies, reasonable notice of right to convert. After discussion, the Committee had the following comment.

KAR 40-4-36. Because the Committee believes that the insurance company should be the entity required to provide notice and collect the premium, rather than the former employer, the Committee asks the agency to withdraw this regulation until legislation can be considered by the Legislature to change the law. If the agency chooses not to withdraw the regulation, then the Committee believes that KSA 40-3215 should be included as an authorizing statute for this regulation.

**Kansas Insurance Department.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning pre-need insurance contracts; minimum standards for determining reserves. After discussion, the Committee had no comment.

**Kansas Pharmacy Board.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning N-Benzylpiperazine included in schedule 1. After discussion, the Committee had the following comments.

KAR 68-20-23. The Committee would like to be informed if there are other drugs which have been classified as Schedule 1 by federal agencies and have not been so designated by the State of Kansas. In addition, the Committee wishes to express its disappointment with the fact that no staff from the agency was present during the time of review of this regulation and plans to distribute copies of this letter to members of the Pharmacy Board. Further, the Committee requests an update to its previous request concerning the registration of "qualifying centers or clinics." Please indicate those which have designated a "pharmacist in charge."

**Kansas Health Policy Authority.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning scope of covered hospital services for MediKan program recipients; scope of covered hospital services for MediKan program recipients. After discussion, the Committee had the following comments.

KAR 129-5-151. The Committee questions why the definition of "severe acute traumatic injury" is not included in the regulation. Also, consider defining the other terms used in this regulation. The Committee also notes that this is not the term used in the statute. Perhaps clarification could be added by defining all of the terms used in this regulation. The Committee also notes that diagnosis-related groups (DRGs) are not normally contained in rules and regulations.

**Kansas Real Estate Appraisal Board.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning definitions; licensed classification, experience supervision requirements; general classification, experience supervision requirements; residential classification, experience supervision requirements; provisional classification, supervisor requirements; provisional classification, supervisor requirements; fees;

reinstatement of certificate or license to active status, continuing education. After discussion, the Committee had the following comments.

KAR 117-1-1. Please consider placing these definitions in alphabetical order.

KAR 117-5-2. In subsection (f), consider using the term "provisionally" rather than "provisional" in order to make the wording grammatically correct. In subsection (h), consider taking some of the detail out of the reference since amendments at a later date may then require this regulation to be amended in order to keep the reference correct.

**Kansas Commission on Veterans Affairs.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning definitions; administrative oversight; eligibility; application for membership; priority for admission; approval or denial of application, notification to applicant, and right of reconsideration, right of hearing, final decision; charges; comfort money; personal conduct, guests; pets and service or therapeutic animals, hunting prohibition; passes; disciplinary actions, discharge. After discussion, the Committee had the following comments.

KAR 97-1-1a. In subsections (j) and (n), the apostrophes after the word "veterans" are not necessary. In addition, the Committee is not sure why the terms "pistol" and "revolver" are necessary when the term "firearm" also is used. Please review this and determine if the term "firearm" will cover all the necessary conditions.

KAR 97-1-3a. In subsection (b) please replace the names of the named acts with the appropriate names and the proper statutory citations.

KAR 97-1-5a. Please correct the statutory reference where KSA 76-1594 should be KSA 76-1954.

KAR 97-1-6a. Please clarify whether the ten calendar days include Saturdays, Sundays, and holidays. Also, consider the inclusion of video conferences.

KAR 97-3-1a. Please clarify in subsection (a) that the reference is to a "state" statute and a "state" regulation.

KAR 97-4-1a. Please clarify the ten calendar days and whether they include Saturdays, Sundays, and holidays.

**Kansas Housing Resources Corporation.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning definitions; installation standards; liability insurance requirement. After discussion, the Committee had no comment.

**Kansas Secretary of State.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning continuing professional education requirements; continuing professional education programs, requirements; definitions; definitions of terms in the AICPA professional standards; independence; integrity and objectivity; commissions and referral fees; general standards; compliance with standards; confidential client information; retention of client records; acts discreditable; advertising; certified public accountants who own a separate

business; firm names; notification, firm registration, sole proprietors; and definitions. After discussion, the Committee had the following comments.

KAR 7-41-1. In subsection (d), the Committee believes that reference should be made to a "registered certification authority" in order to comply with the term used in the statute.

KAR 7-41-5. In subsection (d), the Committee believes that this regulation needs to be rewritten since it is unclear as to what is required.

KAR 7-41-6. Please consider developing a new title for this regulation to match the content.

KAR 7-41-7. The Committee questions the striking of the requirement for records retention and wonders if it could be made clearer by requiring that all records be kept for a certain time period rather than to be reliant on the "certificate policy."

KAR 7-41-16. The Committee wonders whether the terms apply to all or only to those entities which have a relationship with a state agency? If the terms apply only to those entities which have a relationship with a state agency, then perhaps clarification should be made in the regulation.

KAR 7-41-30. The Committee is concerned with the "applicable requirements" and wonders if the requirements are enforceable since they are contained in a policy and not adopted as a part of a regulation.

KAR 7-41-35. The Committee believes that this regulation could be amended to make its intent clearer.

Comment. The Committee voted to introduce legislation to clarify that it is unlawful for a state agency to conduct business with a certification authority which is not registered with the Kansas Secretary of State.

**Kansas Board of Accountancy.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning continuing professional education requirements; continuing professional education programs, requirements; definitions; definitions of terms in the AICPA professional standards; independence; integrity and objectivity; commissions and referral fees; general standards; compliance with standards; confidential client information; retention of client records; acts discreditable; advertising; certified public accountants who won a separate business; firm names; notification, firm registration, sole proprietors; and definitions. After discussion, the Committee had no comment.

