

MINUTES

JOINT COMMITTEE ON ADMINISTRATIVE RULES AND REGULATIONS

April 6-7, 2009
Room 535-N—Statehouse

Members Present

Representative Carl Holmes, Chairperson
Senator Vicki Schmidt, Vice-Chairperson
Senator Karin Brownlee
Senator Janis Lee
Senator Ralph Ostmeyer
Senator Chris Steineger
Representative John Faber
Representative Steve Huebert
Representative Shirley Palmer
Representative Jan Pauls
Representative Ed Trimmer

Members Absent

Representative Joe Patton

Staff Present

Raney Gilliland, Kansas Legislative Research Department
Corey Carnahan, 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

Linda Kenney, Kansas Department of Health and Environment
Brenda E. Walker, Kansas Department of Health and Environment
John Mitchell, Kansas Department of Health and Environment
Roderick Bremby, Secretary, Kansas Department of Health and Environment
Chris Tymeson, Kansas Department of Wildlife and Parks
Julie Ehler, Kansas Department of Agriculture
Lindsey Douglas, Kansas Department of Agriculture

Bill Scott, Kansas Department of Agriculture
Steven Sutton, Kansas Board of Emergency Medical Services
Randall Forbes, Kansas Dental Board
Tom Day, Kansas Corporation Commission
Leo Haynos, Kansas Corporation Commission
Colleen Harrell, Kansas Corporation Commission
Sally Pritchett, Kansas Real Estate Appraisal Board
Julia Mowers, Kansas State Board of Healing Arts
William Scott Hesse, Kansas State Board of Healing Arts
Jay Hall, Kansas Racing and Gaming Commission
Cheryl Dolejsi, Kansas Racing and Gaming Commission
Ken Gorman, Department of Labor
Rick Fleming, Officer of the Securities Commissioner
Doug Farmer, Kansas Health Policy Authority
Berend Koops, Hein Law Firm
Susan Vogel, Kansas Department of Health and Environment
Marla Rhoden, Kansas Department of Health and Environment
Mary Plin, Kansas Department of Health and Environment
Paul Johnson, Kansas Catholic Conference
Bobbi Mariani, Kansas Department of Social and Rehabilitation Services
L. Kimsey, Kansas Department of Social and Rehabilitation Services
John Wine, Kansas Insurance Department
Susan Ellmaker, Kansas Insurance Department
Chut Tee, Kansas Insurance Department
Julie Holmes, Kansas Insurance Department
Craig Van Aalst, Kansas Insurance Department
Linda Sheppard, Kansas Insurance Department
LeRoy Brungardt, Kansas Insurance Department
Jeff Barnes, Kansas Home Inspection Registration Board
Craig Thompson, Kansas Department of Health and Environment
Mike Cochran, Kansas Department of Health and Environment
Mark Jennings, Kansas Department of Health and Environment

**Monday, April 6
Morning Session**

Chairperson Holmes called the meeting to order at 9:10 a.m. on April 6, 2009.

Secretary Roderick Bremby, Kansas Department of Health and Environment (KDHE), addressed the Joint Committee on Administrative Rules and Regulations in response to the Committee's request for information concerning instances in which KDHE was authorized or required to develop rules and regulations by legislation passed during Legislative Sessions 2004-2008 ([Attachment 1](#)). See Kansas Legislative Research Department memorandum and worksheet dated February 2, 2009 ([Attachment 2](#)).

Secretary Bremby went through each of the nine instances in which rules and regulations had not been promulgated by the Department.

He stated that underground crude oil storage rules and regulations were to come before the Committee during the April meeting. Secretary Bremby responded to questions from the Committee members concerning each of the eight remaining instances.

The Secretary noted that KDHE determined that no new rules and regulations were needed for 2007 SB 190, for the proof of financial responsibility for underground storage tanks, at this time since the application form requires contractors to submit proof of financial responsibility.

The Secretary stated that in regard to 2007 House Sub. for SB 11, newborn screening tests, KDHE is testing all Kansas newborns according to the core uniform panel of newborn screening conditions recommended by the American College of Medical Genetics. Regulations in place prior to the introduction of this expansion are adequate to initiate the expansion, but will be subject to future review by KDHE in consultation with the Advisory Council formed to guide decision-making for the expansion.

In regard to 2006 House Sub. for SB 84, the Secretary stated that national accrediting standards and processes have been promulgated by the American Association of Blood Banks and Foundation for the Accreditation of Cellular Therapy, but there are no facilities accredited by either in Kansas. No resources exist for licensure or certification and inspection.

