

MINUTES

JOINT COMMITTEE ON ADMINISTRATIVE RULES AND REGULATIONS

January 7, 2019
Room 582-N—Statehouse

Members Present

Senator Vicki Schmidt, Chairperson
Representative Ron Highland, Vice-chairperson
Senator Oletha Faust-Goudeau, Ranking Minority Member
Senator Tom Hawk
Senator Carolyn McGinn
Senator Caryn Tyson
Representative John Carmichael
Representative Tom Cox
Representative Steve Huebert
Representative Jim Ward
Representative Valdenia Winn

Member Absent

Representative Bill Sutton – Excused

Staff Present

Raney Gilliland, Kansas Legislative Research Department
Jill Shelley, Kansas Legislative Research Department
Jordan Milholland, Kansas Legislative Research Department
Natalie Scott, Office of Revisor of Statutes
Jenna Moyer, Office of Revisor of Statutes
John Willey, Committee Assistant

Conferees

Chad Bontrager, Assistant Secretary, Kansas Department of Agriculture
Jose Castillo, Division of Workers Compensation, Kansas Department of Labor
Sarah Easter, Deputy Director and Interim Executive Director, Kansas State Board of
Technical Professions
Max Foster, Jr., Executive Director, Kansas Behavioral Sciences Regulatory Board
Larry Karns, Director of Workers Compensation, Kansas Department of Labor
Jackie McClaskey, Secretary of Agriculture
Kelly Navinsky-Wenzl, Staff Attorney, Kansas Department of Agriculture
Tucker Poling, General Counsel, Kansas State Board of Healing Arts
Patricia Scalia, Executive Director, Board of Indigents' Defense Services
Jeff Vogel, Program Manager, Plant Protection and Weed Control, Kansas Department of
Agriculture
Jassina Washington, Assistant Medical Service Manager, Kansas Department of Labor

Others Attending

See [Attached List](#).

Welcome

The meeting was called to order at 10:02 a.m. by Chairperson Schmidt.

Review and Comment on notice for hearing of Department of Agriculture, Plant Protection and Weed Control Program.

KAR 4-34-1, definitions; KAR 4-34-2, certified seed; KAR 4-34-3, license approval process; KAR 4-34-4, research license applications; KAR 4-34-5, licenses issued by the department, general requirements for licensees; KAR 4-34-6, research grower license; KAR 4-34-7, research distributor license; KAR 4-34-8, research processor license; KAR 4-34-9, state educational institution research license; KAR 4-34-10, administrative license; KAR 4-34-11, state advisory board; KAR 4-34-12, fees; KAR 4-34-13, modification of license; KAR 4-34-14, land-use restrictions; KAR 4-34-15, movement of industrial hemp, restrictions on sale or transfer of industrial hemp, compliance with applicable law; KAR 4-34-16, voluntary withdrawal, voluntary partial destruction; KAR 4-34-17, pre-harvest and harvest requirements, harvest certificates; KAR 4-34-18, pre-harvest inspection, sample collection, testing and post-testing actions; KAR 4-34-19, post-harvest inspection, sample collection, testing and post-testing actions; KAR 4-34-20, reports; KAR 4-34-21, violations, disciplinary sanctions.

Jackie McClaskey, Secretary of Agriculture, appeared before the Committee to address questions raised during the December 10, 2018, meeting concerning KAR 4-34-1 through KAR 4-34-21 ([Attachment 1](#)). The Committee reviewed each issue and Ms. McClaskey provided additional clarification regarding the Committee's questions concerning the "working group."

Kelly Navinsky-Wenzl, Staff Attorney, and Jeff Vogel, Program Manager, Plant Protection and Weed Control, Kansas Department of Agriculture, continued with the review of the proposed rules from the December 10, 2018, meeting and stood for questions from the Committee ([Attachment 2](#)).

Responding to a question concerning sampling fees, Ms. Navinsky-Wenzl stated there is a fee for any additional sample testing the producer requests. The initial sample fee is included with the license fee. Should the hemp be found to contain tetrahydrocannabinol (THC) over the allowed limit, the crop would have to be destroyed by burning, being tilled into the soil, made into compost, or in another manner approved by the Secretary of Agriculture.

