

## MINUTES

### JOINT COMMITTEE ON ADMINISTRATIVE RULES AND REGULATIONS

July 17, 2006  
Room 519-S—Statehouse

#### Members Present

Senator Vicki Schmidt, Chairperson  
Representative Carl Holmes, Vice-Chairperson  
Senator Donald Betts  
Senator Karin Brownlee  
Senator Ralph Ostmeyer  
Representative Jan Pauls  
Representative Sharon Schwartz  
Representative Josh Svaty  
Representative Mark Treaster

#### Members Absent

Senator Chris Steineger  
Representative Lance Kinzer  
Representative Arlen Siegfried

#### Staff Present

Raney Gilliland, Kansas Legislative Research Department  
Melissa Calderwood, Kansas Legislative Research Department  
Kenneth Wilke, Revisor of Statutes Office  
Diana Lee, Revisor of Statutes Office  
Matt Stromberg, Kansas Legislative Research Department Intern

#### Others Present

Kelly Benedict, PSWS  
Anne Ferguson, Kansas Health Policy Authority  
Mary Lesperance, Kansas Health Policy Authority  
Nialson Lee, Kansas Health Policy Authority  
T. K. Shively, Kansas Legal Services  
Tom Day, Kansas Corporation Commission  
Eva Powers, Kansas Corporation Commission  
Josie Torrez, SILCK

Martha Ryan, Kansas Department of Health and Environment  
Marla Rhoden, Kansas Department of Health and Environment  
George Webb, Kansas Commission of Veterans' Affairs  
Wayne Bollig, Kansas Commission of Veterans' Affairs  
Randy Forbes, Kansas Pharmacy Board  
Lane Hemsley, Kansas Pharmacy Board  
Greg Foley, State Conservation Commission  
Hakim Saadi, State Conservation Commission  
Mark Boranyak, Capitol Strategies  
John Badger, Kansas Department of Social and Rehabilitation Services  
Brian Bolen, Kansas Department of Social and Rehabilitation Services  
John House, Kansas Department of Social and Rehabilitation Services  
Rick Fleming, Office of the Securities Commissioner  
Wiley Kannarr, Office of the Securities Commissioner  
Steve Wassom, Office of the Securities Commissioner  
Deletria L. Nash, Kansas Insurance Department  
Steven G. O'Neil, Kansas Insurance Department

### **Morning Session**

The meeting was called to order by Senator Vicki Schmidt, Chairperson, at 9:05 a.m. on July 17, 2006.

Chairperson Vicki Schmidt introduced Nialson Lee, Administrator, to speak to the proposed rule and regulation noticed for hearing by the Kansas Health Policy Authority. KAR 129-5-1, prior authorization.

Mr. Lee explained that four drugs are being added to the prior authorization list and five drugs are being removed from the prior authorization list. As a result, the State of Kansas will get a reduction of \$360,000 from Kansas Medicaid expenditures and \$900,000 from Federal Financial Participation (FFP).

The Committee had no questions for Mr. Lee and Chairperson Schmidt thanked him for his appearance before the Committee.

Eva Powers, Kansas Corporation Commission, was introduced by the Chairperson to speak to the proposed rule and regulation noticed for hearing by the Kansas Corporation Commission. KAR 82-15-1, application for a video service authorization certificate.

Ms. Powers stated that the 2006 Kansas Legislature passed SB 449, which allows video service providers to apply for statewide authorization. Ms. Powers noted that KAR 82-15-1 has been adopted as a temporary regulation. She stated that the Video Competition Act, Section 6, requires the Commission to recover the costs of administrating the video service authorization process.

In response to a question from a Committee member, Ms. Powers stated that no applications have been received as of this date. A question was raised concerning the fact that it has been noted that the fees may not be enough to cover the cost of these services. Ms. Powers stated that the cost of the application is \$1,000 and that not knowing how many applications may come in, it is very difficult at this time to know whether or not that amount will cover their costs. She stated that SB 449 gave the Commission authority to charge additional sums to cover these costs, if necessary.

There being no further questions from the Committee, Ms. Powers was thanked by the Chairperson for her appearance before the Committee.