The Secretary noted that KDHE does not believe that regulations are necessary under 2006 HB 2756, reimbursement to eligible owners of aboveground petroleum storage tanks or bulk plants, because the statute uses permissive language and existing rules and regulations cover this issue. The application form is available on the KDHE website.

Secretary Bremby stated that in regard to 2006 HB 2916, KDHE does not intend to add a preliminary breath alcohol screening device to the list. A Committee member questioned whether law enforcement was in agreement with this decision. The Secretary stated that the Council was in agreement with this at this time.

KDHE has concluded that the Bureau of Waste Management will utilize the Bureau of Environmental Remediation's RISK Manual as a judgment tool and consider other relevant factors as well as odor in the definition of "uncontaminated soil" for solid waste passed in 2005 HB 2052. The Bureau of Waste Management currently is working to finalize this change in regulation.

Secretary Bremby noted that 2005 HB 2264 concerning tuberculosis evaluation for certain students was passed in 2005 and rules and regulations were prepared. The Attorney General's office determined that the draft regulations were more comprehensive than what the statute allowed. A new bill, SB 62, was introduced during the 2009 Legislative Session at the request of the Joint Committee on Administrative Rules and Regulations. The bill passed the Senate, but did not make it out of the House. It is now in a conference committee, but no action has been taken. After discussion by the Committee, the Committee members requested that staff draft a letter to be sent to the three House and three Senate members of the conference committee, along with the Speaker of the House and the Senate President, asking for assistance in getting the bill passed this Legislative Session.

In regard to 2004 SB 418, the Secretary stated that no state funding has been provided for this activity. A federal grant submission to the Center for Disease Control was not successful. KDHE continues to build capacity within the Department to strengthen its position with regard to future funding opportunities. The Committee suggested that rules and regulations should be prepared so that when funds become available KDHE will be ready to move forward. Secretary Bremby told the Committee that KDHE would go back and look at preparing these rules and regulations and get back to the legislative staff. A Committee member asked whether any other national organization

collected birth defect information that would be available to the state. Secretary Bremby stated that he would go back and check all available sources and get back to the Committee on this also.

After the Secretary responded to all questions from the Committee, Chairperson Holmes thanked Secretary Bremby and his staff for appearing before the Committee.

The Chairperson called the Committee members' attention to the minutes before them for the February 13, 2009, meeting and requested action. *Representative Pauls moved that the minutes be approved as presented; Representative Faber seconded the motion. Motion passed.*

Raney Gilliland provided a copy of correspondence from Behavioral Science Regulatory Board withdrawing the rule and regulation that came before the Committee at the last meeting concerning KAR 102-2-6, social work regulation. The letter states that the Board will now take a formal vote on all regulation changes prior to moving them forward (Attachment 3).

A copy of correspondence from Kansas Health Policy Authority (KHPA) also was provided to Committee members in response to the Committee's request that the KAR 129-5-151 be withdrawn (Attachment 4). KHPA stated that it was withdrawing the rule and regulation at this time.

Chairperson Holmes requested that the Committee set the meeting dates for the rest of the year. The Committee then established tentative meeting dates.

Chairperson Holmes welcomed Chris Tymeson, Chief Counsel, to speak to the proposed rules and regulations noticed for hearing by the Kansas Department of Wildlife and Parks. KAR 115-25-7, antelope; open season, bag limit, and permits (exempt); KAR 115-25-9, deer; open season, bag limit, and permits (exempt); KAR 115-4-11, big game and wild turkey permit applications; KAR 115-8-1, department lands and waters: hunting, fur harvesting, and discharge of firearms; KAR 115-25-8, elk; open season, bag limit and permits (exempt); KAR 115-15-1, threatened and endangered species; general provisions; KAR 115-15-2, nongame species; general provisions; and KAR 115-25-9a, deer; open season, bag limit, and permits; additional considerations (exempt).

Mr. Tymeson noted that the exempt regulations were to adjust areas and bag limits for the year. He answered questions of a general nature concerning deer population and hunting permits from Committee members. In answer to a question from a Committee member concerning removing bald eagles from the threatened species list, Mr. Tymeson stated that Kansas has a growing population of bald eagles and the federal government has removed them from its threatened list, so Kansas also removed them from its threatened list. They are still protected by the Bald and Golden Eagle Protection Act.

After Mr. Tymeson answered all questions from the Committee, Chairperson Holmes thanked Mr. Tymeson for his appearance before the Committee.

