

**MINUTES**

**JOINT COMMITTEE ON ADMINISTRATIVE RULES AND REGULATIONS**

July 6, 2009  
Room 535-N—Statehouse

**Members Present**

Representative Carl Holmes, Chairperson  
Senator Vicki Schmidt, Vice-Chairperson  
Senator Karin Brownlee  
Senator Janis Lee  
Senator Ralph Ostmeyer  
Senator Chris Steineger  
Representative John Faber  
Representative Steve Huebert  
Representative Shirley Palmer  
Representative Joe Patton  
Representative Jan Pauls  
Representative Ed Trimmer

**Staff Present**

Raney Gilliland, Kansas Legislative Research Department  
Corey Carnahan, Kansas Legislative Research Department  
Jill Shelley, 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**

Chris Tymeson, Kansas Department of Wildlife and Parks  
Julia Mowers, Kansas State Board of Healing Arts  
Dan McLaughlin, Kansas State Fire Marshal  
Dan Thompson, Kansas State Fire Marshal  
Berend Koops, Hein Law Firm  
Sean Miller, Capitol Strategies  
Cheryl Dolejsi, Kansas Racing and Gaming Commission  
Patrick Martin, Kansas Racing and Gaming Commission  
John Kiefhaber, Kansas Chiropractic Association  
Susan Vogel, Kansas Department of Health and Environment

Matthew Spurgin, Kansas Corporation Commission  
Mike Hoeme, Kansas Corporation Commission  
Gary Davenport, Kansas Corporation Commission  
Jennifer Flory, Kansas Health Policy Authority  
Mike Michael, Kansas Health Policy Authority  
Mike Degan, Kansas Health Policy Authority  
Tariq Abdullah, Kansas Health Policy Authority  
Tom Day, Kansas Corporation Commission  
Michael Teason, Kansas Department of Social and Rehabilitation Services  
Tom Gross, Kansas Department of Health and Environment  
Doug Farmer, Kansas Health Policy Authority  
Kevin Glendening, State Bank Commission  
Randy Forbes, Kansas Dental Board  
Scott Gates, Kansas State Treasurer's Office  
Deborah Hatfield, Kansas Department of Health and Environment

### **Morning Session**

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

Chairperson Holmes welcomed Chris Tymeson, Chief Counsel, to speak to the proposed rules and regulations noticed for hearing by the Kansas Department of Wildlife and Parks: KAR 112-5-1, furbearers and coyotes; legal equipment, taking methods, and general provisions; KAR 112-5-2, furbearers and coyotes; possession, disposal, and general provisions, and KAR 115-6-1, fur dealer license; application, authority, possession of furs, records and revocation.

A Committee member suggested that in KAR 115-6-1, page 1(a)(2), and page 3(g)(2)(B), the term "physical" be inserted before "residential" to clarify the address being requested.

After Mr. Tymeson responded to questions from the Committee, Chairperson Holmes thanked Mr. Tymeson for his appearance before the Committee.

The Chairperson called Committee members' attention to the minutes of the May 18, 2009 meeting and asked for action on them. *Senator Schmidt moved that the minutes be approved as presented; Representative Huebert seconded the motion. Motion passed.*

Chairperson Holmes asked Legislative Research Department staff to update the Committee on agency responsiveness to the Committee's comments at previous hearings. Mr. Gilliland passed out letters provided by the Kansas Coalition Against Sexual and Domestic Violence (Attachments 1 and 2) and Kansas Department of Agriculture (Attachment 3) in response to questions from the Committee at the May meeting. In regard to agencies not responding to the Committee's comments, Mr. Gilliland stated that a letter requesting a response had been mailed and there are still eight agencies that have not responded. It was the consensus of the Committee that a follow-up letter to the eight agencies be prepared by the Legislative Research Department requesting a reply before the August 24 meeting. Jill Shelley will continue to keep a record of all responses by agencies. The Chairperson thanked staff for their continued effort on this matter.

Mr. Gilliland stated that a copy of the *2009 Report on Oversight Activities of the Joint Committee on Administrative Rules and Regulations* had been mailed to all members of the Committee. (Copies are available in the Legislative Research Department's office.)

Chairperson Holmes welcomed Julia Mowers to address the proposed rules and regulations noticed for hearing by the Kansas State Board of Healing Arts: KAR 100-49-4, fees; KAR 100-73-1, fees; and KAR 100-54-1, application.

Ms. Mowers stated that KAR 100-49-4 and KAR 100-73-1 have been approved as temporary rules and regulations. She noted the Board had introduced HB 2161 during the 2009 Legislative Session to increase the fees, but the bill was never enacted. In response to a question from a Committee member, Ms. Mowers stated that fee increases are allowed under current law. The increase is necessary to meet the Board's anticipated expenses. Ms. Mowers stated that a bill would be introduced in the 2010 Legislative Session to increase all fees. Staff noted in KAR 100-54-1, (a)(2) there needs to be a statement as to what information could be provided if no social security number is available. Also in KAR 100-54-1, page 2, (a)(8), it should read "KSA 65-5410 and amendments thereto."

After Ms. Mowers responded to questions from Committee members, the Chairperson thanked Ms. Mowers for her appearance before the Committee.

Patrick Martin was recognized by the Chairperson to speak to the proposed rules and regulations noticed for hearing by the Kansas Racing and Gaming Commission: KAR 112-104-34, physical key controls; automated key controls; KAR 112-104-35, key control procedures; KAR 112-104-36, key access list; KAR 112-104-37, key log; KAR 112-104-38, broken, lost, or missing keys; KAR 112-104-39, corrections to forms; KAR 112-104-40, manual form dispensers; and KAR 112-104-41, forms; description.

Staff noted that in KAR 112-104-35, (b) a clarification is needed to accomplish the agency's intent. The Committee discussed KAR 112-104-37 and asked Mr. Martin if keys could be marked "do not duplicate" so that no locksmith would duplicate the keys. A Committee member asked if the manufacturer could make a key with a special mark to identify it as an original key. Mr. Martin stated that he would check into these suggestions. In KAR 112-104-38 staff noted that subsection (b) be clarified to read: "An inventory of duplicate keys shall be maintained; and there is always at least one duplicate key in inventory for each critical key or sensitive key." Staff noted that in KAR 112-104-40, the first noun in the third line should be singular and read "form dispenser."

Chairperson Holmes thanked Mr. Martin for appearing before the Committee.

Chairperson Holmes welcomed Matthew Spurgin, Litigation Counsel, and Mike Hoeme, Transportation Director, to speak to the proposed rules and regulations noticed for hearing by the Kansas Corporation Commission: KAR 82-4-3a, hours of service; KAR 82-4-3b, procedures for transportation workplace drug and alcohol testing programs; KAR 82-4-3c, testing for controlled substances and alcohol use; KAR 82-4-3d, safety fitness procedures; KAR 82-4-3e, revoked; KAR 82-4-3f, general motor carrier safety regulations; KAR 82-4-3g, qualifications of drivers; KAR 82-4-3h, driving of commercial motor vehicles; KAR 82-4-3i, parts and accessories necessary for safe operation; KAR 82-4-3j, inspection, repair, and maintenance; KAR 82-4-3k, transportation of hazardous materials; driving and parking rules; KAR 82-4-3l, transportation of migrant workers; KAR 82-4-3m, employee safety and health standards; and KAR 82-4-20, transportation of hazardous materials by motor vehicles.

In response to a question from a Committee member regarding intrastate travel, Mr. Spurgin stated that farm vehicles would be exempt from these rules and regulations. A Committee member questioned the use of the term "special agent" as used in KAR 82-4-3a, KAR 82-4-3f, and KAR 82-4-3j, and if it was used consistently throughout the regulations. Mr. Spurgin stated that he would check this. Staff noted that in KAR 82-4-3i, (a)(1)(C) line 2, the phrase "and amendments thereto" should be added after KSA 58-4202(a). This would ensure that future amendments would be addressed. A question was raised by a Committee member concerning who would have jurisdiction over hazardous materials on Kansas highways. Mr. Spurgin stated that he would look into this, but stated that the federal government would have jurisdiction on interstate trips.

After responding to Committee questions, Mr. Spurgin and Mr. Hoeme were thanked by the Chairperson for the presentation before the Committee.

Tom Gross, Bureau of Air and Radiation, was welcomed by Chairperson Holmes to speak to the proposed rule and regulation noticed for hearing by Kansas Department of Health and Environment: KAR 28-19-350, prevention of significant deterioration (PSD) of air quality (Attachment 4).

In KAR 28-19-350, page 3, (c)(1), staff suggested that the "administrator of the U.S. environmental protection agency" be reinserted for definition purposes and "USEPA" be placed in parentheses, allowing for the use of "USEPA" throughout the regulation. After Mr. Gross responded to questions of a general nature from Committee members, Chairperson Holmes thanked him for appearing before the Committee.

Doug Farmer, Director, State Employee Health Plan, Kansas Health Policy Authority (KHPA), was recognized by the Chairperson to address questions raised by the Committee at the April hearing concerning KAR 108-1-4, local unit of government employee health care benefit plan (Attachment 5).

Mr. Farmer responded to the four questions that the Committee had raised during the hearing in April 2009:

- The question regarding who would be considered eligible to participate in the health plan for purposes of health care coverage. Mr. Farmer stated that anyone that is eligible to participate in the health plan by virtue of their relationship to a state employee is considered to be a dependent; therefore, spouses would be covered.
- The question concerning who exactly is covered under the plan, which is consistent with federal guidelines for an eligible dependent child. The exact language also is included in KAR 108-1-1 for active employees.
- The question concerning employees of environmental protection grant programs. Mr. Farmer stated that language was changed to indicate that it is the agency or program that is paid by the state for its work that is eligible for membership, not the individuals.
- Mr. Farmer stated that the language in KAR 108-1-4, page 10, (v) is taken from the U.S. Tax Code which is what a carrier offering a cafeteria-type policy must follow (Attachment 6).

