

MINUTES

JOINT COMMITTEE ON ADMINISTRATIVE RULES AND REGULATIONS

February 13, 2009
Room 143-N—Statehouse

Members Present

Representative Carl Holmes, Chairperson
Senator Vicki Schmidt, Vice-Chairperson
Senator Karin Brownlee
Senator Janis Lee
Senator Ralph Ostmeyer
Representative John Faber
Representative Jan Pauls
Representative Joe Patton
Representative Ed Trimmer

Members Absent

Senator Chris Steineger
Representative Steve Huebert
Representative Jerry Williams

Staff Present

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

Others Present

Kyle Kessler, KVC Behavioral HealthCare
Skye Westerland, Kansas Chapter, National Association of Social Workers
Sharon Stueve
Katelyn Ultgen, KGC
J. DeSimoné, Senator D. Schmidt's Office
Judith V. Caprez, Fort Hays State University

Kendel Carswell, Fort Hays State University
Tim Davis, Fort Hays State University
Patricia Levy, Fort Hays State University
Michelle Levy, Kansas University
Carman Allen, Kansas Board of Emergency Medical Services
Phyllis Gilmore, Kansas Behavioral Sciences Regulatory Board
Leslie Allen, Kansas Behavioral Sciences Regulatory Board
Susan Vogel, Kansas Department of Health and Environment
John P. Smith, Kansas Department of Credit Unions
John Wine, Kansas Insurance Department
David Starkey, Kansas Department of Agriculture
Ken Tyson, Kansas Department of Agriculture
Leroy Brungardt, Kansas Insurance Department
Richard Cram, Kansas Department of Revenue
Doug Louis, Kansas Corporation Commission
Berend Koops, Hein Law Firm
Mary Galligan, Kansas Legislative Research Department
Cindy Lash, Kansas Legislative Research Department

The Chairperson for 2009, Representative Carl Holmes called the meeting to order at 1:35 p.m. The Chairperson noted that there were three new members on the Committee. He introduced Senator Lee and noted that there were two new members who were not present, Representative Huebert and Representative Williams.

The Chairperson asked for action on the minutes of the January 8, 2009 meeting of the Committee. Representative Patton stated that the Committee had questioned whether the Kansas Health Policy Authority had statutory authority for the regulation that had been before the Committee and had requested that the agency respond to the Committee. He noted that the request was not specifically stated in the minutes and questioned whether a response had been received. Staff provided Committee members a copy of a letter from Kansas Health Policy Authority dated January 30, 2009, withdrawing the regulation (Attachment 1). A technical correction was noted by staff.

A motion was made by Senator V. Schmidt to approve the minutes, noting Representative Patton's concern, and was seconded by Representative Pauls. The motion passed.

Chairperson Holmes recognized Carmen Allen, Manager, to speak to the proposed rules and regulations noticed for hearing by the Board of Emergency Medical Services. KAR 109-5-1, continuing education; KAR 109-5-2, documentation for continuing education; KAR 109-5-3, continuing education approval for long-term providers; KAR 109-5-6, single-program approval for providers of continuing education; KAR 109-15-1, reinstating attendant certificate after expiration; and KAR 109-15-2, recognition of non-Kansas credentials.

Staff stated that in KAR 109-5-1, on page 4, the term "CECBEMS" should be defined for clarification. There was also a question concerning subsection (m) and the fact that continuing education credit during one calendar day shall not exceed 28 hours. Committee members felt that 28 hours of credits earned in one day should be reconsidered, and that there should be a maximum of eight hours approved in a 24-hour period. A Committee member questioned the term "medical" as used on page 4, (k) (4), and asked that a definition of the term be included.

Ms. Allen responded to all questions from the Committee. She was thanked for her appearance before the Committee.

The Chairperson welcomed Phyllis Gilmore, Executive Director, to address the proposed rule and regulation noticed for hearing by the Behavioral Sciences Regulatory Board. KAR 102-2-6, program approval.

