

MINUTES

JOINT COMMITTEE ON ADMINISTRATIVE RULES AND REGULATIONS

August 24, 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 Steve Huebert
Representative Shirley Palmer
Representative Joe Patton
Representative Jan Pauls
Representative Ed Trimmer

Members Absent

Representative John Faber

Staff Present

Raney Gilliland, Legislative Research Department
Corey Carnahan, Legislative Research Department
Jill Shelley, Legislative Research Department
Sharon Wenger, Legislative Research Department
Kenneth Wilke, Revisor of Statutes Office
Judy Glasgow, Committee Assistant

Others Present

Julia Mowers, Kansas State Board of Healing Arts
Berend Koops, Hein Law Firm
Sean Miller, Capitol Strategies
Alex Kotoyantz, Kansas Association of Professional Insurance Agents
Bill Sneed, Polsinelli Law Office
Randy Forbes, Kansas Pharmacy Board
Debra Billingsley, Kansas Pharmacy Board

Julene Miller, Kansas Board of Regents
John Wine, Kansas Insurance Department
Dick Cook, Kansas Insurance Department
Jean Boline, Kansas State Board of Technical Professions
Mary Leigh Dyck, Kansas State Board of Technical Professions
Marsha Schrempp, Kansas Behavioral Sciences Regulatory Board
Kerri Spielman, Kansas Association of Insurance Agents
Brad Smoot, American Insurance Association
Dan Morgan, The Builders' Association
Amy Thornton, Kansas Department of Wildlife and Parks
Julie Ehler, Kansas Department of Agriculture
Tim Tyson, Kansas Department of Agriculture
Patrick Martin, Kansas Racing and Gaming Commission
Charles LaBoy, Kansas Racing and Gaming Commission
Brandi Baer, Kansas Racing and Gaming Commission
David Schultz, Kansas Racing and Gaming Commission

Morning Session

Chairperson Holmes called the meeting to order at 10:00 a.m.

Chairperson Holmes called the Committee members' attention to the minutes of the July 6, 2009, meeting and asked for action on them. *Senator Schmidt moved that the minutes be approved as presented; Representative Palmer seconded the motion. Motion passed.*

Staff distributed draft letters prepared by the Legislative Research Department to Senator McGinn, Chairperson of the Joint Committee on Energy and Environmental Policy (Attachment 1), and to Senator Morris, Chairperson of the Legislative Coordinating Council (Attachment 2), requesting that the proposed regulations promulgated by the Kansas Corporation Commission (KCC) regulating the storage of CO₂ be studied during the 2009 Interim Session by the Joint Committee on Energy and Environmental Policy. Chairman Holmes stated that the proposed regulations were heard by the Committee at the February meeting and the Committee had several concerns. After discussion by Committee members, it was the consensus of members that staff prepare a letter to the Legislative Coordinating Council requesting an additional day be scheduled for the Joint Committee on Energy and Environmental Policy during the 2009 Interim for the study of proposed KAR 82-3-1117 and other CO₂ storage issues. It was noted that the KCC was asked not to move forward with the regulation at this time.

The Chairperson recognized Julia Mowers to address the proposed rules and regulations noticed for hearing by the Kansas Board of Healing Arts. KAR 100-54-8, continuing education; expired, canceled, and revoked licenses; and KAR100-29-3a, examination of written and oral English communication.

Ms. Mowers stated that KAR 100-54-8 would regulate continuing education requirements for occupational therapists whose licenses have been allowed to expire, have been revoked, or have been cancelled. In response to a question from Committee members, Ms. Mowers stated that the allied professions do not have a member representing them on the Board, but they do have a member on an advisory committee to the Board.

Staff noted that on page two, line two, the word "therapy" should be changed to "therapist" to match the accompanying statute. Staff also noted that in the Economic Impact Statement for KAR 100-54-8, the KSA Supp. should be "2008" not "2006." In KAR 100-29-3a, a Committee member questioned why the New Jersey reference was included in subsection (a). It was suggested that the sentence stop after "(ETS)." A question also was raised by the Committee concerning the difference in the test scores in each of the four categories and why they varied so much. Ms. Mowers stated that she did not know but would find out and get the information back to the Committee.

In response to questions of a general nature from the Committee, Ms. Mowers stated that these proposed rules and regulations had not been approved by the Board, but that they would come before the Board at its October meeting, after the public hearing. Committee members expressed concern that this was not the proper process. Ms. Mowers stated that she would convey this back to the Board.

Committee members expressed concern that none of the allied professions were represented on the Board of Healing Arts. It was suggested that the composition of the Board be reviewed. After discussing the issue of how proposed rules and regulations were handled by the Board of Healing Arts, *it was moved by Representative Holmes and seconded by Senator Schmidt that a letter be directed to all state boards to determine their current process for handling proposed rules and regulations and request that a response be provided to the Committee before the October 5 meeting. Motion passed.*

The Chairperson welcomed Anne Haught to speak to the proposed rule and regulation noticed for hearing by the Department of Labor (Attachment 3). KAR 51-9-7, fees for medical and hospital services.

A concern was raised by a Committee member over the use of the term "mandate the use of Official Disability Guidelines (ODG)." It was the opinion of the Committee members that the language in the schedule of medical fees be changed to clearly indicate that use of the ODG is recommended but not mandated. It was the Committee's recommendation that this rule and regulation not be adopted until the change has been made. A Committee member noted that the Economic Impact Statement should be changed to reflect the amount of the savings anticipated.

Randy Forbes and Debra Billingsley were recognized by the Chairperson to speak to the proposed rules and regulations noticed for hearing by the Board of Pharmacy. KAR 68-1-1h, foreign pharmacy graduate equivalency examination; KAR 68-1-3a, qualifying pharmaceutical experience; KAR 68-2-22, electronic prescription transmission; KAR 68-7-14, prescription labels; KAR 68-7-21, institutional drug rooms; and KAR 68-20-16, records and inventories of registrants.