Julie Ehler was recognized by the Chairperson to speak to the proposed rule and regulation noticed for hearing by the Kansas Department of Agriculture. KAR 4-15-5, live plant dealer license fee.

A question was asked by a Committee member concerning the exemption provisions that had been removed. Ms. Ehler stated that those persons offering live plants for advertising or promotional purposes, without charging a fee or offering the plants for sale, do not need to obtain a license. The Committee member said that the regulation should be clarified, since they are considered live plant dealers but are not required have a license. After responding to all questions, Ms. Ehler was thanked by the Chairperson for her presentation before the Committee.

Chairperson Holmes welcomed Steve Sutton to address the proposed rules and regulations noticed for hearing by the Kansas Board of Emergency Medical Services. KAR 109-2-9, variances; and KAR 109-3-1, standards for ambulance attendants.

Mr. Sutton explained to the Committee that the proposed change in KAR 109-2-9 was necessary to establish when a variance request must be submitted, the need of the applicant to identify a "serious hardship," and the period for which a variance may be granted. The change in KAR 109-3-1 would allow high school students to acquire training and certification and begin their careers while still in high school.

Mr. Sutton addressed all questions from the Committee, and Chairperson Holmes thanked him for appearing.

Randall Forbes, General Counsel, was introduced by the Chairperson to speak to the proposed rule and regulation noticed for hearing by the Kansas Dental Board. KAR 7-11-1, practice of dentistry.

Mr. Forbes stated that this proposed rule and regulation identified that any nonlicensed person who provides a service or procedure altering the color or physical condition of teeth is deemed to be practicing dentistry. Staff suggested that there needs to be clarification of the language since the language may be too broad. It was suggested the regulation be amended to add "if this is done for a fee." The Committee also suggested that it spell out that over-the-counter products were not included. Mr. Forbes stated that he would take the suggestion back to the Dental Board for its consideration. The Chairperson thanked Mr. Forbes for his appearance before the Committee.

Chairperson Holmes recognized Leo Haynos to address the proposed rules and regulations noticed for hearing by the Kansas Corporation Commission ([Attachment 5](#)). KAR 82-11-4, transportation of natural and other gas by pipeline; minimum safety standards; and KAR 82-11-10, drug and alcohol testing.

Mr. Haynos stated that KAR 82-11-4 adopts by reference the federal rules and regulations found at 49 C.F.R. Part 192, with the enumerated exceptions. KAR 82-11-10 adopts 49 C.F. R. Part 199 concerning drug and alcohol testing, with the enumerated modifications and exceptions.

In KAR 82-11-4, page 4, a question from a Committee member concerned what was considered short segment of pipe. Mr. Haynos stated that a short segment would be less than 10 feet. Staff noted that on page 2 of KAR 82-11-10, the agency needs to adopt by reference the material referred since it is not adopted elsewhere. This would require a separate regulation. Mr. Haynos stated he would take this back to the Commission for correction. Mr. Haynos stated that on page 1, "of" should be changed from to "or" in the definition of "administrator." After responding to all questions from the Committee, Mr. Haynos was thanked for his presentation by the Chairperson.

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

Afternoon Session

Chairperson Holmes reconvened the meeting at 1:30 p.m.

The Chairperson recognized Sally Pritchett, Executive Director, to speak to the proposed rules and regulations noticed for hearing by the Real Estate Appraisal Board. KAR 117-3-1, general

classification; education requirements; KAR 117-4-1, residential classification; education requirements; and KAR 117-6-1, continuing education; renewal requirements.

Ms. Pritchett stated that KAR 117-3-1 and KAR 117-4-1 are being proposed to reduce the qualifying education requirement for appraisers holding a valid state license or residential certification. There were no questions from the Committee. Ms. Pritchett was thanked by the Chairperson for appearing before the Committee.

Rick Fleming, General Counsel, was welcomed by the Chairperson to speak to the proposed rules and regulations noticed for hearing by the Office of the Securities Commissioner. KAR 81-3-6, dishonest or unethical practices of broker-dealers and agents; KAR 81-5-14, notice filings and fees for offerings of investment company securities; and KAR 81-14-5, dishonest and unethical practices of investment advisers, investment adviser representatives, and federal covered investment advisers.

Mr. Fleming stated that KAR 81-3-6 sets forth the dishonest and unethical practices that constitute grounds for discipline against a broker-dealer or agent. KAR 81-14-5 sets forth the dishonest and unethical practices for investment advisers.