Committee members were still concerned about the language stating, "resident of Mexico and Canada" and suggested that it be changed to "while in Mexico and Canada." Mr. Farmer stated that KHPA did not have the authority to change this since it was the federal code they were following. The Committee asked if Mr. Farmer could provide a breakdown on how many claims had been paid to dependents in Mexico and Canada, and the total dollar amount. Mr. Farmer stated that he would provide the Committee with this information.

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

The Chairperson recessed the meeting until 1:30 p.m.

### **Afternoon Session**

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

The Chairperson welcomed Dan Thompson to speak to the proposed rule and regulation noticed for hearing by the Office of the State Fire Marshal: KAR 22-24-3, adoption by reference.

Mr. Thompson stated that the change involves updating the references to the *2008 Standards of the National Fire Protection Association*, NFPA 472 and 473, thus replacing the 1997 editions. The Committee had no questions. The Chairperson thanked Mr. Thompson for his appearance before the Committee.

Chairperson Holmes welcomed Kevin Glendening, Deputy Commissioner, to speak to the proposed rules and regulations noticed for hearing by the Office of the State Bank Commissioner: KAR 17-24-2, mortgage business fees; KAR 17-24-3, prelicensing and continuing education requirements; KAR 17-24-4, record retention; KAR 17-24-5, prelicensure testing; KAR 17-24-6, bond requirements; KAR 75-6-1, making transactions outside of the scope of the Kansas uniform consumer credit code subject to same; KAR 75-6-9, additional charges; KAR 75-6-31, bond requirements; KAR 75-6-33, revoked; KAR 75-6-34, revoked; KAR 75-6-36, prelicensing and continuing education requirements; KAR 75-6-37, prelicensure testing; and KAR 75-6-38, record retention.

Mr. Glendening reviewed the proposed rules and regulations for the Committee. KAR 75-6-37 is a new regulation as a result of SB 240, which was passed in the 2009 Legislative Session. Bond requirements previously were dictated by statute, but SB 240 provides that specific requirements concerning bonds be addressed through rule and regulation. The Secure and Fair Enforcement (S.A.F.E.) Act requires that bond amounts be determined on the volume of business and KAR 75-6-31 is designed to comply with that requirement.

After Mr. Glendening answered general questions from Committee members, Chairperson Holmes thanked Mr. Glendening for his presence before the Committee.

Michael Degan was recognized by the Chairperson to speak to the rule and regulation noticed for hearing by the Kansas Health Policy Authority: KAR 129-5-78, scope of and reimbursement for home- and community-based services for persons with traumatic brain injury (TBI).

Mr. Degan responded to all Committee questions and was thanked by Chairperson Holmes for appearing before the Committee.

Randy Forbes, General Counsel, was recognized by Chairperson Holmes to speak to the proposed rules and regulations noticed for hearing by the Kansas Dental Board: KAR 71-5-1, revoked; KAR 71-5-2, revoked; KAR 71-5-3, revoked; KAR 71-5-4, revoked; KAR 71-5-5, revoked; KAR 71-5-6, revoked; KAR 71-5-7, definitions; KAR 71-5-8, applicability of regulations; KAR 71-5-9, general requirements; KAR 71-5-10, level I permit: enteral conscious sedation or combination inhalation-enteral conscious sedation; KAR 71-5-11, Level II permit: parenteral conscious sedation; KAR 71-5-12, level III permit: deep sedation and general anesthesia; and KAR 71-5-13, grounds for refusal to issue permit or for revocation, suspension, or limitation of permit.

Mr. Forbes stated that these rules and regulations had come before the Committee before and the Committee had concerns about several of the regulations. The Dental Board reviewed the Committee's concerns and several changes were made.

A question was raised as to whether a response to the Committee's questions concerning rules and regulations previously reviewed by the Committee had been drafted by the Dental Board and Board of Pharmacy. Mr. Forbes stated that he was working on the responses and should have them mailed soon. Chairperson Holmes thanked Mr. Forbes for his presentation.

Scott Gates, Chief Counsel, was welcomed by the Chairperson to speak to the proposed rules and regulations noticed for hearing by the Kansas State Treasurer's Office: KAR 3-4-1, definitions; KAR 3-4-2, eligibility requirements; KAR 3-4-4, eligibility period; KAR 3-4-5, matching grant accounts; KAR 3-4-6, revoked; and KAR 3-4-7, forfeit of matching grant funds.

A Committee member noted that in KAR 3-4-1, the definitions should be alphabetized. Regarding the Learning Quest program, some Committee members expressed concern about not being able to transfer the deposited funds to another account without forfeiting the matching grant and paying penalties. Mr. Gates noted that in the future, only the \$600 matching grant would be lost, not the participant's investment. The Committee noted that the Economic Impact Statement should include the \$720,000 from the State General Fund which has been appropriated under the program.

After Mr. Gates responded to questions from the Committee, Chairperson Holmes thanked him for his presentation.

The Chairperson recognized Deborah Hatfield to speak to the proposed rules and regulations noticed for hearing by the Kansas Department of Health and Environment (KDHE), Division of Health, Bureau of Child Care and Health Facilities: revocations of KAR 28-4-370, KAR 28-4-371, KAR 28-4-372, KAR 28-4-373, KAR 28-4-374, KAR 28-4-375, KAR 28-4-376, KAR 28-4-377, KAR 28-4-378, and KAR 28-4-379; KAR 28-4-1300, definitions; KAR 28-4-1301, applicant and licensee requirements; KAR 28-4-1302, application procedures; KAR 27-4-1303, terms of a temporary permit or a license; KAR 28-4-1304, temporary permit or license; amended license; exceptions; notification; renewal; KAR 28-4-1305, administration; KAR 28-4-1306, clinical staff member qualifications; employee schedules; training; KAR 28-4-1307, records; KAR 28-4-1308, reporting requirements; KAR 28-4-1309, quality assurance; KAR 28-4-1310, clinical services and patient care; KAR 28-4-1311, transfers; KAR 28-4-1312, health-related requirements; KAR 28-4-1313, environmental standards; KAR 28-4-1314, birth center and birthing room furnishings, equipment, and supplies; KAR 28-4-1315, maintenance; KAR 28-4-1316, safety; KAR 28-4-1317, food service; and KAR 28-4-1318, laundry.

Ms. Hatfield stated that it has taken three years to develop these rules and regulations. KAR 28-4-370 through 28-4-379, covering maternity centers, are being revoked and KAR 28-4-1300 through 28-4-1318 are being proposed for birth centers. Ms. Hatfield stated that "birth center" is the current term which is used to cover these types of centers. Staff noted that since the statute covering these proposed rules and regulations uses the term "maternity center" for the purpose of licensing and regulating these centers, the statute probably should be revised to cover the term "birth center." Ms. Hatfield stated that the rules and regulations have been in the planning for so long KDHE would like to move forward with them if possible. The Chairperson stated that there was no reason for KDHE not to go forward with the hearing. A Committee member questioned whether these centers had a pharmacist-in-charge. The Committee member stated that they are required to make quarterly reviews to make sure there are no missing or outdated drugs. It was suggested by the Committee that Ms. Hatfield check with the Board of Pharmacy and see how many of the maternity centers were registered with that Board and to have the centers begin the process of complying with the law if they are not registered. Staff noted in KAR 28-4-1314 (4) the spelling of "dopler" should be checked. There were no further questions for Ms. Hatfield, and Chairperson Holmes thanked her for her presentation.

Chairperson Holmes asked the Committee for its views on the need for statutory changes for the KDHE rules and regulations. After discussion, *Senator Schmidt moved that a bill be prepared by staff to be introduced in the Senate that would cover the required changes; Senator Brownlee seconded the motion. Motion carried.*

The next meeting will be August 24, 2009. It was the consensus of the members that, if at all possible, it should be a one-day meeting, starting early and going late to make the best use of members' time and finances for the state. The meeting adjourned at 3:45 p.m.

### **Committee Comments on Proposed Rules and Regulations**

**Kansas Department of Wildlife and Parks.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning furbearers and coyotes, legal equipment, taking methods, and general provisions; furbearers and coyotes, possession, disposal, and general provisions; fur dealer license, application, authority, possession of furs, records, and revocation. After discussion, the Committee had the following comment.

KAR 115-6-1. Please review this and any other regulation which requires the "residential address" of the applicant for a license. Please consider the use of "physical address" since the residential address could be a post office box number which is not sufficient in order to obtain departmental licenses.

**Kansas State Board of Healing Arts.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning application (occupational therapists and occupational therapy assistants) and fees (podiatrists); and fees (radiologic technologists). After discussion, the Committee had the following comment.

KAR 100-54-1. Please consider the circumstances under which a non-driver identification number may be used as valid information for an application in view of the statutory references used in this regulation. Also in this regulation on page 2,

there appears to be an error in the statutory citation in paragraph (8). Should not KSA 65-4410 be KSA 65-5410?

**Kansas Racing and Gaming Commission.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning physical key controls, automated key controls; key control procedures; key access list; key log; broken, lost, or missing keys; corrections to forms; manual form dispensers; and forms, description. After discussion, the Committee had the following comments.

KAR 112-104-37. Please provide the Committee with additional information with respect to the physical characteristics of sensitive and critical keys, especially with regard to such things as space to indicate "do not duplicate" and whether original keys have identifying marks.

KAR 112-104-38. In subsection (b), the Committee believes that clarity could be added to the sentence if a period were placed after the word "maintained" and a second sentence constructed for the remaining content of the original sentence.

KAR 112-104-40. In subsection (a), "dispensers" should be "dispenser."

**Kansas Corporation Commission.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning hours of service; procedures for transportation workplace drug and alcohol testing programs; testing for controlled substances and alcohol use; safety fitness procedures; general motor carrier safety regulations; qualifications of drivers; driving of commercial motor vehicles; parts and accessories necessary for safe operation; inspection, repair, and maintenance; transportation of hazardous materials, driving and parking rules; transportation of migrant workers; employee safety and health standards; and transportation of hazardous materials by motor vehicles. After discussion, the Committee had the following comments.

