

MINUTES

JOINT COMMITTEE ON ADMINISTRATIVE RULES AND REGULATIONS

December 2, 2014
Room 152-S—Statehouse

Members Present

Senator Vicki Schmidt, Chairperson
Representative Sharon Schwartz, Vice-chairperson
Senator Oletha Faust-Goudeau
Senator Tom Hawk
Senator Garrett Love
Senator Ralph Ostmeyer
Representative Steve Huebert
Representative Ed Trimmer
Representative Jim Ward

Members Absent

Representative Jerry Lunn
Representative Valdenia Winn

Staff Present

Raney Gilliland, Kansas Legislative Research Department
Jill Shelley, Kansas Legislative Research Department
Whitney Howard, Kansas Legislative Research Department
Natalie Scott, Office of Revisor of Statutes
Nobuko Folmsbee, Office of Revisor of Statutes
Shirley Jepson, Committee Assistant

Conferees

Randy Stookey, General Counsel, Agricultural Remediation Board
Randy Carlson, Kansas Department of Health and Environment
Cory Sheedy, Kansas Department of Health and Environment and Attorney for Kansas State
Employee Health Plan
Mike Michaels, Director, State Employee Health Plan
Diane Minear, Kansas Insurance Department
Mark McClafflin, Kansas Insurance Department
Jason Lapham, Kansas Insurance Department
Ken Abitz, Kansas Insurance Department
Chris Tymeson, Legal Counsel, Department of Wildlife, Parks and Tourism
Mary Blubaugh, Board of Nursing

Bob Zook, Administrative Officer, Board of Barbering
Randall Forbes, Board of Pharmacy
Debra Billingsley, Board of Pharmacy

Other Attendees

See attached list.

Morning Session

Chairperson Schmidt opened the meeting at 10:05 a.m.

Approval of Minutes

Representative Schwartz moved to approve the minutes of the October 13, 2014, meeting as written. The motion was seconded by Senator Hawk. Motion carried on a voice vote.

Review and Comment on rules and regulations noticed for hearing by the Agricultural Remediation Board.

KAR 125-1-7, eligible corrective action costs, exclusions.

Randy Stookey, Legal Administrator, Kansas Agricultural Remediation Board, appeared before the Committee to address the proposed rule and regulation. Mr. Stookey explained the Board was established in 2000 by the Legislature to address financial reimbursement for clean-up of chemical release sites. Mr. Stookey noted the proposed amendment would limit the total amount of reimbursement from the Kansas Agricultural Remediation Fund for any one site to \$200,000, except that if the property has been sold or leased and both the buyer and seller (or lessee and lessor) are responsible for remediation costs at the site, then the total amount reimbursed for that site would be limited to \$400,000. Mr. Stookey explained no State General Fund moneys are used; funding is provided through assessments on agricultural businesses. The Board has received applications for approximately \$1.5 million more than available funding with approximately 170 unfunded projects since 2009. Because of the number of unfunded projects, the Board has proposed to limit funding to \$200,000 for any one site.

Responding to a question from the Committee, Mr. Stookey explained most projects cost between \$100,000 and \$500,000. In some instances, the federal government will provide additional funding above the amount paid by the state. Mr. Stookey noted projects in clean-up areas where nitrates are present in the underground water have been more expensive and caused the fund to have a deficit. Mr. Stookey indicated the fund receives between \$800,000 and \$1.2 million annually. Because of the limited funding since 2009, Mr. Stookey stated the Board tries to fund first those projects that have an effect on human health, with Kansas Department of Health and Environment (KDHE) assigning a priority score to each application.

Responding to a question concerning a Hanover housing development built over a contaminated water site, Mr. Stookey deferred to Randy Carlson, KDHE. Mr. Carlson indicated he was not familiar with the situation, but will research it and provide information to the Committee.

Mr. Stookey explained legislation is needed to increase assessments that fund the program (in KSA 2013 Supp. 2-3713) and said representatives of agribusinesses that pay the assessments have agreed to increases. He anticipates legislation will be proposed to the 2015 Legislature.

Review and Comment on rules and regulations noticed for hearing by the State Employees Health Care Commission.