The Chairperson asked for action on the May 25, 2006 minutes from the Committee. *Representative Svaty moved that the minutes be approved as presented; Representative Treaster seconded the motion. The motion carried.*

Chairperson Schmidt recognized Marla Rhoden, Director of Health Occupations Credentialing, to address the proposed rules and regulations noticed for hearing by Kansas Department of Health and Environment. KAR 28-51-100, definitions; KAR 28-51-112, home health aide training program; KAR 28-51-113, home health aide training program; KAR 28-51-114, home health aide course instructors; KAR 28-51-115, allied health training endorsement for home health aide; and KAR 28-51-116, state home health aide test eligibility.

Ms. Rhoden responded to several general questions from the Committee concerning the regulations and the elimination of the 90-hour home health aide care training requirement. She noted that there would be no economic impact felt by communities due to this change. There were no other questions and Ms. Rhoden was thanked for her appearance before the Committee.

Pat Scalia, Executive Director, was introduced by the Chairperson to speak to the proposed rules and regulations noticed for hearing by the State Board of Indigents' Defense Services. KAR 105-05-2, rates of compensation; KAR 105-5-3, appellate courts; compensation; KAR 105-5-6, reasonable compensation; non-tried cases; KAR 105-5-7, reasonable compensation; tried cases; KAR 105-5-8, compensation; exceptional cases; and KAR 105-11-1, defendant reimbursement of attorney fees.

Ms. Scalia stated that these regulations had been approved as temporary regulations. She responded to general questions from the Committee concerning the increased fees, and stated that it was necessary to raise these fees in order to procure competent people willing to perform these services. She stated that she had been directed by the Legislature to open public defender offices in Dodge City and Pittsburg.

There being no further questions, Ms. Scalia was thanked by the Chairperson for her appearance before the Committee.

Chairperson Schmidt introduced George Webb, Executive Director, to speak to the proposed rules and regulations noticed for hearing by the Kansas Commission on Veterans' Affairs. KAR 97-4-1, definitions; KAR 97-4-2, criteria for memorials for veterans; KAR 97-4-3, financing; KAR 97-4-4, proposals; use of names and references; KAR 97-4-5, fund-raising materials for proposed memorials; KAR 97-4-6, financial reporting; KAR 97-4-7, procedures for appointment of the advisory Committee; and KAR 97-4-8, procedures following advisory Committee submission of a final project plan.

Mr. Webb noted that these regulations are the result of the passage of SB 110 during the 2005 Session. Staff suggested that in KAR 97-4-2, first paragraph, (a), "nondiscriminatory" that there be a reference to the statute covering discrimination for clarification. Mr. Webb explained to the Committee that KAR 97-4-6 was at the request of a legislator to ensure that there was sufficient reporting to document the money collected for a memorial and their expenditure. A Committee member noted that there should be a provision for disbanding the Commission upon completion of the memorial. After answering all questions from the Committee, Chairperson Schmidt thanked Mr. Webb for his presentation before the Committee.

Randy Forbes was introduced by Chairperson Schmidt to speak to the proposed rules and regulations noticed for hearing by the Kansas Pharmacy Board. KAR 68-1-1b, continuing

educational unit; KAR 68-1-1d, approved schools; KAR 68-1-1f, foreign graduates; KAR 68-1-1g, Internet-based TOEFL; and KAR 68-11-1, fees for examination and licensure as a pharmacist.

Mr. Forbes noted that in KAR 68-1-1f and KAR 68-1-1g, the requirements for the minimum scores a foreign applicant is required to obtain on the test of English as a foreign language (TOEFL) were lowered for the portion for spoken English, and the addition of the ability to use the Internet-based TOEFL had been added.

It was suggested by the Committee that the Board may wish to add a statement in KAR 68-1-1b page 2 (A), noting that the information be forwarded within 60 days after attending a course. A suggestion was made by the Committee that the economic statement on KAR 68-11-1 be amended to explain the reduction in fees paid to the state. After responding to general questions from the Committee, Mr. Forbes was thanked by the Chairperson for his presentation.

