

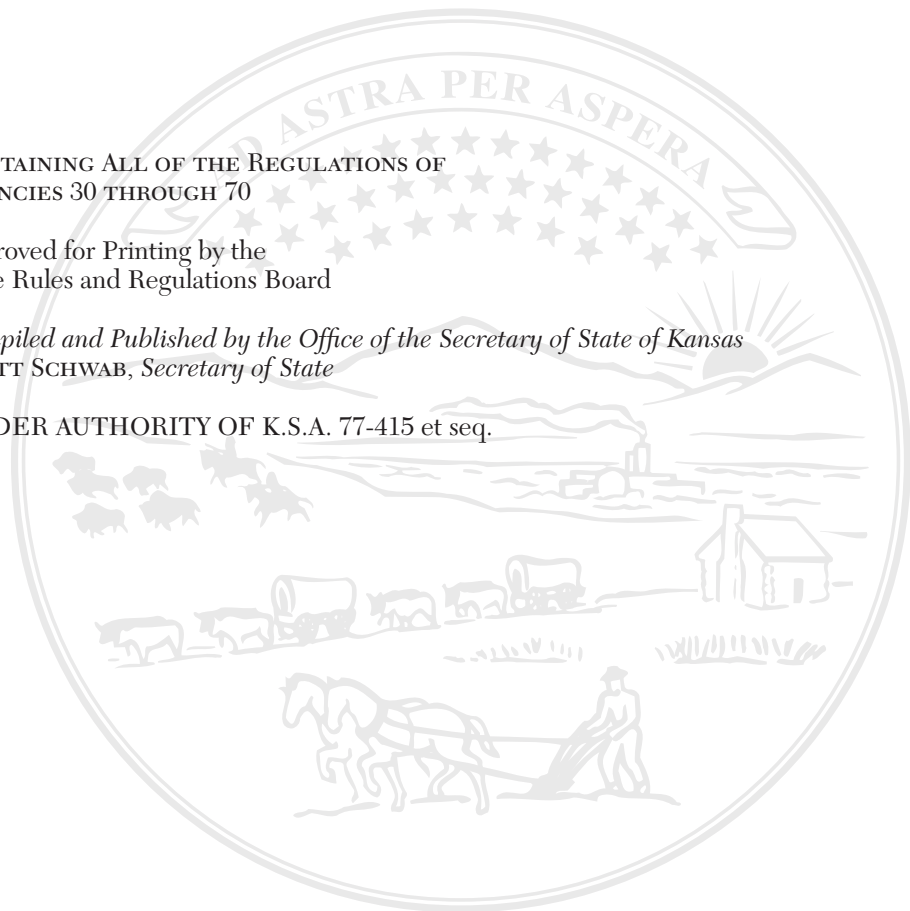
Kansas Administrative Regulations

CONTAINING ALL OF THE REGULATIONS OF
AGENCIES 30 THROUGH 70

Approved for Printing by the
State Rules and Regulations Board

Compiled and Published by the Office of the Secretary of State of Kansas
SCOTT SCHWAB, *Secretary of State*

UNDER AUTHORITY OF K.S.A. 77-415 et seq.



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AUTHENTICATION OF RULES AND REGULATIONS

THIS IS TO CERTIFY That we, Derek Schmidt, Attorney General of and for the State of Kansas, and Scott Schwab, Secretary of State of and for the State of Kansas, pursuant to K.S.A. 77-429 have examined and compared this 2022 Volume 3 of the Kansas Administrative Regulations; and do hereby certify that this publication of rules and regulations contains all rules and regulations for agencies 30 through 70 approved for printing by the State Rules and Regulations Board and otherwise complies with K.S.A. 77-415 *et seq.* and acts amendatory thereof.

Done at Topeka, Kansas, this 15th day of September, 2022.


DEREK SCHMIDT,
Attorney General


SCOTT SCHWAB,
Secretary of State

[SEAL]

EXPLANATORY PREFACE

This volume has been compiled and published in accordance with K.S.A. 77-430a and other applicable laws.

ARRANGEMENT OF RULES AND REGULATIONS

Administrative rules and regulations of the various state agencies are arranged in accordance with a three-part system of numbers divided by hyphens. The first number indicates the agency; the second number indicates the article (a group of regulations of such agency upon the same subject); the last number indicates the specific section or regulation within the article. For example, "1-4-11" refers to agency No. 1, article No. 4 and section No. 11.

The law requires that agencies cite the statutory authority for the regulation and the section(s) of the statutes which the regulation implements. This is published at the end of the text of the regulation. In addition, the Secretary of State includes a history of the regulation which indicates the original effective date of the regulation and each subsequent amendment.

SALES

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SCOTT SCHWAB, *Secretary of State*

COMMENTARY

This volume has been compiled and published in accordance with K.S.A. 77-430a and other applicable laws.

The 2022 Volumes contain rules and regulations filed before January 1, 2022. The volumes replace the 2009 Volumes and 2021 Supplement. Regulations filed on and after January 1, 2022, may be located by checking the Kansas Register, Kansas' official state newspaper. An index appears at the back of each Kansas Register and lists the volume and page number of the Register issue that contains the most recent version of the regulations filed after December 31, 2021.

To find the most recent version of a regulation:

First, check the table of contents in the most current issue of the Kansas Register

Then, check the Index to Regulations in the most current Kansas Register

Next, check the current K.A.R. Supplement

Finally, check the current K.A.R. Volume

If the regulation is found at any of these steps, stop. Consider that version the most recent. The most current regulations, proposed regulations open for public comment, and published regulations with a future effective date may also be found in the online K.A.R. at https://sos.ks.gov/publications/pubs_kar.aspx.

To determine the authorizing and implementing statute(s), the effective date, or to see when a regulation was amended or revoked, check the history found at the end of each regulation. The authorizing and implementing statute(s) are listed first followed by any subsequent action. For example, in "amended, T-7-12-11-90, Dec. 31, 1990" the "T" means temporary, the "7" is the number assigned to the agency in the K.A.R. Volumes, and 12-11-90 is the date that the regulation was filed. Following the last comma is the effective date. Therefore, the amendment was filed as a temporary regulation on December 11, 1990, and the amendment became effective on December 31, 1990. A temporary regulation becomes effective upon approval by the State Rules and Regulations Board and filing in the Secretary of State's Office or at a later date when specified in the body of the regulation. A temporary regulation lasts 120 days unless it is amended or revoked within 120 days. If the "T number" is not included in an action on a regulation, the regulation was filed as a permanent regulation. A permanent regulation is effective 15 days following publication in the Kansas Register or at a later date specified in the body of the regulation. Prior to July 1, 1995, a permanent regulation became effective 45 days following publication in the Kansas Register or at a later date specified in the body of the regulation. The regulation remains in effect until amended or revoked.

Any questions regarding the publication or use of the K.A.R. Volumes or questions regarding the regulation filing procedure may be directed to the Kansas Administrative Regulations Editor at 785-296-0082. For purchasing inquiries call 785-296-4557. Questions concerning the subject matter of a regulation should be directed to the agency administering the regulation.

Issues of the Kansas Register may be viewed and downloaded at <https://sos.ks.gov/publications/kansas-register.html>.

SCOTT SCHWAB, *Secretary of State*

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**Editor's note only.*

Agency 30

Kansas Department for Children and Families

Editor's Note:

Pursuant to Executive Reorganization Order (ERO) No. 41, the Department of Social and Rehabilitation Services was renamed the Kansas Department for Children and Families. See L. 2012, Ch. 185.

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- 30-4. **PUBLIC ASSISTANCE PROGRAM.**
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Article 1.—DEFINITIONS

30-1-1. (Authorized by K.S.A. 1975 Supp. 39-708c; effective Jan. 1, 1967; amended Jan. 1, 1968; amended, E-72-23, July 28, 1972; amended Jan. 1, 1973; amended Jan. 1, 1974; amended May 1, 1975; revoked May 1, 1976.)

Article 2.—GENERAL

30-2-1. Assistance provided without discrimination. All assistance and services provided by the Kansas state department of social and rehabilitation services shall be provided without discrimination on grounds of race, religion, color, sex, age, handicap, national origin, or ancestry. (Authorized by K.S.A. 1978 Supp. 39-708c; K.S.A. 75-3304; effective Jan. 1, 1967; amended Jan. 1, 1974; amended, E-79-20, Aug. 17, 1978; amended May 1, 1979.)

30-2-2. Uniformity of interpretation. All officers or employees of state department of social and rehabilitation services shall uniformly interpret the laws, and rules and regulations pertaining thereto, and in order to provide uniformity the agencies and individuals involved shall follow the interpretation given through handbook or manual material, or by state director's letters or other releases, or communications, from the secretary of the state department of social and rehabilitation services, or the state director of institutions. (Authorized by K.S.A. 1973 Supp. 75-3304; effective Jan. 1, 1967; amended Jan. 1, 1974.)

30-2-3. (Authorized by K.S.A. 75-3304, K.S.A. 1977 Supp. 39-708c; effective Jan. 1, 1968; amended Jan. 1, 1970; amended Jan. 1, 1974; revoked May 1, 1978.)

30-2-4. (Authorized by K.S.A. 1980 Supp. 39-708c; effective, E-70-9, Dec. 4, 1969; effective

Jan. 1, 1971; amended Jan. 1, 1971; amended Jan. 1, 1974; amended, E-79-20, Aug. 17, 1978; amended May 1, 1979; revoked May 1, 1981.)

30-2-5. (Authorized by K.S.A. 39-748; effective Jan. 1, 1974; amended May 1, 1975; proposed amendment rejected, L. 1978, ch. 450; revoked, L. 1978, ch. 160, May 1, 1978; revoked May 1, 1979.)

30-2-6. (Authorized by K.S.A. 1978 Supp. 39-748; effective Jan. 1, 1974; amended May 1, 1978; revoked May 1, 1979.)

30-2-7 and 30-2-8. (Authorized by K.S.A. 1980 Supp. 39-708c; effective May 1, 1978; amended, E-79-20, Aug. 17, 1978; amended May 1, 1979; amended, E-80-13, Aug. 8, 1979; amended May 1, 1980; revoked May 1, 1981.)

30-2-9. (Authorized by K.S.A. 1978 Supp. 39-708c; effective May 1, 1978; amended, E-79-20, Aug. 17, 1978; amended May 1, 1979; revoked May 1, 1981.)

30-2-10. (Authorized by K.S.A. 1978 Supp. 39-708c; effective, E-79-20, Aug. 17, 1978; effective May 1, 1979; revoked May 1, 1981.)

30-2-11. Disclosure of information to client. Information entered into the case record subsequent to July 1, 1978 shall be made available upon request to the client or his or her legal guardian for inspection at a time mutually agreeable to the agency and the requestor except as set forth below.

(a) *Medical and psychiatric reports.* Medical and psychiatric reports shall not be made available to the requestor unless signed, written consent is obtained from the medical practitioner who rendered such report. Such reports may be released

through the client's physician if the agency decides that this method of release is in the best interest of the client.

(b) *Names and addresses of complainants.* The names and addresses of complainants shall not be made available to the requestor.

(c) *Investigative reports.* Investigative reports shall not be made available to the requestor during the course of the investigation or during the time period in which the case has been referred for legal action unless an agency attorney or the prosecuting attorney to whom the case has been referred for legal action authorizes such disclosure.

(d) *Names, addresses and other information which would identify or lead to the identification of persons who have provided information to the agency.* The names, addresses or other information which would identify or lead to the identification of a person or persons who have provided information to the agency shall not be made available to the requestor unless a signed written consent is obtained from the individual whose identity the requestor wishes to be made available.

(e) *Other information.* Other information shall not be made available to the requestor if otherwise prohibited by statute or administrative regulation.

(f) *Exception.* Notwithstanding the provisions of (a), (c) and (e) above, all documents and records to be used by the agency at a fair hearing shall be made available, upon request, to the appellant or his or her representative for inspection or copying at a time mutually agreeable to the agency and the appellant or his or her representative prior to the date of the hearing. (Authorized by K.S.A. 1979 Supp. 39-708c, 39-709b; effective, E-79-20, Aug. 17, 1978; effective May 1, 1979; amended, E-80-13, Aug. 8, 1979; amended May 1, 1980.)

30-2-12. Fee for providing copies of agency documents and records to non-agency personnel. Except as set forth in K.A.R. 30-2-12(d), the following fees may be charged for providing copies of agency documents and records to non-agency personnel: (a) A fee for copies of \$.25 per single-sided page;

(b) an additional fee not exceeding the actual cost of furnishing copies, including the cost of staff time required to make the information available; and

(c) in the case of fees for providing access to records maintained on computer facilities, the cost of any computer services, including staff time required.

(d) *Exceptions.* No fee shall be charged if the request for documents or records meets any of the following criteria:

(1) Is in the administration of an agency program;

(2) is in relationship to a client fair hearing;

(3) is for medical diagnosis or treatment;

(4) is from a state agency; or

(5) is pursuant to an administrative regulation authorizing the release of the document or record without the charging of a fee. This regulation shall take effect on and after April 1, 1999. (Authorized by K.S.A. 75-5321; implementing K.S.A. 76-12a10, K.S.A. 45-218; effective, E-80-13, Aug. 8, 1979; effective May 1, 1980; amended May 1, 1983; amended May 1, 1985; amended April 1, 1999.)

30-2-13. Reliance upon certain agency actions. Interpretations of contract and grant provisions, and the approval of contract and grant changes shall not be binding upon the agency unless they have been reduced to writing. (Authorized by K.S.A. 75-5321; effective, E-80-13, Aug. 8, 1979; effective May 1, 1980.)

30-2-14. (Authorized by K.S.A. 75-5321, K.S.A. 1979 Supp. 39-708c; effective, E-80-13, Aug. 8, 1979; effective May 1, 1980; revoked May 1, 1985.)

30-2-15. Civil rights and equal employment opportunity compliance—providers, contractors, grantees and vendors. The agency may terminate or refuse to enter into a business relationship with a provider, contractor, grantee or vendor who is not in compliance with applicable statutes, administrative regulations or executive orders concerning non-discrimination in the provision of services or employment, affirmative action or equal employment opportunity. (Authorized by K.S.A. 75-5321; effective, E-80-13, Aug. 8, 1979; effective May 1, 1980.)

30-2-16. Permanency planning goals for title IV-E of the federal social security act.

(a) The agency's permanency planning goal for the federal fiscal year commencing on October 1, 1999 shall be to have no more than 600 children who have been in foster care placements in excess of 24 consecutive months receive federal funding during the course of the year.

(b) Both of the following steps shall be taken by the agency to achieve the above-stated goal:

(1) A reasonable effort shall be made to make adoption assistance available on behalf of eligible children.

(2) A case review shall be initiated and a plan shall be developed for each child in the custody of the agency. (Authorized by and implementing K.S.A. 1998 Supp. 39-708c; effective, T-83-26, Sept. 22, 1982; effective May 1, 1983; amended, T-85-24, Sept. 18, 1984; amended May 1, 1985; amended, T-87-5, May 1, 1986; amended, T-87-29, Oct. 22, 1986; amended May 1, 1987; amended May 1, 1988; amended Sept. 26, 1988; amended July 30, 1990; amended Oct. 1, 1990; amended Oct. 28, 1991; amended Oct. 5, 1992; amended Oct. 1, 1993; amended Sept. 30, 1994; amended July 2, 1999.)

30-2-17. Administration of certain long-term care programs. (a)(1) Subject to the federal grant requirements for medicaid under the social security act, title XIX, the “nursing facility services payment program,” as that term is used in K.S.A. 1996 Supp. 75-5321a, shall include the following functions:

- (A) oversight of certification and recertification of nursing facilities;
- (B) provider enrollment;
- (C) minimum data set collection and analysis;
- (D) rate setting and payments;
- (E) cost report reviews;
- (F) audits;
- (G) payment reconciliations;
- (H) overpayment collections;
- (I) penalty enforcement;
- (J) compliance functions, including collection of civil money penalties; and
- (K) budget preparation and management.

(2) For purposes of this regulation, the term “nursing facility” shall not include any nursing facility for mental health or intermediate care facility for the mentally retarded.

(b) The “home and community-based nursing facility waiver program,” as that term is used in K.S.A. 1996 Supp. 75-5321a, means the medicaid home and community-based service waiver program for the frail elderly and targeted case management for the frail elderly.

(c) For the purposes of administering the nursing facility services payment program, the home and community-based nursing facility waiver program, and the income eligible home care program pursuant to K.S.A. 1996 Supp. 75-5321a, the secretary of aging may use, exercise,

and enforce any power, duty, definition, or description established in regulations of the secretary of social and rehabilitation services as may be necessary. To the extent that federal grant requirements for the medicaid program under the social security act, title XIX, require the continued involvement by the secretary of social and rehabilitation services as the designated medicaid single state agency, the state plan, regulatory, policy making, and supervisory authority over the programs administered by the secretary of aging under K.S.A. 1996 Supp. 75-5321a shall continue to be exercised by the secretary of social and rehabilitation services. (Authorized by and implementing K.S.A. 1996 Supp. 39-708c and K.S.A. 75-5321a; effective, T-30-7-1-97, July 1, 1997; effective Oct. 3, 1997.)

Article 3.—PROCESSING OF APPLICATION

30-3-1. (Authorized by K.S.A. 1975 Supp. 39-708c; effective Jan. 1, 1967; amended Jan. 1, 1974; revoked May 1, 1976.)

30-3-2 to 30-3-4. (Authorized by K.S.A. 1975 Supp. 39-708c; effective Jan. 1, 1967; revoked May 1, 1976.)

30-3-5. (Authorized by K.S.A. 1975 Supp. 39-708c; effective Jan. 1, 1967; amended Jan. 1, 1968; amended Jan. 1, 1971; amended Jan. 1, 1974; amended May 1, 1975; revoked May 1, 1976.)

30-3-6. (Authorized by K.S.A. 1975 Supp. 39-708c; effective Jan. 1, 1967; amended Jan. 1, 1971; amended Jan. 1, 1974; amended May 1, 1975; revoked May 1, 1976.)

30-3-7. (Authorized by K.S.A. 1975 Supp. 39-708c; effective Jan. 1, 1967; amended Jan. 1, 1971; amended Jan. 1, 1974; revoked May 1, 1976.)

30-3-8. (Authorized by K.S.A. 1975 Supp. 39-708c; effective Jan. 1, 1967; amended Jan. 1, 1968; amended Jan. 1, 1970; amended Jan. 1, 1974; revoked May 1, 1976.)

30-3-9. (Authorized by K.S.A. 1975 Supp. 39-708c; effective Jan. 1, 1967; revoked May 1, 1976.)

30-3-10. (Authorized by K.S.A. 1975 Supp. 39-708c; effective Jan. 1, 1967; amended Jan. 1, 1971; amended Jan. 1, 1974; revoked May 1, 1976.)

30-3-11. (Authorized by K.S.A. 1975 Supp. 39-708c; effective Jan. 1, 1967; amended Jan. 1, 1974; revoked May 1, 1976.)

30-3-12. (Authorized by K.S.A. 1975 Supp. 39-708c; effective Jan. 1, 1967; amended Jan. 1, 1971; revoked May 1, 1976.)

30-3-13. (Authorized by K.S.A. 1975 Supp. 39-708c; effective Jan. 1, 1967; revoked May 1, 1976.)

30-3-14. (Authorized by K.S.A. 1975 Supp. 39-708c; effective Jan. 1, 1967; amended Jan. 1, 1971; revoked May 1, 1976.)

30-3-15. (Authorized by K.S.A. 1975 Supp. 39-708c; effective Jan. 1, 1967; amended Jan. 1, 1971; amended Jan. 1, 1974; revoked May 1, 1976.)

30-3-16. (Authorized by K.S.A. 1975 Supp. 39-708c; effective Jan. 1, 1967; revoked May 1, 1976.)

30-3-17. (Authorized by K.S.A. 1975 Supp. 39-708c; effective Jan. 1, 1967; amended Jan. 1, 1971; amended Jan. 1, 1974; revoked May 1, 1976.)

Article 4.—PUBLIC ASSISTANCE PROGRAM

30-4-1. (Authorized by K.S.A. 1970 Supp. 39-708c; effective Jan. 1, 1967; amended Jan. 1, 1968; amended Jan. 1, 1970; amended Jan. 1, 1971; revoked Jan. 1, 1974.)

30-4-2. (Authorized by K.S.A. 1975 Supp. 39-708c; effective Jan. 1, 1967; amended Jan. 1, 1968; amended Jan. 1, 1970; amended Jan. 1, 1971; amended Jan. 1, 1973; amended Jan. 1, 1974; amended May 1, 1975; revoked May 1, 1976.)

30-4-3. (Authorized by K.S.A. 1975 Supp. 39-708c; effective Jan. 1, 1967; amended Jan. 1, 1970; amended Jan. 1, 1971; amended Jan. 1, 1974; amended May 1, 1975; revoked May 1, 1976.)

30-4-4. (Authorized by K.S.A. 39-709, K.S.A. 1975 Supp. 39-708c, 75-3304; effective Jan. 1, 1967; amended Jan. 1, 1971; amended Jan. 1, 1974; revoked May 1, 1976.)

30-4-5. (Authorized by K.S.A. 1975 Supp. 39-708c; effective Jan. 1, 1967; amended Jan. 1, 1968; amended, E-70-9, Dec. 4, 1969; amended

Jan. 1, 1971; amended Jan. 1, 1974; revoked May 1, 1976.)

30-4-6. (Authorized by K.S.A. 39-709, K.S.A. 1975 Supp. 39-708c; effective Jan. 1, 1969; amended, E-71-34, Aug. 11, 1971; amended Jan. 1, 1972; revoked May 1, 1976.)

30-4-7 and 30-4-8. (Authorized by K.S.A. 1980 Supp. 39-708c; effective May 1, 1976; revoked May 1, 1981.)

30-4-9. (Authorized by K.S.A. 1980 Supp. 39-708c; effective May 1, 1976; amended, E-77-44, Sept. 23, 1976; amended Feb. 15, 1977; revoked May 1, 1981.)

30-4-10. (Authorized by K.S.A. 1980 Supp. 39-708c; effective May 1, 1976; revoked May 1, 1981.)

30-4-11. (Authorized by K.S.A. 1980 Supp. 39-708c, 39-719b; effective May 1, 1976; amended, E-77-44, Sept. 23, 1976; amended Feb. 15, 1977; amended May 1, 1978; revoked May 1, 1981.)

30-4-12. (Authorized by K.S.A. 1980 Supp. 39-708c; effective May 1, 1976; amended, E-77-44, Sept. 23, 1976; amended Feb. 15, 1977; amended May 1, 1978; amended, E-79-20, Aug. 17, 1978; amended May 1, 1979; amended May 1, 1980; revoked May 1, 1981.)

30-4-13. (Authorized by K.S.A. 39-719b, K.S.A. 1976 Supp. 39-708c, 39-709; effective May 1, 1976; revoked, E-77-44, Sept. 23, 1976; revoked Feb. 15, 1977.)

30-4-14 and 30-4-15. (Authorized by K.S.A. 1980 Supp. 39-708c, 39-709, 39-719b; effective, E-77-44, Sept. 23, 1976; effective Feb. 15, 1977; amended May 1, 1978; amended, E-79-20, Aug. 17, 1978; amended May 1, 1979; amended May 1, 1980; revoked May 1, 1981.)

30-4-16. (Authorized by K.S.A. 1980 Supp. 39-708c, 39-709, 39-719b; effective, E-77-44, Sept. 23, 1976; effective Feb. 15, 1977; revoked May 1, 1981.)

30-4-17. (Authorized by K.S.A. 1980 Supp. 39-708c, 39-709, 39-719b; effective, E-77-44, Sept. 23, 1976; effective Feb. 15, 1977; amended, E-79-20, Aug. 17, 1978; amended May 1, 1979; revoked May 1, 1981.)

30-4-18. (Authorized by K.S.A. 1980 Supp. 39-708c, 39-709, 39-719b; effective, E-77-44, Sept. 23, 1976; effective Feb. 15, 1977; amended May 1, 1978; revoked May 1, 1981.)

30-4-19. (Authorized by K.S.A. 1980 Supp. 38-827, 39-708c; effective, E-77-44, Sept. 23, 1976; effective Feb. 15, 1977; amended May 1, 1979; amended May 1, 1980; revoked May 1, 1981.)

30-4-20. (Authorized by K.S.A. 1980 Supp. 39-708c, 39-709, 39-719b; effective, E-77-44, Sept. 23, 1976; effective Feb. 15, 1977; amended May 1, 1978; amended May 1, 1979; revoked May 1, 1981.)

30-4-24. (Authorized by K.S.A. 1980 Supp. 39-708c, 39-709; effective May 1, 1976; amended, E-77-44, Sept. 23, 1976; amended Feb. 15, 1977; amended May 1, 1978; amended May 1, 1980; revoked, E-81-19, July 16, 1980; revoked May 1, 1981.)

30-4-25. (Authorized by K.S.A. 1980 Supp. 39-708c, 39-709; effective May 1, 1976; amended, E-77-44, Sept. 23, 1976; amended Feb. 15, 1977; amended May 1, 1978; amended, E-79-20, Aug. 17, 1978; amended May 1, 1979; amended May 1, 1980; revoked May 1, 1981.)

30-4-29. (Authorized by K.S.A. 1980 Supp. 19-1015, 39-708c, 39-709, 39-719b; effective May 1, 1976; amended, E-77-44, Sept. 23, 1976; amended Feb. 15, 1977; amended May 1, 1978; amended May 1, 1979; amended May 1, 1980; revoked May 1, 1981.)

30-4-30. (Authorized by K.S.A. 1980 Supp. 39-708c; effective May 1, 1978; revoked May 1, 1981.)

30-4-32. (Authorized by K.S.A. 59-2801 *et seq.*, K.S.A. 1980 Supp. 39-708c, 39-709; effective May 1, 1976; amended, E-77-44, Sept. 23, 1976; amended Feb. 15, 1977; amended, E-79-20, Aug. 17, 1978; amended May 1, 1979; amended, E-81-19, July 16, 1980; revoked May 1, 1981.)

30-4-33. (Authorized by K.S.A. 39-720, K.S.A. 1980 Supp. 39-708c, 39-709, 39-719b; effective May 1, 1976; amended May 1, 1978; amended, E-79-20, Aug. 17, 1978; amended May 1, 1979; revoked May 1, 1981.)

30-4-34. Public assistance program. The public assistance program shall include the following types of assistance:

(a) Temporary assistance for needy families (TANF);

(b) foster care assistance, which shall include the federal financial participation-foster care (FFP-FC) and non-federal financial participation foster care (non-FFP-FC) programs;

(c) low income energy assistance program (LIEAP);

(d) food assistance. The federal term for this program is supplemental nutrition assistance program (SNAP); and

(e) child care assistance. (Authorized by and implementing K.S.A. 2018 Supp. 39-708c; effective May 1, 1981; amended, T-84-8, April 1, 1983; amended May 1, 1983; amended, T-84-9, May 1, 1983; amended May 1, 1984; amended, T-88-14, July 1, 1987; amended May 1, 1988; amended, T-30-6-10-91, July 1, 1991; amended Dec. 30, 1994; amended April 1, 1995; amended Aug. 1, 1995; amended March 1, 1997; amended May 3, 2019.)

30-4-35. Application process. (a) Who may file. Each individual seeking public assistance, or another person authorized to act on the applicant's behalf, shall submit an application for public assistance to the department.

(b) Applications. The applicant or person authorized to act on behalf of the applicant shall sign the application. If the applicant or the applicant's representative signs by mark, the names and addresses of two witnesses shall be required. A telephonic signature, by the applicant or the applicant's authorized representative, shall be an acceptable form of attestation by the applicant when applying for public assistance and shall not be denied legal effect based solely on its format. When a telephonic signature is accepted, measures shall be taken by the department to verify the identity of each applicant. These measures shall be designed to safeguard applicants against any form of identity theft or invasion of privacy. Memoranda of understanding shall be required with any non-profit organization that wants to assist applicants with applications for public assistance and accept telephonic signatures for those applications on behalf of the department.

(c) Interview. An interview shall be required at the time of application for food assistance and TANF assistance. An interview may be required at the time of initial application for child care assistance if information provided by the applicant is incomplete, unclear, or contradictory. (Authorized

by and implementing K.S.A. 2018 Supp. 39-708c; effective May 1, 1981; amended May 1, 1984; amended May 1, 1988; amended July 1, 1989; amended July 1, 1997; amended, May 3, 2019.)

30-4-35w. This regulation shall be revoked on and after March 1, 1997. (Authorized by and implementing K.S.A. 39-708c; effective Dec. 30, 1994; revoked March 1, 1997.)

30-4-36. Redetermination of eligibility.

(a) Redetermination. Redetermination shall give each recipient an opportunity to bring to the attention of the department the recipient's current situation and to give the department an opportunity to review the eligibility factors in order to determine the recipient's continuing eligibility for assistance.

(b) Interview. An interview shall be required at the time of each redetermination for food assistance and cash assistance. An interview may be required at the time of each redetermination for child care assistance if any information provided by the applicant is incomplete, unclear, or contradictory.

(c) Frequency of redetermination. A recipient's eligibility for assistance shall be redetermined as specified in this subsection. Each TANF case shall be reviewed at least once each 12 months. Each TANF caretaker relative case shall be reviewed at least once each 24 months. (Authorized by and implementing K.S.A. 2018 Supp. 39-708c; effective May 1, 1981; amended May 1, 1983; amended May 1, 1986; amended May 1, 1988; amended May 3, 2019.)

30-4-38. Rights of applicants and recipients. (a) Right to information. Each applicant or recipient shall have the right to be provided with information concerning the types of assistance which are provided by the agency. Upon request, the agency shall furnish each applicant with information and shall explain the categories of assistance and the eligibility factors.

(b) Right to make application. Each applicant shall have the right to make application regardless of any question of eligibility or agency responsibility. The right of any individual to make application shall not be abridged.

(c) Right to private interview. Each applicant or recipient, upon request, shall have a right to a private interview when discussing individual situations with the agency.

(d) Right to an individual determination of eligibility for assistance. Each applicant or recipient

shall be given an opportunity to present any request and to explain the individual's situation.

(e) Right to withdraw from program. Each applicant shall have the right to withdraw the application at any time between the date the application is signed and the date the notice of the agency's decision is mailed. Any recipient may withdraw from a program at any time.

(f) Right to prompt decision. Each applicant shall have the right to have a decision rendered on an application within 45 days of its receipt by the agency. Each recipient shall have the right to have a decision rendered on any formal request within 30 days of its receipt by the agency.

(g) Right to correct amount of assistance. Each recipient, if eligible, shall be entitled to the correct amount of assistance, based upon established budgetary standards.

(h) Right to written notification of action. Each applicant or recipient shall have the right to a written notification of agency action concerning eligibility for assistance.

(i) Right to equal treatment. Each applicant or recipient shall have the right to be treated in the same manner as other applicants or recipients who are in similar circumstances.

(j) Right to a fair hearing. Each applicant or recipient shall have the right to request a fair hearing if dissatisfied with any agency decision or lack of action in regard to the application for or receipt of assistance. (Authorized by and implementing K.S.A. 1983 Supp. 39-708c; effective May 1, 1981; amended May 1, 1984.)

30-4-39. Responsibilities of applicants and recipients. Each applicant or recipient shall meet these requirements: (a) Supply, insofar as the applicant or recipient is able, information essential to the establishment of eligibility;

(b) report changes of circumstances within 10 calendar days;

(c) give written permission for release of information regarding resources, when needed;

(d) cooperate with the agency in establishing the paternity of a child born out of wedlock for whom assistance is claimed and in performing the following:

(1) Obtaining support payments for the applicant or recipient and for any child for whom assistance is claimed; and

(2) obtaining any other payments or property due the applicant or recipient or any child for whom assistance is claimed; and

(e) meet each applicant's or recipient's own needs insofar as that individual is capable.

This regulation shall be effective on and after October 1, 2003. (Authorized by K.S.A. 39-708c; implementing K.S.A. 39-708c, K.S.A. 39-709, and K.S.A. 39-719b; effective May 1, 1981; amended May 1, 1982; amended May 1, 1984; amended May 1, 1986; amended Oct. 1, 1997; amended July 1, 1998; amended Oct. 1, 2003.)

30-4-40. Department responsibility to applicants and recipients. (a) On the request of any applicant or recipient, the applicant's or recipient's rights and responsibilities shall be explained by the department.

(b) Each applicant and recipient shall be informed of the following:

(1) Periodic redeterminations. Periodic redeterminations of eligibility shall be made if the application is approved.

(2) Fraud. Each fraudulent application for or receipt of assistance shall be investigated and referred for legal action.

(3) Release of confidential information. Unless otherwise prohibited by other local, state, or federal law, confidential information shall be released by the department if the release is directly related to any of these duties:

(A) The administration of the public assistance program;

(B) an investigation or criminal or civil proceeding being conducted in connection with the administration of the program;

(C) the reporting of a fugitive felon's address to local, state, and federal law enforcement officials. This report shall be made only if the law enforcement official furnishes the recipient's name and social security number and satisfactorily demonstrates that the individual is a fugitive felon, that the location or apprehension of the fugitive felon is within the law enforcement officer's official duties, and that the request is made in the proper exercise of those duties;

(D) the reporting of an applicant's or recipient's intention to commit a crime to the appropriate law enforcement officials; or

(E) release of confidential information concerning applicants and recipients as authorized by state or federal law. (Authorized by and implementing K.S.A. 2018 Supp. 39-708c; effective May 1, 1981; amended, T-85-26, Oct. 15, 1984; amended May 1, 1985; amended May 1, 1987; amended March 1, 1997; amended Oct. 1, 1997; amended May 3, 2019.)

30-4-41. Assistance planning for TANF. (a) For the purposes of K.A.R. 30-4-50 through 30-4-98, the following terms and definitions shall apply:

(1) "Family group" means the applicant or recipient and all individuals living together in which there is a relationship of legal responsibility or a caretaker relationship. This term shall include a cohabiting boyfriend or girlfriend living with the person legally responsible for the child.

(2) "Mandatory filing unit" means all persons in the family group whose needs or resources are required to be considered in determining eligibility and amount of payment as outlined in K.A.R. 30-4-70(e) for TANF purposes. If the department is unable to determine who is required to be a member of the mandatory filing unit as a result of an applicant's or recipient's failure to cooperate in providing necessary information or in complying with an eligibility requirement that is within the applicant's or recipient's control, those persons who would otherwise be required to be in the mandatory filing unit if the applicant or recipient had cooperated shall be ineligible for assistance.

(3) "Caretaker," for TANF assistance purposes, means any of the following persons:

(A) The parent or parents, including the parent or parents of an unborn child; or

(B) the person who is assigned the primary responsibility for the care and control of the child as one of the following representatives:

(i) A guardian, conservator, or relative, as defined in K.A.R. 30-4-70(b); or

(ii) a legal custodian, when based on an approved social service plan.

Caretaker status shall be extended to the spouse of a non-parental caretaker and a cohabiting boyfriend or girlfriend living with the person legally responsible for the child.

(4) "Eligible caretaker" means a caretaker who is considered in the assistance plan with the child.

(5) "Legally responsible relative" means the person who has the legal responsibility to provide support for the person in the assistance plan.

(b) The assistance plan shall consist of those members of the mandatory filing unit and any other persons in the family group for whom assistance is requested and eligibility is determined. An individual excluded from the assistance plan shall not be eligible in a separate assistance plan. (Authorized by K.S.A. 2018 Supp. 39-708c; implementing K.S.A. 2018 Supp. 39-708c and K.S.A. 2018 Supp. 39-709; effective May 1, 1981; amended, E-82-19, Oct. 21, 1981; amended May

1, 1982; amended May 1, 1983; amended May 1, 1984; amended, T-85-26, Oct. 15, 1984; amended May 1, 1985; amended May 1, 1986; amended, T-88-14, July 1, 1987; amended, T-88-59, Dec. 16, 1987; amended May 1, 1988; amended July 1, 1989; amended July 1, 1991; amended Jan. 2, 1992; amended March 1, 1997; amended, May 3, 2019.)

30-4-41w. This regulation shall be revoked on and after March 1, 1997. (Authorized by and implementing K.S.A. 39-708c and L. 1994, Chapter 265; effective Dec. 30, 1994; revoked March 1, 1997.)

30-4-50. Assistance eligibility. (a) General requirements. This regulation shall apply to the TANF and foster care programs except as noted in subsection (b) for TANF. K.A.R. 30-4-51 through 30-4-55 shall apply to all public assistance programs specified in K.A.R. 30-4-34.

(b) Time-limited assistance. A family group shall not be eligible for TANF if at least one of the following conditions is met:

(1) The family group contains at least one adult member who has received TANF, including similar assistance received in any other state, for 24 calendar months beginning on and after October 1, 1996, unless a hardship extension has been granted or certain months of TANF assistance were determined to be an exception and were not counted towards the time limit, allowing receipt of TANF until the 36-month limit is reached. A hardship extension shall be granted under any of the following conditions:

(A) The TANF recipient is a caretaker of a disabled family member living in the household. The nature and duration of the disability shall be verified by a medical professional.

(B) The TANF adult has a disability that precludes employment on a long-term basis or requires substantial rehabilitation. Verification shall be obtained from a medical professional.

(C) The TANF adult needs an extension of the time limit to overcome the effects of domestic violence or sexual assault.

(D) The family is involved with DCF prevention and protection services and has an open social service plan.

(E) A hardship is presented by the family, and a determination is made by a DCF executive review team that an additional 12 months of TANF would benefit the family.

(2) The family group contains at least one adult member who has received a Kansas diversion payment and has received TANF, including assistance similar to TANF in another state for 18 calendar months beginning on and after October 1, 1996, unless a hardship extension has been granted, allowing receipt of TANF until the 30-month limit is reached.

(3) The family group has received TANF for any 24 calendar months beginning on and after October 1, 1996, during which time one or more adult family members residing in the family group were ineligible due to the provisions of K.A.R. 30-4-54(b), K.A.R. 30-4-140(d), or subsections (c) and (d) of this regulation.

(c) Denial of assistance for fugitive felons and probation and parole violators. Assistance shall not be provided to a fugitive from justice by reason of a felony conviction or charge, or to a person who is violating a condition of probation or parole imposed under federal or state law.

(d) Requirements for special projects. Certain eligibility requirements may be waived by the secretary, and additional eligibility requirements for all, or designated areas, of the state may be adopted by the secretary for the purpose of utilizing special project funds or grants or for the purpose of conducting special demonstration or research projects.

(e) TANF suspicion-based drug testing. Suspicion-based drug testing shall be mandatory for applicants and recipients if there appears to be unlawful use of a controlled substance or controlled substance analog. The definition and list of controlled substances shall be as specified in K.S.A. 39-709(l)(9)(B) and (C), and amendments thereto.

(1) TANF assistance shall not be provided to each individual who meets any of the following conditions:

(A) Tests positive for illegal drug use;

(B) fails to complete drug testing; or

(C) refuses to undergo drug testing.

(2) The periods of ineligibility for each individual who tests positive for illegal drug use shall be as follows:

(A) For the first positive drug test, the individual shall be ineligible until the individual completes substance abuse treatment and the skills training course.

(B) For the second positive drug test, the individual shall be ineligible for one year or shall complete a substance abuse treatment program and the skills training course, whichever is later.

(C) For the third positive drug test, the individual shall be ineligible for that person's lifetime.

(3) The periods of ineligibility for each individual who fails or refuses to complete drug testing shall be as follows:

(A) For the first failure or refusal to complete drug testing, the individual shall be ineligible for six months from the date of failure or refusal. To regain eligibility for TANF, the individual shall undergo drug testing and, if necessary, complete substance abuse treatment and skills training.

(B) For the second failure or refusal to complete drug testing, the individual shall be ineligible for 12 months from the date of failure or refusal. To regain eligibility for TANF, the individual shall undergo drug testing and, if necessary, complete substance abuse treatment and the skills training course.

(C) For any subsequent failure or refusal, the individual shall be ineligible for that person's lifetime.

(4) For each positive test, failure, or refusal to test, a protective payee shall be named for the family group. Each protective payee shall be subject to suspicion-based drug testing. (Authorized by K.S.A. 2018 Supp. 39-708c; implementing K.S.A. 2018 Supp. 39-708c, K.S.A. 2018 Supp. 39-709, K.S.A. 2018 Supp. 39-709e, and K.S.A. 2018 Supp. 39-719b; effective May 1, 1981; amended May 1, 1983; amended, T-30-7-29-88, July 29, 1988; amended Sept. 26, 1988; amended Oct. 1, 1989; amended, T-30-10-1-96, Oct. 1, 1996; amended Jan. 17, 1997; amended March 1, 1997; amended July 1, 1998; amended Oct. 1, 2000; amended July 1, 2004; amended, May 3, 2019.)

30-4-50w. This regulation shall be revoked on and after March 1, 1997. (Authorized by and implementing K.S.A. 39-708c and L. 1994, Chapter 265; effective Dec. 30, 1994; revoked March 1, 1997.)

30-4-51. Eligibility process. The determination of eligibility shall be based upon information provided by the applicant, the recipient, or collateral sources. If any information provided by the applicant or recipient is unclear, incomplete, conflicting, or questionable, a further review, including collateral sources, shall be required. A collateral source shall mean an individual or entity that has knowledge of, but is not part of, a household and provides written or verbal confirmation of the household's circumstances. Applicants and recipients shall be eligible for assistance only if all applicable eligibility require-

ments have been met. (Authorized by K.S.A. 2018 Supp. 39-708c; implementing K.S.A. 2018 Supp. 39-708c, 39-709, and 39-719b; effective May 1, 1981; amended May 3, 2019.)

30-4-52. Act in own behalf. (a) Emancipated minor. "Emancipated minor" means a person who is age 16 or 17 and who is or has been married, or a person who is under the age of 18 and who has acquired the rights of majority through court action.

(b) Ability to act on own behalf. Each applicant or recipient shall be legally capable of acting on that individual's own behalf. Incapacitated persons or minors shall not be eligible to receive assistance unless a caretaker applies for assistance on that person's behalf. Emancipated minors shall be eligible to receive assistance on their own behalf. Unemancipated minors shall not be deemed capable of acting on their own behalf and shall reside with a caretaker in order to be eligible for assistance, except when one of the following conditions exists.

(1) Either the parents of the minor are institutionalized or the minor has no parent who is living or whose whereabouts are known, and there is no other caretaker who is willing to assume parental control of the minor.

(2) The health and safety of the minor has or would be jeopardized by remaining in the household with the minor's parents or other caretakers.

(c) This regulation shall take effect on and after July 1, 1998. (Authorized by and implementing K.S.A. 1997 Supp. 39-708c and K.S.A. 1997 Supp. 39-709; effective May 1, 1981; amended May 1, 1984; amended Jan. 4, 1993; amended Oct. 1, 1993; amended March 1, 1997; amended Oct. 1, 1997; amended July 1, 1998.)

30-4-52w. This regulation shall be revoked on and after March 1, 1997. (Authorized by and implementing K.S.A. 39-708c and L. 1994, Chapter 265, Section 1; effective Dec. 30, 1994; revoked March 1, 1997.)

30-4-53. This regulation shall be revoked on and after March 1, 1997. (Authorized by K.S.A. 1985 Supp. 39-708c; implementing K.S.A. 1985 Supp. 39-708c, 39-709; effective May 1, 1981; amended, T-84-8, April 1, 1983; amended May 1, 1983; amended, T-84-9, May 1, 1983; amended May 1, 1984; amended, T-85-26, Oct. 15, 1984; amended May 1, 1985; amended May 1, 1986; revoked March 1, 1997.)

30-4-53w. This regulation shall be revoked on and after March 1, 1997. (Authorized by and implementing K.S.A. 39-708c and L. 1994, Chapter 265; effective Dec. 30, 1994; revoked March 1, 1997.)

30-4-54. Citizenship, alienage, and residence. (a) Definition. For the purposes of this regulation, "resident" shall mean any person who is living in Kansas voluntarily, with no intention of presently moving from Kansas, and who is not living in Kansas for a temporary purpose.

(1) Each child living in Kansas shall be considered a resident.

(2) For TANF, each person who has entered Kansas with a job commitment or who is seeking employment in Kansas shall be considered a resident.

(b) Citizenship and alienage. Each applicant or recipient shall be a citizen of the United States or shall be an alien who meets the conditions in either paragraph (1) or paragraph (2) of this subsection.

(1) The individual entered the United States before August 22, 1996 and meets one of these conditions:

(A) Is a refugee, including persons who are Cuban or Haitian entrants or admitted as Amerasian immigrants;

(B) is granted asylum;

(C) has deportation withheld;

(D) is a lawful permanent resident;

(E) is an honorably discharged veteran or currently on active duty in the armed forces or is the spouse or unmarried dependent child of such an alien;

(F) is paroled into the United States for at least one year;

(G) is granted conditional entry; or

(H) is a person who does not meet any of the conditions listed in paragraphs (b)(1)(A)-(G) but who has been battered or subjected to extreme cruelty by a U.S. citizen or lawful permanent resident spouse or parent and entered the U.S. on or before August 22, 1996. The person shall have a pending or approved violence against women act (VAWA) case or a family-based petition before United States citizenship and immigration services (USCIS). This provision shall include the person's children.

(2) The individual entered the United States on or after August 22, 1996 and meets one of these conditions:

(A) Is a refugee, including persons who are Cuban or Haitian entrants or admitted as Amerasian immigrants;

(B) is granted asylum;

(C) has deportation withheld;

(D) is an honorably discharged veteran or currently on active duty in the armed forces or is the spouse or unmarried dependent child of such an alien;

(E) is a lawful permanent resident who has resided in the United States at least five years as required by federal law;

(F) is paroled into the United States for at least one year and has resided in the United States at least five years;

(G) is granted conditional entry and has resided in the United States for at least five years; or

(H) is a person who does not meet any of the conditions listed in paragraphs (b)(2)(A)-(G) but who has been battered or subjected to extreme cruelty by a U.S. citizen or lawful permanent resident spouse or parent and entered the U.S. on or before August 22, 1996. The person shall have a pending or approved violence against women act (VAWA) case or a family-based petition before USCIS. This provision shall include the person's children.

(c) Residence. Each applicant or recipient shall be a Kansas resident. Temporary absence from Kansas, with subsequent returns to Kansas or intent to return when the purposes of the absence have been accomplished, shall not be considered to interrupt continuity of residence. Residence shall be considered to be maintained until abandoned or established in another state. (Authorized by K.S.A. 2018 Supp. 39-708c; implementing K.S.A. 2018 Supp. 39-708c, K.S.A. 2018 Supp. 39-709; effective May 1, 1981; amended, T-88-10, May 1, 1987; amended May 1, 1988; amended Oct. 1, 1989; amended, T-30-2-20-97, March 1, 1997; amended May 16, 1997; amended June 26, 1998; amended, May 3, 2019.)

30-4-54w. This regulation shall be revoked on and after March 1, 1997. (Authorized by and implementing K.S.A. 39-708c; effective Dec. 30, 1994; revoked March 1, 1997.)

30-4-55. Cooperation. (a) Establishment of eligibility. Each applicant, recipient, or ineligible caretaker shall cooperate with the agency in the establishment of eligibility as provided in K.A.R. 30-4-39. Failure to provide information necessary to determine eligibility shall render the family group ineligible for assistance.

(b) Social security number. Each applicant or recipient shall provide the agency with the applicant's or recipient's social security number. Failure to provide the number, or failure to apply for a number if the applicant or recipient has not previously been issued a number, shall render the applicant or recipient ineligible for assistance.

(c) Paternity and support.

(1) The caretaker who is applying for or receiving assistance shall cooperate with the agency in establishing the paternity of any child born out of wedlock for whom assistance is claimed, and in obtaining support payments for the caretaker and for any child for whom assistance is claimed. Failure to cooperate in any assistance program administered by the secretary in which paternity and support cooperation is required shall render the mandatory filing unit of which the child is a member ineligible for assistance unless the caretaker demonstrates good cause for refusing to cooperate. The period of ineligibility shall be as follows:

(A) For the first failure, until the caretaker cooperates; and

(B) for any subsequent failure, two months or until the person cooperates, whichever is longer.

(2) Cooperation shall include the following actions:

(A) Appearing at the local child support enforcement office, as necessary, to provide information or documentation needed to establish the paternity of a child born out of wedlock, to identify and locate the absent parent, and to obtain support payments;

(B) appearing as a witness at court or at other proceedings as necessary to achieve the child support enforcement objectives;

(C) forwarding to the child support enforcement unit any support payments received from the absent parent that are covered by the support assignment;

(D) establishing and maintaining an agreement to repay assigned support that was retained by the caretaker; and

(E) providing information, or attesting to the lack of information, under penalty of perjury.

(d) Potential resources. Each applicant or recipient shall cooperate with the agency in obtaining any resources due the applicant, recipient, or child for whom assistance is claimed and shall cooperate with the group health plan enrollment process in accordance with K.A.R. 30-6-55(f). Failure to cooperate without good cause shall render ineligible for assistance the mandatory filing unit of

which the applicant, recipient, or child for whom assistance is claimed is a member.

(e) Third party resources. Each applicant or recipient shall cooperate with the agency in identifying and providing information to assist the agency in pursuing any third party who may be liable to pay for medical services under the medical assistance program. Failure to cooperate without good cause shall render the applicant or recipient ineligible for assistance.

(f) This regulation shall be effective on and after October 1, 2003. (Authorized by K.S.A. 39-708c; implementing K.S.A. 39-708c, 39-709, and 39-719b; effective May 1, 1981; amended May 1, 1982; amended, T-87-15, July 1, 1986; amended May 1, 1987; amended Jan. 4, 1993; amended March 1, 1997; amended July 1, 1998; amended Oct. 1, 2003.)

30-4-55w. This regulation shall be revoked on and after March 1, 1997. (Authorized by and implementing K.S.A. 39-708c and 39-709, as amended by L. 1994, Chapter 265, Section 8; effective Dec. 30, 1994; revoked March 1, 1997.)

30-4-56. This rule and regulation shall expire on July 1, 1989. (Authorized by K.S.A. 39-708c; implementing K.S.A. 39-708c, 39-709; effective May 1, 1981; amended, E-82-11, June 17, 1981; amended May 1, 1982; amended May 1, 1983; amended May 1, 1984; amended May 1, 1985; amended May 1, 1986; amended May 1, 1987; amended May 1, 1988; revoked July 1, 1989.)

30-4-57. This rule and regulation shall expire on October 1, 1989. (Authorized by and implementing K.S.A. 39-708c; effective May 1, 1981; amended, E-82-19, Oct. 29, 1981; amended May 1, 1982; amended, T-83-17, July 1, 1982; amended May 1, 1983; amended, T-84-25, Sept. 19, 1983; amended May 1, 1984; amended May 1, 1985; amended May 1, 1986; amended, T-87-33, Dec. 1, 1986; amended May 1, 1987; amended, T-88-14, July 1, 1987; amended, T-88-59, Dec. 16, 1987; amended May 1, 1988; amended, T-30-7-29-88, July 29, 1988; amended Sept. 26, 1988; amended July 1, 1989; revoked Oct. 1, 1989.)

30-4-58. This regulation shall be revoked on and after March 1, 1997. (Authorized by K.S.A. 39-708c; implementing K.S.A. 39-708c, K.S.A. 1988 Supp. 39-709, K.S.A. 39-719b; effective May 1, 1981; amended May 1, 1983; amended May 1, 1984; amended May 1, 1985; amended, T-89-5,

Jan. 21, 1988; amended Sept. 26, 1988; amended July 1, 1989; amended Oct. 1, 1989; revoked March 1, 1997.)

30-4-58w. This regulation shall be revoked on and after March 1, 1997. (Authorized by and implementing K.S.A. 39-708c and 39-709, as amended by L. 1994, Chapter 265, Section 8; effective Dec. 30, 1994; revoked March 1, 1997.)

30-4-59. Strikes. (a) An applicant or recipient shall be ineligible for assistance if the person is participating in a strike. If the applicant or recipient is a legally responsible caretaker, the mandatory filing unit of which that individual is a member shall be ineligible for assistance.

(b) This regulation shall take effect on and after March 1, 1997. (Authorized by and implementing K.S.A. 1995 Supp. 39-708c, as amended by L. 1996, Ch. 229, Sec. 104; effective May 1, 1981; amended, E-82-19, Oct. 21, 1981; amended May 1, 1982; amended March 1, 1997.)

30-4-59w. This regulation shall be revoked on and after March 1, 1997. (Authorized by and implementing K.S.A. 39-708c; effective Dec. 30, 1994; revoked March 1, 1997.)

30-4-60. Living in a public institution. (a) Definition. "Public institution" means any institution that is the responsibility of a governmental unit or over which a governmental unit exercises administrative control.

(b) Living arrangement. Each applicant or recipient living in a public institution shall be ineligible for assistance, except that any otherwise eligible recipient admitted to a public institution for short term medical care or diagnosis shall be eligible for assistance, if needed, for a period not to exceed three months. Any individual who is physically residing in a jail or penitentiary or under the care, custody and control of a law enforcement official shall be ineligible unless the individual is on probation, parole, or on bail. (Authorized by K.S.A. 1983 Supp. 39-708c; implementing K.S.A. 1983 Supp. 39-708c, 39-709, K.S.A. 39-719b; effective May 1, 1981; amended May 1, 1984.)

30-4-60w. This regulation shall be revoked on and after March 1, 1997. (Authorized by and implementing K.S.A. 39-708c and 39-709, as amended by L. 1994, Chapter 265, Section 8; effective Dec. 30, 1994; revoked March 1, 1997.)

30-4-61. Supplemental security income benefits. (a) An applicant or recipient receiving supplemental security income benefits shall be ineligible for assistance. A caretaker shall not be denied eligibility for assistance for the reason that a child is receiving supplemental security income benefits. This provision shall not be applicable to a foster care child placed in a foster family home.

(b) This regulation shall take effect on and after March 1, 1997. (Authorized by K.S.A. 1995 Supp. 39-708c, as amended by L. 1996, Ch. 229, Sec. 104; implementing K.S.A. 1995 Supp. 39-708c, as amended by L. 1996, Ch. 229, Sec. 104, K.S.A. 1995 Supp. 39-709, K.S.A. 39-719b; effective May 1, 1981; amended March 1, 1997.)

30-4-61w. This regulation shall be revoked on and after March 1, 1997. (Authorized by and implementing K.S.A. 39-708c; effective Dec. 30, 1994; revoked March 1, 1997.)

30-4-62. This rule and regulation shall expire on October 1, 1989. (Authorized by and implementing K.S.A. 39-708c, K.S.A. 1988 Supp. 39-7,103; effective May 1, 1983; amended May 1, 1984; amended May 1, 1985; amended May 1, 1986; amended, T-87-33, Dec. 1, 1986; amended May 1, 1987; amended, T-88-59, Dec. 16, 1987; amended May 1, 1988; amended, T-30-7-29-88, July 29, 1988; amended Sept. 26, 1988; amended July 1, 1989; revoked Oct. 1, 1989.)

30-4-63. This regulation shall be revoked on and after March 1, 1997. (Authorized by and implementing K.S.A. 1995 Supp. 39-708c, 39-7,103; effective, T-30-7-29-88, July 29, 1988; effective Sept. 26, 1988; amended July 1, 1989; amended Oct. 1, 1989; amended Jan. 2, 1990; amended, T-30-3-29-90, April 1, 1990; revoked, T-30-7-2-90, July 2, 1990; amended, T-30-7-2-90, July 2, 1990; revoked, T-30-8-14-90, Oct. 1, 1990; amended Oct. 1, 1990; amended Jan. 7, 1991; amended, T-30-6-10-91, July 1, 1991; amended, T-30-8-9-91, Aug. 30, 1991; amended Oct. 28, 1991; amended Oct. 1, 1993; amended Aug. 1, 1995; amended July 1, 1996; revoked March 1, 1997.)

30-4-63w. This regulation shall be revoked on and after March 1, 1997. (Authorized by and implementing K.S.A. 39-708c, 39-7,103, and K.S.A. 1994 Supp. 39-7,104, 39-7,105, and 39-7,107; effective Dec. 30, 1994; amended Aug. 1, 1995; revoked March 1, 1997.)

30-4-64. Work program requirements for TANF. Each applicant or recipient of TANF, unless exempted, shall be required to participate in one or more components of the work program. Any exempt applicant or recipient may volunteer for participation in the program. The geographic areas in the state and the public assistance programs in which work program requirements are to be enforced shall be designated by the secretary. The administration of the work program shall be within the limits of appropriations.

(a) Exemptions. The following persons shall be exempt from the work requirements:

(1) Any person who is aged 17 or younger or who is aged 18 and working toward attainment of a high school diploma or its equivalent. This exemption shall not be claimed by a female who is pregnant or a parent of a child in the home and who has not yet attained a high school diploma or its equivalent;

(2) any person who is needed in the household because another member of the household requires the person's presence due to illness or incapacity and no other appropriate member of the household is available to provide the needed care; and

(3) any parent or other caretaker who is personally providing care for a child under the age of three months. Only one person in a case may be exempt on the basis of providing care for a child under the age of three months. This exemption shall not be claimed under any of the following circumstances:

(A) A custodial parent or pregnant woman under the age of 20 does not possess a high school diploma or its equivalent;

(B) both parents, a stepparent, a cohabiting partner, or a caretaker of the child is present and is not exempt, unsuitable, or incapable of providing child care; or

(C) a parent, a stepparent, a cohabiting partner, or a caretaker is determined to have a substance abuse disorder.

(b) Participation requirements. Each applicant or recipient shall participate in one or more components of a department-approved, work-related program directed toward the recipient's plan of self-reliance.

(c) Support costs. Payment of support costs shall be provided to participants. Support costs may include the following:

(1) Transportation expenses for each person participating in a work program activity in accordance with a department-approved plan;

(2) child care expenses, as necessary for the person to participate in a work program activity in accordance with a department-approved plan;

(3) education and training costs for each participant based on a department-approved plan, which may include tuition, books, and fees; and

(4) support service expenses to obtain goods and services needed to participate in an approved component.

(d) Transitional expenses. Payment for transitional expenses may be provided to each qualifying participant who loses eligibility for TANF if not otherwise disqualified. Transitional expenses may include any reasonable and necessary expenses for job retention.

(e) Penalty.

(1) A person who is required to participate in the work program shall be ineligible for assistance if one of the following conditions is met in any assistance program administered by the secretary in which work program participation is required:

(A) The person fails without good cause to cooperate in the work assessment process or participate in the program.

(B) The person refuses without good cause a bona fide referral for or offer of employment.

(C) The person terminates employment without good cause.

(D) The person is terminated from employment by voluntarily making oneself unacceptable without good cause.

(E) The person reduces earnings without good cause.

(2) The period of ineligibility shall be as follows:

(A) For the first penalty, three months and full cooperation with work program activities;

(B) for the second penalty, six months and full cooperation with work program activities;

(C) for the third penalty, one year and full cooperation with work program activities; and

(D) for the fourth and each subsequent penalty, 10 years.

If the person is an adult, the mandatory filing unit of which the person is a member shall also be ineligible.

(f) Good cause. Each individual who presents verification that the individual meets one or more of the following conditions shall be determined to have good cause for failing to participate in the work program:

(1) The individual is exempt from participation in the program.

(2) The individual was incapable of performing

the activity as determined by the individual's case manager.

(3) Performance of the activity was so dangerous or hazardous according to occupational safety and health administration (OSHA) standards as to make a refusal to perform the activity or termination of the activity a reasonable one.

(4) Child care or day care for an incapacitated individual living in the same home is necessary for an individual to participate or continue to participate in the program, and the care is not available.

(5) The total daily commuting time to and from home to the activity to which the individual is assigned exceeds two hours, not including the transporting of a child to and from a child care facility. If a longer commuting distance is generally accepted in the community, the roundtrip commuting time shall not exceed the generally accepted community standards.

(6) The failure occurred in the month in which the individual's pregnancy ended or the two following months.

(7) A single custodial parent has demonstrated the inability to obtain needed child care for a child under the age of six, because of one or more of the following reasons:

(A) Unavailability of appropriate child care within a reasonable distance from the individual's home or work site;

(B) unavailability or unsuitability of informal child care. "Informal child care" shall mean care that is legally exempt from regulation; or

(C) unavailability of appropriate and affordable formal child care arrangements.

(8) The individual was a victim of domestic violence, and compliance with program requirements would increase the risk of harm for the individual or any children in the individual's care.

(9) There was no bona fide offer of employment or training.

(10) The payment offered for employment was less than the federal minimum wage. (Authorized by and implementing K.S.A. 2018 Supp. 39-708c and K.S.A. 2018 Supp. 39-709; effective Oct. 1, 1989; amended Jan. 2, 1990; amended, T-30-3-29-90, April 1, 1990; revoked, T-30-7-2-90, July 2, 1990; amended, T-30-7-2-90, July 2, 1990; revoked, T-30-8-14-90, Oct. 1, 1990; amended Oct. 1, 1990; amended Jan. 7, 1991; amended, T-30-6-10-91, July 1, 1991; amended, T-30-8-9-91, Aug. 30, 1991; amended Oct. 28, 1991; amended Oct. 1, 1993; amended Aug. 1, 1995; amended July 1, 1996; amended March 1, 1997; amended July

1, 1998; amended April 1, 1999; amended Dec. 1, 1999; amended May 1, 2001; amended Jan. 1, 2007; amended May 3, 2019.)

30-4-64w. This regulation shall be revoked on and after March 1, 1997. (Authorized by and implementing K.S.A. 39-708c, 39-7,103, and K.S.A. 1994 Supp. 39-7,104 and 39-7,105; effective Dec. 30, 1994; amended Aug. 1, 1995; revoked March 1, 1997.)

30-4-65w. This regulation shall be revoked on and after March 1, 1997. (Authorized by and implementing K.S.A. 39-708c and K.S.A. 1994 Supp. 39-7,126; effective Aug. 1, 1995; revoked March 1, 1997.)

30-4-70. Eligibility factors specific to the TAF program. To be eligible for TAF, each applicant or recipient shall meet the applicable general eligibility requirements of K.A.R. 30-4-50 and the specific eligibility requirements set forth below.

(a)(1) Child in family. To be eligible for TAF, the applicant's or recipient's family group shall include at least one eligible child. If the only child in the family group is an SSI recipient, the family group may qualify for assistance.

(2) For purposes of this regulation, "child" means a child who meets either of these requirements:

(A) is under the age of 18, including an unborn child; or

(B) is age 18 and in secondary school or working towards the attainment of a GED.

(b) Living with a caretaker. For the family group to be eligible for TAF, the eligible child or children shall be residing with one or more of these individuals:

(1) Any blood relative who is within the fifth degree of kinship to the child, including any of the following relatives:

(A) Parents;

(B) siblings;

(C) nephews;

(D) nieces;

(E) aunts;

(F) uncles; and

(G) persons of preceding generations who may be denoted by prefixes of grand, great, great-great, or great-great-great;

(2) a stepfather, stepmother, stepbrother, or stepsister;

(3) a legally adoptive parent or parents or another relative or relatives of adoptive parents as noted in paragraphs (1) or (2) above;

(4) a guardian or conservator or a legal custodian when based on an approved social service plan; or

(5) a spouse of any of those persons named in the above groups or a former spouse of any of those persons if marriage is terminated by death or divorce.

(c) Temporary absence. Any person who is out of the home temporarily for a period of 90 days or less or for employment shall remain eligible.

(d) Assignments of support. Each caretaker who is applying for or receiving TAF on his or her own behalf or on behalf of any other family member shall assign to the secretary any accrued, present, or future rights to support from any other person that the caretaker may have on his or her own behalf, or on behalf of any other family member for whom the caretaker is applying for or receiving TAF.

(e) Persons in the family group whose needs shall be considered.

(1) The needs of each child who meets the criteria of subsection (a) of this regulation and the needs of the child's parent, stepparent, or both shall be included in the determination of assistance.

(2) The needs of an eligible child's caretaker, other than a parent or stepparent, shall be considered in the determination of assistance if requested. If the caretaker's needs are included, the caretaker's spouse and any children of the caretaker who meet the criteria of subsection (a) of this regulation shall also be considered.

(3) In determining eligibility, the needs of each of the following caretakers and children shall be excluded, while the resources of these caretakers and children shall be included, unless the resources are specifically exempt:

(A) Any SSI recipient;

(B) any person who is ineligible due to a sanction;

(C) any child whose needs are met through foster care payments;

(D) any alien who is ineligible because of the citizenship and alienage requirements or sponsorship provisions;

(E) unborn children;

(F) a teen parent, as defined in subsection (f) of this regulation; and

(G) any person denied assistance based on the provisions of K.A.R. 30-4-50(c) or (d).

(f) Teen parents under age 18. A parent under age 18 of a child at least 12 weeks of age shall not be eligible for assistance when both of these circumstances are met:

(1) The parent is unmarried.

(2) The parent has not obtained a high school diploma or its equivalent, or is not working toward attainment of a high school diploma or its equivalent.

(g) The effective date of this regulation shall be July 1, 1998. (Authorized by K.S.A. 1997 Supp. 39-708c; implementing K.S.A. 1997 Supp. 39-708c, K.S.A. 39-719b, K.S.A. 1997 Supp. 39-709; effective May 1, 1981; amended July 1, 1989; amended March 1, 1997; amended Oct. 1, 1997; amended July 1, 1998.)

30-4-70w. This rule and regulation shall be revoked on and after March 1, 1997. (Authorized by and implementing K.S.A. 39-708c, 39-719b, and L. 1994, Chapter 265, Section 7; effective Dec. 30, 1994; revoked March 1, 1997.)

30-4-71. This regulation shall be revoked on and after March 1, 1997. (Authorized by K.S.A. 1980 Supp. 39-708c; implementing K.S.A. 1980 Supp. 39-708c, 39-709, 39-719b; effective May 1, 1981; revoked March 1, 1997.)

30-4-71w. This regulation shall be revoked on and after March 1, 1997. (Authorized by and implementing K.S.A. 39-708c and 39-719b; effective Dec. 30, 1994; revoked March 1, 1997.)

30-4-72. This regulation shall be revoked on and after March 1, 1997. (Authorized by and implementing K.S.A. 1991 Supp. 39-708c; effective May 1, 1981; amended, E-82-11, June 17, 1981; amended, E-82-19, Oct. 21, 1981; amended May 1, 1982; amended May 1, 1983; amended, T-30-6-10-92, July 1, 1992; amended Oct. 1, 1992; revoked March 1, 1997.)

30-4-72w. This regulation shall be revoked on and after March 1, 1997. (Authorized by and implementing K.S.A. 39-708c and L. 1994, Chapter 265, Section 7; effective Dec. 30, 1994; revoked March 1, 1997.)

30-4-73. This regulation shall be revoked on and after March 1, 1997. (Authorized by and implementing K.S.A. 1991 Supp. 39-708c, as amended by L. 1992, Chapter 322, Sec. 5; effective May 1, 1981; amended, E-82-19, Oct. 29, 1981; amended May 1, 1982; amended, T-83-38, Nov. 23, 1982; amended May 1, 1983; amended July 1, 1989; amended Oct. 1, 1989; amended April 1, 1990; amended Oct. 1, 1990; amended Oct. 1, 1992; amended May 3, 1993; revoked March 1, 1997.)

30-4-74. This regulation shall be revoked on and after March 1, 1997. (Authorized by and implementing K.S.A. 39-708c; effective May 1, 1981; amended, E-82-19, Oct. 21, 1981; amended May 1, 1982; amended, T-85-26, Oct. 15, 1984; amended May 1, 1985; amended May 1, 1987; amended, T-88-59, Dec. 16, 1987; amended May 1, 1988; amended, T-30-7-1-88, July 1, 1988; amended Sept. 26, 1988; amended July 1, 1989; revoked March 1, 1997.)

30-4-74w. This regulation shall be revoked on and after March 1, 1997. (Authorized by and implementing K.S.A. 39-708c and L. 1994, Chapter 265, Section 7; effective Dec. 30, 1994; revoked March 1, 1997.)

30-4-75. This rule and regulation shall expire on July 1, 1989. (Authorized by and implementing K.S.A. 39-708c; effective May 1, 1981; amended, E-82-19, Oct. 21, 1981; amended May 1, 1982; amended, T-83-17, July 1, 1982; amended May 1, 1983; amended May 1, 1987; amended, T-88-14, July 1, 1987; amended, T-88-59, Dec. 16, 1987; amended May 1, 1988; revoked July 1, 1989.)

30-4-78. This regulation shall be revoked on and after March 1, 1997. (Authorized by and implementing K.S.A. 39-708c; effective May 1, 1983; amended May 1, 1985; amended May 1, 1986; amended May 1, 1987; amended May 1, 1988; revoked March 1, 1997.)

30-4-80. Eligibility factors specific to the FFP-FC program. Each child, as defined in K.A.R. 30-4-70, shall meet the eligibility requirements set forth below. In addition, if the child of an FFP-FC recipient and the FFP-FC recipient are living together in the same foster care living arrangement, the recipient's child shall be deemed to meet the eligibility requirements of the FFP-FC program. (a) General eligibility requirements. Each child shall meet the general eligibility requirements of K.A.R. 30-4-50.

(b) Removed from the home of a relative. The child shall have been removed from the home of a relative as a result of a judicial determination, or the child shall have lived with the relative within six months before the month in which the proceedings were initiated and shall have been placed in a foster home or child care facility as a result of this determination.

(c) Child in need. The child's eligibility shall be determined on a calendar-month basis. Total

budgetary requirements shall be compared with total applicable income. If there is a deficit, the child shall be determined to be in need if the child owns property with a value not in excess of allowable limits.

(d) Court order. A written order of commitment shall be issued giving the secretary care, custody, and control of the child.

(e) Case plan. The child shall have a case plan designed to achieve placement in the least restrictive setting available and in close proximity to the parents' home. The case plan shall be consistent with the best interest and special needs of the child.

(f) Administrative review. The child's status shall be reviewed periodically but not less than once every six months. The review shall be open to the participation of the parents of the child. The review shall be conducted by a panel of appropriate persons. The panel shall include at least one person who is not responsible for the case management of either the child or the parents under review. The administrative review shall determine the future status of the child, including whether the child should be returned to the parent, continued in foster care for a specified period, placed for adoption, or continued in foster care on a permanent or long-term basis.

(g) Living arrangement. The child shall be living in a foster family home or a private, nonprofit child care facility. The home or facility shall be approved by the agency for placement.

(h) This regulation shall take effect on and after March 1, 1997. (Authorized by and implementing K.S.A. 1995 Supp. 39-708c, as amended by L. 1996, Ch. 229, Sec 104; effective May 1, 1981; amended, E-82-11, June 17, 1981; amended May 1, 1982; amended, T-83-17, July 1, 1982; amended May 1, 1983; amended, T-88-10, May 1, 1987; amended May 1, 1988; amended, T-30-7-1-88, July 1, 1988; amended Sept. 26, 1988; amended March 1, 1997.)

30-4-85. (Authorized by K.S.A. 1982 Supp. 39-708c; implementing K.S.A. 1982 Supp. 39-708c, 39-709; effective May 1, 1981; amended, E-82-11, June 17, 1981; amended May 1, 1982; amended, T-83-9, April 29, 1982; revoked May 1, 1983.)

30-4-85a. This regulation shall be revoked on and after March 1, 1997. (Authorized by K.S.A. 1995 Supp. 39-708c; implementing K.S.A. 1995 Supp. 39-709; effective, T-84-9, March 29, 1983;

effective May 1, 1984; amended May 1, 1985; amended May 1, 1986; amended, T-87-5, May 1, 1986; amended May 1, 1987; amended July 1, 1989; amended Oct. 1, 1989; amended April 1, 1990; amended June 1, 1993; amended, T-30-9-16-93, Sept. 16, 1993; amended Nov. 8, 1993; amended Jan. 31, 1996; amended July 1, 1996; revoked March 1, 1997.)

30-4-90. (Authorized by K.S.A. 39-708c; implementing K.S.A. 39-708c and K.S.A. 2008 Supp. 39-709; effective May 1, 1981; amended, E-82-11, June 17, 1981; amended May 1, 1982; amended, T-84-8, April 1, 1983; amended May 1, 1983; amended, T-84-9, May 1, 1983; amended May 1, 1984; amended, T-85-34, Dec. 19, 1984; amended May 1, 1985; amended May 1, 1986; amended May 1, 1987; amended, T-88-14, July 1, 1987; amended, T-88-59, Dec. 16, 1987; amended May 1, 1988; amended Sept. 26, 1988; amended July 1, 1989; amended Oct. 1, 1989; amended, T-30-6-10-91, July 1, 1991; amended Oct. 28, 1991; amended, T-30-6-10-92, July 1, 1992; amended Oct. 1, 1992; amended Dec. 31, 1992; amended, T-30-2-15-93, Feb. 15, 1993; amended June 1, 1993; amended July 1, 1994; amended Jan. 1, 1997; amended March 1, 1997; amended Oct. 1, 1997; amended July 1, 2002; amended, T-30-5-27-04, July 1, 2004; amended Aug. 6, 2004; amended July 1, 2006; amended July 1, 2009; revoked May 3, 2019.)

30-4-90w. This regulation shall be revoked on and after March 1, 1997. (Authorized by and implementing K.S.A. 1995 Supp. 39-708c, as amended by L. 1996, Ch. 229, Sec. 104; effective Dec. 30, 1994; amended Jan. 1, 1997; revoked March 1, 1997.)

30-4-91. (Authorized by and implementing K.S.A. 39-708c; effective, T-84-8, April 1, 1983; effective May 1, 1984; amended May 1, 1985; amended, T-87-15, July 1, 1986; amended, T-87-44, Jan. 1, 1987; amended May 1, 1987; amended, T-88-10, May 1, 1987; revoked, T-88-14, July 1, 1987; revoked May 1, 1988.)

30-4-95. Eligibility factors specific to the non-FFP-FC program. Each child shall meet the eligibility requirements set forth below to be eligible for the non-FFP-FC program. (a) A written order of commitment without guardianship shall have been issued giving the secretary care, custody, and control of the child.

(b) The child shall meet one of the following conditions:

- (1) Is under the age of 18;
- (2) Is under the age of 21 and a full-time student in a secondary school or equivalent level of vocational or technical training; or
- (3) Is under the age of 21 and participating in an approved independent living plan.

(c) The child shall be ineligible for FFP-FC.

(d) The child shall be in need. The child's eligibility shall be determined on a calendar-month basis. Total budgetary requirements shall be compared with total applicable income. If there is a deficit, the child shall be determined to be in need if the child owns property with a value not in excess of allowable limits.

(e) This regulation shall take effect on and after March 1, 1997. (Authorized by K.S.A. 1995 Supp. 39-708c, as amended by L. 1996, Ch. 229, Sec. 104; implementing K.S.A. 1995 Supp. 39-708c, as amended by L. 1996, Ch. 229, Sec. 104, and K.S.A. 1995 Supp. 39-709; effective May 1, 1981; amended, E-82-11, June 17, 1981; amended, E-82-19, Oct. 21, 1981; amended May 1, 1982; amended Sept. 26, 1988; amended March 1, 1997.)

30-4-96. (Authorized by K.S.A. 1996 Supp. 39-708c; implementing K.S.A. 1996 Supp. 39-708c and K.S.A. 1996 Supp. 39-709 and K.S.A. 39-713d; effective May 1, 1984; amended May 1, 1985; amended May 1, 1986; amended April 1, 1990; amended Sept. 30, 1994; amended July 1, 1996; amended March 1, 1997; amended Oct. 1, 1997; revoked March 7, 2003.)

30-4-97. (Authorized by K.S.A. 1982 Supp. 39-708c; implementing K.S.A. 1982 Supp. 39-708c, 39-709, K.S.A. 39-719b; effective May 1, 1981; amended, T-83-17, July 1, 1982; revoked, T-84-8, April 1, 1983; amended May 1, 1983; revoked, T-84-9, May 1, 1983; revoked May 1, 1984.)

30-4-98. Funeral assistance. Assistance may be provided for funeral expenses upon the death of a recipient at the discretion of the secretary.

(a) Funeral expenses. Funeral expenses may include the cost of any of the following, based on available resources and the requirements in this regulation:

- (1) The preparation of the body;
- (2) a minimal casket or urn;
- (3) the transportation of the body within Kansas; or
- (4) a cremation.

(b) Application. Each request for funeral assistance shall be made within six months after either the date of death or the date on which the body is released by a county coroner, whichever is later.

(c) Treatment of resources.

(1) If a decedent, at the time of death, was not living with a child of the decedent who was under the age of 21, the spouse of the decedent, or an adult disabled child of the decedent, the total estate of the decedent shall be considered available. This provision shall not be applicable in situations in which there were separate living arrangements because of the need for institutional care. The estate shall not be allowed any exemptions.

(2) Eligibility for assistance shall be based on the assets owned by the family group at the time of the decedent's death, under either of the following circumstances:

(A) At the time of death, the decedent was living with a child of the decedent who was under the age of 21, the spouse of the decedent, or an adult disabled child of the decedent, or the decedent was a child under the age of 21 living with the parent of the decedent.

(B) There were living arrangements separate from one of the persons specified in paragraph (c)(2)(A) because of the need for institutional care.

(3) The total amount of proceeds on any life insurance policy on the decedent shall be considered available if the policy was owned by the decedent, the spouse of the decedent, or, if the decedent was a child under the age of 21, the parent of the decedent.

(4) Death benefits from SSA, VA, railroad retirement, KPERs, and any other burial funds shall be considered available.

(d) Resource limit. If the value of the resources considered available in accordance with subsection (c) does not exceed \$2,000, funeral assistance may be provided.

If the resource value exceeds \$2,000, the decedent shall be ineligible for funeral assistance. (Authorized by and implementing K.S.A. 2018 Supp. 39-708c and K.S.A. 39-713d; effective Aug. 11, 2006; amended Jan. 1, 2008; amended May 3, 2019.)

30-4-100. Payment standards for the TANF and foster care programs. (a) The basic and shelter standards in K.A.R. 30-4-101 and 30-4-102, and the designated special requirements in K.A.R. 30-4-120, shall be used in determining the total benefit amount for the TANF and foster care programs. An applicant or recipient shall not be

eligible to have a standard included in the computation of the applicant's or recipient's benefit amount if the department or another state's assistance program has issued the applicant or recipient a payment for the same maintenance items in the same calendar month.

(b) The benefit amount for the TANF and foster care program shall be based upon the total number of persons in each assistance plan.

(1) The basic standard and 100% of the shelter standard shall be used under each of the following circumstances:

(A) All persons in the home are in the same assistance plan.

(B) The only person in the home not in the plan is an SSI recipient to whom the one-third SSI reduction is applied because the person lives in the household and receives support and maintenance in kind.

(C) There is a bona fide commercial landlord-tenant relationship between the family group and the other persons in the home.

(D) All persons in the plan are in a commercial board and room or commercial room-only living arrangement or are residing in nonmedical living arrangements that are publicly funded or are funded by not-for-profit agencies or organizations, including temporary homeless shelters, alcohol or drug abuse treatment facilities, and shelters for battered persons.

(2) The basic standard, plus a percentage reduction of the shelter standard, shall be used when there are one or more persons residing in the home who are not included in the assistance plan, except as specified in paragraphs (b)(1) (B), (C), and (D). The percentage reduction shall be as follows:

(A) 60% reduction for one person in the plan;

(B) 50% reduction for two persons in the plan;

(C) 40% reduction for three persons in the plan;

(D) 35% reduction for four persons in the plan;

(E) 30% reduction for five persons in the plan; and

(F) 20% reduction for six or more persons in the plan. (Authorized by K.S.A. 2018 Supp. 39-708c; implementing K.S.A. 2018 Supp. 39-708c, K.S.A. 2018 Supp. 39-709; effective May 1, 1981; amended, T-84-8, April 1, 1983; amended May 1, 1983; amended, T-84-9, May 1, 1983; amended May 1, 1984; amended, T-86-19, July 1, 1985; amended May 1, 1986; amended, T-88-14, July 1, 1987; amended, T-88-59, Dec. 16, 1987; amended May 1, 1988; amended July 1, 1989; amended March 1, 1997; amended May 3, 2019.)

30-4-100w. This regulation shall be revoked on and after March 1, 1997. (Authorized by and implementing K.S.A. 39-708c and L. 1994, Chapter 359, Section 1; effective Dec. 30, 1994; revoked March 1, 1997.)

30-4-101. Standards for persons in own home, other family home, specialized living, commercial board and room, or commercial room-only living arrangements. A monetary standard shall be deemed to address the costs of day-to-day expenses and certain special expenditures. (a) Basic standard. The basic standards shall be those set forth below. The basic standards include \$18.00 per person as an energy supplement.

PERSONS IN PLAN

1	2	3	4
\$132.00	\$217.00	\$294.00	\$362.00

For each additional person, add \$61.00.

(b) Shelter standard. A standard has been established for shelter based on location in the state. The shelter standards shall be those set forth below for each county.

Standard.	Group I \$92.00	
Allen	Finney	Mitchell
Anderson	Ford	Montgomery
Atchison	Geary	Morris
Barber	Gove	Nemaha
Barton	Graham	Neosho
Bourbon	Grant	Ness
Brown	Greeley	Norton
Chase	Greenwood	Osborne
Chautauqua	Hamilton	Ottawa
Cherokee	Harper	Phillips
Cheyenne	Haskell	Pottawatomie
Clark	Hodgeman	Pratt
Clay	Jackson	Rawlins
Cloud	Jewell	Republic
Coffey	Kearny	Rooks
Comanche	Kingman	Rush
Cowley	Labette	Russell
Crawford	Lane	Saline
Decatur	Lincoln	Scott
Dickinson	Linn	Sheridan
Doniphan	Logan	Smith
Edwards	Lyon	Stafford
Elk	Marion	Stanton
Ellis	Marshall	Stevens
Ellsworth	Meade	Sumner

Standard.	Group I \$92.00	
Thomas	Wallace	Wilson
Trego	Washington	Woodson
Wabaunsee	Wichita	

Standard.	Group II \$97.00	Group III \$109.00	Group IV \$135.00
Franklin	Butler	Douglas	
Gray	Jefferson	Harvey	
Kiowa	Leavenworth	Johnson	
Morton	McPherson		
Pawnee	Miami		
Seward	Osage		
Sherman	Reno		
	Rice		
	Riley		
	Sedgwick		
	Shawnee		
	Wyandotte		

(c) This regulation shall take effect on and after March 1, 1997. (Authorized by K.S.A. 1995 Supp. 39-708c, as amended by L. 1996, Chapter 229, Section 104; implementing K.S.A. 1995 Supp. 39-709; effective May 1, 1981; amended, E-82-11, June 17, 1981; amended, E-82-19, Oct. 21, 1981; amended May 1, 1982; amended, T-83-17, July 1, 1982; amended May 1, 1983; amended, T-85-19, July 1, 1984; amended May 1, 1985; amended, T-86-19, July 1, 1985; amended, T-86-42, Jan. 1, 1986; amended May 1, 1986; amended, T-87-15, July 1, 1986; amended, T-88-2, Feb. 1, 1987; amended May 1, 1987; amended, T-88-10, May 1, 1987; amended, T-88-14, July 1, 1987; amended May 1, 1988; amended, T-30-7-1-88, July 1, 1988; amended Sept. 26, 1988; amended July 1, 1989; amended, T-30-12-28-89, Jan. 1, 1990; amended, T-30-2-28-90, Jan. 2, 1990; amended, T-30-5-1-90, May 1, 1990; amended, T-30-8-28-90, Aug. 30, 1990; amended, T-30-12-28-90, Dec. 28, 1990; amended April 1, 1991; amended, T-30-6-10-91, July 1, 1991; amended Oct. 28, 1991; amended, T-30-6-10-92, July 1, 1992; amended Oct. 1, 1992; amended Oct. 13, 1995; amended March 1, 1997.)

30-4-102. Standards for children in foster care. The standards below shall be used for children in foster care. (a) The cost of care for any child placed in a care facility shall be an amount established by the secretary.

(b) The foster care standards shall also be used to meet the maintenance needs of a child of a

foster care recipient if the recipient and the child are living together in the same foster care living arrangement.

(c) This regulation shall take effect on and after March 1, 1997. (Authorized by K.S.A. 1995 Supp. 39-708c, as amended by L. 1996, Ch. 229, Sec. 104; implementing K.S.A. 39-708c, amended by L. 1996, Ch. 229, Sec. 104, K.S.A. 1995 Supp. 39-709; effective May 1, 1981; amended, E-82-11, June 17, 1981; amended May 1, 1982; amended, T-83-17, July 1, 1982; amended, T-84-8, April 1, 1983; amended, T-84-9, May 1, 1983; amended, T-84-11, July 1, 1983; amended May 1, 1984; amended, T-85-19, July 1, 1984; amended May 1, 1985; amended, T-86-19, July 1, 1985; amended, T-86-42, Dec. 18, 1985; amended May 1, 1986; amended, T-87-44, Jan. 1, 1987; amended, T-88-10, May 1, 1987; amended, T-88-14, July 1, 1987; amended May 1, 1988; amended, T-30-7-1-88, July 1, 1988; amended Sept. 26, 1988; amended July 1, 1989; amended, T-30-2-28-90, Jan. 2, 1990; amended May 1, 1990; amended March 1, 1997.)

30-4-105. This regulation shall be revoked on and after March 1, 1997. (Authorized by K.S.A. 1982 Supp. 39-708c; implementing K.S.A. 1982 Supp. 39-708c, 39-709; effective May 1, 1981; amended May 1, 1983; revoked March 1, 1997.)

30-4-105w. This rule and regulation shall be revoked on and after March 1, 1997. (Authorized by and implementing K.S.A. 39-708c and L. 1994, Chapter 265, Sections 5, 8, and 13; effective Dec. 30, 1994; revoked March 1, 1997.)

30-4-106. General rules for consideration of resources, including real property, personal property, and income. (a) For purposes of determining eligibility for assistance, ownership of property shall be determined by legal title. In the absence of a legal title, ownership shall be determined by possession.

(b) Resources, to be real, shall be of a nature that the value can be defined and measured. The value of resources shall be established by the objective measurements set forth in paragraphs (1) and (2) below.

(1) Real property. The value of real property shall be initially determined by the latest uniform statewide appraisal value of the property, which shall be adjusted to reflect current market value. If the property has not been appraised or if the market value as determined above is not satisfac-

tory to the applicant or recipient or the agency, an estimate or appraisal of its value shall be obtained from a disinterested real estate broker. The cost of obtaining an estimate or appraisal shall be borne by the agency.

(2) Personal property. The market value of personal property shall be initially determined by a reputable trade publication. If a publication is not available, or if there is a difference of opinion regarding the value of the property between the applicant or recipient and the agency, an estimate from a reputable dealer shall be used. The cost of obtaining an estimate or appraisal shall be borne by the agency.

(c) Resources shall be considered available both when actually available and when the applicant or recipient has the legal ability to make them available. A resource shall be considered unavailable when there is a legal impediment that precludes the disposal of the resource. The applicant or recipient shall pursue reasonable steps to overcome the legal impediment unless it is determined that the cost of pursuing legal action would exceed the resource value of the property or that it is unlikely the applicant or recipient would succeed in the legal action.

(d) The resource value of property shall be that of the applicant's or recipient's equity in the property. Unless otherwise established, the proportionate share of jointly owned real property and the full value of jointly owned personal property shall be considered available to the applicant or recipient. Resources held jointly with a non-legally responsible person may be excluded from consideration if the applicant or recipient can demonstrate that the applicant or recipient has no ownership interest in the resource, that the applicant or recipient has not contributed to the resource, and that any access to the resource by the applicant or recipient is limited to acting as an agent for the other person.

(e) Except as provided in subsection (h) and (l), nonexempt resources of all persons in the assistance plan and the nonexempt resources of persons who have been excluded from the assistance plan pursuant to K.A.R. 30-4-70(e)(3) and 30-4-90(a)(3) shall be considered.

(f) Except as provided in subsection (h), the combined resources of husband and wife, if they are living together, shall be considered in determining the eligibility of either or both for assistance, unless otherwise prohibited by law. A husband and wife shall be considered to be living

together if they are regularly residing in the same household. Temporary absences of one of the couple for education or training, working, securing medical treatment, or visiting shall not be considered to interrupt the couple's living together.

(g) Despite subsections (e) and (f), the resources of an SSI beneficiary shall not be considered in the determination of eligibility for assistance of any other person, except for funeral assistance.

(h) The resources of an alien sponsor and the sponsor's spouse shall be considered in determining eligibility for the alien.

(i) A conversion of real or personal property from one form of a resource to another shall not be considered as income for the applicant or recipient except for the proceeds from a contract for the sale of property.

(j) Income shall not be considered both as income and as property in the same month.

(k) Despite subsection (e) above, the resources of a child whose needs are met through foster care payments shall not be considered.

(l) This regulation shall take effect on and after October 1, 1997. (Authorized by K.S.A. 1996 Supp. 39-708c; implementing K.S.A. 1996 Supp. 39-708c, 39-709; effective May 1, 1981; amended, E-82-19, Oct. 21, 1981; amended May 1, 1982; amended May 1, 1983; amended May 1, 1984; amended, T-85-26, Oct. 15, 1984; amended May 1, 1985; amended May 1, 1986; amended, T-87-20, Sept. 1, 1986; amended May 1, 1987; amended, T-88-14, July 1, 1987; amended, T-88-59, Jan. 1, 1988; amended May 1, 1988; amended, T-89-13, April 26, 1988; amended, T-30-7-1-88, July 1, 1988; amended Sept. 26, 1988; amended March 1, 1997; amended Oct. 1, 1997.)

30-4-106w. This regulation shall be revoked on and after March 1, 1997. (Authorized by and implementing K.S.A. 39-708c; effective Dec. 30, 1994; revoked March 1, 1997.)

30-4-107. Property exemption. Any assistance family may own otherwise nonexempt real or personal property with an aggregate resource value that shall not exceed the amounts prescribed by the secretary of the United States department of health and human services pursuant to 7 U.S.C. 2014(c). Ownership of property with a resource value in excess of this amount shall render the assistance family group ineligible for assistance. However, if there is ineligibility due to excess real property, assistance shall be provided for a period

of up to nine months if the applicant or recipient is making a bona fide and documented effort to dispose of the property. (Authorized by K.S.A. 2018 Supp. 39-708c; implementing K.S.A. 2018 Supp. 39-708c, 39-709; effective May 1, 1981; amended May 1, 1983; amended, T-84-25, Sept. 19, 1983; amended May 1, 1984; amended, T-85-33, Dec. 19, 1984; amended May 1, 1985; amended Oct. 1, 1997; amended May 3, 2019.)

30-4-108. Real property. (a) Definitions.

(1) "Home" means the house or shelter in which the applicant or recipient is living or from which the applicant or recipient is temporarily absent, as well as the tract of land and contiguous tracts of land upon which the house and other improvements essential to the use or enjoyment of the home are located. Tracts of land shall be considered to be contiguous if lying side by side, except for streets, alleys, or other easements. The home shall not include pieces of property that touch only at the corners.

(2) "Other real property" means any of the following types of property:

(A) real property other than a home;

(B) a home from which an applicant or recipient has been temporarily absent for at least 12 months; or

(C) a home to which an applicant or recipient will be unable to return.

(b) Treatment of real property. The equity value of non-exempt real property shall be considered as a resource.

(c) Exempted real property. The equity value of the following classifications of real property shall be exempt:

(1) The home;

(2) other real property that is essential for employment or self-employment; and

(3) other real property that is producing income consistent with its fair market value.

(d) This regulation shall take effect on and after March 1, 1997. (Authorized by K.S.A. 1995 Supp. 39-708c, as amended by L. 1996, Ch. 229, Sec. 104; implementing K.S.A. 1995 Supp. 39-708c, as amended by L. 1996, Ch. 229, Sec. 104, K.S.A. 1995 Supp. 39-709; effective May 1, 1981; amended, E-82-19, Oct. 29, 1981; amended May 1, 1982; amended May 1, 1983; amended May 1, 1984; amended May 1, 1986; amended May 1, 1988; amended Sept. 26, 1988; amended March 1, 1997.)

30-4-109. Personal property. (a) Definitions for TANF and food assistance programs.

(1) "Cash assets" shall mean money, investments, and cash surrender or loan values of life insurance policies, trust funds, and similar items on which a determinate amount of money can be realized.

(2) "Personal property" shall mean personal effects, household equipment and furnishings, home produce, livestock, equipment, vehicles, inventory, contracts from the sale of property, and similar items on which a determinate amount of money can be realized. This term shall not include real property.

(b) Treatment of personal property. Personal property, unless exempted, shall be considered a resource.