KAR 108-1-1, eligibility; KAR 108-1-3, school district employee health care benefits plan; KAR 108-1-4, local unit of government employee health care benefits plan.

Cory Sheedy, KDHE, attorney for the Kansas State Employees Healthcare Commission, appeared before the Committee to address the proposed rules and regulations as established by the Health Care Commission. Mr. Sheedy explained the rules and regulations establish eligibility requirements for employees of the state, school district and education entities, and local units of government. The changes are proposed to make the rules and regulations as uniform as possible and to respond to changes in federal law.

Responding to questions from the Committee concerning variable hour employees, Mr. Sheedy indicated records are maintained on a year-long basis; if a variable hour employee works a sufficient number of hours, that employee will become eligible for health care coverage for a period of time. If the employee's hours fall below the threshold during the next measurement period, the employee will not be eligible for health care coverage. Mr. Sheedy noted approximately 30 school districts across the state participate in the school district employee health care benefit plan. The Committee requested information on the year school districts were added to the healthcare plan.

Responding to a question concerning benefits for autism, Mike Michaels, Director, State Employee Health Plan, stated dollar caps have been removed and replaced by hours of care, noting the plan is broader now than in the past. Mr. Michaels said he believes the plan has been improved. Mr. Michaels indicated autism benefits are available past the age of 18, if medically necessary.

Review and Comment on rules and regulations noticed for hearing by the Kansas Insurance Department.

KAR 40-1-37, audited financial reports, filing requirements; KAR 40-1-48, risk-based capital instructions for health organizations; KAR 40-4-37e, long-term care insurance; prohibitions.

KAR 40-9-118, life insurance and annuities, advertising; KAR 40-9-126, advertising of Medicare supplement insurance.

Diane Minear, Assistant General Counsel and Governmental Relations Director, Kansas Insurance Department (KID), appeared before the Committee to address the proposed rules and regulations. Accompanying Ms. Minear to assist in the presentation were Mark McClafin, Jason Lapham, and Ken Abitz from KID. Ms. Minear provided written testimony on each regulation ([Attachment 1](#)).

Ms. Minear explained the proposed rules and regulations would amend existing regulations concerning the filing of audited financial statements; adopt by reference the most recent version of National Association of Insurance Commissioners risk-based capital report, including overview and forecasting instructions, for health companies; amend the long-term care policy by striking “greater than 100 days” elimination period and inserting “more than one” to make the regulation consistent with current law; amend language to allow additional methods of communication because of the increased use of the internet, social media and other mass communication media; and restore the Department’s ability to review Medicare Supplement advertising.

Staff expressed a concern that the rules and regulations adopted KID policies and procedures by reference, but those policies and procedures were not accessible on the agency’s website. Committee members noted a concern, voiced by their constituents, regarding enormous increases in long-term care policy premiums and requested KID explore the issue. Ms. Minear noted information is also available to the public on CD-ROM and available by contacting KID. The Committee expressed concern regarding the difficulty in accessing information on the Department’s website.

Review and Comment on rules and regulations noticed for hearing by the Wildlife, Parks and Tourism Commission.

KAR 115-7-2, fishing, general provisions; KAR 115-9-6, vehicle permits, display; KAR 115-30-1, display of identification number and decal.

Chris Tymeson, Legal Counsel, Department of Wildlife, Parks and Tourism, appeared before the Committee to address the proposed rules and regulations. Mr. Tymeson explained the revisions to the rules and regulations would allow the use of a Department-issued identification number in lieu of name and address on certain fishing lines, establish display requirements for vehicle permits, and establish an alternative way to display identification number and decals for sailboards.

Responding to a question from the Committee, Mr. Tymeson explained certain permits will be permanently affixed to the vehicle, either inside or outside the windshield, eliminating the opportunity to move the permit from one vehicle to another. In response to another question, Mr. Tymeson indicated the Commission will meet after the end of the 2014 deer season to address concerns about the possible closing of coyote hunting season during the 12-day firearms deer season.

Review and Comment on rules and regulations noticed for hearing by the Kansas State Board of Nursing.

KAR 60-4-103, fees and travel expenses for school approval and approval of continuing education providers.