Chairperson Schmidt recognized John House to address the proposed rules and regulations noticed for hearing by the Kansas Department of Social and Rehabilitation Services (Attachment 1). KAR 30-63-20, mandated requirements; KAR 30-63-22, individual rights and responsibilities; and KAR 30-64-24, case management.

Mr. House gave a brief background of the mental retardation/developmental disability services for the Committee which have been in effect since 1996. Mr. House stated that the rules and regulations were being updated to reflect current practices.

Staff noted that in KAR 30-64-24, page 5, paragraph iii, the Division of Mental Health and Developmental Disabilities' case management rules and conduct should be identified, adopted by date certain, and adopted by reference. Mr. House stated that he would take this back to the agency. It was noted that in KAR 30-63-22, reference to "agents" also should include "employees." After responding to all of the Committee's questions, Mr. House was thanked by the Chairperson for his appearance before the Committee.

Greg Foley was recognized by Chairperson Schmidt to speak to the proposed rules and regulations noticed for hearing by the State Conservation Commission (SCC). KAR 11-4-1, definitions; KAR 11-4-2, phase I letter of interest; KAR 11-4-3, phase II letter of intent; KAR 11-4-4, review process; KAR 11-4-6, phase III application; KAR 11-4-7, state contract; KAR 11-4-8, program procedures; KAR 11-4-9, partial payments; KAR 11-4-10, notification of completion; KAR 11-4-11, modifications to construction or renovation plan; KAR 11-4-12, amendment to costs of project; KAR 11-4-13, maintenance; KAR 11-4-14, annual inspection; KAR 11-4-15, eligible components of renovation projects; and KAR 11-4-16, testing and disposal of sediment from reservoir.

Mr. Foley gave an overview of the amendments to the Multipurpose Small Lake regulations (Attachment 2). He stated that the 2005 Kansas Legislature directed the SCC to receive and disburse renovation grant funds to address renovation needs for multipurpose small lakes. He noted that 85 percent of the funds are to be used in renovating existing public water supply lakes and 15 percent for technical assistance for rural water districts. Hakim Saadi discussed each regulation for the Committee, noting the items that had been changed or revised (see Attachment 2).

Mr. Foley answered questions concerning the priority rating of items in KAR 11-4-3, page 1 (c) and stated that the agency would look at changing how the items were listed in order to clarify priority ratings. A Committee member had suggested that item 10 should be moved to a higher priority. Mr. Foley stated that the items listed in this section were weighted individually when the letter of intent was reviewed. It was suggested by the Committee that the document listing the rating factor be made a part of the rule and regulation. Mr. Foley stated this could be done when the final version is made. In KAR 11-4-2, paragraph (b), staff noted that the language should be clarified as

to whether all three items are needed to meet qualifications. Mr. Foley noted that the agency would look at the language and make changes. Staff noted that in KAR 11-4-6, contracts appear to be let by the Commission itself, and asked if this was the agency intent. Mr. Foley stated that this was not the intent and that the language was being changed to correct that item. In 11-4-8, paragraph (b) line 2, the term should be change to "rights-of-way." The Chairperson thanked Mr. Foley and Mr. Saadi for their appearance before the Committee.

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

### **Afternoon Session**

Chairperson Schmidt reconvened the meeting at 1:30 p.m. and called on Rick Fleming, General Counsel, to speak to the proposed rules and regulations noticed for hearing by the Office of the Securities Commissioner. KAR 81-1-1, definition of terms; KAR 81-4-1, registration of securities; KAR 81-4-2, small company offering registration (SCOR); KAR 81-5-3, exemption for isolated non-issuer transactions; KAR 81-5-6, uniform limited offering exemption for rule 505 offerings; KAR 81-5-7, exchange exemption; KAR 81-5-8, fees for exemption filings and interpretive opinions; KAR 81-5-10, oil and gas exemptions; KAR 81-5-12, solicitations of interest before the filing of the registration statement; KAR 81-5-13, accredited investor exemption; KAR 81-5-14, notice filings and fees for offerings of investment company securities; KAR 81-5-16, exemption for Internet communication; KAR 81-5-17, standard manuals exemption; KAR 81-5-18, notice filing requirements for securities of agricultural associations; KAR 81-5-19, cross-border trading exemption; KAR 81-5-20, Kansas venture capital, inc. exemption; KAR 81-6-1, prospectus; KAR 81-7-1, statements of policy for registration of corporate equity securities; KAR 81-7-2, NASAA statements of policy; KAR 81-7-3, financial statements required for securities registration; KAR 81-10-1, advertising; and revocations.