Staff noted that in KAR 81-3-6, page 14, (2), line 2 should refer to "subsection" rather than "paragraph." Staff also suggested that the Commission clarify paragraph (C) to keep the authority for approval with the Commissioner and require applicants to provide documentation that they are certified by the other agency. Staff noted that this also would apply to KAR 81-14-5, page 16. A Committee member suggested that a letter addressing these questions be sent to the Attorney General's office and the Securities Commissioner be notified of the opinion request. The Committee had several questions concerning the fee increases and the purpose for the proposed increase. Mr. Fleming stated the fee increase would be used to increase the budget of the Commission for certain employees in the agency and the rest would go into the State General Fund (SGF). In fiscal year 2010, the Commission will collect \$12.6 million, the Office will take \$2.8 million for its budget and send approximately \$9.8 million to the SGF.

After he responded to all the questions from the Committee, Mr. Fleming was thanked by the Chairperson for his presentation before the Committee.

Julia Mowers was welcomed by the Chairperson to speak to the proposed rules and regulations noticed for hearing by the State of Kansas Board of Healing Arts. KAR 100-55-7, continuing education; license renewal; KAR 100-55-9, special permits; and KAR 100-29-16, supervision of physical therapist assistants and support personnel.

Staff noted that in KAR 100-55-7, paragraph (f)(1), there needs to be something added indicating that the Board of Healing Arts accepts the offerings approved by the American Association of Respiratory Care and that those also meet the requirements of the State of Kansas. After responding to all questions from the Committee, Ms. Mowers was thanked by the Chairperson for appearing before the Committee.

Chairperson Holmes recognized Ken Gorman, Kansas Public Employees Relations Board, to speak to the proposed rule and regulation noticed for hearing by the Department of Labor. KAR 84-2-1, service of pleadings.

Mr. Gorman stated that the proposed rule and regulation is being amended to allow for electronic submission of documents with the Board. Staff noted that the history section needs to be updated. The Chairperson thanked Mr. Gorman for his presentation before the Committee.

Doug Farmer , Director, State Employee Health Plan, was welcomed by the Chairperson to address the proposed rules and regulations noticed for hearing by the Kansas Health Policy Authority. KAR 108-1-4, local unit of government employee health care benefits plan.

Mr. Farmer stated that there are four groups which have been through the process with the Kansas Health Policy Authority and desire to be added to the state health plan: (1) any housing authority created pursuant to KSA 17-2337; (2) any local environmental protection program obtaining funds from state water plan fund; (3) any city-county, county, or multicounty health board or department established pursuant to KSA 65-204 and 65-205; and (4) any nonprofit independent living agency as defined in KSA 65-5101.

Committee members had several questions concerning the addition of the local environmental protection program designation being permitted to join the Plan. A question was raised about the term "program" instead of department, agency, or people. The Committee felt that the designation should be more restrictive and asked Mr. Farmer to provide more information to the Committee. The Committee asked that the agency examine KSA 75-5657 and clarify the term "entity." Mr. Farmer stated he would have to research this information and get back to the Committee. Staff noted that the term "plan" should be added on page 2, (H), between "water" and "fund." A Committee member had a question on page 8, (g), where the term "spouses" has been deleted since spouses are not considered dependents. Mr. Farmer stated, in response to a question from staff, that enrollees must sign on for a three-year term and, if they are no longer eligible before the end of the three years, they must continue to pay the premiums for the remainder of the contract. A concern was raised by the Committee concerning page 10, (3) (A) (v) and what the actual intent was. Mr. Farmer stated that this was the same language that is used in the state employee plan; he would get an answer and get back to the Committee. Since the public hearing on this rule and regulation would not take place until after the May 18 meeting, it was the consensus of the Committee that Kansas Health Policy Authority be asked to come to the May 18, 2009, meeting for further clarification. After responding to all Committee questions, Mr. Farmer was thanked for his presentation before the Committee.

The Chairperson welcomed Jay Hall to address the proposed rule and regulation noticed for hearing by the Kansas Racing and Gaming Commission. KAR 112-102-2, gaming supplier and non-gaming supplier defined.

Mr. Hall stated that this rule and regulation narrows the scope of the persons who are required to undergo background checks. A Committee member asked where the agency came up with the \$100,000 limit. Mr. Hall stated that this was from another state and that it uses this as a resource for its other rules and regulations. Committee members noted that the notice did not include the ability to provide comment by e-mail. Mr. Hall stated that this was an oversight. Chairperson Holmes thanked Mr. Hall for appearing before the Committee.