(c) Exempted personal property. The resource value of the following classifications of personal property shall be exempt:

(1) Privately owned personal effects, including clothing and jewelry worn by or carried on an individual;

(2) household equipment and furnishings in use or only temporarily not in use;

(3) tools in use and necessary for the maintenance of house or garden;

(4) income-producing property, other than cash assets, that is essential for employment or self-employment or that is producing income consistent with its fair market value. Income-producing property may include tools, equipment, machinery and livestock;

(5) the stock and inventory of any self-employed person that are reasonable and necessary in the production of goods or services;

(6) items for home consumption, which shall consist of the following:

(A) Produce from a small garden consumed from day to day and any excess that can be canned or stored; and

(B) a small flock of fowl or livestock that is used to meet the food requirements of the family;

(7) one motor vehicle, regardless of the value of the vehicle. Each additional motor vehicle used by the applicant, the applicant's spouse, or the applicant's cohabiting partner used for the primary purpose of earning income shall also be exempt. Nonexempt vehicles shall be considered in the resource limit. Nonexempt vehicles shall include any equity in any boat, personal watercraft, recreational vehicle, recreational off-highway vehicle or all-terrain vehicle, as defined by K.S.A. 8-126 and amendments thereto;

(8) cash assets that are traceable to income exempted as income and as a cash asset;

(9) proceeds from the sale of a home if the proceeds are conserved for the purchase of a new home and the funds so conserved are expended or committed to be expended in the month received or in the following month;

(10) burial plots and funeral agreements that meet conditions established by the secretary of the United States department of health and human services and approved by the secretary of the department for children and families;

(11) any contract for the sale of property, if the proceeds from the contract are considered as income;

(12) escrow accounts established for families participating in the family self-sufficiency program through the department of housing and urban development. Interest earned on the accounts shall also be exempted as income;

(13) the cash value of any life insurance policy; and

(14) learning quest and other 529 educational savings plans. (Authorized by K.S.A. 2018 Supp. 39-708c; implementing K.S.A. 2018 Supp. 39-708c, 39-709; effective May 1, 1981; amended, E-82-19, Oct. 21, 1981; amended May 1, 1982; amended, T-83-17, July 1, 1982; amended May 1, 1983; amended May 1, 1984; amended, T-85-26, Oct. 15, 1984; amended May 1, 1985; amended May 1, 1986; amended May 1, 1988; amended Oct. 1, 1992; amended March 1, 1997; amended Oct. 1, 1997; amended May 3, 2019.)

30-4-109w. This regulation shall be revoked on and after March 1, 1997. (Authorized by and implementing K.S.A. 39-708c and L. 1994, Chapter 265, Section 8; effective Dec. 30, 1994; revoked March 1, 1997.)

30-4-110. Income. (a) Definitions.

(1) "Earned income" means income, in cash or in kind, that an applicant or recipient currently earns, through the receipt of wages, salary, or profit, from activities in which the individual engages as an employer or as an employee with responsibilities that necessitate continuing activity on the individual's part.

(2) "Unearned income" means all income not earned.

(3) "Lump sum" means a nonrecurring payment.

(b)(1) The following types of income shall be excluded from total income:

(A) Income-producing costs of the self-employed listed in K.A.R. 30-4-111(d);

(B) the income of a child received from a youth program funded by the job training partnership act of 1982, as specified in K.A.R. 30-4-113(i); and

(C) the earned income of a child as defined in K.A.R. 30-4-70(a)(2) who is a student in elementary or secondary school or who is working towards attainment of a G.E.D.

(2) For purposes of this regulation, total income shall be regarded as the sum of all earned income, or adjusted gross income of the self-employed, with no exemptions, all nonexempt, unearned income and nonexempt, current support payments received and reported by the child support enforcement office.

(c) Treatment of income.

(1) A prospective or income-average budgetary method shall be used to determine eligibility and the amount of the assistance payment for persons with income.

(2) Prospective budgeting shall be used to determine initial eligibility and the amount of the assistance payment in each calendar month. The budget estimate shall reflect the income received and the income expected to be received.

(3) Intermittent income or income from self-employment shall be considered and averaged. Intermittent income shall be divided by the proper number of months to establish the monthly amount. For self-employed persons with monthly income, the income average shall be based on the income earned during two or more representative months.

(d) This regulation shall be effective on and after October 1, 2003. (Authorized by K.S.A. 39-708c; implementing K.S.A. 39-708c and 39-709; effective May 1, 1981; amended, E-82-19, Oct. 21, 1981; amended May 1, 1982; amended, T-83-17, July 1, 1982; amended May 1, 1983; amended, T-84-25, Sept. 19, 1983; amended May 1, 1984; amended, T-85-26, Oct. 15, 1984; amended May 1, 1985; amended, T-88-14, July 1, 1987; amended, T-88-59, Dec. 16, 1987; amended May 1, 1988; amended Sept. 26, 1988; amended July 1, 1989; amended Oct. 1, 1989; amended March 1, 1997; amended July 1, 1997; amended July 1, 1998; amended Oct. 1, 2003.)

30-4-110w. This regulation shall be revoked on and after March 1, 1997. (Authorized by and implementing K.S.A. 39-708c; effective Dec. 30, 1994; revoked March 1, 1997.)

30-4-111. Income. (a) "Income" shall mean the amount of earned and unearned income that is subtracted from the benefit standard in determining the benefit amount for TANF.

(b) Earned income for persons included in the assistance plan shall equal gross earned income or the adjusted gross earned income from self-employment, less the following items:

(1) Ninety dollars for each employed person;

(2) the earned income disregard of 60 percent of the remaining income, for the following persons in a TANF or foster care assistance plan:

(A) Each applicant who had received assistance in one of the four preceding months; and

(B) each recipient; and

(3) reasonable expenses for child care or expenses for the care of an incapacitated person. The dependent shall be included in the family group before the deduction is allowed.

(c) For self-employed persons, adjusted gross earned income shall equal gross earned income less costs of the production of the income. Income-producing costs shall include only those expenses directly related to the actual production of income. A standard deduction of 25 percent of gross earned income shall be allowed for these costs. If the person wishes to claim actual costs incurred, the following shall be used by the department in calculating the cost of the production of the income:

(1) The public assistance program shall not be used to pay debts, set up an individual in business, subsidize a nonprofit activity, or treat income on the basis of internal revenue service (IRS) policies.

(2) If losses are suffered from self-employment, the losses shall not be deducted from other income, nor may a net loss of a business be considered an income-producing cost.

(3) If a business is being conducted from a location other than the applicant's or recipient's home, the expenses for business space and utilities shall be considered income-producing costs.

(4) If a business is being conducted from a person's own home, shelter and utility costs shall not be considered income-producing costs unless they are clearly distinguishable from the operation of the home.

(5) If payments increase the equity in equipment, vehicles, or other property, the payments shall not be considered income-producing costs.

(6) If equipment, vehicles, or other property is being purchased on an installment plan, the ac-

tual interest paid may be considered an income-producing cost.

(7) Depreciation on equipment, vehicles, or other property shall not be considered an income-producing cost.

(8) Insurance payments on equipment, vehicles, or other property shall be allowed if the payments directly relate to the business.

(9) Expenses for items that are reasonable and required for the business shall be considered income-producing costs.

(10) Wages and other mandated costs related to wages paid by the applicant or recipient shall be considered income-producing costs.

(d) The income for a person in the home whose income is required to be considered and who is not included in the assistance plan shall equal all nonexempt, unearned income and gross earnings, or adjusted gross earnings of the self-employed, without the application of any income disregards, unless otherwise prohibited by federal law or regulation or state or local law or regulation.

(e) The income of an alien's sponsor and the sponsor's spouse shall be considered in determining eligibility and the amount of the assistance payment for the alien.

(f) All net unearned income of persons included in the assistance plan shall be income unless exempted. Net unearned income shall equal gross unearned income less the costs of the production of the income. Income-producing costs shall include only those expenses directly related to the actual production of income. The requirements in subsection (c) regarding the calculation of income-producing costs shall apply.

(g) Each household that is ineligible for TANF due to excess income, which shall include earnings, shall be eligible for the work incentive payment for five months from the date of ineligibility for TANF.

(h) Any household that has never received TANF or a diversion payment may be eligible for the diversion payment if all of the following conditions are met:

(1) No adults in the family are receiving SSI.

(2) At least one adult in the family has employment or a valid offer of employment.

(3) The family's TANF benefit for a one-year period is not less than the diversion payment divided by 12 months.

(4) The family has a documented crisis or emergency that jeopardizes existing employment, including established self-employment, or prevents

the family from accepting a valid offer of employment. (Authorized by K.S.A. 2018 Supp. 39-708c; implementing K.S.A. 2018 Supp. 39-708c and 39-709; effective May 1, 1981; amended, E-82-19, Oct. 21, 1981; amended May 1, 1982; amended, T-83-17, July 1, 1982; amended May 1, 1983; amended, T-85-26, Oct. 15, 1984; amended May 1, 1985; amended May 1, 1986; amended May 1, 1987; amended, T-88-10, May 1, 1987; amended, T-88-59, Dec. 16, 1987; amended May 1, 1988; amended Oct. 1, 1989; amended Jan. 2, 1990; amended May 1, 1991; amended, T-30-11-16-93, Dec. 1, 1993; amended Jan. 3, 1994; amended March 1, 1997; amended July 1, 1997; amended July 1, 1998; amended Jan. 1, 1999; amended May 3, 2019.)

30-4-111w. This regulation shall be revoked on and after March 1, 1997. (Authorized by and implementing K.S.A. 39-708c and L. 1994, Chapter 265, Section 13; effective Dec. 30, 1994; revoked March 1, 1997.)

30-4-112. Income exempt from consideration as income and as a cash asset. The following income shall be exempt, except as provided in K.A.R. 30-4-110(b): (a) Grants and scholarships provided for educational purposes;

(b) the value of benefits provided under the food stamp program;

(c) the value of the U.S. department of agriculture donated foods;

(d) the value of supplemental food assistance received under the child nutrition act of 1966, as amended, and the special food service program for children under the national school lunch act, as amended;

(e) benefits received under title V, community services employment program, or title VII, nutrition program for the elderly, of the older Americans act of 1965, as amended;

(f) Indian funds distributed or held in trust, including interest and investment income accrued on such funds while held in trust and initial purchases made with such funds;

(g) distributions to natives under the Alaska native claims settlement act;

(h) payments provided to individual volunteers serving as foster grandparents, senior health aides, and senior companions, and to persons serving in the service corps of retired executives and active corps of executives under titles II and III of the domestic service act of 1973;

(i) payments to individual volunteers under title I, sec. 404(g) of Public Law 93-113 when the director of ACTION determines that the value of such payments, adjusted to reflect the number of hours such volunteers are serving, is less than the federal minimum wage;

(j) payments received under the uniform relocation assistance and real property acquisition policies act of 1970;

(k) death benefits from SSA, VA, railroad retirement, or other burial insurance policy when the benefit is used toward the cost of burial;

(l) a one-time payment or a portion of a one-time payment from a cash settlement for repair or replacement of property or for legal services, or medical costs or other required obligations to a third party, if the payment is expended or committed to be expended for the intended purpose within six months of its receipt;

(m) money that VA determines may not be used for subsistence needs held in trust by VA for a child;

(n) retroactive corrective assistance payments in the month received or in the following month;

(o) income directly provided by vocational rehabilitation;

(p) benefits from special government programs at the discretion of the secretary, including energy assistance programs.

(q) cash donations that are based on need, do not exceed \$300 in any calendar quarter, and are received from one or more private, nonprofit, charitable organizations;

(r) reimbursements for out-of-pocket expenses in the month received and the following month;

(s) proceeds from any bona fide loan requiring repayment;

(t) payments granted to certain U.S. citizens of Japanese ancestry and resident Japanese aliens under Title I of Public Law 100-383;

(u) payments granted to certain Aleuts under Title II of Public Law 100-383;

(v) agent orange settlement payments;

(w) foster care and adoption support payments;

(x) the amount of any earned income tax credit received. Such credit shall not be regarded as a cash asset in the month of receipt and the following month;

(y) federal major disaster and emergency assistance and comparable disaster assistance provided by state or local government or by disaster assistance organizations in conjunction with a presidentially declared disaster;

(z) payments granted to the Aroostook Band of Micmac Indians under Public Law 102-171;

(aa) payments from the radiation exposure compensation trust fund made by the department of justice; and

(bb) special federal allowances paid monthly to children of Vietnam veterans who are born with spina bifida.

This regulation shall take effect on and after October 1, 1997. (Authorized by K.S.A. 1996 Supp. 39-708c; implementing K.S.A. 1996 Supp. 39-708c and 39-709; effective May 1, 1981; amended, E-82-19, Oct. 21, 1981; amended May 1, 1982; amended May 1, 1983; amended May 1, 1984; amended May 1, 1986; amended May 1, 1987; amended, T-88-14, July 1, 1987; amended May 1, 1988; amended July 1, 1989; amended Oct. 1, 1989; amended Jan. 2, 1990; amended, T-30-7-2-90, July 2, 1990; revoked, T-30-8-14-90, Oct. 1, 1990; amended Oct. 1, 1990; amended May 1, 1991; amended July 1, 1991; amended Jan. 2, 1992; amended Oct. 1, 1992; amended Oct. 1, 1993; amended Dec. 30, 1994; amended Oct. 1, 1997.)

30-4-112w. This regulation shall be revoked on and after March 1, 1997. (Authorized by and implementing K.S.A. 39-708c and L. 1994, Chapter 265, Section 5; effective Dec. 30, 1994; revoked March 1, 1997.)

30-4-113. Exempt income. The following types of income shall be exempt in the determination of the budgetary deficit:

(a) For TANF, earned income of a child who is under the age of 19 years if the child is a student in elementary or secondary school or is working towards attainment of a GED;

(b) for food assistance, earned income of a child who is under the age of 18 years if the child is a student in elementary or secondary school or is working towards attainment of a GED;

(c) lump sum income;

(d) irregular, occasional, or unpredictable monetary gifts that do not exceed \$50.00 per month per family group;

(e) income-in-kind;

(f) shelter cost participation payments. In shared living arrangements in which two families contribute toward the shelter obligations, any cash paid toward the shared shelter obligation by one family to the second family in the shared arrangement shall not be considered as income to the second family.

This exemption shall not be applicable in a bona fide, commercial landlord-tenant arrangement;

(g) tax refunds and rebates, except for earned income tax credits in accordance with K.A.R. 30-4-112;

(h) incentive payments received by renal dialysis patients;

(i) home energy assistance furnished on the basis of need by a federally regulated or state-regulated entity whose revenues are primarily derived on a rate-of-return basis, by a private, non-profit organization, by a supplier of home heating oil or gas, or by a municipal utility company that provides home energy;

(j) income received from the job training partnership act of 1982. However, earnings received by individuals who are participating in on-the-job training programs shall be countable unless the individual is a child;

(k) housing assistance from federal housing programs;

(l) assistance payments in the month received;

(m) support payments received following the effective date of the assignment of support rights to the department. However, a support refund disbursed by the department to the recipient or reported current support that, if prospectively treated as nonexempt income, would result in ineligibility, shall not be exempt income;

(n) up to \$2,000.00 per year of income received by an individual Indian that is derived from leases or other uses of an individually owned trust or restricted lands;

(o) veterans administration (VA) payments resulting from unusual medical expenses, shall mean expenditures exceeding five percent of the veteran's reported annual income;

(p) interest income that does not exceed \$50.00 per month per family group; and

(q) the amount of any child support pass-through payment. (Authorized by K.S.A. 2018 Supp. 39-708c; implementing K.S.A. 2018 Supp. 39-708c and 39-709; effective May 1, 1981; amended, E-82-19, Oct. 21, 1981; amended May 1, 1982; amended May 1, 1983; amended, T-84-11, July 1, 1983; amended, T-84-25, Sept. 19, 1983; amended May 1, 1984; amended, T-85-26, Oct. 15, 1984; amended May 1, 1985; amended, T-87-15, July 1, 1986; amended May 1, 1987; amended, T-88-59, Dec. 16, 1987; amended May 1, 1988; amended Sept. 26, 1988; amended July 1, 1989; amended Oct. 1, 1989; amended May 1, 1991; amended July 1, 1991; amended Sept. 30, 1994; amended

Dec. 30, 1994; amended March 1, 1997; amended July 1, 1997; amended Oct. 1, 1997; amended May 3, 2019.)

30-4-113w. This regulation shall be revoked on and after March 1, 1997. (Authorized by and implementing K.S.A. 39-708c; effective Dec. 30, 1994; revoked March 1, 1997.)

30-4-120. (Authorized by K.S.A. 1995 Supp. 39-708c, as amended by L. 1996, Ch. 229, Sec. 104; implementing K.S.A. 1995 Supp. 39-708c, as amended by L. 1996, Ch. 229, Sec. 104, K.S.A. 1995 Supp. 39-709; effective May 1, 1981; amended, E-82-11, June 17, 1981; amended May 1, 1982; amended, T-84-8, April 1, 1983; amended May 1, 1983; amended, T-84-9, May 1, 1983; amended, T-84-25, Sept. 19, 1983; amended May 1, 1984; amended May 1, 1985; amended May 1, 1986; amended, T-87-33, Dec. 1, 1986; amended May 1, 1987; amended, T-88-14, July 1, 1987; amended May 1, 1988; amended, T-30-7-29-88, July 29, 1988; amended Sept. 26, 1988; amended Oct. 1, 1989; amended, T-30-3-29-90, April 1, 1990; amended, T-30-7-2-90, Aug. 1, 1990; revoked, T-30-8-14-90, Oct. 1, 1990; amended Oct. 1, 1990; amended Jan. 7, 1991; amended May 1, 1991; amended Aug. 1, 1995; amended Jan. 1, 1997; amended March 1, 1997; revoked May 3, 2019.)

30-4-120w. This regulation shall be revoked on and after March 1, 1997. (Authorized by and implementing K.S.A. 1995 Supp. 39-708c, as amended by L. 1996, Ch. 229, Sec. 104; effective Dec. 30, 1994; amended August 1, 1995; amended Jan. 1, 1997; revoked March 1, 1997.)

30-4-121. This regulation shall be revoked on and after July 1, 1996. (Authorized by K.S.A. 1983 Supp. 39-708c; implementing K.S.A. 1983 Supp. 39-708c, 39-709; effective May 1, 1981; amended, E-82-11, June 17, 1981; amended May 1, 1982; amended, T-84-30, Nov. 2, 1983; amended May 1, 1984; revoked July 1, 1996.)

30-4-122. (Authorized by K.S.A. 1982 Supp. 39-708c; implementing K.S.A. 39-719b, K.S.A. 1982 Supp. 39-708c, 39-709; effective May 1, 1981; amended, T-83-9, April 29, 1982; revoked May 1, 1983.)

30-4-122a. This regulation shall be revoked on and after March 1, 1997. (Authorized by and implementing K.S.A. 1992 Supp. 39-708c, imple-

menting K.S.A. 1992 Supp. 39-708c, 39-709, as amended by 1993 SB 317; effective, T-84-9, May 1, 1983; effective May 1, 1984; amended May 1, 1985; amended May 1, 1986; amended, T-87-5, May 1, 1986; amended May 1, 1987; amended June 1, 1993; amended, T-30-9-16-93, Sept. 16, 1993; amended Nov. 8, 1993; revoked March 1, 1997.)

30-4-123. (Authorized by K.S.A. 1982 Supp. 39-708c; implementing K.S.A. 1982 Supp. 39-708c, 39-709, K.S.A. 19-1015, 39-719b; effective May 1, 1981; amended, T-83-17, July 1, 1982; revoked, T-84-8, April 1, 1983; amended May 1, 1983; revoked, T-84-9, May 1, 1983; revoked May 1, 1984.)

30-4-130. Types of payments and payees. Public assistance payments shall be issued in accordance with this regulation.

(a) Money payment.

(1) Payments shall be available through the state electronic benefit transfer system or, in certain circumstances, by check or written order immediately redeemable at face value. Payments shall be made with no restriction on the use of the funds, except TANF payments.

(2) All payments shall be money payments, except for the following types of payments:

(A) Payments pursuant to the foster care programs; and

(B) work program support costs and transitional expenses in accordance with K.A.R. 30-4-64 (c) and (d).

(b) Who may receive money payments. The following persons may receive money payments:

- (1) A caretaker;
- (2) a recipient;
- (3) a personal representative;
- (4) a substitute payee;
- (5) a protective payee; or

(6) an emancipated minor who meets the requirements in K.A.R. 30-4-52.

(c) Protective payments in the TANF program.

(1) If any caretaker repeatedly mismanages the money payment to the detriment of any child for whom assistance is claimed and if an approved service plan is on file, a protective payment, in lieu of a money payment to the caretaker, shall be issued to a protective payee.

(2) If a caretaker has refused to undergo drug testing or has tested positive for illegal use of a controlled substance, a protective payee shall be

named to administer the caretaker's cash benefit for each remaining household member.

(d) Substitute payee.

(1) Appointment and dismissal. Each substitute payee shall be appointed as assisted by the department. The substitute payee may be terminated by the department if the payee's services are no longer needed or if the payee is not giving satisfactory service.

(2)(A) Who may be substitute payee. An individual selected to be a substitute payee may be a relative, friend, neighbor, or member of a religious or community organization. The following persons shall not serve as substitute payees:

(i) Any staff member of the department, unless there is a direct familial relationship;

(ii) the landlord, grocers, or vendors of goods or services dealing directly with the client; or

(iii) another adult residing in the household.

(e) Protective payee.

(1) A protective payee may be selected by the household. If the household does not name a suitable protective payee, the protective payee may be selected by the department.

(2)(A) Who may be a protective payee. An individual selected to be a protective payee may be a relative, friend, neighbor, or member of a religious or community organization. The following persons shall not serve as protective payees:

(i) Any staff from the department, unless there is a direct familial relationship;

(ii) the landlord, grocers, or vendors of goods or services dealing directly with the client; and

(iii) another adult residing in the household.

(B) Exception. Payments may be made to a foster parent on behalf of a minor living in a foster care home with the minor's child in order to provide TANF for the child. The foster care home shall be licensed or approved as meeting licensing standards. This provision shall not be used in any other kind of public assistance case and may continue until the minor is released from custody of the department or becomes emancipated.

(3) Criteria for selection. Each protective payee shall demonstrate the following characteristics:

(A) An interest in and concern for the welfare of the family;

(B) the ability to help the family with ordinary budgeting, experience in purchasing food, clothing, and household equipment within a limited income, and knowledge of effective household practices;

(C) the ability to establish and maintain a positive relationship;

(D) the ability to maintain close contacts with the caretaker and child by virtue of living near the caretaker or having transportation available; and

(E) responsibility and dependability.

(4) Payee-recipient relationship. Any payee may make decisions about the expenditure of the assistance payment. The payee may expend the payment in any of the following ways:

(A) Spend the money for the family;

(B) supervise the recipient's use of the money; or

(C) give a portion of the money to the recipient to spend for certain expenses and pay for other expenses of the recipient.

(5) Payee-department relationship. Each payee shall ensure that the money is spent for the children's benefit. The payee's responsibility to the department shall be specified in writing with one copy for the payee and one for the department.

(A) This written agreement shall cover the following areas:

(i) The plans for accounting;

(ii) use of the assistance funds; and

(iii) reporting on the general progress made.

(B) The agreement shall be supplemented by the following:

(i) Discussions of the payee's responsibility;

(ii) a statement of the purpose of the plan;

(iii) a description of the nature and frequency of reports;

(iv) a statement of the rights of the recipient; and

(v) a statement of the confidential nature of the relationship.

(6) Periodic review of cases. Each money payment mismanagement case shall be reviewed at least every six months to determine which of the following actions will be taken:

(A) Restore the recipient to regular money payment status;

(B) continue the recipient on protective payment status; or

(C) develop another plan for the care of the child or children if necessary, including any of the following options:

(i) Placement with another relative;

(ii) seeking appointment of a guardian; or

(iii) placement in a foster home.

(7) Discontinuance of protective payments. Protective payments shall be discontinued when the caretaker has demonstrated an ability to manage the money payment or after a period of two years has lapsed, whichever comes first. Payment may continue for any additional time reasonably

necessary to complete a substitute plan for the care of the child.

(8) Discontinuance of protective payments. Protective payments shall be discontinued under either of the following conditions:

(A) The individual who failed to complete a drug test completes that person's period of ineligibility, submits to a drug test, and has a negative result for illegal controlled substances.

(B) The individual who tested positive for an illegal controlled substance successfully completes the requirements to regain eligibility for cash assistance.

(f) Special personal representative. A petition for the appointment of a personal representative shall be filed by the department pursuant to K.S.A. 59-2801, and amendments thereto, only if the need for an appointment is clearly established and the department has counseled the applicant or recipient concerning the money management problems. Confidential reports shall be filed by the department with the appropriate court as requested.

(1) Appointment of personal representative. A person who meets the following requirements shall be recommended to the court as a personal representative by the department:

(A) The person shall not be an employee of the department.

(B) The person shall not benefit directly from the assistance payment.

(C) The person shall meet the criteria in paragraph (d)(2)(A).

(2) Dismissal of personal representative. A recommendation to the court to dismiss a personal representative shall be made by the department if the client demonstrates that the client no longer requires a personal representative, or if the personal representative is failing to execute the responsibilities specified in this regulation, in which instance a substitute personal representative shall be recommended by the department.

(3) Responsibility of personal representative. Each personal representative shall be responsible to the court, the department, and the recipient. Each personal representative shall make an annual accounting to both the court and the department. A more frequent accounting may be required by the department or the court in the form and at the times prescribed by the department or the court. Each personal representative shall maintain a confidential relationship with the applicant or recipient and shall consult with the applicant or recipient concerning the applicant's

or recipient's requirements, resources, and the use of the money payment.

(4) Periodic review. The necessity of continuing the appointment of a personal representative shall be reviewed semiannually. Consideration shall be given to whether or not the recipient's ability to manage personal affairs has improved or if other changes in the recipient's circumstances or living arrangements make it possible for the recipient to manage without the help of a personal representative. (Authorized by K.S.A. 2018 Supp. 39-708c; implementing K.S.A. 2018 Supp. 39-708c and K.S.A. 2018 Supp. 39-709; effective May 1, 1981; amended May 1, 1983; amended, T-85-26, Oct. 15, 1984; amended May 1, 1985; amended May 1, 1986; amended May 1, 1987; amended May 1, 1988; amended July 1, 1989; amended Oct. 1, 1989; amended Jan. 2, 1990; amended, T-30-6-10-91, July 1, 1991; amended Oct. 1, 1993; amended July 1, 1996; amended March 1, 1997; amended May 3, 2019.)

30-4-130w. This regulation shall be revoked on and after March 1, 1997. (Authorized by K.S.A. 39-708c; implementing K.S.A. 59-2801 et seq., K.S.A. 39-708c; effective Dec. 30, 1994; revoked March 1, 1997.)

30-4-140. Payments; penalties; enforcement. (a) Assistance payments shall equal the budgetary deficit, which shall be rounded down to the nearest dollar, except as follows:

(1) Payments for the month of application shall equal the budgetary deficit, which shall be prorated beginning with the date of application through the end of the month. This amount shall be rounded down to the nearest dollar.

(2) A payment shall not be made if the amount of the budgetary deficit is less than \$10.00. If a payment is not made under this paragraph, recipient status shall continue.

(b) Overpayments shall be corrected by the end of the calendar quarter following the calendar quarter in which the overpayment was first identified. Recovery procedures shall not be initiated by the department, pending the disposition of a welfare fraud referral. Overpayments may be recovered by voluntary repayment, administrative recoupment, or legal action. The assistance payment shall be reduced for recoupment as follows:

(1) For fraud claims, by the greater of 20 percent of the household's monthly benefit or \$10.00 per month; and

(2) for non-fraud claims, by the greater of 10 percent of the household's monthly benefit or \$10.00 per month.

(c) Disqualification penalties. Each individual who is found to have committed fraud in the temporary assistance for needy families (TANF) program, either through an administrative disqualification hearing or by a court of appropriate jurisdiction, or who has signed either a waiver of right to an administrative disqualification hearing or a disqualification consent agreement in any case referred for prosecution, shall be ineligible for assistance, along with all adult household members. For the TANF program, each child shall also be ineligible if living in a household with a disqualified adult until the child moves into another qualified household, becomes an adult, or is able to act on that individual's own behalf. A protective payee shall be named pursuant to K.S.A. 39-709(b)(12)(A), and amendments thereto. (Authorized by K.S.A. 2018 Supp. 39-708c; implementing K.S.A. 2018 Supp. 39-708c, 39-719b; effective May 1, 1981; amended, E-82-19, Oct. 21, 1981; amended May 1, 1982; amended, T-83-17, July 1, 1982; amended, T-83-38, Nov. 23, 1982; amended, T-84-8, April 1, 1983; amended May 1, 1983; amended, T-85-26, Oct. 15, 1984; amended May 1, 1985; amended May 1, 1986; amended July 1, 1989; amended May 1, 1992; amended March 1, 1997; amended July 1, 1998; amended, May 3, 2019.)

30-4-140w. This regulation shall be revoked on and after March 1, 1997. (Authorized by K.S.A. 39-708c; implementing K.S.A. 39-719b and 39-708c; effective Dec. 30, 1994; amended Aug. 1, 1995; revoked March 1, 1997.)

Article 5.—PROVIDER PARTICIPATION, SCOPE OF SERVICES, AND REIMBURSEMENTS FOR THE MEDICAID (MEDICAL ASSISTANCE) PROGRAM

30-5-1. (Authorized by K.S.A. 39-709, K.S.A. 1975 Supp. 39-708c; effective Jan. 1, 1967; amended Jan. 1, 1968; amended Jan. 1, 1969; amended, E-70-9, Dec. 4, 1969; amended Jan. 1, 1971; amended Jan. 1, 1974; revoked May 1, 1976.)

30-5-2. (Authorized by K.S.A. 1975 Supp. 39-708c; effective Jan. 1, 1967; amended Jan. 1, 1971; amended, E-71-34, Aug. 11, 1971; amended Jan. 1, 1972; amended Jan. 1, 1974; revoked May 1, 1976.)

30-5-3. (Authorized by K.S.A. 1969 Supp. 39-708; effective Jan. 1, 1967; amended, E-70-9, Dec. 4, 1969; revoked Jan. 1, 1971.)

30-5-4 to 30-5-9. (Authorized by K.S.A. 1965 Supp. 39-708; effective Jan. 1, 1967; revoked Jan. 1, 1971.)

30-5-10. (Authorized by K.S.A. 1967 Supp. 39-708; effective Jan. 1, 1967; amended Jan. 1, 1968; revoked Jan. 1, 1971.)

30-5-11 and 30-5-12. (Authorized by K.S.A. 1965 Supp. 39-708; effective Jan. 1, 1967; revoked Jan. 1, 1971.)

30-5-13. (Authorized by K.S.A. 1975 Supp. 39-708c; effective Jan. 1, 1967; amended Jan. 1, 1968; amended Jan. 1, 1971; amended Jan. 1, 1973; amended Jan. 1, 1974; amended, E-76-10, Jan. 23, 1975; amended May 1, 1975; revoked May 1, 1976.)

30-5-14. (Authorized by K.S.A. 1975 Supp. 39-708c; effective Jan. 1, 1967; amended Jan. 1, 1968; amended Jan. 1, 1969; revoked May 1, 1976.)

30-5-15. (Authorized by K.S.A. 1975 Supp. 39-708c; effective Jan. 1, 1967; amended Jan. 1, 1974; revoked May 1, 1976.)

30-5-16. (Authorized by K.S.A. 1975 Supp. 39-708c; effective Jan. 1, 1967; amended Jan. 1, 1968; amended Jan. 1, 1969; amended, E-70-37, Aug. 5, 1970; amended Jan. 1, 1971; amended Jan. 1, 1974; revoked May 1, 1976.)

30-5-17. (Authorized by K.S.A. 1975 Supp. 39-708c; effective Jan. 1, 1967; amended Jan. 1, 1968; revoked May 1, 1976.)

30-5-18. (Authorized by K.S.A. 1975 Supp. 39-708c; effective Jan. 1, 1967; revoked May 1, 1976.)

30-5-19. (Authorized by K.S.A. 1980 Supp. 39-708c; effective Jan. 1, 1967; amended Jan. 1, 1968; amended, E-70-9, Dec. 4, 1969; amended Jan. 1, 1971; amended, E-72-1, Oct. 1, 1971; amended, E-72-3, Nov. 5, 1971; amended Jan. 1, 1972; amended, E-72-12, March 31, 1972; amended Jan. 1, 1973; amended Jan. 1, 1974; amended Feb. 15, 1977; amended, E-78-19, July 8, 1977; amended, E-79-1, Feb. 1, 1978; amended May 1, 1978; amended, E-79-20, Aug. 17, 1978; amended May 1, 1979; amended, E-80-13, Aug. 8, 1979; amended May 1, 1980; revoked May 1, 1981.)

30-5-20. (Authorized by K.S.A. 1980 Supp. 39-708c; effective Jan. 1, 1967; amended Jan. 1, 1968; amended, E-70-9, Dec. 4, 1969; amended Jan. 1, 1971; amended, E-72-1, Oct. 1, 1971; amended, E-72-3, Nov. 5, 1971; amended Jan. 1, 1972; amended Jan. 1, 1973; amended Jan. 1, 1974; amended May 1, 1975; amended Feb. 15, 1977; amended, E-78-19, July 8, 1977; amended, E-79-1, Feb. 1, 1978; amended May 1, 1978; amended, E-79-20, Aug. 17, 1978; amended May 1, 1979; amended, E-80-13, Aug. 8, 1979; amended May 1, 1980; amended, E-81-19, July 16, 1980; revoked May 1, 1981.)

30-5-21. (Authorized by K.S.A. 1980 Supp. 39-708c; effective Jan. 1, 1967; amended Jan. 1, 1968; amended, E-70-9, Dec. 4, 1969; amended Jan. 1, 1971; amended, E-72-1, Oct. 1, 1971; amended Jan. 1, 1972; amended Jan. 1, 1973; amended Jan. 1, 1974; amended, E-77-36, July 1, 1976; amended Feb. 15, 1977; amended, E-79-20, Aug. 17, 1978; amended May 1, 1979; amended, E-80-13, Aug. 8, 1979; amended May 1, 1980; amended, E-81-25, Aug. 27, 1980; revoked May 1, 1981.)

30-5-22. (Authorized by K.S.A. 39-708c; effective Jan. 1, 1967; amended Jan. 1, 1968; amended, E-70-9, Dec. 4, 1969; amended, E-70-37, Aug. 5, 1970; amended Jan. 1, 1971; revoked, E-72-23, July 28, 1972; revoked Jan. 1, 1973.)

30-5-23. (Authorized by K.S.A. 1978 Supp. 39-708c; effective Jan. 1, 1967; amended Jan. 1, 1968; amended, E-70-9, Dec. 4, 1969; amended Jan. 1, 1971; revoked, E-79-20, Aug. 17, 1978; revoked May 1, 1979.)

30-5-24. (Authorized by K.S.A. 1976 Supp. 39-708c; effective Jan. 1, 1967; amended Jan. 1, 1968; amended, E-70-9, Dec. 4, 1969; amended Jan. 1, 1971; revoked Feb. 15, 1977.)

30-5-25. (Authorized by K.S.A. 1980 Supp. 39-708c; effective Jan. 1, 1967; amended Jan. 1, 1968; amended, E-70-9, Dec. 4, 1969; amended Jan. 1, 1971; amended, E-72-1, Oct. 1, 1971; amended Jan. 1, 1972; amended Feb. 15, 1977; amended, E-79-20, Aug. 17, 1978; amended May 1, 1979; revoked May 1, 1981.)

30-5-26. (Authorized by K.S.A. 1980 Supp. 39-708c; effective Jan. 1, 1967; amended, E-70-9, Dec. 4, 1969; amended, E-70-37, Aug. 5, 1970; amended Jan. 1, 1971; amended, E-72-1, Oct. 1,

1971; amended Jan. 1, 1972; amended, E-77-36, July 1, 1976; amended Feb. 15, 1977; amended, E-79-20, Aug. 17, 1978; amended May 1, 1979; amended, E-80-13, Aug. 8, 1979; amended May 1, 1980; revoked May 1, 1981.)

30-5-27. (Authorized by K.S.A. 1971 Supp. 39-708; effective Jan. 1, 1967; amended Jan. 1, 1968; amended, E-70-37, Aug. 5, 1970; amended Jan. 1, 1971; amended, E-72-1, Oct. 1, 1971; amended Jan. 1, 1972; revoked, E-72-23, July 28, 1972; revoked Jan. 1, 1973.)

30-5-28. (Authorized by K.S.A. 1980 Supp. 39-708c; effective Jan. 1, 1967; amended Jan. 1, 1968; amended Jan. 1, 1974; amended, E-79-20, Aug. 17, 1978; amended May 1, 1979; amended, E-81-19, July 16, 1980; revoked May 1, 1981.)

30-5-29. (Authorized by K.S.A. 1970 Supp. 39-708; effective Jan. 1, 1967; amended Jan. 1, 1968; amended, E-70-9, Dec. 4, 1969; amended Jan. 1, 1971; revoked Jan. 1, 1974.)

30-5-30. (Authorized by K.S.A. 1970 Supp. 39-708; effective Jan. 1, 1967; revoked, E-70-9, Dec. 4, 1969; revoked Jan. 1, 1971.)

30-5-31. (Authorized by K.S.A. 1980 Supp. 39-708c; effective Jan. 1, 1969; amended, E-70-9, Dec. 4, 1969; amended Jan. 1, 1971; amended, E-72-1, Oct. 1, 1971; amended, E-72-3, Nov. 5, 1971; amended Jan. 1, 1972; amended, E-72-12, March 31, 1972; amended Jan. 1, 1973; amended Jan. 1, 1974; amended Feb. 15, 1977; amended, E-78-19, July 8, 1977; amended May 1, 1978; amended, E-79-20, Aug. 17, 1978; amended, E-79-30, Nov. 21, 1978; amended May 1, 1979; amended, E-81-25, Aug. 27, 1980; revoked May 1, 1981.)

30-5-32. (Authorized by K.S.A. 1980 Supp. 39-708c; effective Jan. 1, 1969; amended, E-70-9, Dec. 4, 1969; amended Jan. 1, 1971; amended, E-72-1, Oct. 1, 1971; amended Jan. 1, 1972; amended Jan. 1, 1973; amended Jan. 1, 1974; amended May 1, 1975; amended Feb. 15, 1977; amended, E-78-19, July 8, 1977; amended May 1, 1978; amended, E-79-20, Aug. 17, 1978; amended, E-79-30, Nov. 21, 1978; amended May 1, 1979; amended, E-80-13, Aug. 8, 1979; amended May 1, 1980; amended, E-81-19, July 16, 1980; revoked May 1, 1981.)

30-5-33. (Authorized by K.S.A. 1980 Supp. 39-708c; effective Jan. 1, 1969; amended, E-70-9,

Dec. 4, 1969; amended Jan. 1, 1971; amended, E-72-1, Oct. 1, 1971; amended Jan. 1, 1972; amended Jan. 1, 1974; amended May 1, 1975; amended Feb. 15, 1977; amended, E-79-20, Aug. 17, 1978; amended May 1, 1979; amended, E-81-25, Aug. 27, 1980; revoked May 1, 1981.)

30-5-34. (Authorized by K.S.A. 1980 Supp. 39-708c, 75-3304; effective Jan. 1, 1969; amended, E-70-9, Dec. 4, 1969; amended Jan. 1, 1971; amended, E-72-1, Oct. 1, 1971; amended, E-72-3, Nov. 5, 1971; amended, E-72-12, March 31, 1972; amended Jan. 1, 1973; amended Jan. 1, 1974; amended May 1, 1975; amended Feb. 15, 1977; amended, E-79-20, Aug. 17, 1978; amended May 1, 1979; amended, E-81-25, Aug. 27, 1980; revoked May 1, 1981.)

30-5-35. (Authorized by K.S.A. 1970 Supp. 39-708; effective Jan. 1, 1969; revoked, E-70-9, Dec. 4, 1969; revoked Jan. 1, 1971.)

30-5-36. (Authorized by K.S.A. 75-5321; effective Jan. 1, 1974; revoked May 1, 1981.)

30-5-37 and 30-5-38. (Authorized by K.S.A. 75-5321, 75-5375(s), K.S.A. 1980 Supp. 39-708c, 39-748; effective, E-78-19, July 8, 1977; effective May 1, 1978; revoked May 1, 1981.)

30-5-39. (Authorized by K.S.A. 75-5321, K.S.A. 1980 Supp. 39-708c, 39-748; effective, E-78-19, July 8, 1977; amended, E-79-1, Feb. 1, 1978; effective May 1, 1978; amended, E-79-20, Aug. 17, 1978; amended May 1, 1979; amended, E-81-19, July 16, 1980; revoked May 1, 1981.)

30-5-40. (Authorized by K.S.A. 1980 Supp. 39-708c; effective, E-78-19, July 8, 1977; effective May 1, 1978; amended, E-79-20, Aug. 17, 1978; amended May 1, 1979; amended, E-80-13, Aug. 8, 1979; amended May 1, 1980; revoked May 1, 1981.)

30-5-41. (Authorized by K.S.A. 75-5321, 75-5375(s), K.S.A. 1980 Supp. 39-708c, 39-748; effective, E-78-19, July 8, 1977; amended, E-79-1, Feb. 1, 1978; effective May 1, 1978; amended, E-79-20, Aug. 17, 1978; amended May 1, 1979; revoked May 1, 1981.)

30-5-42. (Authorized by K.S.A. 75-5321, K.S.A. 1980 Supp. 39-708c, 39-748; effective, E-79-1, Feb. 1, 1978; effective May 1, 1978; revoked May 1, 1981.)

30-5-43. (Authorized by K.S.A. 1980 Supp. 39-708c; effective, E-79-30, Nov. 21, 1978; effective May 1, 1979; amended, E-81-25, Aug. 27, 1980; revoked May 1, 1981.)

30-5-44. (Authorized by K.S.A. 1980 Supp. 39-708c; effective, E-79-33, Dec. 20, 1978; effective May 1, 1979; amended, E-81-25, Aug. 27, 1980; revoked May 1, 1981.)

30-5-45. (Authorized by K.S.A. 1980 Supp. 39-708c; effective, E-79-30, Nov. 21, 1978; effective May 1, 1979; amended, E-80-13, Aug. 8, 1979; amended May 1, 1980; amended, E-81-25, Aug. 27, 1980; revoked May 1, 1981.)

30-5-46. (Authorized by K.S.A. 1980 Supp. 39-708c; effective, E-79-30, Nov. 21, 1978; effective May 1, 1979; amended, E-81-19, July 16, 1980; revoked May 1, 1981.)

30-5-47. (Authorized by K.S.A. 1980 Supp. 39-708c; effective, E-79-30, Nov. 21, 1978; effective May 1, 1979; amended, E-80-13, Aug. 8, 1979; amended May 1, 1980; revoked May 1, 1981.)

30-5-48 to 30-5-50. (Authorized by K.S.A. 1980 Supp. 39-708c; effective May 1, 1980; revoked May 1, 1981.)

30-5-55 to 30-5-57. (Authorized by K.S.A. 1980 Supp. 39-708c; effective, E-80-13, Aug. 8, 1979; effective May 1, 1980; revoked May 1, 1981.)

30-5-58. Definitions. The following words and terms, when used in this article, shall have the following meanings, unless the context clearly indicates otherwise.

(a) "Accept medicare assignment" means the provider will accept the medicare-allowed payment rate as payment in full for services provided to a recipient.

(b) "Accrual basis accounting" means that revenue of the provider is reported in the period in which it is earned, regardless of when it is collected, and expenses are reported in the period in which they are incurred, regardless of when they are paid.

(c) "Acquisition cost" means the allowable reimbursement price for each covered drug, supply, or device as determined by the secretary in accordance with federal regulations.

(d) "Admission" means entry into a hospital for the purpose of receiving inpatient medical treatment.

(e) "Agency" means the department of social and rehabilitation services.

(f) "Ambulance" means a state-licensed vehicle equipped for emergency transportation of injured or sick recipients to facilities where medical services are rendered.

(g) "Arm's-length transaction" means a transaction between unrelated parties.

(h) "Border cities" means those communities outside of the state of Kansas but within a 50-mile range of the state border.

(i) "Capitated managed care" means a type of managed care plan that uses a risk-sharing reimbursement method whereby providers receive fixed periodic payments for health services rendered to plan members. Capitated fees shall be set by contract with providers and shall be paid on a per person basis regardless of the amount of services rendered or costs incurred.

(j) "Capitation reimbursement" means a reimbursement methodology establishing payment rates, per program consumer or eligible individual, for a designated group of services.

(k) "Case conference" means a scheduled, face-to-face meeting involving two or more persons to discuss problems associated with the treatment of the facility's patient or patients. Persons involved in the case conference may include treatment staff, or other department representatives of the client or clients.

(l) "Change of ownership" means a change that involves the following:

(1) An arm's-length transaction between unrelated parties; and

(2)(A) The dissolution or creation of a partnership when no member of the dissolved partnership or the new partnership retains ownership interest from the previous ownership affiliation;

(B) a transfer of title and property to another party if the property is owned by a sole proprietor;

(C) the change or creation of a new lessee acting as a provider of pharmacy services; or

(D) a consolidation of two or more corporations that creates a new corporate entity. The transfer of participating provider corporate stock shall not in itself constitute a change of ownership. A merger of one or more corporations with a participating provider corporation surviving shall not constitute a change of ownership.

(m) "Common control" means that an individual or organization has the power, directly or indirectly, to significantly influence or direct the actions or policies of an organization or facility.

(n) "Common ownership" means that an entity holds a minimum of five percent ownership or equity in the provider facility and in the company engaged in business with the provider facility.

(o) "Comparable outpatient service" means a service that is provided in a hospital and that is comparable to a service provided in a physician's office or ambulatory surgical center.

(p) "Concurrent care" means services rendered simultaneously by two or more eligible providers.

(q) "Consultation" means an evaluation that requires another examination by a provider of the same profession, a study of records, and a discussion of the case with the physician primarily responsible for the patient's care.

(r) "Contract loss" means the excess of contract cost over contract income.

(s) "Cost and other accounting information" means adequate data, including source documentation, that is accurate, current, and in sufficient detail to accomplish the purposes for which it is intended. Source documentation, including petty cash payout memoranda and original invoices, shall be valid only if it originated at the time and near the place of the transaction. In order to provide the required cost data, financial and statistical records shall be maintained in a consistent manner. This requirement shall not preclude a beneficial change in accounting procedures when there is a compelling reason to effect a change of procedure.

(t) "Cost finding" means the process of recasting the data derived from the accounts ordinarily kept by a provider to ascertain costs of the various types of services rendered.

(u) "Cost outlier" means a general hospital inpatient stay with an estimated cost that exceeds the cost outlier limit established for the respective diagnosis-related group.

(v) "Cost outlier limit" means the maximum cost of a general hospital inpatient stay established according to a methodology specified by the secretary for each diagnosis-related group.

(w) "Cost-related reimbursement" means reimbursement based on analysis and consideration of the historical operating costs required to provide specified services.

(x) "Costs not related to patient care" means costs that are not appropriate, necessary, or proper in developing and maintaining the facility's operations and activities. These costs shall not be allowed in computing reimbursable costs under cost-related reimbursement.

(y) "Costs related to patient care" means all necessary and proper costs arising from arm's-length transactions in accordance with generally accepted accounting principles that are appropriate and helpful in developing and maintaining the operation of patient care facilities and activities.

(z) "Covered service" means a medical service for which reimbursement will be made by the medicaid/medikan program. Coverage may be limited by the secretary through prior authorization requirements.

(aa) "Day outlier" means a general hospital inpatient length of stay that exceeds the day outlier limit established for the respective diagnosis-related group.

(bb) "Day outlier limit" means the maximum general hospital inpatient length of stay established according to a methodology specified by the secretary for each diagnosis-related group.

(cc) "Diagnosis-related group" or "DRG" means the classification system that arranges medical diagnoses into mutually exclusive groups.

(dd) "Diagnosis-related group adjustment percent" or "DRG adjustment percent" means a percentage assigned by the secretary to a diagnosis-related group for purposes of computing reimbursement.

(ee) "Diagnosis-related group daily rate" or "DRG daily rate" means the dollar amount assigned by the secretary to a diagnosis-related group for purposes of computing reimbursement when a rate per day is required.

(ff) "Diagnosis-related group reimbursement system" or "DRG reimbursement system" means a reimbursement system in the Kansas medicaid/medikan program for general hospital inpatient services that uses diagnosis-related groups for determining reimbursement on a prospective basis.

(gg) "Diagnosis-related group weight" or "DRG weight" means the numeric value assigned to a diagnosis-related group for purposes of computing reimbursement.

(hh) "Discharge" means release from a hospital. A discharge shall occur when the consumer leaves the hospital or dies. A transfer to another unit within a hospital, except to a swing bed, and a transfer to another hospital shall not be a discharge.

(ii) "Discharging hospital" means, in instances of the transfer of a consumer, the hospital that discharges the consumer admitted from the last transferring hospital.

(jj) "Dispensing fee" means the reimbursement rate assigned to each individual pharmacy provid-

er for the provision of pharmacy services involved in dispensing a prescription.

(kk) “Disproportionate share hospital” means a hospital that has the following:

(1) Either a low-income utilization rate exceeding 25 percent or a medicaid/medikan hospital inpatient utilization rate of at least one standard deviation above the mean medicaid/medikan inpatient utilization rate for hospitals within the state borders of Kansas that are receiving medicaid/medikan payments; and

(2) at least two obstetricians with staff privileges at the hospital who have agreed to provide obstetric services to medicaid/medikan eligible individuals. In a hospital located in a rural area, the obstetrician may be any physician with staff privileges at the hospital who performs nonemergency obstetric procedures. The only exceptions to this requirement shall be the following:

(A) A hospital with inpatients who are predominantly under 18 years of age; or

(B) a hospital that did not offer nonemergency obstetric services as of December 21, 1987.

(ll) “Drug, supply, or device” means the following:

(1) Any article recognized in the official United States pharmacopoeia, another similar official compendium of the United States, an official national formulary, or any supplement of any of these publications;

(2) any article intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in human beings;

(3) any article intended to affect the structure or any function of the bodies of human beings; and

(4) any article intended for use as a component of any article specified in paragraphs (1), (2), or (3) above.

(mm) “Durable medical equipment” or “DME” means equipment that meets these conditions:

(1) Withstands repeated use;

(2) is not generally useful to a person in the absence of an illness or injury;

(3) is primarily and customarily used to serve a medical purpose;

(4) is appropriate for use in the home; and

(5) is rented or purchased as determined by designees of the secretary.

(nn) “Election period” means the period of time for the receipt of hospice care, beginning with the first day of hospice care as provided in the election statement and continuing through any subsequent days.

(oo) “Election statement” means the revokable statement signed by a consumer that is filed with a particular hospice and that consists of the following:

(1) Identification of the hospice selected to provide care;

(2) acknowledgment that the consumer has been given a full explanation of hospice care;

(3) acknowledgment by the consumer that other medicaid services are waived;

(4) the effective date of the election period; and

(5) the consumer’s signature or the signature of the consumer’s legal representative.

(pp) “Emergency services” means those services provided after the sudden onset of a medical condition manifesting itself by acute symptoms of sufficient severity, including severe pain, such that the absence of immediate medical attention could reasonably be expected to result in any of the following:

(1) Serious jeopardy to the patient’s health;

(2) serious impairment to bodily functions; or

(3) serious dysfunction of any bodily organ or part.

(qq) “Estimated cost” means the cost of general hospital inpatient services provided to a consumer, as computed using a methodology set out in the Kansas medicaid state plan.

(rr) “Formulary” means a listing of drugs, supplies, or devices.

(ss) “Free-standing inpatient psychiatric facility” means an inpatient psychiatric facility licensed to provide services only to the mentally ill.

(tt) “General hospital” means an establishment that provides an organized medical staff of physicians, permanent facilities that include inpatient beds, and medical services. The medical services provided by the hospital shall include the following:

(1) Physician services;

(2) continuous registered professional nursing services for 24 hours each day; and

(3) diagnosis and treatment for nonrelated patients who have a variety of medical conditions.

(uu) “General hospital group” means the category to which a general hospital is assigned for purposes of computing reimbursement.

(vv) “General hospital inpatient beds” means the number of beds reported by a general hospital on the hospital and hospital health care complex cost report form, excluding those beds designated as skilled nursing facility or intermediate care facility beds. For hospitals not filing the hospital and hospital health care complex cost report form, the

number of beds shall be obtained from the provider application for participation in the Kansas medicaid/medikan program form.

(ww) “Generally accepted accounting procedures” means generally accepted accounting principles, except as otherwise specifically indicated by medicaid/medikan program policies and regulations. These principles shall not supersede any specific regulation or policy of the medicaid/medikan program.

(xx) “Group reimbursement rate” means the dollar value assigned by the secretary to each general hospital group for a diagnosis-related group weight of one.

(yy) “Health maintenance organization” means an organization of providers of designated medical services that makes available and provides these medical services to eligible enrolled individuals for a fixed periodic payment determined in advance and that limits referral to outside specialists.

(zz) “Historical cost” means actual allowable costs incurred for a specified period of time.

(aaa) “Hospice” means a public agency, private organization, or a subdivision of either, that primarily engages in providing care to terminally ill individuals, meets the medicare conditions of participation for hospices, and has enrolled to provide hospice services as provided in K.A.R. 30-5-59.

(bbb) “Hospital located in a rural area” means a facility located in an area outside of a metropolitan statistical area as defined in paragraph (sss).

(ccc) “Independent laboratory” means a laboratory that performs laboratory tests ordered by a physician and that is in a location other than the physician’s office or a hospital.

(ddd) “Ineligible provider” means a provider who is not enrolled in the medicaid/medikan program because of reasons set forth in K.A.R. 30-5-60, or because of commission of civil or criminal fraud in another state or another program.

(eee) “Interest expense” means the cost incurred for the use of borrowed funds on a loan made for a purpose related to patient care.

(fff) “Kan Be Healthy program participant” means an individual under the age of 21 who is eligible for medicaid, and who has undergone a Kan Be Healthy medical screening in accordance with a specified screening schedule. The medical screening shall be performed for the following purposes:

- (1) To ascertain physical and mental defects; and
- (2) to provide treatment that corrects or ameliorates defects and chronic conditions that are found.

(ggg) “Kan Be Healthy dental-only participant” means an individual under the age of 21 who is eligible for medicaid, and has undergone only a Kan Be Healthy dental screening in accordance with a specified screening schedule. The dental screening shall be performed for the following purposes:

- (1) To ascertain dental defects; and
- (2) to provide treatment that corrects or ameliorates dental defects and chronic dental conditions that are found.

(hhh) “Kan Be Healthy vision-only participant” means an individual under the age of 21 who is eligible for medicaid, and who has undergone only a Kan Be Healthy vision screening in accordance with a specified screening schedule. The vision screening shall be performed for the following purposes:

- (1) Ascertain vision defects; and
- (2) provide treatment that corrects or ameliorates vision defects and chronic vision conditions that are found.

(iii) “Length of stay as an inpatient in a general hospital” means the number of days an individual remains for treatment as an inpatient in a general hospital from and including the day of admission, to and excluding the day of discharge.

(jjj) “Lock-in” means the restriction, through limitation of the use of the medical identification card to designated medical providers, of a consumer’s access to medical services because of abuse.

(kkk) “Low-income utilization rate for hospitals” means the rate that is defined in accordance with section 1923 of the social security act, codified at 42 U.S.C. 1396r-4, as amended by section 1(a)(6) of the consolidated appropriations act, 2001 P.L. 106-554, which enacted into law Section 701 of H.R. 5661, the medicare, medicaid, and SCHIP benefits improvement and protection act of 2000, effective December 21, 2000, which is adopted by reference.

(lll) “Managed care” means a system of managing and financing health care delivery to ensure that services provided to managed care plan members are necessary, efficiently provided, and appropriately priced.

(mmm) “Managerial capacity” means the authority of an individual, including a general manager, business manager, administrator or director, who performs the following functions:

- (1) Exercises operational or managerial control over the provider; or
- (2) directly or indirectly conducts the day-to-day operations of the provider.

(nnn) “Maternity center” means a facility licensed as a maternity hospital that provides delivery services for normal, uncomplicated pregnancies.

(ooo)(1) “Medical necessity” means that a health intervention is an otherwise covered category of service, is not specifically excluded from coverage, and is medically necessary, according to all of the following criteria:

(A) “Authority.” The health intervention is recommended by the treating physician and is determined to be necessary by the secretary or the secretary’s designee.

(B) “Purpose.” The health intervention has the purpose of treating a medical condition.

(C) “Scope.” The health intervention provides the most appropriate supply or level of service, considering potential benefits and harms to the patient.

(D) “Evidence.” The health intervention is known to be effective in improving health outcomes. For new interventions, effectiveness shall be determined by scientific evidence as provided in paragraph (ooo)(3). For existing interventions, effectiveness shall be determined as provided in paragraph (ooo)(4).

(E) “Value.” The health intervention is cost-effective for this condition compared to alternative interventions, including no intervention. “Cost-effective” shall not necessarily be construed to mean lowest price. An intervention may be medically indicated and yet not be a covered benefit or meet this regulation’s definition of medical necessity. Interventions that do not meet this regulation’s definition of medical necessity may be covered at the choice of the secretary or the secretary’s designee. An intervention shall be considered cost effective if the benefits and harms relative to costs represent an economically efficient use of resources for patients with this condition. In the application of this criterion to an individual case, the characteristics of the individual patient shall be determinative.

(2) The following definitions shall apply to these terms only as they are used in this subsection (ooo);

(A) “Effective” means that the intervention can be reasonably expected to produce the intended results and to have expected benefits that outweigh potential harmful effects.

(B) “Health intervention” means an item or service delivered or undertaken primarily to treat a medical condition or to maintain or restore func-

tional ability. For this regulation’s definition of medical necessity, a health intervention shall be determined not only by the intervention itself, but also by the medical condition and patient indications for which it is being applied.

(C) “Health outcomes” means treatment results that affect health status as measured by the length or quality of a person’s life.

(D) “Medical condition” means a disease, illness, injury, genetic or congenital defect, pregnancy, or a biological or psychological condition that lies outside the range of normal, age-appropriate human variation.

(E) “New intervention” means an intervention that is not yet in widespread use for the medical condition and patient indications under consideration.

(F) “Scientific evidence” means controlled clinical trials that either directly or indirectly demonstrate the effect of the intervention on health outcomes. However, if controlled clinical trials are not available, observational studies that demonstrate a causal relationship between the intervention and health outcomes may be used. Partially controlled observational studies and uncontrolled clinical series may be considered to be suggestive, but shall not by themselves be considered to demonstrate a causal relationship unless the magnitude of the effect observed exceeds anything that could be explained either by the natural history of the medical condition or potential experimental biases.

(G) “Secretary’s designee” means a person or persons designated by the secretary to assist in the medical necessity decision-making process.

(H) “Treat” means to prevent, diagnose, detect, or palliate a medical condition.

(I) “Treating physician” means a physician who has personally evaluated the patient.

(3) Each new intervention for which clinical trials have not been conducted because of epidemiological reasons, including rare or new diseases or orphan populations, shall be evaluated on the basis of professional standards of care or expert opinion as described below in paragraph (ooo)(4).

(4) The scientific evidence for each existing intervention shall be considered first and, to the greatest extent possible, shall be the basis for determinations of medical necessity. If no scientific evidence is available, professional standards of care shall be considered. If professional standards of care do not exist, or are outdated or contradictory, decisions about existing interventions shall be based on expert opinion. Coverage of existing

interventions shall not be denied solely on the basis that there is an absence of conclusive scientific evidence. Existing interventions may be deemed to meet this regulation's definition of medical necessity in the absence of scientific evidence if there is a strong consensus of effectiveness and benefit expressed through up-to-date and consistent professional standards of care or, in the absence of those standards, convincing expert opinion.

(ppp) "Medical necessity in psychiatric situations" means that there is medical documentation that indicates either of the following:

(1) The person could be harmful to himself or herself or others if not under psychiatric treatment; or

(2) the person is disoriented in time, place, or person.

(qqq) "Medical supplies" means items that meet these conditions:

(1) Are not generally useful to a person in the absence of illness or injury;

(2) are prescribed by a physician; and

(3) are used in the home and certain institutional settings.

(rrr) "Mental retardation" means any significant limitation in present functioning that meets these requirements:

(1) Is manifested during the period of birth to age 18;

(2) is characterized by significantly subaverage intellectual functioning as reflected by a score of two or more standard deviations below the mean, as measured by a generally accepted, standardized, individual measure of general intellectual functioning; and

(3) exists concurrently with deficits in adaptive behavior, including related limitations in two or more of the following areas: communication, self-care, home living, social skills, community use, self-direction, health and safety, functional academics, leisure, and work.

(sss) "Metropolitan statistical area" or "MSA" means a geographic area designated as such by the United States executive office of management and budget as set out in the 64 Fed. Reg. 202, pp. 56628-56644, October 20, 1999, and 65 Fed. Reg. 249, pp. 82228-82238, December 27, 2000 which are adopted by reference.

(ttt) "Necessary interest" means interest expense incurred on a loan made to satisfy a financial need of the facility. A loan that results in excess funds or investments shall not be considered necessary.

(uuu) "Net cost" means the cost of approved educational activities, less any reimbursements from the following:

(1) Grants;

(2) tuition; and

(3) specific donations.

(vvv) "Non-covered services" means services for which medicaid/medikan will not provide reimbursement, including services that have been denied due to the lack of medical necessity.

(www) "Occupational therapy" means the provision of treatment by an occupational therapist registered with the American occupational therapy association. The treatment shall meet these requirements:

(1) Be rehabilitative and restorative in nature;

(2) be provided following physical debilitation due to acute physical trauma or physical illness; and

(3) be prescribed by the attending physician

(xxx) "Organization costs" means those costs directly incidental to the creation of the corporation or other form of business. These costs shall be considered intangible assets because they represent expenditures for rights and privileges that have value to the enterprise. Because the services inherent in organization extend over more than one accounting period, the costs shall be amortized over a period of not less than 60 months from the date of incorporation for the purposes of computing reimbursable costs under a cost-related reimbursement system.

(yyy) "Orthotics and prosthetics" means devices that meet these requirements:

(1) Are reasonable and necessary for treatment of an illness or injury;

(2) are prescribed by a physician;

(3) are necessary to replace or improve functioning of a body part; and

(4) are provided by a trained orthotist or prosthetist.

(zzz) "Other developmental disability" means a condition or illness that meets the following criteria:

(1) Is manifested before age 22;

(2) may reasonably be expected to continue indefinitely;

(3) results in substantial limitations in any three or more of the following areas of life functioning:

(A) Self-care;

(B) understanding and the use of language;

(C) learning and adapting;

(D) mobility;

(E) self-direction in setting goals and undertaking activities to accomplish those goals;

- (F) living independently; or
- (G) economic self-sufficiency; and

(4) reflects the need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services that are of extended or lifelong duration and are individually planned and coordinated.

(aaaa) "Out-of-state provider" means any provider that is physically located more than 50 miles beyond the border of Kansas, except those providing services to children who are wards of the secretary. The following shall be considered out-of-state providers if they are physically located beyond the border of Kansas:

- (1) Nursing facilities;
- (2) intermediate care facilities;
- (3) community mental health centers;
- (4) partial hospitalization service providers; and
- (5) alcohol and drug program providers.

(bbbb) "Outpatient treatment" means services provided by the outpatient department of a hospital, a facility that is not under the administration of a hospital, or a physician's office.

(cccc) "Over-the-counter" means any item available for purchase without a prescription order.

(dddd) "Owner" means a sole proprietor, member of a partnership, or a corporate stockholder with five percent or more interest in the corporation. The term "owner" shall not include minor stockholders in publicly held corporations.

(eeee) "Partial hospitalization program" means an ambulatory treatment program that includes the major diagnostic, medical, psychiatric, psychosocial, and daily living skills treatment modalities, based upon a treatment plan.

(ffff) "Participating provider" means any individual or entity that presently has an agreement with the agency to furnish medicaid services.

(gggg) "Pharmacy" means the premises, laboratory, area, or other place meeting these conditions:

(1) Where drugs are offered for sale, the profession of pharmacy is practiced, and prescriptions are compounded and dispensed;

(2) that has displayed upon it or within it the words "pharmacist," "pharmaceutical chemist," "pharmacy," "apothecary," "drugstore," "druggist," "drugs," "drug sundries," or any combinations of these words or words of similar import; and

(3) where the characteristic symbols of pharmacy or the characteristic prescription sign "Rx" are exhibited. The term "premises" as used in this subsection refers only to the portion of any

building or structure leased, used, or controlled by the registrant in the conduct of the business registered by the board at the address for which the registration was issued.

(hhhh) "Pharmacist" means any person duly licensed or registered to practice pharmacy by the state board of pharmacy or by the regulatory authority of the state in which the person is engaged in the practice of pharmacy.

(iiii) "Physical therapy" means treatment that meets these criteria:

(1) Is provided by a physical therapist registered in the jurisdiction where the service is provided or by the Kansas board of healing arts;

(2) is rehabilitative and restorative in nature;

(3) is provided following physical debilitation due to acute physical trauma or physical illness; and

(4) is prescribed by the attending physician.

(jjjj) "Physician extender" means a person registered as a physician's assistant or licensed advanced registered nurse practitioner in the jurisdiction where the service is provided, and who is working under supervision as required by law or administrative regulation.

(kkkk) "Practitioner" means any person licensed to practice medicine and surgery, dentistry, or podiatry, or any other person licensed, registered, or otherwise authorized by law to administer, prescribe, and use prescription-only drugs in the course of professional practice.

(llll) "Prescribed" means the issuance of a prescription order by a practitioner.

(mmmm) "Prescription" means either of the following:

(1) A prescription order; or

(2) a prescription medication.

(nnnn) "Prescription medication" means any drug, supply, or device that is dispensed according to a prescription order. If indicated by the context, the term "prescription medication" may include the label and container of the drug, supply, or device.

(oooo) "Prescription-only" means an item available for purchase only with a prescription order.

(pppp) "Primary care case management" or "PCCM" means a type of managed care whereby a beneficiary is assigned a primary care case manager who manages costs and quality of services by providing case assessment, primary services, treatment planning, referral, and follow-up in order to ensure comprehensive and continuous service and coordinated reimbursement.

(qqqq) "Primary diagnosis" means the most significant diagnosis related to the services rendered.

(rrrr) “Prior authorization” means the approval of a request to provide a specific service before the provision of the service.

(ssss) “Program” means the Kansas medicaid/medikan program.

(tttt) “Proper interest” means interest incurred at a rate not in excess of what a prudent borrower would have had to pay under market conditions existing at the time the loan was made.

(uuuu) “Prospective, reasonable, cost-related reimbursement” means present and future reimbursement, based on analysis and consideration of historical costs related to patient care.

(vvvv) “Qualified medicare beneficiary” or “QMB” means an individual meeting these requirements:

(1) Who is entitled to medicare hospital insurance benefits under part A of medicare;

(2) whose income does not exceed a specified percent of the official poverty level as defined by the United States executive office of management and budget; and

(3) whose resources do not exceed twice the supplemental security income resource limit.

(wwww) “Readmission” means the subsequent admission of a consumer as an inpatient into a hospital within 30 days of discharge as an inpatient from the same or another DRG hospital.

(xxxx) “Related parties” means two or more parties to a transaction, one of which has the ability to influence the other or others in a way in which each party to the transaction might fail to pursue its own separate interests fully. Related parties shall include those related by family, business, or financial association, or by common ownership or control. Transactions between related parties shall not be considered to have arisen through arm’s-length negotiations. Transactions or agreements that are illusory or a sham shall not be recognized.

(yyyy) “Related to the community mental health center” means that the agency or facility furnishing services to the community mental health center meets any of these requirements:

(1) Is directly associated or affiliated with the community mental health center by formal agreement;

(2) governs the community mental health center; or

(3) is governed by the community mental health center.

(zzzz) “Residence for the payment of hospice services” means a hospice consumer’s home or the nursing facility in which a hospice consumer is residing.

(aaaa) “Revocation statement” means the statement signed by the consumer that revokes the election of hospice service.

(bbbbb) “Sampling” means the review process of obtaining a stratified random sample of a subset of cases from the universe of claims submitted by a specific provider. The sample shall be used to project the review results across the entire universe of claims for that provider to determine an overpayment.

(ccccc) “Speech therapy” means treatment provided by a speech pathologist who has a certificate of clinical competence from the American speech and hearing association. The treatment shall meet these requirements:

(1) Be rehabilitative and restorative in nature;

(2) be provided following physical debilitation due to acute physical trauma or physical illness; and

(3) be prescribed by the attending physician.

(dddd) “Standard diagnosis-related group amount” or “standard DRG amount” means the amount computed by multiplying the group reimbursement rate for the general hospital by the diagnosis-related group weight.

(eeee) “State-operated hospital” means an establishment operated by the state of Kansas that provides diagnosis and treatment for nonrelated patients and includes the following:

(1) An organized medical staff of physicians;

(2) permanent facilities that include inpatient beds; and

(3) medical services that include physician services and continuous registered professional nursing services for 24 hours each day.

(ffff) “Stay as an inpatient in a general hospital” means the period of time spent in a general hospital from admission to discharge.

(ggggg) “Swing bed” means a hospital bed that can be used interchangeably as a hospital, skilled nursing facility, or intermediate care facility bed, with reimbursement based on the specific type of care provided.

(hhhhh) “Targeted case management services” means those services that assist medicaid consumers in gaining access to medically necessary care. The services shall be provided by a case manager with credentials specified by the secretary.

(iiii) “Terminally ill” means that an individual has a life expectancy of six months or less as determined by a physician.

(jjjjj) “Timely filing” means the receipt by the agency or its fiscal agent of a claim for payment

filed by a provider for services provided to a medicaid program consumer not later than 12 months after the date the claimed services were provided.

(kkkkk) "Transfer" means the movement of an individual receiving general hospital inpatient services from one hospital to another hospital for additional, related inpatient care after admission to the previous hospital or hospitals.

(lllll) "Transferring hospital" means the hospital that transfers a consumer to another hospital. There may be more than one transferring hospital for the same consumer until discharge.

(mmmmm) "Uncollectable overpayment to an out-of-business provider" means either of the following:

(1) Any amount that is due from a provider of medical services who has ceased all practice or operations for any medical services as an individual, a partnership, or a corporate identity, and who has no assets capable of being applied to any extent toward a medicaid overpayment; or

(2) any amount due that is less than its collection and processing costs.

(nnnnn) "Urgent" means that a situation requires medical treatment within two days of onset, but not through the emergency room. (Authorized by and implementing K.S.A. 39-708c; effective May 1, 1981; amended May 1, 1982; amended May 1, 1983; amended May 1, 1984; amended May 1, 1985; amended May 1, 1986; amended May 1, 1988; amended, T-30-7-29-88, July 29, 1988; amended Sept. 26, 1988; amended Jan. 2, 1989; amended July 1, 1989; amended Jan. 2, 1990; amended, T-30-1-2-90, Jan. 2, 1990; amended, T-30-2-28-90, Jan. 2, 1990; amended Aug. 1, 1990; amended Jan. 7, 1991; amended, T-30-3-1-91, March 1, 1991; amended July 1, 1991; amended, T-30-8-9-91, Aug. 30, 1991; amended Oct. 28, 1991; amended April 1, 1992; amended May 1, 1992; amended July 31, 1992; amended May 3, 1993; amended Oct. 1, 1993; amended July 1, 1994; amended April 1, 1995; amended Sept. 1, 1995; amended March 1, 1996; amended July 1, 1996; amended July 1, 1997; amended July 6, 2001.)

30-5-59. Provider participation requirements. The following shall be prerequisites for participation in and payment from the medicaid/medikan program. Any provider of services to foster care consumers, adoption support consumers, Kan Be Healthy consumers, or other consumers who have special needs may be excluded from

these prerequisites if the secretary determines that a medically necessary item of durable medical equipment or a medically necessary service can be cost-efficiently obtained only from a provider not otherwise eligible to be enrolled within the current program guidelines. (a) Enrollment. Each participating provider shall perform the following:

(1) Submit an application for participation in the medicaid/medikan program on forms prescribed by the secretary of the Kansas department of social and rehabilitation services;

(2) obtain and maintain professional or department-specified credentials determined by the secretary in the jurisdiction where the service is provided and for the time period when the service is provided and, if applicable, be certified, licensed, or registered by the appropriate professional credentialing authority;

(3) notify the Kansas department of social and rehabilitation services if any of the original information provided on the application changes during the term of participation in the medicaid/medikan program;

(4) after completing the necessary application forms and receiving notice of approval to participate from the department, enter into and keep a provider agreement with the Kansas department of social and rehabilitation services;

(5) notify the Kansas department of social and rehabilitation services when a change of provider ownership occurs, submit new ownership information on forms for application for participation in the medicaid/medikan program, and receive approval from the department for participation as a new provider before reimbursement for services rendered to medicaid/medikan program consumers is made;

(6) locate a consumer service representative who is available 24 hours per day and a business in Kansas or a border city that is accessible, in accordance with the applicable Americans with disabilities act guidelines, to the general public between the hours of 9:00 a.m. and 5:00 p.m. at a minimum, excluding weekends and state and federal holidays, if applying to be a durable medical equipment or medical supply provider. Any pharmacy located in Kansas or a border city that has a medical provider number may enroll as a durable medical equipment provider even if no storefront is present; and

(7) be located in Kansas or a border city if applying to be a pharmacy, unless the pharmacy is providing services to children in the custody of

the secretary of the Kansas department of social and rehabilitation services or to program consumers in emergency situations. The only exceptions to this requirement shall be the following:

(A) A pharmacy that is an approved contractor with the Kansas department of health and environment as a supplier of intravenous blood fraction products. This exception shall apply only to reimbursement for the intravenous blood fraction products; and

(B) a mail order pharmacy that serves medic-aid consumers with a primary payor other than medicaid.

(b) Denial of application. If an application for participation in the medicaid/medikan program is denied, the applicant shall be notified in writing by the department.

(c) Continuing participation. Each participating provider shall perform the following:

(1) Comply with applicable state and federal laws, regulations, or other program requirements;

(2) comply with the terms of the provider agreement;

(3) submit accurate claims or cost reports;

(4) submit claims only for covered services provided to consumers;

(5) engage in ethical and professional conduct;

(6) provide goods, services, or supplies that meet professionally recognized standards of quality;

(7) submit a new application for participation in the medicaid/medikan program if a claim has been submitted for payment and if at least 18 months have elapsed since a previous claim for payment was submitted; and

(8) refund any overpayment to the program within a period of time specified by the secretary or lose eligibility to participate.

(d) Recordkeeping. Each participating provider shall perform the following:

(1) Maintain and furnish within the time frame specified in a request any information for five years from the date of service that the Kansas department of social and rehabilitation services, its designee, or any other governmental agency acting in its official capacity may request to ensure proper payment by the medicaid/medikan program, to substantiate claims for medicaid/medikan program payments, and to complete determinations of medicaid/medikan program overpayments. This information shall include the following:

(A) Fiscal, medical, and other recordkeeping systems;

(B) matters of the provider's ownership, organization, and operation, including documentation as to whether transactions occurred between related parties;

(C) documentation of asset acquisition, lease, sale, or other action;

(D) franchise or management arrangements;

(E) matters pertaining to costs of operation;

(F) amounts of income received, by source and purpose; and

(G) a statement of changes in financial position;

(2) use standardized definitions, accounting, statistics, and reporting practices that are widely accepted in the provider's field;

(3) permit the Kansas department of social and rehabilitation services, its designee, or any other governmental agency acting in its official capacity to examine any records and documents that are necessary to ascertain information pertinent to the determination of the proper amount of a payment due from the medicaid/medikan program; and

(4) agree to repay overpayment determinations resulting from the use of sampling techniques.

(e) Payment. Each participating provider shall meet the following conditions:

(1) Accept as payment in full, subject to audit when applicable, the amount paid by the medicaid/medikan program for covered services;

(2) not assign medicaid/medikan program claims or grant a power of attorney over or otherwise transfer right to payment for these claims except as set forth in 42 CFR 447.10, revised July 24, 1996, which is adopted by reference;

(3) not charge medicaid/medikan program consumers for services denied for payment by the medicaid/medikan program because the provider has failed to meet a program requirement including prior authorization;

(4) not charge any medicaid/medikan program consumer for noncovered services unless the provider has informed the consumer, in advance and in writing, that the consumer is responsible for noncovered services;

(5) not charge medicaid/medikan program consumers for services covered by the program, with the exception of claims liable to spenddown or co-payment;

(6) submit claims for payment on claim forms approved and prescribed by the secretary; and

(7) be subject to the payment limitations specified in K.A.R. 30-5-70.

(f) Provider participation in the medicaid/medikan program may be disallowed for any of

the reasons set forth in K.A.R. 30-5-60. (Authorized by and implementing K.S.A. 39-708c; effective May 1, 1981; amended May 1, 1985; amended May 1, 1986; amended May 1, 1988; amended July 1, 1989; amended Oct. 1, 1989; amended, T-30-12-28-89, Jan. 1, 1990; amended, T-30-2-28-90, Feb. 28, 1990; amended Aug. 1, 1990; amended Jan. 7, 1991; amended May 1, 1992; amended May 3, 1993; amended Dec. 30, 1994; amended April 1, 1995; amended Oct. 1, 2000; amended Jan. 1, 2004; amended Dec. 10, 2004.)

30-5-60. Provider termination/suspension.

(a) Any provider's participation in the medicaid/medikan program may be terminated for one or more of the following reasons:

- (1) Voluntary withdrawal of the provider from participation in the program;
- (2) non-compliance with applicable state laws, administrative regulations, or program issuances concerning medical providers;
- (3) non-compliance with the terms of a provider agreement;
- (4) non-compliance with the terms and certification set forth on claims submitted to the agency for reimbursement;
- (5) assignment, granting a power of attorney over, or otherwise transferring right to payment of program claims except as set forth in 42 U.S.C. 1396a (32), revised July 18, 1984, which is adopted by reference;
- (6) pattern of submitting inaccurate billings or cost reports;
- (7) pattern of submitting billings for services not covered under the program;
- (8) pattern of unnecessary utilization;
- (9) unethical or unprofessional conduct;
- (10) suspension or termination of license, registration, or certification;
- (11) provision of goods, services, or supplies harmful to individuals or of an inferior quality;
- (12) civil or criminal fraud against medicare, the Kansas medicaid/medikan or social service programs, or any other state's medicaid or social service programs;
- (13) suspension or exclusion by the secretary of health and human services from the title XVIII or title XIX programs;
- (14) direct or indirect ownership or controlling interest of five percent or more in a provider institution, organization or agency by a person who has been found guilty of civil or criminal fraud against the medicare program or the Kansas medicaid/

medikan or social service programs or any other state's medicaid or social service programs;

(15) employment or appointment by a provider of a person in a managerial capacity or as an agent if the person has been found guilty of civil or criminal fraud against the medicare program or the Kansas medicaid/medikan or social service programs or any other state's medicaid or social service programs;

(16) insolvency; or

(17) other good cause.

(b) Termination, unless based upon civil or criminal fraud against the program, suspension or exclusion by the secretary of health and human services, shall remain in effect until the agency determines that the reason for the termination has been removed and that there is a reasonable assurance that it shall not recur. Terminations based upon civil or criminal fraud shall remain in effect for such time period as deemed appropriate by the agency. Termination based upon suspension or exclusion by the secretary of health and human services (HHS) shall remain in effect no less than the time period specified in HHS' notice of suspension.

(c) Prior to the termination of a provider from the program, the provider shall be sent a written notification by the agency of the proposed termination and the reasons. The notice shall state whether payment liability to the provider has been suspended pending further proceedings. The notice shall further advise the provider that an appearance before the section may be permitted at a specified time, not less than five days nor more than 15 days from the date the notice is mailed to or served upon the provider. At the appearance the provider may present any relevant evidence and have an opportunity to be heard on the question of continuing eligibility in the program. All evidence presented, including that of the provider, shall be considered by the agency. If the decision is to terminate, a written order of termination shall be issued, setting forth the effective date of the termination and the basic underlying facts supporting the order.

(d) Any provider found not to be in compliance with one or more requirements set forth in K.A.R. 30-5-59 may be subject to suspension of payment or other remedies in lieu of termination. The effective date of this regulation shall be May 3, 1993. (Authorized by and implementing K.S.A. 1991 Supp. 39-708c, as amended by L. 1992, Chapter 322, Sec. 5; effective May 1, 1981; amended May

1, 1986; amended July 1, 1989; amended, T-30-12-28-89, Jan. 1, 1990; amended, T-30-2-28-90, Feb. 28, 1990; amended Aug. 1, 1990; amended May 3, 1993.)

30-5-61. (Authorized by K.S.A. 1979 Supp. 39-708c; effective May 1, 1981; amended, T-84-11, July 1, 1983; revoked May 1, 1984.)

30-5-61a. Withholding of payments to medical providers. (a) Payments otherwise authorized to be made to medical providers shall be withheld, in full or in part, by the agency when:

(1) The agency has determined that the provider to whom payments are to be made has been overpaid;

(2) the agency has reliable evidence, although additional evidence may be needed for a determination, that an overpayment exists or that the payment to be made may not be correct; or

(3) the agency has been instructed by the department of health and human services (HHS) to withhold all or part of the federal share from payment to a medical provider.

(b) A withholding action shall become effective immediately unless a later date is set forth in the letter of notification. The agency, no later than the effective date of the withholding action, shall send written notification of the withholding and the reasons therefor to the affected medical provider.

(c) A withholding action shall remain in effect until:

(1) The overpayment is recouped from the amount withheld or is otherwise recovered;

(2) the agency enters into an agreement with the provider for recovery of the over payment;

(3) the agency, on the basis of subsequently acquired evidence or otherwise, determines that there is no overpayment; or

(4) the agency is otherwise notified by HHS if the withholding action is pursuant to federal instructions. No payment for the withheld federal share shall be made to any medical provider unless the agency receives notification from HHS to do otherwise.

(d) Whenever payments to a medical provider are withheld pursuant to paragraph (a)(2), the agency shall take timely action to obtain any additional evidence the agency may need to make a determination as to whether an overpayment exists or whether payments should be made. The agency shall make all reasonable efforts to ex-

pedite the determination. As soon as the determination has been made, the provider shall be informed and, when appropriate, the withholding action shall be rescinded or adjusted to take into account the determination. If not rescinded, the withholding action shall remain in effect as specified in paragraph (c) above. (Authorized by and implementing K.S.A. 1983 Supp. 39-708c; effective May 1, 1984.)

30-5-61b. Suspension of payment liability to medical providers. (a) Suspension of payment liability because of determination by the secretary of health and human services. The agency shall suspend payment liability for services provided by any medical provider during any time period in which payments may not be made to the provider under titles XVIII or XIX of the social security act because of a determination by the secretary of health and human services pursuant to 42 U.S.C.A. 1395y(d)(1) and (e)(1), clause (C)(ii), (D), (E) or (F) of 42 U.S.C.A. 1395cc (b)(2). The suspension shall be effective upon receipt of the notification of the determination by the department of health and human services (HHS) and shall remain in effect until the agency is otherwise notified by HHS. The agency, no later than the effective date of the suspension, shall send written notification of the suspension and the reasons therefore to the affected medical provider. No payment shall be made to any medical provider for services provided by the medical provider during the time period of suspension unless the agency receives notification from HHS to do otherwise.

(b) Suspension of payment liability upon notification of proposed termination.

(1) Payment liability may be suspended by the agency upon notification to a provider of a proposed termination if the provider may no longer legally provide services or for other good cause. No payment shall be made to a provider for services rendered after the provider receives notification of the suspension.

(2) If payment liability is suspended to an adult care home, payment liability for those program recipients who are living in the home at the time of the suspension may be continued, for a period not to exceed 30 days, to facilitate the orderly transfer of the recipients to another facility or to alternate care. (Authorized by and implementing K.S.A. 1983 Supp. 39-708c; effective May 1, 1984.)

30-5-62. Reinstatement of a provider previously terminated from the medicaid/medikan program. A request for reinstatement by a provider terminated from participation in the medicaid/medikan program shall not be considered for a period of 60 days following the effective date of the order of termination. As a prerequisite for reinstatement in the program one or more of the following conditions may be imposed by the agency: (a) Implementation and documentation of corrective action taken by the provider to comply with program policies and to reasonably insure that the reason for the termination shall not recur; (b) probationary period not to exceed one year; (c) attendance at provider education sessions; (d) prior authorization of services; (e) peer supervision; and (f) other conditions as the specific situation may warrant. (Authorized by and implementing K.S.A. 1985 Supp. 39-708c; effective May 1, 1981; amended May 1, 1986.)

30-5-63. Medical necessity. Except as specifically set forth in program policy, the agency shall not reimburse a provider for the provision of a covered service to a program recipient unless the provision of the service was medically necessary. (Authorized by and implementing K.S.A. 1985 Supp. 39-708c; effective May 1, 1981; amended May 1, 1986.)

30-5-64. (Authorized by K.S.A. 39-708c(b) and K.S.A. 2004 Supp. 39-7,120; implementing K.S.A. 2004 Supp. 39-7,120 and 39-7,121a; effective May 1, 1981; amended May 1, 1983; amended May 1, 1986; amended May 1, 1992; amended July 1, 1994; amended March 1, 1995; amended March 1, 1996; amended July 1, 1996; amended July 1, 1997; amended Jan. 1, 1999; amended April 1, 2000; amended Oct. 1, 2000; amended Oct. 1, 2001; amended Dec. 6, 2002; amended Feb. 21, 2003; amended May 9, 2003; amended July 11, 2003; amended Aug. 8, 2003; amended Nov. 14, 2003; amended Dec. 29, 2003; amended May 28, 2004; amended Oct. 29, 2004; amended Jan. 7, 2005; amended April 1, 2005; amended May 27, 2005; revoked Oct. 28, 2005.)

30-5-65. (Authorized by and implementing K.S.A. 39-708c; effective May 1, 1981; amended, E-82-11, June 17, 1981; amended May 1, 1982; amended May 1, 1985; amended May 1, 1986; amended May 1, 1987; amended May 1, 1988; amended, T-30-12-28-89, Jan. 1, 1990; amend-

ed, T-30-2-28-90, Feb. 28, 1990; amended Aug. 1, 1990; amended May 1, 1992; amended July 1, 1994; revoked July 13, 2007.)

30-5-66. Effective date of administrative regulations in relationship to provider cost reporting periods. The administrative regulations in effect at the beginning of a cost reporting period shall govern the treatment of costs that accrue during said period unless otherwise provided. (Authorized by and implementing K.S.A. 1980 Supp. 39-708c; effective May 1, 1981.)

30-5-67. Disallowance of claims for services generated by providers ineligible for participation in the medicaid/medikan program. The agency shall disallow payment, except for emergency services, if the service set forth on a claim was generated by a provider ineligible to participate in the medicaid/medikan program. (Authorized by and implementing K.S.A. 1985 Supp. 39-708c; effective May 1, 1981; amended May 1, 1986.)

30-5-68. Consultants to the medicaid/medikan program. Consultants to the medicaid/medikan program may be reimbursed if under contract with the Kansas department of social and rehabilitation services. The payment rate for consultants shall be a mutually negotiated amount. The effective date of this regulation shall be August 1, 1990. (Authorized by and implementing K.S.A. 39-708c; effective May 1, 1981; amended May 1, 1986; amended, T-30-12-28-89, Jan. 1, 1990; amended, T-30-2-28-90, Feb. 28, 1990; amended Aug. 1, 1990.)

30-5-69. Volume purchase and negotiated contracts for medical services. The agency may procure medical services from a single or multiple source through competitive bidding or negotiated fee. The agreed upon reimbursement shall supersede the usual reimbursement methodology for the service. (Authorized by and implementing K.S.A. 39-708c; effective May 1, 1981; amended May 1, 1982.)

30-5-70. Payment of medical expenses for eligible recipients. (a) Payment for covered services shall be made only to those providers participating in the program pursuant to K.A.R. 30-5-59. The only exceptions shall be pursuant to K.A.R. 30-5-65.

(b) Each program recipient shall be eligible for the payment of specific medical expenses as follows:

(1) Payment of Medicare (title XVIII) premiums and deductibles and co-insurance amounts for services covered in the medicaid program. Recipients who are ineligible for program coverage because they have a spenddown shall be eligible for the payment of the Medicare (title XVIII) premium expense. For cash recipients, including SSI recipients, who are age 65 or older, payment of the Medicare (title XVIII) premium shall begin with the month of approval for medicaid, excluding any months of prior eligibility. For recipients under age 65 who are eligible for Medicare after receiving retirement and survivor's disability insurance for 24 consecutive months, payment of the Medicare (title XVIII) premium shall begin with the 25th month. For all other recipients, payment of the Medicare (title XVIII) premium shall begin with the second month following the month of approval for medicaid, excluding any months of prior eligibility;

(2) payment of premiums of health maintenance organizations that are approved by the agency or premiums of group health plans offered by the recipient's employer if the agency has determined that this plan is cost-effective;

(3) payment of other allowable medical expenses incurred in the current eligibility base period in excess of any co-pay or spenddown requirements;

(4) payment for services rendered to a person who is mandated to receive inpatient treatment for tuberculosis and who is not otherwise eligible for participation in the program. Coverage shall be limited to services related to the treatment for tuberculosis;

(5) payment for services in excess of medicaid/medikan program limitations for foster care and adoption support recipients, when approved by the agency; and

(6) payment for covered medical services provided to an individual participating in the KanWork program. A monthly cost-sharing amount for medical services shall be paid by each individual participating in the KanWork program when required.

(c) The scope of services provided to recipients and the payment for those services shall be as set forth in articles 5 and 10 of this chapter, subject to the following limitations.

(1) Payment for a particular medical expense shall be denied if it is determined that any one of these conditions is met:

(A) The recipient failed to utilize medical care available through other community resources, in-

cluding public institutions, veterans administration benefits, and those laboratory services that are available at no charge through the state department of health and environment.

(B) A third party liability for the medical expense has been established and is available.

(C) The recipient fails to make a good faith effort to establish a third party liability for the medical expense or fails to cooperate with the agency in establishing the liability. Payment of a medical expense may be delayed pending the outcome of a determination concerning third party liability.

(D) The expense is not covered or is only partially covered by an insurance policy because of an insurance program limitation or exclusion.

(E) The recipient failed to notify the provider of services of the recipient's eligibility for the program.

(F) The service is cosmetic, pioneering, or experimental, or is a result of complications related to these procedures.

(G) The service is related to transplant procedures that are not covered by the medicaid/medikan program.

(H) The service was provided by a provider not designated as a lock-in provider for any recipient who is locked into designated providers due to abuse, unless the provider has a written referral from a designated provider or unless the service was an emergency service.

(I) The service was provided by a provider not designated as the primary care case manager for any recipient who is enrolled in the primary care case manager program, unless the provider has a written referral from the designated provider or unless the service was an emergency service.

(J) The service was covered in a health maintenance organization plan for any recipient enrolled in a health maintenance organization.

(K) The service was provided by an unlicensed, unregistered, or noncertified provider when licensure, registration, or certification is a requirement to participate in the medicaid/medikan program.

(L) The service exceeds the limitations defined by the program policies.

(2) Payment for out-of-state services shall be limited to the following:

(A) Payment on behalf of recipients if medical services are normally provided by medical vendors that are located in the bordering state and within 50 miles of the state border, except for community mental health center services, alcohol and drug abuse services, or partial hospitalization services;

(B) emergency services rendered outside the state;

(C) nonemergency services for which prior approval by the agency has been given. Authorization from the agency shall be obtained before making arrangements for the individual to obtain the out-of-state services;

(D) services provided by independent laboratories; and

(E) medical services provided to foster care recipients and medical services in excess of the limitations of the state of residence, when approved by the Kansas department of social and rehabilitation services and within the scope of the adoption agreement for those for whom Kansas has initiated adoption support agreements.

(3) The scope of services for adult non-medicaid (non-title XIX) program recipients shall be limited as set forth in K.A.R. 30-5-150 through 30-5-172.

(d) Payment for medical services shall be made, at the discretion of the secretary, when it has been determined that an agency administrative error has been made.

(e) This regulation shall take effect on and after October 1, 1998. (Authorized by and implementing K.S.A. 1997 Supp. 39-708c and K.S.A. 1997 Supp. 39-709; effective May 1, 1981; amended, E-82-11, June 17, 1981; modified, L. 1982, ch. 469, May 1, 1982; amended, T-84-8, April 1, 1983; amended May 1, 1983; amended, T-84-9, May 1, 1983; amended May 1, 1984; amended May 1, 1985; amended May 1, 1986; amended, T-87-15, July 1, 1986; amended, T-87-44, Jan. 1, 1987; amended May 1, 1987; amended, T-88-10, May 1, 1987; amended May 1, 1988; amended July 1, 1989; amended, T-30-1-2-90, Jan. 2, 1990; amended, T-30-2-28-90, Jan. 2, 1990; amended, T-30-8-9-91, Aug. 30, 1991; amended Oct. 28, 1991; amended May 1, 1992; amended Nov. 2, 1992; amended May 3, 1993; amended July 19, 1996; amended Oct. 1, 1998.)