In KAR 68-7-21, page 2, (d) a Committee member questioned why the name of the patient and the prescriber's name were not required to be on the container. Mr. Forbes stated that he would find out and get back to the Committee. A Committee member suggested that the words "drug room" be deleted in the second sentence. Mr. Forbes stated that they would look at this section again. Staff noted that in KAR 68-20-16(a), line four, that "CRF" should be changed to "CFR." Staff noted that the history section should include KSA 65-4102. A Committee member pointed out that there were several errors in the notice of public hearing and, since this goes out to the public, they should be proofed by the agency before publishing.

A question was raised by a Committee member concerning a question previously asked about whether safety net clinics have a pharmacist-in-charge. The Committee requested that the representative of the Pharmacy Board respond to this question.

Patricia Scalia, Executive Director, was recognized by the Chairperson to speak to the rule and regulation noticed for hearing by the State Board of Indigents' Defense Services. KAR 105-11-1, defendant reimbursement of attorney fees.

Ms. Scalia stated that this regulation provides for the adoption by reference of the "attorney cost reimbursement tables: assigned counsel and public defender." This table is revised annually and is used by the courts to order defendants to pay some or all of the cost of their defense.

Julene Miller, General Counsel, was welcomed by Chairperson Holmes to address the proposed rules and regulations noticed for hearing by the Kansas Board of Regents (Attachment 4). KAR 88-29-1, definitions; KAR 88-29-4, qualifications required for the admission of an applicant with 24 or more transferable credit hours; KAR 88-29-5, qualifications required for the admission of a Kansas resident who is under the age of 21; KAR 88-29-7, qualifications required for the admission of a nonresident; KAR 88-29-8, the ten percent exception window for resident freshman class admissions; KAR 88-29-8a, the ten percent exception window for resident transfer admissions; KAR 88-29-8b, the ten percent exception window for nonresident transfer admission; KAR 88-29-9, admission policies for state educational institutions; KAR 88-29-11, requirements for the qualified admission precollege curriculum; KAR 88-29-12, establishment of a qualified admission precollege curriculum by an accredited high school in Kansas; KAR 88-29-18, functional equivalents of the qualified admission precollege curriculum; residents; and KAR 88-29-19, functional equivalents of the qualified admission precollege curriculum; nonresidents.

Ms. Miller stated these proposed rules and regulations are the result of HB 2197 passed by the 2009 Legislature. The changes allow resident and nonresident graduates of non-accredited secondary schools, including home schools, to be admitted with a composite ACT score of 21 or higher; to create exception windows for both resident and nonresident transfer students who do not meet the statutory qualification for admission; and to eliminate the computer technology requirement from the pre-college curriculum for those students graduating from high school after 2010.

In KAR 88-29-1, a Committee member questioned the definition in (d) "Admission category" as defined. It was suggested that the wording be changed to refer to the rule and regulation that covers this term and to avoid a circular definition. Several members of the Committee questioned the definitions found in (o), (p), and (q) and the total number of students admitted under the ten percent exception. The Committee requested that the Board of Regents provide the Committee with the percentage of the freshman class admitted under each of the categories, how many of them are in remedial courses, and the percentage of graduates from the ten percent exception groups compared with regular admissions students. The members of the Committee also requested that the number of foreign students admitted under the nonresident students be provided to them. Ms. Miller stated that she would get this information for the Committee after October data was made available. The Committee suggested the Board of Regents visit with the State Board of Education regarding the option of KAR 88-29-12 to establish a qualified admission precollege curriculum, since failure to do so makes high school graduates ineligible for admission to a state educational institution under the qualified admission precollege curriculum criterion found in rules and regulations.

The Chairperson recessed the meeting until 1:45 p.m.

Afternoon Session

Chairperson Holmes reconvened the meeting at 1:45 p.m.

Marsha Schrempp was welcomed by the Chairperson to speak to the proposed rule and regulation noticed for hearing by the Behavioral Sciences Regulatory Board. KAR 102-1-13, fees.

Ms. Schrempp stated that this rule and regulation is a result of HB 2162, which was passed by the 2009 Legislature. The regulation will increase the fee for the initial review of an applicant for a psychology license and reduce the fee for the original license. It was noted that Kansas is one of a few states that allows the application for the license to be taken before the coursework is completed, so some take the exam but do not get the original license in Kansas since they never intended to practice in Kansas. Ms. Schrempp said the increase will discourage some of those applicants from taking the exam.

Chairperson Holmes welcomed John Wine, Staff Attorney, to address the proposed rules and regulations noticed for hearing by the Kansas Insurance Department (Attachment 5). KAR 40-3-56, controlled insurance programs; KAR 40-3-57, controlled insurance programs including general liability; and KAR 40-3-58, controlled insurance programs including workers' compensation liabilities.

Mr. Wine stated that these proposed rules and regulations are the result of HB 2214 which was passed by the 2009 Legislature.

Mr. Wine responded to questions from members of the Committee.

Jean Boline, Executive Director, was recognized by the Chairperson to speak to the proposed rules and regulations noticed for hearing by the Kansas State Board of Technical Professions. KAR 66-6-4, professional conduct; KAR 66-6-6, renewal of licenses and certificates of authorization; KAR 66-6-8, revoked; KAR 66-6-9, revoked; KAR 66-7-2, application for certificate of authorization; KAR 66-8-1, revoked; KAR 66-8-3, engineering examinations; KAR 66-8-4, land surveyor examinations; KAR 66-8-7, geology examinations; KAR 66-9-4, engineering curriculum approved by the board; KAR 66-10-1, architectural experience of a character satisfactory to the board; KAR 66-10-9, engineering experience of a character that is satisfactory to the board; KAR 66-10-14, professional engineering, land surveying, and geology experience; KAR 66-11-1, intern engineer certificate; KAR 66-11-1a, intern geologist certificate; KAR 66-11-1b, intern land surveyor certificate; and KAR 66-11-4, admission requirements for fundamentals of geology examination.

Ms. Boline stated that KAR 66-6-6 was the result of SB 29 passed during the 2009 Session. The bill allowed the Board to change the word "corporation" to "business entity" and to have the renewals be divided so one-half will renew in even years and one-half will renew in odd years. This evens out the workload for the agency and will provide revenue each year.