KAR 82-4-3i. In subsection (a)(1)(C), the Committee recommends that after the statutory reference the agency consider inserting the words "or amendments thereto" so that if the Legislature amends this statutory section in the future the agency would not have to amend the regulation.

Comment. Please review this set of regulations to ensure that, where "special agent" is deleted and replaced, the proper language is used and that the deletions and replacements apply to the appropriate portion of the regulation.

**Kansas Department of Health and Environment.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning prevention of significant deterioration (PSD) of air quality. After discussion, the Committee had the following comment.

Suggestion. The Committee suggests the agency include a definition for "USEPA" be included or, if that term is defined elsewhere in administrative regulation, that a cross reference to that definition be made.



**Kansas State Fire Marshal's Office.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning adoption by reference. After discussion, the Committee had no comment.

**Kansas State Bank Commission.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning mortgage business fees; prelicensing and continuing education, requirements; record retention; prelicensing testing; bond requirements; making transactions outside of the scope of the Kansas uniform consumer credit code subject to same; additional charges; bond requirements; prelicensing and continuing education, requirements; prelicensure testing; record retention; and revocations. After discussion, the Committee had the following comment.

KAR 17-24-4. The Committee suggests that a reference be added to the history section in the list of the statutes being implemented. The addition would be KSA 16a-6-117, a section of the Uniform Consumer Credit Code.

**Kansas Health Policy Authority.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning scope of and reimbursement for home- and community-based services for persons with traumatic brain injury. After discussion, the Committee had no comment.

**Kansas State Treasurer.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning definitions; eligibility requirements; eligibility period; matching grant accounts; forfeit of matching grant funds; and revocation. After discussion, the Committee had the following comments.

KAR 3-4-1. To be consistent with other agency rules and regulations, please consider placing the definitions in alphabetical order.

Economic Impact Statement. Please include in the Economic Impact Statement a reference to the total amount appropriated for this program in the current year and the source of those moneys.

**Kansas Dental Board.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning definitions; applicability of regulations; general requirements; Level I permit: enteral conscious sedation or combination inhalation-enteral conscious sedation; Level II permit: parenteral conscious sedation; Level III permit: deep sedation and general anesthesia; grounds for refusal to issue permit or for revocation, suspension, or limitation; and revocations. After discussion, the Committee had no comment.

**Kansas Department of Health and Environment.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning transfers (birth centers); health-related requirements; environmental standards; birth center and birthing room furnishings, equipment, and supplies; maintenance; safety; food service; laundry; administration; clinical staff member qualifications, employee schedules, training; records; reporting requirements; quality assurance clinical services and patient care; definitions; applicant and licensee requirements; application procedures; terms of a temporary permit or a license; temporary permit or license, amended license, exceptions, notification, renewal; and revocations. After discussion, the Committee had the following comments.

Concern. The Committee is concerned that these regulations address "birth centers" yet rely on statutory authority for "maternity centers," which appears to leave the agency with promulgating rules and regulations it does not have statutory authority to promulgate. The Committee has voted to introduce legislation to rectify this apparent conflict.

KAR 28-4-1302. This regulation references KAR 28-4-92, which refers to maternity centers, not to birth centers. KAR 28-4-92 also will need to be modified or amended in order to make the cross reference to KAR 28-4-92 appropriate.

KAR 28-4-1314. The proper spelling of "dopler" is "doppler" in paragraph (e)(4).

KAR 28-4-1316. The Committee believes that the birth centers would need to employ a pharmacist-in-charge in order to maintain the proper medication controls. Please explore the necessity of a pharmacist-in-charge by contacting the Board of Pharmacy and making appropriate modifications to these regulations.

Prepared by Judy Glasgow  
Edited by Raney Gilliland

Approved by Committee on:

August 24, 2009

(Date)

JOINT COMMITTEE ON ADMINISTRATIVE RULES AND REGULATIONS  
 COMMITTEE GUEST LIST

DATE: July 6, 2009

NAME	REPRESENTING
Berend Koops	Hein Law Firm
Chris Tymeson	KDWP
SEAN MILLER	CAPITOL STRATEGIES
Cheryl Dolejsi	KRGC
Patrick Martin	KRGC
John Kiefthaber	Ks. Chiropractic Assn.
Susan Vogel	KDHE
Matt Spurgin	KCC
MIKE HOEME	KCC
GARY DAVENPORT	KCC
Jennifer Flory <sup>Flory</sup>	KHPA
Wade Michael	KHPA <sup>Mike</sup> Deegan
Varig Abdullak	KHPA
Tom DAY	KCC
Dan McLaughlin	KSFMO
Dan Thompson	KSFMO
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Janet

# Kansas Coalition Against Sexual and Domestic Violence



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May 28, 2009

Raney L. Gilliland  
Assistant Director of Research  
Kansas Legislative Research Department  
State Capitol, Room 010-West  
Topeka, Kansas 66612-1504

Dear Mr. Gilliland and Members of the Committee,

This is in response to your letter dated May 21, 2009 to Sandra Barnett, Executive Director of the Kansas Coalition Against Sexual and Domestic Violence (KCSDV). As General Counsel of KCSDV, Sandy has asked me to respond to your request for additional information.

As many of you know, KCSDV is a private non-profit organization whose member programs provide direct services to victims of sexual and domestic violence and stalking in large and small communities across Kansas. They provide services such as 24-hour hotlines, emergency shelter, crisis intervention, hospital advocacy, transitional housing, court advocacy and more.

KCSDV appeared before the Joint Committee on Administrative Rules and Regulations on May 18, 2009, to testify concerning the proposed regulations from the Kansas Department of Labor. You have asked for information on how many complaints KCSDV has received concerning K.S.A. 44-1131 through 1133 and how those complaints have been handled. Thank you for giving KCSDV the opportunity to provide this additional information.

Since I know there were questions about it during the hearing, I'd like to provide my version of how K.S.A. 44-1131 and 1132, and later K.S.A. 44-1133, were passed. In 2006, House Bill 2928 was introduced in order to provide employment protection for victims of sexual assault and domestic violence who needed to take time off from work to address the crisis of being assaulted. I have attached the original version of HB2928, which as you can see is much more extensive, has both civil and criminal penalties, includes some provisions that apply to employers with more than 25 employees, and

references the Family and Medical Leave Act. (See attached.) After much debate and paring down, HB2928 passed as two sections. Later, in conference committee I believe, the address confidentiality program (which allows victims of sexual assault, domestic violence, stalking and trafficking to apply for a confidential address) (See Senate Substitute for House Bill 2928; L. 2006, ch. 213; page 1824) was amended into the bill. Thus, Sections 1 through 8 created the address confidentiality program currently administered by the Secretary of State's office as the Safe at Home program (see <http://www.kssos.org/safeathome/main.html>) and Sections 9 and 10 created protections to allow victims to take time off work to deal with their victimization. If one reviews the entirety of the history of HB2928, one can see that it was initially a much more extensive bill with penalties for violations.

As you know, the purpose of K.S.A 44-1131-1133 is to allow victims to take leave from work to, at a minimum, get a protective order, obtain medical care, or access crisis intervention services from a domestic violence or sexual assault program. The employer is prohibited from discharging, discriminating, or retaliating against the employee under these circumstances. Again, these statutes are not just about discharging the employee but also about demoting her, reducing her hours or pay, or otherwise retaliating against her for taking this time off. As the legislature clearly saw when it passed this law, it is critical that victims be able to maintain employment while seeking services and participating in criminal and civil proceedings.

Soon after passage of these provisions, it became apparent that there was no state agency designated to enforce the new laws and no specific penalties remained in the bill. Depending on where it was placed in the statute book, it could either be seen as an anti-discrimination law or as a labor law. During the first few months after passage, KCSDV fielded several calls from employers and attorneys seeking more information on the intent of the bill and whether it was intended to be a non-discrimination bill or a workplace protection bill. We had no definitive answer for these initial callers. Without a state agency to enforce the statutes, it was clear that these statutes had become statements of public policy and, while that is very important and provides its own remedy, they would do little to give the quick and immediate relief for victims who were desperate to keep their job during a time of crisis.

As KCSDV fielded these initial calls, we began to talk about the most logical state agencies that could enforce these statutes. Neither the Department of Labor nor the Kansas Human Rights Commission believed these laws fell within their jurisdiction. KCSDV talked with several legislators about passage of an enforcement provision. K.S.A. 44-1133, passed in 2008, is the result. KCSDV was lead to believe during the drafting phase that the language in K.S.A. 44-1133 would provide not just an agency to enforce the provisions but would also provide real enforcement authority. As you know from our testimony, we believe "enforce" means more than writing a letter of sanction to the employer. We are disappointed that the Joint Committee and the Department of Labor believe a more specific statute needs to be passed.

Finally, this brings me to the question your committee posed to KCSDV: How many calls has KCSDV fielded from survivors? How have these calls been handled? Unfortunately, I am unable to give you a firm number of how many calls we have gotten since its passage but I can tell you that has probably been more than 10 but less than 20. Between January and March of 2009, while we were tracking technical assistance calls coming into our office, we know we fielded at least 4 calls that involved these statutes.

Generally, these calls have come from advocates working with a survivor who needs to get a protection order or who needs to go to court but her employer is refusing to give her time off. Or, the survivor is afraid to ask for time off to go to court because she is afraid her employer will fire her.

KCSDV has responded to these calls in several ways.

First, we continue to educate advocates about the availability of the protections in K.S.A. 44-1131 and 44-1132. KCSDV published a brochure shortly after the original statutes were passed. That brochure is posted on our website and is attached.

Second, we encourage advocates to discuss with the survivor the pros and cons of requesting time off from her employer using these provisions. If the survivor believes she can risk sharing information about her victimization with her employer, we have suggested any of the following: Taking a copy of the KCSDV brochure to the employer; having the advocate write a letter detailing the workplace protections in these statutes; or, having KCSDV staff draft a letter that can be adapted to the specific facts of the case.

There has generally been good response from employers but we know of at least one employer who said he prefers to put these laws in the trash where they belong.