30-5-71. Copayment requirements. (a) Except as set forth in subsection (b) of this regulation, program recipients shall be obligated to the provider for the following copayment charges.

(1) The copayment for inpatient general hospital and freestanding psychiatric facility services shall be \$48.00 per admission.

(2) The copayment for outpatient general hospital services shall be \$1.00 per non-emergency visit in place of a doctor's office visit.

(3) The copayment for other medical services subject to copayment shall be based upon the following ranges:

Average medicaid/medikan payment for services	Maximum copayment chargeable to recipient
\$10.00 or less	\$.50
\$10.01 to \$25.00	\$1.00
\$25.01 to \$50.00	\$2.00
\$50.01 or more	\$3.00

(4) The copayment for other medical services subject to copayment shall be a standard amount based upon the average medicaid payment for the services, calculated on an annual basis. The average medicaid payment shall be calculated by dividing the cost of the services in aggregate by the total number of claims paid in the previous fiscal year. Any change in copayment shall be published in the Kansas Register on or before December fifteenth to be effective January first of each year.

(5) Other medical services subject to copayment shall include the following:

(A) Ambulatory surgical center services, for each date of service;

(B) audiological services, excluding batteries, for each date of service;

(C) community mental health center services, for each individual psychotherapy visit;

(D) durable medical equipment, prosthetics, and orthotics, for each claim, excluding the rental of durable medical equipment;

(E) home health services, for each skilled nursing visit, excluding the rental of durable medical equipment;

(F) non-emergency ambulance services, for each date of service;

(G) optometric or ophthalmologist services, for each date of service;

(H) outpatient general hospital surgery, for each date of service;

(I) prescribed drugs, for each new or refilled prescription;

(J) physician or physician extender services, for each office visit;

(K) podiatric services, for each office visit;

(L) psychological services, for each office visit;

(M) dietician services, for each date of service;

(N) dental services, for each date of service;

(O) federally qualified health center services, for each encounter; and

(P) rural health clinic services, for each encounter.

(b) The provisions of subsection (a) shall not apply to services provided as follows:

(1) To residents in nursing facilities, including swing beds, intermediate care facilities for the mentally retarded, nursing facilities for mental health, and to recipients participating in the home- and community-based services programs;

(2) to inpatients in a state psychiatric hospital who meet both of the following conditions:

(A) Have reached the age of 18 but are not yet 22 years of age; or

(B) are at least 65 years of age;

(3) to recipients under age 18;

(4) to recipients in the custody of the juvenile justice authority or secretary of social and rehabilitation services who are at least 18 years old but under age 21 and who are in out-of-home placements;

(5) to recipients enrolled in a medicaid-funded health maintenance organization;

(6) for family planning purposes;

(7) for medical services relating to an injury incurred on the job during a community work experience project;

(8) for services related to pregnancy; and

(9) for emergency services. (Authorized by and implementing K.S.A. 39-708c; effective May 1, 1981; amended May 1, 1982; amended, T-83-38, Nov. 23, 1982; amended May 1, 1983; amended, T-84-36, Jan. 1, 1984; amended May 1, 1984; amended May 1, 1986; amended, T-87-20, Sept. 1, 1986; amended May 1, 1987; amended, T-88-59, Dec. 16, 1987; amended May 1, 1988; amended, T-30-12-28-89, Jan. 1, 1990; amended, T-30-2-28-90, Feb. 28, 1990; amended Aug. 1, 1990; amended Dec. 31, 1992; amended Sept. 27, 1993; amended Dec. 30, 1994; amended, T-30-6-28-95, July 1, 1995; amended Sept. 1, 1995; amended July 1, 1997; amended Sept. 3, 2004.)

30-5-72. Medical contracts; funding. All medical contracts shall be subject to federal and state funding conditioned by appropriations made by congress and the state legislature. (Authorized by and implementing K.S.A. 1980 Supp. 39-708; effective May 1, 1981.)

30-5-73. Requirements for facilities to participate. (a) Medical services provided in community mental health centers, free-standing psychiatric facilities, state-operated hospitals, and general hospitals to be reimbursed by the medicaid/medikan program shall be under the effective control of a physician as determined by the agency.

(b) Community mental health centers, free-standing psychiatric facilities, state-operated hospitals, and general hospitals providing medical services reimbursable by the medicaid/medikan program shall have utilization review programs approved by medicare or the agency. Utilization review programs and their implementation shall be subject to review by the secretary.

(c) Facilities offering medical services shall be licensed or certified by an appropriate Kansas state licensing or certification authority in order to be eligible for reimbursement by the medicaid/medikan program. The effective date of this regulation shall be October 1, 1993. (Authorized by and implementing K.S.A. 1992 Supp. 39-708c; effective May 1, 1981; amended May 1, 1986; amended, T-30-1-2-90, Jan. 2, 1990; amended, T-30-2-28-90, Jan. 2, 1990; amended Oct. 1, 1993.)

30-5-74. (Authorized by and implementing K.S.A. 1980 Supp. 39-708c; effective May 1, 1981; revoked May 1, 1986.)

30-5-75. Scope of services for eligible aliens. The scope of services shall be limited to emergency medical services for otherwise eligible aliens pursuant to K.A.R. 30-6-54 who do not qualify under the citizenship and alienage requirements. (Authorized by and implementing K.S.A. 39-708c; effective, T-88-14, July 1, 1987; effective May 1, 1988.)

30-5-76. Scope of coverage and reimbursement for services for qualified medicare beneficiaries. The scope of coverage for QMBs shall be the reimbursement of medicare premiums and coinsurance under part A and part B of medicare, for covered and noncovered medicaid/medikan services. The reimbursement rates shall be based upon the methodologies specified in this article, and the combination of medicare and medicaid payments shall not exceed payments at the current medicaid/medikan reimbursement rates. If the medicare payment exceeds the payment at the current medicaid/medikan reimbursement rate, no further payment shall be made. Reimbursement rates for services not otherwise covered by medicaid/medikan shall not exceed 80 percent of the current medicare allowable reimbursement rates or shall be determined by the secretary. This regulation shall be effective on and after January 1, 2002. (Authorized by and implementing K.S.A. 39-708c; effective July 1, 1989; amended Jan. 1, 2002.)

30-5-77. Scope of home- and community-based services for technology-assisted children.

The scope of home- and community-based services for technology-assisted children shall consist of those services provided under the authority of a federally approved waiver. Home- and community-based services shall be provided in accordance with a written plan of care by a home health agency and approved by the Kansas department of social and rehabilitation services. (a) Services may include one or more of the following:

- (1) An average of 10 hours per month of case management services;
- (2) a maximum of seven days or 168 hours per calendar year of respite care provided in the home; and
- (3) medical equipment and supplies not otherwise covered under the medicaid program and approved in the plan of care.

(b) Reimbursement for services for technology-assisted children shall be based upon reasonable fees as related to customary charges, except no fee shall be paid in excess of the range maximum. The range of charges shall provide the base for computations. The effective date of this regulation shall be July 1, 1991. (Authorized by and implementing K.S.A. 1990 Supp. 39-708c; effective, T-30-3-1-91, March 1, 1991; effective July 1, 1991.)

30-5-78. (Authorized by and implementing K.S.A. 39-708c; effective, T-30-8-9-91, Aug. 30, 1991; effective Oct. 28, 1991; amended Oct. 1, 1998; amended Jan. 1, 2004; revoked July 18, 2008.)

30-5-79. Scope of and reimbursement for home- and community-based services for persons with mental retardation or other developmental disabilities.

The scope of home- and community-based services for persons with mental retardation or other developmental disabilities shall consist of those services provided under the authority of the applicable federally-approved waiver to the Kansas medicaid state plan. (a) Prior to the development of any plan to provide services, the need for services shall be determined by an individualized assessment of the prospective recipient by a provider of community-based screening services.

(b) Home- and community-based services shall be provided in accordance with an individualized, written plan of care approved in writing by the Kansas department of social and rehabilitation

services. Each annual review and amendment of this plan shall be approved in the same fashion. This plan shall:

- (1) Be based on needs identified during the screening assessment;
- (2) specify each service to be provided and why each service was selected, or how each service will address any specific need identified by the assessment;
- (3) specify the frequency, and within what limits, each service shall be provided;
- (4) specify what other support services are required and the plan for obtaining them;
- (5) be prepared in consultation with the recipient or the recipient's guardian, if one has been appointed;
- (6) be approved in writing by the recipient or the recipient's guardian, as appropriate; and
- (7) be reviewed at least annually and updated as necessary.

(c) Reimbursement for home- and community-based services for persons with mental retardation or other developmental disabilities shall be based upon reasonable fees as related to customary charges, except that no fee shall be paid in excess of the range maximum. The effective date of this regulation shall be October 28, 1991. (Authorized by and implementing K.S.A. 39-708c; effective, T-30-8-9-91, Aug. 30, 1991; effective Oct. 28, 1991.)

30-5-80. This regulation shall be revoked on and after July 1, 1997. (Authorized by and implementing K.S.A. 1996 Supp. 39-708c; effective July 31, 1992; amended Dec. 29, 1995; revoked July 1, 1997.)

30-5-81. Scope of hospital services.

(a) Each hospital shall be medicare-certified and shall annually update medicaid enrollment information.

(b) Outpatient services shall be covered with the following limitations.

- (1) Services shall be ordered by an attending physician who is not serving as an emergency room physician, except for those services related to emergency situations. Orders shall be related specifically to the present diagnosis of the recipient.
- (2) A prosthetic device shall replace all or part of an internal body organ or shall replace one of these devices.
- (3)(A) Rehabilitative therapies shall be restorative in nature.

(B) Rehabilitative therapies shall be provided following physical debilitation due to acute physical trauma or physical illness.

(C) Rehabilitative therapies shall be prescribed by the attending physician.

(4) Services provided in the emergency department shall be emergency services.

(5) Elective surgery shall not be covered, except for sterilization operations or operations for Kan Be Healthy program participants.

(6) Ambulance services shall not be covered.

(7) Nonemergency visits in place of physician office visits shall be considered physician office visits and shall be counted against the physician office visit limitation.

(8) Outpatient hospital assessment of the need for emergency service shall not be covered.

(c) Inpatient services shall be covered, subject to the following limitations.

(1) Services shall be ordered by a physician and shall be related specifically to the present diagnosis of the recipient.

(2) Transplant surgery shall be limited to the following:

(A) Liver transplants, which shall be performed only at a hospital designated by the secretary unless the medical staff of that hospital recommends another location; and

(B) corneal, kidney, and bone marrow transplants and related services.

(3) A recipient of general hospital inpatient services shall not be billed for those days determined to be medically unnecessary. If a recipient refuses to leave a hospital after the recipient's physician writes a discharge order, the days after discharge that the recipient remains in the hospital may be billed to the recipient.

(4) A provider shall not be reimbursed for services provided on the day of discharge.

(5) Long-term care services in swing beds shall be provided pursuant to 42 CFR part 482, subpart E, revised October 1, 1999, which is adopted by reference.

(6) A provider shall not be reimbursed on an inpatient basis for therapeutic and diagnostic surgical services, and related services that can be performed on an outpatient basis. A provider shall not be reimbursed on an inpatient basis unless the service provider documents medical necessity.

(7) Inpatient services shall be subject to utilization review, which shall determine the following:

(A) Whether services are medically necessary;

(B) whether services are furnished at the appropriate level of care;

(C) whether services are of a quality that meets professionally recognized standards;

(D) whether a discharge is premature;

(E) whether a transfer is necessary; and

(F) whether the procedure coding and the diagnosis coding on a claim are correct.

(8) Psychotherapy, directed by a psychiatrist or approved hospital staff under the direction of a psychiatrist, shall be provided to each psychiatric patient on a daily basis.

(9) Substance abuse treatment services shall be limited to three treatment admissions per recipient's lifetime, regardless of the type of provider.

(10) Inpatient acute care related to substance abuse treatment services shall be limited to those patients who are in need of acute detoxification.

(11) Elective surgery shall not be covered, except for sterilization operations or operations for Kan Be Healthy program participants. (Authorized by and implementing K.S.A. 1999 Supp. 39-708c; effective May 1, 1981; modified, L. 1982, ch. 469, May 1, 1982; amended May 1, 1983; amended, T-84-7, March 29, 1983; amended, T-84-11, July 1, 1983; amended May 1, 1984; amended, T-85-9, April 11, 1984; amended, T-85-24, Sept. 18, 1984; amended May 1, 1985; amended May 1, 1986; amended May 1, 1987; amended May 1, 1988; amended, T-89-24, May 27, 1988; amended Sept. 26, 1988; amended, T-30-10-28-88, Oct. 28, 1988; amended Jan. 2, 1989; amended July 1, 1989; amended, T-30-7-29-89, July 29, 1989; amended Nov. 24, 1989; amended Aug. 1, 1990; amended, T-30-10-1-90, Oct. 1, 1990; amended Jan. 30, 1991; amended July 1, 1991; amended July 1, 1996; amended Oct. 6, 2000.)

30-5-81a. Participation in the diagnosis related group reimbursement system. As a prerequisite for participation in the medicaid/medikan program, a general hospital shall participate in the Kansas department of social and rehabilitation services' diagnosis related group reimbursement system. The effective date of this regulation shall be July 1, 1989. (Authorized by and implementing K.S.A. 39-708c; effective, E-82-6, May 1, 1981; effective May 1, 1982; amended, T-84-7, May 1, 1983; amended May 1, 1984; amended July 1, 1989.)

30-5-81b. The basis of reimbursement for hospital services. (a) Payment for hospital services provided to program participants shall be made to those hospitals filing cost reports with the Kansas department of social and rehabilitation services. Cost reports shall be due 30 days after

the due date of the medicare cost report to the medicare fiscal intermediary.

(b) General hospitals; inpatient services. For covered services rendered to program recipients, each general hospital shall be reimbursed on the basis of the diagnosis related group reimbursement system pursuant to the provisions of K.A.R. 30-5-81t through 30-5-81v except as set forth below.

(c) General hospitals; outpatient services. For covered services rendered to program recipients, each general hospital shall be reimbursed based on the reimbursement methodology for comparable services rendered by non-hospital providers. For laboratory and radiology services, each general hospital shall be reimbursed its customary charges not to exceed the range maximum set forth in K.A.R. 30-5-85a plus 2%.

(d) General hospitals; long term care in swing bed hospitals. For covered services rendered to program recipients, each general hospital shall be reimbursed pursuant to 42 CFR 447.250 through 447.280, revised October 1, 1988, which are adopted by reference.

(e) State-operated hospitals. Each state-operated hospital shall be reimbursed the lesser of reasonable costs or customary charges for covered inpatient services rendered to program recipients. Each state-operated hospital shall be reimbursed reasonable fees as related to customary charges for covered outpatient services rendered to program recipients, except no fee shall be paid in excess of the range maximum. The range of charges shall provide the base for computations.

(f) Hospitals which are determined to be disproportionate share hospitals shall be reimbursed with a disproportionate share payment adjustment as determined in accordance with the Omnibus Budget Reconciliation Act, Public Law 100-203, section 4112, effective July 1, 1988. The effective date of this regulation shall be October 1, 1993. (Authorized by and implementing K.S.A. 1992 Supp. 39-708c; effective May 1, 1981; amended, E-82-6, May 1, 1981; modified, L. 1982, ch. 469, May 1, 1982; amended May 1, 1983; amended, T-84-7, May 1, 1983; amended May 1, 1984; amended, T-85-24, Sept. 18, 1984; amended May 1, 1985; amended, T-86-19, July 1, 1985; amended May 1, 1986; amended, T-87-44, Jan. 1, 1987; amended, T-88-6, March 4, 1987; amended May 1, 1987; amended, T-88-10, May 1, 1987; amended, T-30-7-29-88, July 29, 1988; amended Sept. 26, 1988; amended July 1, 1989; amended Aug. 1, 1990; amended Oct. 1, 1993.)

30-5-81c. (Authorized by and implementing K.S.A. 1980 Supp. 39-708c; effective May 1, 1981; amended, E-82-6, May 1, 1981; amended May 1, 1982; revoked, T-84-7, March 29, 1983; revoked May 1, 1984.)

30-5-81d. This rule and regulation shall expire on July 1, 1989. (Authorized by and implementing K.S.A. 1985 Supp. 39-708c; effective May 1, 1981; amended, E-82-6, May 1, 1981; amended May 1, 1982; amended, T-84-7, May 1, 1983; amended May 1, 1984; amended May 1, 1985; amended May 1, 1987; revoked July 1, 1989.)

30-5-81e. (Authorized by and implementing K.S.A. 1979 Supp. 39-708c; effective May 1, 1981; revoked, T-84-7, March 29, 1983; revoked May 1, 1984.)

30-5-81f to 30-5-81i. (Authorized by and implementing K.S.A. 1980 Supp. 39-708c; effective May 1, 1981; amended, E-82-6, May 1, 1981; amended May 1, 1982; revoked, T-84-7, March 29, 1983; revoked May 1, 1984.)

30-5-81j. (Authorized by and implementing K.S.A. 1979 Supp. 39-708c; effective May 1, 1981; revoked, T-84-7, March 29, 1983; revoked May 1, 1984.)

30-5-81k and 30-5-81l. (Authorized by and implementing K.S.A. 1980 Supp. 39-708c; effective May 1, 1981; amended, E-82-6, May 1, 1981; amended May 1, 1982; revoked, T-84-7, March 29, 1983; revoked May 1, 1984.)

30-5-81m and 30-5-81n. (Authorized by and implementing K.S.A. 1979 Supp. 39-708c; effective May 1, 1981; revoked, T-84-7, March 29, 1983; revoked May 1, 1984.)

30-5-81o. (Authorized by and implementing K.S.A. 1980 Supp. 39-708c; effective May 1, 1981; amended, E-82-6, May 1, 1981; amended May 1, 1982; revoked, T-84-7, March 29, 1983; revoked May 1, 1984.)

30-5-81p. (Authorized by and implementing K.S.A. 1979 Supp. 39-708c; effective May 1, 1981; revoked, T-84-7, March 29, 1983; revoked May 1, 1984.)

30-5-81q. This rule and regulation shall expire on July 1, 1989. (Authorized by and implementing K.S.A. 1985 Supp. 39-708c; effective May 1, 1981; amended, E-82-6, May 1, 1981; amended May 1, 1982; revoked, T-84-7, March 29, 1983; revoked May 1, 1984.)

tive, T-84-9, May 1, 1983; effective May 1, 1984; amended May 1, 1985; amended May 1, 1986; revoked July 1, 1989.)

30-5-81r. This rule and regulation shall expire on July 1, 1989. (Authorized by and implementing K.S.A. 1985 Supp. 39-708c; effective, T-84-9, May 1, 1983; effective May 1, 1984; amended May 1, 1985; amended May 1, 1986; revoked July 1, 1989.)

30-5-81s. This rule and regulation shall expire on July 1, 1989. (Authorized by and implementing K.S.A. 1985 Supp. 39-708c; effective, T-84-9, May 1, 1983; effective May 1, 1984; amended May 1, 1985; amended May 1, 1986; revoked July 1, 1989.)

30-5-81t. Hospital change of ownership.

(a) Agency notification and provider agreements.

(1) Each hospital shall notify the agency in writing at least 60 days prior to the effective date of the change of ownership. Failure to do so shall result in the forfeiture of rights to payment for covered services provided to recipients by the previous owner or owners in the 60-day period prior to the effective date of the change of ownership. Failure to notify the agency in writing at least 60 days prior to the effective date of the change of ownership shall result in the new owner or owners assuming responsibility for any overpayment made to the previous owner or owners before the effective date of the change of ownership. This shall not release the previous owner of responsibility for such overpayment. This notification requirement may be waived at the discretion of the secretary based upon the showing of good cause by a hospital changing ownership. The new owner or owners shall submit an application to be a provider of services in the program and shall not receive reimbursement for covered services provided to recipients from the effective date of the change of ownership until the date upon which all requirements for participation pursuant to K.A.R. 30-5-59 have been met or until the date upon which an application to be a provider of services in the program is received by the Kansas department of social and rehabilitation services, whichever is later.

(2) At least 60 days before the dissolution of the business entity, the change of ownership of the business entity, or the sale, exchange or gift of 5% or more of the depreciable assets of the business entity, the agency shall be notified in writing. If the business entity fails to provide 60 days writ-

ten notice, no reimbursement shall be made. This notification requirement may be waived at the discretion of the secretary based upon the showing of good cause by a hospital changing ownership.

(3) If a sole proprietor not incorporated under applicable state law transfers title and property to another party, a change of ownership shall have occurred. An application to be a provider of service shall be submitted to the agency by the new owner and affiliated providers.

(4) Transfer of participating provider corporate stock shall not in itself constitute a change of ownership. Similarly, a merger of one or more corporations with the participating provider corporation surviving shall not constitute a change of ownership. A consolidation of two or more corporations which creates a new corporate entity shall constitute a change of ownership, and an application to be a provider of services shall be submitted to the agency by the new owner and affiliated providers.

(5) Each partnership that is dissolved shall not require a new provider agreement if at least one member of the original partnership remains as the owner of the facility. Each addition or substitution to a partnership or any change of ownership resulting in a completely new partnership shall require that an application to be a provider of services shall be submitted to the agency by the new owner and affiliated providers.

(6) The change of or a creation of a new lessee, acting as a provider of services, shall constitute a change of ownership. An application to be a provider of services shall be submitted to the agency by the new lessee and affiliated providers. If the lessee of the facility purchases the facility, the purchase shall not constitute a change in ownership.

(b) Certification surveys. Each new owner or owners shall be subject to a certification survey by the department of health and environment and, if certified, the period of certification shall be as established by the department of health and environment.

(c) Cost limitations.

(1) For each asset in existence on July 18, 1984, which is subsequently sold, the valuation of the asset for reimbursement purposes shall be the lesser of the allowable acquisition cost of the asset to the owner of record on July 18, 1984, or the acquisition cost of the asset to the new owner.

(2) For each asset not in existence on July 18, 1984, the valuation of the asset for reimbursement purposes shall be the lesser of the acquisition cost of the asset to the first owner of record or the acquisition cost of the asset to the new owner.

(3) Costs attributable to the negotiation or settlement of the sale or purchase of any capital asset on or after July 18, 1984, shall not be allowable. The effective date of this regulation shall be July 1, 1989. (Authorized by and implementing K.S.A. 39-708c; effective, T-85-34, Dec. 19, 1984; effective May 1, 1985; amended May 1, 1986; amended May 1, 1988; amended July 1, 1989.)

30-5-81u. General hospital groups under the diagnosis-related group (DRG) reimbursement system. (a) Each general hospital participating in the Kansas medicaid/medikan program shall be assigned by the Kansas department of social and rehabilitation services to one of four groups. Each general hospital shall be annually notified by the department in writing of the hospital's group assignment.

(1) Each general hospital assigned to group one shall meet either of the following criteria:

(A) Be located within a metropolitan statistical area within the state of Kansas and have at least 200 general hospital inpatient beds; or

(B) be located within the state of Kansas and within 10 miles of a general hospital meeting the criteria specified in paragraph (a)(1)(A).

(2) Each general hospital assigned to group two shall meet one of the following criteria:

(A) Be located within a metropolitan statistical area in the state of Kansas and have fewer than 200 general hospital inpatient beds;

(B) be located outside of a metropolitan statistical area in the state of Kansas or its border cities and have at least 100 general hospital inpatient beds; or

(C) be located within the state of Kansas and within 10 miles of a general hospital meeting the criteria specified in paragraph (a)(2)(A) or (B).

(3) Each general hospital assigned to group four shall be located outside of the state of Kansas.

(4) A general hospital shall be assigned to group three if it does not meet the criteria specified in paragraphs (a)(1), (a)(2), and (a)(3) above.

(5) A general hospital shall be assigned to group one if it meets the criteria for assignment to both group one and group two.

(b) General hospital group assignments shall be redetermined annually by the department based upon the criteria in subsection (a). (Authorized by and implementing K.S.A. 39-708c; effective July 1, 1989; amended Dec. 29, 1995; amended, T-30-1-2-03, Jan. 2, 2003; amended April 18, 2003; amended March 18, 2005.)

30-5-81v. Reimbursement for general hospital inpatient services under the diagnosis related group (DRG) reimbursement system. (a) The Kansas department of social and rehabilitation services shall reimburse general hospitals for inpatient services provided to recipients covered pursuant to K.A.R. 30-5-81 on the basis of the diagnosis related group (DRG) reimbursement system.

(b) Reimbursement shall be determined as follows:

(1) The standard DRG amount shall constitute reimbursement for each covered general hospital inpatient stay except in circumstances described in subsections (b)(5) and (b)(6) below. An additional payment shall be made for each day outlier or each cost outlier pursuant to subsections (b)(2), (b)(3) and (b)(4) below.

(2) If a covered general hospital inpatient stay is determined to be a cost outlier, the reimbursement for the cost outlier additional payment shall be obtained by multiplying two items: The DRG adjustment percentage and the difference between the estimated cost of the covered inpatient stay and the cost outlier limit.

(3) If a covered general hospital inpatient stay is determined to be a day outlier, the reimbursement for the day outlier additional payment shall be obtained by multiplying three items: The DRG daily rate, the DRG adjustment percentage, and the difference between the actual covered length of inpatient stay and the day outlier limit.

(4) If a covered general hospital inpatient stay is determined to be both a cost outlier and a day outlier, the additional payment shall be the greater of the amounts computed in subsections (b)(2) or (b)(3) above.

(5) If a recipient is transferred during a covered general hospital inpatient stay from one hospital to another hospital, the reimbursement to both hospitals shall be determined by a methodology specified by the secretary.

(6) Reimbursement shall not be made for a recipient's readmission to a hospital if the readmission for the same recipient is determined to have resulted from an inappropriate discharge. The effective date of this regulation shall be July 1, 1989. (Authorized by and implementing K.S.A. 39-708c; effective July 1, 1989.)

30-5-82. Scope of rural health clinic services. Rural health clinic services and other ambulatory services shall be covered under the Kansas

medical assistance program pursuant to 42 CFR 447.371, effective September 30, 1986, when provided by clinics accepted by the health care financing administration as qualified to furnish rural health clinic services for participation under the medicare program. A clinic may be certified as either an independent or a provider-based rural health clinic. Covered rural health clinic services and other ambulatory services shall include the following: (a) Physician services. These are professional services performed by a physician.

(b) Advanced registered nurse practitioner and physician assistant services. These are professional services furnished by an advanced registered nurse practitioner or a physician assistant under both of the following conditions:

(1) Services are in accordance with medical orders prepared by a physician for the care and treatment of a patient.

(2) A physician is available at least once every two weeks to supervise the delivery of services and to perform services that are not in the scope of advanced registered nurse practitioner and physician assistant services as defined in the Kansas statutes.

(c) Services and related medical supplies furnished incident to professional services provided by a physician, advanced registered nurse practitioner, or physician assistant. These are services and supplies commonly furnished in physician offices under the direct supervision of a physician, advanced registered nurse practitioner, or physician assistant.

(d) Visiting nurse services. These are home health nursing services and related medical supplies provided by a registered nurse or a licensed practical nurse under the supervision of a registered nurse at the beneficiary's place of residence, which shall not include a hospital or long-term care facility, under all of the following conditions:

(1) The rural health clinic is located in an area where there is no home health agency.

(2) The services are furnished to a homebound individual who is confined to the individual's place of residence because of a medical condition.

(3) Services are provided under a written plan of treatment established by a physician, advanced registered nurse practitioner, or physician assistant and reviewed at least once every 60 days by a supervising physician.

(e) Other ambulatory services covered by the medicaid state plan.

(f) Referral for covered services not provided by the rural health clinic, to other practitioners

enrolled as providers in the Kansas medical assistance program shall be covered.

(g) Screening and appropriate referral for the "kan be healthy" program shall be covered.

This regulation shall take effect on and after January 1, 1999. (Authorized by and implementing K.S.A. 1997 Supp. 39-708c; effective May 1, 1981; amended Jan. 2, 1989; amended July 1, 1989; amended, T-30-1-2-90, Jan. 2, 1990; amended, T-30-2-28-90, Jan. 2, 1990; amended Dec. 29, 1995; amended Jan. 1, 1999.)

30-5-82a. Reimbursement for rural health clinic services. Reimbursement for rural health clinic services and other ambulatory services covered by the Kansas medical assistance program shall be at reasonable cost pursuant to 42 CFR 447.371, effective September 30, 1986; 42 CFR Part 413, revised as of October 1, 1997; Section 4205 of the balanced budget act of 1997; and the provisions discussed in this regulation. (a) Reimbursement method. An interim rate per visit shall be paid to each rural health clinic, subject to a fiscal year-end retroactive cost settlement.

(b) Interim reimbursement rate per visit.

(1) Rate for independent rural health clinic. Each clinic shall be paid by the agency the all-inclusive reasonable cost rate per visit determined by the medicare carrier.

(A) Initial rate at enrollment. The medicaid payment rate shall be the current medicare rate.

(B) Rate changes. The interim payment rate of an independent rural health clinic shall be changed by the agency each time a rate change notification for that clinic is received from the medicare carrier.

(2) Rate for provider-based rural health clinic.

(A) Initial rate at enrollment. An estimated payment rate per visit that is no more than the medicare payment limit shall be set by the agency.

(B) Rate changes. After cost settlement of a provider-based clinic, the interim payment rate shall be changed by the agency based on paragraph (d)(2)(B) below.

(c) Visit. A "visit" means a face-to-face encounter between a clinic patient and a health care professional as defined in K.A.R. 30-5-82. Encounters with more than one health professional or multiple encounters with the same health professional that take place on the same day shall constitute a single visit except when, after the first encounter, the patient suffers illness or injury requiring additional diagnosis or treatment.

(d) Retroactive cost settlement. The allowable medicaid cost shall be determined by the agency, and this cost shall be compared by the agency to the total payments to determine the amount overpaid or underpaid for each cost-reporting period. "Total payments" shall include interim reimbursements, health connect Kansas case management payments, third party liability, and any other payment for covered services.

(1) Cost settlement for independent rural health clinic.

(A) Cost report. The audited medicare cost report of the independent rural health clinic received from the medicare carrier shall be used by the agency.

(B) Allowable Kansas medical assistance program cost. The allowable medicaid cost of an independent rural health clinic shall be obtained by applying the audited medicare reimbursement rate per visit to medicaid paid claims data. For independent rural health clinic providers with multiple locations, aggregate medicaid paid claims data for all clinics shall be used.

(2) Cost settlement for provider-based rural health clinic.

(A) Cost report. The audited medicare cost report of the health care organization of which the rural health clinic is a part shall be used by the agency. This cost report is provided by the medicare intermediary.

(B) Allowable Kansas medical assistance program cost. Pursuant to 42 CFR 413.9 (a) and Section 4205 of the balanced budget act of 1997, the allowable medicaid cost shall be the lowest of the following three amounts:

- (i) Cost computed by using the cost report;
- (ii) cost computed by applying medicare maximum rate; or
- (iii) billed charges.

(e) Fiscal and statistical records and audits. The requirements in K.A.R. 30-5-118a(d) shall apply.

(f) This regulation shall take effect on and after January 1, 1999. (Authorized by and implementing K.S.A. 1997 Supp. 39-708c; effective May 1, 1981; amended July 1, 1994; amended Jan. 1, 1999.)

30-5-83. Scope of services for ambulatory surgical centers. Coverage shall be limited to non-elective surgical services, except for sterilization operations or for participants in the Kan Be Healthy program. (Authorized by and implementing K.S.A. 39-708c; effective May 1, 1981; amend-

ed May 1, 1983; amended May 1, 1984; amended, T-85-9, April 11, 1984; amended May 1, 1985; amended Jan. 2, 1989.)

30-5-83a. Reimbursement for ambulatory surgical centers. Reimbursement shall be made as a fee for service established by the secretary. No fee shall be paid in excess of reasonable cost or charges, whichever is less. (Authorized by and implementing K.S.A. 39-708c; effective May 1, 1981; amended May 1, 1983; amended, T-87-44, Jan. 1, 1987; amended, T-88-10, May 1, 1987; amended May 1, 1988.)

30-5-84. This rule and regulation shall expire on January 1, 1990. (Authorized by and implementing K.S.A. 39-708c; effective May 1, 1981; amended May 1, 1983; amended May 1, 1986; amended May 1, 1988; amended July 1, 1989; revoked Jan. 1, 1990.)

30-5-84a. This rule and regulation shall expire on January 1, 1990. (Authorized by and implementing K.S.A. 39-708c; effective May 1, 1981; amended May 1, 1982; amended May 1, 1983; amended May 1, 1986; amended May 1, 1988; revoked Jan. 1, 1990.)

30-5-85. Scope of independent laboratory services. The services of independent laboratories shall be available to program recipients if:

- (a) the laboratory has been certified by medicare to perform the services;
- (b) the laboratory is independent from the office of the ordering physician; and
- (c) the laboratory services are prescribed. (Authorized by and implementing K.S.A. 1980 Supp. 39-708c; effective May 1, 1981.)

30-5-85a. Reimbursement for independent laboratory services. Reasonable fees as related to customary charges shall be paid for independent laboratory services, except no fee shall be paid in excess of the range maximum. The range of charges shall provide the base for computations. (Authorized by and implementing K.S.A. 1982 Supp. 39-708c; effective May 1, 1981; amended May 1, 1983.)

30-5-86. Scope of services by community mental health centers. (a) Community mental health center services shall be available to program recipients in:

- (1) Outpatient treatment programs licensed by mental health and retardation services;

(2) approved inpatient treatment programs;
 (3) partial hospitalization programs approved by mental health and retardation services pursuant to K.A.R. 30-5-110 and certified to participate in medicare; and

(4) the recipient's private residence.

(b) (1) During a calendar year, outpatient psychotherapy shall be limited to 32 hours per recipient unless the recipient is a "Kan Be Healthy" program participant. Outpatient psychotherapy shall be limited to 40 hours per calendar year for each "Kan Be Healthy" program participant.

(2) Outpatient psychotherapy shall be covered, when medically necessary, and when provided concurrently with both targeted case management services and partial hospitalization services by the same provider.

(c) Four hours of psychological testing and evaluation shall be allowed every two consecutive calendar years for medicaid program recipients regardless of provider except that "Kan Be Healthy" program participants shall be allowed six hours. Admission evaluations shall not exceed five hours per calendar year and may include a physical examination.

(d) Inpatient psychotherapy shall be available pursuant to K.A.R. 30-5-81. Case conferences may be considered as individual therapy if they meet the definition in K.A.R. 30-5-58. Group therapy shall be reimbursable only if it is rendered on a day when group therapy has not been a part of partial hospitalization.

(e) Targeted case management services shall be limited to an amount per calendar year per recipient as specified by the secretary.

(f) Services shall be provided by a psychiatrist, a licensed psychologist with a doctoral degree or a registered master's level psychologist, master's degree social worker, master's degree psychiatric nurse, or individuals certified by the Kansas association of community mental health center directors' professional standards committee and approved by the agency, unless the approval is contrary to law or regulation.

(g) The effective date of this regulation shall be December 29, 1995. (Authorized by and implementing K.S.A. 1994 Supp. 39-708c, as amended by L. 1995, Ch. 153, Sec. 1; effective May 1, 1981; amended May 1, 1982; amended May 1, 1983; modified, L. 1983, ch. 361, May 1, 1983; amended May 1, 1984; amended May 1, 1985; amended May 1, 1986; amended, T-87-29, Nov. 1, 1986; amended May 1, 1987; amended

May 1, 1988; amended Jan. 2, 1989; amended Aug. 1, 1990; amended July 1, 1991; amended Oct. 1, 1992; amended Jan. 4, 1993; amended Dec. 29, 1995.)

30-5-86a. Reimbursement for community mental health centers. Reasonable fees as related to customary charges shall be paid for community mental health center services, except no fee shall be paid in excess of the range maximum. The range of charges shall provide the base for computations. The effective date of this regulation shall be July 1, 1988. (Authorized by and implementing K.S.A. 39-708c; effective May 1, 1981; amended May 1, 1982; amended May 1, 1983; amended May 1, 1985; amended May 1, 1986; amended May 1, 1988.)

30-5-86b. Existing provider rates for community mental health centers. (a) For an existing provider and those providers resulting from a separation from or a division of an existing provider, the agency shall review the fee schedule retained for cost auditing and supplied annually to the agency by the provider to determine per hour rates. The rates shall be based on the patient-related costs submitted by the provider for its fiscal year ending on or before December 31, 1981, and any subsequent base years thereafter, as established by the secretary. The rate may be adjusted on or after each July 1 by an inflation factor established by the secretary. The rates shall be limited to the lesser of the computed rate, the highest fee charged to and paid by private patient resources within the catchment area, or the range maximums established by the secretary. Under no circumstances shall a separation or division from an existing provider be considered as the establishment of a new provider, and the existing rate shall be continued. A provider shall be reimbursed for recipients living outside their catchment areas at the same rate as recipients located within their catchment areas.

(b) Failure to complete and submit any required cost report or other financial data shall result in that center's new reimbursement rate being reduced to the lowest rate paid to a community mental health center until such time that a cost report is received and reviewed by the division of medical programs. This rule and regulation shall expire on July 1, 1988. (Authorized by and implementing K.S.A. 39-708c; effective May 1, 1986; amended May 1, 1988.)

30-5-86c. New provider rates for community mental health centers. (a) Rates for the first 18 months of a new community mental health center shall be computed from projected costs. The first projection, based on 12-month projected cost data, shall apply to the first six months of operation. The second 12-month projection, based on six months' actual cost data, shall be filed within 60 days after the end of the sixth month. The projected rate shall remain in effect until a rate can be established from a cost report based on historical cost data for the last 12 months of the projection period. Failure to complete and submit the required cost report or other financial data shall result in that center's reimbursement rate being reduced to the lowest rate paid to a community mental health center.

(b) Each new provider shall file a cost report based on historical cost data for the 12-month period ending on the last day of the 18th month following licensure of the community mental health center. Retroactive adjustments of the payments made during the projection period shall be made at the end of the 18-month period after audit of the historical cost data. Settlement of an overpayment or underpayment shall be at the audited rate computed from the historical cost data reported in accordance with this paragraph, or at the highest fee charged to and paid by private patient resources within the catchment area, or at the range maximums established by the secretary, whichever is less.

(c) Rates for a new provider, subsequent to the projection period, shall be based on the historical cost data reported in accordance with subsection (b), adjusted by an inflation factor established by the secretary, to compute a rate comparable to the rates computed in K.A.R. 30-5-86b for existing providers. This rule and regulation shall expire on July 1, 1988. (Authorized by and implementing K.S.A. 39-708c; effective May 1, 1986; amended May 1, 1988.)

30-5-86d. Financial recordkeeping for community mental health centers. (a) Records shall be maintained by the provider to document income and expenditures, hours of services provided, allocation methodologies, and fees charged to and paid by private patient resources.

(b) Each provider record used in support of costs, charges and payments for services and supplies shall be subject to inspection and audit by the agency, the United States department of health and human services, and the United States gener-

al accounting office. Standardized definitions, accounting, statistics and reporting practices which are widely accepted in community mental health centers and related fields shall be followed. This rule and regulation shall expire on July 1, 1988. (Authorized by and implementing K.S.A. 39-708c; effective May 1, 1986; amended May 1, 1988.)

30-5-86e. Modification of prospective rates for community mental health centers.

(a) Each community mental health center participating in the prospective payment system may request that the rate review committee set forth in paragraph (g) modify its reimbursement rate if its current medicaid/medikan program unit cost exceeds the unit reimbursement rate by at least 15%.

(b) Each rate modification request shall be in writing, shall set forth sufficient information and documentation to support the request, and shall be received by the division of medical programs prior to April 1 of each year.

(c) The review committee shall submit its recommendations to the commissioner of income maintenance and medical services within 60 days after its receipt of the request.

(d) The commissioner shall have five working days from the receipt of the review committee's recommendations to accept, modify or reject them. The recommendations of the review committee shall become final if the commissioner fails to act within 60 days of the committee's receipt of the request.

(e) The commissioner shall notify the agency or community mental health center of the disposition of its modification request within five working days of the final decision.

(f) Each approved modification shall become effective on and after July 1 of that year.

(g) The secretary shall appoint a rate review committee consisting of six members and six alternates. Three of the members and three of the alternates shall be selected in consultation with the association of community mental health centers of Kansas. This rule and regulation shall expire on July 1, 1988. (Authorized by and implementing K.S.A. 39-708c; effective May 1, 1986; amended May 1, 1988.)

30-5-87. Scope of the Kan Be Healthy program. Kan Be Healthy screenings shall be available at intervals designated by the Kansas department of social and rehabilitation services and at other medically necessary intervals for all program

recipients under 21 years of age. (a) The Kan Be Healthy medical screening shall include, but shall not be limited to, the following procedures:

(1) Comprehensive health and developmental history;

(2) comprehensive, unclothed physical examination;

(3) appropriate laboratory tests;

(4) appropriate immunizations according to age and health history;

(5) health education including anticipatory guidance; and

(6) scheduling or referral for diagnosis and treatment necessary to correct defects and chronic conditions discovered during screening.

(b) The Kan Be Healthy dental screening shall include, but shall not be limited to, the following procedures:

(1) Comprehensive oral examination; and

(2) scheduling or referral for diagnosis and treatment necessary to correct defects and chronic conditions discovered during screening.

(c) The Kan Be Healthy vision screening shall include, but shall not be limited to, the following procedures:

(1) A vision screening; and

(2) scheduling or referral for diagnosis and treatment necessary to correct defects and chronic conditions discovered during screening.

(d) The Kan Be Healthy hearing screening shall include, but shall not be limited to, the following procedures:

(1) Appropriate hearing testing; and

(2) scheduling or referral for diagnosis and treatment necessary to correct defects and chronic conditions discovered during screening.

(e) Diagnosis and treatment to correct defects and chronic conditions discovered during screening shall include, but shall not be limited to, the following services:

(1) Eyeglasses;

(2) relief of pain and infections, restoration of teeth and maintenance of dental health;

(3) hearing aids; and

(4) other necessary health care, diagnostic services, treatment and other measures to correct or ameliorate defects and physical and mental illnesses and conditions discovered by the screening services. The effective date of this regulation shall be August 1, 1990. (Authorized by and implementing K.S.A. 39-708c; effective May 1, 1981; amended May 1, 1982; amended May 1, 1984; amended, T-85-24, Sept. 18, 1984; amend-

ed May 1, 1985; amended May 1, 1988; amended Jan. 2, 1989; amended, T-30-6-1-90, June 1, 1990; amended Aug. 1, 1990.)

30-5-87a. Reimbursement for Kan Be Healthy program services. (a) Reimbursement for screening and appropriate referral shall be made as a fee for service established by the secretary. No fee shall be paid in excess of reasonable cost or charges, whichever is less.

(b) Reimbursement for diagnosis and treatment shall follow the guidelines established for all other provider groups in the program. (Authorized by and implementing K.S.A. 39-708c; effective May 1, 1981; amended, T-87-44, Jan. 1, 1987; amended, T-88-10, May 1, 1987; amended May 1, 1988; amended Jan. 2, 1989.)

30-5-88. (Authorized by and implementing K.S.A. 1997 Supp. 39-708c; effective May 1, 1981; amended May 1, 1982; amended May 1, 1983; amended May 1, 1984; amended, T-85-9, April 11, 1984; amended May 1, 1985; amended May 1, 1986; amended May 1, 1988; amended, T-89-24, May 27, 1988; amended Sept. 26, 1988; amended, T-30-10-28-88, Oct. 28, 1988; amended Jan. 2, 1989; amended July 1, 1989; amended, T-30-7-29-89, July 29, 1989; amended Nov. 24, 1989; amended Aug. 1, 1990; amended, T-30-10-1-90, Oct. 1, 1990; amended Jan. 30, 1991; amended July 1, 1991; amended July 1, 1996; amended July 1, 1998; revoked Jan. 12, 2007.)

30-5-88a. Reimbursement for physician services. (a) Reasonable fees as related to customary charges shall be paid for physician services, except no fee shall be paid in excess of the range maximum. The range of charges shall provide the base for computations.

(b) The maximum rate for services provided by a physician extender shall be 75% of that allowed for the physician who is billing for the physician extender services. (Authorized by and implementing K.S.A. 1982 Supp. 39-708c; effective May 1, 1981; amended May 1, 1983.)

30-5-89. Scope of home health services. (a) Covered home health services shall be available to program recipients if both of the following conditions are met:

(1) A physician has developed a plan of treatment and has certified the need for the service.

(2) The service is determined to be medically necessary pursuant to K.A.R. 30-5-58.

(b) Skilled nursing services that are provided on a part-time or intermittent basis shall be provided by a home health agency that meets the requirements for participation in medicare. If there is no such agency in the recipient's county of residence, skilled nursing services may be provided by a registered professional nurse who is licensed in Kansas.

(c) Except as specified in subsection (d), home health services shall be provided by an agency that meets the requirements to participate in medicare. Home health services shall include the following:

(1) Skilled nursing services provided by a registered professional nurse or a licensed practical nurse;

(2) home health aide services;

(3) restorative and rehabilitative physical therapy;

(4) restorative and rehabilitative occupational therapy;

(5) restorative and rehabilitative speech therapy;

(6) respiratory therapy for Kan Be Healthy program participants;

(7) immunizations;

(8) durable medical equipment and medical supplies pursuant to K.A.R. 30-5-108 and K.A.R. 30-5-166; and

(9) restorative aide services.

(d) Prior authorized medical attendant care for independent living (ACIL) by a licensed home health agency shall be covered for eligible beneficiaries.

(1) Covered services for the ACIL program shall consist of the following:

(A) Attendant care;

(B) skilled nursing care provided by a licensed practical nurse or registered professional nurse; and

(C) case management.

(2) Covered services shall meet the following requirements:

(A) Continue as long as the recipient complies with the plan of care and meets the eligibility requirements for program participation set by the Kansas department of social and rehabilitation services;

(B) Not be reimbursed if provided in the same 24-hour period as designated medicaid HCBS services; and

(C) be provided after a recipient is determined by the department to be eligible for the services. (Authorized by and implementing K.S.A. 39-708c; effective May 1, 1981; amended May 1, 1982;

amended May 1, 1983; amended May 1, 1986; amended May 1, 1987; amended May 1, 1988; amended Jan. 2, 1989; amended July 1, 1989; amended, T-30-12-28-89, Jan. 1, 1990; amended Jan. 1, 1990; amended Aug. 15, 2003.)

30-5-89a. Reimbursement for home health services. (a) Reimbursement shall be based upon the fee for services and at a rate established by the secretary.

(b) Reimbursement for medical supplies shall be pursuant to K.A.R. 30-5-108a. (Authorized by and implementing K.S.A. 39-708c; effective May 1, 1981; amended May 1, 1983; amended May 1, 1986; amended Aug. 15, 2003.)

30-5-90. This rule and regulation shall expire on August 1, 1990. (Authorized by and implementing K.S.A. 1985 Supp. 39-708c; effective May 1, 1981; amended May 1, 1983; amended May 1, 1986; revoked Aug. 1, 1990.)

30-5-90a. (Authorized by and implementing K.S.A. 1982 Supp. 39-708c; effective May 1, 1981; amended May 1, 1982; amended May 1, 1983; revoked May 1, 1986.)

30-5-91. (Authorized by and implementing K.S.A. 1983 Supp. 39-708c; effective May 1, 1981; amended May 1, 1985; revoked May 1, 1986.)

30-5-92. Scope of pharmacy services. (a) The medical services provided to program recipients shall include pharmacy services.

(1) Kan Be Healthy participants shall be limited to those prescription-only and over-the-counter drugs, supplies, and devices that have been accepted for inclusion on any formulary listing for Kan Be Healthy participants adopted and distributed by the secretary to eligible providers of service.

(2) Other medicaid recipients shall be limited to those prescription-only and over-the-counter drugs, supplies, and devices that have been accepted for inclusion on any formulary listing for other medicaid recipients adopted and distributed by the agency to eligible providers of service.

(b) Covered drugs, supplies, and devices shall be prescribed by the recipient's attending practitioner and dispensed in a pharmacy by a pharmacist, with the exception of those drugs, supplies, or devices designated by the secretary.

(c) Each provider of pharmacy services shall comply with the provisions of K.A.R. 30-5-59 and shall be assigned a pharmacy services provider number.

(d)(1) Each pharmacist shall dispense each brand-name legend drug as prescribed if either of the following conditions is met:

(A) The pharmacist receives a written prescription on which the prescriber has signed on the "dispense as written" signature line or has personally handwritten "dispense as written" or "D.A.W." on the prescription.

(B) The pharmacist receives an oral prescription in which the prescriber has expressly indicated that the prescription is to be dispensed as communicated.

(2) Each pharmacist shall dispense the generic form of a prescribed brand-name drug, after disclosing the substitution to the consumer, if all of the following conditions are met:

(A) The pharmacist receives either of the following:

(i) a written prescription on which the prescriber has neither signed on the "dispense as written" signature line nor personally handwritten "dispense as written" or "D.A.W." on the prescription; or

(ii) an oral prescription in which the prescriber has not expressly indicated that the prescription is to be dispensed as communicated.

(B) There is available in the pharmacist's stock a less expensive generic drug that is rated bio-equivalent (AB-rated) by the food and drug administration.

(C) In the pharmacist's professional judgment, the generic drug is safely interchangeable with the prescribed drug.

A pharmacist may also make a substitution in a manner consistent with the oral instructions of the prescriber. The pharmacist shall notify the consumer if the pharmacist is dispensing a drug other than the brand-name drug prescribed.

(3) If more than one safely interchangeable generic drug is available in the pharmacist's stock, then the pharmacist shall dispense the least expensive alternative.

(4) Nothing in this subsection shall be deemed to require a pharmacist to substitute a generic drug if the substitution will make the transaction ineligible for reimbursement.

(5) If a pharmacist dispenses a brand-name legend drug and, at that time, a less expensive generic drug is also available in the pharmacist's stock, the pharmacist shall disclose to the consumer that a generic drug is available.

(e) If a drug product is issued to a patient of a long-term care facility and subsequently is not

used, the long-term care facility shall return the drug product to the vendor pharmacy for repackaging and crediting to the secretary if the drug product meets all of the following conditions:

(1) The drug product is a prescription drug product that is not a controlled substance.

(2) The drug product is sealed in individually packaged units or in a multiple-dose, sealed container approved by the federal food and drug administration from which no doses have been withdrawn.

(3) The drug product is returned to the vendor pharmacy at least 90 days before the expiration date.

(4) The drug product is determined to be of acceptable integrity by a licensed pharmacist.

(f) Each long-term care facility shall establish procedures for the return of unused drug products to the vendor pharmacy from which the unused drug products were received.

(g) Each provider of pharmacy services may be reimbursed the reasonable cost of returning and crediting unused drug products, as determined by the secretary.

(h) After prior notification of each provider, reimbursement under the program may be denied for any of the following:

(1) Certain drugs, supplies, and devices determined by the secretary to be less than effective;

(2) drugs, supplies, and devices that do not meet the requirements of section 1927 of the social security act, 42 U.S.C. 1396r-8, as amended Nov. 29, 1999, which is adopted by reference, pertaining to available rebates or the medical necessity of the drug, supply, or device; or

(3) drugs, supplies, or devices restricted by the secretary under the provisions of section 1927 of the social security act, 42 U.S.C. 1396r-8 regarding permissible restrictions.

Selected drugs, supplies, and devices shall be considered for coverage only when prior authorization criteria are met.

(i) Pharmacy services provided for parenteral administration of total nutritional replacements in the consumer's home shall not be covered through the pharmacy program and shall be billed through the durable medical equipment program.

(j) The total number of prescriptions that any recipient may receive in a given time period shall be limited as determined by the secretary.

(k) Selected pharmacy services shall be limited to a dollar value for a given time period as determined by the secretary. (Authorized by and implementing K.S.A. 39-708c; effective May 1, 1981;

amended May 1, 1985; amended May 1, 1986; amended May 1, 1988; amended Jan. 2, 1989; amended Aug. 1, 1990; amended May 1, 1991; amended July 6, 2001.)

30-5-93. (Authorized by and implementing K.S.A. 1980 Supp. 39-708c; effective May 1, 1981; revoked May 1, 1985.)

30-5-94. Reimbursement for pharmacy services. (a) Each pharmacy provider shall be reimbursed for covered pharmacy services on the basis of product acquisition cost plus a dispensing fee. In no case shall reimbursement for a prescription exceed the lesser of the provider's usual and customary charge for that prescription or the state allowable for that prescription. The submitted charge and payment for covered over-the-counter pharmacy products shall not exceed the lesser of the product acquisition cost plus the dispensing fee or the usual and customary over-the-counter charge of the pharmacy provider.

(b) The acquisition cost shall include a maximum allowable cost for selected multiple-source drugs as determined by the secretary.

(c) The dispensing fee assigned to pharmacy providers shall be \$3.40 per prescription unless a different rate is established by the secretary.

(d) If an inactive pharmacy wishes to become an active provider, the pharmacy shall reapply according to K.A.R. 30-5-59.

(e) In areas in which pharmacy services are not available, each physician dispensing prescriptions to consumers shall be eligible to receive reimbursement for provision of those services after a pharmacy provider number has been issued by the department according to K.A.R. 30-5-59.

(1) Each physician assigned a pharmacy provider number shall be reimbursed on the basis of product acquisition cost plus a dispensing fee of \$.74 per prescription.

(2) The physician shall not be reimbursed a dispensing fee for injectable drugs administered in the office, except as included in the charge for the professional services of the physician.

(f) Each pharmacy provider shall be reimbursed only when the covered service has been prescribed by the consumer's attending practitioner.

(g) This regulation shall be effective on and after December 31, 2002. (Authorized by and implementing K.S.A. 39-708c; effective May 1, 1981; amended May 1, 1983; amended May 1, 1984; amended May 1, 1985; amended May 1,

1986; amended July 1, 1989; amended, T-30-12-28-89, Jan. 1, 1990; amended, T-30-2-28-90, Feb. 28, 1990; amended May 1, 1991; amended Dec. 29, 1995; amended Oct. 1, 1997; amended July 6, 2001; amended Dec. 31, 2002.)

30-5-95. Cost report requirement for pharmacy services. (a) The cost reports filed by pharmacy providers for professional fee determination shall reflect data which coincides with the immediate fiscal year used for federal income taxes that ends prior to the cost report filing due date, except in those cases where the provider is not required to file a federal income tax return. In such cases, the provider shall file a cost report from the official financial reporting records of the business.

(b) (1) A pharmacy shall have been in operation for at least six months in the cost reporting period and have submitted at least 250 medicare prescription claims annually during the cost reporting period at fiscal year end, to file an initial cost report.

(2) Any Kansas pharmacy that fails or refuses to file a cost reports when required shall not be assigned a professional fee.

(3) Any pharmacy that does not receive a professional fee as a result of failure or refusal to file cost reports shall have a professional fee calculated and assigned following the completion of the next report as required by the department. The assignment of such a professional fee will take effect at the same time all professional fees of pharmacies are adjusted through the standard fee setting procedures of the department. If all pharmacy fees are not adjusted through the standard fee setting procedures of the department, the pharmacy shall be assigned a fee that corresponds to the average fee in effect at the time the pharmacy submits the cost report. The assignment of a fee to a pharmacy which previously failed or refused to file a cost report shall take effect at a date set by the secretary. There shall be no retroactive cost adjustment or settlement.

(c) Cost report and prescription survey forms, instructions, and notice of the requirement to file shall be prepared by the Kansas department of social and rehabilitation services and distributed to all pharmacy providers as required.

(d) The effective date of this regulation shall be December 29, 1995. (Authorized by and implementing K.S.A. 1994 Supp. 39-708c, as amended by L. 1995, Ch. 153, Sec. 1; effective May 1, 1981; amended May 1, 1984; amended May 1, 1987;

amended July 1, 1989; amended May 1, 1991; amended April 1, 1992; amended Dec. 29, 1995.)

30-5-96. Cost report data and record keeping requirements for pharmacy services.

(a) The principles of cost related reimbursement require that providers maintain sufficient financial and prescription records to facilitate appropriate cost reporting and professional fee determination. Standardized definitions, accounting, statistics, record keeping and reporting practices which are widely accepted in pharmacy practice and related fields shall be adhered to. Significant modifications in these practices and systems shall not be required in order to determine costs pertinent to the principle of cost related reimbursement.

(b) The pharmacy provider shall keep and make available for review, upon request of the agency, the supporting records and documents as are necessary to ascertain that the cost related professional fee determination and program payments are appropriate. These records shall include matters regarding pharmacy ownership and organizational structure; fiscal and prescription record keeping systems; lease and acquisition agreements; state and federal income tax returns with all supporting documents; drug product, devices and supply purchase invoices; asset acquisition, lease or sale; franchise or management arrangements; pharmacy services charge schedules; income receipts by source and purpose; and records pertaining to all other reported costs of operation on the cost study report. Other records shall be made available as necessary. Pertinent records shall be maintained by the pharmacy provider for five (5) years from the date of filing the corresponding cost report with the agency. Records in support of costs, charges and payments for services and products are subject to inspection and audit by the agency and the United States department of health and human services. If a pharmacy provider does not maintain adequate records to support cost related professional fee determination, the assigned professional fee to that provider shall be suspended or reduced to the lowest fee determined for all participating pharmacy providers that filed a cost report for the period of inadequate records. Program payments to such providers shall be suspended or reduced until the agency is assured that adequate records are maintained.

(c) Cost reports filed by pharmacy providers shall reflect cost data provided in accordance with generally accepted accounting principles, and in

adequate detail to permit recasting of the costs derived from the accounts ordinarily kept by the provider to ascertain the costs pertinent to various facets of the total pharmacy operation. The data, including source documentation, shall be accurate for the appropriate reporting period and sufficient to support cost related professional fee determination. (Authorized by and implementing K.S.A. 1980 Supp. 39-708c; effective May 1, 1981.)

30-5-97. Cost report data limitations and allowances for pharmacy services.

(a) Allowable costs for cost related reimbursement and professional fee determination shall be limited to those that arise from arms length transactions between unrelated parties. Related parties shall exist when one (1) party of a transaction has the ability to significantly influence another party to the extent that their own separate interests may not be fully pursued.

(1) Costs not related to the provision of pharmacy services shall be disallowed in the computation of the professional fee. Related costs shall be allowed in total, fractionally allocated or limited in the professional fee computation process per cost finding and allocation techniques employed in the analysis of pharmacy cost reports.

(2) The following costs shall be disallowed, fractionally allocated or limited in the analysis of cost reports:

(A) transactions between related parties are disallowed as costs (*i.e.*, non-arms length transactions), except that compensation received by owners shall be limited to a reasonable amount and accepted as an allowable cost if the owner actually performs functions directly related to the provision of pharmacy services. The reasonable limitation of an owner's compensation shall take into consideration the costs that would have been incurred to pay a non-owner employee for performance of the duties related to the provision of pharmacy services;

(B) costs deemed unreasonable by comparison with similar costs incurred by similar pharmacy providers may be limited or disallowed;

(C) non-competition covenant expenses are not allowable as costs for professional fee determination; and

(D) corporate officer's fees shall be considered as owner's compensation and subject to the limitations applicable to owner's compensation.

(3) Nothing in this section shall preclude application of reasonable limitations on any other spe-

cific cost data items as considered appropriate by the agency.

(b) Audit findings and conclusions per review of pharmacy provider cost reports and subsequent professional fee determinations which reveal overpayment by the agency for pharmacy services shall be subject to refund to the agency by such pharmacy providers. Audit activities which reveal underpayment by the agency to pharmacy providers shall be subject to adjustment payment by the agency to such providers.

(c) Insufficient documentation to support payment for services provided as reflected on billings submitted to the agency by pharmacy providers shall result in suspension or denial of program payments to such provider pending verification of documentation to support the billed charges. (Authorized by and implementing K.S.A. 1980 Supp. 39-708c; effective May 1, 1981.)

30-5-100. Scope of dental services. (a) Dental services shall be covered for recipients receiving a Kan Be Healthy dental screening.

(1) Both a Kan Be Healthy medical screening and a Kan Be Healthy dental screening shall be required for coverage of limited orthodontia services, with the exception of emergency services.

(2) Prior authorization shall be required for designated services.

(3) Prior authorization shall be required for dental treatment plans estimated to exceed, during a calendar year, the range maximum established by the secretary.

(b) Dental services for medicaid recipients not participating in the Kan Be Healthy program shall be limited to the following treatments:

- (1) Orcantral fistula closure;
- (2) unilateral radical antrotomy;
- (3) biopsy of oral tissue;
- (4) radical excision of lesion;
- (5) excision of tumors;
- (6) removal of cysts and neoplasms;
- (7) partial ostectomy;
- (8) surgical incision and drainage of abscess;
- (9) removal of foreign bodies, skin, subcutaneous areolar tissue;
- (10) sequestrectomy for osteomyelitis;
- (11) maxillary sinusotomy for removal of tooth fragment or foreign body;
- (12) treatment of fractures;
- (13) closed reduction of dislocation and related injections;
- (14) limitation of motion and related injections;

- (15) sutures;
- (16) oral skin grafts;
- (17) frenulectomy;
- (18) excision of pericoronal gingiva;
- (19) sialolithotomy;
- (20) excision of salivary gland;
- (21) sialodochoplasty;
- (22) closure of salivary fistula;
- (23) emergency tracheotomy;
- (24) general anesthesia: first 30 minutes;
- (25) general anesthesia: each additional 15 minutes;
- (26) consultation in the form of diagnostic services provided by a dentist or physician other than the practitioner providing treatment;
- (27) house call or extended care facility call;
- (28) hospital call; and
- (29) prior authorized procedures for medically necessary tooth extractions.

(c) This regulation shall be effective on and after January 1, 2002. (Authorized by and implementing K.S.A. 39-708c; effective May 1, 1981; amended May 1, 1983; amended, T-84-7, May 1, 1983; amended May 1, 1984; amended May 1, 1986; amended, T-87-44, Jan. 1, 1987; amended, T-88-10, May 1, 1987; amended May 1, 1988; amended, T-30-7-29-88, July 29, 1988; amended Sept. 26, 1988; amended Jan. 2, 1989; amended Oct. 1, 1989; amended Aug. 1, 1990; amended Dec. 31, 1992; amended Sept. 27, 1993; amended Jan. 1, 2002.)

30-5-100a. Reimbursement for dental services. Reimbursement shall be made on the basis of reasonable charges, except no fee shall be paid in excess of the range maximum. The range of charges shall provide the base for computations. The sum of payments per Kan Be Healthy recipient for dental services provided during each fiscal year beginning July 1, 1987, shall be limited to an amount specified by the secretary. Prior authorization shall be obtained before exceeding this payment limit. The effective date of this regulation shall be December 31, 1992. (Authorized by and implementing K.S.A. 1991 Supp. 39-708c, as amended by L. 1992, Chapter 322, Sec. 5; effective May 1, 1981; amended May 1, 1987; amended Dec. 31, 1992.)

30-5-101. (Authorized by and implementing K.S.A. 1996 Supp. 39-708c; effective May 1, 1981; amended May 1, 1983; amended, T-84-11, July 1, 1983; amended May 1, 1984; amended, T-85-9, April 11, 1984; amended May 1, 1985; amend-

ed May 1, 1986; amended, T-87-5, May 1, 1986; amended May 1, 1987; amended Jan. 2, 1989; amended, T-30-12-28-89, Jan. 1, 1990; amended Jan. 7, 1991; amended, T-30-8-9-91, Aug. 9, 1991; amended Oct. 28, 1991; amended Jan. 1, 1997; amended July 1, 1997; revoked June 28, 2002.)

30-5-101a. (Authorized by and implementing K.S.A. 1985 Supp. 39-708c; effective May 1, 1981; amended May 1, 1983; amended May 1, 1986; amended, T-87-5, May 1, 1986; amended May 1, 1987; revoked Dec. 27, 2002.)

30-5-102. Scope of optometric and optical services. Optometric and optical services shall be covered for medicaid recipients. (a) These services shall include the following:

- (1) Optometric examinations;
- (2) medical treatment pursuant to K.S.A. 65-1501, and amendments thereto;
- (3) grinding and edging lenses, and assembling and dispensing eyeglasses; and
- (4) providing optical materials. Optical materials shall include the following:

(A) Frames. The materials covered shall be only frames showing the manufacturer's name on either the front or temple; and

(B) lenses. Only lenses meeting designated standards shall be acceptable. For single lens replacement, the replacement lens shall be made of quality similar to that of the remaining usable lens.

(b) Limitations.

(1) Prior authorization shall be required for designated services.

(2) The second and subsequent sets of eyeglasses shall meet the standards specified by the secretary.

This regulation shall be effective on and after January 1, 2004. (Authorized by and implementing K.S.A. 39-708c; effective May 1, 1981; amended May 1, 1983; amended May 1, 1986; amended, T-87-5, May 1, 1986; amended May 1, 1987; amended May 1, 1988; amended, T-30-1-2-03, Jan. 2, 2003; amended April 18, 2003; amended Jan. 1, 2004.)

30-5-102a. Reimbursement for optometric and optical services. Reimbursement for covered services shall be made on the basis of reasonable charges, except no fee shall be paid in excess of the range maximum. The range of charges shall provide the base for computations. (Authorized by and implementing K.S.A. 1985 Supp. 39-708c; effective May 1, 1981; amended May 1, 1986.)

30-5-103. Scope of podiatric services. Podiatric services shall be covered for Kan Be Healthy program participants. (a) Covered services shall be diagnosis and the manual, medical, surgical or pharmaceutical treatment of those parts of the body below the ankle. Diagnosis and treatment of tendons and muscles of the lower leg as they relate to conditions of the foot shall also be covered.

(b) Surgery shall be limited to that performed on an outpatient basis.

(c) Routine foot care shall not be covered. The effective date of this regulation shall be October 28, 1991. (Authorized by and implementing K.S.A. 1990 Supp. 39-708c; effective May 1, 1981; amended May 1, 1985; amended May 1, 1986; amended, T-87-5, May 1, 1986; amended May 1, 1987; amended May 1, 1988; amended Jan. 2, 1989; amended, T-30-12-28-89, Jan. 1, 1990; amended Jan. 7, 1991; amended, T-30-8-9-91, Aug. 30, 1991; amended Oct. 28, 1991.)

30-5-103a. Reimbursement for podiatric services. Reimbursement for covered services shall be made on the basis of reasonable charges, except that a fee in excess of the range maximum shall not be paid. (Authorized by and implementing K.S.A. 1985 Supp. 39-708c; effective May 1, 1981; amended May 1, 1983; amended May 1, 1986.)

30-5-104. Scope of psychological services. Psychological services shall be covered for medicaid recipients when provided by clinical psychologists who are licensed by the behavioral sciences regulatory board. (a) Psychotherapy services shall be limited to 40 hours per calendar year for Kan Be Healthy program participants.

(b) Psychotherapy services shall be limited to 32 hours per calendar year for those not participating in the Kan Be Healthy program.

(c) Psychotherapy shall not be covered when provided concurrently by the same provider with both partial hospitalization and case management.

(d) Special psychological services for Kan Be Healthy program participants shall be rendered pursuant to a plan approved by the Kansas department of social and rehabilitation services. The plan shall require prior authorization, and shall not exceed a two-year period. Quarterly progress reports shall be submitted to the department upon request.

(e) Inpatient hospital visits shall be limited to those visits ordered by the recipient's physician,

and shall not exceed those allowable days for which the hospital is paid or would be paid if there were no spenddown requirements.

(f) Visits to nursing facilities by the psychologist as part of the plan of care shall be ordered by the recipient's physician. Visits to intermediate care facilities for mental retardation shall be limited to psychological testing and evaluation. Visits to nursing facilities for mental health shall be limited to program consultation.

(g) Four hours of psychological testing and evaluation shall be allowed every two consecutive calendar years for medicaid program recipients regardless of provider except that Kan Be Healthy program participants shall be allowed six hours. The effective date of this regulation shall be July 1, 1991. (Authorized by and implementing K.S.A. 1990 Supp. 39-708; effective May 1, 1981; amended May 1, 1982; modified, L. 1983, ch. 361, May 1, 1983; amended May 1, 1984; amended May 1, 1986; amended, T-87-5, May 1, 1986; amended May 1, 1987; amended May 1, 1988; amended Jan. 2, 1989; amended Aug. 1, 1990; amended Jan. 2, 1991; amended July 1, 1991.)

30-5-104a. Reimbursement for psychologists services. Reimbursement shall be made on the basis of reasonable charges, except no fee shall be paid in excess of the range maximum. The range of charges shall provide the base for computations. (Authorized by and implementing K.S.A. 1980 Supp. 39-708c; effective May 1, 1981.)

30-5-105. Scope of hearing services. Hearing services shall be covered for medicaid recipients. (a) Medical diagnosis, audiological testing, and the fitting and dispensing of hearing aids and appropriate accessories shall be covered.

(b) A medical diagnosis shall be made by an ear specialist or by a general practitioner if an ear specialist is not easily available.

(c) Audiological testing shall be performed by a physician or an audiologist.

(d) Fitting, dispensing, and follow-up shall be performed by a hearing aid dealer.

(e) A hearing aid shall not be covered if the physician indicates that a medical condition contraindicates the effectiveness of an aid.

(f) This regulation shall be effective on and after January 1, 2004. (Authorized by and implementing K.S.A. 39-708c; effective May 1, 1981; amended May 1, 1986; amended, T-87-5, May 1, 1986; amended May 1, 1987; amended Oct. 1, 1993;

amended, T-30-1-2-03, Jan. 2, 2003; amended April 18, 2003; amended Jan. 1, 2004.)

30-5-105a. Reimbursement for hearing services. Reimbursement for hearing services and for the fitting and dispensing of hearing aids, accessories, and follow-up service shall be made on the basis of reasonable charges, except that a fee in excess of the range maximum shall not be paid. The range of charges shall provide the base for computations. (Authorized by and implementing K.S.A. 1985 Supp. 39-708c; effective May 1, 1981; amended May 1, 1986.)

30-5-106. Scope of ambulance services. (a) General provisions of coverage. Ambulance services shall be available to program recipients. Services shall include the following:

(1) emergency transportation to a facility where medical services will be rendered; and

(2) non-emergency transportation of a recipient between the recipient's residence and a medical facility in the recipient's local community or the nearest facility able to render the medically necessary services, and transportation of a patient from one medical facility to another medical facility when the original facility provides inadequate services for treating the patient. Transportation under this paragraph shall require prior authorization for designated services.

(b) Limitations.

(1) The ambulance service shall be licensed.

(2) The recipient's condition shall be such that the use of any other method of transportation is not possible without endangering the health of the recipient.

(3) The use of licensed ambulances for non-emergency wheelchair transportation shall not be covered.

(4) Non-emergency ambulance transportation of a nursing facility resident shall not be covered.

(c) The effective date of this regulation shall be April 1, 1995. (Authorized by and implementing K.S.A. 39-708c; effective May 1, 1981; amended May 1, 1984; amended May 1, 1986; amended May 1, 1987; amended April 1, 1995.)

30-5-106a. Reimbursement for ambulance services. Reasonable fees as related to customary charges shall be paid for ambulance services. However, no fee shall be paid in excess of the range maximum. The range of charges shall provide the base for computations. (Authorized by and implementing K.S.A. 39-708c; effective

May 1, 1981; amended May 1, 1983; amended, T-87-44, Jan. 1, 1987; amended, T-88-10, May 1, 1987; amended May 1, 1988.)

30-5-107. Scope of non-emergency medical transportation services. (a) Non-commercial transportation, including wheelchair transportation, to and from medicaid-covered services, shall require prior authorization except for trips to receive emergency care. Services shall be provided only when transportation is not otherwise available to the recipient.

(b) The least expensive means of transportation suitable to the recipient's medical need shall be used.

(c) Non-emergency medical transportation for nursing facility residents shall not be covered.

(d) This regulation shall be effective on and after July 1, 2003. (Authorized by and implementing K.S.A. 39-708c; effective May 1, 1981; amended, E-82-19, Oct. 21, 1981; amended May 1, 1982; amended May 1, 1983; amended May 1, 1984; amended May 1, 1986; amended April 1, 1995; amended Oct. 1, 1997; amended July 1, 2003.)

30-5-107a. Reimbursement for non-emergency medical transportation services.

(a) Non-commercial, non-emergency medical transportation providers shall be paid 22 cents per mile.

(b) Each commercial, non-emergency medical transportation provider shall be reimbursed at one of the following rates:

(1) For level one general transportation, \$10.00 for each one-way trip to a medicaid-covered service for a medicaid beneficiary, plus \$1.00 per mile after 10 miles; or

(2) for level two transportation for a non-ambulatory medicaid beneficiary, transportation of medical equipment with a medicaid beneficiary, or transportation of a medicaid beneficiary following a treatment that will result in a disabling physical condition, \$20.00 for each one-way trip to a medicaid-covered service for a medicaid beneficiary plus \$1.00 per mile after 10 miles.

(c) Reimbursement for necessary meals and lodging may be allowed for Kan Be Healthy participants and one attendant, subject to prior authorization.

(d) This regulation shall be effective on and after July 1, 2003. (Authorized by and implementing K.S.A. 39-708c; effective May 1, 1981; amended July 1, 2003.)

30-5-108. (Authorized by and implementing K.S.A. 39-708c; effective May 1, 1981; amended May 1, 1983; amended, T-84-26, Oct. 19, 1983; amended May 1, 1984; amended May 1, 1985; amended May 1, 1986; amended Jan. 2, 1989; amended July 1, 1989; amended May 1, 2001; revoked Nov. 17, 2006.)

30-5-108a. Reimbursement for durable medical equipment, medical supplies, orthotics, and prosthetics. (a) Reimbursement for covered services shall be made on the basis of rates established by the secretary.

(b) Reimbursement for used equipment or repairs of equipment shall not exceed 75% of the reimbursement rate for new equipment.

(c) This regulation shall be effective on and after December 31, 2002. (Authorized by and implementing K.S.A. 39-708c; effective May 1, 1981; amended May 1, 1983; amended May 1, 1986; amended Dec. 31, 2002.)

30-5-109. Scope of services in freestanding inpatient psychiatric facilities. (a) Services shall be available to program recipients who are 65 and over if the services are provided by a facility that meets the medicare requirements.

(b) Services shall be available to program recipients who are under 21 years of age if the services are provided by a facility accredited by the joint commission on accreditation of hospitals.

(c) Services for recipients under age 21 shall be rendered before the recipient reaches age 21 or, if the recipient was receiving the services immediately before reaching the age of 21, before the earlier of the following:

(1) The date the recipient no longer requires the services; or

(2) the date the recipient reaches the age of 22.

(d) Free-standing inpatient psychiatric facility admissions for persons under 21 shall be certified by an interdisciplinary team. This certification shall include documentation that the team has evaluated the patient, considered all local community resources for ambulatory care, and concluded that none of the available resources meet the patient's treatment needs.

(e) This regulation shall take effect on and after July 1, 1997. (Authorized by and implementing K.S.A. 1996 Supp. 39-708c; effective May 1, 1982; amended May 1, 1983; amended July 1, 1997.)

30-5-109a. Reimbursement for free-standing psychiatric facilities. Reimbursement

for free-standing psychiatric facilities shall be pursuant to K.A.R. 30-5-81b as a general hospital. The effective date of this regulation shall be October 1, 1993. (Authorized by and implementing K.S.A. 1992 Supp. 39-708c; effective May 1, 1982; amended Oct. 1, 1993.)

30-5-110. Scope of partial hospitalization programs. (a) Partial hospitalization services shall be provided in a community mental health center or a facility affiliated with a community mental health center. The only exception to this is "Kan Be Healthy" program participants who may receive services in either an affiliated or non-affiliated partial hospitalization program.

(b) Supportive partial hospitalization services shall be limited to a specified number of hours per year.

(c) Partial hospitalization services provided by state institutions shall be exempt from any limitations of hours per recipient per calendar year.

(d) The effective date of this regulation shall be December 29, 1995. (Authorized by and implementing K.S.A. 1994 Supp. 39-708c, as amended by L. 1995, Ch. 153, Sec. 1; effective May 1, 1983; amended, T-84-7, May 1, 1983; amended May 1, 1984; amended May 1, 1986; amended May 1, 1987; amended May 1, 1988; amended July 1, 1989; amended Aug. 1, 1990; amended Oct. 28, 1991; amended May 1, 1992; amended Dec. 29, 1995.)

30-5-110a. Reimbursement for partial hospitalization programs. Reasonable fees as related to customary charges shall be paid for partial hospitalization program services, except no fee shall be paid in excess of the range maximum. The range of charges shall provide the base for computations. (Authorized by and implementing K.S.A. 39-708c; effective May 1, 1983; amended May 1, 1984; amended May 1, 1986; amended May 1, 1987; amended May 1, 1988.)

30-5-111. This rule and regulation shall expire on January 2, 1991. (Authorized by and implementing K.S.A. 1985 Supp. 39-777, 39-778; effective, T-84-25, Oct. 1, 1983; effective May 1, 1984; amended May 1, 1986; amended, T-30-12-28-89, Jan. 1, 1990; amended, T-30-2-28-90, Feb. 28, 1990; revoked Jan. 7, 1991.)

30-5-112. Scope of local health department services. (a) Local health department services shall be covered for medicaid/medikan recipients.

- (b) Covered services shall include the following:
- (1) Kan Be Healthy program services;
 - (2) family planning services;
 - (3) maternal and child health services;
 - (4) home health nursing services when home health agency services are not available to the recipient;
 - (5) immunizations;
 - (6) nursing assessments performed by a registered nurse; and
 - (7) services to detect, diagnose and treat specific diseases. (Authorized by and implementing K.S.A. 39-708c; effective May 1, 1987; amended May 1, 1988; amended Jan. 2, 1989.)

30-5-112a. Reimbursement for local health department services. Reasonable fees, as related to customary charges, shall be paid for local health department services, except that no fee shall be paid in excess of the range maximum. The range of charges shall provide the base for computations of the reimbursement. (Authorized by and implementing K.S.A. 1985 Supp. 39-708c; effective May 1, 1987.)

30-5-113. Scope of advanced registered nurse practitioner and registered nurse anesthesiologist services. (a) Advanced registered nurse practitioner services shall be covered for medicaid/medikan recipients when provided by an advanced registered nurse practitioner who is certified pursuant to K.A.R. 60-11-103 or who meets criteria in K.A.R. 60-11-103 if practicing out-of-state. Covered services shall be pursuant to K.A.R. 30-5-88.

(b) Registered nurse anesthesiologist services shall be covered for medicaid/medikan recipients when provided by a registered nurse anesthesiologist who is authorized to practice pursuant to K.S.A. 1989 Supp. 65-1151 and 65-1152. Anesthesia services shall be covered. The effective date of this regulation shall be August 1, 1990. (Authorized by and implementing K.S.A. 39-708c; effective May 1, 1988; amended Jan. 2, 1989; amended Jan. 2, 1990; amended, T-30-12-28-89, Jan. 1, 1990; amended, T-30-2-28-90, Feb. 28, 1990; amended Aug. 1, 1990.)

30-5-113a. Reimbursement for advanced registered nurse practitioner and registered nurse anesthesiologist services. The maximum rate for a service provided by an advanced registered nurse practitioner or a registered nurse anesthesiologist shall be one of the following: (a) When the services may be provided by a physician, the rate shall be 75% of that allowed for

the physician, except for anesthesia services and Kan Be Healthy screenings; or

(b) other services shall be based upon reasonable fees as related to customary charges, except no fee shall be paid in excess of the range maximum. The range of charges shall provide the base for computations. The effective date of this regulation shall be August 1, 1990. (Authorized by and implementing K.S.A. 39-708c; effective May 1, 1988; amended Aug. 1, 1990.)

30-5-114. Scope of targeted case management services. (a) Targeted case management services shall be covered for medicaid/medikan recipients.

(b) Covered services shall include the following:

- (1) Referral for assessment;
- (2) referral for treatment if appropriate according to the assessment; and
- (3) assistance with gaining access to medically necessary services.

(c) Mental retardation targeted case management services shall be provided by mental retardation centers as defined in K.S.A. 19-4001 to 19-4005, inclusive, or agencies specifically designated by a mental retardation center to provide these services to individuals who are mentally retarded or developmentally disabled.

(d) Targeted nurse case management services for eligible medicaid recipients with at least one prior hospitalization for a high cost, high risk condition, and who are not eligible for any other medicaid case management services except the primary care network (PCN) services shall be provided by registered nurses in Sedgwick county only. Covered services shall include the following:

- (1) Referral for assessment or performance of assessment;
- (2) referral for treatment if appropriate according to the assessment; and
- (3) assistance with gaining access to and coordination of medically necessary services. The effective date of this regulation shall be October 1, 1992. (Authorized by and implementing K.S.A. 1991 Supp. 39-708c; effective May 1, 1988; amended, T-30-1-2-90, Jan. 2, 1990; amended, T-30-2-28-90, Jan. 2, 1990; amended, T-30-6-10-91, July 1, 1991; amended Oct. 28, 1991; amended Oct. 1, 1992.)

(3) assistance with gaining access to and coordination of medically necessary services. The effective date of this regulation shall be October 1, 1992. (Authorized by and implementing K.S.A. 1991 Supp. 39-708c; effective May 1, 1988; amended, T-30-1-2-90, Jan. 2, 1990; amended, T-30-2-28-90, Jan. 2, 1990; amended, T-30-6-10-91, July 1, 1991; amended Oct. 28, 1991; amended Oct. 1, 1992.)

30-5-114a. Reimbursement for targeted case management services. Reasonable fees as related to customary charges shall be paid for

targeted case management services, except no fee shall be paid in excess of the range maximum. The range of charges shall provide the base for computations. (Authorized by and implementing K.S.A. 39-708c; effective May 1, 1988.)

30-5-115. Scope of hospice services. Hospice services shall be covered for medicaid and medikan recipients who have been determined to be terminally ill by a physician and who have filed an election statement with a hospice enrolled to participate in the medicaid/medikan program. Hospice services shall be covered pursuant to Public Law 99-272, section 9505, effective April 7, 1986. Medicaid eligible individuals who reside in adult care facilities shall have room and board reimbursed. The effective date of this regulation shall be August 1, 1990. (Authorized by and implementing K.S.A. 39-708c; effective July 1, 1989; amended, T-30-12-28-89, Jan. 1, 1990; amended, T-30-12-28-90, Feb. 28, 1990; amended Aug. 1, 1990.)

30-5-115a. Reimbursement for hospice services. Reasonable fees as related to the medicare standards of hospice reimbursement as established pursuant to Public Law 99-272, section 9505, effective April 7, 1986, shall be paid for hospice services. The effective date of this regulation shall be July 1, 1989. (Authorized by and implementing K.S.A. 39-708c; effective July 1, 1989.)

30-5-116. Scope of rehabilitation services. Rehabilitation services shall be covered for medicaid recipients when provided by providers enrolled pursuant to K.A.R. 30-5-59. These services may include the following: (a) Substance abuse treatment provided by an enrolled alcohol and drug addiction community service provider;

(b) behavior management services provided by an enrolled behavior management provider, including the following:

(1) Family mental health treatment services that have received prior authorization from a provider recommended by either the juvenile justice authority or the department's division of children and family policy;

(2) group mental health treatment services that have received prior authorization from a provider recommended by either the juvenile justice authority or the department's division of children and family policy;

(3) in-home, family-based mental health services that have received prior authorization from

a provider recommended by either the juvenile justice authority or the department's division of children and family policy; and

(4) comprehensive evaluation and transition services for children who have special psychological or emotional, developmental, or health needs directed toward placement of the recipient in the least restrictive environment;

(c) psychological services, audiological services, Kan Be Healthy screenings, physical therapy, speech pathology or occupational therapy services provided to recipients when medically necessary for purposes of screening and evaluation and for providing services pursuant to an individualized educational plan or individualized family service plan and when provided by employees or contractors of enrolled local education agencies; and

(d) long-term head injury rehabilitation provided by an enrolled head injury rehabilitation facility. Long-term head injury rehabilitation shall be limited to only those individuals who meet the following criteria:

(1) Have sustained a traumatic head injury;

(2) continue to show progress in their recovery; and

(3) can benefit from transitional living skills training.

This regulation shall be effective on and after January 1, 2004. (Authorized by and implementing K.S.A. 39-708c; effective July 1, 1989; amended, T-30-1-2-90, Jan. 2, 1990; amended, T-30-2-28-90, Jan. 2, 1990; amended Aug. 1, 1990; amended Jan. 7, 1991; amended, T-30-10-2-91, Oct. 2, 1991; amended Jan. 2, 1992; amended July 1, 1994; amended Sept. 1, 1995; amended Jan. 1, 2004.)

30-5-116a. Reimbursement for rehabilitation services. (a) Reimbursement for substance abuse treatment and long-term head injury rehabilitation shall be based upon a negotiated rate pursuant to a contract between the Kansas department of social and rehabilitation services and a provider.

(b) Reimbursement for inpatient rehabilitation services provided in a general hospital shall be based on the diagnosis related group system.

(c) Reasonable fees as related to customary charges shall be paid for other rehabilitation services, except no fee shall be paid in excess of the range maximum. The range of charges shall provide the base for computations. The effective date of this regulation shall be October 1, 1993. (Authorized by and implementing K.S.A. 1992 Supp.

39-708c; effective July 1, 1989; amended Jan. 7, 1991; amended, T-30-10-2-91, Oct. 2, 1991; amended Jan. 2, 1992; amended Oct. 1, 1993.)

30-5-117. Scope of maternity center services. Maternity center services shall be covered when provided by a maternity center licensed by the Kansas department of health and environment or its equivalent when provided by a maternity center located out of state. Labor and delivery shall be covered. The effective date of this regulation shall be August 1, 1990. (Authorized by and implementing K.S.A. 39-708c; effective Aug. 1, 1990.)

30-5-117a. Reimbursement for maternity center services. Reasonable fees as related to customary charges shall be paid for maternity center services, except no fee shall be paid in excess of the range maximum. The range of charges shall provide the base for computations. The effective date of this regulation shall be August 1, 1990. (Authorized by and implementing K.S.A. 39-708c; effective Aug. 1, 1990.)

30-5-118. (Authorized by and implementing K.S.A. 1997 Supp. 39-708c; effective, T-30-10-1-90, Oct. 1, 1990; effective Jan. 30, 1991; amended Jan. 1, 1999; revoked June 2, 2006.)

30-5-118a. (Authorized by and implementing K.S.A. 1997 Supp. 39-708c; effective, T-30-10-1-90, Oct. 1, 1990; effective Jan. 30, 1991; amended July 1, 1994; amended July 1, 1997; amended Jan. 1, 1999; revoked March 19, 2010.)

30-5-118b. (Authorized by and implementing K.S.A. 1997 Supp. 39-708c; effective Jan. 1, 1999; revoked June 2, 2006.)

30-5-150. Co-payment requirements for medikan program recipients. Medikan program recipients shall be obligated to the provider for co-payment amounts identical to the co-payment amounts for medicaid program recipients pursuant to K.A.R. 30-5-71. (Authorized by and implementing K.S.A. 39-708c; effective, T-84-8, April 1, 1983; effective May 1, 1984; amended, T-87-20, Sept. 1, 1986; amended May 1, 1987; amended May 1, 1988.)

30-5-151. Scope of hospital services for medikan program recipients. Hospital services for medikan program recipients shall be limited to services provided for the following conditions:

(a) Acute psychotic episodes;
 (b) traumatic injury;
 (c) burns; and
 (d) substance abuse acute detoxification. (Authorized by and implementing K.S.A. 1991 Supp. 39-708c, as amended by L. 1992, Chapter 322, Sec. 5; effective, T-84-8, April 1, 1983; amended, T-84-11, July 1, 1983; effective May 1, 1984; amended, T-85-24, Sept. 18, 1984; amended May 1, 1985; amended May 1, 1986; amended May 1, 1987; amended May 1, 1988; revoked, T-30-12-28-89, Jan. 2, 1990; effective, T-30-2-28-90, Feb. 28, 1990; amended, T-30-6-10-91, July 1, 1991; amended Dec. 31, 1992; amended, T-30-2-15-93, Feb. 15, 1993; amended June 1, 1993.)

30-5-152. Scope of rural health clinic services for medikan program recipients.

The scope of rural health clinic services for medikan program recipients shall be identical to the rural health clinic services pursuant to K.A.R. 30-5-82 covered for adult medicaid program recipients. (Authorized by and implementing K.S.A. 39-708c; effective, T-84-8, April 1, 1983; effective, May 1, 1984; amended May 1, 1988.)

30-5-153. Scope of physical therapist services. (a) Physical therapist services shall be covered for medicaid/medikan beneficiaries when provided by a physical therapist who:

- (1) is certified by medicare; and
- (2) meets requirements listed in K.A.R. 100-35-1 through K.A.R. 100-35-7.

(b) The effective date of this regulation shall be December 29, 1995. (Authorized by and implementing K.S.A. 39-708c; effective, T-84-8, April 1, 1983; effective Dec. 29, 1995.)

30-5-153a. Reimbursement for physical therapist services. (a) Reasonable fees for customary charges shall be paid for physical therapist services except that no fee shall be paid in excess of the range maximum.

(b) The range of charges shall provide the base for the computation.

(c) The effective date of this regulation shall be December 29, 1995. (Authorized by and implementing K.S.A. 39-708c; effective Dec. 29, 1995.)

30-5-154. Scope of services by community mental health centers for medikan program recipients. The scope of community mental health center services for medikan program recipients shall be identical to the community mental

health center services pursuant to K.A.R. 30-5-86 covered for adult medicaid program recipients with the following exceptions: (a) Outpatient psychotherapy shall be limited to 24 hours per calendar year per medikan recipient when provided by a community mental health center, physician, psychologist, or any combination of these providers;

(b) psychological testing shall be prior authorized and limited to six hours in any three consecutive calendar years for medikan recipients; and

(c) targeted case management services and partial hospitalization services shall be limited to amounts specified by the secretary for medikan recipients. (Authorized by and implementing K.S.A. 39-708c; effective, T-84-8, April 1, 1983; effective May 1, 1984; amended May 1, 1987; amended May 1, 1988.)

30-5-155. Scope of Kan Be Healthy program services for medikan program recipients.

Kan Be Healthy program services shall not be covered for medikan program recipients. (Authorized by and implementing K.S.A. 39-708c; effective, T-84-8, April 1, 1983; effective May 1, 1984; amended Jan. 2, 1989.)

30-5-156. Scope of physician services for medikan program recipients.

The scope of physician services for medikan program recipients shall be identical to the physician services pursuant to K.A.R. 30-5-88 covered for medicaid program recipients with the exception that outpatient psychotherapy for medikan recipients shall be limited to 24 hours per calendar year per recipient when provided by a physician, psychologist, community mental health center, or any combination of these providers. (Authorized by and implementing K.S.A. 39-708c; effective, T-84-8, April 1, 1983; amended, T-84-11, July 1, 1983; effective May 1, 1984; amended May 1, 1985; amended May 1, 1986; amended May 1, 1988.)

30-5-157. Scope of home health services for medikan program recipients.

The scope of home health services for medikan program recipients shall be identical to the home health services pursuant to K.A.R. 30-5-89 covered for adult medicaid program recipients. (Authorized by and implementing K.S.A. 39-708c; effective, T-84-8, April 1, 1983; effective May 1, 1984; amended May 1, 1988.)

30-5-158. Scope of pharmacy services for adult medikan program recipients. Coverage shall be limited to prescription-only and

over-the-counter drugs, supplies and devices that have been accepted for inclusion on any formulary listing for adult medikan program recipients which has been adopted and distributed, by the agency, to eligible providers of service. (Authorized by and implementing K.S.A. 1983 Supp. 39-708c; effective, T-84-8, April 1, 1983; effective May 1, 1984.)

30-5-159. Scope of dental services for medikan program recipients. Dental services for medikan program recipients shall not be covered. The effective date of this regulation shall be December 31, 1992. (Authorized by and implementing K.S.A. 1991 Supp. 39-708c, as amended by L. 1992, Chapter 322, Sec. 5; effective, T-84-8, April 1, 1983; modified L. 1983, ch. 373, May 1, 1983; effective May 1, 1984; amended May 1, 1988; revoked, T-30-12-28-89, Jan. 2, 1990; effective, T-30-2-28-90, Feb. 28, 1990; amended, T-30-6-10-91, July 1, 1991; amended Dec. 31, 1992.)

30-5-160. Scope of chiropractic services for medikan program recipients. Chiropractic services for medikan program recipients shall not be covered. The effective date of this regulation shall be December 31, 1992. (Authorized by and implementing K.S.A. 1991 Supp. 39-708c, as amended by L. 1992, Chapter 322, Sec. 5; effective, T-84-8, April 1, 1983; effective May 1, 1984; amended May 1, 1985; amended May 1, 1986; amended, T-87-5, May 1, 1986; amended May 1, 1987; amended May 1, 1988; revoked, T-30-12-28-89, Jan. 2, 1990; effective, T-30-2-28-90, Feb. 28, 1990; amended, T-30-6-10-91, July 1, 1991; amended Dec. 31, 1992.)