There was concern from a Committee member about the Board not accepting courses approved by the national accreditation body. The Committee member requested that the Board provide documentation on what the concerns are and why the Board members believe there is a problem. The Committee also was concerned about the requirement that at least 50 percent of the required program coursework be completed in residence at the institution from which the degree is granted. In response to a question from a Committee member, Ms. Gilmore stated that the Board did not vote on the rule and regulation, and one member did have some reservations about its consequence.

After responding to the questions and comments from the Committee, Ms. Gilmore was thanked for her appearance before the Committee.

Chairperson Holmes noted that there were several conferees who wished to present testimony in opposition to the proposed rule and regulation of the Behavioral Sciences Regulatory Board.

The Chairperson recognized Kyle Kessler, Vice-president for Administration and Government Affairs at KVC Behavioral HealthCare, to respond to the proposed rule and regulation presented by the Behavioral Sciences Regulatory Board (Attachment 2).

Mr. Kessler stated that KVC is opposed to this proposed regulation which limits educational opportunities and would actually implement stricter standards for educational programs than are required nationally. He stated that this would impact rural and western Kansas learning opportunities for students who want to study part time. The High Plains Mental Health Services, from Western Kansas, also is opposed to this regulation. Chairperson Holmes thanked Mr. Kessler for his appearance before the Committee.

The Chairperson noted that written testimony was available from A. Elizabeth Cauble, PhD, LMSW, Department of Sociology, Anthropology and Social Work, Kansas State University (KSU) (Attachment 3). The change would mean that students who transfer to KSU with more than 62 hours of credit and students who have taken a bulk of their required hours through distance education would not be eligible to practice social work in Kansas.

Chairperson Holmes recognized Judith Caprez, Director, Social Work Program, Fort Hays State University (FHSU) (Attachment 4). Ms. Caprez stated that this regulation would limit the development of on-line education. She stated that the requirement for 50 percent of coursework to be completed in residency would do away with the grant program that Fort Hays had received from the Legislature for Southwest Kansas. She stated that the fact that the University does block practicums where students come every Monday for coursework because otherwise, the distance they must travel would preclude the students from participating. Another fact is that many of the faculty of the university are adjunct faculty, rather than "primary professional employment." FHSU instructors have completed their Master's degrees, but do not work primarily for the University. Ms. Caprez stated that this regulation would shut the program down at FHSU. Chairperson Holmes thanked Ms. Caprez for appearing before the Committee.

After a thorough discussion by the Committee, it was the consensus of the members that the rule and regulation should be withdrawn by the agency for further review and consideration. The Committee asked that the Board consider the testimony that was presented before the Committee in opposition to the regulation. The Committee requested that staff send a copy of the letter addressed to the Behavioral Sciences Regulatory Board to each of the persons who testified before the Committee opposing the rule and regulation.

John Smith was welcomed by the Chairperson to speak to the proposed rules and regulations noticed for hearing by the Kansas Department of Credit Unions. KAR 121-11-1, definitions; KAR 121-11-2, process for merger of credit unions; KAR 121-12-1, definition, and KAR 121-9-1, foreign credit union; requirements for approval.

Mr. Smith stated that these proposed rules and regulations came about because of SB 535, passed by the 2008 Legislature. Mr. Smith stated the rules and regulations reflect current Kansas Department of Credit Unions operation.

Mr. Smith responded to questions of a general nature from the Committee. The Chairperson thanked him for his presentation before the Committee. Multiple Committee members noted that a letter should be sent commending the Department on putting the guidelines into rules and regulations.

Chairperson Holmes recognized Janet Neff to address the proposed rule and regulation noticed for hearing by the Kansas Department of Health and Environment. KAR 28-70-4, confidential data for follow-up patient studies.

Staff noted that KSA 65-1,172 refers to the institutional review board as provided for in Title 45, Part 46, of the Code of Federal Regulations, and stated that the Department should adopt these by reference and state the addition being adopted. Staff noted that there should be a definition of "review board." Ms. Neff stated that the Department had adopted them by reference, but she would have to get back to the Committee as to where they were referenced. A Committee member asked if the Department had begun the study referenced in KSA 65-1,174a. Ms. Neff stated that the study was not funded so the Department was not proceeding. The Committee expressed concern that the requirements for this rule and regulation came out of the 2007 Legislature and how long it had taken to promulgate the rules and regulations. Ms. Neff was thanked by the Chairperson for appearing before the Committee.