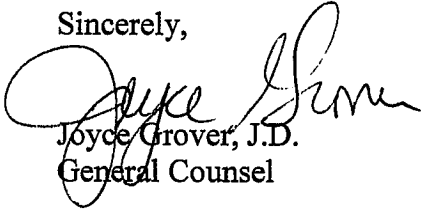
Since the passage of K.S.A. 44-1133 giving the Kansas Department of Labor rules and regulations and enforcement authority, KCSDV has worked with Mr. Root on drafting the regulations and, on at least one occasion that I am aware of, KCSDV consulted with him about how to get an employer to comply. He encouraged us to have the survivor call him if she did not receive time off as due under the statutes.

All this said there is much to do to get the word out about these specific protections for survivors. As I mentioned at the beginning of this letter, we have fielded several calls from attorneys who were advising their employer/clients on these laws. We continue to include these provisions in our trainings for advocates and allied professionals. The information is also included in our Legal Advocacy for Victims Manual (see enclosed section). KCSDV would also be very pleased to have this information included on any pre-printed employee rights notices provided by the Department of Labor. Up to this point, it appears that survivors generally hear about these protections from KCSDV and its member programs. Hopefully, with an enforcing agency now identified, these protections will become better known and used.

Again, thank you for giving KCSDV the opportunity to further comment on these statutes. I apologize for the length of this response. We believe these provisions are critical for survivors and will not only benefit the survivors themselves by providing economic stability but will also improve community safety as survivors are more fully able to participate in criminal and civil proceedings without worrying about losing their employment.

Please let me know if you have additional questions. I would be happy to clarify.

Sincerely,



Joyce Grover, J.D.  
General Counsel

cc: Sandra Barnett, KCSDV Executive Director  
Laurel Klein Searles, KCSDV Staff Attorney  
Darren Root, Kansas Department of Labor

1-4

# Taking Time Off from Work to Address Domestic and Sexual Violence Issues

Kansas Coalition Against  
Sexual and Domestic Violence



SAFETY, ACCOUNTABILITY & JUSTICE  
for victims of sexual assault and  
domestic violence and their children

## Does this mean I *must* tell my employer that I am a victim of domestic violence or sexual assault?

Re **T**o your employer that you are a victim of domestic violence or sexual assault is your decision. You may have a number of important reasons for choosing to keep this information private.

However, if your employer will not give you needed time away from work, you might decide to disclose this information to your employer. Your employer is then required to give you time off from work as provided by Kansas law.

## Under this Kansas law, do I have to give my employer notice that I will be taking time off of work?

Yes. If you want to use this Kansas law, you should give your employer reasonable advance notice if you need to miss work because of domestic violence or sexual assault. Again, the decision about whether to tell your employer is up to you but you might want to if your employer will not give you time off to deal with the sexual or domestic violence.

## What if I can't give my employer advance notice?

If you are not able to notify your employer in advance, your employer can't take any action against you, so long as **within 48 hours after your absence begins** you provide your employer with any of the following:

- Police report about the domestic violence or sexual assault
- Court order or other evidence of a court appearance
- Documentation that you are receiving treatment from a medical professional, health care provider, or counselor because of domestic violence or sexual assault
- Documentation from a domestic violence or sexual assault advocate stating that you are receiving services because of domestic violence or sexual assault

## If I can give advance notice that I will be missing work, do I still have to provide my employer with documentation?

Yes. Even when you give reasonable advance notice, you must provide documentation to support your reason for missing work **within 48 hours of your return to work**.

## Will this information be confidential?

Yes. Under this Kansas law, your employer should keep any information about the reasons for your absences confidential. This includes the documents you must provide about these absences.

## Will the leave be paid or unpaid?

You may use any paid leave you have available. If you do not have any paid leave available, you may use unpaid leave of up to eight days per year.

## What if my employer already has a policy in place to address absences due to domestic violence and/or sexual assault?

If your employer allows for more absences than is provided by this law, you are entitled to take that time off.

## Remember: You Are Not Alone

There are many women who have been assaulted or abused; many of them experience discrimination in their workplace because of the assault or abuse. If you are concerned about your safety and want to talk confidentially with someone who knows about sexual and domestic violence, call your local program (see "Kansas Sexual & Domestic Violence Programs") or the **Kansas Crisis Line:**

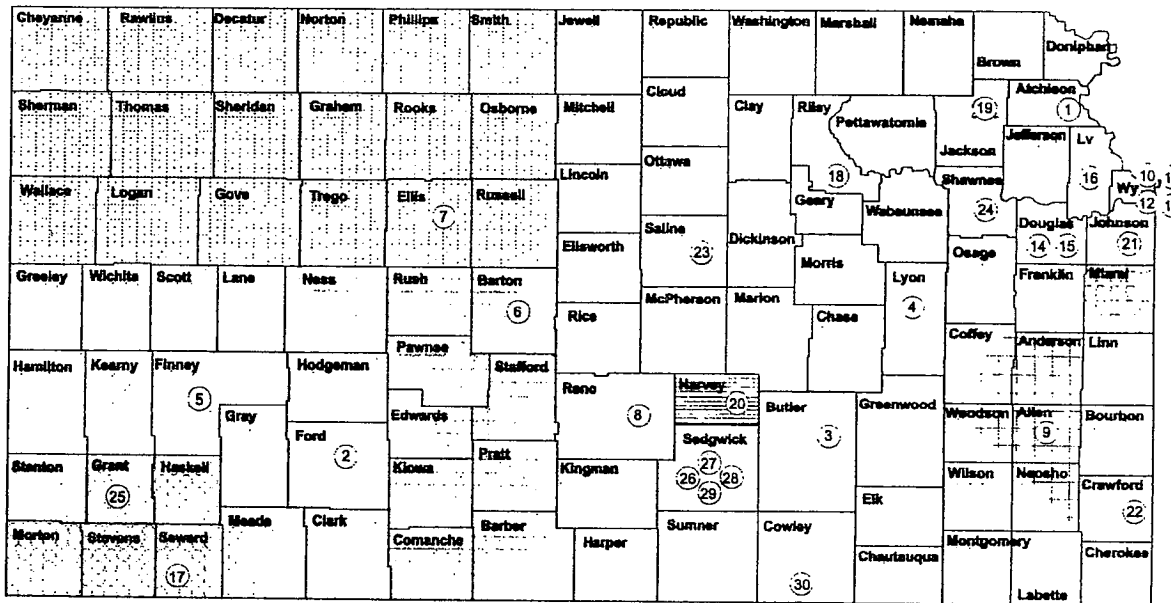
**1-888-END ABUSE**  
(1-888-363-2287).

This brochure is intended to provide you with a summary of K.S.A. 44-1131 and K.S.A. 44-1132. If you have specific questions about the law, you should contact an attorney.

This grant project is partially funded by State General Funds as administered by Kansas Governor Kathleen Sebelius' Grants Program. The opinions, findings and conclusions, or recommendations expressed in this publication, program, or exhibition are those of the authors and do not necessarily reflect the views of the Office of the Kansas Governor.



## Kansas Sexual and Domestic Violence Programs



2-2

our employer is prohibited from discriminating against you if you are a victim of domestic violence or sexual assault. You may need to take time off from work to address these issues.

This means your employer can't fire you or retaliate against you in other ways if you are a victim of domestic violence or sexual assault and need to take time off from work for any of the following reasons:

- Obtaining or trying to obtain a restraining order or similar injunctive relief for yourself or your children;
- Seeking medical care for injuries resulting from domestic violence or sexual assault;
- Obtaining services from a domestic violence or rape crisis program; or
- Appearing in court proceedings related to domestic violence or sexual assault.

### What does domestic violence mean under Kansas law?

Domestic violence means any or all of the following:

- Causing or attempting to cause you physical harm;
- Placing you in fear of imminent physical harm;
- Engaging in sexual relations or lewd fondling or touching for sexual pleasure with a minor under the age of 16. . . .

When these acts are committed by a spouse, former spouse, a person with whom you have a child, a person you live with or lived with in the past, or a person with whom you have had a dating relationship.

### What does sexual assault mean under this law?

Sexual assault includes any of the following crimes:

- Rape
- Indecent liberties with a child
- Criminal sodomy
- Incest

When these acts are committed by anyone, including persons with whom you have a present or past relationship.

1. Atchison	DoVES	800-367-7075 or 913-367-0363
2. Dodge City	Crisis Center of Dodge City	620-225-6510
3. El Dorado	Family Life Center of Butler County	800-870-6967 or 316-321-7104
4. Emporia	SOS, Inc.	800-825-1295 or 620-342-1870
5. Garden City	Family Crisis Services	620-275-5911
6. Great Bend	Family Crisis Center	866-792-1885 or 620-792-1885
7. Hays	NW KS Domestic and Sexual Violence Svcs.	800-794-4624 or 785-625-3055
8. Hutchinson	Sexual Assault/Domestic Violence Center	800-701-3630 or 620-663-2522
9. Iola	Hope Unlimited	620-365-7566
10. Kansas City, KS	El Centro, Inc. ¡Si Se Puede! (domestic violence)	913-281-1186
11. Kansas City, KS	Friends of Yates /Joyce H.Williams Center (domestic violence)	913-321-0951
12. Kansas City, MO	KCAVP	816-561-0550
13. Kansas City, MO	MOCSA (sexual assault)	816-531-0233
14. Lawrence	GaDuGi Safe Center (sexual assault)	785-841-2345
15. Lawrence	Women's Transitional Care Services (domestic violence)	800-770-3030 or 785-843-3333
16. Leavenworth	Alliance Against Family Violence	800-644-1441 or 913-682-9131
17. Liberal	Liberal Area Rape Crisis and DV Services	620-624-8818
18. Manhattan	The Crisis Center, Inc.	800-727-2785 or 785-539-2785
19. Mayetta	Prairie Band Potawatomi Family Violence Prevention Program	866-966-0173 or 785-966-0173
20. Newton	Harvey County DV/SA Task Force	800-487-0510 or 316-283-0350
21. Overland Park	Safehome, Inc.	888-432-4300 or 913-262-2868
22. Pittsburg	Crisis Resource Center of Southeast Kansas, Inc.	800-794-9148 or 620-231-8251
23. Salina	Domestic Violence Assoc. of Central Kansas	800-874-1499 or 785-827-5862
24. Topeka	YWCA Battered Women Task Force	888-822-2983 or daytime 785-354-7927 evening 785-234-3330
25. Ulysses	DoVES of Grant County	888-229-8812 or 620-356-2608
26. Wichita	Catholic Charities Harbor House (domestic violence)	866-899-5522 or 316-263-6000
27. Wichita	StepStone (domestic violence)	316-265-1611
28. Wichita	Wichita Area Sexual Assault Center (sexual assault)	316-263-3002 o por español: 316-263-2044
29. Wichita	YWCA Women's Crisis Center (domestic violence)	316-267-7233
30. Winfield	Cowley County Safe Homes	800-794-7672 or 620-221-4357

## 9. Economic Advocacy

What impact does the inability to secure permanent housing have on a victim? What happens to a woman who loses her welfare benefits because of time limits or because her abusive partner sabotages her efforts to comply with program rules? When a victim needs to take time off work to talk to an advocate or attend a court proceeding, does she fear losing her job? If medical treatment is not covered by insurance, what resources may be available to help a victim after an assault? By providing victims with representation, information and support in using state and federal laws and in utilizing programs designed to aid victims, advocates and attorneys can help reduce the negative financial and economic impact of sexual and domestic violence on survivors.