Chairman Holmes recessed the meeting until 9:00 a.m. on April 7, 2009.

**Tuesday, April 7
Morning Session**

Chairperson Holmes reconvened the meeting at 9:00 a.m. on April 7, 2009.

Jeff Barnes was welcomed by Chairperson Holmes to speak to the rules and regulations noticed for hearing by the Kansas Home Inspectors Registration Board. KAR 130-1-1, registration;

KAR 130-1-2, registration renewal; KAR 130-1-3, examination; KAR 130-2-1, fees; and KAR 130-3-1, approval of educational program.

Mr. Barnes stated that these are new rules and regulations as a result of HB 2315 passed in the 2008 Legislative Session and cleanup bill HB 2260 passed in 2009. There will be a couple of corrections that need to be made in these rules and regulations because of the passage of HB 2260. In KAR 130-1-1 (f) (2) (and KAR 130-1-3 (e) (3)) the date will be changed from "July 1, 2008" to "July 1, 2007." Another change is in KAR 130-1-1 (h), documentation from an insurer "authorized to do business in Kansas." There are a number of insurers particularly providing errors and omissions coverage that are not licensed with the State of Kansas or regulated by the State of Kansas. The Insurance Commissioner has agreed those insurers may do business here as long as the inspector signs a waiver release indicating that the inspector is aware that the insurer is not licensed in the State of Kansas and if there is a problem with that insurer, the inspector cannot go to the Insurance Commissioner for help.

Several Committee members expressed concern about the errors and omissions section and insurers not authorized to do business in Kansas. Mr. Barnes stated that there is a sunset on this program in 2013 so, if problems are found, they can be addressed at that time. A Committee member suggested that renewals could have a question on the renewal form as to whether there had been any filings against that person concerning errors and omissions. This could be done with a yes or no answer. A question was raised concerning the economic impact statement since the dates had been changed. Mr. Barnes stated that the July 1, 2009, date would be combined into the July 1, 2010, date.

After responding to all questions, Mr. Barnes was thanked by the Chairperson for his presentation before the Committee.

Chairperson Holmes recognized Craig Thompson, Section Chief, Division of Environment, Bureau of Environmental Field Services, to address a rule and regulation noticed for hearing by the Department of Health and Environment. KAR 28-16-28g, surface water register.

Mr. Thompson stated that in the period from January 1, 2007, through July 30, 2008, 954 stream segments and 71 lakes were evaluated by a designated use attainability analysis (UAA) to determine the appropriate use designations. These proposed revisions identify the designated use changes for 731 stream segments and 71 lakes as a result of the UAA findings. The Chairperson recommended that each Committee member review the streams and lakes in his or her area to see if he or she concurs with the UAA recommendations. The Chairperson requested that exact points tested on the Cimarron River and also on the Cimarron River North Fork be provided by the agency. The Chairperson also had questions on all entries on page 65 in the Cimarron River Basin. He asked that the Lake Meade State Park and Meade County State Park Wildlife Area be reevaluated; another member asked for reevaluation of the Atwood Township Lake in Rawlins County. Mr. Thompson stated that this could be provided. After responding to all questions, the Chairperson thanked Mr. Thompson for appearing before the Committee.

Marla Rhoden, Director, Health Occupations Credentialing, was welcomed by the Chairperson to speak to proposed rules and regulations noticed for hearing by the Kansas Department of Health and Environment. KAR 28-39-164, definitions; KAR 28-39-165, nurse aide training program; KAR 28-39-166, nurse aide course instructor; KAR 28-39-167, out-of-state and allied health training endorsement for nurse aide; and KAR 28-39-168, state nurse aide test.

A Committee member noted that in KAR 28-39-167, the first paragraph needs to be clarified so that it is clear that both completing training and passing a test are required. The Chairperson thanked Ms. Rhoden for her appearance before the Committee.