30-5-161. Scope of podiatric services for medikan program recipients. Podiatric services for medikan program recipients shall not be covered. The effective date of this regulation shall be December 31, 1992. (Authorized by and implementing K.S.A. 1991 Supp. 39-708c, as amended by L. 1992, Chapter 322, Sec. 5; effective, T-84-8, April 1, 1983; effective May 1, 1984; amended May 1, 1985; amended May 1, 1986; amended, T-87-5, May 1, 1986; amended May 1, 1987; amended May 1, 1988; revoked, T-30-12-28-89, Jan. 2, 1990; effective, T-30-2-28-90, Feb. 28, 1990; amended, T-30-6-10-91, July 1, 1991; amended Dec. 31, 1992.)

30-5-162. Scope of psychological services for medikan program recipients. The scope of

psychological services for adult medikan program recipients shall be identical to the psychological services pursuant to K.A.R. 30-5-104 covered for adult medicaid program recipients with the following exceptions:

(a) Outpatient psychotherapy shall be limited to 24 hours per calendar year per medikan recipient when provided by a psychologist, physician, community mental health center, or any combination of these providers;

(b) psychological testing and evaluation shall be limited to four hours in any three consecutive calendar years for medikan recipients; and

(c) targeted case management and partial hospitalization services shall be limited to amounts specified by the secretary of the department for medikan recipients. The effective date of this regulation shall be January 2, 1991. (Authorized by and implementing K.S.A. 39-708c, as amended by L. 1990, Chapter 152, Sec. 1; effective, T-84-8, April 1, 1983; effective May 1, 1984; amended May 1, 1986; amended, T-87-5, May 1, 1986; amended, T-87-20, Sept. 1, 1986; amended May 1, 1987; amended May 1, 1988; revoked, T-30-12-28-89, Jan. 1, 1990; effective, T-30-2-28-90, Feb. 28, 1990; amended Jan. 7, 1991.)

30-5-163. Scope of hearing services for medikan program recipients. The scope of hearing services for medikan program recipients shall be identical to the hearing services pursuant to K.A.R. 30-5-105 covered for adult medicaid program recipients. (Authorized by and implementing K.S.A. 39-708c; effective, T-84-8, April 1, 1983; effective May 1, 1984; amended May 1, 1985; amended May 1, 1986; amended, T-87-5, May 1, 1986; amended May 1, 1987; amended May 1, 1988.)

30-5-164. Scope of ambulance services for adult medikan program recipients. Coverage shall be limited to emergency transportation to a facility where medical services are rendered. (Authorized by and implementing K.S.A. 1983 Supp. 39-708c; effective, T-84-8, April 1, 1983; effective May 1, 1984.)

30-5-165. Scope of non-ambulance medical transportation services for adult medikan program recipients. Non-ambulance medical transportation services shall not be covered for adult medikan program recipients. (Authorized by and implementing K.S.A. 1983 Supp. 39-708c; effective, T-84-8, April 1, 1983; effective May 1, 1984.)

30-5-166. Scope of durable medical equipment, medical supplies, orthotic and prosthetic services for adult medikan program recipients. Coverage for durable medical equipment and medical supplies shall be limited to services necessary to support life. (Authorized by and implementing K.S.A. 1983 Supp. 39-708c; effective, T-84-8, April 1, 1983; effective May 1, 1984.)

30-5-167. Scope of services in free-standing inpatient psychiatric facilities for medikan program recipients. The scope of services in free-standing inpatient psychiatric facilities for medikan program recipients shall be identical to the free-standing inpatient psychiatric facility services pursuant to K.A.R. 30-5-109 for adult medicaid program recipients. (Authorized by and implementing K.S.A. 39-708c; effective, T-84-8, April 1, 1983; effective May 1, 1984; amended May 1, 1988.)

30-5-168. Family planning services for medikan program recipients. The scope of family planning services for medikan program recipients shall be identical to the family planning services pursuant to K.A.R. 30-5-88(b)(5) covered for adult medicaid program recipients. (Authorized by and implementing K.S.A. 39-708c; effective, T-84-8, April 1, 1983; effective May 1, 1984; amended May 1, 1988; amended May 1, 1988.)

30-5-169. Scope of partial hospitalization services for medikan program recipients. (a) Partial hospitalization services shall be provided in a community mental health center or a facility affiliated with a community mental health center.

(b) Supportive partial hospitalization services shall be limited to a maximum of 720 hours per medikan recipient per calendar year.

(c) Crisis stabilization partial hospitalization services shall be limited to a maximum of 960 hours per medikan recipient per calendar year. The effective date of this regulation shall be December 31, 1992. (Authorized by and implementing K.S.A. 1991 Supp. 39-708c, as amended by L. 1992, Chapter 322, Sec. 5; effective, T-84-8, April 1, 1983; effective May 1, 1984; amended May 1, 1986; amended May 1, 1987; amended May 1, 1988; amended July 1, 1989; revoked, T-30-12-28-89, Jan. 2, 1990; effective, T-30-2-28-90, Feb. 28, 1990; amended, T-30-6-10-91, July 1, 1991; amended Dec. 31, 1992.)

30-5-170. Scope of services for ambulatory surgical centers for medikan program recipients. The scope of ambulatory surgical center services for medikan program recipients shall be identical to the ambulatory surgical center services pursuant to K.A.R. 30-5-83 covered for adult medicaid program recipients. (Authorized by and implementing K.S.A. 39-708c; effective, T-84-8, April 1, 1983; effective May 1, 1984; amended May 1, 1988.)

30-5-171. This rule and regulation shall expire on December 31, 1992. (Authorized by and implementing K.S.A. 39-708c; effective, T-84-8, April 1, 1983; effective May 1, 1984; amended May 1, 1988; revoked, T-30-12-28-89, Jan. 2, 1990; effective, T-30-2-28-90, Feb. 28, 1990; amended, T-30-6-10-91, July 1, 1991; revoked Dec. 31, 1992.)

30-5-172. Scope of optometric services for adult medikan program recipients. Optometric services shall not be covered for adult medikan program recipients. (Authorized by and implementing K.S.A. 1983 Supp. 39-708c; effective, T-84-8, April 1, 1983; effective May 1, 1984.)

30-5-173. This rule and regulation shall be revoked on and after March 1, 1995. (Authorized by and implementing L. 1992, Chapter 322, K.S.A. 1991 Supp. 39-708c, as amended by L. 1992, Chapter 322, Sec. 5; effective Jan. 4, 1993; revoked March 1, 1995.)

30-5-173a. This rule and regulation shall be revoked on and after March 1, 1995. (Authorized by and implementing L. 1992, Chapter 322, K.S.A. 1991 Supp. 39-708c, as amended by L. 1992, Chapter 322, Sec. 5; effective Jan. 4, 1993; revoked March 1, 1995.)

30-5-174. Delivery of managed care. Counties shall be selected by the secretary pursuant to K.S.A. 1994 Supp. 39-7,112, as amended, to participate in managed care service delivery options. Subject to provider availability, any beneficiary may be required to choose a managed care option in order to access covered program services. (a) Managed care contractors shall be selected by the secretary from willing providers based upon the best professional judgment of the secretary or designees in the best interest of the agency.

(b) Before signing a contract to provide services, each provider of capitated managed care

shall have the ability to meet contract requirements, including but not limited to:

- (1) financial solvency;
- (2) a panel of service providers who shall be:
 - (A) appropriately credentialed;
 - (B) in active practice;
 - (C) available to provide services to program enrollees; and

(D) culturally competent, which means a demonstrated ability to provide services which are sensitive to the needs of a diverse population including individuals of any income level, racial or ethnic background, language, handicapped condition or sexual preference;

(3) an approved quality management process; and

(4) other requirements determined by the secretary. In order to participate as a managed care provider, each contractor shall abide by every provision of the contract. Penalties for failure to abide by contract provisions shall be imposed by the secretary or other appropriate actions, as enumerated in the contract provisions may be taken.

(c) Each capitated managed care contractor shall be reimbursed at a rate set by the secretary on an actuarially sound basis. Each provider of primary care case management shall be reimbursed for those medically necessary services which are covered on a fee for service basis, plus a case management fee as determined by the secretary.

(d) The effective date of this regulation shall be September 1, 1995. (Authorized by and implementing K.S.A. 39-708c; effective Sept. 1, 1995.)

30-5-300. Definitions. (a) The following words and terms for home- and community-based services (HCBS), when used in this article, shall have the following meanings, unless the context clearly indicates otherwise.

(1) "Accept medicare assignment" means that the provider will accept the medicare-allowed payment rate as payment in full for services provided to a consumer.

(2) "Activities of daily living (ADLs)" means the following:

- (A) Bathing;
- (B) dressing;
- (C) toileting;
- (D) transferring;
- (E) ambulating; and
- (F) eating.

(3) "Agency" means the Kansas department of social and rehabilitation services.

(4) "Area agency on aging" means the agency or organization within a planning and service area that has been designated by the secretary of the Kansas department on aging (KDOA) to develop, implement, and administer a plan for the delivery of a comprehensive and coordinated system of services to older persons in the planning and service area.

(5) "Assessment" means the face-to-face interview and evaluation of a home- and community-based services consumer by an authorized case manager, assessor, or independent living counselor to determine the consumer's care needs and support systems and to develop a service plan.

(6) "Case management services" means a comprehensive service comprised of a variety of specific tasks and activities designed to coordinate and integrate all other services required in the individual's plan of care.

(7) "Client obligation" means the monthly amount collected from an HCBS consumer by the service provider for the cost of a service.

(8) "Conflict of interest" means any relationship between two or more parties in which one party has the ability to influence another party to the transaction in a way that one or more of the transacting parties might fail to fully pursue the party's or parties' own separate interests. Related parties shall include parties related by family, business, or financial association, or by common ownership or control. Transactions between related parties shall not be considered to have arisen through arm's-length negotiations. Transactions or agreements that are illusory or a sham shall not be recognized.

(9) "Cost cap" means the average HCBS monthly service cost limit per consumer, including primary and acute care costs. The average HCBS monthly service cost limit shall be based on and compared to the average monthly cost that the consumer would incur in a nursing facility.

(10) "Cost-efficient" means that all of the formal and informal service systems available to meet individual needs are used before HCBS services are used.

(11) "Cost-effective" means that the cost of utilizing a service is recovered by the savings generated from avoiding the necessary utilization of a more expensive service.

(12) "Direct cost" means any cost that can be identified specifically with a particular cost objective.

(13) "Documentation" means maintenance of the HCBS consumer's case file, which shall include the following:

- (A) A current assessment or reassessment;
- (B) a plan of care;
- (C) a service plan;
- (D) an activity log; and
- (E) a financial eligibility communication form, including current client obligation information.

(14) “Effective date” means the date on which a program or service begins and on which a provider can be reimbursed for services.

(15) “Formal service” means any needed service as documented in the plan of care and funded by medicaid.

(16) “Frail elderly waiver” means a medicaid HCBS services waiver authorized by and through the Kansas department on aging services in accordance with a federally approved waiver to the Kansas medicaid state plan for individuals age 65 and older who meet the medicaid long-term care threshold.

(17) “Home health aide service” means the direct care provided by a person with minimum training to consumers who are unable to care for themselves or who need assistance in accomplishing the activities of daily living. The home health aide service direct care provider shall be under the supervision of a registered nurse employed by a home health agency.

(18) “Home health agency” means a public or private agency or organization that provides, for a fee, one or more home health services at the residence of a consumer.

(19) “Housing options” means all home and residential environments in which individuals would be eligible to receive HCBS services.

(20) “Instrumental activities of daily living (IADLs)” means the following:

- (A) Meal preparation;
- (B) shopping;
- (C) medication monitoring and treatments;
- (D) laundry and housekeeping;
- (E) money management;
- (F) telephone use; and
- (G) transportation.

(21) “Independent living center” means a public or private agency or organization recognized by the agency whose primary function is to provide independent living services, including the following:

- (A) Independent living skills training;
- (B) advocacy;
- (C) peer counseling; and
- (D) information and referral.

(22) “Independent living counseling” means a service provided through the HCBS/physically

disabled waiver that assesses need, negotiates care plans and service plans, and teaches independent living skills.

(23) “Indirect costs” means the administrative costs of long-term care (LTC) programs or their functional components, including the costs of supplying goods, services, and facilities to those programs or their functional components.

(24) “Ineligible provider” means a provider who is not enrolled in the medicaid/medikan program due to one or more of the reasons set forth in K.A.R. 30-5-60, or because the provider committed civil or criminal fraud in another state or another program.

(25) “Informal service” means any needed or desired service provided voluntarily to a consumer by one or more organizations, agencies, or families, at no cost to the medicaid program.

(26) “Level of care” means the functional needs of consumers, as determined through an assessment or reassessment, based on impairments in ADLs and IADLs.

(27) “Medicaid home- and community-based services (HCBS)” means services provided in accordance with a federally approved waiver to the Kansas medicaid state plan that are designed to prevent unnecessary utilization of services and to reduce health care-related costs. Any individual who has a primary diagnosis of mental illness and who is 21 years of age or older, but less than 65 years old, shall not be eligible.

(28) “Medicaid home- and community-based services for persons with mental retardation or other developmental disabilities (HCBS/MRDD)” means services provided in accordance with a federally approved waiver to the Kansas medicaid state plan. These services shall be designed as alternatives to services otherwise provided in intermediate care facilities for the mentally retarded (ICF/MR) for individuals who have mental retardation or other developmental disabilities.

(29) “Medicaid home- and community-based services for head-injured persons (HCBS/HI)” means medicaid services that meet these requirements:

(A) Are provided in accordance with a federally approved waiver to the Kansas medicaid state plan; and

(B) are designed as an alternative to services in brain injury rehabilitation facilities for individuals who meet these requirements:

- (i) Have external, traumatic brain injuries; and

(ii) are 18 years of age or older, but are less than 55 years of age. Any person receiving HCBS/ HI waiver services may continue to receive these services after reaching age 55 if the Kansas medicaid HCBS program manager determines that the person is continuing to show progress in rehabilitation and increased independence.

(30) “Medicaid long-term care threshold” means the level-of-care criteria, as established by the agency and approved in the waiver to the medicaid state plan for HCBS, that are used to determine eligibility for medicaid long-term care programs.

(31) “Nursing facility (NF)” means a facility that meets these criteria:

- (A) Meets state licensure standards;
- (B) provides health-related care and services, prescribed by a physician; and
- (C) provides residents with licensed nursing supervision 24 hours per day and seven days per week for ongoing observation, treatment, or care for long-term illness or injury.

(32) “Normal rhythms of the day” means the average time frame in which an individual without a physical disability typically completes clusters of ADL and IADL activities.

(33) “Organized health care delivery system” means a system, at least one component of which is organized for the purpose of delivering health care, that furnishes at least one service under a medicaid-covered waiver or the state plan.

(34) “Other developmental disability” means a condition or illness that meets these requirements:

- (A) Is manifested before age 22;
- (B) can reasonably be expected to continue indefinitely;
- (C) results in substantial limitations in any three or more of the following areas of life functioning:
 - (i) Self-care;
 - (ii) understanding and the use of language;
 - (iii) learning and adapting;
 - (iv) mobility;
 - (v) self-direction in setting goals and undertaking activities to accomplish those goals;
 - (vi) living independently; or
 - (vii) economic self-sufficiency; and
- (D) reflects the need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services that are of extended or lifelong duration and are individually planned and coordinated.

(35) “Physically disabled (PD) waiver” means services provided in accordance with a federally

approved waiver to the Kansas medicaid state plan for any individual who meets these requirements:

- (A) Is 16 years of age or older. Consumers who turn 65 years of age while on the physically disabled waiver may remain on the waiver past age 65;
- (B) is physically disabled according to social security disability standards;
- (C) meets the medicaid LTC threshold; and
- (D) requires assistance with normal rhythms of the day.

(36) “Plan of care (POC)” means a document that states and prescribes the responsibilities of providers to ensure that the providers meet the health and safety needs of HCBS consumers. The document shall include the following information:

- (A) A statement identifying the need for care;
- (B) the estimated length of the service or program;
- (C) a description of the prescribed treatment, modalities, and methodology to be used;
- (D) a description of the expected results;
- (E) the name of the provider; and
- (F) the cost of the program or services.

(37) “Prior authorization” means that a service to be provided shall be reimbursed only when approval is given by the agency before the service is provided.

(38) “Program” means the Kansas medicaid/medikan program.

(39) “Provider enrollment” means the process through which the agency determines whether or not an applicant meets the requirements for persons or agencies to provide services to the medicaid program.

(40) “Reassessment” means an annual review and evaluation of an HCBS consumer’s continued need for services.

(41) “Reimbursement rate” means the dollar value assigned by the secretary for a covered service.

(42) “Risk factor” means any condition that can increase an individual’s functional impairment. The risk factor is used to determine needs for services, as appropriate for the individual’s level of care.

(43) “Self-directed care” means an option under the HCBS program that allows an individual in need of care to live in a home environment and direct the attendant services that are essential to the maintenance of the individual’s health and safety.

(44) “Service plan” means a document that describes specific tasks to be performed, based on the needs of the consumer. The description shall include the type of service, the frequency, and the provider.

(45) “Severe emotional disturbance waiver” means services provided in accordance with a federally approved waiver to the Kansas medic-aid state plan for any individual who meets these requirements:

(A) Is under 18 years of age or, if the individual is under 22 years of age, has continually received intensive community-based services for at least six months before the date of the initial application for the waiver;

(B) has received a DSM-IV diagnosis under axis I (clinical disorders);

(C) meets the criteria for a severe emotional disturbance;

(D) meets the following severity index criteria:

(i) On a child behavior checklist (CBCL), a score of at least 70 on one subscale; and

(ii) on a child and adolescent functional assessment scale (CAFAS), an overall score of 100, or at least 30 for each of two subscales; and

(E) according to clinical judgment, is in need of a state mental health hospital (SMHH).

(46) “Technology-assisted child” means a chronically ill or medically fragile child who meets these requirements:

(A) Is 17 years of age or younger;

(B) has an illness or disability that, in the absence of home care services, would require admission to or a prolonged stay in a hospital;

(C) needs both a medical device to compensate for the loss of a vital body function and substantial, continuous care by a nurse or other caretaker under the supervision of a nurse in order to avert death or further disability;

(D) is dependent at least part of each day on mechanical ventilators for survival; and

(E) requires prolonged intravenous administration of nutritional substances or drugs, or requires other medical devices to compensate for the loss of a vital body function.

(47) “Terminally ill” means the medical condition of an individual whose life expectancy is six months or less, as determined and documented by a physician.

(48) “Traumatic brain injury” means non-degenerative, structural brain damage resulting in residual deficits and disability that have been acquired by external physical injury.

(49) “Termination date” means the last day on which a program or service shall be reimbursed. For HCBS, this date shall not extend beyond the last date of medicaid eligibility.

(b) This regulation shall be effective on and

after January 1, 2004. (Authorized by and implementing K.S.A. 39-708c; effective Jan. 1, 1997; amended July 1, 1997; amended, T-30-12-16-97, Jan. 1, 1998; amended April 1, 1998; amended July 1, 2002; amended Jan. 1, 2004.)

30-5-301. Provider participation. (a) Each provider shall meet the provider participation requirements specified in K.A.R. 30-5-59, including record keeping requirements, and the following additional requirements:

(1) All assessment records;

(2) All plan of care records; and

(3) All case file documentation records.

(b) This regulation shall take effect on and after January 1, 1997. (Authorized and implementing K.S.A. 1995 Supp. 39-708c, as amended by L. 1996, Ch. 229, Sec. 104; effective Jan. 1, 1997.)

30-5-302. Limitations for independent living counselors. (a) An independent living center shall not use any consumer as an independent living counselor when that consumer receives services from the same independent living counseling agency.

(b) This regulation shall take effect on and after January 1, 1997. (Authorized by and implementing K.S.A. 1995 Supp. 39-708c, as amended by L. 1996, Ch. 229, Sec. 104; effective Jan. 1, 1997.)

30-5-303. Cost effectiveness. (a) Except for “cost cap” approvals, each HCBS plan of care shall be cost-effective.

(b) This regulation shall take effect on and after January 1, 1997. (Authorized by and implementing K.S.A. 1995 Supp. 39-708c, as amended by L. 1996, Ch. 229, Sec. 104; effective Jan. 1, 1997.)

30-5-304. Cost efficient plans of care. (a) Each HCBS plan of care shall be cost efficient and shall be provided in accordance with K.A.R. 30-5-70.

(b) This regulation shall take effect on and after January 1, 1997. (Authorized by and implementing K.S.A. 1995 Supp. 39-708c, as amended by L. 1996, Ch. 229, Sec. 104; effective Jan. 1, 1997.)

30-5-305. Assessment requirements. (a) Qualified staff and assessment providers shall conduct an assessment prior to the implementation of any HCBS service.

(b) This regulation shall take effect on and after January 1, 1997. (Authorized by and implementing K.S.A. 1995 Supp. 39-708c, as amended by L. 1996, Ch. 229, Sec. 104; effective Jan. 1, 1997.)

30-5-306. Effective date for HCBS eligibility. (a) The effective date of eligibility for HCBS services shall not be before the effective date of medicaid eligibility.

(b) This regulation shall take effect on and after January 1, 1997. (Authorized by and implementing K.S.A. 1995 Supp. 39-708c, as amended by L. 1996, Ch. 229, Sec. 104; effective Jan. 1, 1997.)

30-5-307. Family reimbursement restriction. (a) Neither an adult consumer's spouse nor a minor consumer's parents shall be paid to provide HCBS services to that consumer, unless all other possible options are exhausted and one of the following extraordinary criteria is met.

(1) Three HCBS provider agencies furnish written documentation that the consumer's residence is so remote or rural that HCBS services are otherwise completely unavailable.

(2) Two health care professionals, including the attending physician, furnish written documentation that the consumer's health, safety, or social well-being, would be jeopardized.

(3) The attending physician furnishes written documentation that, due to the advancement of chronic disease, the consumer's means of communication can be understood only by the spouse or by the parent of a minor child.

(4) Three HCBS providers furnish written documentation that delivery of HCBS services to the consumer poses serious health or safety issues for the provider, thereby rendering HCBS services otherwise unavailable.

(b) This regulation shall take effect on and after July 1, 1997. (Authorized by and implementing K.S.A. 1996 Supp. 39-708c; effective Jan. 1, 1997; amended July 1, 1997.)

30-5-308. Nonsupplementation of HCBS services. (a) An organization, agency, family, consumer, or other individual shall not be allowed to pay for services that are on the plan of care.

(b) A consumer may accept the following:

(1) Any available service that is provided free and voluntarily by one or more organizations, agencies, families, or other individuals, at no cost to the medicaid program; and

(2) any available, desired services in addition to those services on the plan of care that are purchased by the consumer or one or more organizations, agencies, families, or other individuals, at no cost to the medicaid program.

(c) This regulation shall be effective on and after December 31, 2002. (Authorized by and implementing K.S.A. 39-708c; effective Jan. 1, 1997; amended Dec. 31, 2002.)

30-5-309. Scope of and reimbursement for medicaid home- and community-based services (HCBS). The scope of medicaid home- and community-based services shall consist of those services provided under the authority of the applicable federally approved waiver to the Kansas medicaid state plan. (a) Medicaid home- and community-based services shall be provided to medicaid-eligible consumers who are determined by individualized assessment to be qualified for the appropriate institutional level of care, and who elect to receive the services specified in individualized written plans of care designed to prevent living in an institution.

(b) Medicaid home- and community-based services shall consist of one or more of the services defined and federally approved in the medicaid home- and community-based waiver provided under a written plan of care.

(c) Medicaid home- and community-based services shall be provided in accordance with an individualized written plan of care approved in writing by the Kansas department of social and rehabilitation services for all waiver program services other than the frail elderly waiver program services, which shall be provided in accordance with an individualized written plan of care approved in writing by the Kansas department on aging. Each annual review and amendment of this plan shall be approved in the same fashion. This plan shall meet these requirements:

(1) Be based on needs identified during the screening assessment;

(2) specify each service to be provided and why each service was selected, or how each service will address any specific need identified by the assessment;

(3) specify the frequency and limits of each provided service;

(4) specify any other required support services and the plan for obtaining them;

(5) be prepared in consultation with the consumer or the consumer's guardian, if one has been appointed;

(6) be approved in writing by the consumer or the consumer's guardian, as appropriate; and

(7) be reviewed at least annually and updated as necessary.

(d) Medicaid home- and community-based services shall be subject to the individual and aggregate expenditure limits applicable under the federally approved waiver.

(e) Medicaid home- and community-based services for a consumer shall be terminated when the Kansas department of social and rehabilitation services or the Kansas department on aging for the frail elderly program determines at least one of the following:

(1) The consumer no longer meets the level of care criteria.

(2) The consumer fails to cooperate with basic program requirements to the degree that the department's ability to deliver services is substantially impeded.

(3) The written plan of care no longer meets the tests of cost-effectiveness, or a cost cap exception is not granted.

(4) No provider of essential services is available in the consumer's home location.

(5) The consumer enters a nursing facility for more than a planned brief stay.

(6) The consumer becomes no longer eligible for medicaid.

(7) The consumer requests termination of services.

(8) The consumer dies.

(f) Reimbursement for medicaid home- and community-based services shall be based upon reasonable fees as related to customary charges, but no fee shall be paid in excess of the range maximum. The range of charges shall provide the basis for computations.

(g) This regulation shall take effect on and after July 1, 2000. (Authorized by and implementing K.S.A. 1999 Supp. 39-708c; effective July 1, 1997; amended July 1, 2000.)

30-5-310. Scope and reimbursement for home- and community-based services for persons with a severe emotional disturbance. (a) The scope of home- and community-based services for persons with a severe emotional disturbance shall consist of those services provided under the authority of the applicable federally approved model waiver to the Kansas medicaid state plan.

(b) Home- and community-based services shall be provided in accordance with an individualized, written plan of care approved by the Kansas department of social and rehabilitation services.

(c) Before the development of any plan to provide services, the need for services shall be de-

termined through an individualized assessment of the prospective recipient made by a qualified assessor. A qualified assessor means a qualified mental health professional as defined in K.S.A. 59-2946, and amendments thereto.

(d) Services may include one or more of the following:

(1) Respite care;

(2) wraparound facilitation or community support;

(3) independent living or skill building; and

(4) parent support and training.

(e) Reimbursement for home- and community-based services for persons with a severe emotional disturbance shall be based upon reasonable fees as related to customary charges, except that no fee shall be paid in excess of the range maximum.

(f) This regulation shall take effect on and after April 1, 1998. (Authorized by and implementing K.S.A. 39-708c; effective, T-30-12-16-97, Jan. 1, 1998; effective April 1, 1998.)

Article 6.—MEDICAL ASSISTANCE PROGRAM—CLIENTS' ELIGIBILITY FOR PARTICIPATION

30-6-1. (Authorized by K.S.A. 1975 Supp. 39-708c; effective Jan. 1, 1967; amended Jan. 1, 1968; amended Jan. 1, 1973; amended Jan. 1, 1974; amended May 1, 1975; revoked May 1, 1976.)

30-6-2 to 30-6-5. (Authorized by K.S.A. 1980 Supp. 39-708c; effective, E-78-15, July 1, 1977; effective May 1, 1978; revoked May 1, 1981.)

30-6-6. (Authorized by K.S.A. 1980 Supp. 39-708c, 39-719b; effective, E-78-15, July 1, 1977; effective May 1, 1978; revoked May 1, 1981.)

30-6-7. (Authorized by K.S.A. 1980 Supp. 39-708c; effective, E-78-15, July 1, 1977; effective May 1, 1978; revoked May 1, 1981.)

30-6-8 and 30-6-9. (Authorized by K.S.A. 1980 Supp. 39-708c, 39-709; effective, E-78-15, July 1, 1977; effective May 1, 1978; revoked May 1, 1981.)

30-6-10. (Authorized by K.S.A. 1980 Supp. 39-708c, 39-709; effective, E-78-15, July 1, 1977; effective May 1, 1978; amended, E-79-20, Aug. 17, 1978; amended May 1, 1979; amended May 1, 1980; revoked May 1, 1981.)

30-6-11. (Authorized by K.S.A. 1980 Supp.

39-708c, 39-709; effective, E-78-15, July 1, 1977; effective May 1, 1978; revoked May 1, 1981.)

30-6-12. (Authorized by K.S.A. 1980 Supp. 39-708c, 39-709; effective, E-78-15, July 1, 1977; effective May 1, 1978; amended, E-79-20, Aug. 17, 1978; amended May 1, 1979; amended May 1, 1980; revoked May 1, 1981.)

30-6-13 to 30-6-15. (Authorized by K.S.A. 1980 Supp. 39-708c, 39-709; effective, E-78-15, July 1, 1977; effective May 1, 1978; revoked May 1, 1981.)

30-6-16. (Authorized by K.S.A. 1980 Supp. 38-827, 39-708c; effective, E-78-15, July 1, 1977; effective May 1, 1978; amended May 1, 1979; amended, E-80-13, Aug. 8, 1979; amended May 1, 1980; revoked May 1, 1981.)

30-6-17 and 30-6-18. (Authorized by K.S.A. 1980 Supp. 39-708c, 39-709; effective, E-78-15, July 1, 1977; effective May 1, 1978; amended May 1, 1980; amended, E-81-25, Aug. 27, 1980; revoked May 1, 1981.)

30-6-19. (Authorized by K.S.A. 1980 Supp. 39-708c, 39-709; effective, E-78-15, July 1, 1977; effective May 1, 1978; amended, E-80-13, Aug. 8, 1979; amended May 1, 1980; revoked, E-81-19, July 16, 1980; revoked May 1, 1981.)

30-6-20. (Authorized by K.S.A. 1980 Supp. 39-708c, 39-709; effective, E-78-15, July 1, 1977; effective May 1, 1978; amended, E-79-20, Aug. 17, 1978; amended May 1, 1979; amended May 1, 1980; revoked May 1, 1981.)

30-6-21 and 30-6-22. (Authorized by K.S.A. 1980 Supp. 39-708c, 39-709; effective, E-78-15, July 1, 1977; effective May 1, 1978; revoked May 1, 1981.)

30-6-23. (Authorized by K.S.A. 39-719a, 39-720, K.S.A. 1980 Supp. 39-708c, 39-709, 39-719b; effective, E-78-15, July 1, 1977; effective May 1, 1978; revoked May 1, 1981.)

30-6-24. (Authorized by K.S.A. 1980 Supp. 39-708c, 39-709; effective, E-78-15, July 1, 1977; effective May 1, 1978; amended, E-79-20, Aug. 17, 1978; amended May 1, 1979; amended May 1, 1980; revoked May 1, 1981.)

30-6-34. (Authorized by and implementing K.S.A. 1995 Supp. 39-708c, as amended by L.

1996, Ch. 229, Sec. 104; effective May 1, 1981; amended, E-82-11, June 17, 1981; amended May 1, 1982; amended May 1, 1984; amended Dec. 30, 1994; amended March 1, 1997; revoked, T-30-10-31-13, Nov. 1, 2013; revoked Feb. 28, 2014.)

30-6-35. (Authorized by and implementing K.S.A. 1997 Supp. 39-708c; effective May 1, 1981; amended May 1, 1984; amended May 1, 1988; amended July 1, 1989; amended, T-30-5-1-90, May 1, 1990; amended, T-30-7-2-90, Aug. 30, 1990; revoked, T-30-8-14-90, Oct. 1, 1990; amended Oct. 1, 1990; amended July 1, 1997; amended Nov. 1, 1998; revoked, T-30-10-31-13, Nov. 1, 2013; revoked Feb. 28, 2014.)

30-6-35w. This regulation shall be revoked on and after March 1, 1997. (Authorized by and implementing K.S.A. 39-708c; effective Dec. 30, 1994; revoked March 1, 1997.)

30-6-36. (Authorized by and implementing K.S.A. 1997 Supp. 39-708c; effective May 1, 1981; amended May 1, 1988; amended Nov. 1, 1998; revoked, T-30-10-31-13, Nov. 1, 2013; revoked Feb. 28, 2014.)

30-6-38. (Authorized by and implementing K.S.A. 39-708c, as amended by 1990 HB 3085; effective May 1, 1981; amended, T-30-7-2-90, July 2, 1990; revoked, T-30-8-14-90, Oct. 1, 1990; amended Oct. 1, 1990; revoked Aug. 11, 2006.)

30-6-39. (Authorized by and implementing K.S.A. 1985 Supp. 39-708c, K.S.A. 39-719b; effective May 1, 1981; amended May 1, 1984; amended May 1, 1986; revoked, T-30-10-31-13, Nov. 1, 2013; revoked Feb. 28, 2014.)

30-6-40. (Authorized by and implementing K.S.A. 1980 Supp. 39-708c; effective May 1, 1981; revoked, T-30-10-31-13, Nov. 1, 2013; revoked Feb. 28, 2014.)

30-6-41. (Authorized by K.S.A. 1997 Supp. 39-708c; implementing K.S.A. 1997 Supp. 39-708c, K.S.A. 1997 Supp. 39-709; effective May 1, 1981; amended, E-82-19, Oct. 21, 1981; amended May 1, 1982; amended, T-83-17, July 1, 1982; amended May 1, 1983; amended May 1, 1984; amended, T-85-26, Oct. 15, 1984; amended May 1, 1985; amended, T-87-15, July 1, 1986; amended May 1, 1987; amended, T-88-14, July 1, 1987; amended, T-88-59, Dec. 16, 1987; amended May 1, 1988; amended, T-30-7-1-88, July 1, 1988;

amended Sept. 26, 1988; amended April 1, 1990; amended March 1, 1997; amended Nov. 1, 1998; revoked, T-30-10-31-13, Nov. 1, 2013; revoked Feb. 28, 2014.)

30-6-41w. This regulation shall be revoked on and after March 1, 1997. (Authorized by and implementing K.S.A. 39-708c and L. 1994, Chapter 265; effective Dec. 30, 1994; revoked March 1, 1997.)

30-6-50. (Authorized by K.S.A. 1985 Supp. 39-708c; implementing K.S.A. 1985 Supp. 39-708c, 39-709; effective May 1, 1981; amended, E-82-11, June 17, 1981; amended May 1, 1982; amended May 1, 1983; amended May 1, 1984; amended May 1, 1986; revoked, T-30-10-31-13, Nov. 1, 2013; revoked Feb. 28, 2014.)

30-6-50w. This regulation shall be revoked on and after March 1, 1997. (Authorized by and implementing K.S.A. 39-708c and L. 1994, Chapter 265; effective Dec. 30, 1994; revoked March 1, 1997.)

30-6-51. (Authorized by and implementing K.S.A. 1983 Supp. 39-708c, 39-709; effective May 1, 1981; amended May 1, 1984; revoked, T-30-10-31-13, Nov. 1, 2013; revoked Feb. 28, 2014.)

30-6-52. (Authorized by and implementing K.S.A. 1997 Supp. 39-708c and 39-709; effective May 1, 1981; amended May 1, 1984; amended Jan. 4, 1993; amended Sept. 30, 1994; amended March 1, 1997; amended October 1, 1997; amended July 1, 1998; revoked, T-30-10-31-13, Nov. 1, 2013; revoked Feb. 28, 2014.)

30-6-52w. This regulation shall be revoked on and after March 1, 1997. (Authorized by and implementing K.S.A. 39-708c and L. 1994, Chapter 265, Section 1; effective Dec. 30, 1994; revoked March 1, 1997.)

30-6-53. (Authorized by K.S.A. 1995 Supp. 39-708c, as amended by L. 1996, Chapter 229, Section 104; implementing K.S.A. 1995 Supp. 39-708c, as amended by L. 1996, Ch. 229, Sec. 104, and 39-709; effective May 1, 1981; amended, E-82-11, June 17, 1981; amended May 1, 1982; amended May 1, 1983; amended May 1, 1984; amended May 1, 1987; amended, T-30-7-1-88, July 1, 1988; amended Sept. 26, 1988; amended Jan. 2, 1989; amended July 1, 1989; amended, T-30-7-2-90, July 2, 1990; revoked, T-30-8-14-90,

Oct. 1, 1990; amended Oct. 1, 1990; amended, T-30-8-9-91, Aug. 30, 1991; amended Oct. 28, 1991; amended Jan. 4, 1993; amended July 19, 1996; amended Jan. 1, 1997; revoked, T-30-10-31-13, Nov. 1, 2013; revoked Feb. 28, 2014.)

30-6-53w. This regulation shall be revoked on and after March 1, 1997. (Authorized by and implementing K.S.A. 1995 Supp. 39-708c, as amended by L. 1996, Chapter 229, Section 104; effective Dec. 30, 1994; amended July 19, 1996; amended Jan. 1, 1997; revoked March 1, 1997.)

30-6-54. (Authorized by and implementing K.S.A. 1997 Supp. 39-708c and 39-709; effective May 1, 1981; amended May 1, 1987; amended, T-88-10, May 1, 1987; amended May 1, 1988; amended, T-30-2-20-97, March 1, 1997; amended May 16, 1997; amended June 26, 1998; revoked, T-30-10-31-13, Nov. 1, 2013; revoked Feb. 28, 2014.)

30-6-54w. This regulation shall be revoked on and after March 1, 1997. (Authorized by and implementing K.S.A. 39-708c; effective Dec. 30, 1994; revoked March 1, 1997.)

30-6-55. (Authorized by and implementing K.S.A. 1995 Supp. 39-708c, as amended by L. 1996, Ch. 229, Sec. 104, K.S.A. 1995 Supp. 39-709; effective May 1, 1981; amended, T-86-9, May 1, 1985; amended, T-86-19, July 1, 1985; amended May 1, 1986; amended, T-87-15, July 1, 1986; amended May 1, 1987; amended Jan. 1, 1990; amended May 1, 1992; amended March 1, 1997; revoked, T-30-10-31-13, Nov. 1, 2013; revoked Feb. 28, 2014.)

30-6-55w. This regulation shall be revoked on and after March 1, 1997. (Authorized by and implementing K.S.A. 39-708c and L. 1994, Chapter 265, Section 8; effective Dec. 30, 1994; revoked March 1, 1997.)

30-6-56. (Authorized by K.S.A. 39-708c; implementing K.S.A. 39-708c, 39-709; effective May 1, 1981; amended, E-82-11, June 17, 1981; amended May 1, 1982; amended May 1, 1983; amended May 1, 1984; amended May 1, 1985; amended May 1, 1986; amended May 1, 1987; amended May 1, 1988; amended, T-89-13, April 26, 1988; amended Sept. 26, 1988; amended July 1, 1989; amended May 1, 1992; amended Jan. 4, 1993; amended May 3, 1993; amended Oct. 1, 1993; amended, T-30-11-16-93, Dec. 1, 1993;

amended Jan. 3, 1994; amended July 1, 1994; revoked, T-30-10-31-13, Nov. 1, 2013; revoked Feb. 28, 2014.)

30-6-56w. This regulation shall be revoked on and after March 1, 1997. (Authorized by and implementing K.S.A. 39-708c; effective Dec. 30, 1994; revoked March 1, 1997.)

30-6-57. This rule and regulation shall expire on October 1, 1989. (Authorized by and implementing K.S.A. 39-708c; effective May 1, 1981; amended, E-82-11, June 17, 1981; amended, E-82-19, Oct. 29, 1981; amended May 1, 1982; amended, T-83-17, July 1, 1982; amended May 1, 1983; amended, T-84-25, Sept. 19, 1983; amended May 1, 1984; amended May 1, 1985; amended May 1, 1986; amended May 1, 1987; amended, T-88-59, Dec. 16, 1987; amended May 1, 1988; revoked Oct. 1, 1989.)

30-6-58. This rule and regulation shall expire on October 1, 1989. (Authorized by and implementing K.S.A. 39-708c; effective May 1, 1981; amended, E-82-11, June 17, 1981; amended May 1, 1982; amended May 1, 1983; amended May 1, 1984; amended May 1, 1985; amended, T-89-5, Jan. 21, 1988; amended Oct. 1, 1988; revoked Oct. 1, 1989.)

30-6-59. (Authorized by and implementing K.S.A. 39-708c, as amended by L. 1996, Ch. 229, Sec. 104; effective May 1, 1981; amended, E-82-11, June 17, 1981; amended, E-82-19, Oct. 21, 1981; amended May 1, 1982; amended March 1, 1997; revoked July 2, 1999.)

30-6-59w. This regulation shall be revoked on and after March 1, 1997. (Authorized by and implementing K.S.A. 39-708c; effective Dec. 30, 1994; revoked March 1, 1997.)

30-6-60. (Authorized by and implementing K.S.A. 1983 Supp. 39-708c, 39-709; effective May 1, 1981; amended May 1, 1984; revoked, T-30-10-31-13, Nov. 1, 2013; revoked Feb. 28, 2014.)

30-6-60w. This regulation shall be revoked on and after March 1, 1997. (Authorized by and implementing K.S.A. 39-708c and 39-709, as amended by L. 1994, Chapter 265, Section 8; effective Dec. 30, 1994; revoked March 1, 1997.)

30-6-63. (Authorized by and implementing K.S.A. 39-708c, K.S.A. 1988 Supp. 39-709; effective,

T-86-19, July 1, 1985; effective May 1, 1986; amended Oct. 1, 1989; revoked, T-30-10-31-13, Nov. 1, 2013; revoked Feb. 28, 2014.)

30-6-65. (Authorized by and implementing K.S.A. 39-708c, K.S.A. 39-709; effective May 1, 1981; amended, E-82-19, Oct. 21, 1981; amended May 1, 1982; amended, T-84-8, April 1, 1983; amended May 1, 1983; amended, T-84-9, May 1, 1983; amended May 1, 1984; amended, T-85-26, Oct. 15, 1984; amended, T-85-34, Dec. 19, 1984; amended May 1, 1985; amended, T-86-19, July 1, 1985; amended May 1, 1986; amended, T-87-5, May 1, 1986; amended, T-87-15, July 1, 1986; amended, T-87-29, Nov. 1, 1986; amended, T-87-44, Jan. 1, 1987; amended May 1, 1987; amended, T-88-10, May 1, 1987; amended, T-88-14, July 1, 1987; amended May 1, 1988; amended, T-30-7-29-88, July 29, 1988; amended Sept. 26, 1988; amended Oct. 1, 1989; amended Jan. 2, 1990; amended, T-30-1-2-90, Jan. 2, 1990; amended, T-30-2-28-90, Jan. 2, 1990; amended, T-30-3-29-90, April 1, 1990; amended, T-30-7-2-90, Aug. 1, 1990; revoked, T-30-8-14-90, Oct. 1, 1990; amended Oct. 1, 1990; amended Jan. 7, 1991; amended May 1, 1991; amended Jan. 2, 1992; amended July 1, 1996; amended March 1, 1997; amended July 1, 1998; amended July 1, 2003; revoked, T-30-10-31-13, Nov. 1, 2013; revoked Feb. 28, 2014.)

30-6-65w. This regulation shall be revoked on and after March 1, 1997. (Authorized by and implementing K.S.A. 39-708c, 39-7,103 and L. 1994, Chapter 265, Section 9; effective Dec. 30, 1994; revoked March 1, 1997.)

30-6-70. (Authorized by and implementing K.S.A. 1997 Supp. 39-708c; effective May 1, 1981; amended, E-82-11, June 17, 1981; amended May 1, 1982; amended March 1, 1997; amended July 1, 1998; revoked, T-30-10-31-13, Nov. 1, 2013; revoked Feb. 28, 2014.)

30-6-70w. This regulation shall be revoked on and after March 1, 1997. (Authorized by and implementing K.S.A. 39-708c and L. 1994, Chapter 265, Section 7; effective Dec. 30, 1994; revoked March 1, 1997.)

30-6-72. This regulation shall be revoked on and after March 1, 1997. (Authorized by and implementing K.S.A. 1991 Supp. 39-708c; effective May 1, 1981; amended, E-82-19, Oct. 21, 1981; amended May 1, 1982; amended May 1, 1983;

amended, T-30-6-10-92, July 1, 1992; amended Oct. 1, 1992; revoked March 1, 1997.)

30-6-72w. This regulation shall be revoked on and after March 1, 1997. (Authorized by and implementing K.S.A. 39-708c and L. 1994, Chapter 265, Section 7; effective Dec. 30, 1994; revoked March 1, 1997.)

30-6-73. This regulation shall be revoked on and after March 1, 1997. (Authorized by and implementing K.S.A. 1991 Supp. 39-708c, as amended by 1992 SB 182, Sec. 5; effective May 1, 1981; amended, E-82-19, Oct. 29, 1981; amended May 1, 1982; amended, T-83-38, Nov. 23, 1982; amended May 1, 1983; amended May 1, 1986; amended July 1, 1989; amended Oct. 1, 1989; amended Feb. 1, 1990; amended Jan. 7, 1991; amended Oct. 1, 1992; revoked March 1, 1997.)

30-6-74. This rule and regulation shall expire on October 28, 1991. (Authorized by and implementing K.S.A. 39-708c, K.S.A. 1988 Supp. 39-709, as amended by L. 1989, Ch. 125, Sec. 1; effective May 1, 1981; amended, T-85-26, Oct. 15, 1984; amended May 1, 1985; amended May 1, 1986; amended, T-87-5, May 1, 1986; amended May 1, 1987; amended, T-88-59, Dec. 16, 1987; amended May 1, 1988; amended, T-30-7-1-88, July 1, 1988; amended Sept. 26, 1988; amended July 1, 1989; amended April 1, 1990; revoked, T-30-8-9-91, Aug. 30, 1991; revoked Oct. 28, 1991.)

30-6-77. (Authorized by K.S.A. 1997 Supp. 39-708c; implementing K.S.A. 1997 Supp. 39-708c and K.S.A. 1997 Supp. 39-709; effective, T-30-7-1-88, July 1, 1988; effective Sept. 26, 1988; amended July 1, 1989; amended, T-30-3-29-90, April 1, 1990; amended, T-30-7-2-90, Aug. 1, 1990; revoked, T-30-8-14-90, Oct. 1, 1990; amended Oct. 1, 1990; amended, T-30-12-28-90, Jan. 2, 1991; amended May 1, 1991; amended July 1, 1991; amended Sept. 30, 1994; amended Dec. 30, 1994; amended Oct. 1, 1997; amended Nov. 1, 1998; revoked June 30, 2006.)

30-6-77w. This regulation shall be revoked on and after March 1, 1997. (Authorized by and implementing K.S.A. 39-708c; effective Dec. 30, 1994; revoked March 1, 1997.)

30-6-78. (Authorized by and implementing K.S.A. 39-708c; effective May 1, 1983; amended May 1, 1986; amended, T-87-15, July 1, 1986; amended May 1, 1987; amended May 1, 1988;

amended, T-30-7-1-88, July 1, 1988; amended Sept. 26, 1988; revoked, T-30-10-31-13, Nov. 1, 2013; revoked Feb. 28, 2014.)

30-6-78w. This regulation shall be revoked on and after March 1, 1997. (Authorized by and implementing K.S.A. 39-708c; effective Dec. 30, 1994; revoked March 1, 1997.)

30-6-79. This regulation shall be revoked on and after March 1, 1997. (Authorized by and implementing K.S.A. 39-708c, K.S.A. 1988 Supp. 39-709, as amended by L. 1989, Ch. 125, Sec. 1; effective, T-85-26, Oct. 15, 1984; effective May 1, 1985; amended, T-87-15, July 1, 1986; amended May 1, 1987; amended, T-88-59, Dec. 16, 1987; amended May 1, 1988; amended April 1, 1990; revoked March 1, 1997.)

30-6-80. (Authorized by and implementing K.S.A. 1982 Supp. 39-708c; effective May 1, 1981; amended, E-82-19, Oct. 21, 1981; amended May 1, 1982; amended May 1, 1983; revoked, T-30-10-31-13, Nov. 1, 2013; revoked Feb. 28, 2014.)

30-6-81. (Authorized by and implementing K.S.A. 1980 Supp. 39-708c, 39-709; effective May 1, 1981; revoked, T-30-10-31-13, Nov. 1, 2013; revoked Feb. 28, 2014.)

30-6-81w. This regulation shall be revoked on and after March 1, 1997. (Authorized by and implementing K.S.A. 39-708c; effective Dec. 30, 1994; revoked March 1, 1997.)

30-6-82. (Authorized by K.S.A. 1996 Supp. 39-708c; implementing K.S.A. 1996 Supp. 39-708c, 39-709; effective, T-30-3-1-91, March 1, 1991; effective July 1, 1991; amended Oct. 1, 1997; revoked, T-30-10-31-13, Nov. 1, 2013; revoked Feb. 28, 2014.)

30-6-82w. This regulation shall be revoked on and after March 1, 1997. (Authorized by and implementing K.S.A. 39-708c; effective Dec. 30, 1994; revoked March 1, 1997.)

30-6-85. (Authorized by and implementing K.S.A. 1980 Supp. 39-708c, 39-709; effective May 1, 1981; revoked, T-30-10-31-13, Nov. 1, 2013; revoked Feb. 28, 2014.)

30-6-85w. This regulation shall be revoked on and after March 1, 1997. (Authorized by and implementing K.S.A. 39-708c; effective Dec. 30, 1994; revoked March 1, 1997.)

30-6-86. (Authorized by K.S.A. 39-708c and 38-2002; implementing K.S.A. 39-708c, 39-709, and 38-2002; effective Jan. 2, 1989; amended July 1, 1989; amended, T-30-12-28-90, Jan. 2, 1991; amended May 1, 1991; amended Jan. 4, 1993; amended July 2, 1999; amended Dec. 31, 2002; revoked, T-30-10-31-13, Nov. 1, 2013; revoked Feb. 28, 2014.)

30-6-86w. This regulation shall be revoked on and after March 1, 1997. (Authorized by and implementing K.S.A. 39-708c; effective Dec. 30, 1994; revoked March 1, 1997.)

30-6-87. (Authorized by and implementing K.S.A. 39-708c, as amended by 1990 HB 3085, K.S.A. 1989 Supp. 39-709; effective, T-30-7-2-90, July 2, 1990; revoked, T-30-8-14-90, Oct. 1, 1990; effective Oct. 1, 1990; revoked, T-30-10-31-13, Nov. 1, 2013; revoked Feb. 28, 2014.)

30-6-87w. This regulation shall be revoked on and after March 1, 1997. (Authorized by and implementing K.S.A. 39-708c; effective Dec. 30, 1994; revoked March 1, 1997.)

30-6-88. (Authorized by and implementing K.S.A. 39-708c, 39-709; effective July 1, 2002; revoked, T-30-10-31-13, Nov. 1, 2013; revoked Feb. 28, 2014.)

30-6-89. (Authorized by and implementing K.S.A. 39-708c; effective Oct. 1, 2001; revoked, T-30-10-31-13, Nov. 1, 2013; revoked Feb. 28, 2014.)

30-6-90. (Authorized by and implementing K.S.A. 39-708c; effective May 1, 1981; revoked, E-82-11, June 17, 1981; revoked May 1, 1982.)

30-6-91. (Authorized by K.S.A. 39-708c; implementing K.S.A. 39-708c and K.S.A. 39-709; effective July 1, 2004; revoked, T-30-10-31-13, Nov. 1, 2013; revoked Feb. 28, 2014.)

30-6-94. (Authorized by and implementing K.S.A. 39-708c, 39-709; effective Jan. 2, 1992; amended May 1, 2002; revoked, T-30-10-31-13, Nov. 1, 2013; revoked Feb. 28, 2014.)

30-6-94w. This regulation shall be revoked on and after March 1, 1997. (Authorized by and implementing K.S.A. 39-708c; effective Dec. 30, 1994; revoked March 1, 1997.)

30-6-95. (Authorized by K.S.A. 39-708c; implementing K.S.A. 39-708c, 39-709; effective

May 1, 1981; amended, E-82-11, June 17, 1981; amended, E-82-19, Oct. 21, 1981; amended May 1, 1982; revoked, T-30-10-31-13, Nov. 1, 2013; revoked Feb. 28, 2014.)

30-6-100. (Authorized by and implementing K.S.A. 39-708c, 39-709; effective May 1, 1981; revoked, E-82-11, June 17, 1981; revoked May 1, 1982.)

30-6-103. (Authorized by and implementing K.S.A. 39-708c and 38-2002; effective May 1, 1981; amended, E-82-11, June 17, 1981; amended, E-82-19, Oct. 21, 1981; amended May 1, 1982; amended, T-83-17, July 1, 1982; amended May 1, 1983; amended, T-84-11, July 1, 1983; amended, T-84-36, Dec. 21, 1983; amended May 1, 1984; amended, T-85-34, Dec. 19, 1984; amended May 1, 1985; amended, T-86-19, July 1, 1985; amended, T-86-42, Jan. 1, 1986; amended May 1, 1986; amended, T-87-15, July 1, 1986; amended, T-88-2, Feb. 1, 1987; amended May 1, 1987; amended, T-88-10, May 1, 1987; amended, T-88-14, July 1, 1987; amended, T-88-59, Dec. 16, 1987; amended May 1, 1988; amended, T-30-7-1-88, July 1, 1988; amended Sept. 26, 1988; amended Jan. 2, 1989; amended July 1, 1989; amended Oct. 1, 1989; amended Jan. 2, 1990; amended, T-30-12-28-89, Jan. 1, 1990; amended, T-30-3-29-90, April 1, 1990; revoked, T-30-7-2-90, July 2, 1990; amended, T-30-7-2-90, July 2, 1990; revoked, T-30-8-14-90, Oct. 1, 1990; amended Oct. 1, 1990; amended Jan. 7, 1991; amended, T-30-12-28-90, Jan. 2, 1991; amended May 1, 1991; amended July 1, 1991; amended Jan. 2, 1992; amended, T-30-6-10-92, July 1, 1992; amended Oct. 1, 1992; amended Jan. 4, 1993; amended Jan. 3, 1994; amended Dec. 30, 1994; amended Dec. 29, 1995; amended Jan. 1, 1997; amended July 1, 1998; amended July 2, 1999; amended July 1, 2002; amended Dec. 31, 2002; amended, T-30-1-2-03, Feb. 1, 2003; amended April 18, 2003; revoked, T-30-10-31-13, Nov. 1, 2013; revoked Feb. 28, 2014.)

30-6-103w. This regulation shall be revoked on and after March 1, 1997. (Authorized by and implementing K.S.A. 1995 Supp. 39-708c, as amended by L. 1996, Ch. 229, Sec. 104; effective Dec. 30, 1994; amended Dec. 29, 1995; amended Jan. 1, 1997; revoked March 1, 1997.)

30-6-105. This rule and regulation shall be revoked on and after March 1, 1997. (Authorized

by and implementing K.S.A. 1985 Supp. 39-708c, 39-709; effective May 1, 1981; amended, E-82-11, June 17, 1981; amended May 1, 1982; amended May 1, 1986; revoked March 1, 1997.)

30-6-105w. This regulation shall be revoked on and after March 1, 1997. (Authorized by and implementing K.S.A. 39-708c and L. 1994, Chapter 265; effective Dec. 30, 1994; revoked March 1, 1997.)

30-6-106. (Authorized by and implementing K.S.A. 39-708c, 39-709; effective May 1, 1981; amended, E-82-19, Oct. 21, 1981; amended May 1, 1982; amended May 1, 1983; amended May 1, 1984; amended, T-85-26, Oct. 15, 1984; amended May 1, 1985; amended May 1, 1986; amended, T-87-15, July 1, 1986; amended, T-87-20, Sept. 1, 1986; amended May 1, 1987; amended, T-88-14, July 1, 1987; amended, T-88-59, Jan. 1, 1988; amended May 1, 1988; amended, T-89-13, April 26, 1988; amended, T-30-7-1-88, July 1, 1988; amended Sept. 26, 1988; amended July 1, 1989; amended Oct. 1, 1989; amended Jan. 2, 1990; amended April 1, 1990; amended, T-30-10-1-90, Oct. 1, 1990; revoked, T-30-11-29-90, Jan. 2, 1991; amended Jan. 7, 1991; amended, T-30-12-28-90, Jan. 2, 1991; amended, T-30-3-1-91, March 1, 1991; amended May 1, 1991; amended July 1, 1991; amended, T-30-8-9-91, Aug. 30, 1991; amended Oct. 28, 1991; amended Jan. 2, 1992; amended, T-30-6-10-92, July 1, 1992; amended Oct. 1, 1992; amended Jan. 4, 1993; amended Oct. 1, 1993; amended, T-30-11-16-93, Dec. 1, 1993; amended Jan. 3, 1994; amended Feb. 6, 1995; amended Dec. 29, 1995; amended March 1, 1997; amended Oct. 1, 1997; amended March 7, 2003; revoked, T-30-10-31-13, Nov. 1, 2013; revoked Feb. 28, 2014.)

30-6-106w. This regulation shall be revoked on and after March 1, 1997. (Authorized by and implementing K.S.A. 39-708; effective Dec. 30, 1994; amended Feb. 6, 1995; amended Dec. 29, 1995; revoked March 1, 1997.)

30-6-107. (Authorized by and implementing K.S.A. 39-708c, 39-709; effective May 1, 1981; amended, E-82-11, June 17, 1981; amended May 1, 1982; amended May 1, 1983; amended, T-84-25, Sept. 19, 1983; amended May 1, 1984; amended, T-85-33, Dec. 19, 1984; amended, T-85-34, Dec. 19, 1984; amended May 1, 1985; amended May 1, 1986; amended, T-87-43, Jan. 1, 1987; amended

May 1, 1987; amended, T-88-59, Dec. 16, 1987; amended May 1, 1988; amended, T-30-7-1-88, July 1, 1988; amended Sept. 26, 1988; amended Jan. 2, 1989; amended, T-30-7-2-90, July 2, 1990; revoked, T-30-8-14-90, Oct. 1, 1990; amended Oct. 1, 1990; amended July 1, 1991; amended Dec. 30, 1994; amended July 1, 2002; revoked, T-30-10-31-13, Nov. 1, 2013; revoked Feb. 28, 2014.)

30-6-107w. This regulation shall be revoked on and after March 1, 1997. (Authorized by and implementing K.S.A. 39-708c; effective Dec. 30, 1994; revoked March 1, 1997.)

30-6-108. (Authorized by K.S.A. 39-708c; implementing K.S.A. 39-708c and K.S.A. 39-709; effective May 1, 1981; amended, E-82-11, June 17, 1981; amended, E-82-19, Oct. 29, 1981; amended May 1, 1982; amended May 1, 1983; amended May 1, 1984; amended May 1, 1985; amended May 1, 1986; amended, T-87-20, Sept. 1, 1986; amended May 1, 1987; amended May 1, 1988; amended Sept. 26, 1988; amended, T-30-5-1-90, May 1, 1990; amended, T-30-7-2-90, Aug. 30, 1990; revoked, T-30-8-14-90, Oct. 1, 1990; amended Oct. 1, 1990; amended March 1, 1997; amended July 1, 2003; revoked, T-30-10-31-13, Nov. 1, 2013; revoked Feb. 28, 2014.)

30-6-109. (Authorized by K.S.A. 39-708c; implementing K.S.A. 39-708c and 39-709; effective May 1, 1981; amended, E-82-11, June 17, 1981; amended, E-82-19, Oct. 21, 1981; amended May 1, 1982; amended, T-83-17, July 1, 1982; amended May 1, 1983; amended May 1, 1984; amended, T-85-26, Oct. 15, 1984; amended, T-85-34, Dec. 19, 1984; amended May 1, 1985; amended May 1, 1986; amended, T-87-15, July 1, 1986; amended May 1, 1987; amended, T-88-14, July 1, 1987; amended May 1, 1988; amended, T-89-13, April 26, 1988; amended Sept. 26, 1988; amended July 1, 1989; amended, T-30-5-1-90, May 1, 1990; amended, T-30-7-2-90, Aug. 30, 1990; revoked, T-30-8-14-90, Oct. 1, 1990; amended Oct. 1, 1990; amended Oct. 1, 1992; amended, T-30-11-16-93, Dec. 1, 1993; amended Jan. 3, 1994; amended July 1, 1994; amended Jan. 1, 1997; amended March 1, 1997; amended Oct. 1, 1997; amended July 1, 2002; amended July 1, 2003; revoked, T-30-10-31-13, Nov. 1, 2013; revoked Feb. 28, 2014.)

30-6-109w. This regulation shall be revoked on and after March 1, 1997. (Authorized by and implementing K.S.A. 1995 Supp. 39-708c, as

amended by L. 1996, Chapter 229, Section 104; effective Dec. 30, 1994; amended Jan. 1, 1997; revoked March 1, 1997.)

30-6-110. (Authorized by and implementing K.S.A. 1995 Supp. 39-708c, as amended by L. 1996, Ch. 229, Sec. 104; K.S.A. 1995 Supp. 39-709; effective May 1, 1981; amended, E-82-19, Oct. 21, 1981; amended May 1, 1982; amended May 1, 1983; amended May 1, 1984; amended, T-85-26, Oct. 15, 1984; amended May 1, 1985; amended May 1, 1986; amended, T-88-59, Dec. 16, 1987; amended May 1, 1988; amended Oct. 1, 1989; amended Jan. 1, 1990; amended March 1, 1997; revoked, T-30-10-31-13, Nov. 1, 2013; revoked Feb. 28, 2014.)

30-6-110w. This regulation shall be revoked on and after March 1, 1997. (Authorized by and implementing K.S.A. 39-708c; effective Dec. 30, 1994; revoked March 1, 1997.)

30-6-111. (Authorized by and implementing K.S.A. 1997 Supp. 39-708c and 39-709; effective May 1, 1981; amended, E-82-19, Oct. 21, 1981; amended May 1, 1982; amended May 1, 1983; amended May 1, 1984; amended, T-85-26, Oct. 15, 1984; amended May 1, 1985; amended, T-86-9, May 1, 1985; amended May 1, 1986; amended May 1, 1987; amended, T-88-10, May 1, 1987; amended, T-88-14, July 1, 1987; amended, T-88-59, Dec. 16, 1987; amended May 1, 1988; amended Oct. 1, 1989; amended Jan. 2, 1990; amended April 1, 1990; amended May 1, 1991; amended July 1, 1994; amended Dec. 30, 1994; amended Aug. 1, 1995; amended March 1, 1997; amended July 1, 1998; amended Nov. 1, 1998; amended Jan. 1, 1999; revoked, T-30-10-31-13, Nov. 1, 2013; revoked Feb. 28, 2014.)

30-6-111w. This regulation shall be revoked on and after March 1, 1997. (Authorized by and implementing K.S.A. 39-708c and K.S.A. 39-7-131; effective Dec. 30, 1994; amended Aug. 1, 1995; revoked March 1, 1997.)

30-6-112. (Authorized by and implementing K.S.A. 39-708c and 39-709; effective May 1, 1981; amended, E-82-19, Oct. 21, 1981; amended May 1, 1982; amended May 1, 1983; amended May 1, 1984; amended May 1, 1986; amended May 1, 1987; amended, T-88-14, July 1, 1987; amended, T-88-59, Jan. 1, 1988; amended May 1, 1988; amended, T-89-13, April 26, 1988; amended Sept. 26, 1988; amended July 1, 1989; amended Oct. 1, 1989; amended Jan. 2, 1990; amended, T-30-

7-2-90, July 2, 1990; revoked, T-30-8-14-90, Oct. 1, 1990; amended Oct. 1, 1990; amended May 1, 1991; amended July 1, 1991; amended Jan. 2, 1992; amended Oct. 1, 1992; amended Oct. 1, 1993; amended Dec. 30, 1994; amended Oct. 1, 1997; amended July 1, 1998; amended July 1, 2002; revoked, T-30-10-31-13, Nov. 1, 2013; revoked Feb. 28, 2014.)

30-6-112w. This regulation shall be revoked on and after March 1, 1997. (Authorized by and implementing K.S.A. 39-708c and L. 1994, Chapter 265, Section 5; effective Dec. 30, 1994; revoked March 1, 1997.)

30-6-113. (Authorized by and implementing K.S.A. 1996 Supp. 39-708c, 39-709; effective May 1, 1981; amended, E-82-19, Oct. 21, 1981; amended May 1, 1982; amended May 1, 1983; amended, T-84-11, July 1, 1983; amended, T-84-25, Sept. 19, 1983; amended May 1, 1984; amended, T-85-26, Oct. 15, 1984; amended May 1, 1985; amended May 1, 1986; amended, T-87-15, July 1, 1986; amended May 1, 1987; amended, T-88-14, July 1, 1987; amended, T-88-59, Jan. 1, 1988; amended May 1, 1988; amended, T-89-13, April 26, 1988; amended, T-30-7-1-88, July 1, 1988; amended Sept. 26, 1988; amended July 1, 1989; amended Oct. 1, 1989; amended, T-30-12-28-90, Jan. 2, 1991; amended May 1, 1991; amended July 1, 1991; amended, T-30-6-10-92, July 1, 1992; amended Oct. 1, 1992; amended Jan. 4, 1993; amended May 3, 1993; amended, T-30-11-16-93, Dec. 1, 1993; amended Jan. 3, 1994; amended Sept. 30, 1994; amended Dec. 30, 1994; amended March 1, 1997; amended July 1, 1997; amended Oct. 1, 1997; revoked, T-30-10-31-13, Nov. 1, 2013; revoked Feb. 28, 2014.)

30-6-113w. This regulation shall be revoked on and after March 1, 1997. (Authorized by and implementing K.S.A. 39-708c; effective Dec. 30, 1994; revoked March 1, 1997.)

30-6-120. (Authorized by and implementing K.S.A. 1982 Supp. 39-708c, 39-709; effective May 1, 1981; amended May 1, 1983; revoked, T-30-10-31-13, Nov. 1, 2013; revoked Feb. 28, 2014.)

30-6-140. (Authorized by and implementing K.S.A. 1995 Supp. 39-708c, as amended by L. 1996, Ch. 229, Sec. 104, K.S.A. 1995 Supp. 39-709; effective May 1, 1981; amended May 1, 1984; amended May 1, 1985; amended May 1, 1986; amended March 1, 1997; revoked, T-30-10-31-13, Nov. 1, 2013; revoked Feb. 28, 2014.)

30-6-150. (Authorized by K.S.A. 1992 Supp. 39-708c; implementing K.S.A. 1992 Supp. 39-708c, and 39-709, as amended by L. 1993, Chapter 180, Sec. 1; effective, T-30-6-10-92, July 1, 1992; effective Oct. 1, 1992; amended Jan. 4, 1993; amended May 3, 1993; amended, T-30-11-16-93, Dec. 1, 1993; amended Jan. 3, 1994; revoked, T-30-10-31-13, Nov. 1, 2013; revoked Feb. 28, 2014.)

30-6-150w. This regulation shall be revoked on and after March 1, 1997. (Authorized by and implementing K.S.A. 39-708c; effective Dec. 30, 1994; revoked March 1, 1997.)

**Article 7.—APPEALS, FAIR
HEARINGS AND TAF/GA
DISQUALIFICATION HEARINGS**

30-7-1. (Authorized by K.S.A. 75-3306, K.S.A. 1980 Supp. 39-708c; effective Jan. 1, 1967; amended Jan. 1, 1974; amended, E-74-45, Aug. 28, 1974; amended May 1, 1975; revoked May 1, 1981.)

30-7-2. (Authorized by K.S.A. 75-3306, K.S.A. 1980 Supp. 39-708c; effective Jan. 1, 1967; amended Jan. 1, 1974; amended May 1, 1975; amended May 1, 1976; revoked May 1, 1981.)

30-7-3. (Authorized by K.S.A. 75-3306, K.S.A. 1980 Supp. 39-708c; effective Jan. 1, 1967; amended Jan. 1, 1974; amended May 1, 1975; revoked May 1, 1981.)

30-7-4. (Authorized by K.S.A. 75-3306, K.S.A. 1980 Supp. 39-708c; effective Jan. 1, 1967; amended May 1, 1975; revoked May 1, 1981.)

30-7-5. (Authorized by K.S.A. 75-3306, K.S.A. 1980 Supp. 39-708c; effective Jan. 1, 1967; amended, E-72-1, Oct. 1, 1971; amended Jan. 1, 1972; amended Jan. 1, 1974; amended, E-74-45, Aug. 28, 1974; amended May 1, 1975; amended May 1, 1978; revoked May 1, 1981.)

30-7-6. (Authorized by K.S.A. 75-3306, K.S.A. 1980 Supp. 39-708c; effective Jan. 1, 1967; amended Jan. 1, 1969; amended, E-72-1, Oct. 1, 1971; amended Jan. 1, 1972; amended Jan. 1, 1974; amended, E-74-45, Aug. 28, 1974; amended May 1, 1975; amended May 1, 1978; revoked May 1, 1981.)

30-7-7 and 30-7-8. (Authorized by K.S.A. 75-3306, K.S.A. 1980 Supp. 39-708c; effective Jan. 1, 1967; amended, E-72-1, Oct. 1, 1971; amend-

ed Jan. 1, 1972; amended Jan. 1, 1974; amended, E-74-45, Aug. 28, 1974; amended May 1, 1975; revoked May 1, 1981.)

30-7-9 and 30-7-10. (Authorized by K.S.A. 75-3306, K.S.A. 1980 Supp. 39-708c; effective Jan. 1, 1967; amended Jan. 1, 1974; amended, E-74-45, Aug. 28, 1974; amended May 1, 1975; revoked May 1, 1981.)

30-7-11. (Authorized by K.S.A. 75-3306, K.S.A. 1980 Supp. 39-708c; effective Jan. 1, 1967; amended, E-72-1, Oct. 1, 1971; amended Jan. 1, 1972; amended Jan. 1, 1974; amended, E-74-45, Aug. 28, 1974; amended May 1, 1975; amended, E-80-13, Aug. 8, 1979; amended May 1, 1980; revoked May 1, 1981.)

30-7-12. (Authorized by K.S.A. 75-3306, K.S.A. 1980 Supp. 39-708c; effective Jan. 1, 1967; amended, E-72-1, Oct. 1, 1971; amended Jan. 1, 1972; amended Jan. 1, 1974; amended May 1, 1975; revoked May 1, 1981.)

30-7-13. (Authorized by K.S.A. 75-3306, K.S.A. 1980 Supp. 39-708c; effective Jan. 1, 1967; amended, E-72-1, Oct. 1, 1971; amended Jan. 1, 1972; amended Jan. 1, 1974; amended, E-74-45, Aug. 28, 1974; amended May 1, 1975; revoked May 1, 1981.)

30-7-14. (Authorized by K.S.A. 75-3306, K.S.A. 1980 Supp. 39-708c; effective Jan. 1, 1967; amended Jan. 1, 1974; amended, E-74-45, Aug. 28, 1974; amended May 1, 1975; revoked May 1, 1981.)

30-7-15. (Authorized by K.S.A. 75-3306, K.S.A. 1980 Supp. 39-708c; effective Jan. 1, 1967; amended Jan. 1, 1974; amended May 1, 1975; revoked May 1, 1981.)

30-7-16. (Authorized by K.S.A. 75-3306, K.S.A. 1980 Supp. 39-708c; effective Jan. 1, 1967; amended Jan. 1, 1973; amended Jan. 1, 1974; amended May 1, 1975; revoked May 1, 1981.)

30-7-17. (Authorized by K.S.A. 75-3306, K.S.A. 1980 Supp. 39-708c; effective Jan. 1, 1967; amended, E-72-1, Oct. 1, 1971; amended Jan. 1, 1972; amended Jan. 1, 1973; amended, E-74-45, Aug. 28, 1974; amended May 1, 1975; revoked May 1, 1981.)

30-7-18. (Authorized by K.S.A. 1980 Supp. 39-708c; effective Jan. 1, 1967; amended, E-72-1, Oct. 1, 1971; amended Jan. 1, 1972; amended,

E-74-45, Aug. 28, 1974; amended May 1, 1975; revoked May 1, 1981.)

30-7-19. (Authorized by K.S.A. 75-3306, K.S.A. 1980 Supp. 39-708c; effective Jan. 1, 1967; amended, E-72-1, Oct. 1, 1971; amended Jan. 1, 1972; amended Jan. 1, 1974; amended, E-74-45, Aug. 28, 1974; amended May 1, 1975; revoked May 1, 1981.)

30-7-20. (Authorized by K.S.A. 75-3306, K.S.A. 1980 Supp. 39-708c; effective Jan. 1, 1967; amended, E-72-1, Oct. 1, 1971; amended Jan. 1, 1972; amended, E-74-45, Aug. 28, 1974; amended May 1, 1975; revoked May 1, 1981.)

30-7-21 and 30-7-22. (Authorized by K.S.A. 1965 Supp. 39-708; effective Jan. 1, 1967; revoked Jan. 1, 1974.)

30-7-23. (Authorized by K.S.A. 75-3306, K.S.A. 1980 Supp. 39-708c; effective, E-72-1, Oct. 1, 1971; amended Jan. 1, 1972; amended Jan. 1, 1974; amended May 1, 1975; revoked May 1, 1981.)

30-7-24. (Authorized by K.S.A. 75-3306, K.S.A. 1980 Supp. 39-708c; effective, E-72-1, Oct. 1, 1971; amended Jan. 1, 1972; amended May 1, 1975; revoked May 1, 1981.)

30-7-25. (Authorized by K.S.A. 75-3306, K.S.A. 1980 Supp. 39-708c; effective, E-72-1, Oct. 1, 1971; amended Jan. 1, 1972; amended Jan. 1, 1974; amended May 1, 1975; revoked May 1, 1981.)

30-7-26 to 30-7-29. These regulations shall expire on July 1, 1989. (Authorized by K.S.A. 75-3304; implementing K.S.A. 75-3306; effective May 1, 1981; revoked July 1, 1989.)

30-7-30. This regulation shall expire on July 1, 1989. (Authorized by K.S.A. 75-3304; implementing K.S.A. 75-3306; effective May 1, 1981; amended May 1, 1986; revoked July 1, 1989.)

30-7-31 to 30-7-34. These regulations shall expire on July 1, 1989. (Authorized by K.S.A. 75-3304; implementing K.S.A. 75-3306; effective May 1, 1981; revoked July 1, 1989.)

30-7-35. This regulation shall expire on July 1, 1989. (Authorized by K.S.A. 75-3304; implementing K.S.A. 75-3306; effective May 1, 1981; amended May 1, 1986; revoked July 1, 1989.)

30-7-36 to 30-7-39. These regulations shall expire on July 1, 1989. (Authorized by K.S.A.

75-3304; implementing K.S.A. 75-3306; effective May 1, 1981; revoked July 1, 1989.)

30-7-40. This regulation shall expire on July 1, 1989. (Authorized by K.S.A. 75-3304; implementing K.S.A. 75-3306; effective May 1, 1981; amended May 1, 1986; revoked July 1, 1989.)

30-7-41 to 30-7-53. These regulations shall expire on July 1, 1989. (Authorized by K.S.A. 75-3304; implementing K.S.A. 75-3306; effective May 1, 1981; revoked July 1, 1989.)

30-7-54. This regulation shall expire on July 1, 1989. (Authorized by K.S.A. 75-3304; implementing K.S.A. 75-3306; effective May 1, 1981; amended May 1, 1986; revoked July 1, 1989.)

30-7-55. This regulation shall expire on July 1, 1989. (Authorized by K.S.A. 75-3304; implementing K.S.A. 75-3306; effective May 1, 1981; amended May 1, 1982; revoked July 1, 1989.)

30-7-56 to 30-7-63. These regulations shall expire on July 1, 1989. (Authorized by K.S.A. 75-3304; implementing K.S.A. 75-3306; effective May 1, 1981; revoked July 1, 1989.)

30-7-64. Definitions. (a) "Appellant" means an individual or entity that has requested a fair hearing from an agency decision affecting the individual or entity.

(b) "Applicant" means an individual who has applied for or requested assistance or benefits from a program administered by the agency.

(c) "Recipient" means an individual who is receiving assistance or benefits from a program administered by the agency. The effective date of this regulation shall be July 1, 1989. (Authorized by K.S.A. 75-3304; implementing K.S.A. 75-3306, as amended by L. 1988, Ch. 356, Sec. 302; effective July 1, 1989.)

30-7-65. Notice to recipients of intended action. (a)(1) "Adequate notice" means a written notice that includes a statement of what action the agency intends to take, the reasons for the intended agency action, the specific policies supporting the action, an explanation of the individual's right to request a fair hearing, and the circumstances under which assistance is continued if a hearing is requested.

(2) "Timely" means that the notice is mailed at least 10 days before the date upon which the action would become effective. Saturdays, Sundays,

and legal holidays shall be counted as part of the 10-day period.

(b) When the agency intends to take action to discontinue, terminate, suspend, or reduce assistance, timely and adequate notice shall be given by the agency, except as set forth in subsection (c) of this regulation.

(c) Under the following circumstances, timely notice shall not be required, but an adequate notice shall be sent by the agency not later than the date of action:

(1) when the agency has factual information confirming the death of a recipient or of the TAF payee and there is no relative available to serve as a new payee;

(2) when the agency receives a clear written statement signed by a recipient indicating that the recipient no longer wishes assistance;

(3) when the recipient provides written information to the agency that requires termination or reduction of assistance, and the recipient has indicated, in writing, an understanding that termination or reduction of assistance will be the consequence of supplying the information;

(4) when the recipient has been admitted or committed to an institution and further payments to that individual are not authorized by program regulations as long as the person resides in the institution;

(5) when the recipient has been placed in skilled nursing care, intermediate care or long-term hospitalization;

(6) when the recipient's whereabouts are unknown and agency mail directed to the recipient has been returned by the post office indicating no known forwarding address. However, the check shall be made available to the recipient if the recipient's whereabouts become known during the payment period covered by a returned check;

(7) when the agency has established that a recipient has been accepted for assistance in a new jurisdiction;

(8) when a child is removed from the home as a result of a judicial determination or voluntarily placed in foster care by the child's legal guardian;

(9) when a change in the level of medical care is prescribed by the recipient-patient's physician;

(10) when a special allowance granted for a specific period is terminated and the recipient was informed in writing at the time the allowance was granted that it would automatically terminate at the end of the specified period;

(11) when the agency takes action because of information the recipient furnished in a monthly

status report or because the recipient has failed to submit a complete or a timely monthly status report without good cause; or

(12) when the recipient is disqualified due to fraud in one of the following ways:

(A) by a court of appropriate jurisdiction;

(B) by an administrative disqualification hearing process in accordance with K.A.R. 30-7-102; or

(C) through a waiver of an administrative disqualification hearing in accordance with K.A.R. 30-7-103.

(d) This regulation shall take effect on and after March 1, 1997. (Authorized by K.S.A. 75-3304; implementing K.S.A. 75-3306; effective July 1, 1989; amended July 1, 1991; amended Jan. 1, 1997; amended March 1, 1997.)

30-7-66. Continuation of assistance. (a) If the recipient requests a hearing within the timely notice period as required by K.A.R. 30-7-65, assistance shall not be suspended, reduced, discontinued, or terminated, (but is subject to recovery by the agency if its action is sustained), until an initial decision of the hearing officer is rendered in the matter, unless:

(1) The request for fair hearing concerns the suspension of program payments to a provider or the termination of a provider from program participation;

(2) the request for a fair hearing concerns a discontinued program or service;

(3) a determination is made by the hearing officer that the sole issue is one of federal or state law, regulation or policy, or change in federal or state law, regulation or policy and not one of incorrect grant computation; or

(4) a change affecting the recipient's assistance occurs while the hearing decision is pending and the recipient fails to request a hearing after notice of the change.

(b) The agency shall promptly inform the recipient in writing if assistance is to be discontinued pending the hearing decision.

(c) In any case where action was taken without timely notice, if the recipient requests a hearing within 10 days of the mailing of the notice of the action, and the agency determines that the action resulted from other than the application of federal or state law or policy or a change in federal or state law, assistance shall be reinstated and continued until a decision is rendered in the matter except as set forth in (a)(1), (2), (3), or (4). The effective date of this regulation shall be July 1, 1989. (Au-

thorized by K.S.A. 75-3304; implementing K.S.A. 75-3306, as amended by L. 1988, Ch. 356, Sec. 302; effective July 1, 1989.)

30-7-67. Administrative hearings section, hearing officer. The administrative hearings section shall administer the agency's fair hearing program. The effective date of this regulation shall be July 1, 1989. (Authorized by K.S.A. 75-3304; implementing K.S.A. 75-3306, as amended by L. 1988, Ch. 356, Sec. 302; effective July 1, 1989.)

30-7-68. Request for fair hearing. (a) Unless preempted by federal law, a request for fair hearing shall be in writing and received by the agency within 30 days from the date of the order or notice of action. Pursuant to K.S.A. 77-531, an additional three days shall be allowed if the notice or order is mailed.

(b) A request for fair hearing involving food stamps shall be received by the agency within 90 days from the date of the notice of action. Pursuant to K.S.A. 77-531, an additional three days shall be allowed if the notice or order is mailed.

(c) The freedom to request a fair hearing shall not be limited or interfered with by the agency. The effective date of this regulation shall be January 2, 1991. (Authorized by K.S.A. 75-3304; implementing K.S.A. 75-3306; effective July 1, 1989; amended Oct. 1, 1989; amended Jan. 2, 1990; amended Jan. 7, 1991.)

30-7-69. Pre-appeal administrative remedies. (a) A pre-appeal administrative remedy is any procedure or process, the purpose of which is to encourage settlement or otherwise resolve the dispute before appeal to the administrative hearings section.

(b) Pre-appeal administrative remedies are to be encouraged to promote the resolution of disputes between the parties involved. Pre-appeal administrative remedies may also be used by the parties to narrow and define the issues to be appealed to the administrative hearings section. The effective date of this regulation shall be July 1, 1989. (Authorized by K.S.A. 75-3304; implementing K.S.A. 75-3306, as amended by L. 1988, Ch. 356, Sec. 302; effective July 1, 1989.)

30-7-70. Agency's review of decision. (a) Upon receipt of notice that a request for fair hearing has been made, the agency shall review its action or decision. Upon reconsideration, the agency may amend or change its action or decision before or during the hearing.

(b) If a satisfactory adjustment is reached prior to the hearing, the agency shall submit a report to the hearing officer, in writing, but the appeal shall remain pending until the appellant submits a signed, written statement withdrawing the appellant's request for fair hearing. If the appellant fails to timely submit a signed, written statement withdrawing the request for fair hearing, the hearing officer may dismiss the request for fair hearing. The effective date of this regulation shall be July 1, 1989. (Authorized by K.S.A. 75-3304; implementing K.S.A. 75-3306, as amended by L. 1988, Ch. 356, Sec. 302; effective July 1, 1989.)

30-7-71. Venue. (a) Fair hearings for applicants or recipients shall be held in the social and rehabilitation services' administrative area in which the applicant or recipient resides unless another site has been designated by the hearing officer or the hearing is conducted pursuant to the provisions of K.A.R. 30-7-72.

(b) Fair hearings for other appellants shall be held in Topeka, Kansas unless another site has been designated by the hearing officer or the hearing is conducted pursuant to the provisions of K.A.R. 30-7-72. The effective date of this regulation shall be July 1, 1989. (Authorized by K.S.A. 75-3304; implementing K.S.A. 75-3306, as amended by L. 1988, Ch. 356, Sec. 302; effective July 1, 1989.)

30-7-72. Telephone hearings. The hearing officer may conduct the fair hearing or any prehearing by telephone or other electronic means if each participant in the hearing or prehearing has an opportunity to participate in the entire proceeding while the proceeding is taking place. A party may be granted a face to face hearing or prehearing if good cause can be shown that a fair and impartial hearing or prehearing could not be conducted by telephone or other electronic means. The effective date of this regulation shall be July 1, 1989. (Authorized by K.S.A. 75-3304; implementing K.S.A. 75-3306, as amended by L. 1988, Ch. 356, Sec. 302; effective July 1, 1989.)

30-7-73. Summary reversals. The hearing officer may, without notice or hearing, summarily reverse the agency's decision or action in the matter if it is clear from the agency's summary that the agency's decision or action was incorrect. The effective date of this regulation shall be July 1, 1989. (Authorized by K.S.A. 75-3304; implementing K.S.A. 75-3306, as amended by L. 1988, Ch. 356, Sec. 302; effective July 1, 1989.)

30-7-74. Independent medical, psychiatric and psychological examinations. When the hearing involves medical, psychiatric or psychological issues, the hearing officer may order on the hearing officer's own motion that an independent medical, psychiatric or psychological assessment other than that of the person or persons involved in making the original decision shall be obtained at agency expense and made part of the record if the hearing officer considers it necessary. If a party requests the independent assessment, that party shall pay the costs incurred in obtaining the assessment. If the party requesting the assessment signs a poverty affidavit, the independent medical, psychiatric or psychological assessment shall be performed at agency expense. The effective date of this regulation shall be July 1, 1989. (Authorized by K.S.A. 75-3304; implementing K.S.A. 75-3306, as amended by L. 1988, Ch. 356, Sec. 302; effective July 1, 1989.)

30-7-75. Agency's summary. Within 15 days after notification of the request for fair hearing the agency shall furnish the appellant and the administrative hearings section with a summary setting forth the following information:

- (a) Name and address of the appellant;
- (b) a summary statement concerning why the appellant is filing a request for a fair hearing;
- (c) a brief chronological summary of the agency's action in relationship to the appellant's request for a fair hearing;
- (d) a statement of the basis of the agency's decision;
- (e) a citation of the applicable policies relied upon by the agency;
- (f) a copy of the notice which notified appellant of the decision in question;
- (g) applicable correspondence; and
- (h) the name and title of the person or persons who will represent the agency at the hearing. The effective date of this regulation shall be July 1, 1991. (Authorized by K.S.A. 75-3304; implementing K.S.A. 75-3306; effective July 1, 1989; amended July 1, 1991.)

30-7-76. Transcripts. (a) A transcript of the hearing may be prepared if requested by an appellant, the agency, the hearing officer, the state appeals committee or the secretary. The party requesting the transcript or review of the hearing officer's decision shall pay any costs associated in obtaining a transcript.

(b) If an appellant requests a transcript, the agency shall pay the costs of transcribing the recording if the appellant signs a poverty affidavit.

(c) If a transcript is prepared, the reporter shall sign the following certification on all copies: "This is to certify that _____

Name of Hearing Officer

conducted a hearing on the application of _____ in _____

Name of Applicant

county, state of Kansas, on _____

Date

at _____ and that the foregoing is a true and correct transcript of the record of the hearing."

Signature of Reporter

The effective date of this regulation shall be January 2, 1992. (Authorized by K.S.A. 75-3304; implementing K.S.A. 75-3306; effective July 1, 1989; amended Jan. 2, 1992.)

30-7-77. Rehearing. (a) Any party, within 15 days after service of the hearing officer's decision, may file a petition for rehearing with the administrative hearings section, stating the specific grounds upon which the rehearing of the hearing officer's decision is requested.

(b) A rehearing may be granted to either party on all or part of the issues when it appears that the rights of the party are substantially affected because:

- (1) Of an erroneous ruling of the hearing officer;
- (2) the decision in whole or in part is contrary to the evidence; or
- (3) of newly discovered evidence which the moving party could not with reasonable diligence have discovered or produced at the hearing.

(c) The filing of a petition for rehearing is not a prerequisite for review at any stage of the proceedings. The filing of a petition for rehearing does not stay any time limits or further proceedings that may be conducted under the Kansas administrative procedures act, K.S.A. 77-501 et seq. and amendments thereto, or any other provision of law. The effective date of this regulation shall be January 2, 1992. (Authorized by K.S.A. 75-3304; implementing K.S.A. 75-3306; effective July 1, 1989; amended Jan. 2, 1992.)

30-7-78. State appeals committee. (a) The secretary may appoint one or more state appeals committees to review the decisions or orders of hearing officers.

(b) The committees shall consist of three impartial persons.

(c) Decisions of the committee shall be by majority vote.

(d) The record, as defined in K.S.A. 77-532, shall be the basis for the state appeals committee review. The effective date of this regulation shall be January 2, 1992. (Authorized by K.S.A. 75-3304; implementing K.S.A. 75-3306; effective July 1, 1989; amended Jan. 2, 1992.)

30-7-79. Motions. (a) Motions, unless made during a hearing, shall:

- (1) Be in writing; and
- (2) state with particularity their bases.

(b) The opposing party shall have 15 days from the date of mailing or personal delivery within which to file a response. The hearing officer may waive the deadline for good cause.

(c) The hearing officer on his or her own motion or at the request of either party may conduct a hearing on the motion. A party requesting a hearing shall include the request in the motion or response. The effective date of this regulation shall be August 1, 1990. (Authorized by K.S.A. 75-3304; implementing K.S.A. 75-3306; effective Aug. 1, 1990.)

30-7-100. Definition of intentional TAF or GA program violation. (a) An “intentional program violation” means any action taken by an individual to establish or maintain a family’s eligibility for temporary assistance for families (TAF) or general assistance (GA), or to obtain an increase in or to maintain the amount of the family’s TAF or GA grant, when that action constitutes either of the following:

(1) an intentionally false or misleading statement, misrepresentation, concealment, or withholding of facts; or

(2) an act intended to mislead, misrepresent, conceal, withhold facts, or propound a falsity.

(b) This regulation shall take effect on and after March 1, 1997. (Authorized by and implementing K.S.A. 1995 Supp. 39-708c, as amended by L. 1996, Chapter 229, Sec. 104; effective July 31, 1992; amended May 3, 1993; amended March 1, 1997.)

30-7-101. Administrative hearings section, hearing officer. The disqualification hearing program shall be administered by the administrative hearings section of the agency. The effective date of this regulation shall be July 31, 1992. (Authorized by and implementing K.S.A. 1991 Supp. 39-708c; effective July 31, 1992.)

30-7-102. Disqualification hearings. (a) An individual’s fair hearing may be consolidated with a disqualification hearing by the agency when the circumstances surrounding the hearings are the same or related, provided that the individual receives prior notice of the consolidation. Either the hearing officer for the fair hearing or the hearing officer for the disqualification hearing may be assigned by the agency to preside at a consolidated hearing.

(b) The hearing officer shall:

- (1) administer oaths and affirmations;
- (2) consider all relevant issues;
- (3) request, receive and make part of the record all evidence necessary to decide the issues raised;
- (4) conduct the hearing in a manner consistent with due process;
- (5) advise the accused individual that the individual may refuse to answer questions during the hearing; and
- (6) render a final decision that will resolve the issues in dispute.

(c) The hearing officer shall base a determination of intentional program violation on clear and convincing evidence which demonstrates that the individual committed an intentional program violation.

(d) The hearing officer shall conduct the fair hearing or any prehearing by telephone or other electronic means if each participant in the hearing or prehearing has an opportunity to participate in the entire proceeding while the proceeding is taking place. A party may be granted a face to face hearing or prehearing if good cause is shown that a fair and impartial hearing or prehearing could not be conducted by telephone or electronic means.

(e) (1) A written notice shall be provided by the agency to the individual alleged to have committed the intentional program violation at least 30 days before the date of the disqualification hearing.

(2) The advance written notice to the individual shall include the following items:

- (A) The date, time and location of the hearing;
- (B) the charge or charges against the individual;
- (C) a summary of the evidence, and how and where the evidence can be examined;

(D) a warning that the individual’s failure to appear without good cause will result in a decision by the hearing officer based solely on the information provided by the agency at the hearing;

(E) a statement that the individual may request a postponement of the hearing if the request is made to the state agency at least 10 days before the scheduled hearing;

(F) a statement that the individual will have 10 days from the date of the scheduled hearing to present to the agency good cause for failure to appear in order to receive a new hearing;

(G) a description of the penalties that can result from a determination that the individual has committed an intentional program violation and a statement of which penalty applies to the individual;

(H) a statement that the hearing does not preclude the state government from prosecuting the individual for an intentional program violation in a civil or criminal court action, or from collecting an overpayment;

(I) information regarding free legal representation available to individuals alleged to have committed intentional program violations;

(J) a statement of the accused individual's right to remain silent concerning the charge or charges and that anything said or signed by the individual concerning the charge or charges may be used against the individual in a court of law;

(K) a statement that the individual may waive the right to appear at an administrative disqualification hearing;

(L) (i) the date that the signed waiver shall be received by the agency;

(ii) a signature block for the accused individual;

(iii) a statement that the caretaker relative shall also sign the waiver if the accused individual is not the caretaker relative; and

(iv) a signature block designated for the caretaker relative;

(M) a statement that waiver of the individual's right to appear at a disqualification hearing may result in a disqualification penalty and a reduction in the assistance payment for the appropriate period even if the accused individual does not admit to the facts as presented by the agency; and

(N) an opportunity for the accused individual to specify whether the individual admits to the facts as presented by the agency.

(f) (1) The hearing officer shall postpone the scheduled hearing at the individual's request provided the request for postponement is made at least 10 days before the scheduled disqualification hearing;

(2) the hearing officer shall not postpone for more than a total of 30 days; and

(3) the hearing officer may limit the number of postponements to one.

(g) The hearing officer assigned to conduct the hearing shall be impartial and not previously involved in the case.