In addition to topics discussed in this section, economic advocacy might include assistance with financial planning, credit and debt issues, and many other areas related to gaining or re-gaining financial stability.

### Workplace Protection<sup>1</sup>

The Workplace Protection law went into effect January 1, 2007 and was amended in the 2008 legislative session. KCSDV has a brochure for victims, *"Taking Time Off from Work to Address Domestic and Sexual Violence Issues,"* which is available on the KCSDV website.

Under this law, the employer is prohibited from discharging, discriminating or retaliating against someone if she is a victim of domestic violence or sexual assault and she takes time off from work to address the violence.

This means the employer cannot fire a victim of domestic violence or sexual assault or retaliate in other ways if she needs to take time off of work for any of the following reasons:

- obtaining or trying to obtain any relief, including but not limited to, a restraining order or other injunctive relief to help ensure the health, safety or welfare of the victim or her children;
- seeking medical care for injuries resulting from domestic violence or sexual assault;
- obtaining services from a domestic violence or rape crisis program; or
- appearing in court proceedings related to domestic violence or sexual assault.

### Definitions of Domestic Violence and Sexual Assault in this Law

**"Domestic violence"** means abuse as defined in the Protection from Abuse Act.<sup>2</sup>

<sup>1</sup> KAN. STAT. ANN. §§ 44-1131- to -1133 (Supp. 2007) (amended 2008).

<sup>2</sup> KAN. STAT. ANN. §§ 60-3101 to -3111 (2005).

**“Sexual assault”** means any crime defined in these statutes: rape, indecent liberties with a child, aggravated indecent liberties with a child, criminal sodomy, aggravated criminal sodomy, incest, or aggravated incest.<sup>3</sup>

### **Revealing the Domestic Violence or Sexual Assault**

The victim must decide whether or not to reveal to the employer that she is a victim of domestic violence or sexual assault. She may have a number of important reasons for choosing to keep this information private. However, if the employer will not give the victim needed time away from work, she must reveal this information in order to obtain the time off and protections provided by this law.

Why would a victim NOT want to disclose the abuse? Perhaps she works with very few other employees and wants to maintain her confidentiality; perhaps her supervisor or human relations office staff knows the abuser; perhaps she hasn't identified herself as a victim; or perhaps she has seen others fired when they revealed information about domestic or sexual violence. There can be any number of reasons. Though it is important to share information with her about these protections, the choice to reveal the information is hers.

### **Notice to the Employer**

The victim should give reasonable advance notice that she needs to miss work. Even when she gives reasonable advance notice, she must provide documentation to support her reason for missing work **within 48 hours of her return to work.**

If the victim is not able to notify the employer in advance, the employer cannot take any action against the victim so long as **within 48 hours after the absence begins** the victim provides the employer with any of the following:

- police report showing the person is a victim of domestic violence or sexual assault;
- protection order for act of domestic violence or sexual assault protecting employee or separating employee from the perpetrator;
- other evidence from the court or prosecuting attorney that employee has appeared in court, or
- documentation from medical professional, domestic violence advocate, or advocate for victims of sexual assault, health care provider or counselor that employee was undergoing treatment for physical or mental injuries or abuse resulting in victimization from an act of domestic violence or sexual assault.

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<sup>3</sup> "Sexual assault" means any crime defined in K.S.A. 21-3502 (rape), 21-3503 (indecent liberties with a child), 21-3504 (aggravated indecent liberties with a child), 21-3505 (criminal sodomy), 21-3506 (aggravated criminal sodomy), 21-3602 (incest) or 21-3603 (aggravated incest), and amendments thereto.

## Confidentiality

The employer must keep any information about the reasons for the absences confidential. This includes the documents provided about these absences.

## Paid or Unpaid Leave

The victim may use paid or unpaid leave of **up to eight days per year**.

If the employer allows for more absences than is provided by this law, the victim is entitled to take that time off.

## Enforcement of the Law

During the 2008 legislative session, the law was amended to require the Department of Labor to enforce the law and draft regulations.<sup>4</sup>

## Housing Resources

### VAWA 2005 and Housing<sup>5</sup>

VAWA 2005 added protections for victims of domestic violence, dating violence, or stalking living in federally funded public housing or using federal housing vouchers. Victims of sexual violence are **not** specifically included but may have rights under other federal, state or local fair housing laws. At this time, Kansas housing law does not offer specific remedies for victims of sexual and domestic violence or stalking living in private housing.

Two national technical assistance providers have abundant information about housing issues and federal protections.

- Legal Momentum's website, [www.legalmomentum.org](http://www.legalmomentum.org), provides detailed technical assistance for advocates, attorneys and survivors on issues relating to VAWA 2005 and protections for victims. (The handout at the end of this section provides general information about these issues for survivors.)
- The National Law Center on Homelessness and Poverty, [www.nlchp.org](http://www.nlchp.org), has a staff person dedicated to working on domestic violence issues. The website also provides many resources.

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<sup>4</sup> KAN. STAT. ANN. §§ 44-1131- to -1133 (Supp. 2007) (amended 2008).

<sup>5</sup> Violence Against Women and Department of Justice Reauthorization Act of 2005, 42 U.S.C. §§ 14043e to 14043e-4 (Supp. V 2005).

## HOUSE BILL No. 2928

By Representatives Loganbill, Ballard, Crow, Faust-Goudeau, Flaharty, Garcia, Gatewood, Hawk, Henderson, Huntington, Huy, Kelley, Kuether, Long, Mah, Mast, Menghini, Judy Morrison, Pauls, Ruff, S. Sharp, Storm, Svaty, Thull, Trimmer, Winn and Yonally

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12 AN ACT concerning employment; requiring employers to allow leave for  
13 certain purposes; providing penalties and remedies for violations.

14

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

16 Section 1. As used in this act:

17 (a) "Domestic violence" means abuse as defined in K.S.A. 60-3102,  
18 and amendments thereto.

19 (b) "Sexual assault" means any crime defined in K.S.A. 21-3502  
20 (rape), 21-3503 (indecent liberties with a child), 21-3504 (aggravated in-  
21 decent liberties with a child), 21-3505 (criminal sodomy), 21-3506 (ag-  
22 gravated criminal sodomy), 21-3602 (incest) or 21-3603 (aggravated in-  
23 cest), and amendments thereto.

24 Sec. 2. (a) An employer may not discharge or in any manner discrim-  
25 inate or retaliate against an employee who is a victim of domestic violence  
26 or a victim of sexual assault for taking time off from work to obtain or  
27 attempt to obtain any relief, including, but not limited to, a temporary  
28 restraining order, restraining order or other injunctive relief, to help en-  
29 sure the health, safety or welfare of the victim or the victim's child.

30 (b) (1) As a condition of taking time off for a purpose set forth in  
31 subsection (a), the employee shall give the employer reasonable advance  
32 notice of the employee's intention to take time off, unless such advance  
33 notice is not feasible.

34 (2) When an unscheduled absence occurs, the employer shall not take  
35 any action against the employee if the employee, within a reasonable time  
36 after the absence, provides a certification to the employer in the form of  
37 any of the following:

38 (A) A police report indicating that the employee was a victim of do-  
39 mestic violence or sexual assault;

40 (B) a court order protecting or separating the employee from the  
41 perpetrator of an act of domestic violence or sexual assault, or other ev-  
42 idence from the court or prosecuting attorney that the employee has  
43 appeared in court; or

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1 (C) documentation from a medical professional, domestic violence  
2 advocate or advocate for victims of sexual assault, health care provider or  
3 counselor that the employee was undergoing treatment for physical or  
4 mental injuries or abuse resulting in victimization from an act of domestic  
5 violence or sexual assault.

6 (c) To the extent allowed by law, the employer shall maintain the  
7 confidentiality of any employee requesting leave under subsection (a).

8 (d) An employee may use vacation, personal leave or compensatory  
9 time off that is otherwise available to the employee under the applicable  
10 terms of employment, unless otherwise provided by a collective bargain-  
11 ing agreement, for time taken off for a purpose specified in subsection  
12 (a). The entitlement of any employee under this section shall not be di-  
13 minished by any collective bargaining agreement term or condition.

14 Sec. 3. (a) In addition to the requirements and prohibitions imposed  
15 on employers pursuant to section 2, and amendments thereto, an em-  
16 ployer with 25 or more employees may not discharge or in any manner  
17 discriminate or retaliate against an employee who is a victim of domestic  
18 violence or a victim of sexual assault for taking time off from work to:

19 (1) Seek medical attention for injuries caused by domestic violence  
20 or sexual assault;

21 (2) obtain services from a domestic violence shelter, program or rape  
22 crisis center as a result of domestic violence or sexual assault;

23 (3) obtain psychological counseling related to an experience of do-  
24 mestic violence or sexual assault; or

25 (4) participate in safety planning and take other actions to increase  
26 safety from future domestic violence or sexual assault, including tempo-  
27 rary or permanent relocation.