Responding to questions concerning overall fees and THC levels in hemp, Ms. Navinsky-Wenzl and Mr. Vogel stated the fee schedule is set out in Section 12 of the regulations. The 0.2 percent THC levels were determined in coordination between law enforcement and the "working group." Mr. Vogel stated the federal government established a 0.3 percent THC level for industrial hemp in the new farm bill. Chad Bontrager, Assistant Secretary, Kansas Department of Agriculture, stated THC levels in hemp is controlled by using certified

hemp seed or by growing approved varieties. One of the reasons for the industrial hemp research program is to determine maximum THC levels that will be allowed.

Review and Comment on notice for hearing of Board of Indigents' Defense Services

KAR 105-5-2, 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; KAR 105-11-1, revocation.

Patricia Scalia, Executive Director, Board of Indigents' Defense Services (BIDS), appeared before the Committee to address the proposed rules and regulations ([Attachment 3](#)). She reviewed the proposed changes to the rules governing indigent defense compensation and stood for questions from the Committee.

Responding to questions concerning compensation funds, Ms. Scalia advised that the hourly pay would be raised to \$75 per hour, but BIDS is statutorily allowed to pay up to \$80 per hour. In some areas of the state, it is difficult or impossible to recruit lawyers willing to take indigent cases due to the current reimbursement rates. In order to increase this rate, the Legislature must increase the maximum cap as set in statute and provide additional funding. There was discussion about introducing a bill during the 2019 Session to increase the maximum cap to at least \$150.

Responding to questions about BIDS' duties, Ms. Scalia stated BIDS consists of nine members, one from each congressional district, with a mix of political parties, and it also includes both attorneys and non-attorneys.

Responding to questions about the difference between court-appointed attorneys and public defender fees, Ms. Scalia explained public defenders receive a set salary. Court-appointed attorneys receive an hourly rate assigned by the court for a set number of hours. The court-appointed attorneys can petition the court for additional hours, depending on the type of case. The funds for these attorneys come out of the agency's budget.

Chairperson Schmidt thanked Jill Shelley and Jordan Milholland, Kansas Legislative Research Department (KLRD), for preparing the "Proposed Revocation" memorandum for KAR 150-11-1 ([Attachment 4](#)).

Review and Comment on notice for hearing of Department of Labor

KAR 51-9-7, fees for medical and hospital services.

Jose Castillo, Division of Workers Compensation, Kansas Department of Labor, appeared before the Committee to address the proposed rules and regulations ([Attachment 5](#)). Mr. Castillo reviewed the proposed changes to the rules governing fees for medical and hospital services and stood for questions from the Committee. Jassina Washington, Assistant Medical Service Manager, and Larry Karns, Director of Workers Compensation, Kansas Department of Labor, were also present.

Responding to a question concerning the workers compensation coverage, and the relationship between medical and medical treatment costs to disability payments, Mr. Karns stated, nationally, costs are between 70.0 percent and 80.0 percent and, in Kansas, costs are 61.0 percent. He further stated the medical payment rates are similar to the rates for the same service being paid in the surrounding states. Medical providers are paid more for workers compensation medical treatment than they would receive from Medicare. The fee schedule is to hold down costs as much as possible; however, there are increases due to inflation and to ensure quality medical providers are retained in the worker's compensation system.

Review and Comment on notice for hearing of Behavioral Sciences Regulatory Board

KAR 102-1-18, designation of referral source for use in the diagnosis and treatment of mental disorders; KAR 102-2-14, designation of referral source for use in the diagnosis and treatment of mental disorders; KAR 102-3-15, designation of referral source for use in the diagnosis and treatment of mental disorders; KAR 102-4-15, designation of referral source for use in the diagnosis and treatment of mental disorders; KAR 102-5-14, designation of referral source for use in the diagnosis and treatment of mental disorders; KAR 102-7-12, designation of referral source for use in the diagnosis and treatment of substance use disorders ([Attachment 6](#)).

KAR 102-1-13, fees; KAR 102-2-3, fees; KAR 102-3-2, fees; KAR 102-4-2, fees; KAR 102-5-2, fees; KAR 102-7-2, fees ([Attachment 7](#)).