(h) Medical assessments shall be obtained by the agency at the agency's expense and shall be made part of the record if the hearing officer considers it necessary.

(i) The individual, or the individual's representative, shall have adequate opportunity to:

(1) examine the contents of the individual's case file, and all documents and records to be used by the agency at the hearing at a reasonable time before the date of the hearing and during the hearing;

(2) present the individual's case alone or with the aid of an authorized representative;

(3) bring witnesses;

(4) establish all pertinent facts and circumstances;

(5) advance any arguments without undue influence; and

(6) question or refute any testimony or evidence, confronting and cross-examining adverse witnesses.

(j) Decisions made by the hearing officer shall be based exclusively on the evidence and other material admitted into the case record at the hearing. The transcript or recording of testimony, exhibits, or official reports admitted at the hearing, together with all papers and requests filed in the proceeding, and the decision of the hearing officer shall be made available to the individual or to the individual's representative at a reasonable time and place.

(k) Decisions by the hearing officer shall:

(1) consist of a decision memorandum summarizing the facts, evidence and regulations supporting the decision; and

(2) be made within 90 days of the date of service of the notice of hearing.

(l) An individual shall not be disqualified by the agency per this section until the hearing officer finds that the individual has committed an intentional program violation. However, assistance may be discontinued, terminated, suspended, or reduced by the agency, or changed in the manner or form of payment to a protective, vendor, or two-party payment for other reasons.

(m) If the hearing officer finds that the individual committed an intentional program violation, a written notice shall be provided by the agency to the individual before disqualification. The notice shall inform the individual of the following:

(1) the decision and the reason for the decision;

(2) the period of disqualification, which shall begin not later than the first day of the second month which follows the date of the notice;

(3) the amount of payment the household will receive during the disqualification period; and

(4) the individual's right to appeal the decision to the district court of Shawnee county or the individual's county within 30 days of the date of the decision and that an appeal may result in a reversal of the decision.

(n) This regulation shall take effect on and after July 1, 1996. (Authorized by and implementing K.S.A. 1995 Supp. 39-708c; effective July 31, 1992; amended July 1, 1996.)

30-7-103. Waiver of the administrative disqualification hearing. (a) An individual shall be allowed by the agency to waive the right to appear at an administrative disqualification hearing.

(b) When the individual waives the right to appear at a disqualification hearing, the individual shall be disqualified and shall be subject to appropriate reduction of assistance regardless of whether the individual admits or denies the charges. A written notice shall be sent by the agency informing the individual of the period of disqualification, which shall begin not later than the first day of the second month which follows the date of notice, and the amount of payment the household will receive during the disqualification period.

(c) This regulation shall take effect on and after July 1, 1996. (Authorized by and implementing K.S.A. 1995 Supp. 39-708c; effective July 31, 1992; amended July 1, 1996.)

30-7-104. Court actions on consent agreements. (a) An accused individual shall be allowed by the agency to sign a written agreement confirmed by a court of competent jurisdiction in which the individual admits committing an intentional program violation.

(b) The written agreement shall include the following:

(1) a statement that the individual understands the consequences of signing the agreement;

(2) a statement that the caretaker relative must also sign the agreement if the accused is not the caretaker relative; and

(3) a statement that signing the agreement will result in a reduction in payment for the appropriate period.

(c) After the court confirms the agreement, a written notice shall be provided by the agency to the individual which specifies the period of disqualification, which shall begin not later than the first day of the second month which follows the date of the notice, and the amount of payment the household will receive during the disqualification

period. If the court specifies the date for initiating the disqualification period, the accused individual shall be disqualified by the agency in accordance with the court order.

(d) This regulation shall take effect on and after July 1, 1996. (Authorized by and implementing K.S.A. 1995 Supp. 39-708c; effective July 31, 1992; amended July 1, 1996.)

Article 8.—PERSONNEL

30-8-1 to 30-8-6. (Authorized by K.S.A. 1965 Supp. 39-708; effective Jan. 1, 1967; revoked Jan. 1, 1974.)

30-8-7. (Authorized by K.S.A. 1971 Supp. 39-708; effective Jan. 1, 1967; revoked Jan. 1, 1972.)

30-8-8. (Authorized by K.S.A. 1971 Supp. 39-708; effective Jan. 1, 1967; revoked, E-71-25, June 11, 1971; revoked Jan. 1, 1972.)

30-8-9. (Authorized by K.S.A. 1965 Supp. 39-708; effective Jan. 1, 1967; amended, E-71-25, June 11, 1971; amended Jan. 1, 1972; revoked Jan. 1, 1974.)

30-8-10 and 30-8-11. (Authorized by K.S.A. 1965 Supp. 39-708; effective Jan. 1, 1967; revoked Jan. 1, 1974.)

30-8-12. (Authorized by K.S.A. 1971 Supp. 39-708; effective Jan. 1, 1967; revoked Jan. 1, 1972.)

30-8-13 and 30-8-14. (Authorized by K.S.A. 1965 Supp. 39-708; effective Jan. 1, 1967; revoked Jan. 1, 1974.)

30-8-15. (Authorized by K.S.A. 75-3304, K.S.A. 1968 Supp. 39-708; effective Jan. 1, 1969; revoked Jan. 1, 1974.)

Article 9.—ADULT CARE PROGRAM

30-9-1. (Authorized by K.S.A. 39-708c; effective, E-72-23, July 28, 1972; effective Jan. 1, 1973; amended Jan. 1, 1974; revoked, E-74-43, Aug. 16, 1974; revoked May 1, 1975.)

30-9-2 and 30-9-3. (Authorized by K.S.A. 39-708c; effective, E-72-23, July 28, 1972; effective Jan. 1, 1973; revoked, E-74-43, Aug. 16, 1974; revoked May 1, 1975.)

30-9-4. (Authorized by K.S.A. 39-708c; effective, E-72-23, July 28, 1972; effective Jan. 1, 1973;

amended Jan. 1, 1974; revoked, E-74-43, Aug. 16, 1974; revoked May 1, 1975.)

30-9-5. (Authorized by K.S.A. 39-708c; effective, E-72-23, July 28, 1972; effective Jan. 1, 1973; revoked, E-74-43, Aug. 16, 1974; revoked May 1, 1975.)

30-9-6 to 30-9-11. (Authorized by K.S.A. 39-708c; effective, E-72-23, July 28, 1972; effective Jan. 1, 1973; amended Jan. 1, 1974; revoked, E-74-43, Aug. 16, 1974; revoked May 1, 1975.)

30-9-12. (Authorized by K.S.A. 39-708c; effective, E-72-23, July 28, 1972; effective Jan. 1, 1973; amended Jan. 1, 1974; amended, E-74-25, April 26, 1974; revoked, E-74-43, Aug. 16, 1974; revoked May 1, 1975.)

30-9-13. This rule and regulation shall expire on July 31, 1992. (Authorized by K.S.A. 39-708c; implementing K.S.A. 39-708c, L. 1989, Chapter 191; effective Jan. 1, 1990; revoked July 31, 1992.)

30-9-18 through 30-9-22. These rules and regulations shall expire on July 31, 1992. (Authorized by K.S.A. 39-708c; implementing K.S.A. 39-708c, L. 1989, Chapter 191; effective Jan. 1, 1990; revoked July 31, 1992.)

Article 10.—ADULT CARE HOME PROGRAM

30-10-1. (Authorized by and implementing K.S.A. 39-708c; effective, E-74-43, Aug. 16, 1974; amended, E-74-44, Aug. 28, 1974; effective May 1, 1975; amended, E-76-34, July 1, 1975; amended May 1, 1976; amended Feb. 15, 1977; amended, E-78-35, Dec. 30, 1977; amended May 1, 1978; amended, E-79-20, Aug. 17, 1978; amended May 1, 1979; amended, E-80-13, Aug. 8, 1979; amended May 1, 1980; revoked May 1, 1982.)

30-10-1a. Nursing facility program definitions. (a) The following words and terms, when used in this article, shall have the following meanings, unless the context clearly indicates otherwise.

(1) “Accrual basis of accounting” means that revenue of the provider is reported in the period when it is earned, regardless of when it is collected, and expenses are reported in the period in which they are incurred, regardless of when they are paid.

(2) “Active treatment for individuals with mental retardation or a related condition” means a continuous program for each client, which shall include aggressive, consistent implementation of a program of specialized and generic training, treatment, health services, and related services that is directed toward the following:

(A) The acquisition of the behaviors necessary for the client to function with as much self-determination and independence as possible; and

(B) the prevention or deceleration of regression or loss of current optimal functional status.

(3) “Agency” means the department of social and rehabilitation services.

(4) “Ancillary services and other medically necessary services” means those special services or supplies, in addition to routine services, for which charges are made.

(5) “Case mix” means a measure of the intensity of care and services used by a group of residents in a facility.

(6) “Case mix index” means a numeric score with a specific range that identifies the relative resources used by a particular group of residents and represents the average resource consumption across a population or sample. Two average case mix index scores are considered in setting rates for nursing facility program participants. These indexes are the following:

(A) “Medicaid average case mix index,” which means the average case mix index calculated using case mix scores for only the medicaid residents in a population; and

(B) “facility average case mix index,” which means the average case mix index calculated using case mix scores for all the residents in a nursing facility.

(7) “Change of ownership” means a transfer of rights and interests in real and personal property used for nursing facility services through an arm’s-length transaction between unrelated persons or legal entities.

(8) “Change of provider” means a change of ownership or lessee specified in the provider agreement.

(9) “Common ownership” means that an entity holds a minimum of five percent ownership or equity in the provider facility or in a company engaged in business with the provider facility.

(10) “Control” means that an individual or organization has the power, directly or indirectly, to significantly influence or direct the actions or policies of an organization or facility.

(11) “Cost and other accounting information” means adequate financial data about the nursing facility operation, including source documentation, that is accurate, current, and sufficiently detailed to accomplish the purposes for which it is intended. Source documentation, including petty cash payout memoranda and original invoices, shall be valid only if the documentation originated at the time and near the place of the transaction. In order to provide the required cost data, the provider shall maintain financial and statistical records in a manner that is consistent from one period to another. This requirement shall not preclude a beneficial change in accounting procedures when there is a compelling reason to effect a change of procedures.

(12) “Cost finding” means recasting the data derived from the accounts ordinarily kept by a provider to ascertain costs of the various types of services rendered.

(13) “Costs not related to resident care” means costs that are not appropriate, necessary, or proper in developing and maintaining the nursing facility operation and activities. These costs shall not be allowed in computing reimbursable costs.

(14) “Costs related to resident care” means all necessary and proper costs, arising from arm’s-length transactions in accordance with general accounting rules, that are appropriate and helpful in developing and maintaining the operation of resident care facilities and activities. Specific items of expense shall be limited pursuant to K.A.R. 30-10-23a, K.A.R. 30-10-23b, K.A.R. 30-10-23c, K.A.R. 30-10-24, K.A.R. 30-10-25, K.A.R. 30-10-26, K.A.R. 30-10-27, and K.A.R. 30-10-28.

(15) “Cost report” means the nursing facility financial and statistical report (MS-2004).

(16) “Educational activities” means an approved, formally organized, or planned program of study usually engaged in by providers in order to enhance the quality of resident care in an institution. These activities shall be licensed when required by state law.

(17) “Educational activities—net cost” means the cost of approved educational activities less any grants, specific donations, or reimbursements of tuition.

(18) “Hospital-based nursing facility” means a nursing facility, as defined in this regulation, that is attached to or associated with a hospital.

(19) “Inadequate care” means any act or failure to act that may be physically or emotionally harmful to a recipient.

(20) “Level of care” means the type and intensity of services prescribed in the resident’s plan of care as based on the assessment and reassessment process.

(21) “Mental illness” means a clinically significant behavioral or psychological syndrome or pattern that is typically associated with either a distressing symptom or impairment of function. Relevant diagnoses shall be limited to schizophrenia, recurrent and severe major affective disorders, atypical psychosis, bipolar disorder, paranoid disorders, schizoaffective disorder, psychotic disorder, obsessive-compulsive disorder, or borderline personality disorder.

(22) “Mental retardation” means subaverage general intellectual functioning that originates in the developmental period and is associated with an impairment in adaptive behavior.

(23) “Nonworking owners” means any individual or organization having five percent or more interest in the provider who does not perform a resident-related function for the nursing facility.

(24) “Nonworking related party or director” means any related party, as defined in this regulation, who does not perform a resident-related function for the nursing facility.

(25) “Nursing facility (NF)” means a facility that conforms to these criteria:

(A) Meets state licensure standards;

(B) provides health-related care and services, as prescribed by a physician; and

(C) provides 24-hour-a-day, seven-day-a-week licensed nursing supervision to residents for ongoing observation, treatment, or care for long-term illness, disease, or injury.

(26) “Nursing facility for mental health” means a nursing facility that meets these criteria:

(A) Meets state licensure standards;

(B) provides structured mental health rehabilitation services, in addition to health-related care, for individuals with a severe and persistent mental illness; and

(C) provides 24-hour-a-day, seven-day-a-week licensed nursing supervision. The nursing facility shall have been operating in accordance with a provider agreement with the agency on June 30, 1994.

(27) “Ongoing entity” means that a change in the provider has not been recognized for Kansas medical assistance program payment purposes.

(28) “Organization costs” means those costs directly incidental to the creation of the corporation or other form of legal business entity. These costs shall be considered to be intangible assets repre-

senting expenditures for rights and privileges that have value to the business.

(29) “Owner and related party compensation” means salaries, drawings, consulting fees, or other payments paid to or on behalf of any owner with a five percent or greater interest in the provider or any related party, as defined in this regulation, whether the payment is from a sole proprietorship, partnership, corporation, or nonprofit organization.

(30) “Owner” means the person or legal entity that has the rights and interests of the real and personal property used to provide the nursing facility services.

(31) “Plan of care for nursing facilities” means a document completed by the nursing facility staff that states the need for care, the estimated length of the program, the methodology to be used, and the expected results for each resident.

(32) “Prescription drug” means a simple or compound substance or mixture of substances prescribed for the cure, mitigation, or prevention of disease or for health maintenance that is prescribed by a licensed physician or practitioner and dispensed by a licensed pharmacist.

(33) “Projected cost report” means a cost report submitted to the agency by a provider prospectively for a 12-month period of time. The projected cost report shall be based on an estimate of the costs, revenues, resident days, and other financial data for that 12-month period of time.

(34) “Provider” means the operator of the nursing facility specified in the provider agreement.

(35) “Recipient” means a person determined to be eligible for the Kansas medical assistance program in a nursing facility.

(36) “Related parties” means two or more parties with a relationship in which one party has the ability to influence another party to the transaction in the following manner:

(A) When one or more of the transacting parties might fail to pursue the party’s or parties’ own separate interests fully;

(B) when the transaction is designed to inflate the Kansas medical assistance program costs; or

(C) when any party considered a related party to a previous owner or operator becomes the employee, or otherwise functions in any capacity on behalf of a subsequent owner or operator. Related parties shall include parties related by family, business, or financial association, or by common ownership or control. Transactions between related parties shall not be considered to have arisen through arm’s-length negotiations.

(37) “Related to the nursing facility” means that the facility is significantly associated or affiliated with, has control of, or is controlled by the organization furnishing the services, facilities, or supplies.

(38) “Representative” means either of the following:

(A) A legal guardian, conservator, or representative payee as designated by the social security administration; or

(B) any person who is designated in writing by the resident to manage the resident’s personal funds and who is willing to accept the designation.

(39) “Resident assessment form” means the document that meets these requirements:

(A) Is jointly specified by the Kansas department of health and environment and the agency;

(B) is approved by the health care finance administration; and

(C) includes the minimum data set.

(40) “Resident assessment instrument” means the resident assessment form, resident assessment protocols, and the plan of care, including reassessments.

(41) “Resident day” means that period of service rendered to a resident between census-taking hours on two successive days and all other days for which the provider receives payment, either full or partial, for any Kansas medical assistance program or non-Kansas medical assistance program resident who was not in the nursing facility. Census-taking hours shall consist of 24 hours beginning at midnight.

(42) “Resident status review” means a reassessment to identify any nursing facility resident who may no longer meet the level of care criteria.

(43) “Routine services and supplies” means services and supplies that are commonly stocked for use by or provided to any resident. The services and supplies shall be included in the provider’s cost report.

(44) “Sale-leaseback” means a transaction in which an owner sells a facility to a related or non-related purchaser and then leases the facility from the new owner to operate as the provider.

(45) “Severe and persistent mental illness” means mental illness as defined in this regulation, but shall include both of the following additional requirements:

(A) The individual meets one of the following criteria:

(i) Has undergone psychiatric treatment more intensive than what could have been provided through outpatient care more than once in a lifetime; or

(ii) has experienced a single episode of continuous, structured, supportive residential care other than hospitalization for a duration of at least two months.

(B) The individual meets at least two of the following criteria, on a continuing or intermittent basis, for at least two years:

(i) Is unemployed, is employed in a sheltered setting, or has markedly limited skills and a poor work history;

(ii) requires public financial assistance for out-of-hospital maintenance and may be unable to procure this assistance without help;

(iii) shows a severe inability to establish or maintain a personal social support system;

(iv) requires help in basic living skills; or

(v) exhibits inappropriate social behavior that results in a need for intervention by the mental health or judicial system.

(46) "Specialized mental health rehabilitation services" means one of the specialized rehabilitative services that provide ongoing treatment for mental health problems and that are aimed at attaining or maintaining the highest level of mental and psychosocial well-being. The specialized rehabilitative services shall include the following:

(A) Crisis intervention services;

(B) drug therapy or monitoring of drug therapy;

(C) training in medication management;

(D) structured socialization activities to diminish tendencies toward isolation and withdrawal;

(E) development and maintenance of necessary daily living skills, including grooming, personal hygiene, nutrition, health and mental health education, and money management; and

(F) maintenance and development of appropriate personal support networks.

(47) "Specialized services" means inpatient psychiatric care for the treatment of an acute episode of mental illness.

(48) "State licensing agency" means the department of health and environment for hospital-based nursing facilities and the department on aging for all other nursing facilities.

(49) "Swing bed" means a hospital bed that can be used interchangeably as either a hospital bed or nursing facility bed.

(50) "Twenty-four-hour nursing care" means the provision of 24-hour licensed nursing services with the services of a registered nurse for at least eight consecutive hours a day, seven days a week.

(51) "Working trial balance" means a list of the account balances in general ledger order that was used in completing the cost report.

(b) This regulation shall be effective on and after May 1, 2005. (Authorized by and implementing K.S.A. 39-708c; effective May 1, 1982; amended May 1, 1983; amended May 1, 1984; amended May 1, 1985; amended May 1, 1986; amended May 1, 1987; amended May 1, 1988; amended Jan. 2, 1989; amended, T-30-10-1-90, Oct. 1, 1990; amended Jan. 30, 1991; amended Oct. 28, 1991; amended April 1, 1992; amended Nov. 2, 1992; amended Jan. 3, 1994; amended July 1, 1994; amended Sept. 30, 1994; amended Dec. 29, 1995; amended Jan. 1, 1997; amended Jan. 1, 1999; amended May 1, 2002; amended May 1, 2005.)

30-10-1b. Nursing facility program providers. (a) The nursing facility program providers shall include the following types of care facilities:

(1) Nursing facilities; and

(2) nursing facilities for mental health, which shall have been operating in accordance with a provider agreement with the agency on June 30, 1994.

(b) Each provider shall meet the following requirements with regard to any change in the structure of the business entities involved in the ownership, operation, or management of the nursing facility:

(1) The current provider or prospective provider shall notify the agency in writing by certified mail of a proposed change of providers at least 60 days in advance of the closing transaction date. If the current or prospective provider fails to submit a timely notification, the new provider shall assume responsibility for any overpayment made to the previous provider before the transfer. Failure to submit timely notification shall not release the previous provider from responsibility for the overpayment.

(2) Before the dissolution of the provider business entity or a transaction involving a change of ownership of the nursing facility or the change of lessee of the nursing facility, the provider shall notify the agency in writing at least 60 days before the change. If the provider fails to submit a timely notification, the new provider shall assume responsibility for any overpayment made to the previous provider before the transfer. Failure to submit timely notification shall not release the previous provider from responsibility for the overpayment. Other overpayment recovery terms may be expressly agreed to in writing by the secretary.

(3) The provider shall submit an application to be a provider of services to the agency for any

addition or substitution to a partnership or any change of provider resulting in a completely new partnership. An application shall not be required when a partnership is dissolved and at least one member of the partnership remains as the provider of services.

(4) If a sole proprietor that is not incorporated under applicable state law transfers title and property to another party, a change of ownership shall have occurred. The new owner shall submit an application to be a provider of services to the agency.

(5) Each consolidation of two or more unrelated corporations that creates a new corporate entity through an arm's-length transaction shall constitute a change of provider. The new corporate entity resulting from the consolidation shall submit an application to be a provider of services to the agency.

(6) Each change or creation of a new lessee acting as a provider of services shall constitute a change of provider. The new lessee shall submit an application to be a provider of services to the agency.

(7) Each provider shall submit documentation of any other change in the ownership or corporate structure of the business entities involved in the ownership, operation, or management of the nursing facility.

(c) Only a change in or creation of a provider of service through a bona fide transaction shall be recognized as resulting in a new provider. The following situations shall not be recognized as resulting in a change of provider, and the facility shall be treated as an ongoing entity:

(1) A transfer of participating provider corporate stock;

(2) a merger of one or more corporations with the participating provider corporation surviving;

(3) the purchase of the facility by the lessee;

(4) the change or creation of a sublessee acting as the provider of services;

(5) the creation of a new lessee that is related to the old owner of the facility;

(6) the creation of a new lessee acting as the provider of services that is related to the old lessee;

(7) the change or creation of a management firm acting as the provider of services; and

(8) the takeover of the lessee's operations by an owner of the facility.

(d) Each new provider shall be subject to a certification survey by the state licensing agency. If certified, the period of certification shall be established by the state licensing agency.

(e) This regulation shall be effective on and after May 1, 2005. (Authorized by and implementing

K.S.A. 39-708c; effective May 1, 1982; amended May 1, 1984; amended May 1, 1986; amended May 1, 1988; amended Jan. 2, 1989; amended Jan. 2, 1990; amended, T-30-10-1-90, Oct. 1, 1990; amended Jan. 30, 1991; amended May 1, 1992; amended Nov. 2, 1992; amended Jan. 3, 1994; amended July 1, 1994; amended Sept. 30, 1994; amended Dec. 29, 1995; amended May 1, 2005.)

30-10-1c. Provider agreement. (a) As a prerequisite for participation in the medicaid/medikan program as a nursing facility provider, the owner of the real and personal property used to provide the nursing facility services or the lessee of such real and personal property shall enter into a provider agreement with the agency on forms prescribed by the secretary.

(b) Only parties signing a provider agreement shall have rights to enforcement of the agreement. The effective date of this regulation shall be January 1, 1994. (Authorized by and implementing K.S.A. 1992 Supp. 39-708c; effective May 1, 1982; amended May 1, 1986; amended, T-30-10-1-90, Oct. 1, 1990; amended Jan. 30, 1991; amended Nov. 2, 1992; amended Jan. 3, 1994.)

30-10-1d. Inadequate care. (a) If the agency determines that inadequate care is being provided to a recipient or that a recipient's rights are being violated, payment to the nursing facility may be terminated or suspended.

(b) If the agency determines that a nursing facility has not corrected deficiencies that significantly and adversely affect the health, safety, nutrition, or sanitation of the nursing facility residents, payments for new admissions shall be denied and future payments for all recipients shall be withheld until the agency determines that the deficiencies have been corrected.

(c) This regulation shall be effective on and after May 1, 2005. (Authorized by and implementing K.S.A. 39-708c; effective May 1, 1982; amended, T-87-43, Dec. 19, 1986; amended May 1, 1987; amended, T-30-10-1-90, Oct. 1, 1990; amended Jan. 30, 1991; amended Jan. 3, 1994; amended May 1, 2005.)

30-10-1e. (Authorized by and implementing K.S.A. 1983 Supp. 39-708c; effective May 1, 1984; revoked May 1, 1986.)

30-10-1f. Private pay wings. As a prerequisite for participation in the medicaid/medikan program, a nursing facility shall not de-

velop private pay wings or segregate medicaid/medikan residents to separate areas of the nursing facility. The effective date of this regulation shall be January 30, 1991. (Authorized by and implementing K.S.A. 39-708c, as amended by L. 1990, Chapter 152; effective May 1, 1987; amended, T-30-10-1-90, Oct. 1, 1990; amended Jan. 30, 1991.)

30-10-2. Standards for participation; nursing facilities and nursing facilities for mental health. (a) As a prerequisite for participation in the Kansas medical assistance program as a provider of nursing facility services, each nursing facility and each nursing facility for mental health shall perform the following:

- (1) Provide nursing services;
- (2) meet the requirements of Title IV, subtitle C, part 2 of the federal omnibus budget reconciliation act of 1987, effective October 1, 1990, which is adopted by reference;
- (3) be certified for participation in the program for all licensed beds by the Kansas department of health and environment or the federal department of health and human services;
- (4) have been operating under a provider agreement with the agency on June 30, 1994 if the certification is for a nursing facility for mental health;
- (5) submit an application for participation in the program on forms prescribed by the secretary of social and rehabilitation services;
- (6) update provided information as required by the application forms;
- (7) furnish and allow inspection of any information that the agency, its designee, or the United States department of health and human services may request in order to assure proper payment by the Kansas medical assistance program;
- (8) inform all new residents of the availability of a potential eligibility assessment under the federal spousal impoverishment law. This assessment shall be completed by the agency or a local agency office;
- (9) ensure that before a nonemergency admission of each resident, state-mandated preadmission and referral services have been completed by the Kansas department on aging;
- (10) provide nonemergency transportation; and
- (11) submit to the agency a copy of the resident assessment form for each resident as follows:
 - (A) Each nursing facility shall complete a resident assessment form no later than 14 days after admission, no later than 14 days after a significant change in the resident's physical or mental con-

dition, and in no case less often than once every 12 months. Each nursing facility shall conduct a review by completing the resident assessment form no less often than once every three months. Assessments shall be used to monitor the appropriate level of care.

(B) Each nursing facility shall submit resident assessment forms, including the tracking documents, within seven days of completion. Each resident assessment form shall be sent to the state data base by electronic transmission. A resident assessment form shall be considered timely submitted upon the receipt of the electronic submission.

(C) Penalty for nonsubmission of accurate and timely assessment. If 10 percent or more of a nursing facility's assessments are not completed and submitted as required, all further payments to the provider shall be suspended until the forms have been completed and submitted electronically. Thirty days before suspending payment to a provider, written notice stating the agency's intent to suspend payments shall be sent by the agency to the provider. This notice shall explain the basis for the agency's determination and shall explain the necessary corrective action that must be taken before payments are reinstated.

(D) Any assessment that cannot be classified shall be assigned to the lowest classification group.

(b) This regulation shall be effective on and after May 1, 2002. (Authorized by and implementing K.S.A. 39-708c; effective, E-74-43, Aug. 16, 1974; effective, E-74-63, Dec. 4, 1974; effective May 1, 1975; amended, E-76-34, July 1, 1975; amended May 1, 1976; amended Feb. 15, 1977; amended, E-78-35, Dec. 30, 1977; amended May 1, 1978; amended, E-80-13, Aug. 8, 1979; amended May 1, 1980; amended May 1, 1982; amended May 1, 1983; amended May 1, 1985; amended May 1, 1987; amended May 1, 1988; amended Jan. 2, 1990; amended, T-30-10-1-90, Oct. 1, 1990; amended Jan. 30, 1991; amended Nov. 2, 1992; amended Jan. 3, 1994; amended July 1, 1994; amended Sept. 30, 1994; amended Dec. 29, 1995; amended Jan. 1, 1997; amended July 1, 1998; amended Jan. 1, 1999; amended May 1, 2002.)

30-10-3. This rule and regulation shall expire on November 2, 1992. (Authorized by and implementing K.S.A. 39-708c, as amended by L. 1990, Chapter 152; effective, E-74-43, Aug. 16, 1974; effective May 1, 1975; amended, E-76-34, July 1, 1975; amended May 1, 1976; amended Feb. 15, 1977; amended, E-78-35, Dec. 30, 1977;

amended May 1, 1978; amended, E-80-13, Aug. 8, 1979; amended May 1, 1980; amended May 1, 1982; amended May 1, 1983; amended May 1, 1984; amended May 1, 1985; amended May 1, 1987; amended May 1, 1988; amended Jan. 2, 1990; amended, T-30-10-1-90, Oct. 1, 1990; amended Jan. 30, 1991; revoked Nov. 2, 1992.)

30-10-4. This rule and regulation shall expire on November 1, 1992. (Authorized by and implementing K.S.A. 39-708c; effective, E-74-43, Aug. 16, 1974; effective May 1, 1975; amended May 1, 1976; amended Feb. 15, 1977; amended, E-78-35, Dec. 30, 1977; amended May 1, 1978; amended, E-80-13, Aug. 8, 1979; amended May 1, 1980; amended May 1, 1982; amended May 1, 1983; amended May 1, 1985; amended May 1, 1987; amended May 1, 1988; amended Jan. 2, 1990; revoked Nov. 2, 1992.)

30-10-5. (Authorized by K.S.A. 1980 Supp. 39-708c; effective, E-74-59, Oct. 24, 1974; effective May 1, 1975; amended May 1, 1976; amended, E-78-35, Dec. 30, 1977; amended May 1, 1978; amended, E-80-13, Aug. 8, 1979; amended May 1, 1980; revoked May 1, 1981.)

30-10-6. Admission procedure. (a) The physical, emotional, social, and cognitive status of each individual, including any individual from out of state, who is seeking admission to a nursing facility or a nursing facility for mental health providing care under title XIX of the federal social security act shall be assessed to determine the need for care and the appropriateness of services in accordance with K.S.A. 39-968 and amendments thereto.

(b) Nursing facility services and nursing facility for mental health services shall be provided pursuant to title IV, subtitle C, part 2, pp. 190-230, of the federal omnibus budget reconciliation act of 1987, effective October 1, 1990, which is adopted by reference in K.A.R. 30-10-2. Each resident shall receive a comprehensive medical evaluation and an explicit recommendation by the physician concerning the level of care needed.

(c) A nursing facility shall not require a private-paying resident to remain in a private-pay status for any period of time after the resident becomes eligible for medicaid/medikan.

(d) This regulation shall be effective on and after July 1, 2002. (Authorized by and implementing K.S.A. 39-708c; effective, E-74-59, Oct. 24, 1974; effective May 1, 1975; amended, E-76-34, July 1, 1975; amended May 1, 1976; amended, E-78-35,

Dec. 30, 1977; amended May 1, 1978; amended, E-80-13, Aug. 8, 1979; amended May 1, 1980; amended May 1, 1982; amended May 1, 1983; amended May 1, 1984; amended May 1, 1987; amended, T-30-10-1-90, Oct. 1, 1990; amended Jan. 30, 1991; amended Nov. 2, 1992; amended Jan. 4, 1993; amended March 1, 1995; amended July 1, 2002.)

30-10-7. Screening, evaluation, reevaluation, and referral for nursing facilities. (a) In accordance with K.S.A. 39-968 and amendments thereto, each individual seeking admission to a nursing facility or nursing facility for mental health providing care under title XIX of the federal social security act, or seeking referral to home- and community-based services (HCBS), shall receive a preadmission assessment, evaluation, and referral to all available community resources, including nursing facilities, before admission.

(b) Each individual choosing to enter a nursing facility following a preadmission assessment identifying no need for nursing facility placement shall do so as a private-paying resident. Medicaid/medikan shall not participate in the cost of care unless and until a preadmission assessment determines that there is a need for nursing facility placement.

(c) Continued eligibility for services at a nursing facility shall be based on each resident's level of care needs as determined through quarterly reassessments. When the reassessment indicates that the resident's level of care needs no longer meet level of care criteria, the resident shall be considered to be in "resident status review." Payment for services shall continue until the authorized case manager indicates that more appropriate and less intensive services are available that meet the resident's health, safety, and social needs.

(d) Each individual admitted to a nursing facility for mental health shall be evaluated at least annually upon the anniversary of admission, and at any other time there may have been a significant change in the resident's mental condition. This evaluation shall be made under the supervision of a qualified mental health professional employed by a participating community mental health center, as defined in K.S.A. 59-2946 and amendments thereto, using the screening tool that may be designated by the secretary, to determine whether it is appropriate for that individual to remain in a nursing facility for mental health. Any state-funded individual for whom it is determined that remaining in the facility is inappropriate may be

required to have prepared a plan for that individual's transfer to appropriate care.

(e) This regulation shall be effective on and after May 1, 2002. (Authorized by and implementing K.S.A. 39-708c and K.S.A. 39-785; effective, E-74-59, Oct. 24, 1974; effective May 1, 1975; amended May 1, 1976; amended, E-78-35, Dec. 30, 1977; amended May 1, 1978; amended, E-80-13, Aug. 8, 1979; amended May 1, 1980; amended May 1, 1981; amended May 1, 1982; amended May 1, 1983; amended, T-84-11, July 1, 1983; amended May 1, 1984; amended, T-85-28, Nov. 14, 1984; amended May 1, 1985; amended May 1, 1986; amended Jan. 2, 1989; amended, T-30-10-1-90, Oct. 1, 1990; amended Jan. 30, 1991; amended May 1, 1991; amended Jan. 4, 1993; amended July 1, 1994; amended Sept. 30, 1994; amended Dec. 30, 1994; amended March 1, 1995; amended Jan. 1, 1997; amended May 1, 2002.)

30-10-8. This rule and regulation shall expire on November 2, 1992. (Authorized by and implementing K.S.A. 39-708c, as amended by L. 1990, Chapter 152; effective, E-74-59, Oct. 24, 1974; effective May 1, 1975; amended May 1, 1976; amended, E-78-35, Dec. 30, 1977; amended May 1, 1978; amended, E-80-13, Aug. 8, 1979; amended May 1, 1980; amended May 1, 1981; amended May 1, 1982; amended May 1, 1983; amended May 1, 1984; amended May 1, 1987; amended, T-30-10-1-90, Oct. 1, 1990; amended Jan. 30, 1991; revoked Nov. 2, 1992.)

30-10-9. This rule and regulation shall expire on January 30, 1991. (Authorized by and implementing K.S.A. 39-708c; effective, E-74-43, Aug. 16, 1974; effective, E-74-44, Aug. 28, 1974; effective, E-74-63, Dec. 4, 1974; effective May 1, 1975; amended, E-76-34, July 1, 1975; amended May 1, 1976; amended Feb. 15, 1977; amended, E-78-35, Dec. 30, 1977; amended May 1, 1978; amended, E-79-20, Aug. 17, 1978; amended May 1, 1979; amended, E-80-13, Aug. 8, 1979; amended May 1, 1980; amended May 1, 1981; amended May 1, 1982; amended May 1, 1983; amended May 1, 1984; amended May 1, 1986; amended May 1, 1987; amended May 1, 1988; revoked, T-30-10-1-90, Oct. 1, 1990; revoked Jan. 30, 1991.)

30-10-10. (Authorized by K.S.A. 1980 Supp. 39-708c; effective, E-74-43, Aug. 16, 1974; effective May 1, 1975; amended, E-78-35, Dec. 30, 1977; amended May 1, 1978; amended, E-80-13, Aug. 8, 1979; amended May 1, 1980; revoked May 1, 1981.)

30-10-11. Personal needs fund. (a) At the time of admission, each nursing facility provider shall furnish each resident and the resident's representative, if any, with a written statement that meets the following requirements:

(1) Lists all services provided by the provider, distinguishing between those services included in the provider's per diem rate and those services not included in the provider's per diem rate that can be charged to the resident's personal needs fund;

(2) states that there is no obligation for the resident to deposit funds with the provider;

(3) describes each resident's right to select one of the following alternatives for managing the personal needs fund:

(A) The resident or the resident's legal guardian, if any, may receive, retain, and manage the resident's personal needs fund;

(B) the resident may apply to the social security administration to have a representative payee designated for federal or state benefits to which the resident may be entitled; or

(C) except when paragraph (B) of this subsection applies, the resident may designate, in writing, another person to act for the purpose of managing the resident's personal needs fund;

(4) states that any charge for management of a resident's personal needs fund is included in the provider's per diem rate;

(5) states that any late fees, interest, or finance charges shall not be charged to the resident's personal needs fund for late payment of the resident liability;

(6) states that the provider is required to accept a resident's personal needs fund to hold, safeguard, and provide an accounting for it, upon the written authorization of the resident or representative, or upon appointment of the provider as the resident's representative payee; and

(7) states that, if the resident becomes incapable of managing the personal needs fund and does not have a representative, the provider shall be required to arrange for the management of the resident's personal funds as provided in subsection (j).

(b)(1) The provider shall, upon written authorization by the resident, accept responsibility for holding, safeguarding, and accounting for the resident's personal needs fund. The provider may make arrangements with a federally insured or state-insured banking institution to provide these services. However, the responsibility for the quality and accuracy of compliance with the requirements of this regulation shall remain with

the provider. The provider shall not charge the resident for these services. Routine bank service charges shall be included in the provider's per diem rate and shall not be charged to the resident. Overdraft charges and other bank penalties shall not be allowable.

(2) The provider shall maintain current, written, and individual records of all financial transactions involving each resident's personal needs fund for which the provider has accepted responsibility. The records shall include at least the following:

- (A) The resident's name;
 - (B) an identification of the resident's representative, if any;
 - (C) the admission date of the resident;
 - (D) the date and amount of each deposit and withdrawal, the name of the person who accepted the withdrawn funds, and the balance after each transaction;
 - (E) receipts indicating the purpose for which any withdrawn funds were spent; and
 - (F) the resident's earned interest, if any.
- (3) The provider shall provide to each resident reasonable access to the resident's own financial records.

(4) The provider shall provide a written statement, at least quarterly, to each resident or representative. The statement shall include at least the following:

- (A) The balance at the beginning of the statement period;
- (B) total deposits and withdrawals;
- (C) the interest earned, if any; and
- (D) the ending balance.

(c) Commingling prohibited. The provider shall keep any funds received from a resident for holding, safeguarding, and accounting separate from the provider's operating funds, activity funds, and resident council funds and from the funds of any person other than another resident in that facility.

(d) Types of accounts; distribution of interest.

(1) Petty cash. The provider may keep up to \$50.00 of a resident's money in a non-interest-bearing account or petty cash fund.

(2) Interest-bearing accounts. The provider shall, within 15 days of receipt of the money, deposit in an interest-bearing account any funds in excess of \$50.00 from an individual resident. The account may be an individual account for the resident or may be pooled with other resident accounts. If a pooled account is used, each resident shall be individually identified on the provider's

books. The account shall be in a form that clearly indicates that the provider does not have an ownership interest in the funds. The account shall be insured under federal or state law.

(3) The interest earned on any pooled interest-bearing account shall be distributed without reductions in one of the following ways, at the election of the provider:

(A) Prorated to each resident on an actual interest-earned basis; or

(B) prorated to each resident on the basis of the resident's end-of-quarter balance.

(e) The provider shall provide the residents with reasonable access to their personal needs funds. The provider shall, upon request or upon the resident's transfer or discharge, return to the resident, the legal guardian, or the representative payee the balance of the resident's personal needs fund for which the provider has accepted responsibility, and any funds maintained in a petty cash fund. When a resident's personal needs fund for which the provider has accepted responsibility is deposited in an account outside the facility, the provider, upon request or upon the resident's transfer or discharge, shall within 15 business days return to the resident, the legal guardian, or the representative payee the balance of those funds.

(f) If a provider is a resident's representative payee and directly receives monthly benefits to which the resident is entitled, the provider shall fulfill all of its legal duties as representative payee.

(g) Duties on change of provider.

(1) Upon change of providers, the former provider shall furnish the new provider with a written account of each resident's personal needs fund to be transferred and shall obtain a written receipt for those funds from the new provider.

(2) The provider shall give each resident's representative a written accounting of any personal needs fund held by the provider before any change of provider occurs.

(3) If a disagreement arises regarding the accounting provided by the former provider or the new provider, the resident shall retain all rights and remedies provided under state law.

(h) Upon the death of a resident who is a recipient of medical assistance, the provider shall take the following actions:

(1) The provider shall in good faith determine or attempt to determine within 30 days from the date of death whether there is a surviving spouse, minor or disabled children, or an executor or administrator of the resident's estate.

(A) If there is an executor or an administrator, the provider shall contact the executor or administrator and convey the monies in the personal needs fund as the executor or administrator directs.

(B) If there is no executor or administrator but there is a surviving spouse, the provider shall contact the surviving spouse and convey the monies in the personal needs fund as that surviving spouse directs.

(C) If there is no executor or administrator or surviving spouse, but there are minor or disabled children, the provider shall contact the guardian or personal representative of the minor or disabled children or, if appropriate, the adult disabled children and convey the monies in the personal needs fund as that person directs.

(D) If there is no surviving spouse, minor or disabled children, or executor or administrator, the provider shall convey within 30 days the personal needs fund to the estate recovery unit, which shall be responsible for notifying the appropriate court or personal representative of the receipt of the monies from the personal needs fund of the resident.

(2) The provider shall provide the estate recovery unit with a written accounting of the personal needs fund within 30 days of the resident's death. The accounting shall also be provided to the executor or administrator of the resident's estate, if any; the surviving spouse, if any; the guardian or representative of the surviving minor or disabled children, if any; the personal representative of the resident, if any; and the resident's next of kin.

(i) The provider shall purchase a surety bond and submit a report on forms designated by the state licensing agency. The provider shall give assurance of financial security in an amount equal to or greater than the sum of all residents' funds managed by the provider at any time.

(j) If a resident is incapable of managing the resident's personal needs fund, has no representative, and is eligible for supplemental security income (SSI), the provider shall notify the local office of the social security administration and request that a representative be appointed for that resident. If the resident is not eligible for SSI, the provider shall refer the resident to the local agency office, or the provider shall serve as a temporary representative payee for the resident until the actual appointment of a guardian, conservator, or representative payee.

(k) Resident property records.

(1) The provider shall maintain a current, written record for each resident that includes written

receipts for all personal possessions deposited with the provider by the resident.

(2) The property record shall be available to the resident and the resident's representative.

(l) Providers shall keep all personal needs funds in the state of Kansas.

(m) Personal needs funds shall not be turned over to any person other than a duly accredited agent or guardian of the resident. With the consent of the resident, if the resident is able and willing to give consent, the administrator shall turn over a resident's personal needs fund to a designated person to purchase a particular item. However, a signed, itemized, and dated receipt shall be required for deposit in the resident's personal needs fund envelope or another type of file.

(n) A receipt for each transaction shall be signed by the resident, legal guardian, conservator, or responsible party. Recognizing that a legal guardian, conservator, or responsible party is not necessarily available at the time each transaction is made for or on behalf of a resident, the provider shall have a procedure that includes a provision for receipts to be signed on at least a quarterly basis.

(o) The provider shall provide and maintain a system of accounting for expenditures from the resident's personal needs fund. This system shall follow generally accepted accounting principles and shall be subject to audit by representatives of the agency.

(p) Suspension of program payments may be made if the agency determines that any provider is not in compliance with the regulations governing personal needs funds. Thirty days before suspending payment to the provider, written notice shall be sent by the agency to the provider stating the agency's intent to suspend payments. The notice shall explain the basis for the agency's determination and shall explain the necessary corrective action that shall be completed before payments are released.

(q) This regulation shall be effective on and after May 1, 2005. (Authorized by and implementing K.S.A. 39-708c; effective, E-74-43, Aug. 16, 1974; effective, E-74-44, Aug. 28, 1974; effective May 1, 1975; amended, E-78-35, Dec. 30, 1977; amended May 1, 1978; amended, E-80-13, Aug. 8, 1979; amended May 1, 1980; amended May 1, 1981; amended May 1, 1982; amended May 1, 1983; amended May 1, 1984; amended May 1, 1986; amended May 1, 1987; amended May 1, 1988; amended Jan. 2, 1989; amended Jan. 2, 1990; amended, T-30-10-1-90, Oct. 1, 1990;

amended Jan. 30, 1991; amended Oct. 28, 1991; amended May 1, 1992; amended Jan. 4, 1993; amended Jan. 3, 1994; amended July 1, 2002; amended May 1, 2005.)

30-10-12. (Authorized by and implementing K.S.A. 1983 Supp. 39-708c; effective, E-74-43, Aug. 16, 1974; effective, E-74-44, Aug. 28, 1974; effective May 1, 1975; amended, E-76-34, July 1, 1975; amended May 1, 1976; amended Feb. 15, 1977; amended, E-78-35, Dec. 30, 1977; amended May 1, 1978; amended, E-79-20, Aug. 17, 1978; amended May 1, 1979; amended, E-80-13, Aug. 8, 1979; amended May 1, 1980; amended, E-81-25, Aug. 27, 1980; amended May 1, 1981; amended May 1, 1982; amended May 1, 1983; amended May 1, 1984; amended, T-85-9, April 11, 1984; revoked May 1, 1985.)

30-10-13. (Authorized by and implementing K.S.A. 1983 Supp. 39-708c; effective, E-74-44, Aug. 28, 1974; effective May 1, 1975; amended May 1, 1976; amended Feb. 15, 1977; amended, E-78-35, Dec. 30, 1977; amended May 1, 1978; amended, E-79-20, Aug. 17, 1978; amended May 1, 1979; amended, E-80-13, Aug. 8, 1979; amended May 1, 1980; amended May 1, 1981; amended May 1, 1982; amended May 1, 1983; amended, T-84-9, May 1, 1983; amended May 1, 1984; amended, T-85-34, Dec. 19, 1984; revoked May 1, 1985.)

30-10-14. (Authorized by and implementing K.S.A. 1997 Supp. 39-708c; effective May 1, 1985; amended, T-30-10-1-90, Oct. 1, 1990; amended Jan. 30, 1991; amended Aug. 14, 1998; revoked Aug. 15, 2003.)

30-10-15a. (Authorized by and implementing K.S.A. 39-708c; effective May 1, 1985; amended May 1, 1988; amended Jan. 2, 1989; amended Jan. 2, 1990; amended, T-30-10-1-90, Oct. 1, 1990; amended Jan. 30, 1991; amended July 1, 1991; amended Nov. 2, 1992; amended Jan. 3, 1994; amended Dec. 29, 1995; amended Jan. 1, 1997; amended Jan. 1, 1999; amended July 1, 2002; amended Aug. 15, 2003; revoked Sept. 19, 2008.)

30-10-15b. (Authorized by and implementing K.S.A. 39-708c; effective May 1, 1985; amended May 1, 1987; amended May 1, 1988; amended Jan. 2, 1989; amended Jan. 2, 1990; amended, T-30-10-1-90, Oct. 1, 1990; amended Jan. 30, 1991; amended Oct. 28, 1991; amended Nov. 2,

1992; amended Jan. 1, 1999; amended July 1, 2002; revoked Sept. 19, 2008.)

30-10-16. This rule and regulation shall expire on July 1, 1991. (Authorized by and implementing K.S.A. 39-708c, as amended by L. 1990, Chapter 152; effective May 1, 1987; amended Jan. 2, 1989; amended, T-30-10-1-90, Oct. 1, 1990; amended Jan. 30, 1991; revoked July 1, 1991.)

30-10-17. (Authorized by and implementing K.S.A. 39-708c; effective May 1, 1985; amended May 1, 1986; amended May 1, 1987; amended May 1, 1988; amended Jan. 2, 1989; amended Jan. 2, 1990; amended, T-30-10-1-90, Oct. 1, 1990; amended Jan. 30, 1991; amended Oct. 28, 1991; amended Nov. 2, 1992; amended Jan. 3, 1994; amended Dec. 29, 1995; amended Jan. 1, 1997; amended Jan. 1, 1999; amended July 1, 2002; amended Dec. 31, 2002; amended, T-30-5-30-03, July 1, 2003; amended July 25, 2003; amended May 1, 2005; revoked Sept. 19, 2008.)

30-10-18. (Authorized by and implementing K.S.A. 39-708c; effective May 1, 1985; amended May 1, 1986; amended, T-87-29, Nov. 1, 1986; amended May 1, 1987; amended, T-89-5, Jan. 21, 1988; amended Sept. 26, 1988; amended Jan. 2, 1989; amended Jan. 2, 1990; amended, T-30-10-1-90, Oct. 1, 1990; amended Jan. 30, 1991; amended Oct. 28, 1991; amended May 1, 1992; amended Nov. 2, 1992; amended Jan. 3, 1994; amended July 1, 1994; amended Sept. 30, 1994; amended Dec. 29, 1995; amended Jan. 1, 1999; amended June 28, 2002; amended Dec. 31, 2002; amended, T-30-5-30-03, July 1, 2003; amended July 25, 2003; amended, T-30-12-29-04, Dec. 29, 2004; amended April 1, 2005; revoked Sept. 19, 2008.)

30-10-19. (Authorized by and implementing K.S.A. 39-708c; effective May 1, 1985; amended May 1, 1987; amended May 1, 1988; amended Jan. 2, 1989; amended Jan. 2, 1990; amended, T-30-10-1-90, Oct. 1, 1990; amended Jan. 30, 1991; amended Oct. 28, 1991; amended Nov. 2, 1992; amended Jan. 3, 1994; amended Dec. 29, 1995; amended Jan. 1, 1997; amended July 1, 2002; amended, T-30-5-30-03, July 1, 2003; amended July 25, 2003; amended May 1, 2005; revoked Feb. 5, 2016.)

30-10-20. Payment of claims. (a) Payment to participating providers. Each participating provider shall be paid, at least monthly, a per diem

rate for nursing facility services, excluding resident liability, rendered to eligible residents if all of the following conditions are met:

(1) The agency is billed on the paper claim form or electronic claim submission furnished by the contractor serving as the fiscal agent for the medicaid/medikan program.

(2) The paper claim form or electronic claim submission is verified by the administrator of the facility or a designated key staff member.

(3) The claim is filed no more than 12 months after the time the services were rendered pursuant to K.S.A. 39-708a, and amendments thereto.

(4) The claim does not include services for the date of discharge.

(b) Resident's liability. The resident's liability for services shall be the amount determined by the local agency office in which a medicaid/medikan resident or the resident's agent applies for care. The resident's liability begins on the first day of each month and shall be applied in full before any liability incurred by the medicaid/medikan program. The unexpended portion of the resident's liability payment shall be refunded to the resident or to the resident's agent if the resident dies or otherwise permanently leaves the facility. Providers shall not charge fees or finance charges related to late payment of resident liability.

(c) The payment of claims may be suspended if there has been an identified overpayment and the provider is financially insolvent.

(d) This regulation shall be effective on and after May 1, 2005. (Authorized by and implementing K.S.A. 39-708c; effective May 1, 1985; amended Jan. 2, 1989; amended, T-30-10-1-90, Oct. 1, 1990; amended Jan. 30, 1991; amended Nov. 2, 1992; amended April 1, 1995; amended May 1, 2005.)

30-10-21. Reserve days. (a) Payment shall be available for nursing facility residents, excluding those on planned temporary stays, for days for which it is necessary to reserve a bed in a nursing facility (NF) or nursing facility for mental health (NF-MH) when the resident is absent for any of the following reasons:

(1) Admission to a hospital for acute conditions;

(2) therapeutically indicated home visits with relatives and friends; or

(3) participation in any state-approved therapeutic or rehabilitative program.

(b) In order for payment to be available, the following requirements shall be met when a bed is

reserved in a nursing facility or nursing facility for mental health because of a resident's hospitalization for acute conditions:

(1) The period of hospitalization shall not exceed either of the following limits:

(A) 10 days for each single hospital stay for an acute condition; or

(B) 21 days for residents from a nursing facility for mental health for each admission to a state mental institution or admission to a psychiatric ward in any of the following:

(i) A general hospital;

(ii) a private psychiatric hospital; or

(iii) a veterans administration medical center.

(2) The resident shall intend to return to the same facility after hospitalization.

(3) The hospital shall provide a discharge plan for the resident.

(4) Reimbursement shall not be made to reserve a bed in a swing bed hospital if a nursing facility will be reimbursed for the same day to reserve a bed for the resident's return from the hospital.

(c) The resident's plan of care shall provide for the non-hospital-related absence.

(1) Payment for non-hospital-related reserve days for eligible residents in nursing facilities for mental health shall not exceed 21 days per calendar year, including travel. If additional days are required to obtain or retain employment, participate in a job readiness training program, or alleviate a severe hardship, the requesting party shall send a request for additional days and supporting documentation to the fiscal agent for approval or disapproval.

(2) Payment for non-hospital-related reserve days for all eligible residents in nursing facilities shall not exceed 18 days per calendar year, including travel. If additional days are required to alleviate a severe hardship, the requesting party shall send a request for additional days and supporting documentation to the fiscal agent for approval or disapproval.

(d) This regulation shall not prohibit any resident from leaving a facility if the resident so desires.

(e) Payments made for unauthorized reserve days shall be reclaimed by the agency.

(f) (1) Before any routine absence by residents, the provider shall notify the local agency office.

(2) In case of emergency admission to a hospital, the provider shall notify the local agency office not later than five working days following admission.

(g) Payment for reserve days shall be approved except when the absence is longer than 10 hospi-

tal days for NF or NF-MH residents or 21 hospital days for NF-MH residents who enter either of the following:

- (1) A state mental hospital; or
- (2) a psychiatric ward in any of the following:
 - (A) A general hospital;
 - (B) a private psychiatric hospital; or
 - (C) a veterans administration medical center.

(Authorized by and implementing K.S.A. 39-708c; effective May 1, 1985; amended May 1, 1986; amended May 1, 1987; amended May 1, 1988; amended Jan. 2, 1989; amended Jan. 2, 1990; amended, T-30-3-29-90, April 1, 1990; amended, T-30-10-1-90, Oct. 1, 1990; amended Jan. 30, 1991; amended July 1, 1996; amended Oct. 1, 2000; amended July 1, 2002; amended Aug. 15, 2003.)

30-10-22. This rule and regulation shall expire on January 30, 1991. (Authorized by and implementing K.S.A. 1983 Supp. 39-708c; effective May 1, 1985; revoked, T-30-10-1-90, Oct. 1, 1990; revoked Jan. 30, 1991.)

30-10-23a. (Authorized by and implementing K.S.A. 39-708c; effective May 1, 1985; amended May 1, 1988; amended, T-30-10-1-90, Oct. 1, 1990; amended Jan. 30, 1991; amended July 1, 1991; amended Oct. 28, 1991; amended May 1, 1992; amended Nov. 2, 1992; amended Jan. 3, 1994; amended Dec. 29, 1995; amended July 1, 2002; amended Dec. 31, 2002; amended May 1, 2005; revoked Sept. 19, 2008.)

30-10-23b. (Authorized by and implementing K.S.A. 39-708c; effective May 1, 1985; amended, T-30-10-1-90, Oct. 1, 1990; amended Jan. 30, 1991; amended May 1, 1992; amended Nov. 2, 1992; amended Dec. 29, 1995; amended Aug. 15, 2003; amended May 1, 2005; revoked Sept. 19, 2008.)

30-10-23c. Revenues. A statement of revenue shall be required as part of the cost report forms. (a) Revenue shall be reported in accordance with general accounting rules as recorded in the accounting records of the facility and as required in the detailed revenue schedule in the uniform cost report.

(b) The cost of non-covered services provided to residents shall be deducted from the related expense item. The net expense shall not be less than zero.

(c) Revenue received for a service that is not related to resident care shall be used to offset the cost of providing that service, if the cost incurred cannot

be determined or is not furnished to the agency by the provider. The cost report line item which includes the non-resident related costs shall not be less than zero. Miscellaneous revenue with insufficient explanation in the cost report shall be offset.

(d) Expense recoveries credited to expense accounts shall not be reclassified as revenue to increase the costs reported in order to qualify for a higher rate. The effective date of this regulation shall be November 2, 1992. (Authorized by and implementing K.S.A. 1991 Supp. 39-708c, as amended by 1992 SB 182, Sec. 5; effective May 1, 1985; amended May 1, 1987; amended, T-30-10-1-90, Oct. 1, 1990; amended Jan. 30, 1991; amended Nov. 2, 1992.)

30-10-24. Compensation of owners, related parties, and administrators. (a) Non-working owners and related parties. Remunerations paid to non-working owners or other related parties, as defined in K.A.R. 30-10-1a, shall not be considered an allowable cost regardless of the name assigned to the transfer or accrual or the type of provider entity making the payment. Each payment shall be separately identified and reported as owner compensation in the non-reimbursable and non-resident-related expense section of the cost report.

(b) Services related to resident care.

(1) If owners with five percent or more ownership interest or related parties actually perform a necessary function directly contributing to resident care, a reasonable amount shall be allowed for such resident care activity. The reasonable amount allowed shall be the lesser of the following:

(A) The reasonable cost that would have been incurred to pay a non-owner employee to perform the resident-related services actually performed by owners or other related parties, limited by a schedule of salaries and wages based on the state civil service salary schedule in effect when the cost report is processed until the subsequent cost report is filed; or

(B) the amount of cash and other assets actually withdrawn by the owner or related parties.

(2) The resident-related functions shall be limited to those functions that are normally performed by non-owner employees common to the industry and for which cost data is available. The job titles for administrative and supervisory duties performed by an owner or related party shall be limited to the work activities included in the schedule of the owner or related party salary limitations.

(3) The salary limit shall be prorated in accordance with subsection (c) of this regulation. The limitation shall not exceed the highest salary limit on the civil-service-based chart.

(4) The owner or related party shall be professionally qualified for those functions performed that require licensure or certification.

(5) Cash and other assets actually withdrawn shall include only those amounts or items actually paid or transferred during the cost reporting period in which the services were rendered and reported to the internal revenue service.

(6) The owner or related party shall pay any liabilities established in cash within 75 days after the end of the accounting period.

(c) Allocation of owner or related party total work time for resident-related functions. When any owner or related party performs a resident-related function for less than a full-time-equivalent work week, defined as 40 hours per week, the compensation limit shall be prorated. The time spent on each function within a facility or within all facilities in which the owner or related party has an ownership or management interest shall be prorated separately by function, but shall not exceed 100 percent of that person's total work time. Time spent on other non-related business interests or work activities shall not be included in calculations of total work time.

(d) Reporting owner or related party compensation on cost report. The provider shall report owner or related party compensation on the owner compensation line in the appropriate cost center for the work activity involved. Any compensation paid to employees who have an ownership interest of five percent or more, including employees at the central office of a chain organization, shall be deemed owner compensation. Providers with any professionally qualified owner or related party employees performing duties other than those for which they are professionally qualified shall report the cost for these duties in the operating cost center.

(e) Owner-administrator compensation limitation.

(1) Reasonable limits shall be determined by the agency for owner-administrator compensation based upon the current civil service salary schedule.

(2) This limitation shall apply to the salaries of each administrator and coadministrator of that facility and to owner compensation reported in the operating cost center. This limitation shall apply to the salaries of the administrator and coadminis-

trator, regardless of whether they have any ownership interest in the business entity.

(3) Each salary in excess of the owner or related party limitations determined in accordance with subsections (b) and (c) of this regulation shall be transferred to the owner compensation line in the operating cost center and shall be subject to the owner-administrator compensation limitation. The provider shall include all owner-administrator compensation in excess of the limitation in the administrative costs used to compute the incentive factor.

(f) Management consultant fees. Fees for consulting services provided by owners and related parties shall be deemed owner's compensation subject to the owner-administrator compensation limit. The provider shall report fees on the owner compensation line in the operating cost center if the actual cost of the service is not submitted with the adult care home financial and statistical report:

(1) Related parties as defined in K.A.R. 30-10-1a;

(2) current owners of the provider agreement and operators of the facility;

(3) current owners of the facility in a lessor-lessee relationship;

(4) management consulting firms owned and operated by former business associates of the current owners in this and other states;

(5) owners who sell and enter into management contracts with the new owner to operate the facility; and

(6) accountants, lawyers, and other professional people who have common ownership interests in other facilities, in this or other states, with the owners of the facility from which the consulting fee is received.

(g) Costs not related to resident care. An allowance shall not be made for costs related to investigation of investment opportunities, travel, entertainment, goodwill, or administrative or managerial activities performed by owners or other related parties that are not directly related to resident care.

(h) This regulation shall be effective on and after July 1, 2002. (Authorized by and implementing K.S.A. 39-708c; effective May 1, 1985; amended May 1, 1986; amended May 1, 1987; amended May 1, 1988; amended Jan. 2, 1989; amended, T-30-10-1-90, Oct. 1, 1990; amended Jan. 30, 1991, amended Oct. 28, 1991; amended Dec. 29, 1995; amended July 1, 2002.)

30-10-25. (Authorized by and implementing K.S.A. 39-708c; effective May 1, 1985; amended May 1, 1988; amended Jan. 2, 1990; amended, T-30-10-1-90, Oct. 1, 1990; amended Jan. 30, 1991; amended Oct. 28, 1991; amended Nov. 2, 1992; amended Jan. 3, 1994; amended Dec. 29, 1995; amended Jan. 1, 1997; amended Jan. 1, 1999; amended July 1, 2002; revoked Sept. 19, 2008.)

30-10-26. (Authorized by and implementing K.S.A. 1997 Supp. 39-708c; effective May 1, 1985; amended May 1, 1986; amended May 1, 1987; amended, T-30-10-1-90, Oct. 1, 1990; amended Jan. 30, 1991; amended Jan. 1, 1999; revoked Sept. 19, 2008.)

30-10-27. (Authorized by and implementing K.S.A. 39-708c; effective May 1, 1985; amended, T-30-10-1-90, Oct. 1, 1990; amended Jan. 30, 1991; amended Oct. 28, 1991; amended Dec. 29, 1995; amended July 1, 2002; revoked Sept. 19, 2008.)

30-10-28. Resident days. (a) Calculation of resident days.

(1) "Resident day" shall have the meaning set forth in K.A.R. 30-10-1a.

(2) If both admission and discharge occur on the same day, that day shall be considered to be a day of admission and shall count as one resident day.

(3) If the provider does not make refunds on behalf of a resident for unused days in case of death or discharge, and if the bed is available and actually used by another resident, these unused days shall not be counted as a resident day.

(4) Any bed days paid for by the resident, or any other party on behalf of the resident, before an admission date shall not be counted as a resident day.

(5) The total resident days for the cost report period shall be precise and documented; an estimate of the days of care provided shall not be acceptable.

(6) In order to facilitate accurate and uniform reporting of resident days, the accumulated method format set forth in data specifications in diskettes furnished by the agency shall be used for all residents beginning January 1, 1999. The monthly reporting, using the diskette, shall be submitted to the agency as supportive documentation for the resident days shown on the cost report forms and shall be submitted at the time the cost report and required documents are submitted to the agency. Monthly census summaries shall include reporting for nursing facility or nursing facility-mental

health, other residential days with shared nursing facility or nursing facility-mental health costs, and day care hours. Each provider shall keep these monthly records for each resident, whether a Kansas medical assistance program recipient or a non-recipient. If the provider fails to keep accurate records of resident days in accordance with the accumulated method format, the assumed occupancy rate shall be 100 percent.

(7) The provider shall report the total number of Kansas medical assistance program resident days in addition to the total resident days on the uniform cost report form.

(8) The provider shall report the total number of other residential days with shared nursing facility or nursing facility-mental health costs on the uniform cost report form.

(b) Respite care days shall be counted as resident days and reported on the monthly census forms.

(c) Day care and day treatment shall be counted as one resident day for 18 hours of service. The total hours of service provided for all residents during the cost reporting year shall be divided by 18 hours to convert to resident days.

(d) This regulation shall take effect on and after January 1, 1999. (Authorized by and implementing K.S.A. 1997 Supp. 39-708c; effective May 1, 1985; amended May 1, 1987; amended Jan. 2, 1989; amended Jan. 2, 1990; amended, T-30-10-1-90, Oct. 1, 1990; amended Jan. 30, 1991; amended Nov. 2, 1992; amended Jan. 3, 1994; amended Jan. 1, 1999.)

30-10-29. (Authorized by and implementing K.S.A. 1994 Supp. 39-708c, as amended by L. 1995, Ch. 153, Sec. 1; effective, T-86-42, Dec. 18, 1985; effective, T-87-5, May 1, 1986; effective May 1, 1987; amended May 1, 1988; amended Jan. 2, 1990; amended, T-30-10-1-90, Oct. 1, 1990; amended Jan. 30, 1991; amended May 1, 1991; amended Oct. 28, 1991; amended Nov. 2, 1992; amended Dec. 29, 1995; revoked June 28, 2002.)

30-10-30. This rule and regulation shall expire on May 1, 1991. (Authorized by K.S.A. 39-708c; implementing 1989 HB 2028; effective Jan. 2, 1990; revoked May 1, 1991.)

30-10-200. (Authorized by and implementing K.S.A. 1990 Supp. 39-708c; effective, T-30-10-1-90, Oct. 1, 1990; effective Jan. 30, 1991; amended Oct. 1, 1991; amended April 1, 1992; revoked Sept. 19, 2008.)

30-10-201. Intermediate care facilities for mentally retarded. (a) Change of provider.

(1) The current provider or prospective provider shall notify the agency of a proposed change of providers at least 60 days in advance of the closing transaction date. Failure to submit a timely notification shall result in the new provider assuming responsibility for any overpayment made to the previous provider before the transfer. This shall not release the previous provider of responsibility for such overpayment.

(2) Before the dissolution of the business entity, the change of ownership of the business entity, or the sale, exchange or gift of 5% or more of the depreciable assets of the business entity, the agency shall be notified in writing concerning the change at least 60 days before the change. Failure to submit a timely notification shall result in the new provider assuming responsibility for any overpayment made to the previous provider before the transfer. This shall not release the previous provider of responsibility for such overpayment. The secretary may expressly agree in writing to other overpayment recovery terms.

(3) Any partnership that is dissolved shall not require a new provider agreement if at least one member of the original partnership remains as the provider of services. Any addition or substitution to a partnership or any change of provider resulting in a completely new partnership shall require that an application to be a provider of services be submitted to the agency.

(4) If a sole proprietor not incorporated under applicable state law transfers title and property to another party, a change of ownership shall have occurred. An application to be a provider of services shall be submitted to the agency.

(5) Transfer of participating provider corporate stock shall not in itself constitute a change of provider. Similarly, a merger of one or more corporations with the participating provider corporation surviving shall not constitute a change of provider. A consolidation of two or more corporations which creates a new corporate entity shall constitute a change of provider and an application to be a provider of services shall be submitted to the agency.

(6) The change of or a creation of a new lessee, acting as a provider of services, shall constitute a change of provider. An application to be a provider of services shall be submitted to the agency. If the lessee of the facility purchases the facility, the purchase shall not constitute a change in provider.

(b) Each new provider shall be subject to a certification survey by the department of health and environment and, if certified, the period of certification shall be as established by the Kansas department of health and environment. The effective date of this regulation shall be January 30, 1991. (Authorized by and implementing K.S.A. 39-708c, as amended by L. 1990, Chapter 152; effective, T-30-10-1-90, Oct. 1, 1990; effective Jan. 30, 1991.)

30-10-202. ICF-MR provider agreement. As a prerequisite for participation in the medicaid/medikan program as an ICF-MR provider, the owner or lessee shall enter into a provider agreement with the agency on forms prescribed by the secretary. The effective date of this regulation shall be January 30, 1991. (Authorized by and implementing K.S.A. 39-708c, as amended by L. 1990, Chapter 152; effective, T-30-10-1-90, Oct. 1, 1990; effective Jan. 30, 1991.)

30-10-203. ICF-MR inadequate care. (a) When the agency determines that inadequate care is being provided to a client, payment to the ICF-MR for the client may be terminated.

(b) When the agency receives confirmation from the Kansas department of health and environment that an ICF-MR has not corrected deficiencies which significantly and adversely affect the health, safety, nutrition or sanitation of ICF-MR clients, payments for new admissions shall be denied and future payments for all clients shall be withheld until confirmation that the deficiencies have been corrected. The effective date of this regulation shall be January 30, 1991. (Authorized by and implementing K.S.A. 39-708c, as amended by L. 1990, Chapter 152; effective, T-30-10-1-90, Oct. 1, 1990; effective Jan. 30, 1991.)

30-10-204. ICF-MR standards for participation; intermediate care facility for the mentally retarded or clients with related conditions. As a prerequisite for participation in the medicaid/medikan program as a provider of intermediate care facility services for the mentally retarded or clients with related conditions, each ICF-MR shall: (a) Meet the requirements of 42 CFR 442, subparts A, B, C and E, effective October 3, 1988, which is adopted by reference, and 42 CFR 483, subpart D, effective October 3, 1988, which is adopted by reference; and

(b) be certified for participation in the program by the Kansas department of health and environ-

ment. The effective date of this regulation shall be January 30, 1991. (Authorized by and implementing K.S.A. 39-708c, as amended by L. 1990, Chapter 152; effective, T-30-10-1-90, Oct. 1, 1990; effective Jan. 30, 1991.)

30-10-205. ICF-MR admission procedure. (a) Admission procedure for ICF's-MR shall be pursuant to 42 CFR 483.440, effective October 3, 1988, which is adopted by reference.

(b) An ICF-MR shall not require a private-paying client to remain in a private-pay status for any period of time after the client becomes eligible for medicaid/medikan.

(c) Each client shall be screened and found eligible for services before the client is admitted in the medicaid/medikan program. The effective date of this regulation shall be January 30, 1991. (Authorized by and implementing K.S.A. 39-708c, as amended by L. 1990, Chapter 152; effective, T-30-10-1-90, Oct. 1, 1990; effective Jan. 30, 1991.)

30-10-206. ICF-MR certification and recertification by physicians. (a) Certification. At the time of admission to an ICF-MR or at the time any ICF-MR client applies for medical assistance under the medicaid/medikan program, a physician or physician extender shall certify that the services must be given on an inpatient basis. Services shall be furnished under a plan established by the physician or physician extender before authorization of payment. Before reimbursement is approved, a screening team designated by the secretary shall review the physician's or physician extender's certification and shall certify that services in an ICF-MR are the most appropriate services available for the individual. The certification of need shall become part of the individual's medical record. The date of certification shall be the date the case is approved for payment and the certification is signed.

(b) Recertification.

(1) Each ICF-MR shall be responsible for obtaining a physician's or physician extender's recertification for each client.

(2) The recertification shall be included in the client's medical record. Recertification statements may be entered on or included with forms, notes, or other records a physician or physician extender normally signs in caring for a client. The statement shall be authenticated by the actual date and signature of the physician or physician extender.

(c) If the appropriate professional refuses to certify or recertify because, in the professional's opinion, the client does not require ICF-MR care on a continuing basis, the services shall not be covered. The reason for the refusal to certify or recertify shall be documented in the client's records. The effective date of this regulation shall be January 30, 1991. (Authorized by and implementing K.S.A. 39-708c, as amended by L. 1990, Chapter 152; effective, T-30-10-1-90, Oct. 1, 1990; effective Jan. 30, 1991.)

30-10-207. ICF-MR inspection of care and utilization review. (a) The inspection of care team from the Kansas department of health and environment shall conduct an inspection of care and utilization review of each medicaid/medikan client in all intermediate care facilities for the mentally retarded certified to participate in the medicaid/medikan program.

(b) Each ICF-MR shall cooperate with authorized representatives of the agency and the department of health and human services in the discharge of their duties regarding all aspects of the inspection of care and utilization review.

(c) Any ICF-MR where the utilization review team finds inappropriately placed clients shall be responsible for providing transportation for the clients to a more appropriate placement facility. The effective date of this regulation shall be October 1, 1991. (Authorized by and implementing K.S.A. 1990 Supp. 39-708c; effective, T-30-10-1-90, Oct. 1, 1990; effective Jan. 30, 1991; amended Oct. 1, 1991.)

30-10-208. ICF-MR personal needs fund. (a) At the time of admission, ICF-MR providers shall furnish that client and the representative with a written statement that:

(1) Lists all services provided by the provider, distinguishing between those services included in the provider's per diem rate and those services not included in the provider's basic rate, that can be charged to the client's personal needs fund;

(2) states that there is no obligation for the client to deposit funds with the provider;

(3) describes the client's rights to select one of the following alternatives for managing the personal needs fund:

(A) The client may receive, retain and manage the client's personal needs fund or have this done by a legal guardian, if any;

(B) the client may apply to the social security administration to have a representative payee des-

igned for purposes of federal or state benefits to which the client may be entitled;

(C) except when paragraph (B) of this subsection applies, the client may designate, in writing, another person to act for the purpose of managing the client's personal needs fund;

(4) states that any charge for these services is included in the provider's per diem rate;

(5) states that the provider is required to accept a client's personal needs fund to hold, safeguard, and provide an accounting, upon the written authorization of the client or representative, or upon appointment of the provider as a client's representative payee; and

(6) states that, if, in the opinion of the professional interdisciplinary team, the client becomes incapable of managing the personal needs fund and does not have a representative, the provider is required to arrange for the management of the client's personal funds as provided in K.A.R. 30-10-208(j).

(b) (1) The provider shall upon written authorization by the client, accept responsibility for holding, safeguarding and accounting for the client's personal needs fund. The provider may make arrangements with a federally or state insured banking institution to provide these services. However, the responsibility for the quality and accuracy of compliance with the requirements of K.A.R. 30-10-208 shall remain with the provider. The provider may not charge the client for these services, but shall include any charges in the provider's per diem rate.

(2) The provider shall maintain current, written, individual records of all financial transactions involving each client's personal needs fund for which the provider has accepted responsibility. The records shall include at least the following:

(A) The client's name;

(B) an identification of client's representative, if any;

(C) the admission date;

(D) the date and amount of each deposit and withdrawal, the name of the person who accepted the withdrawn funds, and the balance after each transaction;

(E) receipts indicating the purpose for which any withdrawn funds were spent; and

(F) the client's earned interest, if any.

(3) The provider shall provide each client reasonable access to the client's own financial records.

(4) The provider shall provide a written statement, at least quarterly, to each client or repre-

sentative. The statement shall include at least the following:

(A) The balance at the beginning of the statement period;

(B) total deposits and withdrawals;

(C) the interest earned, if any, and;

(D) the ending balance.

(c) Commingling prohibited. The provider shall keep any funds received from a client for holding, safeguarding and accounting separate from the provider's operating funds, activity funds, client council funds and from the funds of any person other than another client in that facility.

(d) Types of accounts; distribution of interest.

(1) Petty cash. The provider may keep up to \$50.00 of a client's money in a non-interest bearing account or petty cash fund.

(2) Interest-bearing accounts. The provider shall, within 15 days of receipt of the money, deposit in an interest-bearing account any funds in excess of \$50.00 from an individual client. The account may be individual to the client or pooled with other client accounts. If a pooled account is used, each client shall be individually identified on the provider's books. The account shall be in a form that clearly indicates that the provider does not have an ownership interest in the funds. The account shall be insured under federal or state law.

(3) The interest earned on any pooled interest-bearing account shall be distributed in one of the following ways, at the election of the provider:

(A) Pro-rated to each client on an actual interest-earned basis; or

(B) pro-rated to each client on the basis of the client's end-of-quarter balance.

(e) The provider shall provide the clients with reasonable access to their personal needs funds. The provider shall, upon request or upon the client's transfer or discharge, return to the client, the legal guardian or the representative payee the balance of the client's personal needs fund for which the provider has accepted responsibility, and any funds maintained in a petty cash fund. When a client's personal needs fund for which the provider has accepted responsibility is deposited in an account outside the facility, the provider, upon request or upon the client's transfer or discharge, shall within 15 business days, return to the client, the legal guardian, or the representative payee, the balance of those funds.

(f) When a provider is a client's representative payee and directly receives monthly benefits to

which the client is entitled, the provider shall fulfill all of its legal duties as representative payee.

(g) Duties on change of provider.

(1) Upon change of providers, the former provider shall furnish the new provider with a written account of each client personal needs fund to be transferred, and obtain a written receipt for those funds from the new provider.

(2) The provider shall give each client's representative a written accounting of any personal needs fund held by the provider before any change of provider occurs.

(3) In the event of a disagreement with the accounting provided by the previous provider or the new provider, the client shall retain all rights and remedies provided under state law.

(h) Upon the death of a client, the provider shall provide the executor or administrator of a client's estate with a written accounting of the client's personal needs fund within 30 business days of a client's death. If the deceased client's estate has no executor or administrator, the provider shall provide the accounting to:

(1) The client's next of kin;

(2) the client's representative; and

(3) the clerk of the probate court of the county in which the client died.

(i) The provider shall purchase a surety bond in the name of the provider on behalf of the clients or employee indemnity bond, or submit a letter of credit or individual or corporate surety, to guarantee the security of clients' funds when the amount in the aggregate exceeds \$1,000.00. The guarantee shall be sufficient to secure the highest quarterly balance from the previous year.

(j) If a client is incapable of managing the client's personal needs fund, has no representative, and is eligible for SSI, the provider shall notify the local office of the social security administration and request that a representative be appointed for that client. If the client is not eligible for SSI, the provider shall refer the client to the local agency office, or the provider shall serve as a temporary representative payee for the client until the actual appointment of a guardian or conservator or representative payee.

(k) Client property records.

(1) The provider shall maintain a current, written record for each client that includes written receipts for all personal possessions deposited with the provider by the client.

(2) The property record shall be available to the client and the client's representative.

(l) Providers shall keep the funds in the state of Kansas.

(m) Personal needs fund shall not be turned over to any person other than a duly accredited agent or guardian of the client. With the consent of the client, if the client is able and willing to give consent, the administrator shall turn over a client's personal needs fund to a designated person to purchase a particular item. However, a signed, itemized, and dated receipt shall be required for deposit in the client's personal needs fund envelope or another type of file.

(n) Receipts shall be signed by the client, legal guardian, conservator or responsible party for all transactions. Recognizing that a legal guardian, conservator or responsible party may not be available at the time each transaction is made for or on behalf of a client, the provider shall have a procedure which includes a provision for signed receipts at least quarterly.

(o) The provider shall provide and maintain a system of accounting for expenditures from the client's personal needs fund. This system shall follow generally accepted accounting principles and shall be subject to audit by representatives of the agency. The effective date of this regulation shall be October 1, 1991. (Authorized by and implementing K.S.A. 1990 Supp. 39-708c; effective, T-30-10-1-90, Oct. 1, 1990; effective Jan. 30, 1991; amended Oct. 1, 1991.)

30-10-209. ICF-MR prospective reimbursement. Providers participating in the medicaid/medikan program shall be reimbursed for ICF-MR services through rates that are reasonable and adequate to meet the client-related costs which must be incurred by efficiently and economically operated facilities in order to provide care and services in conformity with applicable state and federal laws, regulations, and quality and safety standards. Because even efficiently and economically operated facilities may incur some excess or inefficient costs, in this prospective payment system the identification of efficiently and economically operated facilities by the procedures and limitations of this article shall be an aggregate determination. (Authorized by and implementing K.S.A. 1997 Supp. 39-708c; effective, T-30-10-1-90, Oct. 1, 1990; effective Jan. 30, 1991; amended Aug. 14, 1998.)

30-10-210. (Authorized by and implementing K.S.A. 1990 Supp. 39-708c; effective, T-30-12-28-90, Dec. 28, 1990; effective March 4, 1991;

amended Oct. 1, 1991; amended April 1, 1992; revoked Sept. 19, 2008.)

30-10-211. ICF-MR financial data. (a) General. The per diem rate or rates for providers participating in the medicaid/medikan program shall be based on an audit or desk review of the costs reported to provide client care in each facility. The basis for conducting these audits or reviews shall be the ICF-MR financial and statistical report MH&RS-2004. Each provider shall maintain sufficient financial records and statistical data for proper determination of reasonable and adequate rates. Standardized definitions, accounting, statistics, and reporting practices which are widely accepted in the ICF-MR and related fields shall be followed, except to the extent that they may conflict with or be superseded by state or federal medicaid requirements. Changes in these practices and systems shall not be required in order to determine reasonable and adequate rates.

(b) Pursuant to K.A.R. 30-10-213, ICF-MR financial and statistical reports, MH&RS-2004, (cost reports) shall be required from providers on an annual basis.

(c) Adequate cost data and cost findings. Each provider shall provide adequate cost data on the cost report. This cost data shall be in accordance with state and federal medicaid requirements and general accounting principles, shall be based on the accrual basis of accounting, and may include a current use value of the provider's fixed assets used in client care. Estimates of costs shall not be allowable except on projected cost reports submitted pursuant to K.A.R. 30-10-213.

(d) Recordkeeping requirements.

(1) Each provider shall furnish any information to the agency that may be necessary:

(A) To assure proper payment by the program pursuant to paragraph (2);

(B) to substantiate claims for program payments; and

(C) to complete determinations of program overpayments.

(2) Each provider shall permit the agency to examine any records and documents that are necessary to ascertain information pertinent to the determination of the proper amount of program payments due. These records shall include:

(A) Matters of the ICF-MR ownership, organization, and operation, including documentation as to whether transactions occurred between related parties;

(B) fiscal, medical, and other recordkeeping systems;

(C) federal and state income tax returns and all supporting documents;

(D) documentation of asset acquisition, lease, sale or other action;

(E) franchise or management arrangements;

(F) matters pertaining to costs of operation;

(G) amounts of income received, by source and purpose;

(H) a statement of changes in financial position; and

(I) actual cost of day care programs provided to ICF/MR clients.

Other records and documents shall be made available as necessary. Records and documents shall be made available in Kansas. Any provider who fails to provide any documents requested by the agency may be suspended from the ICF/MR program.

(3) Each provider, when requested, shall furnish the agency with copies of client service charge schedules and changes thereto as they are put into effect. The agency shall evaluate the charge schedules to determine the extent to which they may be used for determining program payment.

(4) Suspension of program payments to a provider. If the agency determines that any provider does not maintain or no longer maintains adequate records for the determination of reasonable and adequate per diem rates under the program, payments to that provider may be suspended until deficiencies are corrected. Thirty days before suspending payment to the provider, the agency shall send written notice to the provider of its intent to suspend payments. The notice shall explain the basis for the agency's determination with respect to the provider's records and shall identify the provider's recordkeeping deficiencies.

(5) All records of each provider that are used in support of costs, charges and payments for services and supplies shall be subject to inspection and audit by the agency, the United States department of health and human services, and the United States general accounting office. All financial and statistical records to support costs reports shall be retained for five years from the date of filing the cost report with the agency. The effective date of this regulation shall be October 1, 1991. (Authorized by and implementing K.S.A. 1990 Supp. 39-708c; effective, T-30-12-28-90, Dec. 28, 1990; effective March 4, 1991; amended Oct. 1, 1991.)

30-10-212. ICF-MR extra care. (a) Additional reimbursement for direct services shall be available to ICF's-MR for medicaid/medikan clients in need of extra care. Failure to obtain prior authorization shall negate reimbursement for this service.

(b) Extra care shall be considered a covered service within the scope of the program unless the request for prior authorization is denied. Reimbursement for this service shall be contingent on approval by the agency.

(c) The additional reimbursement for extra care shall be shown as a provider adjustment on the individual line item of benefit on the ICF-MR financial and statistical report. Extra care costs shall not be included as a component when calculating the final rate for the facility. The effective date of this regulation shall be April 1, 1992. (Authorized by and implementing K.S.A. 1990 Supp. 39-708c; effective, T-30-12-28-90, Dec. 28, 1990; effective March 4, 1991; amended Oct. 1, 1991; amended April 1, 1992.)

30-10-213. ICF-MR cost reports. (a) Historical cost data.

(1) For cost reporting purposes, each provider shall submit the ICF-MR financial and statistical report in accordance with the instructions included in this regulation. The report shall cover a consecutive 12-month period of operations. The 12-month period shall coincide with the fiscal year used for federal income tax or other financial reporting purposes. The same 12-month period shall be used by providers related through common ownership, common interests or common control. A non-owner operator of a facility must have a signed provider agreement to be considered a provider for the purpose of this paragraph. A working trial balance, as defined in K.A.R. 30-10-200, and a detailed depreciation schedule shall be submitted with the cost report.

(2) If a provider has more than one facility, the provider shall allocate central office costs to each facility consistently, based on generally accepted accounting principles, including any facilities being paid rates from projected cost data.

(b) Amended cost reports. Amended cost reports revising cost report information previously submitted by a provider shall be required when the error or omission is material in amount and results in a change in the provider's rate of \$.10 or more per client day. Amended cost reports shall also be permitted when the error or omission af-

fects the current or future accounting periods of the provider. No amended cost report shall be allowed after 13 months have passed from the report year end.

(c) Due dates of cost reports. Cost reports shall be received by the agency no later than the close of business on the last day of the third month following the close of the period covered by the report. Cost reports from each provider with more than one facility shall be received on the same date.

(d) Extension of time for submitting a cost report to be received by the agency.

(1) A one-month extension of the due date of a cost report may, for good cause, be granted by the agency. The request shall be in writing and shall be received by the agency prior to the due date of the cost report. Requests received after the due date shall not be accepted.

(2) A second extension may be granted in writing by the secretary of the agency when the cause for further delay is beyond the control of the provider.

(3) Each provider who requests an extension of time for filing a cost report to delay the effective date of the new rate, which is lower than the provider's current rate, shall have the current rate reduced to the amount of the new rate. The reduced rate shall be effective on the date that the new rate would have been effective if the cost report had been received on the last day of the filing period without the extension.

(e) Penalty for late filing. Except as provided in subsection (d), each provider filing a cost report after the due date shall be subject to the following penalties.

(1) If the cost report has not been received by the agency by the close of business on the due date, all further payments to the provider shall be withheld and suspended until the complete ICF-MR financial and statistical report has been received.

(2) Failure to submit cost information within one year after the end of the provider's fiscal year shall be cause for termination from the medicaid/medikan program.

(f) Projected cost data.

(1) If a provider is required to submit a projected cost report under K.A.R. 30-10-214, the provider's rate or rates shall be based on a proposed budget with costs projected on a line item basis for the provider's most immediate future 12-month period.

(2) The projection period shall end on the last day of a calendar month. Providers shall use the last day of the month nearest the end of the 12-month period specified in subparagraph (1) or the end of their fiscal year when that period ends not more than one month before or after the end of the 12-month report period. The projection period shall not be less than 11 months or more than 13 months. Historical cost data reported shall be for the full period reported if that period is less than 12 months or the latest consecutive 12-month period if the report period is extended beyond 12 months to meet this requirement.

(3) The projected cost report shall be approved for reasonableness and appropriateness by the agency before the rate or rates are established for the projection period, and upon receipt of the provider's historical cost report for the time period covered by the projected cost report. The projected cost report items which are determined to be unreasonable or which contain deviations from the historical cost report shall, upon audit, be handled in accordance with subsection (f) of K.A.R. 30-10-214.

(4) The projection period of each provider filing a projected cost report in accordance with paragraph (2) of subsection (e) of K.A.R. 30-10-214 shall be extended to the last day of the 12th month following the date the new construction is certified for use by the appropriate agency. The projected and historical cost reports for this projection period shall be handled in accordance with paragraph (1) of this subsection. If the projection period prior to the certification of the new construction exceeds three months, the provider shall be required to file a historical cost report for this period for the purpose of retroactive settlement in accordance with paragraph (1) of this subsection.

(5) An interim settlement, based on a desk review of the historical cost report for the projection period, may generally be determined within 90 days after the provider is notified of the new rate determined from such cost report. The final settlement shall be based on an audit of the historical cost report.

(g) Balance sheet requirement. A balance sheet prepared in accordance with cost report instructions shall be filed as part of the cost report forms for each provider. The effective date of this regulation shall be October 1, 1991. (Authorized by and implementing K.S.A. 1990 Supp. 39-708c; effective, T-30-12-28-90, Dec. 28, 1990; effective March 4, 1991; amended Oct. 1, 1991.)

30-10-214. ICF-MR rates of reimbursement. (a) Rates for ICF's-MR.

(1) The determination of per diem rates shall be made, at least annually by the secretary, on the basis of the cost information supplied by the provider, and retained for cost auditing. The cost information for each provider shall be compared with limits established based on the level of care needs of clients to determine the allowable per diem cost.

(2) Ownership allowance shall be determined as follows:

(A) All ICF's-MR initially certified to participate in the medicaid/medikan program prior to July 1, 1991 shall be held to the established ownership allowance.

(B) All ICF's-MR certified on or after July 1, 1991 shall be subject to an absolute cap on ownership costs.

(3) Per diem rates for the following cost centers shall be limited by absolute caps.

(A) The cost center limits shall be based on facility size and level of care. The cost centers and limiting factors shall be:

(i) Direct service based on facility size and level of care. Direct service consists of the room and board and health care cost centers in the ICF-MR financial and statistical report;

(ii) administration based on facility size; and

(iii) plant operating based on total allowable costs;

(B) The absolute caps shall be reviewed at least annually for reasonableness based on the reimbursement model and the allowable historical costs. The absolute caps shall be approved by the secretary or a designated official.

(4) To establish a per diem rate for each provider by facility size and level of care, a factor for inflation may be added to the allowable per diem cost. The per diem rate shall be based on the lower of the actual allowable cost or the absolute cost center limits. A detailed listing of the computation of the rate shall be provided to each provider. The effective date of the rate for existing facilities shall be in accordance with subsection (a) of K.A.R. 30-10-215.

(b) Comparable service rate limitations.

(1) Intermediate care facilities for the mentally retarded and persons with related conditions. The per diem rate for intermediate care for the mentally retarded and persons with related conditions shall not exceed the rate charged to clients not under the medicaid/medikan program for the same level of care in the ICF-MR and for the same type of service.

(2) All private pay rate structure changes and the effective dates shall be reported on the uniform cost report.

(3) The ICF-MR shall notify the agency of any private pay rate structure changes within 30 days of the effective date of a new medicaid rate.

(4) Providers shall have a grace period to raise the rate or rates charged to clients not under the medicaid/medikan program for the same level of care in the ICF-MR.

(A) The grace period shall end the first day of the third calendar month following the notification date of a new medicaid/medikan rate.

(B) The notification date is the date typed on the letter which informs the provider of a new medicaid/medikan rate.

(C) There shall be no penalty during the grace period if the rate charged to clients not under the medicaid/medikan program is lower than the medicaid/medikan rate for the same level of care in the ICF-MR and for the same type of service.

(D) If the rate charged to clients not under the medicaid/medikan program is lower than the rate charged to medicaid/medikan clients after the grace period, the medicaid/medikan rate will be lowered as of the original effective date of the most recent changes.

(c) Rates for new construction or bed additions. The per diem rate for newly constructed ICF's-MR shall be based on a projected cost report submitted in accordance with K.A.R. 30-10-213. No rate shall be paid until an ICF-MR financial and statistical report is received and approved. Limitations established for existing facilities providing the same level of care shall apply. The effective date of the per diem rate shall be in accordance with K.A.R. 30-10-215.

(d) Change of provider.

(1) When a new provider makes no change in the facility, number of beds or operations, the interim payment rate for the first 12 months of operation shall be based on the historical cost data of the previous owner or provider. The new owner or provider shall file a 12-month historical cost report within three months after the end of the first 12 months of operation and within three months after the end of the provider's fiscal year established for tax or accounting purposes. The rate determined from the historical cost reports shall be effective in accordance with K.A.R. 30-10-215.

(2) The agency may approve a new rate based on a projected cost report when the care of the clients is certified by the Kansas department of

health and environment to be at risk because the per diem rate of the previous provider is not sufficient for the new provider to provide care and services in conformity with applicable state and federal laws, regulations, and quality and safety standards.

(e) Per diem rate errors.

(1) When the per diem rate, whether based upon projected or historical cost data, is audited by the agency and is found to contain errors, a direct cash settlement shall be required between the agency and the provider for the amount of money overpaid or underpaid. If a provider no longer operates a facility with an identified overpayment, the settlement shall be recouped from a facility owned or operated by the same provider or provider corporation unless other arrangements have been made to reimburse the agency. A net settlement may be made when a provider has more than one facility involved in settlements.

(2) The per diem rate for a provider may be increased or decreased as a result of a desk review or audit on the provider's cost reports. Written notice of per diem rate changes and desk review or audit findings shall be sent to the provider. Retroactive adjustments of the rate paid during any projection period shall apply to the same period of time covered by the projected rate.

(3) Providers may request an administrative review of the audit adjustments that result in an overpayment or underpayment within 30 days from the date of the audit report cover letter. The request shall specify the finding or findings that the provider wishes to have reviewed.

(4) Any audit exception imposed on the agency by the department of health and human services due to provider action may be recovered from the provider.

(f) ICF-MR closure. An ICF-MR may submit a plan to the agency to individually place all residents out of the facility, close the facility permanently and cease operations as a certified ICF-MR.

(1) The plan for ICF-MR closure shall include:

(A) A schedule for the placement of residents out of the facility; and

(B) A projected budget for the cost of operating the facility while closure is occurring.

(2) The plan for ICF-MR closure shall be reviewed for reasonableness. If approved by the secretary, the plan may be implemented as written.