Staff had a question concerning KAR 66-8-4, (c), and suggested that the Board adopt the National Council of Examiners for Engineering and Surveying (NCEES) criteria by reference or by some action by the Board by a date certain so that applicants can locate the current provisions. In KAR 66-10-1, staff noted that the record prepared by the National Council of Architectural Registration Boards (NCARB) would have to be adopted by reference.

The Chairperson recognized Amy Thornton to speak to the proposed rules and regulations noticed for hearing by Kansas Wildlife and Parks Commission. KAR 115-2-1, amount of fees; KAR 115-2-3a, cabin camping permit fees; KAR 115-7-1, fishing; legal equipment, methods of taking, and other provisions; KAR 115-7-3, fish; taking of bait fish or minnows; KAR 115-7-10, fishing; special

provisions; KAR 115-8-6, fishing, fish bait, and seining; KAR 115-20-7, doves; legal equipment, taking methods, and possession; KAR 115-25-6, turkey; spring season, bag limit, permits, and game tags; and KAR 115-25-14, fishing; creel limit, size limit, possession limit, and open season.

In KAR 115-8-6 (f), a Committee member questioned why Meade State Park and Scott State Park were listed by name when they were under 1,201 surface acres in size. The Committee suggested that the listing of these state parks by name could be removed since they would fall into the size category. It was suggested that Crawford State Park be checked to determine whether the park fits the criteria. Ms. Thornton stated that she would check on this and get back to the Committee.

Chairperson Holmes recognized Julie Ehler, staff attorney, to address the proposed rules and regulations noticed for hearing by the Department of Agriculture. KAR 4-6-1, certificate of free sale; definitions; and KAR 4-6-2, certificate of free sale.

Several questions were raised by Committee members concerning KAR 4-6-1, (b) (2) and the issuing of a free sale certificate. The question was raised concerning how the agency can issue a Kansas certificate when state agency personnel are doing the inspection pursuant to a federal law and when a certificate of free sale would be issued by a state inspector who performs work on behalf of the federal agency with federal certificates. Staff questioned where a citizen of Kansas would go to find out what the cooperative agreement covers. Ms. Ehler stated that she would have to check on this and get back to the Committee.

Patrick Martin was welcomed by Chairperson Holmes to speak to the proposed rules and regulations noticed for hearing by the Kansas Racing and Gaming Commission. KAR 112-108-1, definitions; KAR 112-108-2, consistency with the Kansas Lottery's rules; KAR 112-108-3, participation in table games by a certificate holder or a licensee; KAR 112-108-4, testing and approval of table games; KAR 112-108-5, compliance with law; prohibited activities; KAR 112-108-6, table game internal controls; KAR 112-108-7, publication of rules and payoff schedules for all permitted games; KAR 112-108-8, payout for progressive table games; KAR 112-108-9, authorized table gaming suppliers; KAR 112-108-10, chip specifications; KAR 112-108-11, submission of chips for review and approval; KAR 112-108-12, primary, secondary, and reserve sets of gaming chips; KAR 112-108-13, exchange of value chips or non-value chips; KAR 112-108-14, receipt of gaming chips from manufacturer; KAR 112-108-15, inventory of chips; KAR 112-108-16, destruction of chips; KAR 112-108-17, counterfeit chips; KAR 112-108-18, tournament chips and tournaments; KAR 112-108-19, promotional activities; KAR 112-108-20, table game and poker cards; specifications; KAR 112-108-21, table game cards; receipt, storage, inspections, and removal from use; KAR 112-108-22, dice specifications; KAR 112-108-23, dice; receipt, storage, inspections, and removal from use; KAR 112-108-24, mandatory table game count procedure; KAR 112-108-25, handling of cash at gaming tables; KAR 112-108-26, table game tips; KAR 112-108-27, table inventory; KAR 112-108-28, opening of gaming tables; KAR 112-108-29, closing of gaming tables; KAR 112-108-30, during 24-hour gaming; KAR 112-108-31, procedures for manually filling chips from cage to tables; form procedures; KAR 112-108-32, procedures for automated filling of chips; KAR 112-108-33, procedures for recording manual table credits; KAR 112-108-34, automated table credits; KAR 112-108-35, table game layouts; KAR 112-108-36, required personnel for specific table games; KAR 112-108-37, instructional table games offered to public; KAR 112-108-38, minimum and maximum table games wagers; KAR 112-108-39, dealer and boxperson hand clearing; KAR 112-108-40, table games jackpot; employee pocketbooks; KAR 112-108-41, poker room; general; KAR 112-108-42, poker room; supervision; KAR 112-108-43, poker room; banks and transactions; KAR 112-108-44, poker room; drops and counts; KAR 112-108-45, bad beat and special hand; KAR 112-108-46, gaming table drop device characteristics; KAR 112-108-47, emergency gaming table drop devices; drop procedures; KAR 112-108-48, procedures for the collection and transportation of drop devices; KAR 112-108-49, exchange and storage of foreign chips; KAR 112-108-50, procedures for

monitoring and reviewing game operations; KAR 112-108-51, maintaining table game statistical data; KAR 112-108-52, required internal audits; KAR 112-108-53, found items; KAR 112-108-54, waiver of requirements; KAR 112-108-55, shipment of table games and table game mechanisms; KAR 112-108-56, handling chips; and KAR 112-108-57, progressive table games.

Mr. Martin stated that these were the last set of rules and regulations under the Expanded Lottery Act to come before the Committee.