Max Foster, Jr., Executive Director, Kansas Behavioral Sciences Regulatory Board (BSRB), appeared before the Committee to address the proposed rules and regulations. He reviewed the proposed changes to the rules and stood for questions from the Committee ([Attachment 8](#)). Director Foster stated the proposed rules and regulations would update references to the *Diagnostic and Statistical Manual of Mental Disorders* (DSM). He explained the current rules and regulations refer to the fourth edition of the DSM and all references would be updated to refer to the fifth edition, DSM-5.

Responding to a question concerning why the DSM-5 is a referral source the BSRB uses instead of another publication, Mr. Forster stated it is the national standard for diagnosing and treating mental disorders. It is also used for the national testing that licensees have to pass.

There was discussion about what the DSM-5 contains and about certain diagnoses in the previous versions that have been removed. Mr. Foster was unable to answer the question and stated he would ask the Board at its next meeting. There were continued hypothetical discussions concerning a provider using a previously approved therapy and the ramifications of using the therapy under the DSM-5.

Mr. Foster reviewed fee regulations for license fees and renewals. The agency is proposing rules and regulations to reduce the fee for each license by \$50. The agency performed a review of its fees and budget and determined its funding would be adequate through FY 2026.

Lunch

Chairperson Schmidt recessed the Committee for lunch at 11:57 a.m. to reconvene at 1:30 p.m.

Afternoon Session

Chairperson Schmidt called the Committee to order at 1:33 p.m.

Review and Comment on notice of hearing of State Board of Technical Professions

KAR 66-9-7, education standard acceptable to the board for reciprocity applicants; KAR 66-10-1, architectural experience satisfactory to the board; KAR 66-10-3 architectural experience required of a reciprocity applicant.

Sarah Easter, Deputy Director and Interim Executive Director, Kansas State Board of Technical Professions, appeared before the Committee to address the proposed rules and regulations. She reviewed the proposed changes to the rules governing reciprocity and stood for questions from the Committee ([Attachment 9](#)).

In response to questions from the Committee concerning reciprocity, Ms. Easter stated reciprocity is agreeing to accept an application from a person licensed in another state as long as that state's licensing requirements meet the minimum established qualifications in Kansas. An applicant could be licensed in another country and reciprocity may be granted as long as they have passed the National Council of Architectural Registration Boards (NCARB) test. This is the only way to show an applicant meets the Kansas minimum qualifications. If a foreign applicant for reciprocity has not taken the NCARB test, then the Kansas State Board of Technical Professions would not approve the application.

Review and Comment on notice of hearing of Kansas State Board of Healing Arts

KAR 100-77-1, definitions; KAR 100-77-2, telemedicine deemed rendered at location of patient; KAR 100-77-3, prescribing drugs by means of telemedicine.

Tucker Poling, General Counsel, Kansas State Board of Healing Arts, appeared before the Committee to address the proposed rules and regulations. He reviewed the proposed changes to the rules governing telemedicine and stood for questions from the Committee ([Attachment 10](#)).

Responding to a question concerning out-of-state telemedicine providers, Mr. Poling advised that the out-of-state provider must meet all Kansas provider regulatory requirements for licensing and insurance, among other things. They can provide consultation services as long as there is no direct telemedicine patient interaction.

Senator Tyson recommended dealing with patient parity billing for telemedicine.

Committee Discussion/Comments and Adjourn

Senator Faust-Goudeau recognized Chiquita Coggs, Executive Director, Kansas Board of Cosmetology, on her retirement.

Chairperson Schmidt stated this was her last action as a legislator. She thanked the staff for their hard work and dedication.

Senator Hawk had questions concerning the budget director legislation passed last year and requested a brief explanation of its effect. Natalie Scott, Office of Revisor of Statutes, had prepared a bill brief before this legislation was passed. It will be distributed to the Committee via email.