**Kansas Department on Aging.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning:

- Adult Care Homes—Definitions; licensure of adult care homes; admission, transfer, and discharge rights of residents in adult care homes; resident rights in adult care homes; receivership of adult care homes; adoptions by reference: general; and revocations

- Assisted Living Facilities and Residential Health Care Facilities—Administration; staff qualifications; staff development; disaster and emergency preparedness; resident records; community governance; resident criteria; resident functional capacity screening; negotiated service agreement; general services; health care services; medication management; dietary services; and infection control
- Home Plus—Administration; staff qualifications; disaster and emergency preparedness; resident records; resident criteria; resident functional screening; negotiated service agreement; general services; health care services; medication management; dietary services; and infection control
- Adult Day Care Facilities—Administration; staff qualifications; staff development; disaster and emergency preparedness; resident records; community governance; resident criteria; resident functional capacity screening; negotiated service agreement; general services; health care services; medication management; dietary services; infection control and revocations

After discussion, the Committee had the following comments:

KAR 26-39-100. In subsection (ddd), the Committee believes that the definition of the term “physician” is too inclusive and needs to be modified.

KAR 26-39-101. The term “two working days” needs to be clarified as to whether it includes Saturdays, Sundays, and holidays. Please review all of the regulations in this set to determine if other similar changes need to be made.

KAR 26-39-104. The Committee believes that it would be helpful to clarify which secretary is referenced in this regulation. Please review all of the regulations in this set to determine if other similar changes need to be made.

KAR 26-41-102. In subsection (d), please review paragraph 3 to determine whether the agency would want to consider abuse in any other type of facility other than in an adult care home. Please review other similar regulations in this set to determine if similar changes need to be made.

KAR 26-41-205. Please include a comma after KSA 65-1642. Please review other regulations to determine if a similar change needs to be made.

Prepared by Judy Glasgow  
Edited by Raney Gilliland

Approved by Committee on:

February 13, 2009

(Date)

JOINT COMMITTEE ON ADMINISTRATIVE RULES AND REGULATIONS  
COMMITTEE GUEST LIST

DATE: Jan 8, 2009

NAME	REPRESENTING
Brenda Kuder	KHPA
Scott Bears <sup>Bears</sup>	KHPA
Travis Lowe	Pinegar, Smith, and associates
Ashley Dopita	Pinegar, Smith & Assoc.
Mary Greb-Hall	Dept. of Administration
SEAN MILLER	CAPROC STRATEGIES
Barend Koops	Hein Law Firm
<sup>P. Prieto</sup> Brian Vazquez	KHPA
Walter Schoenk <sup>Schismaker</sup>	KHPA
Bull Sneed	Polsinelli Law Firm
<sup>Duck</sup> Peter <sup>Moser</sup> Moser	KHPA
Wanda Lee <sup>Mitch</sup>	KMLIA
Norme Phillips	KHRC
Ryan Vincent	KHRC
Susan Jensen	KS Board of Accountancy
Helen O'Brien	KS Board of Accountancy
Diane Minear	Secretary of State
Ivan Weichert	KS Information Technology
<sup>Reser</sup> FREG Reser	KS DEPT. ON AGING



**MEMORANDUM**

**To:** Joint Committee on Administrative Rules and Regulations  
**From:** John Wine  
Kansas Insurance Department  
**Re:** K.A.R. 40-2-28  
**Date:** January 8, 2009

My name is John Wine and I am a Staff Attorney for the Kansas Insurance Department. I would like to thank the committee for allowing the Department to appear and comment on the proposed revisions to K.A.R. 40-2-28.

This proposed regulation specifies the method for determining the appropriate reserves insurance companies are required to maintain for preneed life insurance contracts. These are policies sold in connection with funeral and burial services being sold preneed. The regulation adopts as our policy the methodology recently approved by the National Association of Insurance Commissioners (NAIC). The changes were made to prevent companies from maintaining inadequate reserves based on an inappropriate mortality model that would otherwise be taking effect.

There would be no economic impact on life insurance companies because they are currently using this mortality table to determine reserves and this regulation would merely continue the current practice.

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Larry Bruning, Chief Actuary for our office, is with me today. We would be happy to answer any questions the members of the committee might have. Again, thank you for allowing us to appear today and comment on the proposed regulations.

**K.A.R. 40-2-28. Preneed insurance contracts; minimum standards for determining reserves.** The Kansas insurance department's "policy and procedure pertaining to preneed life insurance minimum standards for determining reserve liabilities and nonforfeiture values," except section 1, dated November 25, 2008, is hereby adopted by reference. (Authorized by K.S.A. 40-103 and K.S.A. 40-409; implementing K.S.A. 40-409; effective P-  
\_\_\_\_\_.)

**MEMORANDUM**

**To:** Joint Committee on Administrative Rules and Regulations  
**From:** John Wine  
Kansas Insurance Department  
**Re:** K.A.R. 40-4-36  
**Date:** January 8, 2009

My name is John Wine and I am a Staff Attorney for the Kansas Insurance Department. I would like to thank the committee for allowing the Department to appear and comment on the proposed revisions to K.A.R. 40-4-36.

K.A.R. 40-4-36 is being amended to comply with changes made by 2008 Senate Bill 81, which amended K.S.A. 40-19c06 and 40-2209. The existing regulation provided the requirements for reasonable written notice by an insurer to employees and their covered dependents of their right to continuation of group accident and sickness insurance coverage. Senate Bill 81 specifically amended K.S.A. 40-2209(j)(3) to now require that employers, not insurers, provide reasonable notice and this proposed regulation simply mirrors that statutory change.