John Wine was welcomed by the Chairperson to speak to the proposed rule and regulation noticed for hearing by the Kansas Insurance Department (Attachment 5). KAR 40-77-20a, agents; continuing education; approval of courses; requirements.

Staff suggested that on page 6, second line, "2008 Supp." be inserted before KSA 40-4909, and on page 7, (e) (2), "2008 Supp." be inserted before KSA 40-4903. Staff also noted that it was not necessary to include the subparagraph (j), in the reference to KSA 2008 Supp. 40-4903.

After Mr. Wine responded to questions from the Committee, the Chairperson thanked him for his presentation.

David Starkey was welcomed by the Chairperson to speak to the proposed rules and regulations noticed for hearing by the Department of Agriculture. KAR 99-25-5, technical representative license application and renewal; and KAR 99-26-1, fees.

Mr. Starkey stated that KAR 99-26-1 increases the hourly rate charged by the Kansas Department of Agriculture for National Type Evaluation (NTEP) testing for a Certificate of Conformance issued by the National Conference of Weights and Measures.

Mr. Starkey responded to questions from the Committee of a general nature. The Chairperson thanked him for appearing before the Committee.

Chairperson Holmes recognized Richard Cram to address the proposed rule and regulation noticed for hearing by the Department of Revenue. KAR 92-12-145, transfer of tax credits.

Staff questioned why the regulation was changed, since the statute states "all taxpayers" and does not limit the transfer to not-for-profit, making the rule and regulation in conflict with the statute. Mr. Cram stated that KSA 79-32,113 exempts non-profit organizations from Kansas income tax. A Committee member suggested that KSA 79-32,113 be added to the history section. Mr. Cram stated that agency staff would look into this. The Committee questioned the economic impact statement that was provided.

The Chairperson introduced Doug Louis, Conservation Division, to speak to the proposed rules and regulations noticed for hearing by the Kansas Corporation Commission (Attachment 6). KAR 82-3-311a, drilling through CO₂ storage facility or CO₂ enhanced oil recovery reservoirs; KAR 82-3-1100, definitions: carbon dioxide (CO₂) storage facilities; KAR 82-3-1101, CO₂ storage facility; permit application; KAR 82-3-1102, notice of application for permit and protest; KAR 82-3-1103, application required to amend permit; KAR 82-3-1104, transfer of a CO₂ storage facility permit; KAR 82-3-1105, modification, suspension, or cancellation of permit; KAR 82-3-1106, well construction requirements; KAR 82-3-1107, storage facility requirements; KAR 82-3-1108, storage facility monitoring and reporting; KAR 82-3-1109, annual review of safety plan; safety plan update; KAR 82-3-1110, safety inspection; KAR 82-3-1111, leak detector inspections and testing; KAR 82-3-1112, mechanical integrity testing; KAR 82-3-1113, report of leak, potential leak, or loss of containment; KAR 82-3-1114, temporary abandonment of storage wells; KAR 82-3-1115, temporary abandonment of a storage facility; KAR 82-3-1116, application for decommissioning and abandonment of storage facility; KAR 82-3-1117, postclosure determination; KAR 82-3-1118, plugging methods and procedures, plugging report, and plugging fee for CO₂ storage wells; KAR 82-3-1119, fees for CO₂ storage facilities and CO₂ storage wells; and KAR 82-3-1120, penalties.