Mr. Fleming explained that these proposed rules and regulations were the result of the new Kansas Uniform Securities Act (KUSA) effective July 1, 2005. Mr. Fleming stated that KAR 81-5-8, raises fees collected in selected cases and that these fees have not been raised since the adoption in 1987.

In KAR 81-5-3, page 2, (c) it was noted that some clarification was needed concerning offer or sale conducted through a bulletin board and those limitations. Mr. Fleming stated that the agency would review this for clarification. Staff noted that the history section needed to be updated since the passage of 2006 HB 2663. In KAR 81-5-6, the history section should be amended to include KSA 2005 17-12a608. After answering all questions from Committee and staff, Chairperson Schmidt thanked Mr. Fleming for his presentation before the Committee.

The Chairperson introduced Deletria Nash, Staff Attorney, to speak to the proposed rules and regulations noticed for hearing by the Kansas Insurance Department ([Attachment 3](#)). KAR 40-4-41b, utilization review organizations; requirements for collecting information; KAR 40-4-41f, utilization review organizations; review requirements; KAR 40-4-41i, utilization review organizations; program qualifications; and KAR 40-4-41j, utilization review organizations; written procedures to maintain confidentiality.

In response to a question from staff about KAR 40-4-41b, Ms. Nash stated that there was nothing set out in writing detailing what a "reliable source" should be. Ms. Nash stated that this could be anyone in the medical profession that had knowledge about the patient's condition. This was being added to help the insured in the certification process. A question was raised about KAR 40-4-

41f, page 3, (h), about what would constitute a conflict of interest or establish a standard. Ms. Nash stated that she would get back to the Committee concerning this situation. In KAR 40-5-51i, (c), a question was raised concerning who would do the review of the case files and if it was members of the utilization review organization, since there was no definition. Ms. Nash stated that she would find out and notify the Committee. After responding to all questions from the Committee, the Chairperson thanked Deletria Nash for her appearance before the Committee.

Chairperson Schmidt asked for dates on when the next meeting for the Committee would be scheduled. After discussion by Committee members, it was tentatively approved for September 6, 2006.

Raney Gilliland, Legislative Research Department staff, reviewed the following rules and regulations by agencies that have come before the Committee and have been become permanent, noting whether or not the suggestions made by the Committee have been adopted:

Kansas Department of Health and Environment	Secretary of State
Kansas State Board of Healing Arts	Animal Health Department
Kansas Insurance Department	Kansas Real Estate Commission
Kansas State Employees Health Care Commission	Kansas Department of Agriculture
Kansas Department of Wildlife and Parks	

The Chairperson ask for comments on the lack of response from some agencies to the Committee's written requests. It was suggested that in the letter to each agency regarding the Committee comments a statement be added, which would ask agencies to respond in writing and request that they return to the Committee if no written response is received.

Chairperson Schmidt adjourned the meeting at 3:45 p.m.

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

**Kansas Health Policy Authority.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning prior authorization and had no comment.

**Kansas Corporation Commission.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning application for a video service authorization certificate and 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 definitions; home health aide training program; home health training program; home health aide course instructors; allied health training endorsement for home health aide; and state home health aide test eligibility and had the following comment.

KAR 28-51-115. In subsection (a), the Committee expresses concern that there has been a policy change regarding the reporting of disciplinary actions. Please explain the rationale for this proposed amendment.

**Kansas Department of Social and Rehabilitation Services.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning mandated requirements; individual rights and responsibilities; and case management and had the following comments.