Staff noted that in KAR 112-108-1, (f) the term "lammer" was not used in any of the rules and regulations and should be deleted. In KAR 112-108-2, staff questioned where an individual would find what specific gaming rules were approved by the Kansas Lottery and where the rules are published. Mr. Martin stated that at this time there are no adopted rules and that each owner and operator will have these. The rules will be approved as temporary rules and regulations by the Department of Administration and the Attorney General's Office. The rules will then be published. This would apply to KAR 112-108-4 also. In KAR 112-108-8, (b), staff questioned how the five-day requirement would be calculated, and whether this includes weekends and holidays. Mr. Martin stated that standards for counting time do not apply to casinos. A Committee member suggested that a definition of the term "day" be included in the definition section. In KAR 112-108-11, (d) line three, staff questioned whether the word "edge" should be removed. Mr. Martin stated that they would consider the suggestion. Staff suggested that in KAR 112-108-18, (b)(4) be moved out of this regulation and into KAR 112-108-17 if the intent was to exclude tournament chips from the counterfeit chip regulations. Mr. Martin stated that the agency would review these two rules and regulations. Representative Huebert asked if background information concerning rules and regulations previously heard by this Committee could be furnished to him since he was new to the Committee. Mr. Martin stated he would provide the information.

Chairperson Holmes noted that the next meeting will be October 5, 2009. The meeting was adjourned by the Chairperson at 4:55 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 amount of fees; cabin camping permit fees; fishing, legal equipment, methods of taking, and other provisions; fish, taking of bait fish or minnows; fishing, special provisions; fishing, fish bait, and seining; doves, legal equipment, taking methods, and possession; turkey, spring season, bag limit, permits, and game tags (exempt); and fishing, creel limit, size limit, possession limit, and open season (exempt). After discussion, the Committee had the following comments.

KAR 115-8-6. In subsection (f), please inform the Joint Committee why the three specific state parks are named in the regulation, while others were excluded.

KAR 115-20-7. Consider removing pellet and BB guns from the list of legal hunting equipment for the taking of doves. The Joint Committee is concerned about both the effectiveness and humaneness of these guns regarding dove hunting.

Kansas State Board of Healing Arts. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning continuing education, expired, canceled, and revoked licenses and examination of written and oral English communication. After discussion, the Committee had the following comment.

KAR 100-29-3a. In subsection (a), the Committee believes that the final phrase, which provides additional information about the Educational Testing Service, is unnecessary.

KAR 100-54-8. In the first paragraph of the economic impact statement, "2006 Supp." should be updated to "2008 Supp." In addition, in subsection (b) "occupational therapy council" should be corrected to "occupational therapist council," the official name given to it in KSA 65-5404.

Kansas Racing and Gaming Commission. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning definitions; consistency with the Kansas lottery's rules; participation in table games by a certificate holder or a licensee; testing and approval of table games; compliance with law, prohibited activities; table game internal controls; publication of rules and payoff schedules for all permitted games; payout for progressive table games; authorized table gaming suppliers; chip specifications; submission of chips for review and approval; primary, secondary, and reserve sets of gaming chips; exchange of value chips or non-value chips; receipt of gaming chips from manufacturer; inventory of chips; destruction of chips; counterfeit chips; tournament chips and tournaments; promotional activities; table game and poker cards, specifications; table game cards, receipt, storage, inspections, and removal from use; dice specifications; dice, receipt, storage, inspections, and removal from use; mandatory table game count procedure; handling of cash at gaming tables; table game tips; table inventory; opening of gaming tables; closing of gaming tables; during 24-hour gaming; procedures for manually filling chips from cage to tables, form procedures; procedures for automated filling of chips; procedures for recording manual table credits; automated table credits; table game layouts; required personnel for specific table games; instructional table games offered to public; minimum and maximum table game wagers; dealer and boxperson hand clearing; table games jackpot, employee pocketbooks; poker room, general; poker room, supervision; poker room, banks and transactions; poker room, drops and counts; bad beat and special hand; gaming table drop device characteristics; emergency gaming table drop devices, drop procedures; procedures for the collection and transportation of drop devices; exchange and storage of foreign chips; procedures for monitoring and reviewing game operations; maintaining table game statistical data; required internal audits; found items; waiver of requirements; shipment of table games and table game mechanisms; handling chips; and progressive table games. After discussion, the Committee had the following comments.

KAR 112-108-1. Please consider removing "lammer" from the list of definitions if the term is not used in any of the subsequent regulations. The Committee also suggests the agency consider defining the term "day" in order to interpret its meaning in KAR 112-108-8 and in other regulations in which periods of less than 10 days are mentioned.

KAR 112-108-8. In subsection (b), the Joint Committee questioned whether the five-day cancellation period includes weekends and holidays. Also, in subsection (b), the Committee requests the agency define "commission" as used in the regulation.

KAR 112-108-11. In subsection (d), consider removing the word "edge" from the regulation. The Joint Committee believed removing the term would broaden the applicability of the provision to all design elements of gaming chips.

KAR 112-108-18. Consider moving subsection (b)(4) to KAR 112-108-17 to better place the provision exempting counterfeit chips. Also when subsection (b)(4) is moved to KAR 112-108-17, clarify the language so that tournament chips authorized by KAR 112-108-18 are not considered to be counterfeit chips.

Request. After specific gaming rules have been established (as referenced in KAR 112-108-2), please promulgate temporary regulations adopting the rules by reference for presentation at a meeting of the State Rules and Regulations Board. The regulations will then be heard by the Joint Committee.

Kansas State Board of Indigents' Defense Services. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning defendant reimbursement of attorney fees. After discussion, the Committee had no comment.

Kansas State Board of Pharmacy. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning foreign pharmacy graduate equivalency examination; qualifying pharmaceutical experience; electronic prescription transmission; prescription labels; institutional drug rooms; and records and inventories of registrants. After discussion, the Committee had the following comments.

KAR 68-7-21. In subsection (d), the Committee suggests that a patient's name be added to information required to be on the label. It further suggests that "for use outside the institutional drug room" could be changed to "for use outside the institution."

Request. The Committee requests information including the name of the institution and the pharmacist in charge of each institutional drug room as defined in KSA 65-1626d(o). It believes this list will be more extensive than the list provided by the agency titled "Clinics & Qualifying Centers for Unused Medications" as a response to its request following the meeting of January 8, 2009.