28 (b) (1) As a condition of taking time off for a purpose set forth in  
29 subsection (a), the employee shall give the employer reasonable advance  
30 notice of the employee's intention to take time off, unless such advance  
31 notice is not feasible.

32 (2) When an unscheduled absence occurs, the employer may not take  
33 any action against the employee if the employee, within a reasonable time  
34 after the absence, provides a certification to the employer. Certification  
35 shall be sufficient in the form of any of the following:

36 (A) A police report indicating that the employee was a victim of do-  
37 mestic violence or sexual assault;

38 (B) court order protecting or separating the employee from the per-  
39 petrator of an act of domestic violence or sexual assault or other evidence  
40 from the court or prosecuting attorney that the employee appeared in  
41 court; or

42 (C) documentation from a medical professional, domestic violence  
43 advocate or advocate for victims of sexual assault, health care provider or

1 counselor that the employee was undergoing treatment for physical or  
2 mental injuries or abuse resulting in victimization from an act of domestic  
3 violence or sexual assault.

4 (c) To the extent allowed by law, employers shall maintain the con-  
5 fidentiality of any employee requesting leave under subsection (a).

6 (d) An employee may use vacation, personal leave or compensatory  
7 time off that is otherwise available to the employee under the applicable  
8 terms of employment, unless otherwise provided by a collective bargain-  
9 ing agreement, for time taken off for a purpose specified in subsection  
10 (a). The entitlement of any employee under this section may not be di-  
11 minished by any collective bargaining agreement term or condition.

12 (e) This section does not create a right for an employee to take unpaid  
13 leave that exceeds the unpaid leave time allowed under, or is in addition  
14 to the unpaid leave time permitted by, the federal family and medical  
15 leave act of 1993 (29 U.S.C. Sec. 2601 et seq.).

16 Sec. 4. (a) Any employee who is discharged, threatened with dis-  
17 charge, demoted, suspended or in any other manner discriminated or  
18 retaliated against in the terms and conditions of employment by the em-  
19 ployee's employer because the employee has taken time off for a purpose  
20 set forth in section 2 or 3, and amendments thereto, shall be entitled to  
21 reinstatement and reimbursement for lost wages and work benefits  
22 caused by the acts of the employer. Any employer who willfully refuses  
23 to rehire, promote or otherwise restore an employee or former employee  
24 who has been determined to be eligible for rehiring or promotion by a  
25 grievance procedure or hearing authorized by law is guilty of a class C  
26 misdemeanor.

27 (b) In addition to or in lieu of the criminal remedy provided by sub-  
28 section (a), any employee who is discharged, threatened with discharge,  
29 demoted, suspended or in any manner discriminated or retaliated against  
30 in the terms and conditions of employment by the employee's employer  
31 because the employee has exercised the rights set forth in section 2 or 3,  
32 and amendments thereto, may bring a civil action in the district court of  
33 the county in which the violation is alleged to have occurred or in which  
34 the alleged violator resides or transacts business. If the court finds that a  
35 violation has occurred, the court may award to the plaintiff actual dam-  
36 ages, including, but not limited to, amounts to which the employee is  
37 entitled pursuant to subsection (a), or \$500, whichever is greater, for each  
38 violation. The court may also grant as relief any permanent or temporary  
39 injunction or restraining order, including an order enjoining the defend-  
40 ant from engaging in such violation or ordering such affirmative action as  
41 may be appropriate. The prevailing party shall be awarded court costs  
42 and reasonable attorney fees.

June 2, 2009

Raney Gilliland  
Assistant Director for Research  
Kansas Legislative Research Department  
Room 010-West, State Capitol Building  
300 SW Tenth Avenue  
Topeka, Kansas 66612-1504

RE Food inspection process in relation to regulations concerning psychiatric residential treatment facilities, specifically K.A.R. 28-4-1216

Dear Mr. Gilliland:

I appreciate the opportunity to respond to the committee's questions and will address them in the same order as requested.

Food Safety and Lodging staff met with representatives of the Department on Aging, the Department of Social and Rehabilitation Services, and the Department of Education to discuss food safety concerns. These concerns included how the agencies can partner to provide the best food safety services to regulated facilities, types of food inspections conducted by the agencies, frequency of inspections, educational materials, and reviewing regulations that may refer to food inspections conducted by the Kansas Department of Health and Environment. For certain agencies which regulate facilities where residents sleep, the discussion also including lodging inspections and standards.

**1. The types of food preparation facilities that are exempted from KDA inspections.**

The exemption in current law applies to food service activities which are operated in connection with facilities licensed and inspected by the Kansas Department of Health and Environment. These facilities include hospitals, maternity centers, family foster homes, and licensed day care centers.

**2. A list of state agencies that have entered into a memorandum of understanding with KDA.**

As mentioned above, KDA staff met with representatives from the Department on Aging, the Department of Education and the Department of Social and Rehabilitation Service. Each agency declared its intent to enter into a memorandum of understanding but the memorandums have not yet been finalized. The memorandums will confirm that each



Raney Gilliland  
RE: comments regarding K.A.R. 28-4-1216  
June 2, 2009  
Page 2

licensing agency will continue to do inspections of food service in licensed facilities and set up a procedure for requesting assistance from KDA staff.

**3. Notable types of facilities not inspected by KDA that are not exempted under current law or enactments of the 2009 Legislature.**

KDA has not conducted food safety inspections of food service operations in facilities licensed by the Department on Aging or the Department of Social and Rehabilitation Services. Examples of these types of facilities are nursing homes and assisted living complexes, residential treatment facilities, and juvenile detention centers.

**4. A description of any guidance, training, or other information given to other state agencies to assist in inspecting food and dining facilities.**

KDA has offered to have its inspectors accompany inspectors from another agency if the agency believes its inspectors would benefit from hands-on-training. KDA has made available copies of the 2005 Food Code, training materials and handouts to other agencies. KDA has also designated a contact person for other agencies to contact to request a food service or lodging inspection to be conducted by KDA personnel.

Please contact me if you have further questions.

Sincerely,



Adrian J. Polansky  
Secretary of Agriculture

cc: Steve Moris, Division of Food Safety and Lodging Program Manager

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STATE OF KANSAS

**ALAN D. CONROY**  
Director  
**RANEY L. GILLILAND**  
Assistant Director for Research  
**J.G. SCOTT**  
Chief Fiscal Analyst  
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Assistant Director for Information Management



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LEGISLATIVE INQUIRIES

**KANSAS LEGISLATIVE RESEARCH DEPARTMENT**

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May 22, 2009

**Adrian Polansky, Secretary**  
Kansas Department of Agriculture  
109 SW 9th Street  
BUILDING MAIL

Dear Secretary Polansky:

At its meeting on May 18, 2009, the Joint Committee on Administrative Rules and Regulations reviewed proposed regulations promulgated by the Kansas Department of Health and Environment (KDHE). One of KDHE's proposed regulations, KAR 28-4-1216, outlined the sanitary practices for food preparation and service at psychiatric residential treatment facilities.

In discussing the regulation, it was brought to the Joint Committee's attention that facilities inspected by KDHE are exempted from inspections conducted by the Kansas Department of Agriculture (KDA). This exemption was granted in 2009 SB 203, which passed during the 2009 Legislative Session and since has been signed into law.

Based on this discussion, members of the Joint Committee asked that I provide you with a list of questions in hopes of better understanding the state's food inspection processes. Please provide the following information:

- The types of food preparation facilities that are exempted from KDA inspections;
- A list of state agencies that have entered into a memorandum of understanding with KDA;
- Notable types of facilities not inspected by KDA that are not exempted under current law or enactments of the 2009 Legislature; and
- A description of any guidance, training, or other information given to other state agencies to assist in inspecting food and dining facilities.

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Secretary Polansky

- 2 -

Please address your response to me at the Legislative Research Department. Feel free to contact me with any questions or if more information is needed.

Sincerely,

Raney L. Gilliland  
Assistant Director for Research

RLG/jl

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**Testimony to Joint Committee on Administrative Rules and Regulations**

**July 6, 2009**

**Thomas Gross, Bureau of Air and Radiation, KDHE**

**Revisions to K.A.R. 28-19-350**

Good morning Mr. Chairman and committee members. I am Tom Gross, with the Bureau of Air and Radiation at KDHE.

The Bureau is proposing to amend K.A.R. 28-19-350 Prevention of Significant Deterioration (PSD). K.A.R. 28-19-350 implements the New Source Review (NSR) program that the USEPA promulgated at 40 CFR Parts 51 and 52 in response to requirements of the federal Clean Air Act, 42 U.S.C. §7401 *et seq.* NSR is a preconstruction permitting program that requires a major stationary source of air pollutants to obtain a permit before it can begin construction or make a major modification if the construction or modification will increase emissions above certain trigger levels. Under Part C of Title I of the Clean Air Act, states have the primary responsibility for developing a state implementation plan and issuing permits subject to the emission limits and other control measures developed in the plan, which is approved by the USEPA.

The last update to this regulation occurred in 2006 making it current up to July 1, 2004. The currently proposed amendment to K.A.R. 28-19-350 updates the adoption of the federal regulations to July 1, 2007. There are ten provisions of 40 C.F.R. Part 51, 52 and 58 that have been promulgated or amended from July 1, 2004 through June 30, 2007. Of these, seven are C.F.R. corrections and internal reference updates. The remaining three require revisions to the language of K.A.R. 28-19-350 in addition to simply changing the date from 2004 to 2007.

