

MINUTES

JOINT COMMITTEE ON ADMINISTRATIVE RULES AND REGULATIONS

February 15, 2008
Room 519-S—Statehouse

Members Present

Senator Vicki Schmidt, Chairperson
Representative Carl Holmes, Vice-Chairperson
Senator Karin Brownlee
Senator Ralph Ostmeyer
Representative John Faber
Representative Joe Patton
Representative Jan Pauls
Representative Arlen Siegfroid
Representative Mark Treaster
Representative Ed Trimmer

Members Absent

Senator Donald Betts
Senator Chris Steineger

Staff Present

Raney Gilliland, Kansas Legislative Research Department
Jill Shelley, Kansas Legislative Research Department
Kenneth Wilke, Office of the Revisor of Statutes
Nobuko Folmsbee, Office of the Revisor of Statutes
Judy Glasgow, Committee Assistant

Others Present

Cheryl Magathan, Kansas Real Estate Appraisers Board
Michael Deegan, Department of Social and Rehabilitation Services
Dr. Margaret L. Smith, Kansas Health Policy Authority
Brenda Kuder, Kansas Health Policy Authority
Tracy Russell, Kansas Health Policy Authority
Reid Stacey, Kansas Health Policy Authority
Stephanie White Buchanan, Center for Medicare and Medicaid Services

Karen Kluczykowski
Lisa Todd
Carrie Ellison, Kansas Board of Cosmetology
Mary Lou Davis, Kansas Board of Cosmetology
Lindsey Douglas, Hein Law Firm
Mike Hutfles, Hutfles Government Relations
Marla Rhoden, Kansas Department of Health and Environment
Sandy McAdam, Kansas Department of Health and Environment
Craig McCullah, Senator Schmidt's Office

Chairperson Vicki Schmidt called the meeting to order at 1:30 p.m. on February 15, 2008. The Chairperson stated that the minutes from the January 14, 2008 meeting were ready for action by the Committee. *Representative Trimmer moved to approve the minutes as presented; Representative Faber seconded the motion; the motion was approved.*

Chairperson Schmidt welcomed Michael Deegan, to speak to the proposed rules and regulations noticed for hearing by the Department of Social and Rehabilitation Services. KAR 30-5-78, revoked, and KAR 129-5-78, scope of and reimbursement for home- and community-based services for persons with traumatic brain injury.

Mr. Deegan explained that the proposed regulation would increase the potential number of hours per calendar year that a client may receive Targeted Case Management (TCM) services with prior authorization. Mr. Deegan responded to a question concerning the term "personal services," stating that this would be attendant care services provided to individuals. These services could include help with personal grooming, household chores, and shopping. There were no other questions for Mr. Deegan, and the Chairperson thanked him for appearing before the Committee.

Dr. Margaret Smith was recognized by Chairperson Schmidt to address the proposed rule and regulation noticed for hearing by the Kansas Health Policy Authority. KAR 129-5-1, prior authorization.

Dr. Smith stated that the drug Selzentry®, an antiretroviral drug, was being added to the list of drugs that will require prior authorization. A Committee member had concerns as to whether this drug was appropriate for the prior approval list, since it is a very specific drug for a very specific purpose and certain tests must be performed before the drug is prescribed. There were no further questions for Dr. Smith and she was thanked for her presentation before the Committee.

Chairperson Schmidt recognized Cheryl Magathan to speak to the rule and regulation noticed for hearing by the Real Estate Appraisal Board. KAR 117-6-1, continuing education; renewal requirements.

Ms. Magathan stated that the regulation is being amended to change the reporting of continuing education from an annual process to a biennial one. The renewal of license/certification will continue on an annual basis; however, only in the second year of the two-year education cycle (odd years) will the appraiser be required to log evidence of the required continuing education.

There were no questions from the Committee, and Ms. Magathan was thanked by the Chairperson for her appearance before the Committee.

Mary Lou Davis, Executive Director, was recognized by the Chairperson to speak to the proposed rule and regulation noticed for hearing by the Kansas Board of Cosmetology (Attachment 1). KAR 69-11-1, fees.