KAR 68-20-16. In subsection (a), "CRF" in line 4 should be corrected to "CFR." Also, the agency should consider adding to the authorizing statutes KSA 2008 Supp. 65-4102 as amended by 2009 Session Laws Ch. 32, §54.

Kansas Department of Labor. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning fees for medical and hospital services. After discussion, the Committee had the following comments.

KAR 51-9-7. The Committee requests that the instructions to users of the "Schedule of Medical Fees" referenced in the proposed regulation be changed to make it more clear that the schedule is a reference only and not a mandated schedule. The Committee requests that the agency not adopt the regulation until the language is changed. Please provide the Committee with a copy of the amended document.

Request. In regard to the economic impact statement, Part III, the Committee requests that the agency specify a dollar amount in addition to stating that the schedule is predicted to reduce overall rates by approximately 2 percent.

Kansas State Board of Regents. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning definitions; qualifications required for the admission of an applicant with 24 or more transferable credit hours; qualifications required for the admission of a Kansas resident who is under the age of 21; Qualifications required for the admission of a nonresident; the ten percent exception window for resident freshman class admissions; the ten percent exception window for resident transfer admissions; the ten percent exception window for nonresident transfer admissions; admission policies for state educational institutions; requirements for the qualified admission precollege curriculum; establishment of a qualified admission precollege curriculum by an accredited high school in Kansas; functional equivalents of the qualified admission precollege curriculum, residents; and functional equivalents of the qualified admission precollege curriculum, nonresidents. After discussion, the Committee had the following comment.

KAR 88-29-1. Subsection (d) contains a circular reference. The Committee suggests this definition be clarified, perhaps by substituting "refers to" for "means." Also, in subsections (o), (p), and (q), the Committee requests clarification as to whether the ten percent exception window refers to ten percent of all such admissions by the type of admission defined in (o), (p) and (q) for all Regents institutions or ten percent of those admissions within the type of admission defined by (o), (p) and (q) at a given institution.

KAR 88-29-12. The Committee requests information about interaction between the Board of Regents and the State Board of Education regarding these requirements. Has the State Board of Education considered requiring an accredited high school to establish a qualified admission precollege curriculum?

Request. The Committee requests the Board report at its October meeting the following statistics, both for the overall system and by educational institution:

- The total numbers of students admitted, for comparison with information requested below;
- The actual numbers of students and percentage of overall admissions for those admitted under each type of exception;
- The numbers of foreign students admitted under the exception window for nonresident transfer admissions;
- The numbers and percentages of students admitted under the exceptions who are enrolled in remedial classes and the numbers of credits of remedial courses, plus a comparison of similar rates and numbers for students not admitted under the exceptions; and
- To the extent such information is currently available, the graduate rates for those admitted under the exceptions and a comparison with the overall graduation rate.

Kansas Behavioral Sciences Regulatory Board. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning fees. After discussion, the Committee had no comment.

Kansas State Insurance Commissioner. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning controlled insurance programs; controlled insurance programs including general liability; and controlled insurance programs including workers compensation liabilities. After discussion, the Committee had no comment.

Kansas State Board of Technical Professions. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning professional conduct; renewal of licenses and certificates of authorization; application for certificate of authorization; engineering examinations; land surveyor examinations; geology examinations; engineering curriculum approved by the board; architectural experience of a character satisfactory to the board; engineering experience of a character that is satisfactory to the board; professional engineering, land surveying, and geology experience standards acceptable to the board for reciprocity applicants; intern engineer certificate; intern geologist certificate; intern land surveyor certificate; admission requirements for fundamentals of geology examination; and revocations. After discussion, the Committee had the following comments.

KAR 66-8-4. Please inform the Joint Committee whether the Board is going to formally adopt by reference as of a date certain the testing criteria developed by the National Council of Examiners for Engineering and Surveying (NCEES). Additionally, the Joint Committee is concerned about potential unlawful delegation issues related to the use of NCEES criteria.

KAR 66-10-1. The intern development program included in the regulation will need to be adopted by reference as of a date certain.

Kansas Department of Agriculture. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning certificates of free sale, definitions; and certificate of free sale. After discussion, the Committee had the following comments.

KAR 4-6-1. In paragraph (b)(2), the Committee is concerned that the public may not know which regulations are "administered pursuant to a cooperative agreement with a federal agency" and requests the agency consider adopting specific documents by reference as of a date certain instead of those resulting from a cooperative agreement.

Prepared by Judy Glasgow
Edited by Raney Gilliland, Sharon Wenger,
Corey Carnahan, and Jill Shelley

Approved by Committee on:

October 5, 2009

(Date)

JOINT COMMITTEE ON ADMINISTRATIVE RULES AND REGULATIONS
 COMMITTEE GUEST LIST

DATE: Aug 24, 2009

NAME	REPRESENTING
Besend Koops	Hein Law Firm
Alex Kotovantz	P. I. A.
Sean Milvel	CAPITOL STRATEGIES
Bill Sneed	Polsielli
RANDY FORBES	PHARMACY BRD.
Debra Billingsley	" "
Julene Miller	KBOR
Jean Bolini	KS BTP
Mary Leigh Dyck	KS BTP
Marsha Schremp	BSRB
Kerri Spielman	KAFIA
BRAD SWOOT	American Insurance Assoc
DAN MORGAN	Builders' Assn.
Amy Thornton	K.D.W.P.
Julie Ehler	KS Dept Agriculture
Tim Tyson	KS Dept of Ag

August 20, 2009

Senator Carolyn McGinn, Chairperson
Joint Committee on Energy and Environmental Policy
11047 North 87th West
Wichita, KS 67135

Dear Senator McGinn:

The purpose of this letter is to follow-up on previous correspondence sent to you at the request of the Joint Committee on Administrative Rules and Regulations during its February meeting.

As stated in the attached letter dated February 23, 2009, members of the Joint Committee expressed concern related to the proposed rules and regulations promulgated by the Kansas Corporation Commission (KCC) governing the storage of CO₂. Specifically, members were concerned with KAR 82-3-1117, a proposed regulation that would require the State of Kansas to assume financial responsibility for all future remediation and monitoring activities once the KCC had determined a set of criteria had been met by the operator of the facility.