The first of these three is an amendment to the federal regulation that streamlines the permitting process for large ethanol plants by excluding ethanol production facilities from the definition of chemical process plants. It raises the PSD threshold for ethanol production facilities from 100 tons per year (TPY) to 250 TPY. The change puts ethanol production facilities that produce fuel at the same PSD threshold as ethanol production facilities that produce beverage alcohol. This revision also affects fugitive emissions. Fugitive emissions are currently included in the calculation of emissions of new and existing facilities. With these proposed revisions, fugitive emissions will not be included in the calculation of emissions for new facilities. This amendment was finalized on May 1, 2007 but did not take effect until July 2, 2007, therefore the language in the regulation was changed from "in effect" to "as revised" to accurately reflect its status. When these changes went into effect on July 2, 2007, K.A.R. 28-19-350 became more

stringent than the federal requirement for ethanol producing facilities in Kansas. These proposed amendments align K.A.R. 28-19-350 with the revised federal regulations for PSD. They are no more stringent than the federal requirements, as required under House Bill 2369.

The October 17, 2006 final rule removes Part 58 appendix B. Appendix B is internally referenced in §52.21 and adopted by reference in K.A.R. 28-19-350(d)(3), which is proposed for removal.

The June 13, 2007 final rule aligns the regulations with the decision by the U.S. Court of Appeals for the D.C. Circuit, *New York v. EPA*, vacating the pollution control project and clean unit provisions. These provisions are also proposed for removal from K.A.R. 28-19-350.

KDHE is not proposing to adopt changes between July 1, 2007 and July 1, 2008. The two relevant rules promulgated by EPA in that timeframe were both denied petitions for reconsideration by the previous EPA administration but are currently under review by EPA.

The department has provided copies of the proposed regulations and Regulatory Impact Statements to the League of Kansas Municipalities, Kansas Association of Counties and the Kansas Association of School Boards. As of today, we have received one response letter from the Kansas Association of School Boards, stating they do not anticipate or foresee any negative impact upon the school districts in response to the proposed regulation.

STATE OF KANSAS

ALAN D. CONROY  
Director  
RANEY L. GILLILAND  
Assistant Director for Research  
J.G. SCOTT  
Chief Fiscal Analyst  
MARY K. GALLIGAN  
Assistant Director for Information Management



STAFF  
LEGISLATIVE COORDINATING COUNCIL  
INTERIM COMMITTEES  
STANDING COMMITTEES  
LEGISLATIVE INQUIRIES

**KANSAS LEGISLATIVE RESEARCH DEPARTMENT**

Room 010-West — State Capitol Building — 300 SW Tenth Avenue — Topeka, Kansas 66612-1504  
PHONE (785) 296-3181 ♦ FAX (785) 296-3824 ♦ TTY (785) 296-3677  
INTERNET: <http://www.kslegislature.org/klrd> E-MAIL: [kslegres@klrd.state.ks.us](mailto:kslegres@klrd.state.ks.us)

April 10, 2009

Dr. Marcia Nielsen, Executive Director  
Kansas Health Policy Authority  
900 SW Jackson, Room 900-N  
BUILDING MAIL

Dear Dr. Nielsen:

At its meeting on April 6, 2009, the Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning local unit of government employee health care benefits plan. After discussion, the Committee had the following comments.

- **KAR 108-1-4.** The Committee believes in the heading of subsection (g) that the language should read "Coverage of spouses and eligible dependent participants." In subsection (h)(3)(A)(v), the Committee is concerned about the language and who exactly is covered. The Committee has requested that the agency provide a copy of the coverage for regular KPERS retired individuals to determine whether the language is identical. In addition, in terms of local entities covered, the Committee asks for information on which local environmental protection programs are included by the regulation. Finally, the Committee requests that a spokesperson from the agency appear at the next regular meeting of the Committee to answer further questions about these issues.

Prior to filing with the Secretary of State, review the history sections of the rules and regulations to update them to the most recent statutory citations, making certain the citations for authorizing and implementing statutes are correct and complete. Please indicate your agency's website address in the filing notice where proposed regulations can be located. In addition, if your agency accepts written comments by e-mail include this information in the public notice. Further, e-mail requests for public accommodation should be included as a part of the notice. Finally, verify that the adoption by reference of any materials included in the regulations is properly completed as prescribed in the *Policy and Procedure Manual for the Adoption of Kansas Administrative Regulations*.

Please make this letter a part of the public record on these regulations. The Committee will review the regulations, which the agency ultimately adopts, and reserves any expression of legislative concern to that review.

**Joint Committee on  
Administrative Rules and Regulation**  
July 6, 2009  
*Attachment 5*

Dr. Nielsen

- 2 -

To assist in that final review:

- Please inform the Joint Committee and me, in writing, at the time the rules and regulations are adopted and filed with the Secretary of State, of any and all changes which have been made following the public hearing.
- Please notify the Joint Committee and me, in writing, when your agency has adopted the regulations as permanent; delayed implementation of the regulations; or decided not to adopt any of the regulations.
- Also, please indicate separately to the Joint Committee and me, any changes made to the proposed regulations reviewed by the Committee.

Based upon direction from the Committee, failure to respond to each and every comment contained in this letter may result in the request that a spokesperson from your agency appear before the Committee to explain the agency's failure to reply.

Sincerely,

Raney L. Gilliland  
Assistant Director for Research

RLG/jl

5-2



June 1, 2009

Raney L. Gilliland  
Assistant Director for Research  
Kansas Legislative research Department  
Rm 010-West, State Capitol Building  
300 SW 10<sup>th</sup> Avenue  
Topeka, KS 66612-1504

Mr. Gilliland,

I am in receipt of your April 10, 2009 letter on behalf of the Joint Committee on Rules and Regulations. Your letter indicates that the committee has four questions related to our proposed rule and regulation changes for KAR 108-1-4, which I will address below.

1. You state that the Committee believes in the heading of subsection (g) that the language should read "Coverage of spouses and eligible dependent participants."
  - a. **For purposes of this regulation, a spouse is considered a dependent with regard to health care insurance coverage. In my testimony before the Committee, I indicated that a spouse was not considered a dependent of a state employee. That statement is accurate with respect to an employee and spouse's tax status. However, for purposes of health care coverage, anyone that is eligible to participate in the health plan by virtue of their relationship to a state employee is considered to be a dependent. Therefore, we believe that the committee's suggested change is unnecessary.**
2. In subsection (h)(3)(A)(v), the Committee is concerned about the language and who exactly is covered.
  - a. **Section (h)(3)(A)(v) was placed in this regulation in order to remain consistent with federal guidelines for an "eligible dependent child." Specifically, this language comes from Title 26, Subtitle A, Chapter 1, Subchapter B, Part V Subsection 152 of the Internal Revenue Code. (Attached)**
  - b. **Additionally, this exact language is included in KAR 108-1-1 (attached) for active employees.**
3. The Committee has requested that the agency provide a copy of coverage for regular KPERS retired individuals to determine whether the language is identical.

Rm. 900-N, Landon Building, 900 SW Jackson Street, Topeka, KS 66612-1220

[www.khpa.ks.gov](http://www.khpa.ks.gov)

Medicaid and HealthWave:  
Phone: 785-296-3981  
Fax: 785-296-4813

State Employee Health  
Benefits and Plan Purchasing:  
Phone: 785-368-6361  
Fax: 785-368-7180

State Self Insurance Fund:  
Phone: 785-296-2364  
Fax: 785-296-6995

5-3



A copy of KAR 108-1-1 is attached. The specific citation for comparison is KAR 108-1 1(h)(3)(A)(v).

4. The committee asks for information on which local environmental protection programs are included by the regulation.
- a. As proposed, the regulation would include any local environmental protection program obtaining funds from the state water fund in accordance with K.S.A. 75-5657, and amendments thereto.
  - b. K.S.A. 75-5657 reads as follows:

*Environmental protection grant program; contracts; plans, approval; rules and regulations.*

*(a) On and after January 1, 1990, the state of Kansas shall provide state environmental protection grants to local health departments or other local entities for the purpose of developing and implementing environmental protection plans and programs. A local entity or the Kansas department of health and environment may enter into contracts to develop, implement or carry out any elements of the local environmental protection plan or program.*

*(b) The governing board of any local health department or other local entity desiring to receive a state environmental protection grant pursuant to this act shall indicate its intent to develop an environmental protection plan to implement the environmental protection strategy of the state water plan. An environmental protection plan should include, but not be limited to, the sanitary code, subdivision water and wastewater plan, solid waste management plan, hazardous waste management plan, public water supply protection plan and nonpoint source pollution control plan.*

*(c) A local health department or other local entity may request certification by the secretary that it has an approved environmental protection plan and is prepared to assume a program of permitting, inspection, compliance and enforcement of specified elements of the department's environmental protection plan. The secretary shall provide guidance on achieving environmental results for certification of local programs and audit annually each local program based on achievement of environmental results.*

*(d) The secretary of health and environment may adopt such rules and regulations as necessary for the administration of this section.*

If you should have further questions, please do not hesitate to contact me at 296-8146.

Sincerely,



Doug Farmer  
Director, SEHBP

Coordinating health & health care  
for a thriving Kansas



June 23, 2009

Raney L. Gilliland  
Assistant Director for Research  
Kansas Legislative Research Department  
Rm. 010-West, State Capitol Building  
300 SW 10<sup>th</sup> Avenue  
Topeka, KS 66612-1504

Mr. Gilliland:

The Kansas State Employees Health Care Commission (HCC) met on June 19, 2009, and formally adopted certain amendments to K.A.R. 108-1-4 regarding the State Employee Health Plan (SEHP). The public hearing for this regulation change took place on May 20, 2009. We received two sets of comments during the 60-day public comment period. First, we received the comments you forwarded from the Joint Committee on Administrative Rules and Regulations, to which I responded on June 1, 2009. (A copy of the June 1 response is attached.) Second, the Kansas Association of Centers for Independent Living submitted comments supporting the proposed revisions on the basis that the amendments to make certain non profit independent living agencies eligible to participate in the SEHP would allow such agencies to offer their employees more health insurance options. No post-hearing changes were made to the proposed amended regulation.