Mary Blubaugh, Kansas State Board of Nursing, appeared before the Committee to address the proposed rules and regulations. Ms. Blubaugh explained the proposed language increases the fee on the application for the approval of a new nursing school; increases the cost of the approval of single continuing nursing education offerings; and changes “renewal” to “report” for the annual approval of nursing schools and continuing nursing education providers,

to be consistent with other rules and regulations. Proposed are a \$300 increase for all new applications for nursing programs in Kansas (the first such increase in at least 15 years) and an increase of \$50 for approval of each single continuing nursing education offering. The economic impact to the Board of Nursing will be a fiscal increase of approximately \$2,050 per year.

Review and Comment on proposed rules and regulations noticed for hearing by the Board of Barbering.

KAR 61-3-7, minimum requirements for opening a barber school or barber college; KAR 61-3-22, schools ineligible for a permit to operate a barber school or barber college.

Bob Zook, Administrative Officer, Board of Barbering, appeared before the Committee to address the proposed rules and regulations ([Attachment 2](#)). Mr. Zook stated the rules and regulations establish certain parameters pertaining to the approval of and requirements for the operation of a barber school or college in the state.

Committee members voiced some concern with the requirement to have separate entrances for a school or college of barbering and a school or college of cosmetology when they use the same classrooms and facilities. Mr. Zook noted the requirement is to prevent commingling of students.

Review and Comment on rules and regulations noticed for hearing by the Board of Pharmacy.

KAR 68-2-22, electronic transmission of a prescription; KAR 68-20-10a, electronic transmission of a controlled substance prescription.

Repeal of rules and regulations for the Cancer Drug Repository Program: KAR 68-16-1, revocation (definitions); 68-16-2, revocation (requirements for participation by physicians, pharmacies, hospitals and non-profit clinics); KAR 68-16-3, revocation (donation of cancer drugs); KAR 68-16-4, revocation (dispensing requirements); KAR 68-16-5, revocation (handling fees); KAR 68-16-6, revocation (distribution of donated cancer drugs); KAR 68-16-7, revocation (sale of donated drugs); KAR 68-16-8, revocation (recordkeeping requirements); KAR 68-16-9, revocation (forms).

Randall Forbes, General Counsel, Kansas Board of Pharmacy, appeared before the Committee to address the proposed rules and regulations. Also present was Debra Billingsley, Executive Secretary of the Board of Pharmacy. Mr. Forbes stated electronic transmission of prescriptions is less costly and helps to prevent fraud. In response to a question from staff concerning whether 29 CFR Part 1311 has been adopted by reference, Mr. Forbes indicated he will check before the hearing to make sure this is included. The Cancer Drug Repository Program rules and regulations are being repealed because their authorizing statute was repealed.

COMMITTEE COMMENTS AND RECOMMENDATIONS

Kansas Agricultural Remediation Board

The Committee had no comments.

State Employees Health Care Commission

Question. The Committee is curious to learn exactly when the 1,000 hour threshold for eligibility was implemented for an employee to qualify as a primary participant in the State Health Care Benefits Program (please see, for example, KAR 108-1-1(b)(2)(A)).

Kansas Insurance Department

Comment. Please adjust the agency's website to clearly identify for any users the location of the documents adopted by reference. The Committee suggests the use of a hyperlink to the documents or a separate tab for links to publications adopted by reference within agency rules and regulations. [This comment is applicable to each of the two sets of proposed rules and regulations.]

Kansas Department of Wildlife, Parks and Tourism

The Committee had no comments.

Kansas State Board of Nursing

The Committee had no comments.

Kansas Board of Barbering

KAR 61-37-7. The Committee asks why a separate entrance is necessary if a building is also used to operate a business or school that conducts or teaches anything other than barbering.

Kansas Board of Pharmacy

Comment. Both of these proposed rules and regulations refer to 21 CFR Part 1311. The Committee asks where this federal regulation has been adopted by reference by the Kansas Board of Pharmacy. If it has not been adopted by reference, the Committee suggests that it should be.

Adjournment

The meeting was adjourned at 12:05 p.m. The next meeting of the Committee is scheduled for January 6, 2015.

Prepared by Shirley Jepson
Edited by Jill Shelley and Raney Gilliland

Approved by the Committee on:

January 6, 2015
(Date)