In addition to this follow-up letter being sent to you, the Joint Committee has requested a letter be sent to the Legislative Coordinating Council asking it to assign the topic of state ownership to the Joint Committee on Energy and Environmental Policy. As Chairperson of the Joint Committee on Energy and Environmental Policy, members of Administrative Rules and Regulations wanted you to be aware of the request.

Please feel free to contact me with any questions.

Sincerely,

Representative Carl Holmes, Chairperson
Joint Committee on Administrative Rules and
Regulations

CJC/kal

H:\02clerical\ANALYSTS\CJC\49928.wpd

Joint Committee on
Administrative Rules and Regulations
August 24, 2009
Attachment 1

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/kldr> E-MAIL: kslegres@kldr.state.ks.us

February 23, 2009

Senator Carolyn McGinn, Chairperson
Joint Committee on Energy and Environmental Policy
Room 222-E, Statehouse
BUILDING MAIL

Dear Senator McGinn:

This letter is on behalf of the members of the Joint Committee on Administrative Rules and Regulations and is to inform you of a concern shared by members of the Committee at its February 13, 2009, meeting.

The issue which prompted this concern arose during the Committee's review of the Kansas Corporation Commission's proposed rules and regulations related to the sequestration of CO₂. The concern arose from the language contained in proposed KAR 82-3-1117. In this regulation, after a determination by the agency that the CO₂ plume has stabilized, the CO₂ is contained in the reservoir, the CO₂ is not a threat to public health and safety and usable water, and the CO₂ reservoir pressure is stable, the operator of the facility would be released from any future financial assurance requirement. In addition, the regulation proposes that all future remediation and monitoring activities would be performed by the state using funds for the Commission's CO₂ Remediation Fund. The fact that the State would assume responsibility was the issue of concern with Committee members.

As Chairperson of the Joint Committee on Energy and Environmental Policy, the Committee members wanted you to be aware of their concern, and consider examining this and other issues involving CO₂ sequestration as topics for the Joint Committee on Energy and Environmental Policy.

Please feel free to contact me if you have any questions.

Sincerely,

A handwritten signature in black ink that reads "Raney L. Gilliland".

Raney L. Gilliland
Assistant Director for Research

cc: Rep. Carl Holmes, Chairperson,
Sen. Vicki Schmidt, Vice-Chairperson, and
Rep. Jan Pauls, Ranking Minority Member,
Joint Committee on Administrative Rules and Regulations

August 20, 2009

Senate President Stephen Morris, Chairperson
Legislative Coordinating Council
Room 371-E, Statehouse
BUILDING MAIL

Dear President Morris:

At its meeting on February 13, 2009, the Joint Committee on Administrative Rules and Regulations heard a set of proposed regulations promulgated by the Kansas Corporation Commission (KCC) regulating the storage of CO₂.

During the meeting, the Joint Committee expressed shared concerns over proposed KAR 82-3-1117. As outlined in the regulation, the State of Kansas would assume financial responsibility for all future remediation and monitoring activities for the storage of CO₂ once the KCC had determined a set of criteria had been met by the operator of the facility. Members of the Joint Committee expressed their concern about the role of the State in assuming this responsibility.

Given this regulation and other related issues, the Joint Committee respectfully asks the Legislative Coordinating Council to direct the Joint Committee on Energy and Environmental Policy to study this and other CO₂ storage issues during the 2009 Interim Session. This suggestion stems from the growing importance of CO₂ storage policies at both the state and federal levels, and how those policies may impact the State of Kansas.

Please feel free to contact me with any questions or if additional information is needed.

Sincerely,

Representative Carl Holmes, Chairperson
Joint Committee on Administrative Rules and
Regulations

CJC/kal

cc: Speaker Mike O'Neal, Vice-Chairperson

**Testimony before the
Joint Committee on Administrative Rules and Regulation
K.A.R. 51-9-7
Anne Haught, Division of Workers Compensation Medical Services
Kansas Department of Labor
August 24, 2009**

Representative Holmes and Members of the Committee:

Thank you for the opportunity to appear today. My name is Anne Haught and I represent the Kansas Department of Labor. I am here to answer any questions you may have with regard to our proposed updated regulation K.A. R. 51-9-7.

This regulation shall become effective on, and after, January 1, 2010. This regulation is authorized by and implements K.S.A. 44-510i. This regulation adopts by reference the 2010 Schedule of Medical Fees, which establishes fees for medical and hospital services through the utilization of a maximum medical fee schedule. The Schedule of Medical Fees shall, in accordance with the statute, be revised as necessary at least every two (2) years by the Director to assure that the schedule is current, reasonable and fair, yet promotes health care cost containment.

The current fee schedule was adopted in 2008. The medical fee advisory panel and its subcommittee presented and agreed to the revisions that are present in the 2010 fee schedule.

It was agreed that resource based relative value system (RBRVS) that was originally developed for Medicare as the source of CPT (current procedural terminology used by physicians) unit values would continue to be utilized in the 2010 fee schedule. It was accepted that each major section of the 2010 fee schedule would have an independent conversion factor to maintain reasonable comparative payment levels with the 2008 fee schedule. However, the Evaluation and Management conversion factors were adjusted up, to compensate for the previous lower levels of reimbursement.

A new section, "non-face to face non-physician services" section was added for phone calls by non-physician health care professionals unrelated to a recent/future office visit.

We have previously recommended the Official Disability Guidelines (ODG) as the reference of choice for treatment protocols. The 2010 Schedule of Medical Fees will mandate the use of ODG over one of the other published disability guidelines. Eighteen (18) states have adopted ODG and another sixteen (16) are considering adopting them.

The previous hospital/ambulatory surgical center section has been divided into two (2) new sections: hospital/in-patient and ambulatory surgical center/hospital out-patient. Ambulatory surgical center/hospital out-patient will continue to be subject to an established variable discount rate associated with the center's peer group designation while hospital/in-patient charges will be paid according to MS-DRGs (Medicare severity diagnosis related groups) cost weights times a variable modifier that is dependent on the peer group of the facility. For hospital/in-patient charges exceeding \$60,000 discounting any implantables or trauma activation fees, the hospital/in-patient charges will be paid at billed charges, minus 15%.

