



October 21, 2019

REPORT

To: Kansas Legislature

From: Joint Committee on Administrative Rules and Regulations

Re: Report on the October 8, 2019, Meeting of the Joint Committee on Administrative Rules and Regulations

At its meeting on October 8, 2019, the Joint Committee on Administrative Rules and Regulations (Committee) reviewed for public comment rules and regulations listed below and provided its comments.

State Board of Healing Arts

KAR 100-69-7, unprofessional conduct, definitions; KAR 100-69-10, license renewal, continuing education; KAR 100-29-4, examination; KAR 100-29-9, license and certificate renewal, continuing education.

Concern. The Committee was made aware that page 3 of proposed KAR 100-69-10 was not part of the regulation packet that was published on the website of the Secretary of State. Although the corrected file was published after the Committee meeting, with the stamp of the Secretary of State on the added page 3, the Committee is concerned that interested members of the public may not be aware of the provisions included in page 3. The Committee asks the agency to provide a timeline of the review and filing process for KAR 100-69-10 and information on the chain of custody for the rule and regulation packet. The Committee further asks the agency to determine whether the rule and regulation should begin the process anew to be in compliance with provisions of KSA 2019 Supp. 77-420 and to share its reasoning behind the decision.

Board of Pharmacy

KAR 68-2-10, cessation of operations; KAR 68-7-15, prepackaging or repackaging of oral drugs; KAR 68-14-1, revocation (was wholesale distributors); KAR 68-14-2, definitions; KAR 68-14-3, revocation (was wholesale distributor registration requirement); KAR 16-14-4,

minimum required information for registration; KAR 68-14-5, personnel; KAR 68-14-7, wholesale distributors, minimum requirements for the storage and handling of prescription-only drugs and devices and for the establishment and maintenance of prescription-only drug and device distribution records; KAR 68-14-7a, third-party logistics providers, minimum requirements for operation and maintenance of records; KAR 68-14-7b, outsourcing facilities, minimum requirements for operation and maintenance of records; KAR 68-19-1, minimum program requirements; KAR 68-21-6, reciprocal agreements with other states or government entities to share information.

Concern. The Committee notes proposed KAR 68-2-10 requires the pharmacist in charge to notify pharmacy customers but the economic impact statement states the estimate of compliance costs is \$0. It notes KSA 2019 Supp. 77-416 (b)(1)(C)(ii) requires “a detailed quantification of implementation and compliance costs, on the specific businesses . . . [and] individuals . . .” The Committee requests a detailed analysis of the potential costs of this proposed rule and regulation and asks the agency to consider issuing a new economic impact statement.

Request. The Committee requests information on the Board procedures required by KSA 2019 Supp. 65-1685(b), contractual provisions, and other processes and policies to protect the privacy of Kansans’ pharmacy records.

Request. The Committee requests the agency provide information related to the agency’s inspection or testing of drugs imported into the United States.

Request. The Committee requests information on fees originally paid to the Board of Pharmacy that have been moved into the State General Fund.

Department of Health and Environment

KAR 28-4-133, reporting critical incidents.

Concern. The Committee is concerned that the term “jeopardizes” in paragraph (a)(6) may leave room for interpretation and suggests the agency consider either defining the term or making the language more specific.

Request. The Committee asks the agency to consider defining the term “written report” as found in subsection (b) and to also consider alternate forms of reporting to the agency. The Committee suggests providing copies of the form in hard copy and is concerned a report mailed *via* U.S. Postal Service would not meet the requirement in the proposed rule and regulation that the report is “submitted by the next working day to the department”; it requests clarification of that requirement.

Request. The Committee asks the agency to consider defining the term “facility” in subsection (b) with respect to the requirement that copies of

critical incident reports be kept on file at the facility for a period of one year. It believes the proposed language could be read to mean the agency's facility.