KAR 30-63-22. In subsection (c), consider changing the reference from "agents" to "agents or employees" in order to provide clarification.

KAR 30-64-24. In subsection (b)(5)(F)(iii), the Committee is concerned that the standards, rules of conduct, policies and procedures, and principles and directives appear to be unenforceable by the agency and should be identified and adopted either by reference or through inclusion in a regulation.

**Board of Indigents' Defense Services.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning rates of compensation; appellate courts, compensation; reasonable compensation, non-tried cases; reasonable compensation, tried cases; compensation, exceptional cases; and defendant reimbursement of attorney fees and had no comment.

**Kansas Commission on Veterans' Affairs.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning definitions; criteria for memorials for veterans; financing; proposals, use of names and references; fund-raising materials for proposed memorials; financial reporting; procedures for appointment of the advisory Committee; and procedures following advisory Committee submission of a final project plan and had the following comment.

KAR 97-4-7. The Committee is concerned with the dissolution of the advisory Committees and suggests that this issue be addressed in this regulation.

**State Board of Pharmacy.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning continuing educational unit; approved schools; foreign graduates; Internet-based TOEFL; and fees for examination and licensure as a pharmacist and had the following comments.

KAR 68-1-1b. In subsection (c)(3), consider the inclusion of a time frame for the submission of documentation for attendance of continuing education courses of post-approval. The Committee notes that a time frame has been established for courses submitted for approval after the course is taken.

KAR 68-11-1. The regulation proposes to lower a fee. The Economic Impact Statement should be revised to show that the regulation change is revenue neutral. It also should contain an explanation supporting the revenue neutral status.

**State Conservation Commission.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning definitions; phase I letter of interest; phase II letter of intent; review process; phase III application; state contract; program procedures; partial payments; notification of completion; modifications to construction or renovation plan; amendment of costs of project; maintenance; annual inspection; eligible components of renovation projects; and testing and disposal of sediment from reservoir and had the following comments.

KAR 11-4-2. In subsection (b), the Committee requests clarification as to whether the project is to meet just one or all of the eligibility requirements set forth in the regulation.

KAR 11-4-3. In subsection (c), the Committee requests the removal of the word "prioritized" since it leads a reader to believe that the criteria outlined are in priority order. Consider the adoption by reference of the eligibility document discussed before the Committee which establishes the weighted scale for priority determination of applications.

KAR 11-4-8. In subsection (b), please correct the term "right-of-way" to "rights-of-way."

**Office of the Securities Commissioner.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning definition of terms; registration of securities; small company offering registration (SCOR); exemption for isolated non-issuer transactions; uniform limited offering exemption for rule 505 offerings; exchange exemption; fees for exemption filings and interpretive opinions; oil and gas exemptions; solicitations of interest before the filing of the registration statement; accredited investor exemption; notice filings and fees for offerings of investment company securities; exemption for Internet communication; standard manuals exemption; notice filing requirements for securities of agricultural associations; cross-border trading exemption; Kansas venture capital, Inc. exemption; prospectus; statements of policy for registration of corporate equity securities; NASAA statements of policy; financial statements required for securities registration; advertising; and revocations and had the following comments.

KAR 81-5-3. Please include a definition for the term "bulletin board."

KAR 81-5-6. The Committee is concerned with the agency's authority to require record keeping. Please review statutory authority and include that authority within the history section of the regulation.

**Kansas Insurance Department.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning utilization review organization, requirements for collecting information; utilization review organizations, review requirements; utilization review organizations, program qualifications; and utilization review organizations, written procedures to maintain confidentiality had the following comment.

Comment. The Committee requests that the agency provide the criteria used by the American Accreditation Health Commission as approved by the Utilization Review Advisory Committee to develop certain standards within these regulations such as "reasonably reliable sources," "conflict of interest," and "performance evaluation." The Committee also requests the agency review whether statutory authority is in place to allow the Commissioner to collect and maintain policies and procedures of utilization review organizations.

Prepared by Judy Glasgow  
Edited by Melissa Calderwood and Raney Gilliland

Approved by Committee on:

September 6, 2006



(Date)