Maximum fees have been established for trauma activations and all durable medical equipment---not just those valued at \$250 or more are to be reimbursed at a cost plus level.

Prescription drug reimbursement will see a slight decrease but will continue to be determined by the two formulas. Average whole sale pricing less 15% + \$5.00 dispensing fee for generic drugs and average whole sale pricing less 10% + \$3.00 dispensing fee for brand name drugs.

The National Council on Compensation Insurance, Inc. (NCCI) for the 2010 Schedule of Medical Fees shows an overall impact on total workers compensation costs to be an approximate 2% savings.

Thank you. I now stand for questions.

Anne Haught



KANSAS BOARD OF REGENTS

1000 SW JACKSON • SUITE 520 • TOPEKA, KS 66612-1368

TELEPHONE – 785-296-3421
FAX – 785-296-0983
www.kansasregents.org

Joint Committee on Rules and Regulations August 24, 2009

Testimony Regarding Qualified Admissions Regulations *K.A.R. 88-29-1, 88-29-4, 88-29-5, 88-29-7, 88-29-8, 88-29-8a, 88-29-8b, 88-29-9,* *88-29-11, 88-29-12, 88-29-18, and 88-29-19*

Julene L. Miller, General Counsel

Good morning Chairman Holmes and Members of the Committee. Thank you for this opportunity to provide background information and a brief summary of the Board of Regents' proposed qualified admissions regulations.

During the 2009 Session, the Legislature enacted amendments to the state university qualified admissions statute. These statutory amendments had been recommended by the Board of Regents and its State University Admissions Task Force.

The Task Force, comprised of 16 individuals from diverse geographic areas and professional or civic backgrounds, was created by the Board in October 2007, with the primary charge to "advise the Board and make recommendations regarding optimal state university admissions policies for year 2010 and beyond." After holding public hearings and gathering significant input from a wide range of stakeholders across the state, the Task Force forwarded 11 recommendations to the Board in a Final Report dated October 2008 and the Board approved them in November, 2008. Of the 11 recommendations, four required statutory amendments and were included in House Bill No. 2197:

- Give the Board authority to establish admissions standards for the state universities;
- Allow for regular admission of home-schooled students with qualifying ACT scores;
- Update the pre-college curriculum to remove the computer technology requirement; and
- Create separate "exceptions windows" for transfer students.

The Bill, with these amendments, passed both houses and was signed by Governor Sebelius on March 27, 2009.

Two other Task Force recommendations did not require legislation:

- Allow pre-college curriculum algebra taken in middle school to count toward satisfying the QA curriculum requirements, but require successful completion of a math course in the 12th grade; and

Joint Committee on
Administrative Rules and Regulations
August 24, 2009
Attachment 4

- Authorize the state universities to establish requirements necessary for non-resident freshmen admitted in the conditional admissions category to enter the regular admissions category.

To effectuate this new legislation and the two additional Task Force recommendations that did not require legislation, the Board is proposing the following regulation amendments:

- K.A.R. 88-29-1 would be amended to include new definitions for the following terms:
 - “admission category”;
 - “non-accredited private secondary school,” which would include home schools;
 - “ten percent exception window for resident transfer admissions”; and
 - “ten percent exception window for nonresident transfer admissions”;
- Amendments to K.A.R. 88-29-4 and 88-29-8, and new regulation 88-29-8a would provide for a separate exceptions window for **resident** transfer admissions;
- Amendments to K.A.R. 88-29-4 and new regulation 88-29-8b would provide for a separate exceptions window for **non-resident** transfer admissions;
- K.A.R. 88-29-5 would be amended to provide for admission of **resident** home-schooled students who have earned a composite score of at least a 21 on the ACT;
- K.A.R. 88-29-7 would be amended to provide for admission of **non-resident** home-schooled students who have earned a composite score of at least a 21 on the ACT;
- K.A.R. 88-29-9 would be amended to authorize state universities to establish requirements necessary for non-resident freshmen admitted in the conditional admissions category to enter the regular admissions category;
- K.A.R. 88-29-11 would be amended to address the pre-college curriculum math requirement issues; and
- K.A.R. 88-29-11, 88-29-12, 88-29-13, 88-29-18, and 88-29-19 would be amended to address the pre-college curriculum computer technology requirement.

Temporary versions of these amendments were adopted by the Board and took effect July 1, 2009. These proposed permanent regulations are identical to the temporary regulations except for some formatting, their history sections and internal effective dates.

Thank you for the opportunity to appear before you today. I would be happy to address any questions that Committee Members may have.

HOUSE BILL No. 2197

AN ACT concerning state educational institutions; relating to the admission of students thereto; amending K.S.A. 76-717 and repealing the existing section.

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

Section 1. K.S.A. 76-717 is hereby amended to read as follows: 76-717. (a) The board of regents may adopt rules and regulations for the admission of students at the state educational institutions. ~~Effective for the 2001-02 academic year and thereafter~~ *Except as provided by subsection (f)*, the rules and regulations shall include the following:

(1) Each Kansas resident who has graduated from an accredited Kansas high school and who is seeking admission to a state educational institution shall be admitted if the applicant for admission has achieved at least one of the following:

(A) The applicant has completed the precollege curriculum prescribed by the board of regents with a minimum grade point average of 2.0 on a 4.0 scale or has been recognized by the board of regents as having attained a functionally equivalent level of education; or

(B) the applicant has a composite American college testing program (ACT) score of not less than 21 points; or

(C) the applicant ranks in the top 1/3 of the applicant's high school class upon completion of seven or eight semesters.

(2) *Each Kansas resident who has graduated from a non-accredited private secondary school, as defined in K.S.A. 72-53,100, and amendments thereto, and who is seeking admission to a state educational institution shall be admitted if the applicant for admission has a composite American college testing program (ACT) score of not less than 21 points.*

~~(3)~~ (3) Admission to all state educational institutions shall be granted to each Kansas resident under 21 years of age who has earned the general educational development (GED) certificate with an overall score of not less than 50 points.