We have submitted the adopted regulation, certificate of adoption, and updated economic impact statement to the Secretary of State so that the adopted regulation may be published in the Kansas Register. If you have any questions please feel free to contact me at 785-296-8146 or by e-mail at [doug.farmer@khpa.ks.gov](mailto:doug.farmer@khpa.ks.gov).

Sincerely,

Doug Farmer  
Director, State Employee Health Benefits Program

Rm. 900-N, Landon Building, 900 SW Jackson Street, Topeka, KS 66612220

[www.khpa.ks.gov](http://www.khpa.ks.gov)

Medicaid and HealthWave:  
Phone: 785-296-3981  
Fax: 785-296-4813

State Employee HealthPlan:  
Phone: 785-368-6361  
Fax: 785-368-7180

State Self Insurance Fund:  
Phone: 785-296-2364  
Fax: 785-296-6995

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Coordinating health & health care  
for a thriving Kansas



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January 21, 2009

Barb Dominguez  
Editor of Rules and Regulations  
Kansas Register, Secretary of State  
Memorial Hall, 1<sup>st</sup> Floor  
120 SW 10<sup>th</sup> Ave.  
Topeka, KS 66612-1594

Dear Ms. Dominguez:

Please accept the enclosed submission of the Notice of Public Hearing related to proposed amendments to K.A.R. 108-1-4. The submission includes 2 copies of each of the following: the notice itself, the proposed regulation, and the economic impact statement. We are also sending one copy of the notice to the chairperson of the joint committee on administrative rules and regulations, Representative Carl Holmes, and one copy to Raney Gilliland, Legislative Research Department. If you have any questions please feel free to call me at 785-296-3362 or contact me by e-mail at [jennifer.flory@khpa.ks.gov](mailto:jennifer.flory@khpa.ks.gov).

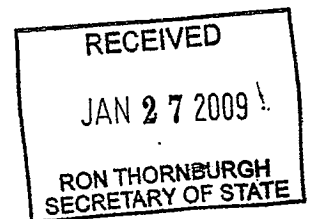
Yours truly,



Jennifer Flory  
State Employee Health Plan

JF/les  
Enclosures

Rm. 900-N, Landon Building, 900 SW Jackson Street, Topeka, KS 66612-1220  
[www.khpa.ks.gov](http://www.khpa.ks.gov)



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Phone: 785-296-3981  
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State Employee Health  
Benefits Plan:  
Phone: 785-296-6280  
Fax: 785-368-7180

State Self Insurance Fund:  
Phone: 785-296-2364  
Fax: 785-296-6995

5-6

**Proposed**

**Barb Dominguez**

**From:** Goossen, Duane [BU] [Duane.Goossen@budget.ks.gov]  
**Sent:** Tuesday, January 27, 2009 2:03 PM  
**To:** Barb Dominguez  
**Cc:** Farmer, Edwin D [HPA]  
**Subject:** FW: KAR CHanges

Barb,

Publishing the regulation changes that Doug mentions in the e-mail below would be fine. Let me know if you have any questions.

Duane Goossen  
Chair, State Employee Health Care Commission

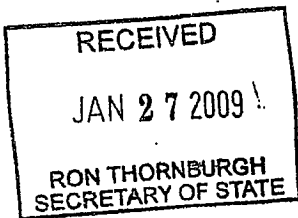
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**From:** Farmer, Doug [KHPA] [mailto:Doug.Farmer@khpa.ks.gov]  
**Sent:** Friday, January 23, 2009 2:03 PM  
**To:** Goossen, Duane [BU]  
**Subject:** KAR CHanges

Duane, we have proposed changes in KAR 108-1-4 that will codify the additions to the Non-State groups that the HCC approved this past year. However, because of the relationships between KHPA and the HCC, the Secretary of State's Office wants your approval to go forward. If you wouldn't mind sending an email to Barb Dominguez with the Secretary of State office, they'll get us published. Let me know if you have questions. Thanks.  
KHPA Disclaimer

\*\*\*\*\*

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5-7

STATE OF KANSAS  
KANSAS HEALTH POLICY AUTHORITY  
NOTICE OF HEARING ON PROPOSED ADMINISTRATIVE REGULATION

A public hearing will be conducted at 9:30 a.m., on Wednesday, May 20, 2009, in Room 106 of the Landon State Office Building, 900 SW Jackson, Topeka, Kansas, to consider the adoption of proposed changes to an existing regulation of the Kansas State Employees Health Care Commission.

This 60-day notice of the public hearing shall constitute a public comment period for the purpose of receiving written public comments on the proposed amendments. All interested parties may submit written comments prior to the hearing to the State Employee Health Plan, KHPA, 900 SW Jackson, Rm. 900-N, Topeka, Kansas 66612, or to [lea.selleck@khpa.ks.gov](mailto:lea.selleck@khpa.ks.gov). All interested parties will be given a reasonable opportunity to present their views orally on the adoption of the proposed amendments during the hearing. In order to give all parties an opportunity to present their views, it may be necessary to request that each participant limit any oral presentation to five minutes.

Any individual with a disability may request accommodation in order to participate in the public hearing and may request the proposed regulation and economic impact statement in an accessible format. Requests for accommodation to participate in the hearing should be made at least five working days in advance of the hearing by contacting Lea Selleck at (785) 368-6361 or through the Kansas Relay Center (1-800-766-3777) or by e-mail at [lea.selleck@khpa.ks.gov](mailto:lea.selleck@khpa.ks.gov). Handicapped parking is located on the south end of Landon State Office Building, directly across the street from the building's north entrance, and on Ninth Street. The north entrance to the building is accessible to individuals with disabilities.

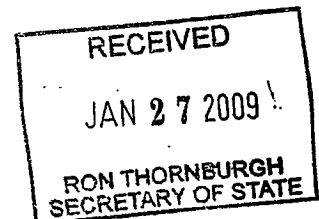
These regulations are proposed for adoption on a permanent basis. A summary of proposed regulations and their economic impact follows.

**K.A.R. 108-1-4. Local unit of government employee health care plan:** Revisions to this regulation align it with the dependent requirements for eligibility of state employee dependents as outlined in K.A.R. 108-1-1. The revisions clarify who is eligible to be covered as a dependent in the local unit of government portion of the State Employee Health Plan. The revisions also allow local environmental protection programs, city and county health departments, local housing authorities, and nonprofit independent living centers to join the State Employee Health Plan.

Other governmental units, private citizens, and consumers will not be affected by this change.

A copy of the proposed regulation and the economic impact statement may be obtained on the KHPA website at [www.khpa.ks.gov](http://www.khpa.ks.gov) or by contacting Lea Selleck: Kansas Health Policy Authority, 900 SW Jackson, Rm. 900-N, Topeka, Kansas 66612; (785) 368-6361; [lea.selleck@khpa.ks.gov](mailto:lea.selleck@khpa.ks.gov).

5-8



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5-9

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## U.S. Code collection

TITLE 26 > Subtitle A > CHAPTER 1 > Subchapter B > PART V > § 152

### § 152. Dependent defined

#### (a) In general

For purposes of this subtitle, the term "dependent" means—

- (1) a qualifying child, or
- (2) a qualifying relative.

#### (b) Exceptions

For purposes of this section—

##### (1) Dependents ineligible

If an individual is a dependent of a taxpayer for any taxable year of such taxpayer beginning in a calendar year, such individual shall be treated as having no dependents for any taxable year of such individual beginning in such calendar year.

##### (2) Married dependents

An individual shall not be treated as a dependent of a taxpayer under subsection (a) if such individual has made a joint return with the individual's spouse under section 6013 for the taxable year beginning in the calendar year in which the taxable year of the taxpayer begins.

##### (3) Citizens or nationals of other countries

###### (A) In general

The term "dependent" does not include an individual who is not a citizen or national of the United States unless such individual is a resident of the United States or a country contiguous to the United States.

###### (B) Exception for adopted child

Subparagraph (A) shall not exclude any child of a taxpayer (within the meaning of subsection (f)(1)(B)) from the definition of "dependent" if—

- (i) for the taxable year of the taxpayer, the child has the same principal place of abode as the taxpayer and is a member of the taxpayer's household, and
- (ii) the taxpayer is a citizen or national of the United States.

#### (c) Qualifying child

Joint Committee on  
Administrative Rules and Regulation  
July 6, 2009  
Attachment 6

For purposes of this section—

**(1) In general**

The term “qualifying child” means, with respect to any taxpayer for any taxable year, an individual—

- (A) who bears a relationship to the taxpayer described in paragraph (2),
- (B) who has the same principal place of abode as the taxpayer for more than one-half of such taxable year,
- (C) who meets the age requirements of paragraph (3), and
- (D) who has not provided over one-half of such individual’s own support for the calendar year in which the taxable year of the taxpayer begins.

**(2) Relationship**

For purposes of paragraph (1)(A), an individual bears a relationship to the taxpayer described in this paragraph if such individual is—

- (A) a child of the taxpayer or a descendant of such a child, or
- (B) a brother, sister, stepbrother, or stepsister of the taxpayer or a descendant of any such relative.

**(3) Age requirements**

**(A) In general**

For purposes of paragraph (1)(C), an individual meets the requirements of this paragraph if such individual—

- (i) has not attained the age of 19 as of the close of the calendar year in which the taxable year of the taxpayer begins, or
- (ii) is a student who has not attained the age of 24 as of the close of such calendar year.

**(B) Special rule for disabled**

In the case of an individual who is permanently and totally disabled (as defined in section 22 (e)(3)) at any time during such calendar year, the requirements of subparagraph (A) shall be treated as met with respect to such individual.

**(4) Special rule relating to 2 or more claiming qualifying child**

**(A) In general**

Except as provided in subparagraph (B), if (but for this paragraph) an individual may be and is claimed as a qualifying child by 2 or more taxpayers for a taxable year beginning in the same calendar year, such individual shall be treated as the qualifying child of the taxpayer who is—

- (i) a parent of the individual, or
- (ii) if clause (i) does not apply, the taxpayer with the highest adjusted gross income for such taxable year.

**(B) More than 1 parent claiming qualifying child**

6-2