Ms. Davis stated that this regulation increases the initial license application fee and renewal fee for electrologists, estheticians, and manicurists. The renewal fee also will be increased for cosmetology technicians. The cosmetology practitioner license fees and related establishment fees were last increased in July 1998. Ms. Davis responded to questions from the Committee concerning the reason for the fee increase, stating that the agency carry over amount has been going down every year and the agency will need this increase to continue to maintain its budget. She stated that the agency's annual budget was \$760,000 and that it has been carrying over approximately \$200,000 on the advice of budget counsel. A Committee member questioned whether the counsel was from their agency or from outside the agency. A request was made that the dynamics of the budget be furnished to the Committee for review. The Committee was concerned that the requested increase in fees would generate more revenue than was necessary and could result in the excess being swept into the general funds.

Marla Rhoden, Director of Health Occupations Credentialing, was welcomed by the Chairperson, to speak to the proposed rules and regulations noticed for hearing by the Kansas Department of Health and Environment. KAR 28-59-5, license renewal; and KAR 28-61-11, unprofessional conduct.

The Committee had several concerns regarding KAR 28-59-5, page 2, (B) "poster sessions" and what type of training this would involve. The Committee felt that there should be some type of required test or a certificate awarded by the presenters that would be completed at the conclusion of the display. It also was suggested by a Committee member that for the Internet-based seminars a post-test be given prior to logging off to verify the completion of the course.

Ms. Rhoden reviewed KAR 28-61-11, which adds a category of unprofessional conduct. Committee members had questions concerning page 2, (h) and the word "could." The Committee members felt that the removal of this word would clarify the sentence. A question was raised as to whether the list of services that can be performed by the licensee are clearly set forth. Ms. Rhoden explained that the reason for the addition of (h) was because of complaints that the agency had received from licensees about being required by their employers to perform services for which the licensee had not been trained. The Committee felt that the penalty was being enforced against the wrong person according to the explanation, and that the penalty should be against the employer and not the employee. The Committee felt that (h) needed to be clarified to better provide relief for the licensees who find themselves in this position. After responding to all questions from the Committee, Chairperson Schmidt thanked Ms. Rhoden for her presentation before the Committee.

The Chairperson recognized Raney Gilliland, who distributed two reports to Committee members showing all agencies that have come before the Administrative Rules and Regulations Committee from September 1, 2006 through September 1, 2007. The report recorded the comments made by the Committee and listed the response or lack of response that the agency made to these comments (Attachments 2 and 3).

The Committee reviewed the two reports and stated that it would be helpful to have the summary report listed by agency instead of date, so that the Committee could get an idea of how each agency was responding to the Committee's requests. Mr. Gilliland stated that this could be done. One of the questions asked by Mr. Gilliland was how often the Committee would like to receive these reports. The Chairperson stated that quarterly would be a good place to start.

A copy of a letter received from the Kansas Pharmacy Board illustrating the Institutional Drug Rooms currently registered was distributed to confirm that the information had been mailed to each Committee member (Attachment 4).

The Chairperson recognized Patrick Martin, Assistant Attorney General for the Racing and Gaming Commission, who provided the Committee with an update on the progress of the proposed rules and regulations as a result of the passage of the Expanded Lottery Act in 2007 (Attachment 5). Mr. Martin explained that these rules and regulations were being forwarded in three waves, with the first wave containing four articles. The rest of the articles are in various stages of review. Mr. Martin stated that, in formulating these rules and regulations, agency staff had reviewed the regulations in other Midwest states including Illinois, Iowa, and Missouri that had been successful and that would be more in line with activities in Kansas. The Chairperson asked the Committee whether members wanted to look at the package as a whole at one time or take them in waves. Mr. Martin stated that the first public hearing has been set for April 17, 2008. Mr. Martin stated that he believed that most of the articles would be through the review process by the first of April. It was decided that the Committee should go ahead and schedule a hearing with tentative dates for the next meeting to be set for April 7, 8, and 9.

Chairperson Schmidt thanked Mr. Martin for his presentation before the Committee.