(3) The facility may be reimbursed on a projected basis for cost of operating the facility while

closure is occurring according to the agreed upon plan. Reimbursement may exceed limits established for any cost centers for ICF's-MR including but not limited to:

- (A) Administration;
- (B) ownership allowance;
- (C) plant operating; and
- (D) direct service, including room and board and habilitation.

(4) After the ICF-MR ceases operation, an audit of the actual costs incurred during implementation of the approved closure plan shall be conducted.

(A) If the actual overall costs incurred during closure are not as great as the costs projected in the approved closure plan, the facility shall repay the difference to the agency.

(B) If the actual overall cost incurred during closure meets or exceeds the projected costs in the approved closure plan, no additional payment shall be made to the ICF-MR.

(5) If the ICF-MR does not close as agreed upon, the ICF-MR must repay the excess of the amount paid under the closure agreement above the regular payments the ICF-MR would have received, based on the most recent historical actual cost report, if the ICF-MR had not submitted a closure plan to the agency.

(g) Provision of services out-of-state. Rates for clients served out-of-state by certified participants in a medicaid program shall be the rate or rates approved by the agency. All payments made for services provided outside the state of Kansas require prior authorization by the agency. The effective date of this regulation shall be October 1, 1992. (Authorized by and implementing K.S.A. 1991 Supp. 39-708c, as amended by 1992 SB 182, Sec. 5; effective, T-30-12-28-90, Dec. 28, 1990; effective March 4, 1991; amended Oct. 1, 1991; amended Oct. 1, 1992.)

30-10-215. ICF-MR rates; effective dates. (a) Effective date of per diem rates for existing facilities. The effective date of a new rate that is based on information and data in the ICF/MR cost report shall be the first day of the third calendar month following the month the complete cost report is received by the agency.

(b) Effective date of the per diem rate for a new provider. The effective date of the per diem rate for a new provider, as set forth in subsection (c) of K.A.R. 30-10-214, shall be the date of certification by the department of health and environment

pursuant to 42 CFR section 442.13, effective October 3, 1988, which is adopted by reference. The interim rate determined from an approved projected cost report filed by the provider shall be established with the fiscal agent by the first day of the third month after the receipt of a complete and workable cost report. The effective date of the final rate, determined after audit of the historical cost report filed for the projection period, shall be the date of certification by the department of health and environment.

(c) Effective date of the per diem rate for a new provider resulting from a change in provider.

(1) The effective date of the per diem rate for a change in provider, as set forth in K.A.R. 30-10-215, shall be the date of certification by the department of health and environment. The effective date of the final rate, determined after audit of the historical cost report filed for the projection period, shall be the date of certification by the department of health and environment.

(2) The effective date of the projected and final rate for a new provider, as set forth in K.A.R. 30-10-214, shall be the later of the date of the receipt of the ICF-MR financial and statistical report or the date the new construction is certified.

(d) The effective date of the per diem rates for providers with more than one facility filing an historic cost report, in accordance with K.A.R. 30-10-213, shall be the first day of the third calendar month after all cost reports due from that provider have been received.

(e) The effective date for a provider filing an historic cost report covering a projection status period shall be the first day of the month following the report year-end. This is the date that historic and estimated inflation factors are applied in determining prospective rates. The effective date of this regulation shall be October 1, 1991. (Authorized by and implementing K.S.A. 1990 Supp. 39-708c; effective, T-30-12-28-90, Dec. 28, 1990; effective March 4, 1991; amended Oct. 1, 1991.)

30-10-216. ICF-MR payment of claims.

(a) Payment to participating provider. Each participating provider shall be paid, at least monthly, a per diem rate for ICF-MR services, excluding client liability, rendered to eligible clients provided that:

(1) The agency is billed on the turn-around document or electronic claims submission furnished by the contractor serving as the fiscal agent for the medicaid/medikan program;

(2) the turn-around document or electronic claims submission is verified by the administrator of the facility or a designated key staff member; and

(3) the claim is filed no more than six months after the time the services were rendered pursuant to K.S.A. 39-708a, and any amendments thereto.

(b) Client's liability. The client's liability for services shall be the amount determined by the local agency office in which a medicaid/medikan client or the client's agent applies for care. The client's liability begins on the first day of each month and shall be applied in full prior to any liability incurred by the medicaid/medikan program. The unexpended portion of the client's liability payment shall be refunded to the client or client's agent if the client dies or otherwise permanently leaves the facility.

(c) The payment of claims may be suspended if there has been an identified overpayment and the provider is financially insolvent. (Authorized by and implementing K.S.A. 39-708c, as amended by L. 1990, Chapter 152; effective, T-30-12-28-90, Dec. 28, 1990; effective March 4, 1991.)

30-10-217. ICF-MR reserve days. (a) Payment shall be available for days for which it is necessary to reserve a bed in an intermediate care facility for the mentally retarded when the client is absent for:

- (1) admission to a hospital for acute conditions;
- (2) therapeutically indicated home visits with relatives or friends; or
- (3) participation in state-approved therapeutic or rehabilitative programs.

(b) (1) Payment shall be available only for the days during which there is a likelihood that the reserved bed would otherwise be required for occupancy by some other client.

(c) The provider shall notify the local agency office before routine absence from the facility by clients in the Kansas medicaid/medikan program. In case of emergency admission to a hospital, the provider shall notify the local agency office not later than five working days following admission.

(d) In order for payment to be available, the following conditions shall be met when a bed is reserved in an ICF/MR because of hospitalization.

(1) The provider shall be reimbursed for client reserve days for hospitalization of an acute condition for each period of hospitalization up to 10 days.

(2) ICF/MR clients transferred to one of the state mental retardation facilities, shall be eligible for 21 hospital reserve days.

(3) The client shall intend to return to the same facility after the hospitalization and the facility shall intend to accept the individual for service.

(4) The hospital shall provide a discharge plan for the client which includes returning to the facility requesting the reserve days.

(5) An ICF/MR which has less than 90 percent occupancy shall not be approved for hospitalization reserve days.

(e) The client's plan of care shall provide for any non-hospital related absence. Payment for non-hospital related reserve days for eligible clients residing in intermediate care facilities for the mentally retarded shall not exceed 21 days per calendar year, including travel. If additional days are required to alleviate a severe hardship or facilitate normalization, the ICF-MR provider shall send the request for additional days and supporting documentation to the agency for approval or disapproval.

(f) This regulation shall not prohibit any client from leaving a facility if the client so desires.

(g) Payments made for unauthorized reserve days shall be reclaimed by the agency.

(h) This regulation shall take effect on and after July 1, 1996. (Authorized by and implementing K.S.A. 1995 Supp. 39-708c; effective, T-30-12-28-90, Dec. 28, 1990; effective March 4, 1991; amended Oct. 1, 1991; amended April 1, 1992; amended July 1, 1996.)

30-10-218. ICF-MR non-reimbursable costs. (a) Costs not related to client care, as set forth in K.A.R. 30-10-200, shall not be considered in computing reimbursable costs. In addition, the following expenses or costs shall not be allowed:

- (1) Fees paid to non-working directors and the salaries of non-working officers;
- (2) bad debts;
- (3) donations and contributions;
- (4) fund-raising expenses;
- (5) taxes, including:
 - (A) Federal income and excess profit taxes, including any interest or penalties paid;
 - (B) state or local income and excess profits taxes;
 - (C) taxes from which exemptions are available to the provider;
 - (D) taxes on property which is not used in providing covered services;
 - (E) taxes levied against any client and collected and remitted by the provider;
 - (F) self-employment taxes applicable to individual proprietors, partners, or members of a joint venture; and

(G) interest or penalties paid on federal and state payroll taxes;

(6) insurance premiums on lives of officers and owners;

(7) the imputed value of services rendered by non-paid workers and volunteers;

(8) utilization review;

(9) costs of social, fraternal, and other organizations which concern themselves with activities unrelated to their members' professional or business activities;

(10) oxygen;

(11) vending machine and related supplies;

(12) board of director costs;

(13) client personal purchases;

(14) barber and beauty shop expenses;

(15) advertising for client utilization;

(16) public relations expenses;

(17) penalties, fines, and late charges;

(18) items or services provided only to non-medicaid/medikan clients and reimbursed from third party payors;

(19) automobiles and related accessories in excess of \$25,000.00. Buses and vans for client transportation shall be reviewed for reasonableness and may exceed \$25,000.00 in costs;

(20) airplanes and associated expenses;

(21) costs of legal fees incurred in actions brought against the agency;

(22) aggregate costs incurred in excess of historical or projected costs plus allowed inflation, without prior authorization of the agency; and

(23) costs incurred through providing service to a bed made available through involuntary discharge of a client as determined by the Kansas department of health and environment without prior authorization of the agency.

(b) The following contract costs under the day habilitation program shall not be allowed:

(1) Client salaries and FICA match;

(2) any material costs, including sub-contracts;

(3) any costs related to securing contracts; and

(4) 50 percent of the cost of the following items:

(A) Cost of equipment lease;

(B) maintenance of equipment;

(C) purchase of small tools under \$100.00; and

(D) depreciation of production equipment.

(c) Private ICFs/MR shall not be reimbursed for services provided to individuals admitted on or after the effective date of this regulation unless the community developmental disability organization (CDDO) assigned by the agency first determines such persons meet eligibility requirements estab-

lished by the agency and the ICF/MR placement is consistent with the preferred lifestyle of the person as specified by the person or the person's guardian, if one has been appointed. (Authorized by and implementing K.S.A. 39-708c; effective, T-30-12-28-90, Dec. 28, 1990; effective March 4, 1991; amended Oct. 1, 1991; amended May 10, 1996.)

30-10-219. ICF-MR costs allowed with limitations. (a) The following expenses or costs shall be allowed with limitations:

(1) Loan acquisition fees and standby fees shall be amortized over the life of the related loan if the loan is related to client care.

(2) Only the taxes specified below shall be allowed as amortized costs.

(A) Taxes in connection with financing, re-financing, or re-funding operations; and

(B) special assessments on land for capital improvements over the estimated useful life of those improvements.

(3) Purchase discounts, allowances, and refunds shall be deducted from the cost of the items purchased. Refunds of prior year expense payments shall also be deducted from the related expenses.

(4) Any start-up cost of a provider shall be recognized if it is:

(A) Incurred prior to the opening of the facility and related to developing the ability to care for clients;

(B) amortized over a period of not less than 60 months;

(C) consistent with the facility's federal income tax return, and internal and external financial reports with the exception of (B) above; and

(D) identified in the cost report as a start-up cost which may include:

(i) Administrative salaries limited to three months prior to licensing;

(ii) employee salaries limited to one month prior to licensing;

(iii) utilities;

(iv) taxes;

(v) insurance;

(vi) mortgage interest;

(vii) employee training costs; and

(viii) any other allowable costs incidental to the start-up of the facility as prior approved by the agency.

(5) Any cost which can properly be identified as organization expenses or can be capitalized as construction expenses shall be appropriately classified and excluded from start-up cost.

(6) Organization and other corporate costs, as defined in K.A.R. 30-10-200, of a provider that is newly organized shall be amortized over a period of not less than 60 months beginning with the date of organization.

(7) Membership dues and costs incurred as a result of membership in professional, technical, or business-related organizations shall be allowable. However, similar expenses set forth in paragraph (a)(9) of K.A.R. 30-10-218 shall not be allowable.

(8) (A) Costs associated with services, facilities, and supplies furnished to the ICF-MR by related parties, as defined in K.A.R. 30-10-200, shall be included in the allowable cost of the facility at the actual cost to the related party, except that the allowable cost to the ICF-MR provider shall not exceed the lower of the actual cost or the market price.

(B) When a provider chooses to pay an amount in excess of the market price for supplies or services, the agency shall use the market price to determine the allowable cost under the medicaid/medikan program in the absence of a clear justification for the premium.

(9) The net cost of approved staff educational activities shall be an allowable cost. The net cost of "orientation" and "on-the-job training" shall not be within the scope of approved educational activities, but shall be recognized as normal operating costs.

(10) Client-related transportation costs shall include only reasonable costs that are directly related to client care and substantiated by detailed, contemporaneous expense and mileage records. Transportation costs only remotely related to client care shall not be allowable. Estimates shall not be acceptable.

(11) Lease payments. Lease payments shall be reported in accordance with the financial account statements of the Financial Accounting Standards Board.

(12) The actual cost of airplanes and associated expenses are not allowed. However, the provider may charge the equivalent distance of automobile mileage at the IRS allowable rate. The effective date of this regulation shall be April 1, 1992. (Authorized by and implementing K.S.A. 1990 Supp. 39-708c; effective, T-30-12-28-90, Dec. 28, 1990; effective March 4, 1991; amended Oct. 1, 1991; amended April 1, 1992.)

30-10-220. ICF-MR revenues. A statement of revenue shall be required as part of the cost report forms. (a) Revenue shall be reported in ac-

cordance with general accounting rules as recorded in the accounting records of the facility and as required in the detailed revenue schedule in the uniform cost report.

(b) The non-reimbursable cost of goods and services provided to clients shall be deducted from the related expense item. The net expense shall not be less than zero.

(c) Revenue received for a service that is not related to client care shall be used to offset the cost of providing that service provided that excess revenue received for such service shall be distributed to the entire agency based on generally accepted accounting principles. The cost report line item which includes the non-client related costs shall not be less than zero. Miscellaneous revenue with insufficient explanation in the cost report shall be offset.

(d) Expense recoveries credited to expense accounts shall not be reclassified as revenue to increase the costs reported in order to qualify for a higher rate.

(e) Each ICF-MR provider with a day habilitation program shall not be required to deduct the income earned from the costs incurred on contracts. The effective date of this regulation shall be October 1, 1991. (Authorized by and implementing K.S.A. 1990 Supp. 39-708c; effective, T-30-12-28-90, Dec. 28, 1990; effective March 4, 1991; amended Oct. 1, 1991.)

30-10-221. ICF-MR compensation of owners, spouses, related parties and administrators. (a) Non-working owners and related parties. Remunerations paid to non-working owners or other related parties, as defined in K.A.R. 30-10-200, shall not be considered an allowable cost regardless of the name assigned to the transfer or accrual or the type of provider entity making the payment. Each payment shall be separately identified and reported as owner compensation in the non-reimbursable and non-client related expense section of the cost report.

(b) Services related to client care.

(1) If owners with 5% or more ownership interest, spouses, or related parties actually perform a necessary function directly contributing to client care, a reasonable amount shall be allowed for such client care activity. The reasonable amount allowed shall be the lesser of:

(A) The reasonable cost that would have been incurred to pay a non-owner employee to perform the client-related services actually performed

by owners or other related parties, limited by a schedule of salaries and wages based on the state civil service salary schedule in effect when the cost report is processed until the subsequent cost report is filed; or

(B) the amount of cash and other assets actually withdrawn by the owner, spouse, or related parties.

(2) The client-related functions shall be limited to those functions common to the industry and for which cost data is available which are normally performed by non-owner employees. The job titles for administrative and supervisory duties performed by an owner, spouse, or related party shall be limited to the work activities included in the schedule of the owner, spouse, or related party salary limitations.

(3) The salary limit shall also be pro-rated in accordance with subsection (c) of this regulation. In no case shall the limitation exceed the highest salary limit on the civil-service-based chart.

(4) The owner, spouse, or related party shall be professionally qualified for those functions performed which require licensure or certification.

(5) Cash and other assets actually withdrawn shall include only those amounts or items actually paid or transferred during the cost reporting period in which the services were rendered and reported to the internal revenue service.

(6) Any liabilities of the provider shall be paid in cash within 75 days after the end of the accounting period.

(c) Allocation of owner, spouse, or related party total work time for client-related functions. When any owner, spouse, or related party performs a client-related function for less than a full-time-equivalent work week, the compensation limit shall be pro-rated. The time spent on each function within a facility or within all facilities in which they have an ownership or management interest, shall be pro-rated separately by function, but shall not exceed 100% of that person's total work time. Time spent on other non-related business interests or work activities shall not be included in calculations of total work time.

(d) Reporting owner, spouse, or related party compensation on cost report. Owner, spouse, or related party compensation shall be reported on the owner compensation line in the appropriate cost center for the work activity involved. Any compensation paid to employees who have an ownership interest of 5% or more, including employees at the central office of a chain organization, shall be considered to be owner compensation. Provid-

ers with professionally qualified owner, spouse, or related party employees performing duties other than those for which they are professionally qualified shall report the cost for such duties in the administrative cost center.

(e) Owner-administrator compensation limitation.

(1) Reasonable limits shall be determined by the agency for owner-administrator compensation based upon the current civil service salary schedule.

(2) This limitation shall apply to the salaries of each administrator and co-administrator of that facility and to owner compensation reported in the administrative cost center of the cost report. This limitation shall apply to the salary of the administrator and co-administrator, regardless of whether they have any ownership interest in the business entity.

(3) Each salary in excess of the owner, spouse, or related party limitations determined in accordance with subsections (b) and (c) of this regulation shall be transferred to the owner compensation line in the administrative cost center and shall be subject to the owner-administrator compensation limitation.

(f) Management consultant fees. Fees for consulting services provided by the following professionally qualified people shall be considered owner's compensation subject to the owner-administrator compensation limit and shall be reported on the owner compensation line in the administrative cost center if the actual cost of the service is not submitted with the ICF-MR financial and statistical report:

(1) Related parties as defined in K.A.R. 30-10-200;

(2) current owners of the provider agreement and operators of the facility;

(3) current owners of the facility in a lessor-lessee relationship;

(4) management consulting firms owned and operated by former business associates of the current owners in this and other states;

(5) owners who sell and enter into management contracts with the new owner to operate the facility; and

(6) accountants, lawyers and other professional people who have common ownership interests in other facilities, in this or other states, with the owners of the facility from which the consulting fee is received.

(g) Costs not related to client care. An allowance shall not be made for costs related to in-

vestigation of investment opportunities, travel, entertainment, goodwill, administrative or managerial activities performed by owners or other related parties that are not directly related to client care. The effective date of this regulation shall be October 1, 1991. (Authorized by and implementing K.S.A. 1990 Supp. 39-708c; effective, T-30-12-28-90, Dec. 28, 1990; effective March 4, 1991; amended Oct. 1, 1991.)

30-10-222. ICF-MR ownership reimbursement fee. (a) The agency shall determine an allowable cost for ownership.

(b) (1) The ownership allowance shall include an appropriate component for:

- (A) Rent or lease expense;
- (B) interest expense on real estate mortgage;
- (C) amortization of leasehold improvements; and
- (D) depreciation on buildings and equipment.

(2) The ownership allowance shall be subject to a facility maximum.

(c) (1) The depreciation component of the ownership allowance shall be:

(A) Identifiable and recorded in the provider's accounting records;

(B) based on the historical cost of the asset as established in this regulation; and

(C) pro-rated over the estimated useful life of the asset using the straight-line method.

(2) (A) Appropriate recording of depreciation shall include identification of the depreciable assets in use, the assets' historical costs, the method of depreciation, the assets' estimated useful life, and the assets' accumulated depreciation.

(B) Gains and losses on the sale of depreciable personal property shall be reflected on the cost report at the time of such sale. Trading of depreciable property shall be recorded in accordance with the income tax method of accounting for the basis of property acquired. Under the income tax method, gains and losses arising from the trading of assets are not recognized in the year of trade but are used to adjust the basis of the newly acquired property.

(3) (A) Gains from the sale of depreciable assets while the provider participates in the medicaid/medikan program, or within one year after the provider terminates participation in the program, shall be used to reduce the allowable costs for each cost reporting period prior to the sale, subject to limitation. The total sale price shall be allocated to the individual assets sold on the basis of an appraisal by a qualified appraiser or on

the ratio of the seller's cost basis of each asset to the total cost basis of the assets sold.

(B) The gain on the sale shall be defined as the excess of the sale price over the cost basis of the asset. The cost basis for personal property assets shall be the book value. The cost basis for real property assets sold or disposed of before July 18, 1984, shall be the lesser of the book value adjusted for inflation by a price index selected by the agency or an appraisal by an American institute of real estate appraiser or an appraiser approved by the agency. The cost basis for real property assets sold or disposed of after July 17, 1984 shall be the book value.

(C) The gain on the sale shall be multiplied by the ratio of depreciation charged while participating in the medicaid/medikan program to the total depreciation charged since the date of purchase or acquisition. The resulting product shall be used to reduce allowable cost.

(4) For depreciation purposes, the cost basis for a facility acquired after July 17, 1984 shall be the lesser of the acquisition cost to the holder of record on that date or the purchase price of the asset. The cost basis shall not include costs attributable to the negotiation or final purchase of the facility, including legal fees, accounting fees, travel costs and the cost of feasibility studies. (Authorized by and implementing K.S.A. 39-708c, as amended by L. 1990, Chapter 152; effective, T-30-12-28-90, Dec. 28, 1990; effective March 4, 1991.)

30-10-223. ICF-MR interest expense. (a) Only necessary and proper interest on working capital indebtedness shall be an allowable cost.

(b) The interest expense shall be incurred on indebtedness established with:

(1) Lenders or lending organizations not related to the borrower; or

(2) partners, stockholders, home office organizations, or related parties, if the following conditions are met:

(A) The terms and conditions of payment of the loans shall resemble terms and conditions of an arms-length transaction by a prudent borrower with a recognized, local lending institution with the capability of entering into a transaction of the required magnitude.

(B) The provider shall demonstrate, to the satisfaction of the agency, a primary business purpose for the loan other than increasing the per diem rate.

(C) The transaction shall be recognized and reported by all parties for federal income tax purposes.

(c) When the general fund of an ICF-MR "borrows" from a donor-restricted fund, this interest expense shall be an allowable cost if it is considered by the agency to be reasonable. In addition, if an ICF-MR operated by members of a religious order borrows from the order, interest paid to the order shall be an allowable cost.

(d) The interest expense shall be reduced by the investment income from restricted or unrestricted idle funds or funded reserve accounts, except when that income is from gifts and grants, whether restricted or unrestricted, which are held in a separate account and not commingled with other funds. Income from the provider's qualified pension fund shall not be used to reduce interest expense.

(e) Interest earned on restricted or unrestricted reserve accounts of industrial revenue bonds or sinking fund accounts shall be offset against interest expense and limited to the interest expense on the related debt.

(f) Loans made to finance that portion of the cost of acquisition of a facility that exceeds historical cost or the cost basis recognized for program purposes shall not be considered to be reasonably related to client care. (Authorized by and implementing K.S.A. 39-708c, as amended by L. 1990, Chapter 152; effective, T-30-12-28-90, Dec. 28, 1990; effective March 4, 1991.)

30-10-224. ICF-MR central office costs.

(a) Allocation of central office costs shall be reasonable, conform to general accounting rules, and allowed only to the extent that the central office is providing a service normally available in the ICF-MR. Central office costs shall not be recognized or allowed to the extent they are unreasonably in excess of similar ICF's-MR in the program. The burden of furnishing sufficient evidence to establish a reasonable level of costs shall be on the provider. All expenses reported as central office cost shall be limited to the actual client-related costs of the central office.

(b) Expense limitations.

(1) Salaries of professionally qualified employees performing the duties for which they are professionally qualified shall be allocated to the room and board and health care cost centers as appropriate for the duties performed. Professionally qualified employees include licensed and registered nurses, dietitians, qualified mental retardation professionals, and other as may be designated by the secretary.

(2) Salaries of chief executives, corporate officers, department heads, and employees with ownership interests of 5% or more shall be considered owner's compensation and shall be reported as owner's compensation in the administrative cost center. Salaries of the chief executive officers of non-profit organizations shall also be considered owner's compensation and included in the administrative cost center.

(3) The salary of an owner or related party performing a client-related service for which such person is professionally qualified shall be included in the appropriate cost center for that service.

(4) Salaries of all other central office personnel performing client-related administrative functions shall be reported in the administrative cost center.

(5) All providers operating more than one facility shall complete and submit detailed schedules of all salaries and expenses incurred for each fiscal year. Failure to submit detailed central office expenses and allocation methods shall result in the cost report being considered incomplete. Methods for allocating all program costs to all facilities in this and other states shall be submitted for prior approval. Changes in these methods shall not be permitted without prior approval.

(6) A central office cost limit may be established by the agency within the overall administrative cost center limit. (Authorized by and implementing K.S.A. 39-708c, as amended by L. 1990, Chapter 152; effective, T-30-12-28-90, Dec. 28, 1990; effective March 4, 1991.)

30-10-225. ICF-MR client days. (a) Calculation of client days.

(1) Client day has the meaning set forth in K.A.R. 30-10-200.

(2) If both admission and discharge occur on the same day, that day shall be considered to be a day of admission and shall count as one client day.

(3) If the provider does not make refunds on behalf of a client for unused days in case of death or discharge, and if the bed is available and actually used by another client, these unused days shall not be counted as a client day.

(4) Any bed days paid for by the client, or any other party on behalf of the client, before an admission date shall not be counted as a client day.

(5) The total client days for the cost report period shall be precise and documented; an estimate of the days of care provided shall not be acceptable.

(6) In order to facilitate accurate and uniform reporting of client days, the accumulated method

format set forth in forms prescribed by the secretary shall be used for all clients. These forms shall be submitted to the agency as supportive documentation for the client days shown on the cost report forms and shall be submitted at the time the cost report forms are submitted to the agency. Each provider shall keep these monthly records for each client, whether a medicaid/medikan recipient or a non-recipient. If a provider fails to keep accurate records of client days in accordance with the accumulated method format, the assumed occupancy rate shall be 100%.

(7) The provider shall report the total number of medicaid/medikan client days in addition to the total client days on the uniform cost report form.

(b) Any provider which has an occupancy rate of less than 90% for the cost report period shall calculate client days at a minimum occupancy of 90%.

(c) The minimum occupancy rate shall be determined by multiplying the total licensed bed days available by 90%. Therefore, in order to participate in the medicaid/medikan program, each ICF-MR provider shall obtain proper certification for all licensed beds.

(d) Respite care days shall be counted as client days and reported on the monthly census forms.

(e) Day care and day treatment shall be counted as one client day for 18 hours of service. The total hours of service provided for all clients during the cost reporting year shall be divided by 18 hours to convert to client days. (Authorized by and implementing K.S.A. 39-708c, as amended by L. 1990, Chapter 152; effective, T-30-12-28-90, Dec. 28, 1990; effective March 4, 1991.)

30-10-226. This rule and regulation shall expire on October 1, 1991. (Authorized by and implementing K.S.A. 39-708c, as amended by L. 1990, Chapter 152; effective, T-30-12-28-90, Dec. 28, 1990; effective March 4, 1991; revoked Oct. 1, 1991.)

Article 11.—COMMUNITY BASED GROUP BOARDING HOMES FOR CHILDREN AND YOUTH

30-11-1 to 30-11-5. (Authorized by K.S.A. 1965 Supp. 39-708; effective Jan. 1, 1967; revoked Jan. 1, 1974.)

30-11-6 to 30-11-8. (Authorized by K.S.A. 39-1303, 75-5321; effective Jan. 1, 1974; revoked May 1, 1982.)

Article 12.—SERVICES FOR THE BLIND

30-12-1. (Authorized by and implementing K.S.A. 39-708c; effective Jan. 1, 1967; amended Jan. 1, 1972; revoked May 1, 1982.)

30-12-2. (Authorized by and implementing K.S.A. 39-708c; effective Jan. 1, 1967; amended Jan. 1, 1969; amended Jan. 1, 1972; amended Jan. 1, 1974; revoked May 1, 1982.)

30-12-3. (Authorized by and implementing K.S.A. 39-708c; effective Jan. 1, 1967; amended Jan. 1, 1974; revoked May 1, 1982.)

30-12-4. (Authorized by and implementing K.S.A. 39-708c; effective Jan. 1, 1967; revoked May 1, 1982.)

30-12-5. (Authorized by and implementing K.S.A. 39-708c; effective Jan. 1, 1967; amended Jan. 1, 1969; amended Jan. 1, 1972; amended Jan. 1, 1974; revoked May 1, 1982.)

30-12-6 and 30-12-7. (Authorized by and implementing K.S.A. 39-708c; effective Jan. 1, 1967; revoked May 1, 1982.)

30-12-8 and 30-12-9. (Authorized by K.S.A. 1968 Supp. 39-708; effective Jan. 1, 1967; revoked Jan. 1, 1969.)

30-12-10. (Authorized by K.S.A. 1971 Supp. 39-708; effective Jan. 1, 1967; amended Jan. 1, 1969; revoked Jan. 1, 1972.)

30-12-11. (Authorized by and implementing K.S.A. 39-708c; effective Jan. 1, 1967; revoked May 1, 1982.)

30-12-12. (Authorized by and implementing K.S.A. 39-708c; effective Jan. 1, 1967; amended Jan. 1, 1974; revoked May 1, 1982.)

30-12-13. (Authorized by and implementing K.S.A. 39-708c, 75-3304; effective Jan. 1, 1967; amended Jan. 1, 1969; amended Jan. 1, 1974; revoked May 1, 1982.)

30-12-14. (Authorized by K.S.A. 1979 Supp. 39-708c; effective Jan. 1, 1967; amended Jan. 1, 1974; revoked May 1, 1980.)

30-12-15. (Authorized by and implementing K.S.A. 39-708c; effective Jan. 1, 1973; amended Jan. 1, 1974; revoked May 1, 1982.)

30-12-16. (Authorized by and implementing

K.S.A. 1985 Supp. 39-708c; effective May 1, 1982; amended May 1, 1985; amended May 1, 1986; revoked March 29, 2002.)

30-12-17. (Authorized by and implementing K.S.A. 39-708c; effective May 1, 1982; revoked March 29, 2002.)

30-12-18. (Authorized by and implementing K.S.A. 39-708c; effective May 1, 1982; revoked March 29, 2002.)

30-12-19. (Authorized by and implementing K.S.A. 39-708c; effective May 1, 1982; revoked March 29, 2002.)

30-12-20. (Authorized by and implementing K.S.A. 1983 Supp. 39-708c; effective May 1, 1982; amended May 1, 1985; revoked March 29, 2002.)

30-12-21. (Authorized by and implementing K.S.A. 39-708c; effective May 1, 1982; revoked March 29, 2002.)

30-12-22. (Authorized by and implementing K.S.A. 1985 Supp. 39-708c; effective May 1, 1982; amended May 1, 1983; amended May 1, 1985; amended May 1, 1986; revoked March 29, 2002.)

**Article 13.—VENDING FACILITIES
OPERATED BY THE DIVISION OF
SERVICES FOR THE BLIND**

30-13-1. (Authorized by and implementing K.S.A. 39-708c; effective Jan. 1, 1967; amended Jan. 1, 1974; revoked May 1, 1982.)

30-13-2. (Authorized by and implementing K.S.A. 39-708c; effective Jan. 1, 1967; amended Jan. 1, 1974; amended May 1, 1976; amended May 1, 1981; revoked May 1, 1982.)

30-13-3 and 30-13-4. (Authorized by and implementing K.S.A. 39-708c; effective Jan. 1, 1967; revoked May 1, 1982.)

30-13-5. (Authorized by and implementing K.S.A. 75-3340; effective Jan. 1, 1972; amended Jan. 1, 1974; revoked May 1, 1982.)

30-13-6. (Authorized by and implementing K.S.A. 39-708c; effective Jan. 1, 1967; revoked May 1, 1982.)

30-13-7. (Authorized by and implementing K.S.A. 39-708c; effective Jan. 1, 1967; amended Jan. 1, 1974; revoked May 1, 1982.)

30-13-8. (Authorized by and implementing K.S.A. 39-708c; effective Jan. 1, 1967; amended Jan. 1, 1974; amended May 1, 1981; revoked May 1, 1982.)

30-13-9. (Authorized by and implementing K.S.A. 39-708c; effective Jan. 1, 1967; amended Jan. 1, 1972; amended Jan. 1, 1974; revoked May 1, 1982.)

30-13-10. (Authorized by and implementing K.S.A. 39-708c; effective Jan. 1, 1967; amended May 1, 1981; revoked May 1, 1982.)

30-13-11. (Authorized by and implementing K.S.A. 39-708c; effective Jan. 1, 1967; revoked May 1, 1982.)

30-13-12. (Authorized by and implementing K.S.A. 39-708c; effective Jan. 1, 1967; amended Jan. 1, 1972; revoked May 1, 1982.)

30-13-13 to 30-13-16. (Authorized by and implementing K.S.A. 39-708c; effective Jan. 1, 1967; revoked May 1, 1982.)

30-13-17. (Authorized by and implementing K.S.A. 75-3339; effective May 1, 1982; revoked March 29, 2002.)

30-13-18. (Authorized by and implementing K.S.A. 75-3339; effective May 1, 1982; revoked March 29, 2002.)

30-13-19. (Authorized by and implementing K.S.A. 75-3339; effective May 1, 1982; revoked March 29, 2002.)

30-13-20. (Authorized by and implementing K.S.A. 75-3339; effective May 1, 1982; revoked March 29, 2002.)

30-13-21. (Authorized by and implementing K.S.A. 75-3339; effective May 1, 1982; revoked March 29, 2002.)

30-13-22. (Authorized by K.S.A. 75-3340; implementing K.S.A. 75-3337; effective May 1, 1982; revoked March 29, 2002.)

30-13-23. (Authorized by and implementing K.S.A. 75-3340; effective May 1, 1982; amended May 1, 1983; revoked March 29, 2002.)

30-13-24. (Authorized by and implementing K.S.A. 75-3340; effective May 1, 1982; revoked March 29, 2002.)

30-13-25. (Authorized by and implementing K.S.A. 75-3340; effective May 1, 1982; revoked March 29, 2002.)

30-13-26. (Authorized by and implementing K.S.A. 75-3340; effective May 1, 1982; revoked March 29, 2002.)

Article 14.—CHILDREN’S HEALTH INSURANCE PROGRAM

30-14-1. (Authorized by K.S.A. 1997 Supp. 39-708c and L. 1998, Chapter 125, Section 2; implementing L. 1998, Chapter 125, Section 1; effective Nov. 1, 1998; revoked, T-30-10-31-13, Nov. 1, 2013; revoked Feb. 28, 2014.)

30-14-2. (Authorized by K.S.A. 1997 Supp. 39-708c and L. 1998, Chapter 125, Section 2; implementing L. 1998, Chapter 125, Section 1; effective Nov. 1, 1998; revoked, T-30-10-31-13, Nov. 1, 2013; revoked Feb. 28, 2014.)

30-14-3. (Authorized by K.S.A. 1997 Supp. 39-708c and L. 1998, Chapter 125, Section 2; implementing L. 1998, Chapter 125, Section 1 and Section 5; effective Nov. 1, 1998; revoked, T-30-10-31-13, Nov. 1, 2013; revoked Feb. 28, 2014.)

30-14-20. (Authorized by K.S.A. 1997 Supp. 39-708c and L. 1998, Chapter 125, Section 2; implementing L. 1998, Chapter 125, Section 1; effective Nov. 1, 1998; revoked, T-30-10-31-13, Nov. 1, 2013; revoked Feb. 28, 2014.)

30-14-21. (Authorized by K.S.A. 1997 Supp. 39-708c and L. 1998, Chapter 125, Section 2; implementing L. 1998, Chapter 125, Section 1; effective Nov. 1, 1998; revoked, T-30-10-31-13, Nov. 1, 2013; revoked Feb. 28, 2014.)

30-14-22. (Authorized by K.S.A. 1997 Supp. 39-708c and L. 1998, Chapter 125, Section 1; implementing L. 1998, Chapter 125, Section 1; effective Nov. 1, 1998; revoked Aug. 11, 2006.)

30-14-23. (Authorized by K.S.A. 1997 Supp. 39-708c and L. 1998, Chapter 125, Section 2; implementing L. 1998, Chapter 125, Section 1; effective Nov. 1, 1998; revoked, T-30-10-31-13, Nov. 1, 2013; revoked Feb. 28, 2014.)

30-14-24. (Authorized by K.S.A. 1997 Supp. 39-708c and L. 1998, Chapter 125, Section 2; implementing L. 1998, Chapter 125, Section 1;

effective Nov. 1, 1998; revoked, T-30-10-31-13, Nov. 1, 2013; revoked Feb. 28, 2014.)

30-14-25. (Authorized by K.S.A. 1997 Supp. 39-708c and L. 1998, Chapter 125, Section 2; implementing L. 1998, Chapter 125, Section 1; effective Nov. 1, 1998; revoked, T-30-10-31-13, Nov. 1, 2013; revoked Feb. 28, 2014.)

30-14-26. (Authorized by K.S.A. 1997 Supp. 39-708c and L. 1998, Chapter 125, Section 2; implementing L. 1998, Chapter 125, Section 1; effective Nov. 1, 1998; revoked, T-30-10-31-13, Nov. 1, 2013; revoked Feb. 28, 2014.)

30-14-27. (Authorized by K.S.A. 1997 Supp. 39-708c and L. 1998, Chapter 125, Section 2; implementing L. 1998, Chapter 125, Section 1; effective Nov. 1, 1998; revoked June 30, 2006.)

30-14-28. (Authorized by K.S.A. 39-708c and K.S.A. 38-2002; implementing K.S.A. 2001 Supp. 38-2001; effective Nov. 1, 1998; amended, T-30-1-2-03, Jan. 2, 2003; amended April 18, 2003; revoked, T-30-10-31-13, Nov. 1, 2013; revoked Feb. 28, 2014.)

30-14-29. (Authorized by K.S.A. 1997 Supp. 39-708c and L. 1998, Chapter 125, Section 2; implementing L. 1998, Chapter 125, Section 1; effective Nov. 1, 1998; revoked, T-30-10-31-13, Nov. 1, 2013; revoked Feb. 28, 2014.)

30-14-30. (Authorized by K.S.A. 1998 Supp. 39-708c and 38-2002; implementing K.S.A. 1998 Supp. 38-2001; effective Nov. 1, 1998; amended July 2, 1999; revoked, T-30-10-31-13, Nov. 1, 2013; revoked Feb. 28, 2014.)

30-14-31. (Authorized by K.S.A. 1997 Supp. 39-708c and L. 1998, Chapter 125, Section 2; implementing L. 1998, Chapter 125, Section 1; effective Nov. 1, 1998; revoked, T-30-10-31-13, Nov. 1, 2013; revoked Feb. 28, 2014.)

30-14-50. (Authorized by K.S.A. 1997 Supp. 39-708c and L. 1998, Chapter 125, Section 2; implementing L. 1998, Chapter 125, Section 1; effective Nov. 1, 1998; revoked, T-30-10-31-13, Nov. 1, 2013; revoked Feb. 28, 2014.)

Article 17.—HOUSING, PROCUREMENT, AND OPERATIONS—COUNTY WELFARE DEPARTMENT

30-17-1 and 30-17-2. (Authorized by

K.S.A. 39-708; effective Jan. 1, 1967; revoked May 1, 1978.)

30-17-3 to 30-17-5. (Authorized by K.S.A. 1977 Supp. 39-708c; effective Jan. 1, 1967; revoked May 1, 1978.)

Article 18.—LICENSING OF SOCIAL WORK PERSONNEL

30-18-1. (Authorized by K.S.A. 1978 Supp. 75-5350; effective May 1, 1976; amended Feb. 15, 1977; amended May 1, 1978; amended, E-79-20, Aug. 17, 1978; amended May 1, 1979; revoked May 1, 1982.)

30-18-2. (Authorized by K.S.A. 1976 Supp. 75-5350; effective May 1, 1976; amended Feb. 15, 1977; revoked May 1, 1982.)

30-18-3 and 30-18-4. (Authorized by K.S.A. 1975 Supp. 75-5350; effective May 1, 1976; revoked May 1, 1982.)

Article 19.—SOUTHEAST KANSAS TUBERCULOSIS HOSPITAL

30-19-1. (Authorized by K.S.A. 1976 Supp. 75-3304; effective Jan. 1, 1967; amended Jan. 1, 1969; amended Jan. 1, 1970; amended Jan. 1, 1974; revoked Feb. 15, 1977.)

30-19-2. (Authorized by K.S.A. 39-111, K.S.A. 1976 Supp. 75-3304; effective Jan. 1, 1967; amended Jan. 1, 1969; amended Jan. 1, 1974; revoked Feb. 15, 1977.)

30-19-3. (Authorized by K.S.A. 76-1510; effective Jan. 1, 1967; amended Jan. 1, 1969; amended Jan. 1, 1971; revoked Feb. 15, 1977.)

30-19-4. (Authorized by K.S.A. 76-1510; effective Jan. 1, 1967; amended Jan. 1, 1969; revoked Jan. 1, 1971.)

30-19-5. (Authorized by K.S.A. 1976 Supp. 76-12a07; effective Jan. 1, 1967; amended Jan. 1, 1969; amended Jan. 1, 1974; revoked Feb. 15, 1977.)

30-19-6. (Authorized by K.S.A. 1976 Supp. 76-12a07; effective Jan. 1, 1967; amended Jan. 1, 1969; revoked Feb. 15, 1977.)

30-19-7 and 30-19-8. (Authorized by K.S.A. 1976 Supp. 76-12a07; effective Jan. 1, 1967; amended Jan. 1, 1969; amended Jan. 1, 1974; revoked Feb. 15, 1977.)

30-19-9. (Authorized by K.S.A. 76-1510b; effective Jan. 1, 1967; amended Jan. 1, 1969; amended Jan. 1, 1970; amended Jan. 1, 1974; revoked Feb. 15, 1977.)

30-19-10. (Authorized by K.S.A. 1976 Supp. 75-3304; effective Jan. 1, 1967; amended Jan. 1, 1969; amended Jan. 1, 1974; revoked Feb. 15, 1977.)

Article 20.—SECURITY AND TRAFFIC CONTROL FOR STATE INSTITUTIONS OPERATED BY MENTAL HEALTH AND RETARDATION SERVICES

30-20-1 and 30-20-2. (Authorized by K.S.A. 76-12a16; effective Jan. 1, 1974; revoked May 1, 1982.)

30-20-3. (Authorized by K.S.A. 76-12a16; effective Jan. 1, 1974; amended, E-80-13, Aug. 8, 1979; amended May 1, 1980; revoked May 1, 1982.)

30-20-4. (Authorized by K.S.A. 76-12a07; implementing K.S.A. 76-12a16; effective May 1, 1982; revoked May 1, 1983.)

30-20-5. Badge. Security officers shall wear and publicly display a badge clearly identified with the words, “security policeman” and “SRS institution”. The badge shall be worn only while on official duty. The badge shall remain the property of the institution and shall be turned in whenever an appointment as a security officer is terminated. (Authorized by and implementing K.S.A. 76-12a16; effective May 1, 1982.)

30-20-6. Law enforcement assistance. The superintendent on an institution may request appropriate law enforcement personnel to assist the security officers in the performance of their official duties as necessary. (Authorized by K.S.A. 76-12a07; implementing K.S.A. 76-12a16; effective May 1, 1982.)

30-20-7. Traffic and parking control. (a) The provisions of K.A.R. 30-20-8 through 30-20-19 shall apply to the operation of motor vehicles and bicycles upon state institution grounds except as set forth in paragraph (b) and shall be enforced at all times unless otherwise posted.

(b) Any regulation shall not apply if in conflict with city ordinances or state laws effective on state institution grounds. (Authorized by K.S.A. 76-

12a13; implementing K.S.A. 76-12a12, 76-12a14; effective May 1, 1982.)

30-20-8. Superintendent responsibilities. (a) The superintendent of an institution shall adopt policies concerning speed limits, the routing of traffic movement, and parking on institution grounds. Regulatory, warning, and guide signs shall be posted as appropriate.

(b) Subject to the provisions of paragraphs (c) and (d), the superintendent of an institution may:

(1) Require the registration of motor vehicles regularly operated on institutional grounds;

(2) Require parking permits;

(3) Charge parking fees for the regular use of parking spaces; and

(4) Allocate specific parking spaces to employees or other individuals.

(c) Parking fees shall be approved by the commissioner and secretary.

(d) Parking permits shall be valid for the current fiscal year subject to the permit holder terminating his or her connection with the institution. (Authorized by K.S.A. 76-12a13; implementing K.S.A. 76-12a12, 76-12a15; effective May 1, 1982.)

30-20-9. Rules of the road. The rules of the road set forth in chapter eight (8) of the Kansas statutes annotated (effective July 1, 1982) shall apply to state institution grounds unless otherwise posted or in conflict with other provisions of this article. (Authorized by K.S.A. 76-12a13; implementing K.S.A. 76-12a12; effective May 1, 1982; amended May 1, 1983.)

30-20-10. Maximum speed limit. The maximum speed limit shall be twenty-five miles per hour (25 mph) unless otherwise posted. (Authorized by K.S.A. 76-12a13; implementing K.S.A. 76-12a12; effective May 1, 1982.)

30-20-11. Buses. Buses shall have the right-of-way over other motor vehicles and bicycles except for emergency vehicles displaying the appropriate signals. (Authorized by K.S.A. 76-12a13; implementing K.S.A. 76-12a12; effective May 1, 1982.)

30-20-12. Maintenance vehicles and equipment. Maintenance vehicles and equipment shall be exempt from the guide and parking provisions of this article if the exemption is necessary for maintenance purposes. If exempted, vehicles and equipment shall be operated and parked with a minimum of traffic obstruction or hazard. Proper warning and safety devices shall be used as ap-

propriate. (Authorized by K.S.A. 76-12a13; implementing K.S.A. 76-12a12; effective May 1, 1982.)

30-20-13. Movement of heavy equipment. Heavy equipment may only be operated on state institution grounds if supervised by the institution's maintenance personnel or security officers. (Authorized by K.S.A. 76-12a13; implementing K.S.A. 76-12a12; effective May 1, 1982.)

30-20-14. Accidents, collisions, fire, or theft. Accidents, collisions, fires, or thefts involving motor vehicles or bicycles shall immediately be reported to the state institution's security office. (Authorized by K.S.A. 76-12a13; implementing K.S.A. 76-12a12; effective May 1, 1982.)

30-20-15. Prohibited acts. The following acts shall be prohibited and subject to fine: (a) Violation of any administrative regulation set forth in this article;

(b) Failure to follow any regulatory, warning, or guide sign;

(c) Failure to display a registration or parking permit if required;

(d) Double parking;

(e) Transporting of unauthorized firearms or other weapons, explosives, drugs, or alcohol upon state institution grounds; and

(f) Failure to follow directions of a security officer or other law enforcement official. (Authorized by K.S.A. 76-12a13; implementing K.S.A. 76-12a12; effective May 1, 1982.)

30-20-16. Fines. Persons ticketed shall be subject to the following fines: (a) Non-moving violation not involving creation of a danger or hazard—ten dollars (\$10);

(b) Non-moving violation involving creation of a danger or hazard—twenty dollars (\$20);

(c) Moving violation involving the failure to follow any regulatory, warning, or guide sign—twenty dollars (\$20);

(d) Failure to follow directions of a security officer or other law enforcement officer—thirty dollars (\$30);

(e) Transporting of unauthorized fire arms or other weapons, explosives, drugs, or alcohol upon state institution grounds—one hundred dollars (\$100);

(f) Failure to display a registration or parking permit if required—ten dollars (\$10); and

(g) Other violations—ten dollars (\$10). (Authorized by and implementing K.S.A. 76-12a13; effective May 1, 1982.)

30-20-17. Review by superintendent. (a) Any person ticketed may request the superintendent to dismiss or amend a ticket within ten (10) days of its issuance.

(b) The superintendent or his or her designee shall conduct an informal review concerning the request within twenty (20) days of its receipt. A person ticketed shall be given an opportunity to be heard on the question, to put forth evidence, and to cross-examine the ticketing officer.

(c) The decision of the superintendent or his or her designee shall be in writing and shall set forth the underlying facts supporting its conclusions and shall be final. (Authorized by and implementing K.S.A. 76-12a13; effective May 1, 1982.)

30-20-18. Failure to pay fine. (a) Any person failing to pay a fine within ten (10) days of being ticketed shall be prohibited from operating any motor vehicle or bicycle upon state institution grounds until the fine is paid. This provision shall not bar the institution from using other legal remedies to collect unpaid fines.

(b) If a person ticketed appeals the ticket pursuant to K.A.R. 30-20-17, the provisions of this regulation shall be stayed pending the outcome of the review. (Authorized by and implementing K.S.A. 76-12a13; effective May 1, 1982.)

30-20-19. Removal of vehicles, bicycles. Vehicles or bicycles may be removed from the institution's grounds if allowed to stand in violation of any regulation or if left in a position or condition to constitute a hazard to the safety of others. The cost of same shall be paid by the owner of the vehicle or bicycle. (Authorized by K.S.A. 76-12a13; implementing K.S.A. 76-12a12; effective May 1, 1982.)

Article 21.—TRAFFIC AND PARKING

30-21-1 to 30-21-19. (Authorized by K.S.A. 76-12a13; effective Jan. 1, 1974; revoked May 1, 1982.)

Article 22.—LICENSING OF PSYCHIATRIC HOSPITALS; FUNDING OF COMMUNITY MENTAL HEALTH CENTERS AND FACILITIES FOR THE MENTALLY RETARDED AND FACILITIES FOR HANDICAPPED PERSONS

30-22-1. Scope. (a) These rules and regulations shall apply to the licensing of psychiatric

hospitals as authorized by K.S.A. 75-3307b, as amended, and shall apply to the setting of standards, the inspection of such hospitals, and the withdrawal of licenses for cause.

(b) Terms used herein shall have the same meaning as defined in the "act for obtaining treatment for a mentally ill person," K.S.A. 59-2901 through 59-2941, as amended. (Authorized by and implementing K.S.A. 75-3307b; effective, E-70-16, Feb. 13, 1970; effective Jan. 1, 1971; amended Feb. 15, 1977; amended May 1, 1979; amended Oct. 28, 1991.)

30-22-2. Principles to be considered in approval of application for licensing, renewal of license, or revoking of license. The following principles shall be considered in the inspection of the applying psychiatric hospital: (a) The quality of the services offered by the applying agency is determined by professional standards, and the selection of the services as to kind and extent can only be determined by the governing authority usually based upon the will of the community, the nature of the community problems, and the depth of community resources (acting together with the professional considerations).

(b) The applying agency shall be a growing, developing, social organization with different stages of differentiation and versatility dependent upon the specific local internal and community forces acting at a given point in time.

(c) Services of the applying agency may be offered to the mentally ill, the mentally retarded, persons under specific or unusual stress, or handicapped persons. Services may include those listed below offered either in an inpatient, residential setting, or an outpatient, neighborhood, or home setting.

(1) Diagnosis, evaluation, treatment, and restoration of mentally disordered or handicapped persons to an optimal level of functioning.

(2) Day care, training, education, sheltered employment necessary to improve an individual's maximum abilities leading toward total rehabilitation.

(3) Consultative and educational services to schools, courts, health and welfare and social agencies, both public and private.

(4) Training for students entering the mental health and retardation professions and continuing inservice training of mental health and retardation professionals and adjunctive personnel.

(5) Recruitment, training, and supervision of volunteer workers in the mental health related activities of the community.

(6) Informational activities directed toward the general population.

(7) Research.

(8) Interventions in society purposely directed to reduce stresses to the individual or to the community as a whole, which stresses contribute to the incidence of mental illness or mental retardation.

(9) Client information and referral, counseling, follow along, protective and other social and socio-legal services, transportation, residential and transitional centers, and recreation services, all geared toward the handicapped individuals, their families and the general public.

(d) The applying agency shall acknowledge the dignity and protect the rights of all persons within its authority to direct or regulate both personnel and clientele.

(e) The applying agency shall have an ethical and competent staff, and the recruitment practices shall provide measures to insure the hiring of personnel with these characteristics.

(f) The applying agency shall make provisions to cooperate with other community agencies within the scope of its resources and the skills of its personnel, and within its capacities to respond to the community needs.

(g) The applying agency shall keep accurate, current, and adequate client and administrative records, and shall submit reports derived from such records as required by the licensing agency to carry out these licensing procedures.

(h) The applying agency shall have written policies and procedures covering operation of the agency, including a written policy on how the agency is related to the statewide mental health planning effort.

(i) The applying agency shall provide a physical plant which is a safe and wholesome environment fit to enhance the program.

(j) The applying agency shall plan the program and physical plant to be accessible to clientele in point of view of time, location, and transportation. (Authorized by and implementing K.S.A. 75-3307b; effective, E-70-16, Feb. 13, 1970; effective Jan. 1, 1971; amended Jan. 1, 1974; amended May 1, 1975; amended Feb. 15, 1977; amended May 1, 1979; amended Oct. 28, 1991.)

30-22-3. Standards related to program, organization, and personnel. The standards maintained by the applying agency should conform with those considered reasonable and current in the community served by that agency.

Also, separate segments of the program must be evaluated not only in terms of its own intrinsic value to the community but also in terms of its relationship to the total program of that agency. The standards maintained by the applying agency should be reflected in its basic documents, including its articles of incorporation or constitutions, its by-laws, its recorded minutes of regularly scheduled meetings, and its written description of personnel practices. The following guidelines will be followed by the licensing agency in its inspection of the applying agency: (a) The applying agency must specify in writing the services it offers and the manner in which these are routinely accomplished.

(b) The applying agency must make provision for appropriate coordination, communication and collaboration among all personnel.

(c) The governing board must assume the legal and moral responsibility for the conduct of the applying agency. It must place the responsibility for the services offered upon the appropriate specialist, must assume the responsibility that the personnel meet ethical, educational, and training standards commensurate with duties, and must provide a merit system for the protection and benefit of the personnel.

(d) The governing board must assume the responsibility to insure that those functions of the agency that are, properly speaking, medical concerns (such as the diagnosis and treatment of mental and physical disorders, the prescribing of medications, etc.) are the responsibility of licensed physicians or under the supervision of a licensed physician.

(e) In the event the applying agency maintains a psychiatric service, the service shall not be considered complete unless supervised by a recognized, qualified psychiatrist.

(f) In the event the applying agency maintains a psychological service, the service shall not be considered complete unless supervised by a recognized, qualified psychologist.

(g) In the event the applying agency maintains a social work service, the service shall not be considered complete unless supervised by a recognized, qualified social worker.

(h) In the event the applying agency maintains a nursing service, the service shall not be considered complete unless supervised by a recognized, qualified registered nurse.

(i) Any individual reporting to act in a professional capacity must meet the standards for that

profession accepted by the division of mental health and retardation services. (Authorized by K.S.A. 1974 Supp. 75-3307b; effective, E-70-16, Feb. 13, 1970; effective Jan. 1, 1971; amended May 1, 1975.)

30-22-3a. Private psychiatric hospitals; additional organizational standards. Each hospital shall: (a) Have a governing body that has overall responsibility for the operation of the hospital;

(b) have a chief executive officer appointed by its governing body who shall be responsible for the overall administration of the hospital;

(c) have a single, organized professional staff that has the overall responsibility for the quality of all clinical care provided to patients and for the professional practices of its members, as well as for accounting therefor to the governing body. The manner in which the professional staff is organized shall be consistent with the hospital's documented staff organization and bylaws, policies, and the setting in which the services are provided. The professional staff bylaws, rules and regulations shall require, unless otherwise provided by law, that a licensed physician be responsible for diagnosis and all medical care and treatment. The organization of the professional staff, and its bylaws, rules and regulations, shall be approved by the governing body;

(d) prepare a written, annual budget which includes a statement of expected revenues and expenses and an integrated statement of the hospital's progress plan;

(e) have personnel policies which promote its objectives and provide qualified personnel during all hours of operation in numbers which are adequate to support the functions of the hospital and to provide quality care;

(f) provide staff development programs for administrative, professional, and support staff; and

(g) make library services available to meet the professional and technical needs of the facility's staff. (Authorized by and implementing K.S.A. 75-3307b, effective May 1, 1985.)

30-22-3b. Private psychiatric hospitals; additional program standards. Each hospital shall: (a) Formulate and specify its goals and objectives and describe its programs (including volunteer services, if any) in a written plan for professional services. The plan shall be written in such a manner that the hospital's performance can be measured;

(b) have a written statement of goals and objectives for each program and each patient population served;

(c) conduct a utilization review program;

(d) exhibit evidence of a well-defined, organized program designed to enhance patient care through ongoing, objective assessment of important aspects of patient care and correction of identified problems; and

(e) if conducting research with human subjects, have written policies which assure that a rigorous review is conducted with regard to the merits of each research project and the potential effects of the research procedures on the participants. (Authorized by and implementing K.S.A. 75-3307b; effective May 1, 1985.)

30-22-3c. Private psychiatric hospitals; additional treatment standards. Each hospital shall: (a) Maintain a written record for each patient;

(b) have a written plan designed to assure that the treatment planned and provided for each patient is evaluated and revised according to the needs of the patient;

(c) have written policies and procedures governing the intake process which specify the following:

(1) The information to be obtained for each applicant or referral for admission;

(2) the procedures for accepting referrals from outside agencies and organizations;

(3) the records to be kept regarding each applicant;

(4) the statistical data to be kept on the intake process; and

(5) the procedures to be followed when an applicant or a referral is found to be ineligible for admission;

(d) conduct a complete assessment of each patient, including a clinical consideration of the patient's needs;

(e) develop a written, individualized treatment plan for each patient. The plan shall be based on an assessment of such patient's clinical needs;

(f) require special, written justification prior to the implementation of the following treatment procedures:

(1) The use of restraints;

(2) the use of seclusion;

(3) the use of electroconvulsive therapy and other forms of convulsive therapy; and

(4) the performance of psychosurgery or other surgical procedures for intervention in or alter-

ation of a mental, emotional, or behavioral disorder; and

(g) assess and treat the dental needs of its patients. (Authorized by and implementing K.S.A. 75-3307b; effective May 1, 1985.)

30-22-3d. Private psychiatric hospitals; additional services. (a) Each hospital shall provide the following services except as noted:

(1) Dietetic services, if a hospital provides 24-hour care, has therapeutic goals related to the nutritional needs of patients, or has patients otherwise requiring such services;

(2) pastoral services, in accordance with the needs of its patients;

(3) pathology and laboratory services, in accordance with the needs of the patients, the size of the facility, the services offered, and the resources available in the community;

(4) pharmaceutical services provided by the hospital or by agreement; and

(5) radiology services provided by the hospital or by agreement.

(b) In addition to the services listed in subsection (a), inpatient, residential and partial-day facilities shall directly provide or make arrangements for the following services:

(1) Activity services to meet the physical, social, cultural, recreational, health maintenance, and rehabilitation needs of patients;

(2) educational services to meet patient needs for special education, patient needs related to learning difficulties resulting from either physical or emotional aspects of their mental illness, and patient needs for pre-vocational or vocational education necessary for re-integration into the community after treatment;

(3) speech-language, and hearing services to provide assessments of speech, language, or hearing when indicated and to provide counseling, treatment, and rehabilitation when needed; and

(4) counseling services concerning specific vocational needs. (Authorized by and implementing K.S.A. 75-3307b; effective May 1, 1985.)

30-22-4. Standards related to physical plant. The applying agency shall provide a physical plant which is a safe and wholesome environment fit to enhance the program. With particular programs directed to special groups of the emotionally or mentally handicapped much attention may have to be expended on the environmental atmosphere and appearance to make the milieu

stimulating or calming, diverting or focusing, informal or formal as the care and treatment program demands. To this end, the plant shall have differentiated rooms and spaces appropriate to the programs being offered. However the physical plant shall meet all local building and fire codes and also state requirements for use by physically handicapped persons where appropriate. (Authorized by K.S.A. 1974 Supp. 75-3307b; effective, E-70-16, Feb. 13, 1970; effective Jan. 1, 1971; amended May 1, 1975.)

30-22-4a. Private psychiatric hospitals; additional environmental management standards. (a) Each building in which patients receive treatment or in which patients are housed overnight shall be designed, constructed, and equipped to reasonably protect patients, staff, and visitors from the hazards of fire, explosion, and panic.

(b) Each hospital shall:

(1) Establish a safety committee that includes representatives from all major services;

(2) establish an environment that enhances the positive self-image of patients and preserves their human dignity;

(3) develop written policies and procedures for maintaining a clean and safe environment;

(4) develop an infection-control program; and

(5) develop written policies and procedures for the handling, maintenance, and use of sterile supplies and equipment if such supplies and equipment are used by the hospital. (Authorized by and implementing K.S.A. 75-3307b; effective May 1, 1985.)

30-22-5. Licensing of private psychiatric hospitals. Private in-patient facilities for the treatment of psychiatric patients exclusively may be licensed to offer services to the full range of psychiatric patients or to some sub-groups of psychiatric patients with mental health problems in addition to alcoholism, drug addictions, developmental disabilities or similar conditions. In the event that a hospital service is offered to a limited clientele only, the license application shall so state and the license issued shall designate the limitation of service authorized by the state department of social and rehabilitation services. The responsibility for licensing psychiatric wards of general hospitals rests with the Kansas state department of health and environment. (Authorized by and implementing K.S.A. 75-3307b; effective, E-70-

16, Feb. 13, 1970; effective Jan. 1, 1971; amended Jan. 1, 1974; amended May 1, 1975; amended Feb. 15, 1977; amended May 1, 1979; amended Oct. 28, 1991.)

30-22-6. Licensing procedure; duration and renewal of license. (a) Each application for a license shall be submitted to the director of the division of mental health and retardation services on a form provided by the department.

(b) The division shall process the application, inspect the applying agency, and prepare a report to the director. The director shall review the report and recommend approval or disapproval of the application within 60 days of filing.

(c) Upon approval of the application, a license shall be issued by the department of social and rehabilitation services, stating the activity or activities for which the applicant receives the license.

(d) A license shall remain in effect for the period of two years, unless revoked for cause.

(e) Application for renewal of a license shall be submitted to the director of the division of mental health and retardation services 45 days before expiration of the license. This provision may be waived by the director upon a showing of good cause by the agency. (Authorized by and implementing K.S.A. 75-3307b; effective, E-70-16, Feb. 13, 1970; effective Jan. 1, 1971; amended Jan. 1, 1974; amended May 1, 1975; amended May 1, 1979; amended Oct. 28, 1991.)

30-22-7. Revocation of license. A license may be suspended or revoked at any time that the department of social and rehabilitation services finds that the licensed agency has failed to comply with these regulations or applicable statutes. Prior to suspension or revocation of an agency's license, the division of mental health and retardation services shall send to the agency a written notification of the proposed suspension or revocation and the reasons therefor. The notice shall state whether the agency's license has been suspended pending further proceedings. Such notice shall further advise the agency that the agency may appear before the division at a specified time not less than five (5) nor more than fifteen (15) days from the date the notice is mailed to or served upon such agency and present any relevant evidence and be given an opportunity to be heard on the agency's continuing eligibility to be licensed. The division shall consider all evidence presented, including that of the agency. If the decision is to suspend or revoke

the agency's license as herein provided, the division shall issue a written order of suspension or revocation setting forth the effective date of such suspension or revocation and the basic underlying facts supporting the order. (Authorized by K.S.A. 75-3307b; effective, E-70-16, Feb. 13, 1970; effective Jan. 1, 1971; amended Jan. 1, 1974; amended May 1, 1975; amended May 1, 1979.)

30-22-8. Compliance with civil rights legislation. Each agency licensed or applying for license by the department of social and rehabilitation services shall comply with the Kansas act against discrimination. (Authorized by K.S.A. 75-3307b; effective, E-70-16, Feb. 13, 1970; effective Jan. 1, 1971; amended Jan. 1, 1974; amended May 1, 1975; amended May 1, 1979.)

30-22-9. Provisional license. A provisional license to begin operations or continue operations may be issued to an agency meeting most but not all of the requirements, provided the governing board of the agency presents evidence that any deficiency is temporary and provided said governing board presents sufficient evidence that efforts to correct the deficiency are in progress. (Authorized by K.S.A. 75-3307b; effective, E-70-16, Feb. 13, 1970; effective Jan. 1, 1971.)

30-22-10. (Authorized by K.S.A. 65-4406(c); implementing K.S.A. 65-4404(b); effective May 1, 1975; amended May 1, 1979; amended May 1, 1981; amended May 1, 1983; amended, T-86-26, Aug. 19, 1985; amended May 1, 1986; revoked May 1, 1987.)

The content of this regulation is being transferred to 30-22-30 effective May 1, 1987.

30-22-11 to 30-22-14. (Authorized by K.S.A. 75-3304, K.S.A. 1985 Supp. 75-3307b, as amended by L. 1986, Ch. 324, Sec. 2; implementing K.S.A. 19-4001, K.S.A. 1985 Supp. 75-3307b, as amended by L. 1986, Ch. 324, Sec. 2; effective May 1, 1987; revoked Oct. 28, 1991.)

30-22-15 to 30-22-28. (Authorized by K.S.A. 1985 Supp. 75-3307b, as amended by L. 1986, Ch. 324, Sec. 2; effective May 1, 1987; revoked Oct. 28, 1991.)

30-22-30. Application for state financing of community mental health centers. (a) Community mental health centers may apply for state financing under L. 1987, Ch. 249, Sections 1 through 12 by submitting an annual budget re-

quest to the secretary of social and rehabilitation services.

(b) Budget requests shall be submitted to the secretary by July 1 of each year unless a delay is granted in writing.

(c) Budgets shall be submitted on forms and according to instructions prescribed by the secretary.

(d) When an existing program is adequately serving a geographic area, a duplicate program shall not be requested in the budget of a center. Reasonable efforts shall be made to make the existing service available to all citizens in the area through contractual agreement with the provider of the existing service, if necessary.

(e) When a new program is to be implemented by a center, the center must notify the secretary 45 days in advance of program initiation in order to receive approval as a non-duplicate program in the center catchment area. In determining whether a new program duplicates an existing program, the secretary shall consider pre-existing programs in the center catchment area and the availability of the pre-existing programs to all groups of catchment area citizens.

(f) As soon as state appropriation bills are signed into law, the amount available for each center that has submitted a budget shall be determined by the secretary. The amount shall be equal to the amount that the center's average grant would have been under the Kansas community mental health assistance act for the fiscal years ending on June 30, 1986, June 30, 1987, and June 30, 1988, if such act had not been repealed and if appropriations for the fiscal year ending June 30, 1988 to finance grants under such act had remained constant from the previous fiscal year plus each mental health center's pro rata share of any increase in moneys, including any inflation adjustments, appropriated for such purpose. The amounts so determined shall be paid to the centers in four payments on July 1, October 1, January 1 and April 1.

(g) Each center shall submit a quarterly report within 30 working days after the end of each calendar quarter. The report shall be on forms and in such detail as prescribed by the secretary.

(h) Each center shall file a copy of its annual audit report that has been certified by an independent auditor.

(i) Underpayments, overpayments or payments exceeding the maximum allowed by statute shall be subtracted from or added to the payment made on April 1.

(j) The secretary may withdraw funds from any center for one or more of the following reasons:

(1) not being substantially administered according to the annual budget;

(2) loss of license granted in accordance with the provisions of K.S.A. 75-3307b and amendments thereto; or

(3) net loss in a new program which did not receive approval by the secretary and which is found to be a duplicate program within the center catchment area. The secretary shall verify the amount of income and disbursements related to such programs in determining any net loss with audits conducted by auditors of the department of social and rehabilitation services. The amount withdrawn will be equal to the net loss of the program determined after each 12 months of operation.

(k) The secretary may withhold payments from a center or facility for one or more of the following reasons:

(1) Failure to submit required reports;

(2) unreasonable delay in the submission of required reports; or

(3) other good cause.

(l) Quarterly payments described in subsection (e) shall be made to a new or realigned community mental health center catchment area only after each new or realigned catchment area has been approved in accordance with K.A.R. 30-22-13 and 30-22-14. The financial plan required in K.A.R. 30-22-13(c)(6) shall include a new or revised budget as required in subsection (c).

(m) Special purpose grants may be awarded by the secretary if appropriated by the legislature for that purpose. The secretary shall consider legislative intent and identified local needs in awarding such grants. (Authorized by L. 1987, Ch. 249, Sec. 12; implementing L. 1987, Ch. 249, Sections 1 through 11; effective May 1, 1987; amended, T-88-42, Oct. 27, 1987; amended May 1, 1988.)

30-22-31. Definitions. The following definitions apply to K.A.R. 30-22-32. (a) "State hold harmless level" means the amount appropriated for state fiscal year 1986 under the provisions of K.S.A. 1988 Supp. 65-4411 et. seq., and is comprised of the aggregate of each eligible center's hold harmless level.

(b) "Center's hold harmless level" means the amount a center earned in state fiscal year 1986 under the provisions of K.S.A. 1988 Supp. 65-4411 et. seq.

(c) "Part day" means any adult day activity or vocational programming service that requires at least 1.5 but no more than 3.0 hours of direct contact between a center's staff and its client.

(d) "Full day" means any adult day activity or vocational programming service that requires in excess of 3.0 hours of direct contact between a center's staff and its client.

(e) "Individual habilitation plan (IHP)" means a plan, in written form, which:

(1) Describes a specific strategy for treatment/habilitation developed and agreed upon by team members and the client or a legal representative; and

(2) includes information regarding assessment, goals and objectives, time lines, program strategies and interventions, monitoring, review and documentation procedures.

(f) "Full-day equivalency" means two part-day activity or vocational program units or one full-day activity or vocational program unit.

(g) "Per diem rate" means an amount per program unit that shall be paid to community mental retardation centers for serving mentally retarded, or otherwise developmentally disabled clients.

(h) "Program unit" means either a full-day equivalency in a day program defined in subsections (i) through (n), or placement in community living defined in subsections (o) and (p). No more than two units can be generated for one client on a given day, regardless of the level of disability of the client and the length or intensity of the program provided.

(i) "Adult day care" means programs for elderly or disabled adults to:

(1) Prevent institutionalization or re-institutionalization;

(2) allow individuals to remain in their own home or the least restrictive environment;

(3) protect against abuse, neglect, and exploitation; and

(4) enable family members to obtain or remain in employment.

(j) "Adult life skills training" means programs that provide training in life skills, personal social adjustment and work attitude and skills exploration to improve, maintain functions, or reduce regression of disabled individuals with very limited personal, social, and pre-vocational skills.

(k) "Work activity" means programs that provide long-term instruction and supervision to assist disabled individuals, demonstrating pre-vocational skills, in maximizing vocational abilities.

(l) "Work adjustment" means programs that assist disabled persons, who demonstrate basic work skills, to develop or refine critical work behaviors within a short period of time. These services shall improve the disabled person's prospect of obtaining employment.

(m) "Occupational skills training" means programs that assist disabled persons, who demonstrate a potential to benefit from skill training, to acquire occupational skills needed to perform jobs in competitive employment.

(n) "Supported employment" means programs that provide competitive community employment with emphasis on structural job placement or on-the-job training for as long as is necessary and provides follow-up services that assure continued employment.

(o) "Group living" means residential programs that improve life skills, personal and social adjustment of disabled individuals, needing daily nonmedical residential supervision and support, to enable them to become more self-sufficient in the community.

(p) "Semi-independent living" means residential programs that enable disabled individuals, requiring less than daily supervision or training, to remain and function in the community with minimal supervision or training.

(q) "Waiting lists" means a single listing of all persons who have, through an admissions screening process, been found appropriate for and in need of programming that the licensed community mental retardation center should provide for persons with similar disabilities. The effective date of this regulation shall be January 1, 1990. (Authorized by and implementing K.S.A. 1988 Supp. 65-4411 to 65-4415; effective May 1, 1987; amended Jan. 1, 1990.)

30-22-32. Application for state financing of community mental retardation centers under the community mental retardation centers assistance act. Recognized community mental retardation centers may apply for state financing by submitting a report to the secretary of social and rehabilitation services (SRS) which indicates the number of program units generated by eligible clients actively enrolled in the center or contracted affiliates on December 31st of each year. (a) Client eligibility. A client shall be eligible and shall generate program units for a center if the client meets the following conditions:

(1) Is mentally retarded, or otherwise developmentally disabled;

- (2) is 18 years of age or older;
- (3) has an individual habilitation plan (IHP) acceptable by the SRS area office;
- (4) is not being supported in whole or in part by a special grant from SRS to support clients transferred from a state hospital or training center, private ICF/MR, or from community waiting lists;
- (5) is accepted for a program by the facility on a "first-come, first-serve basis in order of the time at which an application for admission was made to such facility on behalf of the client, except that a client accepted for a program by a facility on other than a first-come, first-serve basis because of a family crisis occasioned by family circumstances shall constitute a full-time equivalent client." A family crisis occasioned by family circumstances shall be considered on an individual basis. Standards and guidelines shall be established by each agency board of directors and shall upon request of the secretary be made available for review by the secretary. The standards and guidelines established by the agency board of directors shall specify to the extent known the types of family crises most likely to necessitate admission to a facility and shall establish criteria for determining the appropriateness of such admission. Standards and guidelines for defining family crises shall specify family situations which make it impossible or extremely difficult for the family unit to provide or continue provision of that care and programming which the client needs based on the client's current behavior, functioning and medical needs. Age, health, transportation and financial capabilities of responsible family members, as well as client needs, shall be valid considerations in determining crises situations;
- (6) is not being funded in a certified ICF/MR operated by the center; and
- (7) is served by a recognized community mental retardation center or contracted affiliate.

(b) Program eligibility. The following programs as defined in K.A.R. 30-22-31 shall be eligible for generating state financing when provided to an eligible client:

- (1) Adult day care;
- (2) adult life skills;
- (3) work activity;
- (4) work adjustment;
- (5) occupational skills training;
- (6) supported employment;
- (7) group living; and
- (8) semi-independent living.

The center shall be restricted to programs (1) through (8) in computing program units, but shall not be restricted to programs (1) through (8) in expending the grant funds they receive.

(c) Contracts between community mental retardation centers and other providers. Contracts between community mental retardation centers and other providers shall define an unmet program need, and shall be subject to the approval of the secretary of SRS before any state grants shall be awarded.

(d) Per diem calculations. A per diem will be calculated using the following method:

(1) By June 1 of each year, the amount of grant which is held harmless (\$5,216,286) will be subtracted from the total amount of the grant appropriated for the fiscal year beginning July 1.

(2) The resulting amount will be divided by the total number of program units reported by all of the centers for December 31st of the previous year.

(e) Center awards. The per diem will be multiplied by the total number of program units for each center. This amount will be added to the hold harmless grant for each center. The sum of these amounts will constitute the total grant award to be made to each center for the following fiscal year.

(f) Hold harmless distribution. There are established two mechanisms for distributing the state appropriation subject to the hold harmless levels defined in K.A.R. 30-22-31.

(1) If in the event an appropriation meets or exceeds the state's hold harmless level, the grant for a center will be determined by subsection (e).

(2) If in the event the appropriation is less than the state's hold harmless level, then each center shall receive a grant award that is prorated based upon the percentage that each center's hold harmless level comprises the state's hold harmless level.

(g) Annual and quarterly reports. Each center and affiliate shall submit an annual report within 120 working days after the end of the state fiscal year. The center and affiliate shall also submit quarterly reports within 45 days after the close of the quarter. The annual and quarterly reports shall:

- (1) Be on forms and in such detail as prescribed by the secretary;
- (2) describe by program their income, expenditures, clients and program units; and
- (3) include the number and names of clients on their waiting lists.

(h) Annual audit reports. Each center shall file a copy of its annual audit report certified by an

independent auditor to social and rehabilitation services, mental health and retardation services.

(i) Audits. Program units reported on the state grant application shall be verified by auditors of the department of social and rehabilitation services.

(j) Underpayments or overpayments. Underpayments or overpayments resulting from audit reports or corrections to prior quarterly reports, shall be subtracted from or added to the payments made on October 1 and April 1.

(k) Withdrawal of funds. Funds may be withdrawn from any center that:

(1) Does not maintain eligibility;

(2) is not being substantially administered according to the grant application, including providing fewer than 95% of the number of program units upon which the center's grant was awarded. In the event a center provides fewer than 95% of the number of program units in the center's grant award, the secretary may calculate the amount to be withdrawn according to the per diem rate multiplied by the number of program units short of the grant award.

(l) Proration of withdrawn funds. If in the event the grant was reduced, withdrawn funds shall be prorated to the other centers according to the method described in subsection (e), and shall be distributed in the April 1 payment.

(m) Appeal of withdrawn funds. Centers may appeal to a review board any withdrawn funds if there are extenuating circumstances that caused them to provide fewer than 95% of the program units in their grant award. Extenuating circumstances include unforeseen changes in funding or client caseload, or unpredictable disasters. The review board shall be comprised of four individuals, two selected by the secretary and two selected by the Kansas association of rehabilitation facilities.

(n) Withholding of payments. The secretary may withhold payments from a center for one or more of the following reasons:

(1) Failure to submit required reports;

(2) unreasonable delay in the submission of required reports; or

(3) failure to enter into an affiliate agreement with a center in order to avoid duplication. The effective date of this regulation shall be January 1, 1990. (Authorized by and implementing K.S.A. 1988 Supp. 65-4411, 65-4412, 65-4413, 65-4414, 65-4415; effective May 1, 1987; amended May 1, 1988; amended Jan. 1, 1990.)

30-22-33. Special purpose grants to community mental retardation centers. (a) Community mental retardation centers may receive special purpose grants from the secretary of social and rehabilitation services or the secretary's designee. These grants are for the purpose of expanding the availability of non-institutional services for persons with mental retardation/developmental disabilities. These grants are distinct from the state financing provided under provisions of K.A.R. 30-22-32.

(b) Grants subject to appropriations. The total funds disbursed by the secretary in accordance with these regulations shall not exceed the amount appropriated.

(c) General eligibility for grants. Only community mental retardation centers having been established pursuant to K.S.A. 19-4001 to 19-4015 inclusive, or agencies with affiliation agreements with these centers that have been approved by the secretary or the secretary's designee, and that have been licensed in accordance with the provisions of K.S.A. 75-3307b shall be eligible to receive special purpose grant funding. Providers that have not been established pursuant to K.S.A. 19-4001 to 19-4015, but have been licensed in accordance with the provisions of K.S.A. 65-501 instead of K.S.A. 75-3307b, may also receive special purpose grant funding if services offered by these providers allow the diversion or discharge of persons 18 years or less from state mental retardation hospitals.

(d) Application for funds. Eligible centers shall apply to the secretary or the secretary's designee to receive special purpose grant funding. Applications must be submitted in a manner prescribed by the secretary or the secretary's designee and must be submitted by the date and time specified by the secretary or the secretary's designee.

(e) Calculation of assistance. Centers may receive assistance on the basis of a written commitment by the center to provide eligible programs, as defined in K.A.R. 30-22-32, to eligible clients, as defined in K.A.R. 30-22-32. Eligible providers may receive assistance in accordance with the provisions of the mental health and retardation services commissioner's letter on supported family living.

(1) Funds may be awarded to centers on the basis of the number of eligible program units, as defined in K.A.R. 30-22-32, that are proposed to be provided by the center during the fiscal year for which the grant is awarded. For newly award-

ed grants, program units must be in addition to the number of total units provided during the preceding fiscal year. For continuation grants initially awarded in previous years, the number of program units may equal the number of units funded by the grant in the previous fiscal year. This unit number is in turn multiplied by the program unit per diem rates established by the secretary or the secretary's designee. For new grants, centers may receive start-up funds in addition to those awarded for provision of program units to allow purchase of necessary materials, supplies and equipment.

(2) If the appropriation is insufficient to fund the cumulative number of program units proposed to be provided by all eligible centers, eligible centers may receive funding on the basis of the percentage of the state's population included within the center's catchment area and the percentage of the statewide total number of program units not funded by the special purpose grants or medicaid that are provided by the respective center.

(3) If the center fails to provide the number of program units on which the grant award was based, the center will be required to return a prorated amount of special purpose grant funding to social and rehabilitation services.

(f) Grant agreement. Additional requirements not specified in regulation may be imposed upon the centers receiving special purpose grant funding. These requirements may be contained in a contractual agreement between the center and social and rehabilitation services. The effective date of this regulation shall be August 1, 1990. (Authorized by and implementing K.S.A. 75-5321; effective Aug. 1, 1990.)

**Article 23.—PARSONS STATE HOSPITAL
AND TRAINING CENTER, WINFIELD
STATE HOSPITAL AND TRAINING
CENTER, NORTON STATE HOSPITAL
AND KANSAS NEUROLOGICAL
INSTITUTE**

30-23-1. This rule and regulation shall be revoked on and after December 29, 1995. (Authorized by K.S.A. 1974 Supp. 76-12a07; effective Jan. 1, 1967; amended Jan. 1, 1974; amended May 1, 1975; revoked Dec. 29, 1995.)

30-23-2. (Authorized by K.S.A. 39-111, K.S.A. 1974 Supp. 76-12a07; effective Jan. 1, 1967; revoked May 1, 1975.)

30-23-3. This rule and regulation shall be revoked on and after December 29, 1995. (Authorized by K.S.A. 76-12a07; effective Jan. 1, 1967; amended Jan. 1, 1974; amended May 1, 1975; amended May 1, 1979; revoked Dec. 29, 1995.)

30-23-4. (Authorized by K.S.A. 1974 Supp. 76-12a07; effective Jan. 1, 1967; revoked May 1, 1975.)

30-23-5. (Authorized by K.S.A. 1974 Supp. 76-17c02; effective Jan. 1, 1967; revoked May 1, 1975.)

30-23-6. This rule and regulation shall be revoked on and after December 29, 1995. (Authorized by K.S.A. 1974 Supp. 76-12a07, 76-17c02; effective Jan. 1, 1967; amended Jan. 1, 1974; amended May 1, 1975; revoked Dec. 29, 1995.)

30-23-7. This rule and regulation shall be revoked on and after December 29, 1995. (Authorized by K.S.A. 1974 Supp. 76-12a07, 76-17c02; effective Jan. 1, 1967; amended Jan. 1, 1974; amended May 1, 1975; revoked Dec. 29, 1995.)

30-23-8. This rule and regulation shall be revoked on and after December 29, 1995. (Authorized by K.S.A. 76-12a07, 76-17c02; implementing K.S.A. 76-12a06; effective Jan. 1, 1967; amended May 1, 1975; amended May 1, 1984; revoked Dec. 29, 1995.)

30-23-9. This rule and regulation shall be revoked on and after December 29, 1995. (Authorized by K.S.A. 1974 Supp. 76-12a07, 76-17c02; effective Jan. 1, 1967; amended May 1, 1975; revoked Dec. 29, 1995.)

30-23-10. This rule and regulation shall be revoked on and after December 29, 1995. (Authorized by K.S.A. 1974 Supp. 76-12a07, 76-17c02; effective Jan. 1, 1967; amended Jan. 1, 1974; amended May 1, 1975; revoked Dec. 29, 1995.)

30-23-11. This rule and regulation shall be revoked on and after December 29, 1995. (Authorized by K.S.A. 1974 Supp. 76-12a07, 76-17c02; effective Jan. 1, 1967; amended Jan. 1, 1974; amended May 1, 1975; revoked Dec. 29, 1995.)

30-23-12. This rule and regulation shall be revoked on and after December 29, 1995. (Authorized by K.S.A. 1974 Supp. 76-12a07, 76-17c02; effective Jan. 1, 1967; amended May 1, 1975; revoked Dec. 29, 1995.)

30-23-13. This rule and regulation shall be revoked on and after December 29, 1995. (Authorized by K.S.A. 1974 Supp. 76-12a07, 76-17c02; effective Jan. 1, 1967; amended Jan. 1, 1970; amended Jan. 1, 1974; amended May 1, 1975; revoked Dec. 29, 1995.)

30-23-14. This rule and regulation shall be revoked on and after December 29, 1995. (Authorized by K.S.A. 1974 Supp. 75-3304, 76-1411, 76-1617, 76-17c02; effective Jan. 1, 1967; amended May 1, 1975; revoked Dec. 29, 1995.)

30-23-15. This rule and regulation shall be revoked on and after December 29, 1995. (Authorized by K.S.A. 1974 Supp. 75-3304; effective Jan. 1, 1967; amended Jan. 1, 1969; amended Jan. 1, 1974; amended May 1, 1975; revoked Dec. 29, 1995.)

30-23-16. (Authorized by K.S.A. 1974 Supp. 75-3304; effective Jan. 1, 1969; amended Jan. 1, 1974; revoked May 1, 1975.)

30-23-17. This rule and regulation shall be revoked on and after December 29, 1995. (Authorized by K.S.A. 1974 Supp. 75-3304; effective May 1, 1975; revoked Dec. 29, 1995.)

Article 24.—KANSAS TREATMENT CENTER FOR CHILDREN

30-24-1 to 30-24-18. (Authorized by K.S.A. 76-17b01, 76-17b02, 76-17b03; effective Jan. 1, 1967; revoked Jan. 1, 1969.)

Article 25.—STATE YOUTH CENTERS OPERATED BY SOCIAL AND REHABILITATION SERVICES

30-25-1. (Authorized by K.S.A. 76-12a07; effective May 1, 1976; revoked May 1, 1983.)

30-25-2. Persons eligible for admission to a state youth center. Juveniles 13 years of age or older, who have been committed by a judge of a district court in this state to the custody of the secretary under the provisions of K.S.A. 1982 Supp. 38-1663, may be admitted to a state youth center. (Authorized by K.S.A. 1982 Supp. 76-12a21; implementing K.S.A. 1982 Supp. 38-1663; effective May 1, 1976; amended May 1, 1983.)

30-25-3. (Authorized by K.S.A. 76-12a07; effective May 1, 1976; revoked May 1, 1983.)

30-25-4. (Authorized by K.S.A. 75-3335a, 76-12a07; effective May 1, 1976; revoked May 1, 1983.)

30-25-5 to 30-25-7. (Authorized by K.S.A. 76-12a07; effective May 1, 1976; revoked May 1, 1983.)

30-25-8. (Authorized by K.S.A. 75-3304, 76-12a07; effective May 1, 1976; revoked May 1, 1983.)

30-25-9. (Authorized by K.S.A. 76-12a07; effective May 1, 1976; revoked May 1, 1983.)

Article 26.—STATE PSYCHIATRIC HOSPITALS; CATCHMENT AREAS; ASSISTANCE TO COUNTIES; PATIENT FUNDS; AND MEDICAL INFORMATION

30-26-1. (Authorized by K.S.A. 75-3304, 76-12a07; implementing K.S.A. 59-2919; effective Jan. 1, 1967; amended Jan. 1, 1969; amended Jan. 1, 1972; amended, E-74-45, Sept. 30, 1974; amended May 1, 1975; amended May 1, 1983; revoked June 13, 1997.)

30-26-1a. State hospital catchment areas. (a) Persons residing in the following counties authorized by a participating mental health center to seek voluntary admission to a state psychiatric hospital or ordered to be involuntarily admitted by a district court acting pursuant to K.S.A. 59-2945, et seq., shall be admitted to or committed to the Larned state hospital: Barber, Barton, Cheyenne, Clark, Comanche, Decatur, Dickinson, Edwards, Ellis, Ellsworth, Finney, Ford, Gove, Graham, Grant, Gray, Greeley, Hamilton, Harper, Harvey, Haskell, Hodgeman, Kearny, Kingman, Kiowa, Lane, Lincoln, Logan, Marion, McPherson, Meade, Morton, Ness, Norton, Osborne, Ottawa, Pawnee, Phillips, Pratt, Rawlins, Reno, Rice, Rooks, Rush, Russell, Saline, Scott, Seward, Sheridan, Smith, Sherman, Stafford, Stanton, Stevens, Sumner, Thomas, Trego, Wallace, and Wichita.

(b) Persons residing in the following counties authorized by a participating mental health center to seek voluntary admission to a state psychiatric hospital or ordered to be involuntarily admitted by a district court acting pursuant to K.S.A. 59-2945, et seq., shall be admitted to or committed to either the Osawatimie state hospital or the Rainbow mental health facility as designated by the participating mental health center authorizing the admission: Allen, Anderson, Atchison,

Bourbon, Brown, Butler, Chase, Chautauqua, Cherokee, Clay, Cloud, Coffey, Cowley, Crawford, Doniphan, Douglas, Elk, Franklin, Geary, Greenwood, Jackson, Jefferson, Jewell, Johnson, Labette, Leavenworth, Linn, Lyon, Marshall, Miami, Mitchell, Montgomery, Morris, Nemaha, Neosho, Osage, Pottawatomie, Republic, Riley, Sedgwick, Shawnee, Wabaunsee, Washington, Wilson, Woodson, and Wyandotte.

(c) The state security hospital at Larned shall admit persons from all counties as ordered committed there, pursuant to K.S.A. 22-3302, 22-3303, 22-3428, 22-3428a, 22-3428b, 22-3429, or 22-3430.

(d)(1) Persons ordered committed to a state psychiatric hospital other than the state security hospital at Larned pursuant to K.S.A. 22-3302, 22-3303, 22-3428, 22-3428a, 22-3428b, 22-3429, 22-3430, or 38-1655 shall be admitted to the Larned state hospital if the person's county of residence is a county listed in subsection (a), or to the Osawatomie state hospital if the person's county of residence is a county listed in subsection (b).

(2) If the county of residence of the person ordered committed under paragraph (d)(1) cannot be reasonably determined, then that person shall be admitted to the Larned state hospital if the court committing that person is the court for a county listed in subsection (a), or to the Osawatomie state hospital if the court committing that person is the court for a county listed in subsection (b).

(e) Persons proposed to be committed by a court to a state psychiatric hospital pursuant to K.S.A. 22-3219, 38-1623, 38-1637, 38-1638, 38-1662, 59-29a05, 59-29a07 or any other provisions of law not provided for in this regulation, shall be admitted to the hospital designated by the secretary as the secretary may determine is a suitable place to which the person may be committed and at which space is available. (Authorized by K.S.A. 75-3304 and 76-12a07; implementing K.S.A. 22-3219, 22-3302, 22-3303, 22-3428, 22-3428a, 22-3428b, 22-3429, 22-3430, 38-1623, 38-1637, 38-1638, 38-1655, 38-1662, 59-2968, 59-29a05, and 29a07; effective June 13, 1997.)

30-26-2. (Authorized by K.S.A. 1973 Supp. 75-3304, 76-12a07; effective Jan. 1, 1967; amended Jan. 1, 1974; revoked June 13, 1997.)

30-26-3. Payment for care and treatment. Payment for the maintenance, care and treatment of persons admitted to a state hospital, state hospital and training center or the Kansas neurological

institute, shall be made in accordance with K.S.A. 1973 Supp. 59-2006 and K.S.A. 59-2006a or any other Kansas statute particularly pertaining to said hospitals or institutions. At the same hospitals and institutions the maximum rate to be charged for the evaluation, care and treatment of outpatients (any patient not admitted as an inpatient such as day-treatment, night-treatment, part-time treatment patients or patients in study units, or other special non-inpatient programs) shall be set by the state director of mental health and retardation services at a reasonable rate not in excess of the actual costs for the particular services being given. The director may delegate to the superintendent the authority to grant allowances which will reduce the amount to be paid by the patient. In granting allowances the superintendent may take into consideration the therapeutic or treatment value of the charge to the patient, the ability of the individual being charged to pay, as well as the actual costs to the state for the services being performed. On past due outpatient accounts which have not been collected in full and the hospital or institution superintendent responsible for the setting of the charge determines that the unpaid balance is then unreasonable or uncollectible the same may be modified or cancelled but may not be increased from the original amount.

The state hospitals or institutions shall make collections for maintenance, care and treatment, but the final determination as to a compromise on any claim due shall be by the legal division of the state department of social and rehabilitation services. (Authorized by K.S.A. 1973 Supp. 75-3304, 76-12a07, K.S.A. 76-170; effective Jan. 1, 1967; amended Jan. 1, 1974.)

30-26-4. (Authorized by K.S.A. 1973 Supp. 75-3302c, 75-3304, 76-12a07; effective Jan. 1, 1967; amended Jan. 1, 1974; revoked June 13, 1997.)

30-26-5. This rule and regulation shall be revoked on and after December 29, 1995. (Authorized by K.S.A. 1973 Supp. 75-3304; effective Jan. 1, 1967; revoked Dec. 29, 1995.)

30-26-6. This rule and regulation shall be revoked on and after December 29, 1995. (Authorized by K.S.A. 1973 Supp. 75-3304; effective Jan. 1, 1967; revoked Dec. 29, 1995.)

30-26-7. (Authorized by K.S.A. 1973 Supp. 75-3304, 76-12a07; effective Jan. 1, 1967; amended Jan. 1, 1974; revoked June 13, 1997.)

30-26-8. Assistance to counties in establishing outpatient mental health treatment center or clinic. The state director of mental health and retardation services shall have authority to assist communities in establishing outpatient mental health clinics or centers, following determination of need and the advisability of such facility, and the director may provide staff for the local clinics from the state mental hospitals to the extent he determines possible; such staffing to be on a temporary basis until the local clinic can secure permanent personnel. (Authorized by K.S.A. 1973 Supp. 75-3303a; effective Jan. 1, 1967, amended Jan. 1, 1974.)

30-26-9. Establishment of patients' personal fund and patients' benefit fund. There is hereby established at each institution under the state department of social and rehabilitation services a patients' personal fund and a patients' benefit fund. The patients' personal fund shall be established pursuant to K.S.A. 1973 Supp. 76-163, chapter 371, Laws of Kansas, 1973, and any directives of the state department of social and rehabilitation services. The patients' benefit fund shall be established pursuant to directives of the state department of social and rehabilitation services and shall receive and handle all nonappropriated funds including profits from canteen funds and non-official enterprises or activities received by an institution or the state department of social and rehabilitation services for the general use and benefit of all patients or residents of an institution. (Authorized by K.S.A. 1973 Supp. 75-3304, 76-163, 76-12a07; effective Jan. 1, 1967; amended Jan. 1, 1974.)