Chairperson Holmes introduced Mike Cochran, Chief, Geology Section, Bureau of Water, to address proposed rules and regulations noticed for hearing by the Department of Health and Environment (Attachment 6, 7, 8, and 9). KAR 28-45b-1, definitions; KAR 28-45b-2, permit required for facilities and storage wells; variances; KAR 28-45b-3, well conversions and reentry; KAR 28-45b-4, permit required for facility and associated storage wells; KAR 28-45b-5, public notice; KAR 28-45b-6, modification and transfer of a permit; KAR 28-45b-7, signatories for permit applications and reports; KAR 28-45b-8, siting requirements for new storage wells and facilities; KAR 28-45b-9, financial assurance for closure of underground crude oil storage facility; KAR 28-45b-10, operations and maintenance plan; KAR 28-45b-11, emergency response plan and safety and security measures; KAR 28-45b-12, design and construction of storage wells; KAR 28-45b-13, monitoring; KAR 28-45b-14, testing and inspections; KAR 28-45b-15, groundwater monitoring; KAR 28-45b-16, record requirements and retention; KAR 28-45b-17, well workovers; KAR 28-45b-18, plugging and plugging-monitoring requirements; KAR 28-45b-19, underground crude oil storage fees; KAR 28-45b-20, permit required for a brine pond; KAR 28-45b-21, brine pond permit application; permit renewal; KAR 28-45b-22, public notice for a brine pond; KAR 28-45b-23, modification and transfer of a brine pond permit; variance; KAR 28-45b-24, signatories for brine pond permit applications and reports; KAR 28-45b-25, financial assurance for brine pond closure; KAR 28-45b-26 design, construction, and maintenance of brine ponds; KAR 28-45b-27, groundwater monitoring for brine ponds; and KAR 28-45b-28, brine pond closure requirements.

Mr. Cochran stated that these new regulations concern the underground storage of crude oil in bedded salt. The proposed regulations require industry to minimize adverse impacts to the environment that could result in contamination by crude oil or brine. The regulations require safety measures for the safe operation and maintenance of the storage facility.

Staff noted that in KAR 28-45b-1, page 1, (b), last line should be "expressed in degrees API." Staff noted that in KAR 28-45b-40, page 6, (q), the word "activities" is misspelled. In KAR 28-45b-4, page 6, (p), a Committee member questioned the required 100-foot roof thickness maintained above the storage cavern and asked that the agency look at these requirements since crude oil does not carry the same pressure as natural gas. With regard to KAR 28-45b-8, page 3, (f), "shipping traffic," a Committee member noted that this should be removed as there is no shipping traffic in Kansas. A Committee member had a question concerning KAR 28-45b-12, page one, (1), and asked the agency to clarify whether this is just for new storage wells. In KAR 28-45b-14, page 1, (B), staff noted that clarification is needed to designate when the five-year period starts. In KAR 28-45b-19, staff had a question concerning the Economic Impact. Mr. Cochran noted that these are new regulations and no one has contacted them regarding these storage facilities, so they have no idea of the potential numbers.

Mr. Cochran responded to all questions from the Committee. Chairperson Holmes thanked Mr. Cochran and Mr. Jennings for their presentation before the Committee.

The Chairperson welcomed John Wine, Staff Attorney, to address the proposed rules and regulations noticed for hearing by the Kansas Insurance Department (Attachments 10, 11 and 12). KAR 40-4-37v, long-term care; agent training; KAR 40-1-37, audited financial reports; filing requirements; and KAR 40-4-35, Medicare supplement policies; minimum standards.

Mr. Wine stated that KAR 40-4-37v is a new regulation being proposed to specify the training required for licensed agents selling long-term care partnership program policies. The conferee stated that KAR 40-1-37 is being updated to adopt by reference the February 5, 2009 policy and procedure requiring annual audited financial reports. It affects only those companies having annual premiums of \$500 million or more. KAR 40-4-35 is proposed to update the existing regulations on Medicare supplement insurance to adopt standards equal to or exceeding the minimum standards and

requirements permitted by Section 1395ss(b) of the federal Social Security Act. There were no questions concerning these regulations and Mr. Wine was thanked by the Chairperson for his appearance before the Committee.

The Chairperson introduced Bobbi Mariani to speak to the proposed rule and regulation noticed for hearing by the Social Rehabilitation Services. KAR 30-4-90, eligibility factors specific to the GA program.

Representative Faber provided a detailed list for Committee members showing each county and the number of individuals who would be impacted by this proposed rule and regulation (Attachment 13).

Staff questioned how the agency would notify clients about this rule and regulation. Ms. Mariani stated that there is a notification process in place now for recipients when they reach the end of their eligibility and this would be the method for notification. Ms. Mariani stated that case workers were notifying clients as they meet with them now. Several members of the Committee had concerns about the statement "time frame to be determined by the secretary." The Committee asked that (e) be changed to apply only "for fiscal year 2010." Ms. Mariani responded to additional questions from Committee members. The Chairperson thanked Ms. Mariani for her presentation before the Committee.