~~(4)~~ (4) Admission to all state educational institutions shall remain open for each Kansas resident who is 21 years of age or older and who has:

(A) Graduated from an accredited Kansas high school *or a non-accredited private secondary school*; or

(B) earned the general educational development (GED) certificate with an overall score of not less than 50 points.

~~(5)~~ (5) Each state educational institution shall establish and maintain a policy permitting the admission of not more than 10% of the total number of freshman class admissions to the state educational institution as exceptions to the minimum admissions standards prescribed by this section. These exceptions shall only be applied to students who are bona fide residents of Kansas in accordance with rules and regulations of the board of regents and which rules and regulations are substantially similar to law, rule or regulation relative to the determination of resident status for tuition purposes. The board of regents shall adopt rules and regulations prescribing criteria and guidelines to be applied on a system-wide basis to policies established by the state educational institutions for the purpose of permitting freshman class admissions to the institutions as exceptions to the minimum admissions standards prescribed by this section ~~and~~. *On or before January 31 of each year, the board of regents shall submit an annual report to the legislature containing the number and percentage of freshman class admissions permitted as exceptions to such standards during the preceding academic year.* The information contained in the annual report shall be disaggregated by institution.

~~(6)~~ (6) Each Kansas resident who has earned at least 24 credit hours of transferable course work with a cumulative grade point average of not less than 2.0 on a 4.0 scale at an accredited community college, university or other college shall be admitted as a transfer student to the state educational institutions. *Each state educational institution may permit the admission of not more than 10% of the total number of such resident transfer admissions to the state educational institution as exceptions to the minimum admission standards prescribed by this paragraph. The board of regents shall adopt rules and regulations prescribing criteria and guidelines to be applied on a system-wide basis for the purpose of admitting students who have earned at least 24 credit hours of transferable course work to state educational institutions as exceptions to the minimum standards prescribed by this paragraph. On or before January 31 of each year, the board of regents shall submit a report to the legislature contain-*

ing the number and percentage of transfer student admissions permitted as exceptions to such standards during the preceding academic year. The information contained in the report shall be disaggregated by institution.

(6) (7) Each person who is not a resident of Kansas and who has graduated from an accredited high school may be admitted as a freshman to any of the state educational institutions if the person has achieved at least one of the following:

(A) The person has completed the precollege curriculum prescribed by the board of regents with a minimum grade point average of 2.50 on a 4.0 scale or has been recognized by the board of regents as having attained a functionally equivalent level of education; or

(B) the person has a composite American college testing program (ACT) score of not less than 21 points; or

(C) the person ranks in the top 1/3 of the person's high school class upon completion of seven or eight semesters.

(8) *Each person who is not a resident of Kansas and who has graduated from a non-accredited private secondary school meeting requirements substantially equivalent to K.S.A. 72-53,100 through 72-53,102, and amendments thereto, may be admitted to any state educational institution if the person has a composite American college testing program (ACT) score of not less than 21 points.*

(7) (9) Each person who is not a resident of Kansas and who has earned at least 24 credit hours of transferable course work with a cumulative grade point average of not less than 2.0 on a 4.0 scale at an accredited community college, university or other college may be admitted as a transfer student to any of the state educational institutions. *Each state educational institution may permit the admission of not more than 10% of the total number of such non-resident transfer admissions to the state educational institution as exceptions to the minimum admission standards prescribed by this paragraph. The board of regents shall adopt rules and regulations prescribing criteria and guidelines to be applied on a system-wide basis for the purpose of admitting students who have earned at least 24 credit hours of transferable course work to state educational institutions as exceptions to the minimum standards prescribed by this paragraph. On or before January 31 of each year, the board of regents shall submit a report to the legislature containing the number and percentage of transfer student admissions permitted as exceptions to such standards during the preceding academic year. The information contained in the report shall be disaggregated by institution.*

(b) The board of regents may prescribe a precollege curriculum which includes, but need not be limited to, four units of English, three units of mathematics, three units of social studies; *and three units of natural science, and one unit in the field of computer technology which is designed for the development of computer literacy including a basic understanding of computer operations, applications and programming.*

(c) When a Kansas high school is organized in a manner that provides for documentation of a student's performance in terms other than units of credit or grade point averages, or both, the board of regents shall determine for the students of such school a level of education that is functionally equivalent to the completion of the precollege curriculum with ~~a~~ *the required* grade point average of ~~2.0~~ on a 4.0 scale. The determination of a functionally equivalent level of education required under this subsection shall be made by the board of regents after consultation with the state board of education and the board of education or other governing authority having jurisdiction over the students of the affected school.

(d) The board of regents shall determine a level of education that is functionally equivalent to the completion of the precollege curriculum with ~~a~~ *the required* grade point average of ~~2.50~~ on a 4.0 scale for persons who are not residents of Kansas.

(e) The board of regents may authorize the chief executive officer of each state educational institution to adopt additional rules and policies relating to admissions of students so long as such rules and policies are not in conflict with the provisions of this section.

(f) *The board of regents may adopt rules and regulations establishing standards for the admission of students to state educational institutions that differ from the standards set forth in subsection (a). Rules and regulations adopted pursuant to this subsection that are more rigorous than*

HOUSE BILL No. 2197—page 3

those set forth in subsection (a) shall not be effective prior to the first day of the fourth academic year following the year in which the rules and regulations are adopted.

(g) Information in reports required to be compiled and submitted to the legislature by this section may be compiled and submitted to the legislature in a single report.

Sec. 2. K.S.A. 76-717 is hereby repealed.

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

I hereby certify that the above BILL originated in the HOUSE, and passed that body

HOUSE concurred in
SENATE amendments _____

Speaker of the House.

Chief Clerk of the House.

Passed the SENATE
as amended _____

President of the Senate.

Secretary of the Senate.

APPROVED _____

Governor.

5-7