30-26-10. (Authorized by K.S.A. 75-3304, K.S.A. 1965 Supp. 76-2461; effective Jan. 1, 1967; revoked Jan. 1, 1974.)

30-26-11. Definition of medical information. The term medical information as used in this regulation shall be considered to include but not limited to the following:

- (1) Discharge summaries.
- (2) Laboratory reports.
- (3) X-ray reports.
- (4) Diagnostic reports.
- (5) Physical, psychiatric or psychological reports or general medical reports.
- (6) Social histories. (Authorized by K.S.A. 1973 Supp. 76-12a10; effective Jan. 1, 1974.)

30-26-12. Release without payment of fee. Medical information may be provided without a payment of fee to the following: Patient, former patient, or his next of kin; any concerned state agency; state or national accreditation agency; scholarly investigator; federal agencies; physicians and hospitals; railroad or other retirement agencies; school, colleges and universities, community mental health/retardation facilities; alcoholism or other special care facilities; adult or children's care homes; prospective employers of former patients; courts and attorneys in judicial proceedings involving admission or discharge of a patient, or former patient. Nothing in this regulation shall be deemed to authorize release of information, but shall pertain solely to the question of release without payment of fee. Information can be released only upon standard release forms signed by the proper person or as authorized by K.S.A. 1972 Supp. 59-2931. (Authorized by K.S.A. 1973 Supp. 76-12a10; effective Jan. 1, 1974.)

30-26-13. Release with payment of fee. After receipt of the standard release form signed by the proper person authorized to consent to the release of medical information, this information may be released to the requesting party upon the payment of any fee required to be charged pursuant to K.A.R. 30-2-12. A statement of the charges shall be sent and the remittance received prior to the sending of medical information. The statement of charges shall be sent on a standard billing form approved by the director of mental health and retardation services. Receipts shall be deposited as outlined in chapter 369, Laws of Kansas, 1973. (Authorized by K.S.A. 75-5321, K.S.A. 1979 Supp. 45-204, 76-12a10; effective Jan. 1, 1974; amended, E-80-13, Aug. 8, 1979; amended May 1, 1980.)

Article 27.—OIL AND GAS LEASES ON INSTITUTIONAL PROPERTIES

30-27-1. Determination of land to be leased for oil, gas, or other mineral purposes. The secretary will determine which lands under his control may be leased for the production of oil, gas, or other materials without undue interference upon any state institution or any purpose or function of the secretary. (Authorized by K.S.A. 76-112 and 76-112d; effective, E-74-26, May 1, 1974; effective May 1, 1975.)

30-27-2. Bidders; notice; form of bids. Legal notice to bidders for lease of designated oil,

gas and other mineral lands shall be advertised for not less than five weeks in the Kansas register and shall be published in the county where the land is situated. The secretary shall accept the highest and optimum bid from a responsible bidder and shall reserve the right to reject any and all bids and to readvertise. Separate sealed bids for each tract of land shall be prepared on forms supplied by and filed with the secretary of social and rehabilitation services, and shall conform with the terms contained in the publication notice. A certified check or bank draft in the amount of the bid and payable to the secretary shall accompany all bids. The successful bidder may be required to pay publication costs before the awarded lease is executed. (Authorized by and implementing K.S.A. 76-112, 76-112e; effective, E-74-26, May 1, 1974; effective May 1, 1975; amended May 1, 1983.)

30-27-3. Cash bonus, rental. Bids for the leasing of oil and gas rights in lands designated by the secretary will be considered on the basis of a cash bonus, annual delay rental, and the amount of royalty to be paid shall not be less than 12½% of the gross proceeds at the prevailing market rate. Leases will be executed on a standard Kansas lease form. No lease shall be for a period to exceed five (5) years and so long thereafter as oil, gas, or other minerals, are being produced therefrom in paying quantities. (Authorized by K.S.A. 76-112; effective, E-74-26, May 1, 1974; effective May 1, 1975.)

30-27-4. Indemnity bonds. The secretary may require the filing of an indemnity bond, in an amount not to exceed \$50,000.00, by any successful bidder before the execution of an oil and gas lease with the bidder. The amount of the indemnity bond, if any, required for any oil and gas lease executed under these regulations shall be stated in the published notice for bids for that lease. The secretary may further require that the indemnity bond be in effect for the term of the lease and for six months after the plugging of any well on the lease if this latter period exceeds the term of the lease. (Authorized by and implementing K.S.A. 76-112; effective, E-74-26, May 1, 1974; effective May 1, 1975; amended May 1, 1983.)

30-27-5. Wells: operation and management. Oil and gas lessees shall notify the secretary thirty (30) days prior to the commencement of each well drilling operation. All wells shall be spaced, located, operated, and maintained in ac-

cordance with all applicable state laws and regulations and shall be spaced, located, operated, and maintained at least 500 feet from any building on any state institution. The secretary may require the lessee of oil and gas rights to erect chain link fences of at least eight feet in height along their entire perimeter to fully enclose or encircle any drilling rig, pump, pipe, pool, pit, pile, housing or any other oil or gas drilling or production device or structure situated within 1,320 feet from any building, structure, or area normally used by institutional patients under the supervision or custody of any state institution or the secretary. The secretary may further prescribe reasonable procedures or safety devices to be followed or provided by the oil and gas lessees for the protection of residents, patients, or staff members of institutions from attractive nuisances or items inherently dangerous. The secretary shall notify the lessee of the need for correction of any dangerous devices or structures or the restoration of any land made dangerous by fill, excavation, or contamination from any operations of the lessee. The secretary may order the removal of any dangerous devices or structures or the restoration of any land made dangerous by fill, excavation, or contamination to its former state if the lessee fails to take any action within ninety (90) days after notification by the secretary to correct the dangerous device or structure or to restore land rendered dangerous to its former safe condition or if the lessee notifies the secretary that the lessee is unable to correct the dangerous devices, structures, or contaminations. The ordered removal or restoration operations shall, if possible, be performed by the lessee and the expenses of such operations shall be paid by the lessee. The costs of any above operations of removal or corrections that the secretary may be required to have performed due to refusal or inability of the lessee and the expenses of any uncorrected dangers or contaminations to land or property under the control of the secretary may be charged against the indemnity bond, if any, filed by the lessee. (Authorized by K.S.A. 76-112 and 76-112d; effective, E-74-26, May 1, 1974; effective May 1, 1975.)

Article 31.—ALCOHOL AND DRUG ABUSE TREATMENT PROGRAMS

30-31-1. Adoption by reference. The document titled “standards for licensure/certification of alcohol and/or other drug abuse treatment programs,” dated November 1, 2006, by the Kansas

department of social and rehabilitation services is hereby adopted by reference. (Authorized by K.S.A. 39-708c, 65-4016, and 65-4607; implementing K.S.A. 65-4011, 65-4013, 65-4014, 65-4015, 65-4016, 65-4019, 65-4024, 65-4603, and 65-4605; effective May 1, 1976; amended May 1, 1978; amended Jan. 5, 2007.)

30-31-2. (Authorized by and implementing K.S.A. 39-708c, 65-4011, 65-4016, 65-4607; effective May 1, 1976; amended May 1, 1978; amended, E-80-13, Aug. 8, 1979; amended May 1, 1980; amended May 1, 1988; revoked Jan. 5, 2007.)

30-31-3. (Authorized by K.S.A. 39-708c, 65-4016, 65-4607; implementing K.S.A. 65-4011, 65-4012, 65-4013, as amended by L. 1987, Ch. 243, Sec. 1, 65-4014, as amended by L. 1987, Ch. 243, Sec. 2, 65-4601, 65-4603, as amended by L. 1987, Ch. 251, Sec. 1, 65-4605, as amended by L. 1987, Ch. 251, Sec. 3; effective May 1, 1976; amended May 1, 1978; amended, T-88-37, Sept. 17, 1987; amended May 1, 1988; revoked Jan. 5, 2007.)

30-31-4. (Authorized by K.S.A. 39-708c, 65-4016, 65-4607; implementing K.S.A. 65-4013, as amended by L. 1987, Ch. 243, Sec. 1, 65-4014, as amended by L. 1987, Ch. 243, Sec. 2, 65-4603, as amended by L. 1987, Ch. 251, Sec. 1, 65-4605, as amended by L. 1987, Ch. 251, Sec. 3; effective May 1, 1976; amended May 1, 1978; amended, T-88-37, Sept. 17, 1987; amended May 1, 1988; revoked Jan. 5, 2007.)

30-31-5. (Authorized by K.S.A. 1977 Supp. 39-708c, 65-4016; effective May 1, 1976; revoked May 1, 1978.)

30-31-6. (Authorized by K.S.A. 1977 Supp. 39-708c, 65-4016; effective May 1, 1976; amended May 1, 1978; revoked Jan. 5, 2007.)

30-31-7. (Authorized by and implementing K.S.A. 1992 Supp. 39-708c, K.S.A. 65-4016, 65-6601 through 65-6606, inclusive, and 74-7507; effective May 1, 1976; amended May 1, 1978; amended, T-30-6-15-93, June 15, 1993; amended July 26, 1993; revoked Jan. 5, 2007.)

30-31-8 and 30-31-9. (Authorized by K.S.A. 1977 Supp. 39-708c, 65-4016; effective May 1, 1976; revoked May 1, 1978.)

30-31-10. (Authorized by K.S.A. 1977 Supp. 39-708c, 65-4016; effective May 1, 1976; amended May 1, 1978; revoked Jan. 5, 2007.)

30-31-11. (Authorized by K.S.A. 1977 Supp. 39-708c, 65-4016; effective May 1, 1976; amended May 1, 1978; revoked Jan. 5, 2007.)

30-31-12. (Authorized by K.S.A. 1977 Supp. 39-708c, 65-4016; effective May 1, 1978; revoked Jan. 5, 2007.)

30-31-13. (Authorized by and implementing K.S.A. 8-1008; effective May 1, 1983; revoked, T-84-11, July 1, 1983; revoked May 1, 1984.)

Article 40.—DRUG TREATMENT FACILITIES OF THE KANSAS DRUG ABUSE UNIT

30-40-1 to 30-40-9. (Authorized by K.S.A. 75-5375; effective, E-77-44, Sept. 23, 1976; effective Feb. 15, 1977; revoked May 1, 1978.)

Article 41.—LICENSING OF COMMUNITY BASED AGENCIES PROVIDING SERVICES TO ADULTS WITH MENTAL RETARDATION OR OTHER DEVELOPMENTAL DISABILITIES

30-41-1. This regulation shall be revoked on and after July 1, 1996. (Authorized by and implementing K.S.A. 75-3307b; effective May 1, 1979; amended May 1, 1980; amended, E-82-19, Oct. 21, 1981; amended May 1, 1982; amended May 1, 1984; amended May 1, 1986; amended May 1, 1987; amended July 1, 1991; amended Feb. 6, 1995; revoked July 1, 1996.)

30-41-2. This regulation shall be revoked on and after July 1, 1996. (Authorized by and implementing K.S.A. 1985 Supp. 75-3307b, as amended by L. 1986, Ch. 324, Sec. 2; effective May 1, 1979; amended, E-82-19, Oct. 21, 1981; amended May 1, 1982; amended May 1, 1984; amended May 1, 1985; amended May 1, 1987; revoked July 1, 1996.)

30-41-3. This regulation shall be revoked on and after July 1, 1996. (Authorized by K.S.A. 75-3307b; effective May 1, 1979; revoked July 1, 1996.)

30-41-4. This regulation shall be revoked on and after July 1, 1996. (Authorized by K.S.A. 75-3307b; effective May 1, 1979; amended May 1, 1985; revoked July 1, 1996.)

30-41-5. This regulation shall be revoked on and after July 1, 1996. (Authorized by K.S.A. 1985 Supp. 75-3307b, as amended by L. 1986, Ch. 324, Sec. 2; effective May 1, 1979; amended May 1, 1980; amended May 1, 1985; amended May 1, 1987; revoked July 1, 1996.)

30-41-6. (Authorized by and implementing K.S.A. 1980 Supp. 75-3307b; effective May 1, 1979; amended, E-80-13, Aug. 8, 1979; amended May 1, 1980; amended, E-82-19, Oct. 21, 1981; revoked May 1, 1982.)

30-41-6a. This regulation shall be revoked on and after July 1, 1996. (Authorized by and implementing K.S.A. 1983 Supp. 75-3307b; effective May 1, 1982; amended May 1, 1984; revoked July 1, 1996.)

30-41-6b. This regulation shall be revoked on and after January 1, 1997. (Authorized by and implementing K.S.A. 1985 Supp. 75-3307b; effective May 1, 1982; amended May 1, 1984; amended May 1, 1985; amended May 1, 1986; revoked Jan. 1, 1997.)

30-41-6c. This regulation shall be revoked on and after July 1, 1996. (Authorized by and implementing K.S.A. 1985 Supp. 75-3307b, as amended by L. 1986, Ch. 324, Sec. 2; effective May 1, 1982; amended May 1, 1987; revoked July 1, 1996.)

30-41-6d. This regulation shall be revoked on and after July 1, 1996. (Authorized by and implementing K.S.A. 1985 Supp. 75-3307b, as amended by L. 1986, Ch. 324, Sec. 2; effective May 1, 1982; amended May 1, 1984; amended May 1, 1986; amended May 1, 1987; revoked July 1, 1996.)

30-41-6e. This regulation shall be revoked on and after July 1, 1996. (Authorized by and implementing K.S.A. 1985 Supp. 75-3307b; effective May 1, 1982; amended May 1, 1984; amended May 1, 1986; revoked July 1, 1996.)

30-41-6f. This regulation shall be revoked on and after July 1, 1996. (Authorized by and implementing K.S.A. 75-3307b; effective May 1, 1984; amended May 1, 1985; revoked July 1, 1996.)

30-41-6g. This regulation shall be revoked on and after July 1, 1996. (Authorized by and implementing K.S.A. 75-3307b; effective May

1, 1984; amended May 1, 1985; revoked July 1, 1996.)

30-41-6h. This regulation shall be revoked on and after July 1, 1996. (Authorized by K.S.A. 1985 Supp. 75-3307b, as amended by L. 1986, Ch. 324, Sec. 2; effective May 1, 1985; amended May 1, 1986; amended May 1, 1987; revoked July 1, 1996.)

30-41-7. (Authorized by and implementing K.S.A. 1980 Supp. 75-3307b; effective May 1, 1979; amended, E-80-13, Aug. 8, 1979; amended May 1, 1980; amended, E-82-19, Oct. 21, 1981; revoked May 1, 1982.)

30-41-7a. This regulation shall be revoked on and after July 1, 1996. (Authorized by and implementing K.S.A. 1990 Supp. 75-3307b; effective May 1, 1982; amended July 1, 1991; revoked July 1, 1996.)

30-41-7b. This regulation shall be revoked on and after July 1, 1996. (Authorized by and implementing K.S.A. 1985 Supp. 75-3307b, as amended by L. 1986, Ch. 324, Sec. 2; effective May 1, 1982; amended May 1, 1984; amended May 1, 1986; amended May 1, 1987; revoked July 1, 1996.)

30-41-7c. This regulation shall be revoked on and after July 1, 1996. (Authorized by and implementing K.S.A. 1981 Supp. 75-3307b; effective May 1, 1982; revoked July 1, 1996.)

30-41-7d. This regulation shall be revoked on and after July 1, 1996. (Authorized by and implementing K.S.A. 1985 Supp. 75-3307b, as amended by L. 1986, Ch. 324, Sec. 2; effective May 1, 1982; amended May 1, 1987; revoked July 1, 1996.)

30-41-7e. This regulation shall be revoked on and after July 1, 1996. (Authorized by and implementing K.S.A. 1983 Supp. 75-3307b; effective May 1, 1982; amended May 1, 1984; revoked July 1, 1996.)

30-41-7f. This regulation shall be revoked on and after July 1, 1996. (Authorized by and implementing K.S.A. 1983 Supp. 75-3307b; effective May 1, 1982; amended May 1, 1984; revoked July 1, 1996.)

30-41-7g. This regulation shall be revoked on and after July 1, 1996. (Authorized by and

implementing K.S.A. 1985 Supp. 75-3307b, as amended by L. 1986, Ch. 324, Sec. 2; effective May 1, 1982; amended May 1, 1984; amended May 1, 1987; revoked July 1, 1996.)

30-41-7h. This regulation shall be revoked on and after July 1, 1996. (Authorized by and implementing K.S.A. 1985 Supp. 75-3307b; effective May 1, 1982; amended May 1, 1986; revoked July 1, 1996.)

30-41-7i. This regulation shall be revoked on and after July 1, 1996. (Authorized by and implementing K.S.A. 1990 Supp. 75-3307b; effective July 1, 1991; revoked July 1, 1996.)

30-41-8. This regulation shall be revoked on and after July 1, 1996. (Authorized by K.S.A. 75-3307b; effective May 1, 1979; amended, E-80-13, Aug. 8, 1979; amended May 1, 1980; revoked July 1, 1996.)

30-41-10 to 30-41-19. (Authorized by K.S.A. 75-3307b; effective May 1, 1985; revoked June 28, 1996.)

30-41-20. This regulation shall be revoked on and after July 1, 1996. (Authorized by and implementing K.S.A. 1990 Supp. 75-3307b; effective July 1, 1991; revoked July 1, 1996.)

Article 42.—LICENSING OF NONMEDICAL RESIDENT CARE FACILITIES

30-42-1. (Authorized by K.S.A. 1978 Supp. 39-708c; effective May 1, 1979; revoked May 1, 1984.)

30-42-2. (Authorized by and implementing K.S.A. 39-708c; effective May 1, 1979; amended, E-82-19, Oct. 21, 1981; amended May 1, 1982; revoked May 1, 1984.)

30-42-3 and 30-42-4. (Authorized by K.S.A. 1978 Supp. 39-708c; effective May 1, 1979; revoked May 1, 1984.)

30-42-5. (Authorized by and implementing K.S.A. 39-708c; effective May 1, 1979; amended May 1, 1980; amended, E-82-19, Oct. 21, 1981; revoked May 1, 1982.)

30-42-5a to 30-42-5g. (Authorized by and implementing K.S.A. 39-708c; effective May 1, 1982; revoked May 1, 1984.)

30-42-6. Definitions. (a) “Applicant” means any facility which applies for a license issued by the department to provide residential care.

(b) “Department” means the Kansas state department of social and rehabilitation services.

(c) “Facility” means any private person, group, association or corporation, or any community or local government department undertaking to provide residential care within the meaning of these regulations.

(d) “Handicapped” means a physical, mental, or emotional impairment which limits one or more major life activities.

(e) “Mental or emotional abuse” means any method of inflicting or causing mental injury or causing deterioration of the individual. Mental or emotional abuse includes failure to maintain reasonable care or treatment to such an extent that the individual’s emotional well-being is in danger.

(f) “Secretary” means the secretary of the department of social and rehabilitation services.

(g) “Staff” means employees of the facility who spend a majority of their work time in the supervision of residents. (Authorized by and implementing K.S.A. 1985 Supp. 75-3307b, as amended by L. 1986, Ch. 324, Sec. 2; effective, T-87-20, Sept. 1, 1986; effective May 1, 1987.)

30-42-7. Licensing procedures. (a) Each facility shall apply for a license on application forms provided by the department.

(b) Each application for renewal of a license shall be submitted by the licensed facility to the department at least 60 days before expiration of the license. This provision may be waived by the department upon a showing of good cause by the facility.

(c) At the discretion of the department, a provisional license may be issued to any facility that is substantially in compliance with the licensing regulations, if the facility presents evidence that any deficiency is temporary and if efforts to correct the deficiency are agreed to or are in progress. Each provisional license shall become a regular license at the end of a period of 180 days if the department agrees, in writing, that the previously noted deficiencies have been corrected. If the deficiencies have not been corrected, the provisional license shall automatically lapse at the end of the 180-day period.

(d) Each license issued shall specify and shall be valid only for the facility and the operator named on the license. A new application shall be required for each change of operator. A facility which chang-

es operators may continue to provide the same care which it was licensed to provide under its last prior operator for the period of time that is required for the facility to pursue all administrative avenues available under these regulations for obtaining licensure under the facility's new operator.

(e) The license shall be issued for a specified period of time not to exceed one year.

(f) The department, upon request, may waive any specific licensing standard for good cause if such waiver does not affect the health, safety or welfare of a facility's residents. (Authorized by and implementing K.S.A. 1985 Supp. 75-3307b, as amended by L. 1986, Ch. 324, Sec. 2; effective, T-87-20, Sept. 1, 1986; effective May 1, 1987.)

30-42-8. Capacity. Each license shall specify the maximum number of residents who may be served at any one time in the facility. That maximum number shall not be less than five nor more than 40. (Authorized by and implementing K.S.A. 1985 Supp. 75-3307b, as amended by L. 1986, Ch. 324, Sec. 2; effective, T-87-20, Sept. 1, 1986; effective May 1, 1987.)

30-42-9. Suspension or revocation of license. (a) The license of any facility shall be suspended or revoked according to the provisions of this subsection (a) whenever:

(1) The department finds that the facility has failed to comply with the provisions of K.A.R. 30-2-15 or of any licensing regulations set forth in this article and there is reason to believe that the facility will be in further non-compliance; or

(2) the department finds that the facility is in continuing non-compliance with K.A.R. 30-2-15 or of any licensing regulations set forth in this article.

(b) Procedures for the suspension or revocation of a license.

(1) Subject to the provisions of paragraph (2) of this subsection, when the department finds that a licensed facility is not in compliance with the provisions of any licensing regulations set forth in this article, the department shall informally advise the facility's operator or chief officer in person or by telephone of a finding of non-compliance. This informal communication shall be confirmed in writing within five working days of the informal advice. The written confirmation of the advice shall:

(A) Specify in detail the noted items of non-compliance;

(B) inform the facility of the action required to correct the non-compliance;

(C) inform the facility that failure to provide evidence that the non-compliance has been corrected will result in suspension or revocation of the facility's license;

(D) inform the facility of the time period within which the item of non-compliance can be corrected without temporary or permanent loss of license. This time period shall not be less than 45 days from the date of written confirmation; and

(E) inform the facility of the name and address of the person within the department to whom evidence must be provided demonstrating that the item of non-compliance has been corrected.

(2) The department shall immediately suspend the license of any facility whose non-compliance with these regulations is of a nature so serious that such non-compliance will constitute an immediate threat to the health, safety or welfare of the facility's residents. The department shall immediately initiate an action to revoke such a license according to these regulations.

(3) Whenever a facility has failed to satisfy the department that an item of non-compliance has been corrected as provided in paragraph (1) of this subsection, or whenever the department has suspended a facility's license under paragraph (2) of this subsection, action shall be commenced to revoke the facility's license. Prior to revocation of a facility's license, the department shall send to the facility a written notification of the proposed revocation and the reasons therefor. The notice shall state whether the facility's license has been suspended pending further proceedings. If the decision is to revoke the facility's license as here-in provided, the department shall issue a written order of revocation setting forth the effective date of such revocation and the basic underlying facts supporting the order. (Authorized by and implementing K.S.A. 1985 Supp. 75-3307b, as amended by L. 1986, Ch. 324, Sec. 2; effective, T-87-20, Sept. 1, 1986; effective May 1, 1987.)

30-42-10. Prerequisites for license. (a) Any applicant for licensure shall be at least 18 years of age at the time of application.

(b) Each facility for eight or more persons shall be approved by the Kansas department of health and environment as meeting the standards for a lodging establishment under the food service and lodging act.

(c) Each facility shall meet the legal requirement of the community for zoning, fire protection, water supply and sewage disposal.

(d) Each facility shall obtain and retain on file a fire life safety code report issued within the previous 12 months by the state fire marshal, or persons designated in K.S.A. 31-137 and amendments thereto. Deficiencies noted on the report shall be the subject of an acceptable plan of correction submitted to the state fire marshal within the time-frame established by the state fire marshal. The facility shall adhere to the plan of correction as well as the date, if any, by which the correction is to be made.

(e) Each facility shall provide and maintain fire protection equipment. This equipment shall be approved as adequate by the state fire marshal.

(f) Each facility shall employ at least one staff person certified in the administration of first-aid. All other staff shall receive training in the administration of first-aid within 30 days of employment and every two years thereafter. The date of that training shall be recorded for each staff person and retained on file.

(g) Each facility shall provide adequate care of residents and shall not exceed a maximum ratio of 20 residents to one staff person.

(h) Each facility shall allow residents the right of privacy and the right to see relatives, friends and participate in regular community activities.

(i) Corporal punishments, restraints or punitive measures shall not be used by any facility.

(j) Each facility shall develop a current, written grievance procedure for residents.

(k) Each facility shall see that arrangements are made for emergency and regular medical care for residents.

(l) Each facility shall allow the secretary and authorized representatives of the secretary access to the home, grounds, residents and to records related to residents.

(m) Facility personnel shall not accept permanent guardianship or conservatorship of residents. However, guardianship or conservatorship of blood relatives shall be permitted.

(n) Each facility shall maintain official policies and make them available for review by the department, staff, residents, and guardians and relatives of residents. The official policies of each facility shall contain statements regarding the provisions of subsections (g), (h), (i), (j) and (k) set forth above. (Authorized by and implementing K.S.A. 1985 Supp. 75-3307b, as amended by L. 1986, Ch. 324, Sec. 2; effective, T-87-20, Sept. 1, 1986; effective May 1, 1987.)

30-42-11. Admission and discharge policies. (a) Each facility shall have on file and shall provide to the department an admissions policy. At a minimum, the admissions policy shall indicate the types of residents the facility will accept indicating:

(1) Age range;

(2) sex;

(3) type of disability; and

(4) the types of residents the facility will not accept.

(b) The facility shall make an inventory of each resident's major personal items within 24 hours of the resident's admission to the facility. Documentation of the inventory shall be retained on file.

(c) Prior to or within 24 hours of admission, the facility shall obtain and retain on file a document signed by the resident and guardian, if any, verifying that they have received in writing the phone number which they may call at any time to complain about exploitation, neglect, or abuse, including mental or emotional abuse.

(d) The facility shall be responsible for encouraging residents to seek and utilize available services when needed.

(e) The facility shall agree to refer a resident to other appropriate residential facilities as soon as it determines that the needs of a resident can no longer be met by the facility.

(f) The resident shall not be involuntarily transferred or discharged from the facility except:

(1) For medical or behavioral reasons which render the facility an inappropriate placement;

(2) for the welfare of the resident or others; or

(3) for non-payment of the rates and charges imposed by the facility.

(g) Except in emergencies, the resident and legal guardian, if any, shall be given written notice at least seven days in advance of a transfer or discharge of the resident. (Authorized by and implementing K.S.A. 1985 Supp. 75-3307b, as amended by L. 1986, Ch. 324, Sec. 2; effective, T-87-20, Sept. 1, 1986; effective May 1, 1987.)

30-42-12. Disaster policies. The facility shall, in consultation with the fire inspector or other appropriate resources, develop a written disaster plan to provide for the care and safety of residents and employees in emergencies and in occurrences of serious illness or injury. The residents and employees shall be informed of the disaster plan and the plan, including an exit diagram, shall be posted. Evacuation drills shall be conducted each quarter and the date and the length of time for evacuation

shall be recorded. A telephone shall be located on the premises and readily available. Emergency numbers shall be posted by each phone. (Authorized by and implementing K.S.A. 1985 Supp. 75-3307b, as amended by L. 1986, Ch. 324, Sec. 2; effective, T-87-20, Sept. 1, 1986; effective May 1, 1987.)

30-42-13. Health policies. (a) The facility may assist with the taking of medication when the medication is in a labeled bottle dispensed by a pharmacist which clearly shows a physician's orders and when the resident requires assistance because of tremor, visual impairment, or other physical or mental handicapping conditions. The facility may assist the residents with such physical activities as eating, bathing, dressing, help with brace or walker, and transferring from wheelchairs when such assistance is needed on a temporary or intermittent basis.

(b) Each facility shall provide a sanitary environment and shall follow proper techniques of asepsis and isolation for residents with infections and contagious diseases.

(c) All outdated or discontinued medication shall be discarded in the presence of the supervisor.

(d) Each employee infected with a disease in a communicable form or having communicable skin lesions shall be restricted from work until the disease is no longer communicable. (Authorized by and implementing K.S.A. 1985 Supp. 75-3307b, as amended by L. 1986, Ch. 324, Sec. 2; effective, T-87-20, Sept. 1, 1986; effective May 1, 1987.)

30-42-14. Financial policies. The personal money of each resident shall be kept in the resident's individual account. The individual account shall be separate from the funds of the facility, owner, operator, employees, and other residents. (Authorized by and implementing K.S.A. 1985 Supp. 75-3307b, as amended by L. 1986, Ch. 324, Sec. 2; effective, T-87-20, Sept. 1, 1986; effective May 1, 1987.)

30-42-15. Adult residential sleeping quarters. (a) Sleeping quarters shall have a minimum of 70 square feet per person of free floor space in single rooms and an average of not less than 55 square feet per person in rooms accommodating more than one person.

(b) Rooms used as sleeping quarters shall have windows that are operable without a tool. (Authorized by and implementing K.S.A. 1985 Supp. 75-3307b, as amended by L. 1986, Ch. 324, Sec. 2; effective, T-87-20, Sept. 1, 1986; effective May 1, 1987.)

30-42-16. Environmental standards. (a) Each facility shall comply with the standards set forth below. The department may consider, but need not accept, written statements of compliance with environmental requirements from other authorized licensing agencies or groups.

(b) The building shall be clean, in good state of repair, and free from accumulated dirt or trash and vermin infestation.

(c) Aisles, hallways, stairways, and main routes of travel shall be maintained free of obstacles and stored materials.

(d) Furniture shall be clean and in good state of repair.

(e) Rooms shall be well-ventilated, adequately lighted, and appropriately heated or cooled.

(f) Each resident shall have a separate bed with a level, flat mattress in good condition, and sufficient and clean bedding.

(g) Bathroom fixtures shall be accessible, clean, and in good state of repair.

(h) Kitchenware and tableware shall be clean and in good condition.

(i) Meals and snacks, when provided, shall be appropriate to the nutritional needs of the residents. Menus shall be posted and shall follow the basic food group requirements.

(j) The outside area shall be free of physical hazards and be free of accumulated garbage and trash. (Authorized by and implementing K.S.A. 1985 Supp. 75-3307b, as amended by L. 1986, Ch. 324, Sec. 2; effective, T-87-20, Sept. 1, 1986; effective May 1, 1987.)

Article 43.—CORPORATE GUARDIANS

30-43-1. Certification of corporate guardians. (a) Each corporation requesting to be certified as suitable to perform the duties of a guardian shall make application on forms prescribed by the secretary. Each corporation, along with its application, shall furnish the agency with a copy of its articles of incorporation, an organizational chart, including the names of the board of directors, a current financial statement, and a detailed plan of operation concerning its functions as a corporate guardian. The corporation shall update the information provided on the application and attachments, as necessary.

(b) To be eligible for certification, each corporation shall:

- (1) Provide proof of corporate stability;
- (2) provide proof of financial solvency;

(3) have access to qualified professionals to provide consultation concerning the needs of the wards for whom the corporation is acting as guardian;

(4) have access to an attorney to provide necessary legal services in relationship to its guardian responsibilities;

(5) maintain liability insurance coverage of at least \$25,000.00 per occurrence for the protection of the wards from corporate negligence;

(6) provide orientation and in-service training, as approved by the agency, to persons working with wards and their supervisors. No person may serve as a supervisor or be directly responsible for a ward unless that person has attended the required orientation or in-service training sessions, as appropriate;

(7) assign a specific individual to be directly responsible for each ward. No person shall be directly responsible for more than 15 wards;

(8) assign a supervisor to each person who is directly responsible for a ward. No supervisor shall have more than 10 supervisees;

(9) not assign a person to be a supervisor or to work with wards if that person has ever been:

(A) Convicted of a felony or crime against persons;

(B) removed as a guardian or conservator by the court for cause; or

(C) relieved of responsibilities in the guardianship program by a corporation for cause;

(10) ensure that the person assigned the direct responsibility for a ward lives within 50 miles of the ward, has an active involvement with the ward and makes contact with the ward, as necessary, encourages appropriate interaction of immediate family members, relatives, and friends with the ward, and effectively carries out the corporation's guardianship responsibility to the ward. The person who is assigned responsibility for a ward shall contact the ward at least once each week and shall meet in person with the ward at least once each month. If a ward's mental status is diminished to the extent that the ward cannot communicate with the person assigned to the ward, the weekly contact shall be with a person who has day to day contact with the ward or who supervises such activities;

(11) designate back-up persons for each person assigned to a ward and maintain a 24 hour telephone system, at no cost to the ward, to ensure coverage in an emergency;

(12) ensure that a ward is not used in a fund raising or publicity campaign without the approval of the agency;

(13) have a written grievance procedure for wards;

(14) assign a specific staff person to act on behalf of the corporation to carry out the corporation's guardianship responsibility for each ward for whom the corporation is acting as guardian;

(15) maintain a file and case log for each ward;

(16) furnish reports to the agency, as requested;

(17) report serious injuries of wards to the agency within 72 hours of their occurrence;

(18) notify the agency if a supervisor or person working with a ward is:

(A) Convicted of a felony or crime against persons;

(B) removed as a guardian or conservator by the court for cause; or

(C) relieved of responsibilities in the guardianship program by a corporation for cause; and

(19) allow the agency to have access to wards and their records.

(c) Hearings to revoke certification shall be conducted pursuant to K.A.R. 30-7-26, et seq. (Authorized by and implementing L. 1983, Ch. 191; effective, T-84-36, Dec. 21, 1983; effective May 1, 1984.)

Article 44.—SUPPORT ENFORCEMENT

30-44-1. (Authorized by K.S.A. 1983 Supp. 39-756; effective May 1, 1985; revoked, T-86-26, Aug. 19, 1985; revoked May 1, 1986.)

30-44-2. Standardized cost recovery fee.

(a) As used in this regulation, the following definitions shall apply:

(1) "Applicant or recipient" means a person who has applied for or is receiving support enforcement services from the department for children and families pursuant to Part D of Title IV of the federal social security act, 42 U.S.C. § 651 et seq., as amended.

(2) "IV-D case" means a case in which the department for children and families is providing child support services pursuant to Part D of Title IV of the federal social security act, 42 U.S.C. § 651 et seq., as amended.

(3) (A) "Non-PA case" means a case in which the applicant or recipient or the child, as appropriate, has not received and is not currently receiving public assistance from the state of Kansas, including the following:

(i) Temporary assistance to needy families (TANF), regardless of how designated;

(ii) medical services;

(iii) care due to placement under K.S.A. 38-2201 et seq. and K.S.A. 38-2301 et seq., and amendments thereto;

(iv) care in a state institution, as defined in K.S.A. 59-2006b and amendments thereto;

(v) supplemental nutrition assistance program (SNAP); and

(vi) child care assistance.

(B) “Non-PA case” shall also mean, in any IV-D case in which the applicant or recipient or the child previously received but is not currently receiving public assistance from the state of Kansas, that portion of the case not subject to any assignment of support rights for reimbursement of public assistance.

(C) In an interstate IV-D case referred to Kansas by another state, unless the other state clearly designates otherwise, “non-PA case” shall mean a case, or that portion of a case, designated as IV-D non-TANF.

(D) “Non-PA” case shall not include any IV-D case referred to Kansas from a foreign country.

(b) A cost recovery fee may be collected in all non-PA cases. If a fee is required pursuant to subsection (c), the fee shall be retained from support collections made on behalf of the applicant or recipient. If any fee remains unpaid and the applicant or recipient will receive no further support collections in the non-PA case, the fee shall be remitted by the applicant or recipient upon demand.

(c) The fee shall be in an amount equal to the basic rate times the amount of support collections distributed to the applicant or recipient. The date of collection shall determine the applicable basic rate. The basic rate shall be four percent. If the secretary determines that the department for children and families’ funds for support enforcement services are sufficient to pay for some or all of the costs associated with all non-PA cases statewide, then the basic rate for all non-PA cases statewide may be reduced by an amount commensurate with the department’s available funds or not collected. (Authorized by and implementing K.S.A. 2015 Supp. 39-756; effective Feb. 6, 1995; amended Jan. 3, 2000; amended Feb. 12, 2016.)

30-44-3. Birthing hospital. (a) “Birthing hospital” means a hospital that has a licensed obstetric care unit or is licensed to provide obstetric services, or a licensed facility outside a hospital that provides maternity services and is associated with a hospital.

(b) This regulation shall become effective 45

days following publication in the Kansas Register. (Authorized by and implementing L. 1994, Chapter 292, Section 1; effective Feb. 6, 1995.)

30-44-4. Disclosure to credit reporting agencies. (a) Except as provided in subsection (b) or (c), the following information shall be made available periodically to consumer credit agencies:

(1) the name of any parent who owes overdue support and is at least two months delinquent in the payment of such support; and

(2) the amount of such delinquency.

Additional information about the parent or the debt may be provided to the consumer reporting agency. Except as provided in subsection (b) or (c), the name of any other parent who owes support, together with information about the debt, may be made available to consumer reporting agencies.

(b) Debt information regarding particular cases shall not be made available pursuant to this regulation to:

(1) any consumer reporting agency which the secretary or the secretary’s designee determines does not have sufficient capability to make accurate use of such information in a systematic and timely manner; or

(2) an entity which has not furnished evidence satisfactory to the secretary or the secretary’s designee that the entity is a consumer reporting agency.

(c) Notwithstanding any other provision of this regulation, it may be determined that providing debt information to a consumer reporting agency in any particular case is not appropriate because of the circumstances of the case.

(d) No fee will be charged to a consumer reporting agency requesting support arrearage information under this regulation.

(e) The effective date of this regulation shall be September 1, 1995. (Authorized by and implementing K.S.A. 23-4,145; effective Sept. 1, 1995.)

30-44-5. Scope of services; judgment interest. (a) Except as otherwise provided in subsection (b), the scope of child support enforcement services related to judgment interest shall be limited to enforcement of a lump sum previously determined by a tribunal of competent jurisdiction, if the judgment interest debt can be enforced in the same manner as that for a debt for child support.

(b) If the director of child support enforcement services determines that conducting or participat-

ing in a pilot project is in the best interests of the child support enforcement program, additional services related to judgment interest may be authorized by the director in cases selected for the pilot project.

(c) This regulation shall be effective on and after July 1, 2003. (Authorized by and implementing K.S.A. 39-753; effective July 1, 2003.)

30-44-6. Support arrears forgiveness. (a)

If a child's parent or parents are liable to repay the secretary for state assistance expended on the child's behalf pursuant to K.S.A. 39-718b and amendments thereto, the amount due may be offset by one of the following:

(1) The parent's or parents' participation in an arrears adjustment program; or

(2) the parent's or parents' contributions to a Kansas postsecondary education savings account established on behalf of the child through the child support savings initiative program.

(b) All arrears adjustment programs shall be approved by the department's child support services and shall include programs designed to provide job skills, further education, and enhance parenting skills.

(c) The arrears adjustments earned through participation in an arrears adjustment program or contributions to the child support savings initiative program shall be applied to offset the amount owed to the secretary. The department's child support services shall have the authority to determine any arrears adjustment rates and to determine whether participation in a particular class or program qualifies a participant for any arrears adjustments. (Authorized by and implementing K.S.A. 2015 Supp. 39-753; effective Feb. 12, 2016.)

Article 45.—YOUTH SERVICES

30-45-1. Adoption—genetic and medical history of parents. Each person, other than a stepparent, filing a petition to adopt a minor, shall file with the petition a statement relative to:

(a) The history of significant illnesses or hospitalizations of the genetic parents; and

(b) the indication of any conditions, ailments, maladies, handicaps, genetically transmitted or communicable diseases which are known to exist within the parent or their family background which might affect the health or development of the child. (Authorized by and implementing K.S.A. 1985 Supp. 59-2278a; effective, T-86-30, Sept. 24, 1985; effective May 1, 1986.)

30-45-2. Adoption—medical history of child. The medical history of the child filed with the adoption petition shall include the following information and facts about the child's birth and health history: (a) The date, time, place of the birth of the child and the name of the attending physician;

(b) whether the child was full-term or premature;

(c) the child's weight and length at birth;

(d) type of delivery;

(e) whether there were any complications during pregnancy or at birth;

(f) a history of any childhood diseases;

(g) a history of immunizations and tests;

(h) a history of any significant illnesses or hospitalizations since birth;

(i) a history of any chronic health problems, diseases or disabilities affecting the child;

(j) the date of birth and sex of any of the child's siblings, if known; and

(k) a record of the child's developmental milestones. (Authorized by and implementing K.S.A. 1985 Supp. 59-2278a; effective, T-86-30, Sept. 24, 1985; effective May 1, 1986.)

30-45-3. Adoption—social history. The following information shall be filed with the petition as the social history of the biological parents on forms prescribed by the secretary: (a) Each parent's religious background;

(b) each parent's educational background;

(c) each parent's ethnic background;

(d) each parent's tribal membership, if applicable; and

(e) each parent's employment history. (Authorized by and implementing K.S.A. 1985 Supp. 59-2278a; effective, T-86-30, Sept. 24, 1985; effective May 1, 1986.)

30-45-4. Adoption—procedures for updating histories. (a) The person filing the petition to adopt shall provide written notification to the biological parent of the process for notifying social and rehabilitation services of any new genetic or medical information which might affect the child.

(b) The person filing the petition to adopt shall advise the adoptive family in writing that genetic and medical information is permanently filed with social and rehabilitation services. (Authorized by and implementing K.S.A. 1985 Supp. 59-2278a; effective, T-86-30, Sept. 24, 1985; effective May 1, 1986.)

30-45-10. Definitions. (a) “Medical neglect” includes, but is not limited to, the withholding of medically indicated treatment from a disabled infant with a life-threatening condition.

(b) “Withholding of medically indicated treatment” means the failure to respond to the infant’s life-threatening conditions by failing to provide treatment, which in the treating physician’s reasonable medical judgment, is most likely to ameliorate or correct all life-threatening conditions, except when the treatment would be futile in terms of survival of the infant and the treatment itself under such circumstances would be inhumane. In all circumstances “withholding of medically indicated treatment” shall always include the failure to provide appropriate nutrition, hydration or medication.

(c) “Reasonable medical judgment” means a medical judgment made by a reasonably prudent physician who is knowledgeable about the case and the treatment possibilities with respect to the medical conditions involved.

(d) “Infant” means an infant less than one year of age. The reference to less than one year of age shall not be construed to imply that treatment should be changed or discontinued when an infant reaches one year of age. The standards set forth in subsection (b) of this regulation should be consulted thoroughly in the evaluation of any issue of medical neglect involving an infant older than one year of age who has been continuously hospitalized since birth, whose birth was extremely premature, or who has a long-term disability.

(e) “Designated hospital liaison” means the individual designated by the hospital administrator as the person to be contacted by agency personnel upon a report of medically indicated treatment being withheld from a disabled infant. Names of liaisons shall be furnished to the agency annually by each hospital.

(f) “Hospital medical ethics review committee” means the group established by the hospital to review medical treatment and make recommendations to the appropriate medical personnel involved in the case. (Authorized by and implementing K.S.A. 1985 Supp. 39-708c, K.S.A. 75-5321; effective, T-87-29, Oct. 22 1986; effective May 1, 1987.)

30-45-11. Reports of medically neglected infants. (a) Reports of medical neglect of a disabled infant shall be made to the local social and rehabilitation services office. Receipt of the

report and subsequent initiation of an investigation will follow the emergency procedures established under the Kansas code for care of children. Upon receiving notification of withholding of medically indicated treatment from a disabled infant, an agency social worker shall:

(1) Contact the designated hospital liaison at the facility where the infant is located;

(2) contact the hospital medical ethics review committee at the facility housing the infant to obtain the committee’s findings or the Kansas perinatal medical council if no hospital medical ethics review committee exists; and

(3) include as a part of the investigative report, information from and reports to the designated hospital liaison and the hospital medical ethics review committee or the Kansas perinatal medical council if no hospital medical ethics review committee exists.

(b) Subsequent to the initial investigation of a report of medical neglect of a disabled infant, the agency personnel shall follow the procedures established under the Kansas code for care of children and all due process rights contained therein shall apply. (Authorized by and implementing K.S.A. 1985 Supp. 39-708c, K.S.A. 75-5321; effective, T-87-29, Oct. 22, 1986; effective May 1, 1987.)

30-45-12. Responsible reporters. (a) Physicians, nurses, hospital administrators and others listed in K.S.A. 1985 Supp. 38-1522 shall be required to report cases of medical neglect of disabled infants.

(b) Reports to social and rehabilitation services of medical neglect of disabled infants can be initiated by any concerned citizen. The reporter will remain anonymous unless the reporter agrees to the use of the reporter’s identity by the agency. The reporter is not liable to prosecution for reports made in good faith pursuant to K.S.A. 1985 Supp. 38-1525 and 38-1526. (Authorized by and implementing K.S.A. 1985 Supp. 39-708c, K.S.A. 75-5321; effective, T-87-29, Oct. 22, 1986; effective May 1, 1987.)

30-45-13. Records. Records of medical neglect cases involving disabled infants shall be handled according to established agency procedures. (Authorized by and implementing K.S.A. 1985 Supp. 39-708c, K.S.A. 75-5321; effective May 1, 1987.)

30-45-14. Public information. The medical community shall be annually informed of the need to report cases of alleged medical neglect

of disabled infants pursuant to these regulations. (Authorized by and implementing K.S.A. 1985 Supp. 39-708c, K.S.A. 75-5321; effective, T-87-29, Oct. 22, 1986; effective May 1, 1987.)

30-45-20. Foster child educational assistance. Any individual meeting the definition of foster child in K.S.A. 75-53,112 (b), and amendments thereto, and wanting to receive the benefits of the foster child educational assistance act may obtain an application form from any office of the department of social and rehabilitation services (“department”) or from any Kansas educational institution, as defined in K.S.A. 75-53,112 and amendments thereto. The individual shall submit the completed application to the registrar’s office at the educational institution where the applicant enrolls. The applicant’s eligibility shall be verified by the department upon receipt of the application from the educational institution. Within 30 days after enrollment, the student shall notify the department of that student’s enrollment status and intended program of study. (Authorized by K.S.A. 2008 Supp. 75-53,117; implementing K.S.A. 2008 Supp. 75-53,113 and K.S.A. 2008 Supp. 75-53,120; effective July 6, 2009.)

Article 46.—CHILD ABUSE AND NEGLECT

30-46-1. (Authorized by and implementing K.S.A. 39-708c, 65-516, as amended by L. 1987, Ch. 233, Sec. 1; effective, T-88-14, July 1, 1987; effective May 1, 1988; revoked Jan. 2, 1989.)

30-46-2. (Authorized by and implementing K.S.A. 39-708c, 65-516, as amended by L. 1987, Ch. 233, Sec. 1; effective, T-88-14, July 1, 1987; effective May 1, 1988; revoked Jan. 2, 1989.)

30-46-3. (Authorized by and implementing K.S.A. 39-708c, 65-516, as amended by L. 1987, Ch. 233, Sec. 1; effective, T-88-14, July 1, 1987; effective May 1, 1988; revoked Jan. 2, 1989.)

30-46-4. (Authorized by and implementing K.S.A. 39-708c, 65-516, as amended by L. 1987, Ch. 233, Sec. 1; effective, T-88-14, July 1, 1987; effective May 1, 1988; revoked Jan. 2, 1989.)

30-46-5. (Authorized by and implementing K.S.A. 39-708c, 65-516, as amended by L. 1987, Ch. 233, Sec. 1; effective, T-88-14, July 1, 1987; effective May 1, 1988; revoked Jan. 2, 1989.)

30-46-6. (Authorized by and implementing K.S.A. 39-708c, 65-516, as amended by L. 1987, Ch. 233, Sec. 1; effective, T-88-14, July 1, 1987; effective May 1, 1988; revoked Jan. 2, 1989.)

30-46-10. Definitions. For the purpose of the child abuse and neglect central registry, the following definitions shall apply:

(a) “Abandon” and “abandonment” have the meaning specified in K.S.A. 38-2202, and amendments thereto.

(b) “Abuse” means “physical, mental or emotional abuse” or “sexual abuse,” as these two terms are defined in K.S.A. 38-2202 and amendments thereto and as “sexual abuse” is further defined in this regulation, involving a child who resides in Kansas or is found in Kansas, regardless of where the act occurred. The term “abuse” shall include any act that occurred in Kansas, regardless of where the child is found or resides.

The term “abuse” may include the following:

(1) Terrorizing a child, by creating a climate of fear or engaging in violent or threatening behavior toward the child or toward others in the child’s presence that demonstrates a flagrant disregard for the child;

(2) emotionally abandoning a child, by being psychologically unavailable to the child, demonstrating no attachment to the child, or failing to provide adequate nurturance of the child; and

(3) corrupting a child, by teaching or rewarding the child for unlawful, antisocial, or sexually mature behavior.

(c) “Affirmed perpetrator” means a person who has been determined by the secretary or the secretary’s designee, by a preponderance of evidence, to have committed an act of abuse or neglect, regardless of where the person resides, but has not been substantiated so the affirmed perpetrator’s name is not placed on the child abuse and neglect central registry.

(d) “Alleged perpetrator” means the person identified in the initial report or during the investigation as the person suspected of perpetrating an act of abuse or neglect.

(e) “Child” means anyone under the age of 18 or anyone under the age of 21 and in the custody of the secretary pursuant to K.S.A. 38-2255, and amendments thereto.

(f) “Child abuse and neglect central registry” means the list of names for individuals identified by the department as substantiated perpetrators.

(g) “Child care facility” has the meaning specified in K.S.A. 65-503, and amendments thereto.

(h) “Department” means Kansas department for children and families.

(i) “Investigation” means the gathering and assessing of information to determine if a child has been harmed, as defined in K.S.A. 38-2202 and amendments thereto, as the result of abuse or neglect, to identify the individual or individuals responsible, and to determine if the incident perpetrated by the individual or individuals should be affirmed or substantiated.

(j) “Neglect” has the meaning specified in K.S.A. 38-2202, and amendments thereto, involving a child who resides in Kansas or is found in Kansas, regardless of where the act or failure to act occurred.

The term “neglect” may include the following:

(1) The birth of an infant who is identified as being affected by or having withdrawal symptoms resulting from prenatal exposure to a legal or an illegal substance; and

(2) failure of the parent or caregiver to meet that individual’s responsibilities to provide for the child’s education as required by law.

(k) “Sexual abuse” has the meaning specified in K.S.A. 38-2202, and amendments thereto. With respect to the determination by the department for children and families of an affirmed or substantiated finding of sexual abuse, difference in age and maturity between the perpetrator and victim and issues of force or coercion may be considered.

(l) “Substantiated perpetrator” and “perpetrator” mean a person, regardless of where the person resides, who has been substantiated by the secretary or the secretary’s designee, by a preponderance of evidence, to have either intentionally committed an act of abuse or neglect or failed or refused to protect a child when a reasonable person would have anticipated that the act of abuse or neglect would result in or create a likelihood of serious harm, injury, or deterioration to the child. The substantiated perpetrator’s name is placed on the Kansas child abuse and neglect central registry, and the person is thereby prohibited from residing, working, or volunteering in a child care facility pursuant to K.S.A. 65-516, and amendments thereto.

(m) “Unsubstantiated alleged perpetrator” means a person who has been determined by the secretary or the secretary’s designee, by a preponderance of evidence, to have not committed an alleged act of abuse or neglect. (Authorized by

K.S.A. 2018 Supp. 38-2225 and 39-708c; implementing K.S.A. 2018 Supp. 38-2226 and 38-2230; effective Jan. 2, 1989; amended Jan. 2, 1990; amended Oct. 1, 1993; amended Jan. 1, 1997; amended Oct. 3, 1997; amended July 9, 2004; amended July 6, 2009; amended, T-30-6-1-12, June 1, 2012; amended Sept. 14, 2012; amended July 1, 2016; amended, T-30-11-15-18; Nov. 15, 2018; amended Feb. 22, 2019.)

30-46-11. Reporting of abuse or neglect of children who reside in an institution operated by the secretary of social and rehabilitation services.

(a) Each person who has reason to suspect that child abuse, neglect or sexual abuse, as defined in K.A.R. 30-46-10, has occurred in an institution operated by the secretary of SRS shall make a report directly to the attorney general’s office and shall not be required to report first to the secretary or to any employee of the secretary except when immediate action is necessary to protect a resident or another person.

(b) Each person who has reason to suspect that an SRS employee or a volunteer may be a perpetrator of abuse, neglect or sexual abuse, as defined in K.A.R. 30-46-10, shall not be required to make a report to the suspected perpetrator even though department policy would dictate otherwise. (Authorized by and implementing K.S.A. 39-708c, K.S.A. 1987 Supp. 65-516, as amended by L. 1988, Ch. 232, Sec. 10, L. 1988, Ch. 140; effective Jan. 2, 1989.)

30-46-12. Standards for determining abuse, neglect or sexual abuse in a child care facility or institution. (a) An incident may involve abuse, neglect or sexual abuse, as defined in K.A.R. 30-46-10, if, without investigation, it is more likely than not that:

(1) A child has suffered an unexplained or non-accidental injury due to an act or omission of an employee or volunteer in the facility or institution;

(2) an employee or volunteer has had sexual contact with a child;

(3) an employee or volunteer demonstrates a pattern of interaction which impairs the child’s social, emotional or intellectual functioning to an observable and material degree;

(4) an employee or volunteer has failed to make a reasonable effort to prevent a child or other person from causing harm or the substantial risk of harm;

(5) an employee or volunteer has failed to make a reasonable effort to remove a child from

or supervise a child in a situation that requires judgment or actions beyond the child's level of maturity, physical condition or mental ability and that results in harm or substantial risk of harm to the child;

(6) an employee or volunteer has failed to obtain or follow through with prescribed medical care for a child and such failure resulted in death, disfigurement, serious physical or emotional injury or substantial risk of same to the child; or

(7) an employee or volunteer has failed to provide a child with food, shelter or clothing necessary to sustain the life or health of the child.

(b) An incident does not necessarily involve abuse, neglect or sexual abuse, as defined in K.A.R. 30-46-10, if, without investigation, it is more likely than not that:

(1) Harm to a child resulted from an accident and was not due to wanton disregard for the welfare of the child;

(2) care provided to a child failed to meet minimum regulatory standards but did not result in harm or substantial risk of harm;

(3) the inappropriate use of language by an employee or volunteer did not result in emotional harm to the child;

(4) the use of inappropriate disciplinary action contrary to agency policy by an employee or volunteer has not resulted in harm or substantial risk of harm;

(5) any harm to a child resulted from the appropriate use of restraint practices approved by SRS or the department of health and environment;

(6) a child was denied privileges;

(7) harm to a child resulted from conflict with another child; or

(8) the child eloped from a facility or institution. (Authorized by and implementing K.S.A. 39-708c, K.S.A. 1987 Supp. 65-516, as amended by L. 1988, Ch. 232, Sec. 10, L. 1988, Ch. 140; effective Jan. 2, 1989.)

30-46-13. Right to interview. Each alleged perpetrator shall have an opportunity to be interviewed before a finding affirming or substantiating the perpetrator under K.A.R. 30-46-15 is issued. (Authorized by K.S.A. 2018 Supp. 39-708c; implementing K.S.A. 2018 Supp. 38-2226, K.S.A. 2018 Supp. 39-708c, and K.S.A. 65-516; effective Jan. 2, 1989; amended Oct. 28, 1991; amended July 1, 1997; amended July 9, 2004; amended, T-30-11-15-18; Nov. 15, 2018; amended Feb. 22, 2019.)

30-46-14. This rule and regulation shall expire on October 28, 1991. (Authorized by and implementing K.S.A. 39-708c, K.S.A. 1987 Supp. 65-516, as amended by L. 1988, Ch. 232, Sec. 10, L. 1988, Ch. 140; effective Jan. 2, 1989; revoked Oct. 28, 1991.)

30-46-15. Notice of decision. (a) Each affirmed perpetrator shall be notified in writing of the secretary's decision to affirm the perpetrator for an incident of child abuse or neglect. The notice shall specify the reasons for the finding and shall inform the affirmed perpetrator of the perpetrator's right to appeal the decision.

(b) Each substantiated perpetrator shall be notified in writing of the secretary's decision to substantiate the perpetrator for the purpose of placing the name of the perpetrator in the child abuse and neglect central registry. The notice shall specify the reasons for the finding and shall inform the substantiated perpetrator of the perpetrator's right to appeal the decision.

(c) Each unsubstantiated alleged perpetrator shall be notified in writing of the secretary's decision that based on a preponderance of evidence, the alleged perpetrator has not committed an alleged act of abuse or neglect. (Authorized by K.S.A. 2018 Supp. 39-708c; implementing K.S.A. 2018 Supp. 38-2226, K.S.A. 2018 Supp. 39-708c, and K.S.A. 65-516; effective Jan. 2, 1989; amended Oct. 28, 1991; amended July 1, 1997; amended July 9, 2004; amended, T-30-11-15-18; Nov. 15, 2018; amended Feb. 22, 2019.)

30-46-16. Child abuse and neglect central registry. The name of a substantiated perpetrator shall not be entered into the department's child abuse and neglect central registry until the person has exhausted or failed to exercise the appeal process in K.A.R. 30-7-64 through 30-7-104. (Authorized by K.S.A. 39-708c; implementing K.S.A. 38-1523, K.S.A. 39-708c, and K.S.A. 65-516; effective Jan. 2, 1989; amended July 1, 1997; amended July 9, 2004.)

30-46-17. Expungement of record of perpetrator from child abuse and neglect central registry. (a) Application for expungement.

(1) Any perpetrator of abuse or neglect may apply in writing to the secretary to have the perpetrator's record expunged from the child abuse and neglect central registry when three years have passed since the perpetrator's name was entered on the child abuse and neglect central registry. Thereafter, if the expungement is denied, an ap-

plication for expungement may be submitted by the perpetrator to the secretary no more than once every 12 months after the date of the most recent expungement review panel hearing.

(2) Each application for expungement shall be referred to the expungement review panel. The panel shall consist of the director of prevention and protection services or the director's designee, the chief legal counsel of the department or the counsel's designee, and a representative of the public appointed by the secretary. The director of prevention and protection services or the director's designee shall chair the panel.

(b) Expungement review panel hearing.

(1) A review hearing shall be convened by the panel, at which time the applicant may present evidence supporting expungement of the applicant's name from the child abuse and neglect central registry. The applicant shall have the burden of providing the panel with the basis for granting the expungement. Evidence in support of or in opposition to the application and a recommendation may be presented by the regional office that conducted the original investigation.

(2) Recommendations of the review panel shall be determined by majority vote. The following factors shall be considered by the panel in making its recommendation:

(A) The nature and severity of the act of abuse or neglect;

(B) the number of findings of abuse or neglect involving the applicant;

(C) specification of whether the applicant was a child at the time of the finding of abuse or neglect for which expungement is requested and the age of the applicant at the time of the incident;

(D) circumstances that no longer exist that contributed to the finding of abuse or neglect by the applicant; and

(E) actions taken by the applicant since the incident to prevent the reoccurrence of abuse or neglect.

(3) The review hearing shall be set within 30 days from the date the application for expungement is received by the department. A written notice shall be sent to the applicant and the regional office that made the finding by the director of prevention and protection services or the director's designee at least 10 days before the hearing. The notice shall state the day, hour, and place of the hearing. Continuances of the hearing may be granted by the secretary or the secretary's designee only for good cause.

(4) A written recommendation to the secretary shall be rendered by the panel within 45 days from the date of the hearing. The recommendation to the secretary shall be submitted in writing and shall specify the reasons for the recommendation.

(c) Expungement.

(1) Based upon the application for expungement, other records in the expungement file, and the findings and recommendations of the panel, a decision to grant or deny the requested expungement shall be made by the secretary and shall be the final agency order. The secretary's decision shall be made with 60 days of the expungement hearing.

(2) The applicant shall be informed in writing of the secretary's decision, the specific reasons for the decision, and the applicant's right to appeal that decision pursuant to the Kansas judicial review act.

(3) Any record may be expunged from the child abuse and neglect central registry by the secretary or the secretary's designee when 18 or more years have passed since the most recent finding of abuse or neglect.

(4) Each record of a perpetrator who was under 18 at the time of abuse or neglect and has not been substantiated for more than a single event or incident while a minor shall be expunged five years after the finding of abuse or neglect is entered in the child abuse and neglect central registry if the perpetrator has had none of the following after entry in the registry:

(A) A finding of abuse or neglect;

(B) juvenile offender adjudication for any act, other than the event or incident that resulted in the offender's name being placed on the child abuse and neglect central registry, that, if committed by an adult, would be a class A person misdemeanor or any person felony; or

(C) criminal conviction for a class A person misdemeanor or any person felony. (Authorized by K.S.A. 2018 Supp. 39-708c and K.S.A. 65-516; implementing K.S.A. 65-516; effective Jan. 2, 1989; amended Jan. 1, 1990; amended July 1, 1997; amended July 9, 2004; amended July 6, 2009; amended, T-30-11-15-18; Nov. 15, 2018; amended Feb. 22, 2019.)

Article 47.—FOSTER CARE LICENSING

30-47-3. License requirements. Each individual shall meet the following requirements to obtain a license and to maintain a license:

(a) Submit a complete application for a license on forms provided by the department, including requests for the background checks specified in K.A.R. 28-4-805;

(b) be at least 21 years of age;

(c) have adequate financial resources to provide for the needs and financial obligations of the household, independent of foster care reimbursement payments; provide basic income and expense information to the secretary for review at the time of initial application and annual license renewal; and provide documentation of financial information for review as deemed necessary;

(d) participate in an initial family assessment, a family assessment for each renewal, and any additional family assessments conducted by the sponsoring child-placing agency. Each family assessment shall include at least one individual interview with each household member at least seven years of age and at least one visit in the family foster home;

(e) meet the training requirements in K.A.R. 28-4-806; and

(f) obtain and maintain ongoing sponsorship by a public or private child-placing agency, including a recommendation by the sponsoring child-placing agency that the home be used for placement of children in foster care. (Authorized by K.S.A. 2016 Supp. 65-508, 75-3084, and 75-3085; implementing K.S.A. 2016 Supp. 65-504 and 65-508; effective Sept. 8, 2017.)

Article 51.—ADULT ABUSE, NEGLECT OR EXPLOITATION

30-51-1 to 30-51-5. These rules and regulations shall expire on April 1, 1990. (Authorized by and implementing K.S.A. 39-708c, 39-1422; effective, T-88-59, Dec. 16, 1987; effective May 1, 1988; revoked April 1, 1990.)

Article 60.—LICENSING OF COMMUNITY MENTAL HEALTH CENTERS

30-60-1. Scope. The regulations set forth in this article shall provide for the licensing of, and set the standards for the services and programs required of, community mental health centers, including the following:

(a) Each center organized as a community mental health center pursuant to the provisions of K.S.A. 19-4001 et seq., and amendments thereto;

(b) each center organized as a mental health

clinic pursuant to the provisions of K.S.A. 65-211 et seq., and amendments thereto; and

(c) each affiliated center meeting the exception specified in K.S.A. 75-3307b(b), and amendments thereto. (Authorized by K.S.A. 75-3307b; implementing K.S.A. 75-3307b, 75-3307c, and 75-3304a; effective Oct. 28, 1991; amended July 7, 2003.)

30-60-2. Definitions. Words and phrases used in this article but not defined in this regulation shall have the same meanings as they are defined to have in the “care and treatment act for mentally ill persons,” K.S.A. 59-2945 et seq., and amendments thereto, or in the “mental health reform act,” K.S.A. 39-1601 et seq., and amendments thereto. (a) “Affiliate” means any individual or agency that independently provides mental health services and that has entered into an affiliation agreement with a community mental health center in accordance with the provisions of K.A.R. 30-60-29.

(b) “Affiliated center” means any community mental health center that is licensed by the secretary in accordance with this article, based upon the exception specified in K.S.A. 75-3307b(b) and amendments thereto.

(c) “Center” means a community mental health center that is organized pursuant to K.S.A. 19-4001 et seq., and amendments thereto, or K.S.A. 65-211 et seq., and amendments thereto, and that is licensed by the secretary in accordance with this article. This term shall not include any “affiliated center” that is licensed by the secretary in accordance with this article, based upon the exception specified in K.S.A. 75-3307b(b) and amendments thereto.

(d) “Consumer” means a person, whether a child, an adolescent, or an adult, who is in need of, is currently receiving, or has recently received any services from any mental health services provider. This term shall include, when appropriate in the context, the spouse of an adult consumer, the legal guardian of a consumer, the parent of a minor who is a consumer, the foster parent of a minor who is the subject of juvenile court proceedings, other members of the immediate family of a minor who is a consumer, and other individuals, including members of the immediate family of an adult consumer, who may be living with or assisting, or are otherwise being supportive of a consumer.

(e) “Contractor” means any individual or agency providing any service to a licensee in accordance

with a contract, whether written or oral, entered into by the licensee and the contractor. This term shall not include a licensee. A “contractor” may also be an “affiliate” if the individual or agency has entered into an affiliation agreement with a center in accordance with the provisions of K.A.R. 30-60-29.

(f) “Department” means the department of social and rehabilitation services.

(g) “Division” means the division of mental health, addiction and prevention services within the department of social and rehabilitation services.

(h) “Executive director” means the individual appointed by a licensee in compliance with K.A.R. 30-60-40(a), regardless of whether that individual has been given any other title by the licensee. This term shall include, when appropriate, the designee of the executive director.

(i) “Licensee” means either a community mental health center licensed by the secretary in accordance with this article, or an “affiliated center” licensed by the secretary in accordance with this article. This term shall not include an “affiliate” or a “contractor.”

(j) “Secretary” means the secretary of social and rehabilitation services. This term shall include, when appropriate, the assistant secretary for health care policy. (Authorized by K.S.A. 39-1603(t), 75-3307b; implementing K.S.A. 39-1603(t), 75-3304a, and 75-3307b; effective Oct. 28, 1991; amended July 7, 2003.)

30-60-5. Two types of license; requirements. (a) Two types of license shall be issued by the secretary in accordance with this article. One shall be titled “community mental health center.” The other shall be titled “affiliated community mental health center.” To be eligible for either license, the applicant agency shall demonstrate that it can and will comply with all of the applicable requirements contained within this article. However, the applicant agency shall not be required to meet the requirements contained within article 61 that provide for those additional services and programs that a center must be capable of and willing to provide in order to be eligible to contract with the secretary to become a participating community mental health center.

(b) (1) Only one license shall be issued by the secretary to operate a “community mental health center” within a designated service area, which shall be stated upon the license issued.

(2) If the board of county commissioners for any county within the service area of a licensed

center, pursuant to K.S.A. 19-4001 and amendments thereto, notifies the secretary of the board’s withdrawal of its designation of that licensed center as the community mental health center for that county and requests that the secretary either approve the establishment of a new community mental health center for that county, as provided for in K.A.R. 30-60-10, or approve the realignment of the service area of another existing licensed center to include that county within its service area, as provided for in K.A.R. 30-60-12, and if the secretary approves either request, then at least one of the following actions shall be taken by the division:

(A) If the secretary’s action involves the establishment of a new community mental health center to replace the existing licensed center and that existing center will not afterwards be serving any other county, the license of the existing center from which the board of county commissioners withdrew its designation shall be revoked.

(B) If the secretary’s action involves the realignment of the service area of one or more existing licensed centers, a new license shall be issued to each involved center. Each new license shall state upon it the new service area of that center.

(c) Each agency meeting the exception specified in K.S.A. 75-3307b(b), and amendments thereto, shall be exempted from the limitation stated in subsection (b) above and may be licensed as an “affiliated community mental health center,” if it complies with all of the following:

(1) The agency has an affiliation agreement, as specified in K.A.R. 30-60-29, with each center within whose service area the agency provides any services.

(2) The agency makes regular and timely applications for renewal of its license.

(3) The agency is at all times in compliance with all of the applicable requirements of this article, including those applicable to the services and programs it has agreed to provide in its affiliation agreement with any center. (Authorized by K.S.A. 75-3307b; implementing K.S.A. 75-3307b, 75-3307c, and 75-3304a; effective Oct. 28, 1991; amended July 7, 2003.)

30-60-6. Licensing procedure; compliance surveys; duration and renewal of license; provisional license. (a) Each agency or licensee desiring a new or renewed license as a “community mental health center” or an “affiliated community mental health center” shall

submit an application for that license, or for renewal of its license, to the secretary in the format prescribed by the division. Each application for renewal of a license shall be submitted at least 45 days before the expiration of the current license. This requirement may be waived by the secretary upon a showing of good cause. If a waiver is granted, a reasonable deadline may be established by the secretary for submittal of the required renewal application.

(b) Upon receipt of an application for a license or for renewal of a license, a survey of the applicant agency or licensee may be conducted by the division to determine whether the applicant agency or licensee is in compliance with the applicable requirements of this article or can be expected to be in compliance with the applicable requirements of this article during the term of the requested license.

(c) At any time deemed appropriate by the division, a licensee may be formally resurveyed by the division to determine whether the licensee continues to be in compliance with the requirements of this article. No prior notice by the division of its intent to conduct a continuing compliance survey shall be required to be given to a licensee. Neither technical assistance provided to a licensee nor ongoing monitoring of a licensee's programs and services by any employee of the division assigned by the department to perform quality assurance duties shall be construed to constitute a formal resurvey for compliance under this subsection. However, if an employee of the division observes any evidence of noncompliance with the requirements of this article by a licensee, a compliance resurvey under this subsection may be instituted.

(d) Following any initial, renewal, or continuing compliance survey, the applicant agency or licensee shall be notified of the division's findings in writing. Any applicant agency or licensee that disagrees with any finding of the division that the applicant agency or licensee is not in compliance with an applicable requirement of this article may submit, in writing and within 15 days of receipt of the division's survey findings, any arguments and supporting documents that the applicant agency or licensee wishes the division to consider. These written materials shall become a part of the record concerning the agency's application for a license or application for renewal of its license. Based upon these materials, a determination may be made by the division to resurvey the applicant agency or licensee or to revise the division's survey findings. If a resurvey or revision of

the division's findings is made, the applicant agency or licensee shall be notified of the division's new findings, in writing.

(e) Upon receipt of an application for a license or for renewal of a license, or following any initial, renewal, or continuing compliance survey, a recommendation for the issuance of a provisional license to begin or continue operations by an applicant agency or licensee may be made to the secretary by the division. Each provisional license issued shall include the requirement that the applicant agency or licensee develop, submit, and implement a plan of corrective action to bring the applicant agency or licensee into compliance with the applicable requirements of this article.

(1) This plan of corrective action shall be submitted to the division within 30 days following receipt by the applicant agency or licensee of the division's written request for a plan of corrective action.

(2) The plan of corrective action shall be reviewed by the division to determine the following:

(A) Whether the plan adequately addresses all of the areas of noncompliance cited in the division's survey report; and

(B) whether a follow-up resurvey is necessary to determine that the plan has been fully implemented and that the applicant agency or licensee is in compliance with the applicable requirements of this article. No prior notice by the division of its intent to conduct a resurvey shall be required to be given to the applicant agency or licensee.

(3) The division's findings from any follow-up resurvey shall be provided to the applicant agency or licensee, in writing, and may include a recommendation to the secretary that a license be issued, that the application be denied, that a license be revoked, or that further corrective action be taken by the applicant agency or licensee.

(4) Failure of an applicant agency or licensee to submit or to fully implement an acceptable plan of corrective action may be grounds for denial or revocation of a license, regardless of whether or not a provisional license has been recommended or issued.

(f)(1) If the division determines upon receipt of an application for a license, an application for renewal of a license or a plan of corrective action, that no compliance survey or resurvey is necessary, a recommendation may be made by the division to the secretary that the applicant agency or licensee merits the public's trust and that a license should be issued for a specified term.

(2) If a compliance survey or resurvey finds that the applicant agency or licensee is in compliance with the applicable requirements of this article, or can be expected to be in compliance with the applicable requirements of this article during the term of the requested license, a recommendation may be made by the division to the secretary that the applicant agency or licensee merits the public's trust and that a license should be issued for a specified term.

(3) If a compliance survey or resurvey does not find that the applicant agency or licensee is in compliance with the applicable requirements of this article, or can not be expected to be in compliance with the applicable requirements of this article during the term of the requested license, or if the division determines that the applicant agency or licensee does not merit the public's trust, a recommendation may be made by the division to the secretary that the application should be denied. A copy of any recommendation made by the division to deny a license, or to deny renewal of a license, shall be sent to the applicant agency or licensee by registered mail and addressed to the executive director of the applicant agency or licensee, and shall clearly state the reasons for the recommended denial. Any recommendation for denial of a license, or denial of renewal of a license, may be appealed to the office of administrative hearings within the Kansas department of administration in accordance with article 7.

(g) Each license issued by the secretary in accordance with this article shall be in effect for a term to be stated upon the license, which shall not exceed two years, unless revoked earlier for cause.

(h) Each provisional license issued by the secretary shall specify the length of time for which it shall be valid, but in no case shall a provisional license be valid for more than six months. Successive provisional licenses may be issued. (Authorized by K.S.A. 75-3307b; implementing K.S.A. 75-3307b, 75-3307c, and 75-3304a; effective Oct. 28, 1991; amended July 7, 2003.)

30-60-7. Suspension; revocation of a license; procedure; voluntary surrender. (a) Any license issued by the secretary in accordance with this article may be suspended or revoked for failure of the licensee to be in compliance with the applicable requirements of this article.

(b) A license may be suspended only upon a determination by the division that continued operations by the licensee during any license revocation

proceedings would constitute a serious threat to the health and safety of consumers receiving the licensee's services. A copy of this determination shall be provided to the licensee, in writing, and shall clearly state the reasons for it.

(c) Before revocation of a license, a written notice of the proposal to revoke the license shall be sent by registered mail to the executive director of the licensee, along with a copy of the division's determination to suspend the license during the revocation proceedings, if applicable. The notice shall include the following:

(1) A clearly written statement of the reasons for the proposed revocation of the license;

(2) the date upon which the revocation of the license will become effective, unless appealed; and

(3) notice to the licensee that this proposal to revoke its license may be appealed to the office of administrative hearings within the Kansas department of administration in accordance with article 7.

(d) If, at any time during the pendency of revocation proceedings, the division is satisfied that the licensee is in compliance with all of the applicable requirements of this article and that it is in the best interests of the public that the proposed revocation be withdrawn, all parties to the revocation proceedings shall be notified by the division that the proposed revocation has been withdrawn. The revocation proceedings shall then be terminated.

(e) If, after notice to the licensee of a proposed revocation, the licensee does not timely appeal the proposed revocation, or at the conclusion of any revocation proceedings that result in the proposed revocation being upheld, the following actions shall be taken:

(1) The license previously issued shall be revoked by the division.

(2) The board or boards of county commissioners of each county within the service area of any center whose license has been revoked shall be notified by the division of the revocation and of the procedures by which the board or boards of county commissioners may establish a new community mental health center.

(f) A licensee may at any time voluntarily surrender its license. Upon a voluntary surrender of a license, the license shall be marked by the division as void. The board or boards of county commissioners of each county within the service area of any center that voluntarily surrenders its license shall be notified by the division of the licensee's voluntary surrender of the license and of the procedures by which the board or boards of county

commissioners may establish a new community mental health center.

(g) If the division has revoked a license previously issued, or a licensee has voluntarily surrendered its license, the licensee may be required by the division to develop and implement a plan for the transfer of those consumers then receiving any services from the licensee to another licensed or other appropriate provider of these services. (Authorized by K.S.A. 75-3307b; implementing K.S.A. 39-1603, 39-1604(d), 39-1608(a) and (c), 65-4434(f), and 75-3304a; effective Oct. 28, 1991; amended July 7, 2003.)

30-60-8. Notice of need of a license; order to cease; appeal. (a) Upon the division's notice to any person or agency of the division's determination that the person or agency is providing services for which a license issued in accordance with this article is required, that person or agency shall either submit an application for the applicable license in accordance with K.A.R. 30-60-6 or cease provision of those services.

(b) If any person or agency so notified fails or refuses to submit, within 60 days, an application for the applicable license but continues to provide the services, a written order addressed and delivered to that person or agency may be issued by the division, requiring the person or agency to cease provision of those services until the person or agency is licensed in accordance with this article.

(c) Any order to cease provision of services may be appealed to the office of administrative hearings within the Kansas department of administration in accordance with article 7. (Authorized by K.S.A. 75-3307b; implementing K.S.A. 39-1603, 39-1604(d), 39-1608(a) and (c), 65-4434(f), and 75-3304a; effective July 7, 2003.)

30-60-10. Establishment of a new community mental health center; altered service area. (a) Pursuant to K.S.A. 19-4001 and amendments thereto, the establishment of a new community mental health center shall not be approved by the secretary if the proposed center's service area is already being served by one or more existing licensed centers, unless the respective board or boards of county commissioners notify the secretary of the following:

(1) The intent of the board or boards to withdraw their designation of the existing licensed center serving that area as their community mental health center; and

(2) the request of the board or boards that the secretary approve the establishment of a new community mental health center, as requested in accordance with K.A.R. 30-60-11.

(b) No licensed center may alter its existing service area to include an area already being served by one or more other licensed centers, except in compliance with subsection (a) and K.A.R. 30-60-11.

(c) Each proposal to establish a new community mental health center to serve an area not then being served by a licensed center shall be accompanied by an application for a license as a community mental health center as required by K.A.R. 30-60-6. (Authorized by K.S.A. 75-3307b; implementing K.S.A. 39-1603, 39-1604(d), 39-1608(a) and (c), 65-4434(f), and 75-3304a; effective Oct. 28, 1991; amended July 7, 2003.)

30-60-11. Necessary elements for a proposal to establish a new community mental health center or to realign the service area of one or more existing centers. (a) A written request for approval of the establishment of a new community mental health center, or of the realignment of the service area of any licensed center, shall be made by the respective board or boards of county commissioners to the secretary, pursuant to K.S.A. 19-4001 and amendments thereto, and shall include, or contain as an attachment, the following:

(1) The rationale for the proposal;

(2) a specific plan for providing mental health services to persons living within the proposed new service area;

(3) an endorsement of the proposal by the governing boards and executive directors of any licensed centers that might be affected by the proposal, as appropriate;

(4) any written comments that have been received from other governmental agencies existing within any affected service area; and

(5) any written comments received from the public and a summary of any public comments made at a public hearing held for the purpose of receiving comments on the proposal. The division shall be consulted in advance of this public hearing and shall have approved of the procedures utilized in obtaining the public comments.

(b) The rationale for the proposal shall include the following:

(1) Information about how, and by whom, the decision to create the proposed new community

mental health center or to realign the licensed center's service area was initiated;

(2) a map of the service area or areas proposed to be created;

(3) a statement describing the problems thought to exist with the provision of mental health services within this area; and

(4) information about how the proposed community mental health center or the realignment of any licensed center's service area will address these problems.

(c) The plan for providing mental health services shall include the following:

(1) A description of how the services required by this article to be provided by a community mental health center, and any other planned services, will be provided by the proposed new community mental health center or by the realigned center;

(2) a description of any unique mental health needs of the community within the proposed service area and the manner in which those needs will be met by the proposed new community mental health center or realigned center;

(3) evidence of the establishment of a working relationship between the proposed new community mental health center or realigned center and the local district court, other local providers of mental health services, and the applicable state hospital, as designated in K.A.R. 30-26-1a;

(4) a plan for adequate staffing of the proposed new community mental health center or realigned center;

(5) a description of the planned structure of governance, organization, and management of the proposed new community mental health center or the realigned center;

(6) a financial plan detailing how the proposed new community mental health center or the realigned center will be financed during an initial five-year period; and

(7) a statement of the anticipated fiscal and service impacts that the creation of this proposed new community mental health center, or the realignment of the licensed center, would have on all other affected service areas. (Authorized by K.S.A. 75-3307b; implementing K.S.A. 39-1603, 39-1604(d), 39-1608(a) and (c), 65-4434(f), and 75-3304a; effective Oct. 28, 1991; amended July 7, 2003.)

30-60-12. Approval or disapproval of a proposal to establish a new community mental health center or to realign the service area

of one or more existing centers. (a) Each proposal to establish a new community mental health center, or to realign the service area of one or more licensed centers, and the materials required to be submitted to the secretary by K.A.R. 30-60-11 shall be reviewed by the division to determine whether or not the proposal contributes to the state's overall plan for providing mental health services. Additional comments from the following may be received or sought out by the division:

(1) Other divisions within the department;

(2) appropriate representatives of the district court for the proposed service area or areas;

(3) consumer organizations;

(4) representatives or advocates of consumers; and

(5) other individuals or agencies as the division deems appropriate.

(b) The approval or disapproval of the proposal may be recommended to the secretary by the division. The proposer shall be notified by the division of that recommendation in writing. If the division recommends disapproval of the proposal, the notification shall clearly state the reasons for this recommendation.

(c) Any recommendation to the secretary that the proposal be disapproved may be appealed to the office of administrative hearings within the Kansas department of administration in accordance with article 7. (Authorized by K.S.A. 75-3307b; implementing K.S.A. 39-1603, 39-1604(d), 39-1608(a) and (c), 65-4434(f), and 75-3304a; effective Oct. 28, 1991; amended July 7, 2003.)

30-60-13. Responsibility for compliance.

(a) Each center shall comply with the requirements of this article.

(b) Each center shall ensure compliance with the applicable requirements of this article by any affiliated center, affiliate, or contractor with which the center has entered into an affiliation agreement or contract to provide any service specified in this article. (Authorized by K.S.A. 39-1604(r), 75-3307b; implementing K.S.A. 39-1603(r), 75-3307b, and 75-3304a; effective July 7, 2003.)

30-60-14. Departmental assistance; cooperation with compliance monitoring. One or more employees of the division may be assigned by the department to provide technical assistance to a licensee or to assist a licensee in developing its quality improvement program or other similar responsibilities. Each licensee shall cooperate with that

employee's efforts and with that employee's monitoring of the licensee's ongoing compliance with the requirements of this article. This cooperation shall include providing that employee with reasonable access to all of the facilities and administrative records of the licensee and to all clinical records and treatment or service activities of the licensee. (Authorized by K.S.A. 75-3307b; implementing K.S.A. 39-1603, 39-1604(d), 39-1608(a) and (c), 65-4434(f), and 75-3304a; effective July 7, 2003.)

30-60-15. Access; identification; information. (a) Each center shall make every reasonable effort to overcome any barriers that consumers may have to receiving services, including the following:

- (1) Physical disabilities;
- (2) disabilities specifically resulting from any mental illness;
- (3) language or other communication barriers;
- (4) barriers associated with cultural, social, ethnic, and religious factors; and
- (5) barriers associated with economic issues, including a consumer's access to public transportation, child care needs, and the demands of the consumer's employer.

(b) Each center shall make the following information generally known to or easily discoverable by the public:

- (1) The address and location of the center;
- (2) the center's usual office hours;
- (3) the center's telephone number, including any telephone number that should be called in an emergency; and
- (4) the types of services provided by the center or its contractors, or by any affiliated center or affiliate with which the center has an affiliation agreement. Each center shall make an effort to advertise the center's services, the services of any affiliated center or affiliate with which the center has an affiliation agreement, and the availability of those services, at locations where consumers are likely to be found.

(c) If a center is physically located within a multi-use or multipurpose building, the center shall insure that the center can be found within that building by having posted, both outside and inside of the building, signs or other directory information sufficient to assist consumers to locate the center.

(d) Each center shall make available at the center, and at other appropriate locations, materials that provide information about the following:

- (1) A description of the center and the services that the center or its contractors provide;
 - (2) a description of any affiliated center or affiliate with which the center has an affiliation agreement and the services that each provides;
 - (3) the rights of consumers;
 - (4) the center's policy on fees and adjustments to those fees; and
 - (5) the ways to contact the center for services.
- (e) The materials specified in subsection (d) shall be designed to be comprehensible to persons with only a limited education.

(f) All center stationery used to communicate with the public and any preprinted materials prepared for use in communicating with consumers shall have printed on that stationery and those materials the center's name, address, and telephone number, including any telephone number that should be called in an emergency. (Authorized by K.S.A. 39-1603(r), 65-4434(f), and 75-3307b; implementing K.S.A. 39-1603, 39-1604(d), 65-4434(f), 75-3307b, and 75-3304a; effective July 7, 2003.)

30-60-16. No denial of required services; exceptions; requirements; rights, documentation. (a) No center shall deny necessary and appropriate services to any person requesting mental health services from that center unless any of the following conditions is met:

- (1) The person requires services that are not required by K.A.R. 30-60-64 to be provided by a center and that are not provided by the center.
- (2) The person refuses to pay the fees charged for any services provided, even after those fees have been adjusted or reduced in compliance with K.A.R. 30-60-17, unless the center is required by K.A.R. 30-60-64 to provide those services.
- (3) The person is determined by the executive director to have engaged in behavior that threatens the safety of center staff or other individuals present at the center, but only if every reasonable effort has been made to address those issues. The denial of services may continue only as long as the behavior continues.

(b) If a center denies any necessary and appropriate services to any person, the center shall take one or more of the following actions, as applicable:

- (1)(A) If the services being denied are services that are required by K.A.R. 30-60-64 to be provided by a center, immediately send to the division the name and address of that person, a list of what specific services are being denied, and the reasons why this denial has been instituted; and

(B) refer the person to another mental health services provider with whom the center has made arrangements for the provision of those services to that person, including, if the other provider requires it, arrangements for the other provider to be paid for its services by the center;

(2) if the services being denied are services not required by K.A.R. 30-60-64 to be provided by a center, refer the person to another appropriate provider; or

(3) if the person is engaging in threatening behavior, either initiate the appropriate involuntary admission of that person to a state psychiatric hospital or to another appropriate treatment facility, or take other appropriate actions necessary to ensure the safety of both that person and other individuals, including, when necessary, calling the appropriate law enforcement agency.

(c) Each person who has been denied any services by a center shall have the right to file a complaint concerning that denial, as specified in K.A.R. 30-60-51, and shall be informed of the procedures and process of filing a complaint. The center shall document its compliance with this requirement. (Authorized by K.S.A. 75-3307b; implementing K.S.A. 39-1603, 39-1604(d), 39-1608(a) and (c), 65-4434(f), and 75-3304a; effective July 7, 2003.)

30-60-17. Prohibition against denial of required services because of an inability to pay fees; establishment of a schedule of fees; adjustment; disclosure; reviews; collection of fees. (a) No center shall deny to any consumer requesting services from that center any necessary and appropriate services that the center is required to provide by K.A.R. 30-60-64, solely because of the consumer's inability to pay the fees charged by the center for those services, even after those fees have been adjusted or reduced in compliance with this regulation.

(b) Each center shall print upon all center stationery used to communicate with the public and any preprinted materials prepared for use in communicating with consumers a statement indicating that the center will not deny to any consumer necessary and appropriate services that the center is required by K.A.R. 30-60-64 to provide, solely because of the consumer's inability to pay the fees charged by the center for those services. This statement shall also indicate that the fees charged by the center may be adjusted or reduced in compliance with this regulation.

(c) Each licensee shall periodically establish the fees that the licensee charges for its services. These fees shall be published in a schedule of fees, which shall be made available to anyone upon request.

(d) Each licensee shall adopt and adhere to written policies and procedures specifying when staff shall have the authority to adjust from the published schedule of fees the actual fee that will be charged for any service provided to any consumer. These policies and procedures shall require that a consumer's ability to pay that fee, or any responsible party's ability to pay that fee, shall be considered in making any adjustments. These policies and procedures shall further specify the circumstances in which the services provided by the licensee would be provided to a consumer free of any charge.

(e) Each licensee shall perform the following:

(1) Require its staff to disclose to any consumer seeking services from the licensee that licensee's schedule of fees for those services, and the policies and procedures under which designated staff members have the authority to adjust those scheduled fees; and

(2) require its staff to periodically review the circumstances of every consumer receiving services from the licensee to determine whether any adjustments to the fees being charged that consumer should be made.

(f) Each licensee shall adopt and adhere to written policies and procedures providing for the collection of fees to which the licensee is entitled but that remain unpaid after they are due. These policies and procedures shall include the following:

(1) Requiring staff to document the efforts undertaken to collect any fees that have not been paid when due;

(2) specifying under what circumstances any past-due charges may be reduced or forgiven;

(3) providing that any individual responsible for paying any past-due charges may request that the licensee reduce or forgive all or part of those past-due charges; and

(4) providing that any consumer whose request that past-due charges be reduced or forgiven is denied shall have the right to file a complaint concerning that denial, as provided for in K.A.R. 30-60-51, and shall be informed of the procedures and process of filing a complaint.

(g) Each licensee shall document its compliance with the requirements of this regulation. (Authorized by K.S.A. 39-1603(r), 75-3307b; implement-

ing K.S.A. 39-1603(r), 75-3307b, and 75-3304a; effective Oct. 28, 1991; amended July 7, 2003.)

30-60-18. Coordination and community involvement. Each center, in order to facilitate the coordination of services between itself and other agencies and the referral of consumers, both to the center by others and by the center to other providers of services, shall establish and maintain cooperative working relationships with those local public and private agencies who are also likely to provide services to consumers, including the following:

(a) The department of social and rehabilitation services local area office and any applicable divisions or contractors of the department;

(b) public health agencies, public and private hospitals and clinics, other health care providers, and providers of specialized mental health services, including private mental health treatment facilities, nursing facilities for mental health, and residential care facilities for the mentally ill;

(c) community developmental disability organizations and community mental retardation and developmental disabilities service providers;

(d) the local regional alcohol and drug abuse assessment center and other treatment agencies for alcohol or substance abuse;

(e) public and private schools and other education agencies;

(f) law enforcement agencies, including jails and other adult detention facilities;

(g) the district court for each county within the service area of the center;

(h) juvenile justice agencies, including juvenile detention facilities;

(i) public housing authorities;

(j) area agencies on aging;

(k) employment service agencies;

(l) homeless shelters; and

(m) agencies run by or specifically oriented to consumers. (Authorized by K.S.A. 75-3307b; implementing K.S.A. 39-1603, 39-1604(d), 39-1608(a) and (c), 65-4434(f), and 75-3304a; effective Oct. 28, 1991; amended July 7, 2003.)

30-60-19. Data and statistical reporting.

(a) Each center shall compile and report to the division data and statistics concerning the operations of the center and its utilization by the community as the division may require.

(b) These data and statistical reporting requirements shall be developed by the division after

consultation with the association of community mental health centers, inc. and other parties as the division deems appropriate. (Authorized by K.S.A. 75-3307b; implementing K.S.A. 39-1603, 39-1604(d), 39-1608(a) and (c), 65-4434(f), and 75-3304a; effective Oct. 28, 1991; amended July 7, 2003.)

30-60-25. Governing or advisory board; powers; bylaws. (a) Each center shall have a governing board empowered to perform the following:

(1) Adopt bylaws and establish policies and procedures for the center;

(2) set goals and adopt necessary plans and a budget for the center; and

(3) exercise general supervisory authority over the center, including having the authority to hire, evaluate, and fire the executive director of the center, appointed in compliance with K.A.R. 30-60-40.

(b) If, pursuant to K.S.A. 19-4002a or 19-4002b, and amendments thereto, the board of county commissioners acts as the governing board for their center, then the advisory board, pursuant to K.S.A. 19-4002a or 19-4002b, and amendments thereto, shall be empowered to make recommendations to the board of county commissioners concerning the same matters as those listed in subsection (a).

(c) The membership of the governing or advisory board shall meet the following criteria:

(1) Consist of no fewer than seven members;

(2) include among them at least one member who is currently being treated for or who has in the past experienced a severe and persistent mental illness. In addition, a second member shall be included who is a member of a family that has a child or adolescent who is currently being treated for or who has in the past experienced a severe emotional disability or disorder;

(3) to the extent possible, and over time and in rotation, both be representative of the various communities within the center's service area, and include representatives from the following groups within the community:

(A) Public health agencies;

(B) medical professionals;

(C) legal professionals and district court judges;

(D) public assistance agencies;

(E) hospitals and clinics, including any psychiatric treatment facilities;

(F) mental health organizations;

(G) educational agencies;

(H) rehabilitation services agencies;

- (I) labor and business organizations;
- (J) civic groups and organizations;
- (K) consumer-run organizations and advocacy groups; and

(L) the general public.

(d) The governing or advisory board shall meet at least quarterly, and comprehensive minutes of all meetings of the board shall be kept.

(e) Each center's bylaws and its other policies and procedures shall meet the following criteria:

(1) Provide for the governance of the board, the terms of office of its members, and the election of their successors;

(2) clearly set out and differentiate the responsibilities, authorities, and roles of the following:

- (A) The governing or advisory board;
 - (B) the executive director; and
 - (C) other staff of the center; and
- (3) establish how the center shall operate.