COMMENTS AND RECOMMENDATIONS

Department of Agriculture, Plant Protection and Weed Control Program. The Joint Committee on Administrative Rules and Regulations reviewed for comment rules and regulations concerning KAR 4-34-1, definitions; KAR 4-34-2, certified seed; KAR 4-34-3, license approval process; KAR 4-34-4, research license applications; KAR 4-34-5, licenses issued by the department, general requirements for licensees; KAR 4-34-6, research grower license; KAR 4-34-7, research distributor license; KAR 4-34-8, research processor license; KAR 4-34-9, state educational institution research license; KAR 4-34-10, administrative license; KAR 4-34-11, state advisory board; KAR 4-34-12, fees; KAR 4-34-13, modification of license; KAR 4-34-14, land-use restrictions; KAR 4-34-15, movement of industrial hemp, restrictions on sale or transfer of industrial hemp, compliance with applicable law; KAR 4-34-16, voluntary withdrawal, voluntary partial destruction; KAR 4-34-17, pre-harvest and harvest requirements, harvest certificates; KAR 4-34-18, pre-harvest inspection, sample collection, testing and post-testing actions; KAR 4-34-19, post-harvest inspection, sample collection, testing and post-testing actions; KAR 4-34-20, reports; KAR 4-34-21, violations, disciplinary sanctions.

KAR 4-34-7. The Committee suggests the term “primary residence” be a defined term for purposes of this set of rules and regulations.

Request. The Committee asks whether the agency considered a review period of less than 60 days for the first draft rules and regulations to increase the likelihood these rules and regulations would have met the December 31, 2018, deadline for promulgation.

Request. The Committee is concerned these rules and regulations may become intertwined with issues of medicinal or recreational marijuana if they do not remain agriculturally oriented. To that end, the Committee requests the agency provide whatever documentation is available with respect to research in other states that indicates the varieties approved by the State of Kansas remain in the 0.3 percent to 2.0 percent THC range, regardless of the conditions under which industrial hemp is grown.

Suggestion. The Committee suggests the agency consider the introduction of legislation or promulgation of additional rules and regulations to specifically outline the make-up of the advisory committee. The Committee suggests the advisory committee’s legislative

membership be balanced particularly with respect to party affiliation and with respect to legislative chamber balance. In addition, the Committee suggests there be geographic balance if possible. The Committee would further suggest all state institutions of higher education with a potential interest in industrial hemp research be contacted or urged to participate in the advisory committee.

Board of Indigents' Defense Services. The Joint Committee on Administrative Rules and Regulations reviewed for comment rules and regulations concerning KAR 105-5-2, 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; KAR 105-11-1, revocation.

Request. The Committee recognizes the reimbursement for assigned counsel is inadequate. The Committee requests the agency conduct a survey to determine an adequate rate and forward that information to the Senate Committee on Ways and Means, the House Committee on Appropriations, the House Committee on Judiciary, and the Senate Committee on Judiciary.

Department of Labor. The Joint Committee on Administrative Rules and Regulations reviewed for comment rules and regulations concerning KAR 51-9-7, fees for medical and hospital services.

After discussion, the Committee reported no comments.

Behavioral Sciences Regulatory Board. The Joint Committee on Administrative Rules and Regulations reviewed for comment rules and regulations concerning KAR 102-1-18, designation of referral source for use in the diagnosis and treatment of mental disorders; KAR 102-2-14, designation of referral source for use in the diagnosis and treatment of mental disorders; KAR 102-3-15, designation of referral source for use in the diagnosis and treatment of mental disorders; KAR 102-4-15, designation of referral source for use in the diagnosis and treatment of mental disorders; KAR 102-5-14, designation of referral source for use in the diagnosis and treatment of mental disorders; KAR 102-7-12, designation of referral source for use in the diagnosis and treatment of substance use disorders.

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State Board of Healing Arts. The Joint Committee on Administrative Rules and Regulations reviewed for comment rules and regulations concerning KAR 100-77-1, definitions; KAR 100-77-2, telemedicine deemed rendered at location of patient; KAR 100-77-3, prescribing drugs by means of telemedicine.

KAR 100-77-2. The Committee suggests the Legislature monitor payment parity as this rule and regulation is implemented.

Adjournment

Chairperson Schmidt adjourned the Committee at 2:05 p.m.

Prepared by John Willey

Edited by Jordan Milholland

Approved by the Committee on:

March 28, 2019

(Date)