There will be a positive economic impact on insurers, who are no longer required to provide the notice. Those costs will now be the responsibility of employers, including small business owners, who are now required to assume these statutory duties. Because SB 81 imposes no penalty on employers who fail to provide the required notice, employees and their covered dependents may experience an economic impact if

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Attachment 2

they fail to receive notice of their rights to continuation of their health insurance coverage. Because the Kansas Insurance Department has no regulatory authority over employers, there will be no economic impact on the Department.

Linda Sheppard, Director of the Accident and Health Division of our office, and Susan Ellmaker, Staff Attorney, are with me today. We would be happy to answer any questions the members of the committee might have. Again, thank you for allowing us to appear today and comment on the proposed regulation.

**K.A.R. 40-4-36. Accident and sickness insurance; ~~continuation and conversion policies; reasonable notice of right to continuation and right to convert.~~** (a) ~~The requirements for reasonable notice by the insurer of the right to continuation specified in K.S.A. 40-19c06 and K.S.A. 40-2209, and amendments thereto, shall be fulfilled if a form meeting the following requirements is transmitted to the insured person:~~

- ~~(1) Describes the right to continue coverage under the group policy;~~
- ~~(2) sets forth the premiums or subscriber's charges and mode of payment necessary to exercise this right; and~~
- ~~(3) describes the availability of types of coverage through the Kansas health insurance association.~~

~~(b) The form shall be directly delivered or transmitted to the last known address of the insured person.~~

(e) The requirements for reasonable notice by the insurer of the right to convert specified in K.S.A. 40-19c06, and K.S.A. 40-2209, and K.S.A. 40-3209, and amendments thereto, shall be fulfilled if, during the ~~six-month~~ 18-month continuation period, a form meeting the following requirements is transmitted to the person eligible for conversion:

- (1) Describes the conversion options;
- (2) describes the premiums or subscriber's charges for each option;
- (3) provides instructions regarding the action required to effect conversion; and

**ATTORNEY GENERAL**

OCT 31 2008

APPROVED BY



**DEPT. OF ADMINISTRATION**

OCT 22 2008

**APPROVED**

2-3

(4) describes the availability of types of coverage through the Kansas health insurance association.

~~(d)~~ (b) Insurers may include provisions in their group policies, subscription agreements, and certificates of coverage that are necessary to identify or obtain identification of persons and events that would activate the continuation and conversion rights created by K.S.A. 40-19c06, and K.S.A. 40-2209, and K.S.A. 40-3209, and amendments thereto. (Authorized by K.S.A. 40-103, ~~40-19c06~~, and K.S.A. 2007 Supp. 40-2209, as amended by L. 2008, Ch. 164, §5; implementing K.S.A. 2007 Supp. 40-19c06, as amended by L. 2008, Ch. 164, §3, and 40-2209, as amended by L. 2008, Ch. 164, §5, and 40-3209, as amended by L. 2008, Ch. 164, §7; effective, T-86-3, Jan. 9, 1985; effective May 1, 1985; amended May 1, 1986; amended May 29, 1998; amended April 25, 2003; amended P-  
\_\_\_\_\_.)

**ATTORNEY GENERAL**

OCT 31 2008

APPROVED BY 

**DEPT. OF ADMINISTRATION**

OCT 30 2008

**APPROVED**

2-4

## PROPOSED BILL NO. \_\_\_\_\_

By Joint Committee on Administrative Rules and Regulations

AN ACT concerning the pharmacy act of the state of Kansas; declaring certain acts not to be in violation of said act; amending K.S.A. 65-1636 and repealing the existing section.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 65-1636 is hereby amended to read as follows: 65-1636. (a) Except as otherwise provided in this act, the sale and distribution of drugs shall be limited to pharmacies operating under registrations as required by this act, and the actual sale or distribution of drugs shall be made by a pharmacist or other persons acting under the immediate personal direction and supervision of the pharmacist.

(b) The donation, acceptance, transfer, distribution or dispensing of any drug in compliance with the provisions of the cancer drug repository program established by K.S.A. 2008 Supp. 65-1664 through 65-1667, and amendments thereto, and any rules and regulations promulgated thereunder shall not constitute a violation of this section.

(c) The donation, acceptance, transfer, distribution or dispensing of any drug in compliance with the provisions of the utilization of unused medications act and any rules and regulations promulgated thereunder shall not constitute a violation of this section.

Sec. 2. K.S.A. 65-1636 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.

**PRESENTATION OF PROPOSED REGULATIONS  
BEFORE THE JOINT COMMITTEE ON  
ADMINISTRATIVE RULES & REGULATIONS**

January 8, 2009

Chairpersons Schmidt and Holmes and members of the Committee, I serve as General Counsel to the Kansas Housing Resources Corporation (KHRC), whose purpose is to enhance Kansas communities with housing opportunities. Thank you for this opportunity to present the attached proposed regulations for the installation of manufactured housing in Kansas.

*A. Background*

The Federal Manufactured Housing Improvement Act of 2000 (Federal Act) required the U.S. Department of Housing and Urban Development (HUD) to establish a Federal manufactured home installation program for states that choose not to operate their own programs. Any state wishing to operate its own program must be certified by HUD as containing installation standards that meet or exceed the Federal standards.

Responding to the Federal Act, in 2002 the Legislature amended the Kansas Manufactured Housing Act (State Act), charging KHRC's predecessor with the requirement of adopting regulations for the State to operate its own program. These regulations were to take effect six months after the Federal standards were published. The final pieces of the Federal regulations took effect in October, so KHRC is able to move forward with our proposed regulations.

*B. Synopsis of Regulations*

**K.A.R. 127-2-1 Definitions.** Defines phrases used in the State Act.

**K.A.R. 127-2-2 Installation Standards.** Contains standards for installing manufactured homes in Kansas. These standards primarily adopt the Federal standards, but allow for installers to follow the HUD-approved manufacturer instructions to ensure compatibility with warranties.