The Chairperson welcomed Chris Tymeson, Chief Counsel, Kansas Department of Wildlife and Parks, to address the proposed rules and regulations noticed for hearing. KAR 115-4-4, big game; legal equipment and taking methods; KAR 115-4-4a, wild turkey; legal equipment and taking methods; KAR 115-4-13, deer permits; descriptions and restrictions; KAR 115-7-8, weigh-in black bass fishing tournaments using tournament black bass pass; KAR 115-7-9, weigh-in black bass fishing tournaments not using tournament black bass pass; and KAR 115-18-7, use of crossbows and locking draws for big game and wild turkey hunting by persons with disabilities; application, permit, and general provisions.

Mr. Tymeson stated that the proposed amendments in KAR 115-4-4 would allow the use of knapped broad head points for archery hunting, the use of scopes on muzzleloaders during the muzzleloader season, the use of hard-cast solid lead bullets for muzzleloader and firearms hunting, the use of .22 caliber center-fire cartridges for deer and antelope firearms hunting, and the use of crossbows during the firearms season. The Committee had several questions concerning the use of muzzleloaders with the allowance of scopes and hard-case solid lead bullets. The Committee noted that there did not appear to be much difference between a rifle and a muzzleloader. Mr. Tymeson stated that the muzzleloaders are still just a single shot. A Committee member noted that in KAR 115-4-4, page 1, (D) the words "or chemical device" was stricken, but the word "device" should be reinserted. Mr. Tymeson said this would be corrected. Staff noted, for KAR 115-4-4a, that KSA 32-969 had been updated in 2007.

Mr. Tymeson also reviewed for the Committee an exempt proposed rule and regulation noticed for hearing by the Kansas Wildlife and Parks Commission. KAR 115-25-8, elk; open season, bag limit and permits. The Committee had no questions concerning the exempt regulation. Chairperson Schmidt thanked Mr. Tymeson for his appearance before the Committee.

The Chairperson stated that the next meeting of the Committee would be April 7, 8, and 9, 2008. The meeting was adjourned at 3:40 p.m.

Committee Comments on Proposed Rules and Regulations

Kansas Department of Health and Environment. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning license renewal and unprofessional conduct and had the following comments.

KAR 28-59-5. The Committee believes that a post-test needs to be included for those types of continuing education options contained in the regulation. In addition, the Committee is concerned about the benefit of poster sessions and poster displays in terms of educational value without some measure to determine gain of knowledge.

KAR 28-61-11. In subsection (h), the Committee believes that the word "could" is too subjective and allows discretion. In addition, the Committee believes that, with this proposed regulation, the wrong person would be punished, and wonders how effective the regulation will be.

Kansas Health Policy Authority. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning scope of and reimbursement for home- and community-based services for persons with traumatic brain injury and revocation and prior authorization and had the following comment.

KAR 129-5-1. The Committee questions why this drug was chosen for prior approval rather than any of the other new retroviral drugs available for treatment of HIV/AIDS.

Kansas Real Estate Appraisal Board. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning continuing education and renewal requirements and had no comment.

Kansas Board of Cosmetology. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning fees and had the following comment.

KAR 69-11-1. The Committee would like to know at what point, in terms of the fee fund balance, the Board would consider a fee reduction.

Kansas Department of Wildlife and Parks. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning big game, legal equipment and taking methods; wild turkey, legal equipment and taking methods; deer permits, descriptions and restrictions; weigh-in black bass fishing tournaments using tournament black bass pass; weigh-in black bass fishing tournaments not using tournament black bass pass; and use of crossbows and locking draws for big game and wild turkey hunting by persons with disabilities, application, permit, and general provisions and had the following comments.

KAR 115-4-4. In subsection (a)(1)(D), the Committee believes there is a need to restore the word "device." Also, the Committee is concerned with the term "muzzleloading" in that the term is used to describe rifles and pistols which are becoming more modern. The Committee questions why the definition of

"muzzleloading" is not restricted to those weapons with original muzzleloading technology.

Prepared by Judy Glasgow
Edited by Raney Gilliland

Approved by Committee on:

April 7, 2008

(Date)