Deanna Lieber, General Counsel, was welcomed by Chairperson Holmes to speak to the proposed rules and regulations noticed for hearing by the Kansas State Department of Education. KAR 91-1-200, definition of terms; KAR 91-1-202, endorsements; KAR 91-1-203, licensure requirements; KAR 91-1-204, licensure of out-of-state and foreign applicants; KAR 91-1-205, licensure renewal requirements; and KAR 91-1-216, procedures for promulgation of in-service education plans; approval by state board; area professional development centers' in-service programs.

In KAR 91-1-203, staff noted on page 5, (H), that a clarification regarding the five-year time frame needs to be made. Staff noted that KAR 91-1-216, (d), should be clarified as to when the semester time frame would begin and end. Ms. Lieber stated that the Department would look at that time frame again.

Committee Comments on Proposed Rules and Regulations

Kansas Department of Wildlife and Parks. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning threatened and endangered species, general provisions; and nongame species; general provisions and big game and wild turkey permit applications; and department lands and waters: hunting, furharvesting, and discharge of firearms. After discussion, the Committee had no comment.

Kansas Department of Agriculture. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning live plant dealer license fee. After discussion, the Committee had no comment.

Kansas Board of Emergency Medical Services. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning variances and standards for ambulance attendants. After discussion, the Committee had no comment.

Kansas Dental Board. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning practice of dentistry. After discussion, the Committee had the following comment.

KAR 71-11-1. The Committee suggests that the Board consider adding words such as “for a fee” after the phrase “service or procedure” to clarify that the use of “over-the-counter products” by individuals is not covered by this regulation.

Kansas Corporation Commission. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning transportation of natural and other gas by pipeline, minimum safety standards and drug and alcohol testing. After discussion, the Committee had the following comments.

KAR 82-11-10. The Committee notes that the word “of” in subsection (b) in the definition of “administrator” should be “or.” Also, in the definition of “DOT Procedures,” the Committee believes the agency should adopt the federal regulation by reference or refer to the place where it is adopted by reference.

Kansas Real Estate Appraisal Board. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning general classification, education requirements, residential classification, education requirements, and continuing education; renewal requirements. After discussion, the Committee had no comment.

Office of the Securities Commissioner. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning dishonest or unethical practices of broker-dealers and agents; notice filings and fees for offerings of investment company securities; and dishonest and unethical practices of investment advisers, investment adviser representatives, and federal covered investment advisers. After discussion, the Committee had the following comments.

KAR 81-3-6. In subsection (i)(2), reference is made to “paragraph” (i)(1)(D) and the Committee believes this word should be changed to “subsection.” Please review the other regulations in this set for similar references and make the appropriate change. The Committee is planning to write to the Attorney General with respect to the establishment of a rebuttable presumption for a designating or certifying organization to determine whether this is an unlawful delegation of authority for this subsection and for a similar subsection in KAR 81-14-5.

Kansas Board of Healing Arts. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning:

- Special permits
- Supervision of physical therapist assistants and support personnel
- Continuing education; license renewal (respiratory therapy)

After discussion, the Committee had the following comments.

KAR 100-55-7. The Committee is concerned that the agency does not approve the continuing education offerings by the American Association of Respiratory Care and is concerned that this may be an unlawful delegation of authority.

Kansas Health Policy Authority. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning local unit of government employee health care benefits plan. After discussion, the Committee had the following comments.

KAR 108-1-4. The Committee believes in the heading of subsection (g) that the language should read “Coverage of spouses and eligible dependent participants.” In subsection (h)(3)(A)(v), the Committee is concerned about the language and who exactly is covered. The Committee has requested that the agency provide a copy of the coverage for regular KPERS retired individuals to determine whether the language is identical. In addition, in terms of local entities, covered the Committee asks for information on which local environmental protection programs are included by the regulation. Finally, the Committee requests that a spokesperson from the agency appear at the next regular meeting of the Committee to answer further questions about these issues.

Kansas Department of Labor. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning service of pleadings. After discussion, the Committee had no comment.

Kansas Racing and Gaming Commission. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning gaming supplier and non-gaming supplier defined. After discussion, the Committee had no comment.

Kansas Home Inspectors Registration Board. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning registration; registration

renewal; examination; fees; and approval of educational program. After discussion, the Committee had the following comments.

KAR 130-1-1. The Committee is concerned as to whether “errors and omissions” insurance is required by the applicants for registration.