**K.A.R. 127-2-3 Liability Insurance Requirement,** Requires that installers carry a minimum liability insurance coverage of at least \$200,000.

KHRC has partnered with the Kansas Manufactured Housing Association and Sedgwick County Housing Department, which has the State's primary installer's program, in adopting these standards. We believe the standards will receive certification by HUD, protect Kansas consumers, and ensure proper installation of manufactured housing in the State. I welcome any questions you may have.

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# KANSAS LEGISLATIVE RESEARCH DEPARTMENT

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<http://www.kslegislature.org/klrd>

January 8, 2009

**To:** Joint Committee on Administrative Rules and Regulations  
**From:** Raney Gilliland, Assistant Director for Research  
Jill Shelley, Research Analyst  
**Re:** Agency Responsiveness to JCARR Comments

Since July 2006, JCARR has heard draft regulations from 49 agencies. The enclosed analysis summarizes agency responsiveness to Committee requests and comments. It shows that most agencies respond in writing to Committee requests and comments in a timely manner.

The first, single-page listing shows the number of database entries by agency and the analyst's opinion as to whether, in general, there were problems with agency responsiveness. The second listing, seven pages, gives detail on that responsiveness. It lists, for each agency:

- The date the agency appeared before the Committee;
- Whether the Committee had comments;
- Whether the agency responded by letter as requested;
- Whether the response addressed each Committee comment;
- Whether final rules have been published; and
- Analyst comments for that entry.

(Whether final rules and regulations have been published in the *Kansas Register*, in general, was not recorded for rules and regulations presented before November 2007, a change in the data kept.)

A full printout of Committee comments and agency responses is available upon request (159 pages).

Please contact us if you have any questions.

JAS/kal

Enclosures

<b>Agency</b>	<b>Database entries since July 2006</b>	<b>In general, were there problems with agency response?</b>
Accountancy	3	no
Administration	1	no
Agriculture	11	no
Agriculture - Water Resources	3	no
Athletic Commission (Commerce)	1	no
Attorney General	1	no
Bank Commissioner	1	no
Barbering	1	no
Behavioral Sciences	8	no
Commerce	4	yes
Conservation Commission	3	no
Corrections	3	no
Cosmetology	1	no
Credit Unions	3	no
Dental Board	2	no
Education	4	no
Emergency Medical Services	1	no
Fire Marshal	1	yes
Governmental Ethics Commission	1	no
Healing Arts	12	with 1
Health Policy Authority	8	no
Hearing Aid Examiners	1	no
Historical Society	1	no
Indigents Defense	3	no
Insurance	9	yes
Juvenile Justice Authority	1	no
KBI	1	no
KCC	7	with 1
KDHE	17	no (a)
Labor	3	no
Labor - Workers Comp	1	no
Mortuary Arts	2	no
Nursing	3	with 1
Pharmacy Board	12	yes
Racing and Gaming	4	no
Real Estate Appraisal	3	with 1
Real Estate Commission	2	with 1
Regents	3	with 1
Revenue	8	yes
Revenue - Alcoholic Beverage Control	2	no
Secretary of State	4	with 1
Securities Commissioner	3	no
SRS	5	no
Tax Appeals	1	no
Technical Professions	4	no
Treasurer	3	yes
Veterans Affairs	2	no
Veterinary Medical Examination	1	yes
Wildlife and Parks	11	no
49	190	35, "no"
(a) Usually KDHE responded only in the hearing officer's report included with the final regulation.		

JCAK meeting date	Agency	Committee comments?	Agency response letter in file?	Did agency address each Committee comment in its response?	Final rules have been published? (Register date) (a) (b)	Comments
1/4/2007	Accountancy	yes	yes	yes		
11/19/2007	Accountancy	yes	yes	yes	12/27/2007	
4/7/2008	Accountancy	yes	yes	yes	5/8/2008	
7/9/2007	Administration	yes	yes	yes		
11/20/2006	Agriculture	yes	yes	no		The response didn't address the Committee's request that comments on the regulations be received by email prior to the public hearing. minor problem
1/4/2007	Agriculture	yes	yes	no		The agency's response did not address the Committee's requests to include in its notice of publication a website where the public may access proposed regulations or to allow the public to comment on the proposed regulations through email. It fully addressed other suggestions, including withdrawing 2 of the 3 proposed regulations.
2/9/2007	Agriculture	yes	yes	yes		
11/19/2007	Agriculture	yes	yes	yes	1/3/08 and 1/24/2008	(Two separate replies were received, one for feed and seed and one for weights and measures.)
12/10/2007	Agriculture	yes	yes	yes	2/14/2008	(food safety)
4/7/2008	Agriculture	yes	yes	yes	withdrawn	from the response letter: "[I]t was decided to withdraw the proposed regulations as currently drafted. ... The department will redraft the proposed regulations and reinstate the regulation adoption process."
5/28/2008	Agriculture	no	yes	n/a	7/3/2008	
5/28/2008	Agriculture	no	yes	n/a	7/3/2008	(weights and measures)
9/22/2008	Agriculture	yes	yes	yes	11/20/2008	
11/6/2008	Agriculture	yes				(BGH labeling)
12/10/2007	Agriculture	yes	yes	yes	2/14/2008	(pesticides)
3/23/2007	Agriculture - Water Resources	yes	yes	yes		
5/28/2008	Agriculture - Water Resources	yes	no	no	10/16/2008	
7/7/2008	Agriculture - Water Resources	yes	yes	yes	9/18/2008	
12/10/2007	Athletic Commission (Commerce)	yes	yes	yes	3/20/2008	
9/6/2006	Attorney General	yes	yes	yes		
1/14/2008	Bank Commissioner	yes	yes	yes	3/20/2008	
10/2/2006	Barbering	yes	no	n/a	NTD	
9/6/2006	Behavioral Sciences	yes	yes	yes		
4/4/2007	Behavioral Sciences	yes	yes	yes		
8/14/2007	Behavioral Sciences	no	no	n/a		
12/10/2007	Behavioral Sciences	yes	yes	yes	3/27/2008	
5/28/2008	Behavioral Sciences	yes	yes	yes	7/24/08 for all but social workers, 12/4/08 for social workers	
8/12/2008	Behavioral Sciences	no	n/a	n/a	12/4/2008	
9/22/2008	Behavioral Sciences	yes			NTD	
11/6/2008	Behavioral Sciences	yes			NTD	
10/2/2006	Commerce	yes	no	n/a		The Committee questioned the agency's authority to divide the maximum amount of tax credits available to community-based organizations. problem
8/14/2007	Commerce	yes	no	n/a		The Committee's comment had to do with receiving comments via the internet.
10/8/2007	Commerce	yes	no	n/a	12/6/2007	The Committee had suggested that the agency consider a different phrase for "on a form provided by the department" so that the form could be provided electronically, and it suggested agency explore mechanisms using electronic verification other than solely using the mail.
5/28/2008	Commerce	yes	yes	yes	7/10/2008	
7/17/2006	Conservation Commission	yes	no	n/a		
7/9/2007	Conservation Commission	no	yes	n/a		
8/12/2008	Conservation Commission	yes	yes	yes	9/11/2008 and 10/30/08	(two replies because there were two sets of regulations and two public hearings)