Concern. The Committee is concerned that some childcare providers may not have access to email or the Internet, which may present difficulties in being informed of new rules and regulations pertaining to childcare. The Committee asks the agency to consider providing notification of regulatory changes *via* U.S. Postal Service in addition to electronic notification if the provider so requests.

Board of Nursing

KAR 60-16-101, definitions; KAR 60-16-103, stand-alone course approval procedure, competency examinations, recordkeeping; KAR 60-16-104, standards for course and program curriculum content.

After discussion, the Committee reported no comments.

Dental Board

KAR 71-2-2, branches of dentistry; KAR 71-2-3, revoked (was committee for specialists examination).

After discussion, the Committee reported no comments.

Board of Emergency Medical Services

KAR 109-3-3, emergency medical responder, authorized activities; KAR 109-3-4, emergency medical technician, authorized activities; KAR 109-5-1a, emergency medical responder (EMR) continuing education; KAR 109-11-1a, emergency medical responder course approval.

After discussion, the Committee reported no comments.

Department of Wildlife, Parks and Tourism

KAR 115-7-1, fishing, legal equipment, methods of taking, and other provisions; KAR 115-7-10, fishing, special provisions; KAR 115-9-9, electronic licenses, permits, stamps, tags, and other issues of the department, other requirements; KAR 115-15-1, threatened and endangered species, general provisions; KAR 115-15-2, nongame species, general provisions; KAR 115-18-6a, motor vehicle permits, school exemption for state parks and other areas requiring motor vehicle permits; KAR 115-25-14, fishing, creel limit, size limit, possession limit, and open season; KAR 115-4-2, big game and wild turkey, general provisions; KAR 115-7-3, fish, taking and use of baitfish or minnows; KAR 115-7-4, fish, processing and possession; KAR 115-25-5, turkey, fall season, bag limit, and permits; KAR 115-25-6, turkey, spring season, bag limit, permits, and game tags.

KAR 115-25-5 and KAR 115-25-6. The Committee is concerned with the potential effects on the state economy due to the proposals to eliminate the fall turkey season in 2020 for approximately half of the state and reduce the bag limit for turkeys in those same units during the 2020 spring season. The Committee requests the agency provide the data and studies used to make the determination.

Request. The Committee requests the agency provide data, including the number of in-state and out-of-state hunting licenses for wild turkeys issued over the past five years.

Request. The Committee requests the agency provide statutory citations and authority allowing the agency to determine species included in the endangered and threatened species lists and also requests information on the steps the agency and Commission take before proposing changes to the listings.

Board of Technical Professions

KAR 66-15-1, fees.

After discussion, the Committee reported no comments.

EXPECTATIONS OF AGENCIES

Prior to filing rules and regulations with the Secretary of State, agencies are expected to review the history sections of the rules and regulations to update them to the most recent statutory citations, making certain the citations for authorizing and implementing statutes are correct and complete. Each agency is encouraged to include in the filing notice its website address where proposed rules and regulations can be located. In addition, if the agency accepts written comments *via* e-mail, it is expected the public notice will include this information, as are directions for e-mail requests for public accommodation. Finally, agencies are expected to verify the adoption by reference of any materials included in the regulations is properly completed as prescribed in the Department of Administration's current "Policy and Procedure Manual for the Adoption of Kansas Administrative Regulations."

This report should be part of the public record on these regulations. The Committee may review the regulations the agency ultimately adopts, and it reserves any expression of legislative concern to that review.

To assist in that final review, agencies are expected to respond to each question or comment of the Committee and to inform the Committee and its Kansas Legislative Research Department (KLRD) staff, in writing, at the time the rules and regulations are adopted and filed with the Secretary of State, of any and all changes that have been made following the public hearing. Agencies are expected to notify the Committee and KLRD, in writing, when the agency has adopted the regulations as permanent, delayed implementation of the regulations, or decided not to adopt any of the regulations.

Failure to respond to each and every comment contained in this report may result in a request from the Committee that a spokesperson from the agency appear before the Committee to explain the agency's failure to reply.