Request of the Attorney General. The Committee is concerned with the potential impact that the 2009 enactment of HB 2260 may have upon these regulations and plans to write to the Attorney General to express this concern.

Economic Impact Statement. The Committee believes that the Economic Impact Statement for KAR 130-2-1 needs to be updated.

Kansas Department of Health and Environment. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning the surface water register. After discussion, the Committee 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; nurse aide training program; nurse aide course instructor; out-of-state and allied health training endorsement for nurse aide; and state nurse aide test. After discussion, the Committee had the following comment.

KAR 28-39-167. The Committee is concerned that the language in subsection (a) could be interpreted to mean that a person who receives only training but has not passed a test would be able to become a nurse aide. The Committee believes that clarification should be added to make it clear that passing a test is required.

Kansas Department of Health and Environment. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning definitions; permit required for facilities and storage wells; variances; well conversions and reentry; permit required for facility and associated storage wells; public notice; modification and transfer of a permit; signatories for permit applications and reports; siting requirements for new storage wells and facilities; financial assurance for closure of underground crude oil storage facility; operations and maintenance plan; emergency response plan and safety and security measures; design and construction of storage wells; monitoring; testing and inspections; groundwater monitoring; record requirements and retention; well workovers; plugging and plugging-monitoring requirements; underground crude oil storage fees; permit required for a brine pond; brine pond permit application; permit renewal; public notice for a brine pond; modification and transfer of a brine pond permit; variance; signatories for brine pond permit applications and reports; financial assurance for brine pond closure; design, construction, and maintenance of brine ponds; groundwater monitoring for brine ponds; and brine pond closure requirements. After discussion, the Committee had the following comments.

KAR 28-45b-1. In subsection (b), the Committee believes that the gravity scale should be expressed in “degrees API” rather than just in “degrees” in order to add clarity.

KAR 28-45b-2. The Committee is concerned with the agency granting variances when no specific authority to do so exists. The Committee plans to write to the Attorney General expressing concern with the approval of this regulation and others when no specific statutory authority exists.

KAR 28-45b-4. In subsection (p), the Committee questions the thickness requirement and wonders how the 100 foot thickness requirement was determined when in subsection (r) and (s) it appears there could be approved storage caverns with salt roof thickness of between 50 and 100 feet. The Committee asks the agency to review all salt thickness requirements throughout these regulations to determine their adequacy. In subsection (q), the word “activities” is not spelled correctly.

KAR 28-45b-8. In subsection (f), the Committee questions what kind of aircraft or shipping traffic hazards the agency expects to have in proximity to any salt cavern storage of crude oil. Please make any appropriate modifications.

KAR 28-45b-14. In subsection (c)(1)(B), the Committee believes clarification should be added so that one would know when the “five year” time period actually begins.

Kansas Insurance Department. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning:

- Long-term care; agent training
- Audited financial reports; filing requirements
- Medicare supplement policies; minimum standards

After discussion, the Committee had no comment.

Kansas Department of Social and Rehabilitation Services. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning eligibility factors specialized to the GA program. After discussion, the Committee had the following comment.

KAR 30-4-90. The Committee is concerned that the proposed wording regarding the time frame for assistance means the lifetime maximum could be changed by the Secretary without Legislative notification and believes that the agency should change the regulation each time the agency wishes to change the time frame. The Committee suggests that the agency change the wording of the regulation so that the 18 calendar months applies only to those receiving assistance during FY 2010. Also, the agency should provide some means of notification or communicating the Secretary’s decision on the number of months if different from 18, *e. g.* publication in the *Kansas Register*.

Kansas Department of Education. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning definition of terms; endorsements; licensure requirements; licensure of out-of-state and foreign applicants; license renewal requirements; and procedures for promulgation of in-service education plans, approval by state board, area professional development centers’ in-service programs. After discussion, the Committee had the following comment.

KAR 91-1-203. In subsection (b)(4)(C), the Committee suggests that clarity could be achieved if additional language were added to make clear that it is college credit that

is being required. After subsection (b)(4)(H), the Committee suggests language to make it clear when the subsection (b)(4) expires.

KAR 91-1-216. In subsection (d), the Committee believes clarifying language should be added so that there is a specific time frame when the plan will be approved, approved with modifications, or disapproved to indicate that the time frame is within the first semester.

The meeting was adjourned by the Chairperson at 12:45 p.m.

Prepared by Judy Glasgow
Edited by Raney Gilliland and Jill Shelley

Approved by Committee on:

May 18, 2009
(Date)