JCARR meeting date	Agency	Committee comments?	Agency response letter in file?	Did agency address each Committee comment in its response?	Final rules have been published? (Register date) (a) (b)	Comments
2/9/2007	Corrections	yes	yes	yes		
4/24/2007	Corrections	yes	yes	yes		
5/28/2008	Corrections	yes	yes	yes	7/24/2008	
2/15/2008	Cosmetology	yes	yes	yes	NTD	
10/2/2006	Credit Unions	yes	no	n/a		The only comment was about including the agency's website address in the notice and indicating that comments on the regulation are accepted by email. minor problem
10/8/2007	Credit Unions	yes	no	n/a	12/13/07 and 7/17/2008	The Committee's question was about a definition. The regulation in question came back before the Committee at its May 28, 2008, meeting.
5/28/2008	Credit Unions	no	no	n/a	7/17/2008	
5/28/2008	Dental Board	no			withdrawn	A revised version of these proposed rules and regulations came before the JCARR on 22 Sept 08.
9/22/2008	Dental Board	yes	no	n/a	n/a for some; 12/25/08 for the remainder	The Board did not adopt the proposed sedative and general anaesthesia regulations, KAR 71-5-7 through 71-5-14; KLRD received a letter to this effect dated 11/17/08. The regulations on practice by a dental student and by a dental hygiene student have been published as final regulations.
1/4/2007	Education	yes	yes	n/a		The regulations were withdrawn.
5/22/2007	Education	yes	yes	yes		
10/8/2007	Education	yes	yes	yes	3/6/2008	
4/7/2008	Education	yes	yes	yes	7/3/2008	
8/12/2008	Emergency Medical Services	no	yes	n/a	10/16/2008	
9/22/2008	Fire Marshal	yes	no	no	12/11/2008	The Committee had concerns about cross references within regulations, ramifications to a regulated entity of a single violation, and the impact of a program not paying for itself.
4/7/2008	Governmental Ethics Commission	yes	yes	yes	7/3/2008	
9/6/2006	Healing Arts	yes	no	n/a		A comparison of the proposed regulations with the yellow copy of the permanent regulations in KLRD files showed no changes, except that the agency delayed adoption of proposed regulation 100-73-9 (to Register Vol. 26, p. 1044 [June 21, 2007]). problem
10/2/2006	Healing Arts	yes	no	n/a		The Committee had questions about only 1 of the 3 regulations. The questioned regulation went before the Committee again 5/22/07.
11/20/2006	Healing Arts	yes	no	n/a	NTD	
4/4/2007	Healing Arts	yes	no	n/a		Although there was no letter, the regulations were revised to address Committee comments.
5/22/2007	Healing Arts	yes	no	n/a		The Board did not address the Committee's concern regarding the size of the sign to be displayed. One of the three proposed regulations was not adopted. problem
7/9/2007	Healing Arts	yes	no	n/a		The Committee commented that the Board should consider the staggering of fees in order to relieve cash flow issues. problem
11/19/2007	Healing Arts	yes	yes	no	3/13/2008	The Committee requested a copy of any letter sent to the regulated community; no such copy was in the file.
1/14/2008	Healing Arts	yes	yes	yes	3/20/2008	
5/28/2008	Healing Arts	yes	yes	yes	100-69-1 and 100-69-2 on 11/6/08; 100-69-3 NTD	The Board tabled proposed KAR 100-69-3 "for further research and revision."
7/7/2008	Healing Arts	yes			NTD	
9/22/2008	Healing Arts	yes			NTD	
11/6/2008	Healing Arts	yes			NTD	comments were on fee regulations
7/17/2006	Health Policy Authority	no	yes	n/a		
9/6/2006	Health Policy Authority	no	n/a	n/a		
11/20/2006	Health Policy Authority	yes	yes	yes		
1/4/2007	Health Policy Authority	no	yes	n/a		
4/4/2007	Health Policy Authority	yes	yes	yes		
7/9/2007	Health Policy Authority	yes	yes	yes		