Staff noted in KAR 82-3-1101 page 1, (1) the reference to KSA 55-155 would be outside the authority of that particular statute to license CO₂ facilities. Mr. Louis stated that he would take this back for discussion. In KAR 82-3-1109, staff suggested that a cross reference should be made to KAR 82-3-1101, (c) (14), pages 5 and 6, so that the items that are in the storage safety facility plan can be found by those reviewing the plan. Staff noted that in KAR 82-3-1111, that KSA2008 Supp. 55-1640 should be added in history section. A Committee member had a concern in KAR 82-3-1117 about the state taking over liability. It was never the intention when the legislation was drafted that the state would take responsibility for CO₂ storage. Another concern expressed by the Committee was how to protect the fee fund in the future since it could be more than 50 years before the funds were needed. A suggestion was made that a third party be set up to handle the trust funds. The question was raised as to who would be the third party. The chairperson of the Committee in response to questions concerning KAR 82-3-1114, KAR 82-3-1116 and KAR 82-3-1117, moved to refer these to the Joint Committee on Energy and Environment for study. Questions for that Committee to study would be both the state ownership issue and time frame and how to protect the fee funding from being swept. Staff was instructed to send a letter to the Chairman and Vice-Chairman of the relevant Committee notifying them of the Committee's decision. In KAR 82-3-1118, staff suggested that the language from KAR 82-3-117 and KAR 82-3-118 be included and modified

to cover CO₂. In response to a question from staff on KAR 82-3-1120, Mr. Louis stated that the penalty provision is in the regulatory statute and that it is the Commission's discretion to set the amount of the penalty and the amount could be up to \$10,000 per day per violation. This is the same language as used in natural gas law. Staff noted that "KSA 2008 Supp." should be listed in the history section throughout these rules and regulations. In KAR 82-3-311a, a Committee member was concerned about the party responsible for protecting the CO₂ if another party drills through a CO₂ well. It was the Committee member's belief that the person who has drilled through the well, not the person who owns the field, should be held responsible.

After responding to all the questions from the Committee, Chairperson Holmes thanked Mr. Louis for his presentation.

A Committee member requested that a copy of the letter sent to Kansas Health Policy Authority after the January 8, 2009, meeting be furnished to all Committee members. The concern of the member was that there was no statutory authority for the proposed rule and regulation, and also no authority for the current rule and regulation that was being amended.

Chairperson Holmes stated that the Legislative Research Department had prepared a list showing legislation that has required the Kansas Department of Health and Environment to promulgate rules and regulations. The list shows there was legislation passed in 2004, 2005, and 2006 for which rules and regulations should be prepared. It was the consensus of the Committee that a letter be sent to KDHE to appear before the Committee in April to address this issue. Staff will send a copy of the report to all Committee members.

Vice-Chairperson Schmidt called attention to the document prepared by Legislative Research staff showing agency responsiveness to the Committee's concerns and requests. The Committee thanked the staff for preparing the document. The memorandum shows that there is a significant lack of response from agencies to requests from the Committee. A suggestion from a Committee member was that a list of agencies who have not responded to this Committee concerning rules and regulations be provided to the Appropriations and Ways and Means Committee Chairpersons. Committee members and staff will work on this.

The Chairperson announced that the next Committee meeting would be April 6 for the primary day and April 7 for the secondary day, if needed.

The Chairperson adjourned the meeting at 4:45 p.m.

Committee Comments on Proposed Rules and Regulations

Kansas Board of Emergency Medical Services. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning continuing education; documentation for continuing education; continuing education approval for long-term providers; single-program approval for providers of continuing education; reinstating attendant certificate after expiration; recognition of non-Kansas credentials; and revocation. After discussion, the Committee had the following comments.

KAR 109-5-1. In subsection (m), the Committee is concerned about the potential of receiving 28 hours of continuing education in one day and suggests that a maximum

of eight hours of credit should be allowed to be obtained in one day. Further, the Committee is concerned with the type of continuing education which would qualify. For example, is it medical or nursing instruction? Please spell out CECBEMS in subsection (m).

Kansas Department of Revenue. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning transfer of tax credit. After discussion, the Committee had the following comments.

KAR 92-12-145. The Committee believes that this rule and regulation is contrary to statutory requirements. Please explain the rationale for this rule and regulation. In addition, the Committee believes that the Economic Impact Statement is incomplete since it lacks specificity.