JCAR meeting date	Agency	Committee comments?	Agency response letter in file?	Did agency address each Committee comment in its response?	Final rules have been published? (Register date) (a) (b)	Comments
2/15/2008	Health Policy Authority	yes	yes	yes	5/8/08 and 7/3/08	
5/28/2008	Health Policy Authority	yes	yes	yes	9/4/2008	
4/4/2007	Hearing Aid Examiners	yes	no	n/a	NTD	The Committee suggested rearranging some words for clarity.
11/20/2006	Historical Society	yes	yes	yes		
7/17/2006	Indigents Defense	no	yes	n/a		
8/14/2007	Indigents Defense	no	no	n/a		
8/12/2008	Indigents Defense	no	yes	n/a	12/11/2008	
7/17/2006	Insurance	yes	no	n/a		The Committee requested the criteria used by the American Accreditation Health Commission and used by the Utilization Review Committee to develop certain standards. The Committee also requested the agency review its statutory authority for collecting and maintaining policies and procedures of utilization review organizations. problem
11/20/2006	Insurance	yes	no	n/a		A comparison of the proposed to the final regulations showed that none of the suggested changes were made. The JCARR questioned the economic impact statement, a 180-day timeframe, and whether new state law had been considered. Problem
2/9/2007	Insurance	yes	yes	yes		The regulation was withdrawn
3/16/2007	Insurance	yes	yes	yes		The regulation was withdrawn.
8/14/2007	Insurance	no	no	n/a		
11/19/2007	Insurance	yes	no	n/a	for 3 of 4 (1/3/08 and 1/31/08)	The Committee's only comment was to ask the agency to review the history sections of the proposed regulations and communicate the changes, if any, which the agency makes. (40-3-12 has not yet been adopted as of 1/8/09.)
1/14/2008	Insurance	yes	no	n/a	4/3/2008	The Committee was concerned that any changes in health utilization management standards will no longer be reviewed by any legislative entity, but rather, those changes will be made in a document adopted by reference. problem?
8/12/2008	Insurance	yes	yes	yes	40-1-48 published 11/13/08	One (40-1-37) of the two proposed regulations was withdrawn and will be redone to reflect the newest NAIC model regulation, per testimony from KID.
11/6/2008	Insurance	no			NTD	
10/2/2006	Juvenile Justice Authority	yes	yes	yes		
2/9/2007	KBI	yes	yes	yes		However, the Committee asked for a clarity on when a time period was to begin; the final regulations omit reference to any time period.
7/17/2006	KCC	no	no	n/a		
11/20/2006	KCC	yes	yes	yes		
4/4/2007	KCC	no	no	n/a		
7/9/2007	KCC	yes	no	n/a		No changes were made to the final regulations to address the Committee's concerns about the acceptance of an electronic signature under the Kansas Electronic Transactions Act. problem
10/8/2007	KCC	yes	yes	yes		
5/28/2008	KCC	yes	no	n/a	7/3/2008	The only comment requested correction of a spelling error; the error was corrected in the final regulation
5/28/2008	KCC	yes	yes	yes	10/9/2008	(oil and gas)
7/17/2006	KDHE	yes	in final reg packet	yes		KDHE responded completely to the comment, in the hearing officer's report but not in a separate letter to the Committee.
9/6/2006	KDHE	yes	no	n/a	3/1/2007	The Committee had concerns about uses of terms including "confined feeding facility" and "inspector" and whether certain standards had been adopted by reference.
11/20/2006	KDHE	yes	no	n/a		The Committee's comment was a commendation for including a website and receiving comments via email.

JCAR meeting date	Agency	Committee comments?	Agency response letter in file?	Did agency address each Committee comment in its response?	Final rules have been published? (Register date) (a) (b)	Comments
3/16/2007	KDHE	yes	yes	yes		Two separate letters providing some of the requested information/responses were included in the file. Other responses were included in the Report of the Hearing Officer and not otherwise sent to KLRD.
4/24/2007	KDHE	yes	in final reg packet	yes		There was no separate letter to the Committee, but responses to each Committee concern were included in the Hearing Officer's report.
5/22/2007	KDHE	yes	in final reg packet	yes		At this meeting, KDHE presented three types of regulations: isolation and quarantine; cosmetology and tanning; and solid waste management. KDHE did not respond to the Committee's comment on the isolation and quarantine regulations, but it did make the suggested change. KDHE responded completely to each comment on the cosmetology and tanning regulations, in the hearing officer's report but not in a separate letter to the Committee. KDHE responded completely to each comment on the solid waste regulations, in the hearing officer's report but not in a separate letter to the Committee.
7/9/2007	KDHE	yes	in final reg packet	yes		KDHE responded completely to each comment, in the hearing officer's report but not in a separate letter to the Committee.
10/8/2007	KDHE	yes	no	yes	12/20/2007	KDHE responded in its Responsiveness Summary (attached to the final regulations packet) to both of the Committee's concerns, but not in a separate letter to the Committee.
11/19/2007	KDHE	yes	in final reg packet	yes	1/17/2008 (lodging)	
11/19/2007	KDHE	yes	in final reg packet	yes	3/13/08 (foster care)	
1/14/2008	KDHE	yes	yes	yes	2/28/2008	The Committee had questioned the agency's authority to require records retention. The response was from the Secretary.
2/15/2008	KDHE	yes	yes	no	5/22/2008	There was no separate letter to the Committee, but a response to one of the Committee's two concerns was included in the Hearing Officer's report. KDHE did not address the Committee's concern about ways to measure gains in knowledge from certain types of continuing education allowed, e.g., attendance at poster sessions.
4/7/2008	KDHE	no	yes	n/a	5/22/2008	(surface water register)
4/8/2008	KDHE	yes	no	yes	6/28/2008	(child care) There was no separate letter to the Committee, but responses to the Committee's concerns were included with the Hearing Officer's report in the final regulations received from the Secretary of State's Office.
9/22/2008	KDHE	yes	yes	no	11/20/2008	
11/6/2008	KDHE	yes			NTD	
11/6/2008	KDHE	yes			NTD	(charitable health care providers)
9/6/2006	Labor	no	n/a	n/a		
8/14/2007	Labor	yes	yes	yes		
8/12/2008	Labor	yes	yes	yes	9/25/2008	(boilers)
8/14/2007	Labor - Workers Comp	no	no	n/a		
11/20/2006	Mortuary Arts	yes	yes	yes		
8/14/2007	Mortuary Arts	yes	no	n/a		The Committee's only comment was a commendation on promulgating the regulations promptly.

JCAH meeting date	Agency	Committee comments?	Agency response letter in file?	Did agency address each Committee comment in its response?	Final rules have been published? (Register date) (a) (b)	Comments
2/9/2007	Nursing	yes	yes	no	NTD; most heard anew in Sept. '08	The Board didn't address the Committee's general comment that "The Committee is concerned about the establishment of different protocols for the mid-level practitioners, the physicians' assistants and the advanced registered nurse practitioners, that would be created by the adoption of these regulations." The Board also didn't address this Committee request: "Request. The Committee is concerned with the authority of the Board to establish 'protocol' as defined in this set of regulations. The Committee requests that the agency review its statutory authority and explain in detail where and how it believes that statutory authority exists beyond the written protocol for the prescription of drugs. ...." Update: The JCARR heard again 22 Sept 08 many of the regulations presented 2/9/07.
9/22/2008	Nursing	yes			NTD	
8/12/2008	Nursing	yes	yes	no	10/23/2008 for all but 60-2-105 and 60-2-106	60-2-105 and 60-2-106 were sent back to the Board's education committee. The Board did not address the Committee's request for information about the Board's ability to license those who have been home-schooled or who otherwise received their secondary educations at schools not approved by the Kansas State Board of Education. The JCARR had requested the Board include information about whether legislative action is needed to allow those individuals to receive licensure. possible problem
7/17/2006	Pharmacy Board	yes	no	n/a		The Pharmacy Board showed that it discussed to each comment, in the hearing officer's report but not in a separate letter to the Committee.
10/2/2006	Pharmacy Board	yes	yes	yes		The Board thought that removing subsection letter references in definitions in KAR 68-16-1 would delay adoption; this may provide an opportunity for education on which changes are "major" and would require a restart to the process. The Board said it made no changes to the proposed regulations.
11/20/2006	Pharmacy Board	yes	no	n/a		The Committee's only comment was a request to include notice that public comments could be made by email prior to the hearing.
5/22/2007	Pharmacy Board	yes	no	n/a		
8/14/2007	Pharmacy Board	yes	no	n/a		The Committee heard a proposal for the regulation reviewed at the 8/14/07 meeting again 1/14/08.
10/8/2007	Pharmacy Board	yes	no		temporary regulation published 11/13/08	The Committee requested clarification regarding the basis upon which the 93-day supply of a controlled substance would be dispensed.
11/19/2007	Pharmacy Board	yes	yes	no	4/3/2008	The Board sent notice that the public hearing had been delayed because of the ice-storm-related emergency. No subsequent letter was in the file relating to the Committee's comment, and no changes were made to the regulation.
1/14/2008	Pharmacy Board	yes			not as of 12/4/08	
4/7/2008	Pharmacy Board	no	no	n/a	68-11-2 published 10/9/08	The public hearing for 1 of the 2 proposed regs was rescheduled to 9/24/08, with a request to the Committee that it need not re-hear the regulation as no changes had been made to it. (The 8/21/08 Kansas Register includes an announcement for a public meeting on 68-7-14 [one of the two regs heard] for 12/3/08.) The other reg, 68-11-2, came to the JCARR again 9/22/08.
8/12/2008	Pharmacy Board	yes	no	no	10/9/2008	The JCARR had requested the Board send Raney the number of the statute that allows the Board to regulate oxygen suppliers.
9/22/2008	Pharmacy Board	yes			NTD	