Kansas Behavioral Sciences Regulatory Board. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning program approval (social work). After discussion, the Committee had the following comments.

KAR 102-2-6. The Committee is concerned with the impact of and the approval process contained in this regulation. The Committee believes that this regulation should be withdrawn. In addition, the Committee asks the agency to explain, in detail, the inadequacies of the social work programs in the state and to provide the Committee with the appropriate documentation of those inadequacies.

Kansas Insurance Department. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning agents, continuing education, approval of courses, requirements. After discussion, the Committee had the following comment.

KAR 40-7-20a. The Committee asks that the agency update its statutory references in subsections (c) and (e). It also notes that the reference to a subsection of KSA 40-4903 in subsection (e) is not necessary and may require the agency to resubmit this rule and regulation if the statute is amended in the future.

Kansas Department of Credit Unions. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning definitions (merger); process for merger of credit unions; and definition (branches); and foreign credit union, requirements for approval. After discussion, the Committee had no comment other than to express its appreciation to the agency for getting its guidelines into 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 confidential data for follow-up patient studies. After discussion, the Committee had the following comments.

KAR 28-70-4. The Committee notes that the term "institution review board" is defined by federal regulation. The Committee suggests that there be a reference to the proper Code of Federal Regulations citation with an adoption by reference of such

federal regulations as of a date certain. If these federal regulations already have been adopted by reference, please insert a cross reference to the rule and regulation in which the adoption by reference occurs. In addition, the Committee expresses its great concern with the length of time to develop this rule and regulation and notes that the legislation has been effective since July 1, 2007.

Kansas Department of Agriculture. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning technical representative license application and renewal and fees. After discussion, the Committee had no comments.

Kansas Corporation Commission. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning drilling through CO₂ storage facility or CO₂ enhanced oil recovery reservoirs; definitions: carbon dioxide (CO₂) storage facilities; CO₂ storage facility, permit application; notice of application for permit and protest; application required to amend permit; transfer of a CO₂ storage facility permit; modification, suspension, or cancellation of permit; well construction requirements; storage facility requirements; storage facility monitoring and reporting; annual review of safety plan, safety plan update; safety inspection; leak detector inspections and testing; mechanical integrity testing; report of leak, potential leak, or loss of containment; temporary abandonment of storage wells; temporary abandonment of a storage facility; application for decommissioning and abandonment of storage facility; postclosure determination; plugging methods and procedures, plugging report, and plugging fee for CO₂ storage wells; fees for CO₂ storage facilities and CO₂ storage wells; and penalties. After discussion, the Committee had the following comments.

KAR 82-3-1100. The Committee is concerned with the definitions of “fresh water” and “usable water” with regard to water which may some day be needed for consumption purposes and whether different definitions should be used. Are these definitions consistent with those used by the Division of Water Resources of the Department of Agriculture and the Kansas Department of Health and Environment?

KAR 82-3-1101. The Committee is concerned with the reference to KSA 55-155 since that section applies to oil and gas operators rather than those who may be involved with CO₂ sequestration.

KAR 82-3-1109. The Committee suggests the inclusion of a cross reference back to safety plan requirements contained in KAR 82-3-1101 (c)(14).

KAR 82-3-1111. The Committee suggests the inclusion of KSA 2008 Supp. 55-1640 in the history section of this rule and regulation.

KAR 82-3-1117. The Committee is concerned with the State of Kansas taking possession of CO₂ storage facilities at some point in the future and intends to refer this as a topic of study to the Joint Committee on Energy and the Environmental Policy.

KAR 82-3-1118. This regulation references rules and regulations that appear to refer to oil and gas activities rather than to CO₂ storage. Please make appropriate changes.

KAR 82-3-311a. The Committee believes that the responsibility for penetrating a CO₂ storage formation should rest with the company doing the drilling rather than with the field owner.

Prepared by Judy Glasgow
Edited by Raney Gilliland

Approved by Committee on:

April 6, 2009
(date)