JCA meeting date	Agency	Committee comments?	Agency response letter in file?	Did agency address each Committee comment in its response?	Final rules have been published? (Register date) (a) (b)	Comments
11/6/2008	Pharmacy Board	yes	no	n/a	12/18/08 for Utilization of unused medications	Comments were on unused medications: the Committee questioned a term and expressed concern that this donation program and the cancer drug donation program may be contrary to the Kansas Pharmacy Act; it has authorized the introduction of legislation to ensure that the two programs do not conflict with the Kansas Pharmacy Act.
10/8/2007	Racing and Gaming	yes	yes	yes		The response to the Committee's question at KAR 112-7-6 seems to miss the point.
7/7/2008	Racing and Gaming	yes	yes	yes	9/11/2008	
11/6/2008	Racing and Gaming	yes				(racing)
11/6/2008	Racing and Gaming	yes				(gaming)
2/9/2007	Real Estate Appraisal	yes	no	n/a		The Committee requested clarifications, including clarification of which entity approves course design. problem
11/19/2007	Real Estate Appraisal	yes	yes	yes	1/3/2008	The agency made no changes.
2/15/2008	Real Estate Appraisal	no	n/a	n/a	3/20/2008	
8/14/2007	Real Estate Commission	yes	yes	yes		
8/12/2008	Real Estate Commission	yes	no	n/a	10/9/2008	The Committee had a concern regarding the Commission's restrictions on the use of the terms "realty" and "real estate" in the names of entities operating in that field. possible problem
11/20/2006	Regents	yes	yes	yes		
4/24/2007	Regents	yes	yes	yes		
5/22/2007	Regents	yes	no	no		The final regulation addressed one Committee concern ?? (that the student not be concurrently enrolled in high school), but there was no response to the Committee's question about whether the Board considered students who are not yet age 18.
10/2/2006	Revenue	yes	yes	yes		
11/20/2006	Revenue	yes	yes	no		Revenue changed only a date in two regulations, as suggested. The agency's letter didn't address other Committee concerns. minor problem
1/4/2007	Revenue	yes	yes	no		The response fully addressed all comments except that on including a website address for review of proposed regulations.
7/9/2007	Revenue	yes	yes	yes		
10/8/2007	Revenue	yes	no	n/a	12/13/2007	The agency revoked its regulation setting fines and penalties. The Committee was told that there would be agency guidelines, which do not have the force and effect of law, for the imposition of fines and penalties. The Committee requested that any fines and penalties within the discretion of the Secretary be established through rules and regulations. problem
4/7/2008	Revenue	yes	yes	yes	6/5/2008	The final version of 92-12-140 only partially addresses the Committee's concern about placing the value of a donation at the lesser of fair market value or value when purchased when the item's current fair market value far exceeds the original purchase price. The final says "an independent appraisal may be necessary in determining fair market value" and retains the "lesser of" language.
5/28/2008	Revenue	yes	no	n/a	8/14/2008	The Department did include the word "of," as requested by the JCARR, in the final regulation. (That was the only comment.)
9/22/2008	Revenue	yes	yes	yes	NTD	
10/8/2007	Revenue - Alcoholic Beverage Co	yes	yes	yes		
5/28/2008	Revenue - Alcoholic Beverage Co	yes			8/14/2008	
1/4/2007	Secretary of State	yes	no	n/a		The agency did make the requested change.
4/7/2008	Secretary of State	yes	no	n/a	6/19/2008	(UCC) The Committee questioned the authority of the agency to adopt these rules and regulations until after 2008 SB 449 went into effect (7/1/08). problem?
4/7/2008	Secretary of State	no	no	n/a	6/19/2008	(voting)
8/12/2008	Secretary of State	yes	yes	yes	10/16/2008	The Committee requested only a copy of a letter from the Governor, which was provided.
7/17/2006	Securities Commissioner	yes	yes	yes		
4/7/2008	Securities Commissioner	no	no	n/a	7/31/2008	
9/22/2008	Securities Commissioner	no	n/a	n/a	12/4/2008	



JCAR meeting date	Agency	Committee comments?	Agency response letter in file?	Did agency address each Committee comment in its response?	Final rules have been published? (Register date) (a) (b)	Comments
7/17/2006	SRS	yes	yes	yes		
10/2/2006	SRS	yes	yes	yes		
10/8/2007	SRS	no	yes	n/a		
4/7/2008	SRS	yes	yes	yes	5/15/2008	
5/28/2008	SRS	n/a			9/4/2008	(These were revocations only, in conjunction with the KHPA regulations.)
8/12/2008	Tax Appeals	yes	yes	yes	10/9/2008	
11/20/2006	Technical Professions	yes	yes	yes		
4/24/2007	Technical Professions	no	yes	n/a		
1/14/2008	Technical Professions	yes	yes	yes	3/13/2008	
11/6/2008	Technical Professions	yes	no	n/a	1/8/2009	The agency has sent information on other states that allow continuing education credit for participation on boards, but that was not one of the JCARR's formal comments.
9/6/2006	Treasurer	yes	no	n/a		The Committee suggested the adoption of the referenced sections of the federal Internal Revenue Code and said "the current construction may be a potential unlawful delegation." There were no changes between proposed and permanent regulations. problem
4/24/2007	Treasurer	yes	no	n/a		The Committee's concerns had to do with statutory authority for provisions in three regulations. problem
8/12/2008	Treasurer	yes	no	n/a	10/9/2008	The Committee requested information on the Treasurer's authority regarding housing loans for building in a floodplain and a determination of whether the program should follow HUD guidelines. The housing loan program regulation the JCARR heard, 3-3-2, was further amended before it became final. possible problem
7/17/2006	Veterans Affairs	yes	no	n/a		The final regulation includes a new subsection that addresses the JCARR's concern.
2/9/2007	Veterans Affairs	yes	yes	yes		
4/4/2007	Veterinary Medical Examination	yes	yes	no		The Committee had only one comment, about making the proposed regulation available on the agency's website. The response (not received until November) did not address that concern. minor problem
10/2/2006	Wildlife and Parks	yes	yes	no (it addressed one of two)		KDWP's letter did list all changes to the proposed regulations. KDWP did not make a suggested wording change.
11/20/2006	Wildlife and Parks	yes	yes	yes		
2/9/2007	Wildlife and Parks	no	yes	n/a		
4/4/2007	Wildlife and Parks	no	yes	n/a		
5/22/2007	Wildlife and Parks	no	yes	n/a		
7/9/2007	Wildlife and Parks	yes	yes	no		In its response, KDWP listed the changes between the proposed and final regulations but didn't respond to the Committee's questions regarding the manner in which boaters will be informed of the new requirement of speed and the definition of "all departmental land and waters."
10/8/2007	Wildlife and Parks	no	yes	n/a		
2/15/2008	Wildlife and Parks	yes	yes	yes	3/27/2008	
4/7/2008	Wildlife and Parks	no	yes	n/a	5/1/2008	
5/28/2008	Wildlife and Parks	yes			8/28/08 for all but 115-20-2	(Proposed 115-20-2 did not pass on a Commission vote held August 14, 2008.)
9/22/2008	Wildlife and Parks	no	yes	n/a	11/13/2008	

(a) The data has not been entered for most regulations presented to the JCARR before November 2007.

(b) NTD = not as of January 8, 2009