(f) If a center is operated as a governmental agency or is operated as a department of a hospital, the bylaws shall include provisions establishing and delineating the lines of authority between the superior governmental authority or the hospital's ownership and the governing or advisory board of the center.

(g) If the center is organized as a private, non-profit corporation, it shall meet the following criteria:

(1) Be incorporated pursuant to Kansas statutes;

(2) be duly registered with the secretary of state and the register of deeds for the county in which the principal office of the center is located;

(3) pursuant to K.S.A. 19-4007 and amendments thereto, file its written contract for providing mental health services to the residents of that county or counties with the board or boards of county commissioners of the county or counties it serves; and

(4) adopt bylaws, which shall include the following:

(A) A delineation of the powers and duties retained by the corporation's board, its officers, and any committees;

(B) a delineation of the authority and responsibilities delegated to the corporation's employed staff;

(C) the criteria for membership in the corporation, the types of membership that there are, the manner in which the members are elected or appointed, the length of term of membership, and the method of filling vacancies in the membership;

(D) the frequency of corporation meetings and quorum requirements;

(E) the objectives of the corporation; and

(F) other items that may be appropriate or necessary to demonstrate how the corporation is organized, operates, and selects its officers. (Authorized by K.S.A. 75-3307b; implementing K.S.A. 39-1603, 39-1604(d), 39-1608(a) and (c), 65-4434(f), and 75-3304a; effective Oct. 28, 1991; amended July 7, 2003.)

30-60-26. Conflict of interest prohibited. Each licensee shall ensure that no individual serving on the licensee's governing or advisory board or as an employee, contractor, or consultant engages in activities constituting a conflict of interest between the licensee's provision of services and the private, remunerative activities of that individual, employee, contractor, or consultant. (Authorized by K.S.A. 75-3307b; implementing K.S.A. 39-1603, 39-1604(d), 39-1608(a) and (c), 65-4434(f), and 75-3304a; effective Oct. 28, 1991; amended July 7, 2003.)

30-60-27. Annual audit. (a) Each center shall annually obtain an independent audit of the financial affairs and records of the center.

(b) The reports of this audit shall be made available to anyone upon request.

(c) A copy of the two most recently completed audit reports shall be attached to the center's application for renewal of its license, submitted to the division in accordance with K.A.R. 30-60-6, unless previously provided to the division in accordance with K.A.R. 30-60-19 or any separate grant or contract compliance requirement. (Authorized by K.S.A. 75-3307b; implementing K.S.A. 39-1603, 39-1604(d), 39-1608(a) and (c), 65-4434(f), and 75-3304a; effective Oct. 28, 1991; amended July 7, 2003.)

30-60-28. Mission and vision statements; strategic plan; coordination with quality improvement program. (a) Each center shall develop, adopt, and display at appropriate locations a statement of its mission, including a concise statement of the purpose for which the center exists, the general nature of the services it provides, and the population to whom it provides those services.

(b) Each center shall develop and adopt a vision statement of its goals for the future and the values it holds with regard to the consumers it serves.

(c) Each center shall develop and adopt a statement of its strategic plan, including specific, mea-

asurable, short-term, and long-term goals, and the specific means or methods by which it intends to accomplish those goals.

(d) Each center shall ensure consistency between its strategic plan and its quality improvement program required by K.A.R. 30-60-55. (Authorized by K.S.A. 75-3307b; implementing K.S.A. 39-1603, 39-1604(d), 39-1608(a) and (c), 65-4434(f), and 75-3304a; effective Oct. 28, 1991; amended July 7, 2003.)

30-60-29. Affiliation agreement; notice to secretary of a center's refusal to enter into; investigation and recommendations; no agreement imposed. (a) Each center shall have a written affiliation agreement with each affiliated community mental health center that is licensed by the secretary in accordance with this article based upon the exception provided for in K.S.A. 75-3307b(b), and amendments thereto, and that provides any of the services described in this article within the service area of that center. Any center may enter into an affiliation agreement with any other provider of mental health services with which the center chooses to enter into an affiliation agreement.

(b) Each affiliation agreement shall contain the following:

(1) A description of the types of services that the affiliated center or other provider has agreed to provide, pursuant to the terms of the affiliation agreement;

(2) provisions concerning how and by what procedures a consumer requesting or receiving services from the center can be referred to the affiliated center or other provider;

(3) provisions concerning how and by what procedures a consumer requesting or receiving services from the affiliated center or other provider can or should be referred to the center;

(4) any necessary and appropriate financial arrangements between the center and the affiliated center or other provider;

(5) provisions concerning how and by what procedures the affiliated center or other provider will assist the center in the collection of any data or statistics that the center may require in order to comply with K.A.R. 30-60-19;

(6) a statement that the affiliated center or other provider agrees to provide any of the services it provides in a manner consistent with the mission statement of the center and that the affiliated center or other provider accepts and will abide by the values of the center. This statement shall in-

clude a description of how the services that are to be provided by the affiliated center or other provider will augment or supplement the services of the center or how those services will promote the strategic plan of the center adopted in compliance with K.A.R. 30-60-28;

(7) an agreement specifying that the affiliated center or other provider is subject to and will abide by and utilize the policies and procedures that the center adopts in compliance with K.A.R. 30-60-30, concerning the solicitation of consumer comments and suggestions;

(8) an agreement specifying that the affiliated center or other provider is subject to and will abide by and utilize the policies and procedures that the center adopts in compliance with K.A.R. 30-60-48, concerning de-escalation techniques and emergency behavioral interventions;

(9) an agreement specifying that the affiliated center or other provider is subject to and will abide by and utilize the policies and procedures that the center adopts in compliance with K.A.R. 30-60-51, concerning accepting and resolving complaints;

(10) an agreement specifying that the affiliated center or other provider is subject to and will abide by and utilize the policies and procedures that the center adopts in compliance with K.A.R. 30-60-55, concerning the center's quality improvement program;

(11) an agreement specifying that the affiliated center or other provider is subject to and will abide by and utilize the policies and procedures that the center adopts in compliance with K.A.R. 30-60-56, concerning the center's risk management program;

(12) an agreement specifying that the affiliated center or other provider is subject to and will abide by and utilize the policies and procedures that the center adopts in compliance with K.A.R. 30-60-57, concerning the center's utilization review program; and

(13) provisions specifying when and under what circumstances the affiliation agreement either expires or can be cancelled.

(c) (1) If a center refuses to enter into an affiliation agreement with either of the following types of agencies, the agency may notify the secretary of that refusal:

(A) Any agency that wishes to become an affiliated provider and that would otherwise be entitled to any benefits that would be associated with being an affiliate of a community mental health center; or

(B) any agency that would otherwise be entitled to a license as an affiliated community mental health center by virtue of the exception specified in K.S.A. 75-3307b(b) and amendments thereto.

(2) Upon notification of a center's refusal to enter into an affiliation agreement, the division or any other individual or agency may be requested by the secretary to investigate the circumstances leading to this refusal and to make recommendations to either or both parties. (Authorized by K.S.A. 75-3307b(b); implementing K.S.A. 75-3307b(b) and 75-3304a; effective July 7, 2003.)

30-60-30. Solicitation and consideration of consumer comments and suggestions. (a) Each center shall adopt and adhere to written policies and procedures that provide for regular and ongoing solicitation of comments and suggestions from its consumers. Each center shall utilize both formal and informal means of soliciting these comments or suggestions and shall ensure the solicitation of a diverse group of consumers to whom the center, and each affiliated provider with which the center has an affiliation agreement, provides services.

(b) Each center shall ensure coordination between the solicitation of consumer comments and suggestions and its quality improvement program required by K.A.R. 30-60-55.

(c) Records that demonstrate each center's compliance with this requirement shall be centrally maintained for at least five years. (Authorized by K.S.A. 75-3307b; implementing K.S.A. 39-1603, 39-1604(d), 39-1608(a) and (c), 65-4434(f), and 75-3304a; effective July 7, 2003.)

30-60-40. Personnel. (a) Each licensee shall vest the following duties in an executive director, to be appointed by and responsible to the governing board of a center, or as provided for in the bylaws or other policies and procedures of an affiliated provider:

(1) Responsibility for the day-to-day operations of the licensee;

(2) assurance of the quality of the services provided; and

(3) the effective and efficient management of the licensee's resources.

(b) The medical responsibility for any consumer to whom the licensee provides services shall be vested in a licensed physician. If the physician is not a psychiatrist, then a psychiatric consultant shall be made available to this physician and to

other staff assigned to work with that consumer on a continuing and regularly scheduled basis.

(c) Each licensee shall provide its services using appropriately trained or professionally qualified staff. Each licensee shall ensure that it retains the services of sufficient staff to appropriately meet the needs of those consumers to whom the licensee is providing any services. All treatment shall be provided by, or provided under the direction or supervision of, professionally qualified staff.

(d) Each licensee shall ensure that its professional staff meets any applicable state licensing, registration, or certification requirements and has completed any training program that may be required by the division within the contract, if any, in accordance with K.A.R. 30-61-5, that the department has with the center or with the center with which the licensee is affiliated.

(e) Each licensee shall ensure that any staff providing any community-based services outside of the offices of the licensee have completed, or will have completed within six months, a community services training program approved by the division.

(f) Each licensee shall insure that any volunteers or students providing any services to any person are screened, trained, and regularly supervised in accordance with written policies and procedures, which shall meet the following criteria:

(1) Govern the scope and extent of volunteer or student participation in any treatment being provided; and

(2) require training that shall include a review of the center's policies and procedures regarding confidentiality and consumer rights. (Authorized by K.S.A. 75-3307b; implementing K.S.A. 39-1603, 39-1604(d), 39-1608(a) and (c), 65-4434(f), and 75-3304a; effective Oct. 28, 1991; amended July 7, 2003.)

30-60-41. Personnel policies and procedures. (a) Each licensee shall adopt and adhere to written personnel policies and procedures providing for the rights, duties, and responsibilities of all members of the licensee's staff.

(b) These policies and procedures shall require the following, at a minimum:

(1) That a written job description exist for each position and that it be reviewed by supervisory staff with the employee and revised on a regular basis;

(2) that each employee will receive, at least annually, a written performance evaluation based

upon the duties and responsibilities assigned to that staff member within the job description for that position;

(3) that any professional staff obtain and maintain the skills necessary to meet the individual needs of the consumers to whom the licensee provides services; and

(4) at any time a consumer is employed by a licensee, that the licensee will abide by guidelines for the employment of consumers that may be established by the division. These guidelines shall be available from the division, and each licensee shall be responsible for obtaining these guidelines from the division.

(c) All personnel policies and procedures that a licensee adopts, including any amendments to those policies and procedures, shall be made available for inspection by all members of the staff. (Authorized by K.S.A. 75-3307b; implementing K.S.A. 39-1603, 39-1604(d), 39-1608(a) and (c), 65-4434(f), and 75-3304a; effective Oct. 28, 1991; amended July 7, 2003.)

30-60-45. Administrative records. Each licensee shall adopt and adhere to written policies and procedures providing for the creation, retention, and destruction of accurate administrative and business records that shall clearly reflect the business, financial, and administrative operations of the licensee. (Authorized by K.S.A. 75-3307b; implementing K.S.A. 39-1603, 39-1604(d), 39-1608(a) and (c), 65-4434(f), and 75-3304a; effective Oct. 28, 1991; amended July 7, 2003.)

30-60-46. Clinical records. (a) Each licensee shall adopt and adhere to written policies and procedures providing for a written, consolidated, and current clinical record for each consumer to whom the licensee provides any service.

(b) This record shall meet the following criteria:

(1) Be contemporaneously created during the course of services, in accordance with the policies and procedures of the licensee concerning the format, organization, and content of these records;

(2) be stored in a secured location with access limited to staff providing treatment to that consumer, and to other individuals only as specified in the policies and procedures of the licensee; and

(3) be maintained in accordance with policies and procedures of the licensee that provide for the following:

(A) The retention of inactive records;

(B) the destruction of obsolete records;

(C) the duplication of records; and

(D) the release of copies of records. (Authorized by K.S.A. 75-3307b; implementing K.S.A. 39-1603, 39-1604(d), 39-1608(a) and (c), 65-4434(f), and 75-3304a; effective Oct. 28, 1991; amended July 7, 2003.)

30-60-47. Confidentiality and release of information. (a) Each licensee shall adopt and adhere to written policies and procedures that shall ensure the confidentiality of the clinical record, and all portions of that record, and any other information concerning each consumer who has at any time requested or received, or who is currently receiving any services from the licensee. These policies and procedures shall be consistent with any applicable federal or state law, regulation, or rule concerning the confidentiality of that information.

(b) The clinical record, any portion of that record, or any information concerning any consumer who has ever requested or received or who is currently receiving any services from a licensee shall be released only as authorized by law or upon the written authorization of that consumer, or, if applicable, of the parent, legal guardian, or other appropriate representative of that consumer. This authorization shall contain the following:

(1) The name of the consumer whose clinical record, or any portion of that record, or about whom information is being authorized to be released;

(2) the name and address of, or other information identifying, the person or agency to whom the consumer's clinical record, any portion of that record, or any other information is being authorized to be released;

(3) the name of the licensee or the staff member employed by the licensee being authorized to release the consumer's clinical record, any portion of that record, or any other information;

(4) the reason or purpose for the release of the consumer's clinical record, any portion of that record, or any other information;

(5) (A) A clear indication that the entire clinical record is to be released;

(B) a clear description of the specific portion of the clinical record that is to be released; or

(C) a clear description of what other information is being authorized to be released;

(6) the date, event, or condition upon which the authority to release any information or any portion of the clinical record will expire;

(7) a statement that the consumer authorizing the release of the clinical record, any portion of that record, or any other information reserves the right, to, at any time before this authorization would otherwise expire, revoke the authorization except for any information or record or portion of that record that has already been released, and information concerning how this revocation may be effected;

(8) the date on which the authorization is signed; and

(9) the printed name and the signature of the person authorizing the release, whether the consumer or, if applicable, the parent, legal guardian, or other appropriate representative of the consumer.

(c) Before the release of a consumer's clinical record or any portion of that record, or any other information concerning any consumer who has at any time requested or received any services from a licensee or who is currently receiving any services from a licensee, the staff member making the release shall make a reasonable effort to ensure that the authority or authorization upon which the release is being made is in the proper form and, in the context made, seems appropriate. If the staff member believes that any question should be raised concerning the release of any information or record, or portion of any record, that staff member shall make a reasonable effort to confirm the propriety of the release. (Authorized by K.S.A. 75-3307b; implementing K.S.A. 39-1603, 39-1604(d), 39-1608(a) and (c), 65-4434(f), and 75-3304a; effective Oct. 28, 1991; amended July 7, 2003.)

30-60-48. De-escalation techniques and emergency behavioral interventions. (a) Each center shall adopt and adhere to written policies and procedures that require the following:

(1) Each staff member, volunteer, and contractor shall utilize only de-escalation techniques or emergency behavioral interventions that the staff member, volunteer, or contractor has been appropriately trained in or is professionally qualified to utilize. Each use of these techniques and interventions shall be consistent with the rights of consumers as listed in K.A.R. 30-60-50.

(2) No practice utilized shall be intended to humiliate, frighten, or physically harm a consumer.

(3) No practice that becomes necessary to implement shall continue longer than necessary to resolve the behavior at issue.

(4) Physical restraint or seclusion shall be used as a method of intervention only when all other methods of de-escalation have failed and only

when necessary for the protection of that consumer or others.

(5) Each instance of the utilization of a physical restraint or the use of seclusion shall be documented in the consumer's clinical record required by K.A.R. 30-60-46 and reviewed by supervising staff and the center's risk management program required by K.A.R. 30-60-56.

(6) Each instance in which the utilization of a de-escalation technique or emergency behavioral intervention results in serious injury to the consumer shall be reported to the division.

(b) Each center shall ensure that each affiliated provider with which the center has an affiliation agreement adheres to the center's policies and procedures adopted in compliance with subsection (a) of this regulation. (Authorized by K.S.A. 39-1603(d) and (t), 65-4434(f), and 75-3306b; implementing K.S.A. 39-1603, 39-1604(d), 65-4434(f), 75-3304a, and 75-3307b; effective July 7, 2003.)

30-60-49. Transportation. (a) Each licensee providing any transportation to consumers shall adopt and adhere to written policies and procedures that require the following:

(1) Before a staff member, a volunteer, or a contractor provides any transportation of a minor consumer, the staff member, volunteer, or contractor shall obtain permission to transport that minor from the minor's parent or legal guardian. If the transportation of a minor is necessary because of a medical or other emergency and permission cannot be obtained, the nature of the emergency and the reason why that permission was unable to be obtained shall be documented in the consumer's clinical record required by K.A.R. 30-60-46.

(2) Each driver of any vehicle used to transport a consumer shall be 18 years of age or older and shall hold a current operator's license for the type of vehicle being used.

(3) Each vehicle owned or leased by the licensee shall be covered by accident and liability insurance. Documentation of the current insurance coverage shall be kept both within the vehicle and in the administrative records maintained by the licensee in accordance with K.A.R. 30-60-45.

(4) Each vehicle owned or leased by the licensee shall be equipped with a fire extinguisher and a first-aid kit, and shall be maintained in a safe operating condition.

(5) No more persons may be transported in a vehicle than the number of safety restraints that

the vehicle contains. No more than one person may utilize a single safety restraint at any time.

(6) Only age-appropriate safety restraints may be utilized.

(7) No trailer pulled by another vehicle or truck bed may be utilized to transport any consumer. No motorcycle may be utilized to transport any consumer.

(8) Smoking shall not be permitted at any time a minor consumer is being transported. Smoking shall not be permitted if any consumer being transported objects to that smoking.

(9) The driver of the vehicle shall not smoke, use a cellular telephone, or eat or drink while the vehicle is in motion.

(10) The driver shall require all parts of each passenger's body to remain inside of the vehicle while the vehicle is in motion.

(11) The driver shall require all doors of the vehicle to be locked while the vehicle is in motion.

(12) The driver shall not leave any minor consumer unattended in the vehicle at any time. The driver shall make certain that no consumer is left in the vehicle before vacating the vehicle.

(13) The driver shall transport each consumer directly to the intended destination without any unauthorized stops en route, except in cases of emergency.

(14) The driver shall require other staff from the licensee to accompany the driver on the trip whenever necessary to provide adequate supervision of the consumers being transported either because of the number of consumers being transported or because of the nature of a consumer's illness or disability.

(15) The driver shall not allow any consumer to enter or exit the vehicle from or into a lane of traffic.

(16) If a personal vehicle belonging to any staff member, a volunteer, or a contractor is utilized to transport a consumer, the driver and owner of the vehicle shall be covered by sufficient liability insurance to protect the interests of any consumer that is transported.

(b) Nothing in this regulation shall be construed to require any licensee to provide transportation to any consumer. (Authorized by K.S.A. 75-3307b; implementing K.S.A. 39-1603, 39-1604(d), 39-1608(a) and (c), 65-4434(f), and 75-3304a; effective July 7, 2003.)

30-60-50. Statement of rights; distribution; adherence to. (a) Each center shall publish and make available at the center, at the principal

place of business of each affiliated provider with which the center has an affiliation agreement, and at other appropriate locations a written statement of the rights of consumers.

(b) Each consumer receiving services from any licensee providing services within the center's service area shall be given a copy of this statement during intake or at the consumer's first appointment, and again at least annually thereafter. Staff shall provide oral or other appropriate explanations that may be required to assist the consumer in understanding the consumer's rights. Delivery of this statement and the provision of any necessary explanations to each consumer shall be documented in that consumer's clinical record required by K.A.R. 30-60-46.

(c) This statement of rights shall contain information that lists the following rights, at a minimum:

(1) The right of the consumer to always be treated with dignity and respect, and not to be subjected to any verbal or physical abuse or exploitation;

(2) the right of the consumer not to be subjected to the use of any type of treatment, technique, intervention, or practice, including the use of any type of restraint or seclusion, performed solely as a means of coercion, discipline, or retaliation, or for the convenience of staff or any volunteer or contractor;

(3) the right of the consumer to receive treatment in the least restrictive, most appropriate manner;

(4) the right of the consumer to an explanation of the potential benefits and any known side effects or other risks associated with all medications that are prescribed for the consumer;

(5) the right of the consumer to an explanation of the potential benefits and any known adverse consequences or risks associated with any type of treatment that is not included in paragraph (c)(4) and that is included in the consumer's treatment plan;

(6) the right of the consumer to be provided with information about other clinically appropriate medications and alternative treatments, even if these medications or treatments are not the recommended choice of that consumer's treating professional;

(7) the right of a consumer voluntarily receiving treatment to refuse any treatments or medications to which that consumer has not consented, in compliance with the consumer's rights;

(8) the right of a consumer involuntarily receiving treatment pursuant to any court order to be informed that there may be consequences to the

consumer if the consumer fails or refuses to comply with the provisions of the treatment plan or to take any prescribed medication;

(9) the right of the consumer to refuse to take any experimental medication or to participate in any experimental treatment or research project, and the right not to be forced or subjected to this medication or treatment without the consumer's knowledge and express consent, given in compliance with the consumer's rights, or as consented to by the consumer's guardian when the guardian has the proper authority to consent to this medication or treatment on the consumer's behalf;

(10) the right of the consumer to actively participate in the development of an individualized treatment plan, including the right to request changes in the treatment services being provided to the consumer, or to request that other staff members be assigned to provide these services to the consumer;

(11) the right of the consumer to receive treatment or other services from a licensee in conjunction with treatment or other services obtained from other licensed mental health professionals or providers who are not affiliated with or employed by that licensee, subject only to any written conditions that the licensee may establish only to ensure coordination of treatment or any services;

(12) the right of the consumer to be accompanied or represented by an individual of consumer's own choice during all contacts with the licensee. This right shall be subject to denial only upon determination by professional staff that the accompaniment or representation would compromise either that consumer's rights of confidentiality or the rights of other individuals, would significantly interfere with that consumer's treatment or that of other individuals, or would be unduly disruptive to the licensee's operations;

(13) the right of the consumer to see and review the clinical record maintained on that consumer, unless the executive director of the licensee has determined that specific portions of the record should not be disclosed. This determination shall be accompanied by a written statement placed within the clinical record required by K.A.R. 30-60-46, explaining why disclosure of that portion of the record at this time would be injurious to the welfare of that consumer or to others closely associated with that consumer;

(14) the right of the consumer to have staff refrain from disclosing to anyone the fact that the consumer has previously received or is currently receiving any type of mental health treatment or

services, or from disclosing or delivering to anyone any information or material that the consumer has disclosed or provided to any staff member of the licensee during any process of diagnosis or treatment. This right shall automatically be claimed on behalf of the consumer by the licensee's staff unless that consumer expressly waives the privilege, in writing, or unless staff are required to do so by law or a proper court order;

(15) the right of the consumer to exercise the consumer's rights by substitute means, including the use of advance directives, a living will, a durable power of attorney for health care decisions, or through springing powers provided for within a guardianship; and

(16) the right of the consumer to at any time make a complaint in accordance with K.A.R. 30-60-51 concerning a violation of any of the rights listed in this regulation or concerning any other matter, and the right to be informed of the procedures and process for making such a complaint.

(d) Each licensee providing any services within the service area of the center shall at all times adhere to each of these consumer rights. (Authorized by K.S.A. 65-4434(f), 39-1603(r), and 75-3307b; implementing K.S.A. 39-1603, 65-4434(f), 75-3304a, and 75-3307b; effective Oct. 28, 1991; amended July 7, 2003.)

30-60-51. Complaints; review; appeals; procedures; records. (a) Each center shall adopt and adhere to written policies and procedures that allow for any consumer, individual, or agency to make a written complaint about any member of the staff or any aspect of the center's operations, requirements, or services, or those of any affiliated center or other provider with which the center has an affiliation agreement. These policies and procedures shall include the following requirements and provisions, at a minimum:

(1) Notice shall be displayed at appropriate locations stating that any consumer, individual, or agency has the right to make a complaint. This notice shall also describe the procedures by which a complaint can be made.

(2) No particular form shall be required in order to make a complaint, but appropriate forms shall be made available at appropriate locations for use by any consumer, individual, or agency wishing to make a complaint.

(3) Procedures shall exist so that a complaint can be made confidentially if a consumer, individual, or agency so desires.

(4) The staff of the center shall be trained to be alert to, listen for, and identify a complaint of a significant nature that is made either orally or incompletely by a consumer receiving any services from the center, or from any affiliated center or other provider with which the center has an affiliation agreement. The staff shall be required to assist that consumer to write out the complaint if made orally or to more specifically record that complaint for the consumer if the consumer fails or is unable to completely write out the complaint.

(5) The executive director shall review in a timely manner every complaint made, conduct any investigation as appropriate, and take any appropriate actions.

(6) If the complaint is the result of a discontinuation or reduction of any service that had been provided to a consumer, the executive director may, at the executive director's discretion, require that the service that was discontinued or reduced be restored to its former level pending the outcome of the executive director's investigation and determination.

(7) If a complaint received by a center concerns any matter involving the staff or any action, decision, policy, or requirement of an affiliated center or other affiliate, the executive director of the center may refer the complaint to the executive director of that affiliated center or other affiliate for that director's response. The response of the executive director of the affiliated center or other affiliate may be included in or attached to the center's response when a response is made or if a response is required to be made to a consumer.

(8) The executive director of the center shall reply, in writing, to every complaint concerning any aspect of either the center's operations, requirements, or services, or those of any affiliated center or other provider with which the center has an affiliation agreement, that is made by a consumer receiving services from the center, any affiliated center, or any other provider with which the center has an affiliation agreement, not later than 30 days following receipt of that complaint. This reply shall state the executive director's findings and determinations with regard to that complaint.

(9) A system shall be established to analyze all complaints made during specified periods of time to determine whether any trend or pattern appears and, if so, to attempt to identify the cause of those complaints or any other issue presented and to deliver this information either to the executive director or to another appropriate party.

(10) Any consumer who is dissatisfied with a determination of the executive director may appeal that determination to the division.

(11) Each appeal of a determination of the executive director shall be made in writing, within 30 days of receipt of that determination. Each appeal shall be addressed to the executive director of the center and shall state specifically the determination that is being appealed and the reasons why the consumer believes that the determination of the executive director is wrong.

(12) Upon receipt of such an appeal, the executive director may contact the consumer who is appealing and offer to meet personally with that consumer to see if some agreement or other resolution can be reached, or to offer mediation of the dispute to the consumer.

(13) The appeal of the executive director's determination shall proceed as provided for in this regulation. The executive director shall forward to the division the consumer's written appeal and both the original complaint and the executive director's written reply to that complaint when any of the following circumstances occurs:

(A) The executive director does not choose to make any offer for a meeting or for mediation.

(B) The consumer refuses any offer for a meeting or for mediation.

(C) Thirty days have elapsed following receipt of the appeal, and no agreement or resolution has been reached within that time period through the use of any meeting or meetings, or through a process of mediation.

(14) One or more employees of the division shall be assigned by the department to make an investigation and conduct any proceedings necessary to decide the outcome of the appeal. That employee or panel of employees shall give due regard to the rights and interests of both the consumer who is appealing and the center or the affiliated center or other affiliate against which the complaint was made. These procedures shall include the right of the consumer to be represented in the appeal by any individual of that consumer's choice.

(15) If the appeal resulted from a complaint that any service that had been provided to the consumer was discontinued or reduced, the division employee or panel of employees assigned to hear the appeal shall have the authority to require a licensee to restore that service to its former level during the pendency of the appeal.

(16) Following any investigation or proceeding that is determined appropriate, the division em-

ployee or panel of employees assigned to hear the appeal shall make a written decision with regard to the issues appealed. This decision shall be sent to the following individuals:

(A) The consumer and the individual that the consumer selected to represent the consumer, if applicable;

(B) the executive director of the center; and

(C) the executive director of the affiliated center or other affiliate, if applicable.

(17) The decision of the division's employee or panel of employees may be appealed to the office of administrative hearings within the Kansas department of administration in accordance with article 7.

(18) Records of every complaint and appeal made, and of the final determination or decision made with regard to each complaint, shall be centrally maintained for at least five years.

(b) No consumer shall be denied any service or otherwise penalized solely for any of the following reasons:

(1) Having made a complaint;

(2) having refused any offer to meet, to meet again, or to engage in mediation;

(3) failing to continue any process of mediation even though begun;

(4) failing to resolve or settle the complaint; or

(5) making or pursuing an appeal.

(c) Nothing in this regulation shall be construed to limit the right of any person to bring any action against a licensee that is permitted by law. (Authorized by K.S.A. 39-1603(r), 65-4434(f), and 75-3307b; implementing K.S.A. 39-1603, 65-4434(f), 75-3307b, and 75-3304a; effective July 7, 2003.)

30-60-55. Quality improvement program; records. (a) Each center shall adopt and adhere to written policies and procedures that provide for a comprehensive quality improvement program designed to continually measure, assess, and improve the quality of the services that are provided by the center, any affiliated center, or any other provider with which the center has an affiliation agreement. These policies and procedures shall require the following:

(1) An ongoing means by which the program measures the degree of consumer satisfaction with the services, from consumers who are currently being or who have recently been provided these services by the center, any affiliated center, or any other provider with which the center has an affiliation agreement;

(2) an ongoing means of furnishing feedback to the staff that provides those services with regard to each consumer's satisfaction or dissatisfaction; and

(3) procedures that ensure that information gathered or generated by the center's risk management program, required by K.A.R. 30-60-56, and the center's utilization management program, required by K.A.R. 30-60-57, is available to and utilized by the center's quality improvement program.

(b) Records that demonstrate the center's compliance with this regulation shall be centrally maintained for at least five years. (Authorized by K.S.A. 65-4434(f), 39-1603(r), and 75-3307b; implementing K.S.A. 39-1603, 75-3307(b), 65-4434(f), and 75-3304a; effective Oct. 28, 1991; amended July 7, 2003.)

30-60-56. Risk management program; records. (a) Each center shall adopt and adhere to written policies and procedures that provide for a comprehensive risk management program designed to review and evaluate clinical and administrative activities for the following purposes:

(1) Identifying and analyzing incidents that present a risk of harm to consumers, staff, and other individuals, including the public at large, or a risk of financial loss to the center or to any affiliated center or other provider with which the center has an affiliation agreement; and

(2) determining actions that might reduce the risks specified in paragraph (a)(1).

(b) Incidents that the risk management program specified in subsection (a) shall review shall include the following, at a minimum:

(1) Any suicide or homicide, attempted suicide or homicide, or other unexpected death involving a consumer who is currently receiving or has recently received any services from the center, the affiliated center, or any other provider with which the center has an affiliation agreement;

(2) any act or series of acts resulting in significant destruction of property belonging to the center, or to the affiliated center or other provider with which the center has an affiliation agreement, committed by any consumer who is currently receiving or has recently received any services from the center or the affiliated center or other affiliate;

(3) any act or omission that falls or might fall below the applicable standard of care or professional obligation; and

(4) any allegation of abuse, neglect, or exploitation of a consumer who is currently receiving or has recently received any services from the center, the

affiliated center, or any other provider with which the center has an affiliation agreement, committed by a member of the staff of the center, any contractor, the affiliated center, or other affiliate.

(c) These policies and procedures shall include the following requirements:

(1) Staff members shall be afforded the opportunity to confidentially report any incident that a staff member believes is appropriate for review by the risk management program.

(2) Each action that the center, affiliated center, or any other provider with which the center has an affiliation agreement takes in response to any incident that comes to the attention of the risk management program shall conform to all statutory requirements for the reporting of suspected incidents of either child abuse, neglect, or exploitation, or the abuse, neglect, or exploitation of an adult.

(d) Records demonstrating the center's compliance with this regulation shall be centrally maintained for at least five years. (Authorized by K.S.A. 39-1603(r) and 75-3307b; implementing K.S.A. 39-1603(r), 75-3307b, and 75-3304a; effective July 7, 2003.)

30-60-57. Utilization review program; records. (a) Each center shall adopt and adhere to written policies and procedures that provide for a comprehensive utilization review program designed to facilitate the delivery of high-quality, cost-effective, appropriate services by the center and by each affiliated provider with which the center has an affiliation agreement.

(b) The policies and procedures specified in subsection (a) shall include the following:

(1) A means to ensure monitoring of the usage of the services of the center and of each affiliated provider with which the center has an affiliation agreement;

(2) a means to determine whether inappropriate or unnecessary services are being provided to any consumer; and

(3) a means to determine whether appropriate or necessary services have not been provided to any consumer.

(c) Records demonstrating the center's compliance with this regulation shall be centrally maintained for at least five years. (Authorized by K.S.A. 75-3307b; implementing K.S.A. 39-1603, 39-1604(d), 39-1608(a) and (c), 65-4434(f), and 75-3304a; effective July 7, 2003.)

30-60-60. (Authorized by and implementing K.S.A. 75-3307b, K.S.A. 1990 Supp. 39-1603, 39-1604(d), 39-1608(a) and (c), 65-4434(f); effective Oct. 28, 1991; revoked July 7, 2003.)

30-60-61. (Authorized by and implementing K.S.A. 75-3307b, K.S.A. 1990 Supp. 39-1603, 39-1604(d), 39-1608(a) and (c), 65-4434(f); effective Oct. 28, 1991; revoked July 7, 2003.)

30-60-62. Basic service delivery standards; service components. (a) Each licensee shall provide all services in a manner consistent with the following basic service delivery standards. Each service provided by a licensee shall include the following components:

(1) An initial assessment, which shall meet the following criteria:

(A) Be performed by adequately trained and professionally qualified staff; and

(B) be completed and documented within 14 days of a consumer's initial intake to record the following:

(i) All of the presenting problems or requests made by that consumer;

(ii) all pertinent history that can be gathered;

(iii) the consumer's present mental status;

(iv) a provisional diagnosis, as applicable;

(v) any strengths or preferences of the consumer that are disclosed or are discernable; and

(vi) the primary intervention provided or disposition made, or both, including a preliminary individualized treatment plan;

(2) a comprehensive, individualized treatment plan, which shall meet the following criteria:

(A) Be centralized into a single integrated and consolidated document;

(B) be developed beginning with the initial assessment and completed, subject to necessary and appropriate revisions, within 30 days thereafter;

(C) be developed with the participation of the consumer and, if appropriate, one or more members of the family of that consumer or other individuals designated by that consumer, evidenced by the signature of that consumer or by other documentation indicating this participation and stating the reason for the absence of the consumer's signature;

(D) contain identified goals, objectives, strengths, and preferences of the consumer, based upon the problems presented, the consumer's requests, the consumer's diagnosis, and the assessed needs of that consumer, each as identified during the initial assessment and subsequently during treatment;

(E) whenever multiple services are being provided, or whenever services are being provided by multiple providers, require that those services be coordinated by a single individual not necessarily employed by the licensee, in a manner that ensures the integration of the services being provided; and

(F) be regularly reviewed and revised as appropriate, with the participation of the consumer and, when appropriate, one or more members of the family of that consumer or other individuals designated by that consumer. Reviews and revisions shall occur at periodic intervals of not more than 90 days and shall be updated with appropriate notations in the clinical record;

(3) a written, chronological clinical record, as required by K.A.R. 30-60-46, which shall document the consumer's progress toward meeting the identified goals and objectives contained within that consumer's individualized treatment plan, including documentation of each treatment, other service or intervention provided to that consumer, and appropriate notations of dates and times;

(4) regular consultations with the consumer and, when appropriate, with members of the family of that consumer or other individuals designated by that consumer, for the following purposes:

(A) Ensuring that the licensee's treatment staff have complete, accurate, and current information concerning the circumstances and needs of that consumer or of the members of the consumer's family; obtaining any necessary consent for the release of information to the staff; and confirming and following up on previous consultations or referrals;

(B) identifying other treatment providers, agencies, or other individuals who are providing any treatment or supportive services to that consumer or to any members of the consumer's family;

(C) arranging for the appropriate sharing of information from that consumer's clinical record with other treatment providers, agencies, or other individuals, who either provide or may be able to provide any treatment or supportive services to that consumer or to members of the consumer's family;

(D) involving other appropriate treatment providers, agencies, or individuals, who either provide or could provide other treatment or supportive services to that consumer or to one or more members of the consumer's family, in a process that assures the appropriate, integrated, and efficient delivery of treatment and services; and

(E) reviewing with the consumer the progress of the consumer in treatment and making appropriate modifications to that consumer's individualized treatment plan, including any appropriate modifications that are requested by that consumer or by one or more members of the consumer's family;

(5) regular consultations with other treatment providers, agencies, or other individuals providing any treatment or supportive services to a consumer or to one or more members of the consumer's family, for the purposes of ensuring coordination, continuity, and appropriate transitions in that consumer's treatment or supportive services; and

(6) a discharge or termination plan, which shall meet the following criteria:

(A) Be developed in a manner consistent with the consumer's individualized treatment plan;

(B) if possible, be developed with the participation of that consumer and, if appropriate, with the participation of one or more members of the consumer's family or with other individuals designated by that consumer;

(C) include a plan for appropriate postdischarge or posttermination of treatment contact by staff with that consumer and, if appropriate, with one or more members of the consumer's family or other individuals designated by that consumer;

(D) include referrals to other treatment providers and supportive services when appropriate; and

(E) result in a final written summary notation, which shall be included in the consumer's clinical record required by K.A.R. 30-60-46.

(b) Compliance with these basic service delivery standards shall be appropriately documented in the consumer's clinical record required by K.A.R. 30-60-46. (Authorized by K.S.A. 39-1603(r), 65-4434(f), and 75-3307b; implementing K.S.A. 39-1603, 65-4434(f), 75-3307b, and 75-3304a; effective Oct. 28, 1991; amended July 7, 2003.)

30-60-63. Timeliness of response; requirements; documentation when unable to comply; referral to quality improvement program.

(a) Each center shall respond to every contact or request for services by first determining, in a manner that is consistent with applicable clinical practices, whether or not that initial request constitutes an emergency.

(b) If the initial request is determined to be an emergency, all services that are required by K.A.R. 30-60-64 to be provided by a center shall be provided immediately as necessary to resolve the emergency. After the emergency has been re-

solved, if the consumer is not detained for inpatient care and treatment, that consumer shall be scheduled for a follow-up appointment and provided any necessary and appropriate services consistent with the requirements of this regulation.

(c) If the initial request is determined to be an urgent matter or a routine matter, the consumer shall be scheduled for an appointment with the appropriate staff within a timely period after that initial contact.

(d) After a consumer's first appointment, the center shall begin providing any necessary and appropriate services to that consumer within a timely period.

(e) If a center is unable to comply with the requirements of this regulation, the appropriate staff member shall document in the consumer's clinical record, as required by K.A.R. 30-60-46, the reason or reasons why the center was unable to comply with the requirements of this regulation. The staff member shall report the same information to the center's quality improvement program required by K.A.R. 30-60-55. (Authorized by K.S.A. 39-1603(r), 65-4434(f), and 75-3307b; implementing K.S.A. 39-1603, 65-4434(f), 75-3307b, and 75-3304a; effective July 7, 2003.)

30-60-64. Required basic community support services. (a) Each center shall provide as appropriate, through the center, a contractor, or any affiliated center or other provider with which the center has an affiliation agreement, each of the following basic community support services:

(1) Orientation services, including a means by which any person can discover, or become oriented to the center or its contractors or affiliated providers, through information concerning the following:

(A) What services are offered by the center, its contractors, its affiliated centers, or any other affiliates, and how to access those services, in a manner consistent with the requirements of K.A.R. 30-60-15;

(B) what the requirements or expectations are for each service offered, whether to qualify for or to continue to receive those services;

(C) what fees are charged for any service, and under what circumstances those fees may be adjusted, as required by K.A.R. 30-60-17; and

(D) what rights a consumer has, in a manner consistent with the requirements of K.A.R. 30-60-50;

(2) public education, including community education programs concerning the following:

(A) What mental illness or severe emotional disturbance is;

(B) what the symptoms of mental illness or severe emotional disturbance are;

(C) what treatments are available;

(D) what the community can do to assist and support persons with a mental illness or a severe emotional disturbance; and

(E) what individuals can do to dispel the myths about mental illness and severe emotional disturbance;

(3) emergency treatment and first response services, which shall be provided on a 24-hour-per-day, seven-day-per-week basis and shall include the following:

(A) Crisis responsiveness, including, when appropriate, staff going out of the office and to the individual for personal intervention, for any person found within the service area of the center who is thought to be experiencing a crisis or other emergency;

(B) referral to psychiatric and other community services, when appropriate, for any person found within the service area of the center;

(C) emergency consultation and education when requested by law enforcement officers, other professionals or agencies, or the public for the purposes of facilitating emergency services;

(D) evaluation of any person found within the service area of the center to determine the need for either inpatient or involuntary psychiatric care and treatment. This evaluation shall meet the following criteria:

(i) Be completed as soon as possible, but in any case not later than 24 hours after the initial request for that evaluation is made by any individual or agency. The evaluation shall be completed sooner if necessary to provide the certificate required by K.S.A. 59-2957(c)(1) and amendments thereto; and

(ii) be conducted in a place and manner that address the needs of that person;

(E) screening for admission to a state psychiatric hospital, when applicable and required by K.A.R. 30-61-10; and

(F) follow-up with any consumer seen for or provided with any emergency service and not detained for inpatient care and treatment, to determine the need for any further services or referral to any services;

(4) basic outpatient treatment services, including the following:

(A) Evaluation and diagnosis;

(B) individual, group, and family therapy;

(C) medication management, including a means by which a consumer can receive the following under the direction and supervision of a licensed physician:

(i) A prescription for any medication required to treat the consumer's mental illness or severe emotional disturbance;

(ii) assistance with obtaining any medication prescribed for the treatment of the consumer's mental illness or severe emotional disturbance;

(iii) education concerning the effects, benefits, and proper usage and storage of any medication prescribed for the treatment of the consumer's mental illness or severe emotional disturbance;

(iv) assistance with the administration of, or with monitoring the administration of, any medication prescribed for the treatment of the consumer's mental illness or severe emotional disturbance; and

(v) any physiological testing or other evaluation necessary to monitor that consumer for adverse reactions to, or for other health-related issues that might arise in conjunction with, the taking of any medication prescribed for the treatment of the consumer's mental illness or severe emotional disturbance; and

(D) referral to other community treatment providers and services, when appropriate;

(5) basic case management services for adults, which shall be provided to any adult consumer who has a severe or persistent mental illness and who is determined to be in need of case management services. Case management services shall be provided either by a single individual acting as the case manager or by a team of individuals jointly acting as the case manager. If a team is jointly acting as the case manager, an individual from that team shall be assigned the responsibility for overseeing the provision of case management services to each consumer. Each individual case manager and each member of a team of case managers shall be sufficiently qualified by education and experience, and shall have completed, or shall have completed within six months, a case management training program that has been approved by the division and is specifically focused upon adults. Each case manager shall have the responsibility to provide, through a mutually acceptable process involving the consumer, the following:

(A) Engagement services and activities, including the following:

(i) Engaging the consumer in a purposeful, supportive, and helping relationship;

(ii) eliciting the consumer's choices concerning basic needs, including determining where the consumer desires to reside, what supports the consumer desires to rely upon, what productive activities the consumer desires to engage in, and what leisure activities the consumer desires to participate in; and

(iii) understanding the consumer's personal history and either satisfaction or dissatisfaction with services and treatments, including medications, that have been provided to or prescribed for that consumer in the past;

(B) strengths assessment services and activities, including the following:

(i) Identifying and assessing the consumer's wants and needs, the consumer's aspirations for the future, the resources that are or might be available to that consumer, the sources of motivation available to the consumer, and the strengths and capabilities the consumer possesses;

(ii) identifying and assessing what the consumer's preferences are with regard to having designated members of the consumer's family involved in the consumer's treatment, or with regard to having other designated individuals involved in the consumer's treatment, and depending upon what those preferences are, determining how best to involve those designated family members or other individuals in the consumer's assessment, treatment, and rehabilitation;

(iii) identifying and researching what educational and vocational, financial, and social resources are or might be available to the consumer and might facilitate that consumer's recovery; and

(iv) identifying, researching, and understanding the cultural factors that might have affected or that might affect the consumer's experience with receiving treatment and other services, the role that family and other natural supports play in the life of that consumer, the effects that these factors might have on the treatment process, and the ways in which these factors might be used to support the consumer's recovery;

(C) goal-planning services and activities, including the following:

(i) Helping the consumer to identify, organize, and prioritize the consumer's personal goals and objectives with regard to independent living, education and training, employment, and community involvement;

(ii) assisting and supporting the consumer in choosing and pursuing activities consistent with achieving those goals and objectives at a pace con-

sistent with that consumer's capabilities, resources, and motivation;

(iii) teaching the consumer goal-setting and problem-solving skills, and living, social, and self-management skills;

(iv) identifying critical stressors that negatively affect the consumer's mental status and those interventions, coping strategies, and supportive resources that have been successful or helpful in addressing or relieving those stressors in the past; and

(v) developing relapse-prevention strategies, including wrap-around plans and advance directives, which the consumer may choose to utilize;

(D) resource acquisition services and activities, including the following:

(i) Assisting the consumer to access housing, transportation, education, job training, employment, public assistance, and recreational services available in the community;

(ii) assisting the consumer in finding and utilizing services provided by peer-companion programs, mutual support groups, and self-help organizations; and

(iii) ensuring that the consumer is knowledgeable of, and assisting the consumer in accessing, necessary and available medical and dental services and treatment;

(E) emergency services coordination during periods of crisis;

(F) advocacy services and activities, including the following:

(i) Acting as a liaison between the consumer and that consumer's other service providers;

(ii) coordinating the treatment and supportive efforts of all the consumer's service providers, family members, and peers;

(iii) advocating for the consumer, as appropriate, in developing goals and objectives within the consumer's individualized treatment plan during the course of that consumer's treatment, and in acquiring the resources necessary for achieving those goals and objectives;

(iv) identifying factors that place the consumer at high risk for suicide, violence, substance abuse, victimization, or infection with serious medical disorders, including HIV, and assisting that consumer to develop strategies to eliminate or mitigate these risks; and

(v) providing ongoing education to the consumer, to members of that consumer's family, and to other individuals involved with that consumer about mental illness, treatment, medication and

its side effects, rehabilitation, empowerment, and supportive resources;

(6) basic community-based support services for children, adolescents, and their families, which shall include consultative and advocative services and activities designed to assist professionals, service agencies, governmental and educational entities, and other individuals in understanding, planning for, developing, and comprehensively meeting the special needs of children and adolescents who either have a severe emotional disability or disorder or are mentally ill, and are therefore considered to be at risk of hospitalization or other out-of-home placement, and meeting the special needs of their families; and

(7) basic case management services for children, adolescents, and their families, which shall be provided to any child or adolescent consumer who either has a severe emotional disability or disorder or has been diagnosed as mentally ill and who is determined to be in need of case management services, and to the immediate family with whom that child or adolescent consumer resides or with whom it is intended that that child or adolescent consumer will reside. Case management services shall be provided either by a single individual acting as the case manager or by a team of individuals acting jointly as the case manager. If a team is jointly acting as the case manager, an individual from that team shall be assigned the responsibility for overseeing the provision of case management services to each child or adolescent and the family. Each individual case manager and each member of a team of case managers shall be sufficiently qualified by education and experience, and shall have completed, or shall have completed within six months, a case management training program that has been approved by the division and is specifically focused upon children, adolescents, and their families. Each case manager shall have responsibility to provide the following:

(A) Engagement services and activities, including the following:

(i) Engaging the child or adolescent and members of the child's or adolescent's family in a purposeful, supportive, and helping relationship;

(ii) eliciting the family's choices concerning what supports the family desires to utilize; and

(iii) understanding both the child's or adolescent's and the family's experiences and either satisfaction or dissatisfaction with services and treatments, including medications, that have been

provided to or prescribed for that child or adolescent in the past;

(B) strengths assessment services and activities, including the following:

(i) Identifying and assessing the child's or adolescent's and the family's wants and needs, their goals, the resources that are or might be available to them, and the strengths and capabilities that both the child or adolescent and the family possess;

(ii) identifying and researching what educational, financial, and social resources are or might be available to the child or adolescent, or to the family, and that might facilitate that child's or adolescent's or the family's treatment; and

(iii) identifying, researching, and understanding the cultural factors that might have affected or that might affect the child's or adolescent's or the family's experience with receiving treatment and other services, the role that natural supports play in the life of that child or adolescent or in the functioning of the family, the effects that these factors might have on the treatment process, and the ways in which these factors might be used to support the child or adolescent, or the family;

(C) goal-planning services and activities, including the following:

(i) Helping the child or adolescent and the child's or adolescent's family to identify and prioritize specific goals and objectives based upon needs identified during the strengths assessment;

(ii) assisting and supporting the child or adolescent and the child's or adolescent's family in choosing and accessing the services and supports necessary for achieving those goals and objectives and for increasing that family's community integration;

(iii) identifying critical stressors that negatively affect the child's or adolescent's or the family's ability to function, and developing interventions and coping strategies to address or relieve those stressors; and

(iv) developing crisis strategies that the child or adolescent or a member of the child's or adolescent's family can utilize to control symptomatic behavior in order to avoid crisis situations that present a risk of harm to either the child or adolescent or to others, or that result in an out-of-home placement of that child or adolescent;

(D) resource acquisition services and activities, including the following:

(i) Assisting the child or adolescent and the child's or adolescent's family to obtain needed benefits and services that are available in the community;

(ii) assisting the child or adolescent and the child's or adolescent's family in finding and utilizing services provided by peer-companion programs and groups, and other support organizations; and

(iii) ensuring that the family is knowledgeable of, and assisting the family in accessing, necessary and available medical and dental services and treatment;

(E) emergency services coordination during periods of crisis;

(F) transitional services and activities, which shall meet the following criteria:

(i) Commence in early adolescence in order to assist the adolescent to move into adulthood and to transition to services intended for adults; and

(ii) include the utilization of a wrap-around approach to services involving the appropriate persons and agencies necessary to coordinate and collaborate with the educational, employment, living, and supportive services necessary to ensure community integration and tenure; and

(G) advocacy services and activities, including the following:

(i) Acting as a liaison between the child or adolescent, or the child's or adolescent's family, and that child's, adolescent's, or family's other service providers;

(ii) coordinating the treatment and supportive efforts of all the child's or adolescent's or the family's service providers, including educational, child welfare, and juvenile justice agencies;

(iii) advocating for the child or adolescent or for the child's or adolescent's family, as appropriate, in developing goals and objectives within that child's or adolescent's individualized treatment plan during the course of that child's or adolescent's treatment and in acquiring the resources necessary for achieving those goals and objectives;

(iv) identifying factors that place the child or adolescent at risk for suicide, violence, substance abuse, victimization, or infection with serious medical disorders, including HIV, and assisting both the child or adolescent and the members of the child's or adolescent's family to develop strategies to eliminate or mitigate those risks; and

(v) providing ongoing education to the child or adolescent, to the members of the child's or adolescent's family, and to other persons involved with that child or adolescent about severe emotional disturbances and behavior disorders, treatment, medication and its side effects, rehabilitation, empowerment, and supportive resources.

(b) Each center shall adopt and adhere to written policies and procedures, which shall include the following requirements:

(1) The services required to be provided by this regulation shall be provided by staff who are supervised by professionals who are sufficiently qualified by education and experience.

(2) The caseloads of staff providing these services shall be monitored and managed in a manner that ensures the quality of the services provided.

(3) Supervision of case managers shall be provided by supervisors who are sufficiently qualified by education and experience and who have completed a supervisory training program approved by the division.

(4) No consumer shall be denied access to any of these services solely on the basis of any previous unsuccessful intervention or experience.

(5) Continuity shall be maintained, whenever possible, in any relationship that might be established between a consumer and a staff member that provides any services to that consumer.

(6) Appropriate staff shall be encouraged to provide the majority of their services to consumers in settings outside of the offices of that center or those of any affiliated center or other provider with which the center has an affiliation agreement.

(c) Each center shall ensure that each affiliated center or other provider with which the center has an affiliation agreement adheres to the center's policies and procedures adopted in compliance with subsection (b) of this regulation.

(d) If a center elects to provide any of these basic community support services through any contractor, affiliated center, or other provider with which the center has an affiliation agreement, the center shall regularly monitor the services provided by that contractor or affiliated center or other affiliate to ensure the quality of the services that are provided and compliance with the requirements of this regulation. (Authorized by K.S.A. 39-1603(r), 65-4434(f), and 75-3307b; implementing K.S.A. 39-1603, 65-4434(f), 75-3304a, and 75-3307b; effective July 7, 2003.)

30-60-70. Optional services. The services specified in K.A.R. 30-60-71 through K.A.R. 30-60-76 shall be deemed optional services that a licensee may choose to offer directly or through a contractor. If a licensee elects to provide any or all of these services, the licensee, or its contractor, shall comply with the provisions of the applicable regulations. (Authorized by K.S.A. 75-3307b;

implementing K.S.A. 39-1603, 39-1604(d), 39-1608(a) and (c), 65-4434(f), and 75-3304a; effective Oct. 28, 1991; amended July 7, 2003.)

30-60-71. Alcohol and substance abuse services. If a licensee provides, directly or through a contractor, specialized alcohol or substance abuse services, these services shall meet the following conditions: (a) Be separately licensed or certified as required by the department; (b) be provided by appropriately trained or professionally qualified staff; and

(c) be administered in accordance with written policies and procedures adopted by the licensee. (Authorized by K.S.A. 75-3307b; and implementing K.S.A. 39-1603, 39-1604(d), 39-1608(a) and (c), 65-4434(f), and 75-3304a; effective Oct. 28, 1991; amended July 7, 2003.)

30-60-72. Acute care services. If a center provides, directly or through a contractor, services consisting of inpatient care and treatment that is more intensive than outpatient treatment, in a facility or unit that is separately licensed by this department as a psychiatric hospital or by the Kansas department of health and environment as a general hospital, but that is operated by the licensee, these services shall meet the following conditions: (a) Be provided in the least restrictive manner appropriate, following generally accepted clinical standards of practice;

(b) provide both medical and nursing services as each consumer's care requires;

(c) be provided by appropriately trained or professionally qualified staff; and

(d) be administered in accordance with written policies and procedures adopted by the licensee. (Authorized by K.S.A. 75-3307b; implementing K.S.A. 39-1603, 39-1604(d), 39-1608(a) and (c), 65-4434(f), and 75-3304a; effective Oct. 28, 1991; amended July 7, 2003.)

30-60-73. Partial or day hospitalization services. If a licensee provides, directly or through a contractor, partial or day hospitalization services, these services shall meet the following conditions: (a) Be provided in compliance with the requirements of the department's medicaid regulations;

(b) be provided by appropriately trained or professionally qualified staff; and

(c) be administered in accordance with written policies and procedures adopted by the licensee. (Authorized by K.S.A. 75-3307b; implementing

K.S.A. 39-1603, 39-1604(d), 39-1608(a) and (c), 65-4434(f), and 75-3304a; effective Oct. 28, 1991; amended July 7, 2003.)

30-60-74. Residential treatment services. If a licensee provides, directly or through a contractor, residential treatment services at a facility other than in a consumer's own home, these services shall meet the following conditions: (a) Be separately inspected or licensed as required by the Kansas department of health and environment, or by this division or any other division within this department, if applicable;

(b) be provided in accordance with an individualized plan developed for each consumer provided with any residential treatment services, which shall be developed with the participation of that consumer and, when appropriate, members of the immediate family of that consumer or other individuals designated by that consumer. This plan shall be based on an assessment of the level of supervision and support necessary for that consumer to be able to function in the least restrictive setting possible;

(c) be provided by appropriately trained or professionally qualified staff; and

(d) be administered in accordance with written policies and procedures adopted by the licensee. These policies and procedures shall require that the facility be maintained in a manner that meets any applicable state or local fire or safety code. (Authorized by K.S.A. 75-3307b; implementing K.S.A. 39-1603, 39-1604(d), 39-1608(a) and (c), 65-4434(f), and 75-3304a; effective Oct. 28, 1991; amended July 7, 2003.)

30-60-75. (Authorized by and implementing K.S.A. 75-3307b, K.S.A. 1990 Supp. 39-1603, 39-1604(d), 39-1608(a) and (c), 65-4434(f); effective Oct. 28, 1991; revoked July 7, 2003.)

30-60-76. Research programs. If a licensee conducts research programs utilizing human subjects, directly through research being conducted by the staff of the licensee or of a contractor, these programs shall meet the following conditions: (a) Be strictly conducted under written policies and procedures adopted by the licensee and developed specifically for each research project;

(b) require review of any proposed project by a specifically established committee of appropriately selected professionals before the initiation of the research;

(c) be conducted only on subjects who are capable of and who have given written, informed

consent to be the subject of a specific research project; and

(d) strictly adhere to any applicable professional standards regarding the conducting of research, as well as all applicable federal and state laws and regulations. (Authorized by K.S.A. 75-3307b; implementing K.S.A. 39-1603, 39-1604(d), 39-1608(a) and (c), 65-4434(f), and 75-3304a; effective Oct. 28, 1991; amended July 7, 2003.)

Article 61.—PARTICIPATING COMMUNITY MENTAL HEALTH CENTERS

30-61-1. Scope. The regulations in this article shall apply to each community mental health center licensed by the secretary in accordance with article 60 that desires to enter into a contract with the secretary pursuant to the "mental health reform act," K.S.A. 39-1601 et seq., and amendments thereto, for the purposes of being a participating community mental health center. (Authorized by K.S.A. 75-3307b; implementing K.S.A. 39-1603, 39-1604(d), 39-1608(a) and (c), 65-4434(f), and 75-3304a; effective Oct. 28, 1991; amended July 7, 2003.)

30-61-2. Definitions. Words and phrases used in this article but not defined in this regulation shall have the same meanings as they are defined to have in the "care and treatment act for mentally ill persons," K.S.A. 59-2945 et seq., and amendments thereto, in the "mental health reform act," K.S.A. 39-1601 et seq., and amendments thereto, or in K.A.R. 30-60-2. (a) "Community mental health center" and "center" mean a community mental health center that is organized pursuant to K.S.A. 19-4001 et seq., and amendments thereto, or K.S.A. 65-211 et seq., and amendments thereto, and that is licensed by the secretary in accordance with article 60. These terms shall not include any community mental health center licensed by the secretary in accordance with article 60 and meeting the exception specified in K.S.A. 75-3307b(b) and amendments thereto.

(b) "Participating community mental health center" means a community mental health center, as defined in this regulation, that has entered into a contract with the secretary in accordance with this article.

(c) (1) "Target population" means any of the following categories of consumers:

(A) Adults with a severe and persistent mental illness;

(B) children or adolescents with a severe emotional disturbance; or

(C) other individuals at risk of requiring institutional care because of a mental illness.

(2) Each of the categories of consumers listed in this subsection may be further defined within the contract provided for in K.A.R. 30-61-5. (Authorized by K.S.A. 75-3307b; implementing K.S.A. 39-1603, 39-1604(d), 39-1608(a) and (c), 65-4434(f), and 75-3304a; effective Oct. 28, 1991; amended July 7, 2003.)

30-61-5. Annual contracts; application; plan for compliance; term. (a) Each community mental health center desiring to become the participating community mental health center for its service area shall apply to the secretary for a contract on an annual basis at the time and in the manner that shall be announced by the secretary.

(b) Each center that desires to become a participating community mental health center may be required by the secretary to submit to the division, in addition to the center's application for a contract, a plan detailing how the center will come into and stay in compliance with the applicable requirements of this article if the center has not before been in compliance. This plan shall be reviewed by the division. A recommendation shall be made by the division to the secretary concerning whether a contract should be awarded or denied.

(c) If the parties agree to a contract, the term during which the center is considered to be a participating mental health center shall be specified in the contract. During the term in which the center is considered to be a participating community mental health center, the center shall provide the additional services required to be provided by this article or by the contract.

(d) A center shall have no obligation to be a participating community mental health center, or to be in compliance with the requirements of this article, beyond the term specified in the contract if the center does not subsequently contract with the secretary to be a participating community mental health center. (Authorized by K.S.A. 75-3307b; implementing K.S.A. 39-1603, 39-1604(d), 39-1608(a) and (c), 65-4434(f), and 75-3304a; effective Oct. 28, 1991; amended July 7, 2003.)

30-61-6. Preference for licensed service area center; secretary's right to contract with another licensed center. (a) Preference shall be given to the community mental health center in each service area to enter into a contract with the secretary to become the participating community mental health center for that area.

(b) The secretary shall have the right to contract with another center to provide the services of a participating community mental health center to that service area if any of the following conditions is met:

(1) The center fails to timely enter into a contract to become a participating community mental health center.

(2) The center is unwilling to enter into a contract to provide all of the required services of a participating community mental health center.

(3) The secretary determines that the center is unable or has failed in the past to adequately provide all of the required services of a participating community mental health center. (Authorized by K.S.A. 75-3307b; implementing K.S.A. 39-1603, 39-1604(d), 39-1608(a) and (c), 65-4434(f), and 75-3304a; effective Oct. 28, 1991; amended July 7, 2003.)

30-61-10. Screening and gatekeeping services. (a) Each participating community mental health center shall provide, when necessary or when requested and necessary, to any person found within the service area of the center, screening services to determine whether either of the following applies:

(1) The person can be evaluated or treated by community services.

(2) The person needs to be admitted to the designated state psychiatric hospital for evaluation or treatment, or both.

(b) This screening and gatekeeping service shall meet the following criteria:

(1) Be performed by a qualified mental health professional;

(2) be completed by utilizing the screening assessment instrument designated by the division for this purpose; and

(3) if the screening results in a determination that the person needs to be admitted to a state psychiatric hospital, whether on a voluntary or involuntary basis, be evidenced by a completed statement upon the form designated by the division for this purpose.

(c) The center shall arrange for any protective custody necessary to complete the screening.

(d) The center shall offer to provide, shall provide, or shall refer to and coordinate with another appropriate provider, including providing any follow-up that might be necessary, any appropriate and necessary services that are required by this article to be provided by a participating community mental health center or that are required by article 60 to be provided by a center, to any person meeting the following criteria:

(1) Is determined by the qualified mental health professional acting on behalf of that center not to be in need of admission to a state psychiatric hospital; and

(2) is in need of treatment or could benefit from any of the services required by this article to be provided by a participating community mental health center or required by article 60 to be provided by a center. (Authorized by K.S.A. 75-3307b; implementing K.S.A. 39-1603, 39-1604(d), 39-1608(a) and (c), 65-4434(f), and 75-3304a; effective Oct. 28, 1991; amended July 7, 2003.)

30-61-11. Liaison services. (a) Each participating community mental health center shall designate staff who shall perform the following:

(1) Regularly visit at the hospital with every person admitted to a state psychiatric hospital from the service area of the center, whether on a voluntary or involuntary basis;

(2) participate in the discharge planning of each person admitted to a state psychiatric hospital from the service area of the center in order to facilitate the return of that person to the community;

(3) be empowered by the center to commit the center to specified services upon the discharge and return to the community of any person admitted to a state psychiatric hospital from the service area of the center; and

(4) coordinate the treatment provided at the state psychiatric hospital with the treatment provided by either the center or any affiliated provider with which the center has an affiliation agreement.

(b) The names and professional qualifications of liaison staff shall be communicated by the executive director of the center to the superintendent of the state psychiatric hospital to which the liaison staff is assigned.

(c) The liaison staff shall follow all rules of the state psychiatric hospital while on the campus of the hospital. (Authorized by K.S.A. 75-3307b; implementing K.S.A. 39-1603, 39-1604(d), 39-

1608(a) and (c), 65-4434(f), and 75-3304a; effective July 7, 2003.)

30-61-15. Enhanced community support services. (a) Each participating community mental health center shall provide directly, or through a contractor, an affiliated center, or any other provider with which the center has an affiliation agreement, enhanced community support services in extension of the services required to be provided by K.A.R. 30-60-64, including the following:

(1) Outreach services designed to achieve the following:

(A) Identify and locate persons in the target population, particularly persons who do not often seek mental health services in traditional ways;

(B) encourage these persons to utilize the services of the center, its affiliated centers, or other affiliates; and

(C) offer special assistance to these persons, as required, in order to enable them to utilize the services of the center, its affiliated centers, or other affiliates;

(2) public education about the enhanced services that are available at the center or through its contractors, affiliated centers, or other affiliates;

(3) liaison services with any nursing facilities for mental health that are located in the center's service area or to which a person from the center's service area has been admitted, designed to facilitate the discharge of persons residing in those nursing facilities who could live in the community with the assistance and support provided by the services available through the center, its affiliated centers, or other affiliates;

(4) any services necessary to provide any treatment required to fulfill a court order for outpatient treatment that is issued by the district court of any county within the service area of the center; and

(5) attendant care services, designed as an extension of the center's basic outpatient treatment services, basic case management services for adults, basic community-based support services for children, adolescents, and their families, and basic case management services for children, adolescents and their families, required by K.A.R. 30-60-64, tailored specifically to accomplish the following:

(A) To enhance the independence of consumers in the target population;

(B) to reduce the risks for the need to be admitted to a state psychiatric hospital that are

known to be associated with consumers in the target population;

(C) to facilitate the discharge of consumers in the target population who have been admitted to any state psychiatric hospital; and

(D) to otherwise assist consumers in the target population to be able to live in the community.

(b) Each center shall adopt and adhere to written policies and procedures that shall require all of the following:

(1) The services required to be provided by this regulation shall be provided by staff who are supervised by professionals who are sufficiently qualified by education and experience.

(2) The caseloads of staff members providing these services shall be monitored and managed to ensure the quality of the services provided.

(3) No consumer shall be denied access to any of these services solely on the basis of any previous unsuccessful intervention or experience.

(4) Continuity shall be maintained, whenever possible, in any relationship that might be established between a consumer and staff member that provides any services to that consumer.

(5) Appropriate staff shall be encouraged to provide the majority of their services to consumers in settings outside of the offices of the center.

(c) If a participating community mental health center elects to provide any of these enhanced community support services through any contractor, affiliated center, or other provider with which the center has an affiliation agreement, the center shall regularly monitor that contractor, center, or provider to ensure compliance with the requirements of this regulation and the quality of the services that are provided. (Authorized by K.S.A. 39-1603(r), 65-4434(f), and 75-3307b; implementing K.S.A. 39-1603, 65-4434(f), 75-3304a, and 75-3307b; effective Oct. 28, 1991; amended July 7, 2003.)

30-61-16. (Authorized by and implementing K.S.A. 75-3307b, K.S.A. 1990 Supp. 39-1603, 39-1604(d), 39-1608(a) and (c), 65-4434(f); effective Oct. 28, 1991; revoked July 7, 2003.)

Article 63.—DEVELOPMENTAL DISABILITIES—LICENSING PROVIDERS OF COMMUNITY SERVICES

30-63-1. Definitions. (a) Words and phrases used in this article shall have the same meanings as set forth in K.S.A. 39-1803, and amendments

thereto. In addition, the following terms shall have the meaning ascribed to them in this regulation.

(1) “Agent” means any individual utilized by a provider to carry out any activity done by that provider, whether being paid or serving as a volunteer.

(2) “Commissioner” means the commissioner of mental health and developmental disabilities.

(3) “Commission” means the division of mental health and developmental disabilities within the department of social and rehabilitation services.

(4) “Department” means the department of social and rehabilitation services.

(5) “Person” means an individual with a developmental disability.

(6) “Provider” means a community services provider or any other entity required to be licensed pursuant to this article.

(7) “Services” means community services.

(8) “Support network” means the one or more individuals selected by a person or by the person and the person’s guardian, if one has been appointed, to provide assistance and guidance to that person in understanding issues, making plans for the future, or making complex decisions.

(b) This regulation shall take effect on and after October 1, 1998. (Authorized by and implementing K.S.A. 75-3307b and K.S.A. 1997 Supp. 39-1801, et seq.; effective July 1, 1996; amended Oct. 1, 1998.)

30-63-10. License required; exceptions.

(a) Each individual, group, association, corporation, local government department, or local quasigovernment agency providing services to persons 18 years of age or older in need of services greater than those provided in a boarding care home as defined in K.S.A. 39-923(a) (8), and amendments thereto, shall be licensed in accordance with the provisions of this article, except when those services are provided in or by any of the following:

(1) In a medical care facility, as defined and required to be licensed in K.S.A. 65-425 et seq. and amendments thereto;

(2) in a nursing facility, nursing facility for mental health, intermediate care facility for the mentally retarded, assisted living facility, or residential health care facility, or in a home plus setting, as defined and required to be licensed in K.S.A. 39-923 et seq. and amendments thereto;

(3) by a home health agency, as defined and provided for the licensing of in K.S.A. 65-5101 et seq. and amendments thereto; or

(4) in a manner so that the services constitute in-home services, funded under the federal home and community-based services/mental retardation waiver or with state funding under terms like those of the federal home-and community-based services/mental retardation waiver, and are provided in compliance with all of the following conditions:

(A) The services are directed and controlled by an adult receiving services, the parent or parents of a minor child receiving services, or the guardian of an adult receiving services.

(B) The person or person's representative directing and controlling the services selects, trains, manages, and dismisses the individual or business entity providing the services and coordinates payment.

(C) The person or person's representative directing and controlling the services owns, rents, or leases the whole or a portion of the home in which services are provided.

(D) If any individual providing services also lives in the home in which services are provided, there is a written agreement specifying that the person receiving services will not be required to move from the home if there is any change in who provides services, and that any individual or business entity chosen to provide services will be allowed full and reasonable access to the home in order to provide services.

(E) The person receiving services does not receive services in a home otherwise requiring a license pursuant to these regulations.

(F) Any individual providing services is at least 16 years of age, or at least 18 years of age if a sibling of the person receiving services, unless an exception to this requirement has been granted by the commission, based upon the needs of the person receiving services.

(G) Any individual or business entity providing services receives at least 15 hours of prescribed training, or the person or person's representative directing and controlling the services has provided written certification to the community developmental disability organization (CDDO) that sufficient training to meet the person's needs has been provided.

(H) The person or person's representative directing and controlling the services has chosen case management from the CDDO or an agency affiliated with the CDDO. That case management may be limited, at the choice of the person or person's representative directing and controlling the services, to reviewing the services on a regular basis to

ensure that the person's needs are met, annual re-evaluation of continued eligibility for funding, and development of the person's plan of care.

(I) The person or person's representative directing and controlling the services cooperates with the CDDO's quality assurance committee and allows review of the services as deemed necessary by the committee to ensure that the person's needs are met. In addition, the person directing and controlling the services cooperates with the commission and allows monitoring of the person's services to ensure that the case manager and the CDDO's quality assurance committee have adequately reviewed and determined that the person's needs are met.

(J) The person or person's representative directing and controlling the services agrees to both of the following:

(i) If it is determined by the CDDO or the commission that the person receiving services is or could be at risk of imminent harm to the person's health, safety, or welfare, the person or person's representative directing and controlling the services shall correct the situation promptly.

(ii) If the situation is not so corrected, after notice and an opportunity to appeal, funding for the services shall not continue.

(b) Each license issued pursuant to this article shall be valid only for the provider named on the license. Each substantial change of control or ownership of either a corporation or other provider previously licensed pursuant to this article shall void that license and shall require a reapplication for licensure. (Authorized by K.S.A. 39-1810 and K.S.A. 75-3304; implementing K.S.A. 39-1806 and K.S.A. 2008 Supp. 75-3307b; effective July 1, 1996; amended Oct. 1, 1998; amended Jan. 15, 2010.)

30-63-11. Two types of license; display.

(a) Two types of license may be issued by the secretary pursuant to this article to operate as a provider. One type shall be a "full license," and the other type shall be a "limited license." Both types of license may be issued on a "temporary" or on a "with requirements" basis as specified in K.A.R. 30-63-12.

(b) Both licenses issued pursuant to this article shall be prepared by the commission.

(c) Each holder of a license shall prominently display the license in the holder's principal place of business.

(d) A full license shall apply to all providers except those providers specified in subsection (e).

(e) A “limited license” shall apply to providers who provide services only to either one or two specified persons to whom the provider is related or with whom the provider has a preexisting relationship. The services shall be provided in the home of the person being served. A provider operating with a limited license shall be afforded greater flexibility in the means by which that provider is required to comply with all of the requirements of this article if the services are provided in a manner that protects the health, safety, and welfare of the specific person being served, as determined by the commission. (Authorized by and K.S.A. 39-1810 and K.S.A. 75-3304; implementing K.S.A. 39-1806 and K.S.A. 2008 Supp. 75-3307b; effective July 1, 1996; amended Jan. 15, 2010.)

30-63-12. Licensing procedure; requirements; duration of license. (a) Each provider required to be licensed pursuant to this article shall submit an application for an appropriate license to the commissioner, on a form provided by the commission.

(b) For a full license, each applicant shall provide the following:

(1) Certification that the applicant’s chief director of services, regardless of title, is qualified to develop and modify, if appropriate, a program of individualized services to be provided to persons as defined in K.A.R. 30-63-1, as evidenced by that individual’s having either of the following:

(A) A bachelor’s or higher degree in a field of human services awarded by an accredited college or university; or

(B) work experience in the area of human services at the rate of 1,040 hours of paid work experience substituted for a semester of higher education, which shall mean 15 undergraduate credit hours, with at least eight full-time semester’s worth of either satisfactorily passed education or work experience;

(2) certification that the applicant’s chief director of services, regardless of title, is qualified to supervise the delivery of a program of services to persons, as evidenced by that individual’s having one of the following:

(A) At least one year of experience in a senior management-level position with a licensed provider;

(B) at least two years of experience as either a case manager or a services manager with supervisory authority over at least two other individuals providing direct services to persons; or

(C) at least five years of experience delivering direct care services to persons;

(3) three letters of reference concerning the applicant’s chief director of services, regardless of title. Each letter written shall be by an individual knowledgeable both of the applicant and of the delivery of services to persons;

(4) evidence of completion of a background check meeting the requirements of the “SRS/CSS policy regarding background checks,” dated September 8, 2009 and hereby adopted by reference, done on the applicant’s chief director of services, regardless of title;

(5) a set of written policies and procedures specifying how the applicant intends to comply with the requirements of this article;

(6) a written business plan that shows how the applicant intends to market its services, to accommodate growth or retrenchment in the size of its operations without jeopardizing consumer health or safety issues, to respond to other risk factors as could be foreseeable in the specific case of that applicant, and to keep the operation fiscally solvent during the next three years, unless the application is for a renewal of a succession of licenses that the applicant has had for at least three years. In this case, the viability of the applicant’s operation shall be presumed, unless the commissioner determines that there is reason to question the viability of the licensed provider applying for license renewal and requires the submission of a written business plan despite how long the renewal applicant has been previously licensed; and

(7) if required of the applicant by the United States department of labor, a subminimum wage and hour certificate.

(c) For a limited license, each applicant shall provide the following:

(1) A description of the preexisting relationship with the one or two persons proposed to be provided services;

(2) documentation that the individual who will be chiefly responsible for providing services is qualified to do so, as evidenced by that individual’s having either of the following:

(A)(i) At least one year of work experience in providing services to a person; and

(ii) completion of the curriculum of studies designated by the commission and accessed through the commission’s web site; or

(B) the qualifications specified in paragraph (b)(1);

(3) evidence of completion of a background check meeting the requirements of the background check policy adopted by reference in paragraph (b)(4), done on the individual who will be chiefly responsible for the operations of the applicant;

(4) a written plan that shows how the applicant intends to comply with the requirements of this article applicable to the specific circumstances of the one or two persons to whom those services are proposed to be provided; and

(5) a written business plan that shows how the applicant intends to keep the applicant's proposed provider operation fiscally solvent during the next three years, except as specified in this paragraph. If the application is for a renewal of a succession of licenses that the applicant has had for at least three years, the viability of the applicant's operation shall be presumed, unless the commissioner determines that there is reason to question the viability of the licensed provider applying for license renewal and requires the submission of a written business plan, regardless how long the applicant has been previously licensed.

(d) Upon receipt of an application, the commission shall determine whether the applicant is in compliance with the requirements of subsection (b) or (c) and with this article.

(e) The applicant shall be notified in writing if the commission finds that the applicant is not in compliance with the requirements of subsection (b) or (c) or with this article.

(f) A temporary license or a temporary license with requirements may be issued by the secretary to allow an applicant to begin the operations of a new provider. A license with requirements may be issued by the secretary to allow a provider seeking renewal of a previously issued license to continue operations. A license with requirements shall be designated as contingent upon the provider's developing, submitting to the commission, and implementing an acceptable plan of corrective action intended to bring the provider into continuing compliance with the requirements of this article.

(1) Findings made by the commission with regard to the implementation of a plan of corrective action shall be given to the provider in writing.

(2) Failure of a provider to be in compliance with the requirements of this article or to implement an acceptable plan of corrective action may be grounds for denial of a license whether or not a temporary license or a license with requirements has been issued.

(g) Based upon findings made by the commission regarding compliance with or the implementation of an acceptable plan of corrective action, the commissioner shall determine whether to recommend issuance or denial of the full or limited license applied for. The applicant shall be notified in writing of any decision to recommend denial of an application for a license. The notice shall clearly state the reasons for a denial. The applicant may appeal this denial to the administrative appeals section pursuant to article seven of these regulations.

(h)(1) A full or limited license issued pursuant to this article shall remain in effect for not more than two years from the date of issuance. The exact date on which the license expires shall be stated upon the license. However, the license shall earlier expire under any of the following circumstances:

(A) The license is revoked for cause.

(B) The license is voided.

(C) For a temporary license or a license with requirements, the license is superseded by the issuance of a full or a limited license as applied for.

(D) The license is voluntarily surrendered by the provider.

(2) Each license term shall be determined by the commissioner based upon the commission's findings regarding the history and strength of the applicant's provider operations, including evidence of the provider's having earned certification from a nationally recognized agency or organization that specializes in certifying providers of services.

(i) Each license with requirements shall specify the length of time for which the license is valid, which shall not exceed one year. Successive licenses with requirements may be issued by the secretary, but successive licenses with requirements shall not be issued for more than two years.

(j) Each temporary license shall be valid for six months. If, at the expiration of that six months, the licensee has not yet commenced providing services to any person but the licensee wishes to continue efforts to market the licensee's services, a successive temporary license may be issued for another six-month period. No further extensions of a temporary license shall be granted.

(k) A license previously issued shall be voided for any of the following reasons:

(1) Issuance by mistake;

(2) a substantial change of control or ownership, as provided for in K.A.R. 30-63-10(b); or

(3) for a limited license, the licensee's cessation of provision of services to the person or persons

for whom the license was specifically sought and obtained.

(l) In order to renew a license, the licensee shall reapply for a license in accordance with this regulation.

(m) If a provider is licensed pursuant to this article on or before the effective date of the amendments to this regulation, the requirements specified in either paragraphs (b)(1) and (b)(2) or paragraph (c)(2) shall not apply to any renewal request of that licensee made during the one-year period following the effective date of these amendments. (Authorized by K.S.A. 39-1810 and K.S.A. 75-3304; implementing K.S.A. 39-1806 and K.S.A. 2008 Supp. 75-3307b; effective July 1, 1996; amended Jan. 15, 2010.)

30-63-13. Compliance reviews; mediation; enforcement actions; emergency orders. (a) At any time deemed necessary by the commissioner, a licensed provider may be reviewed by the commission to ensure continuing compliance with the requirements of this article.

(b) If a finding indicates that the licensed provider is not in compliance, the provider shall be given by the commissioner a written copy of the finding setting out each specific deficiency and a notice of the provider's right to seek mediation of any dispute regarding the finding.

(c) If the provider disagrees with any finding made by the commission, the provider may request mediation, in writing, within 14 days of receipt of the finding. An independent entity shall be selected by the commissioner and the provider to serve as the mediator, unless the parties are not able to agree upon a mediator, in which case an independent mediator shall be designated by the secretary. The mediator shall assist the parties in attempting to come to an agreement on the following:

(1) The nature and extent of any noncompliance;

(2) any course of corrective actions necessary to bring the provider into compliance; and

(3) a time limit within which the provider shall have to come into compliance.

(d) (1) Written notice may be issued by the commissioner to the provider of a determination of noncompliance under any of the following circumstances.

(A) The provider does not request mediation.

(B) Mediation does not resolve the issues.

(C) The commission finds that the provider has not complied with the requirements of this article

by the deadline established in a mediated agreement or a deadline that has been extended by the commissioner for good cause.

(2) If the commissioner issues written notice to the provider of a determination of noncompliance in accordance with paragraph (d)(1), a written plan of correction from the provider shall be required by the commissioner, to be submitted within 14 days of receipt of the notice.

(3) If the commissioner determines that the provider has failed to satisfactorily comply with the plan of correction within 30 days of the date of the plan, or within a deadline that has been extended by the commissioner for good cause, any or all of the following enforcement actions may be imposed:

(A) Civil penalties in an amount not to exceed \$125.00 per day for each violation from the date specified by the commissioner within the notice until the provider comes into compliance. The date specified by the commissioner may be any date from or after 45 days following the date of the commissioner's notice requiring a plan of correction;

(B) an order that the provider shall cease providing specified services and shall make all necessary arrangements to have any person or persons then receiving services transferred to another provider. The order may include provisions requiring the provider to continue the provision of those or other services until the transfer can be accomplished. The order shall remain in effect until the provider comes into compliance;

(C) suspension or revocation of the provider's license as provided for in K.A.R. 30-63-14.

(e) A provider may appeal any enforcement action taken to the administrative appeals section pursuant to article seven of these regulations.

(f) If the commission additionally finds that the provider's noncompliance creates a situation of imminent danger to the health, safety, or welfare of any person or persons, an emergency order may be issued by the commissioner, making any provisions that the commissioner deems necessary for the immediate protection of the health, safety, or welfare of the person or persons. Written notice of any emergency order shall be given to the provider and shall specify the following:

(1) The actions that the provider shall take;

(2) the reason the commissioner has determined an emergency order is needed; and

(3) notice that the provider will be given an emergency hearing regarding the emergency order by the administrative appeals section pursuant

to article seven of these regulations if the provider makes a written request for a hearing within 15 days after receiving the order.

(g) This regulation shall take effect on and after October 1, 1998. (Authorized by and implementing K.S.A. 75-3307b and K.S.A. 1997 Supp. 39-1801, et seq.; effective July 1, 1996; amended Oct. 1, 1998.)

30-63-14. Revocation of a license; suspension. (a) Any license issued pursuant to this article may be suspended or revoked before the expiration date for failure of the provider to comply with the requirements of this article.

(b) A provider's license may be suspended during the revocation proceedings only upon a determination by the commissioner that the continued operation of the provider during the revocation proceedings would constitute an imminent danger to the health, safety or welfare of any person or persons who would be receiving services from the provider during the revocation proceedings. This determination shall be made in writing and clearly state the reasons for it.

(c) Before revocation of a provider's license, a written notice of the intent to revoke shall be sent to the provider by registered mail, along with a copy of the commissioner's determination to suspend the license during the revocation proceedings, if applicable. The notice shall:

(1) specify the date the license shall be revoked if an appeal is not timely taken;

(2) clearly state the reasons for the revocation of the license;

(3) instruct the provider to immediately cease providing services if the commissioner has determined to suspend the license during the revocation proceedings; and

(4) advise the provider that the revocation may be appealed to the administrative appeals section pursuant to article seven of these regulations, and that an appeal shall stay the revocation, but shall not stay any suspension of the license during the pendency of the appeal, except as may be provided for in any order issued after an emergency hearing held as a result of a request made under K.A.R. 30-63-13(f)(3).

(d) If at any time during the pendency of an appeal the commissioner finds that the provider now complies with all of the requirements of this article, and that it is in the best interests of the public that the revocation be withdrawn, the commissioner shall notify all parties to the re-

vocation proceedings that the revocation action has been withdrawn and the appeal proceedings shall be terminated.

(e) If, after notice to the provider of the commissioner's intent to revoke, the provider does not timely appeal, the license shall be revoked by the commission effective on the date stated within the notice.

(f) This regulation shall take effect on and after July 1, 1996. (Authorized by and implementing K.S.A. 75-3307b and K.S.A. 39-1801, et seq.; effective July 1, 1996.)

30-63-20. Mandated requirements. (a) In order to be eligible to be licensed as a provider, each applicant shall demonstrate that the applicant either complies with or can comply with all applicable requirements of this article and all applicable requirements of article 64.

(b) For good cause shown by an applicant, or by any person being served or proposed to be served by that applicant, one or more of the specific requirements of this article may be waived by the commissioner, and some other requirement or requirements that may be proposed by the applicant or person may be substituted by the commissioner, if the waiver or substitution would neither jeopardize the health, safety, or well-being of any person or persons served or proposed to be served by the applicant, nor substantially deviate from meeting the intent or purpose of the requirement or requirements being waived.

(c) Attainment of national accreditation by an applicant from an organization that evaluates and accredits providers of mental retardation or developmental disabilities services, or the recommendation of a local CDDO's quality assurance committee, shall be considered by the commissioner in determining compliance by the applicant with any one or more of the requirements of this article. (Authorized by K.S.A. 39-1810 and K.S.A. 2005 Supp. 75-3307b; implementing K.S.A. 39-1806; effective July 1, 1996; amended Oct. 1, 1998; amended Dec. 8, 2006.)

30-63-21. Person-centered support planning; implementation. (a) The provider shall prepare a written person-centered support plan for each person served that shall meet these requirements:

(1) Be developed only after consultation with the following:

(A) The person;

(B) the person's legal guardian, if one has been appointed; and

(C) other individuals from the person's support network as the person or the person's guardian chooses;

(2) contain a description of the person's preferred lifestyle, including describing the following:

(A) In what type of setting the person wants to live;

(B) with whom the person wants to live;

(C) what work or other valued activity the person wants to do;

(D) with whom the person wants to socialize; and

(E) in what social, leisure, religious, or other activities the person wants to participate;

(3) list and describe the necessary activities, training, materials, equipment, assistive technology, and services that are needed to assist the person to achieve the person's preferred lifestyle;

(4) describe how opportunities of choice will be provided, including specifying means for the following:

(A) Permitting the person to indicate the person's preferences among options presented to the person, by whatever communication methods that person may possess, including a description of the effective communication methods utilized by the person;

(B) providing the necessary support and training to allow the person to be able to indicate the person's preferences, including a description of any training and support needed to fully participate in the planning process and other choice making; and

(C) assisting the person or the person's guardian to understand the negative consequences of choices the provider knows the person might make and that may involve risk to that person;

(5) describe when it is necessary to do so, to the person and the person's support network, how the preferred lifestyle might be limited because of imminent significant danger to the person's health, safety, or welfare based on an assessment of the following:

(A) The person's history of decision-making, including any previous experience or practice the person has in exercising autonomy, and the person's ability to learn from the natural negative consequences of poor decision-making;

(B) the possible long- and short-term consequences that might result to the person if the person makes a poor decision;

(C) the possible long- and short-term effects that might result to the person if the provider limits or prohibits the person from making a choice; and

(D) the safeguards available to protect the person's safety and rights in each context of choices;

(6) prioritize and structure the delivery of services toward the goal of achieving the person's preferred lifestyle;

(7) contribute to the continuous movement of the person towards the achievement of the person's preferred lifestyle. In evaluating this outcome, the provider may include assessments made by professionals and shall perform either of the following:

(A) Include consideration of the expressed opinions of the person, the person's legal guardian, if one has been appointed, and other individuals from the person's support network; or

(B) account for the following:

(i) The financial limitations of the person and the provider;

(ii) the supports and training needed, offered, and accepted by the person; and

(iii) matters identified in paragraph (a)(5). Next best options may be considered as responsive if the person cannot specifically have what the person prefers due to limitations identified by this methodology; and

(8) be approved, in writing, by the person or the person's guardian, if one has been appointed. Requirements for approval from or consultation with the person's guardian shall be considered to have been complied with if the provider documents that it has taken reasonable measures to obtain this approval or consultation and that the person's guardian has failed to respond.

(b) Whenever two or more providers provide services to the same person, the providers shall work together to prepare a single person-centered support plan. Each provider shall be responsible for the preparation and implementation of any portion of the plan relating to its services. The person, the guardian if one has been appointed, a member of the person's support network, or a provider shall take the lead coordination role in preparation of the plan, and a designation of that person or entity shall be noted in the plan.

(c) The provider shall regularly review and revise the plan, by following the same procedures as set out above, whenever necessary to reflect any of the following:

(1) Changes in the person's preferred lifestyle;

(2) achievement of goals or skills outlined within the plan; or

(3) any determination made according to the methodology provided for in paragraph (a)(7) above that any service being provided is unresponsive.

(d) The provider shall deliver services to the person only in accordance with the person's person-centered support plan.

(e) This regulation shall take effect on and after October 1, 1998. (Authorized by and implementing K.S.A. 75-3307b and K.S.A. 1997 Supp. 39-1801, et seq.; effective July 1, 1996; amended Oct. 1, 1998.)

30-63-22. Individual rights and responsibilities. (a) Each provider shall at all times encourage and assist each person served to understand and exercise the person's individual rights and to assume the responsibilities that accompany these rights.

(b) Each person served shall be guaranteed the same rights afforded to individuals without disabilities. These rights may be limited only by provisions of law or court order, including guardianship, conservatorship, power of attorney or other judicial determination. These rights shall include the following:

(1) Being free from physical or psychological abuse or neglect, and from financial exploitation;

(2) having control over the person's own financial resources;

(3) being able to receive, purchase, have, and use the person's personal property;

(4) actively and meaningfully making decisions affecting the person's life;

(5) having privacy;

(6) being able to associate and communicate publicly or privately with any person or group of people of the person's choice;

(7) being able to practice the religion or faith of the person's choice;

(8) being free from the inappropriate use of a physical or chemical restraint, medication, or isolation as punishment, for the convenience of a provider or agent, in conflict with a physician's orders or as a substitute for treatment, except when physical restraint is in furtherance of the health and safety of the person;

(9) not being required to work without compensation, except when the person is living and being provided services outside of the home of a member of the person's family, and then only for the

purposes of the upkeep of the person's own living space and of common living areas and grounds that the person shares with others;

(10) being treated with dignity and respect;

(11) receiving due process; and

(12) having access to the person's own records, including information about how the person's funding is accessed and utilized and what services were billed for on the person's behalf.

(c) Each provider shall train its agents regarding the rights specified in subsection (b). In addition, each provider shall offer training at least annually regarding these rights and effective ways to exercise them to each person served, to the guardian if one has been appointed, and to the person's parent and other individuals from each person's support network. (Authorized by K.S.A. 39-1810; implementing K.S.A. 39-1802 and K.S.A. 39-1806; effective July 1, 1996; amended Oct 1, 1998; amended Dec. 8, 2006.)

30-63-23. Medications; restrictive interventions; behavioral management committee.

(a) A provider shall take proactive and remedial actions to ensure appropriate, effective, and informed use of medications and other restrictive interventions to manage behavior or to treat diagnosed mental illness. These actions shall be taken before the provider initiates the use of any medication or other restrictive intervention to manage behavior, unless the needs of the person served clearly dictate otherwise and the provider documents that need. Otherwise, these actions shall be taken promptly following the initiation of, or any change in, the use of any medication or other restrictive intervention to manage behavior or to treat diagnosed mental illness.

(b) These proactive and remedial actions shall include all the following:

(1) Safeguards, which shall include initial and ongoing assessment and responsive modifications that may be needed to ensure and document the following, in consultation with the person, the person's guardian, and the person's support network:

(A) All other potentially effective, less restrictive alternatives have been tried and shown ineffective, or a determination using best professional clinical practice indicates that less restrictive alternatives would not likely be effective;

(B) positive behavior programming, environmental modifications and accommodations, and effective services from the provider are present in the person's life;

(C) voluntary, informed consent has been obtained from the person or the person's guardian if one has been appointed, after a review of the risks, benefits, and side effects, as to the use of any restrictive interventions or medications; and

(D) medications are administered only as prescribed, and no "PRN" (provided as needed) medications are utilized without both the express consent of the person or the person's guardian if one has been appointed, and per usage approval from the prescribing physician or another health care professional designated by the person or the person's guardian if one has been appointed;

(2) management, which shall include initial and ongoing assessment and responsive modifications that may be needed to ensure and document the following:

(A)(i) When restrictive intervention or medication is being used to manage specific behaviors, those behaviors are documented as to the frequency and objective severity of occurrence;

(ii) the provider periodically reviews and reports to the person, the person's guardian if one has been appointed, the person's support network, and the physician prescribing any medication to manage behavior, the frequency and objective severity of the specific behaviors, and the effectiveness of the restrictive intervention or medication and any side effects experienced from any medication used to manage specific behaviors, in conjunction with safeguard measures; and

(iii) the provider recommends to the person, the person's guardian if one has been appointed, the person's support network, and the physician prescribing any medication to manage behavior, reducing the use of the restrictive intervention or medication being used to manage specific behaviors, when appropriate, based upon the documented effectiveness of those efforts in conjunction with safeguard measures; or

(B) when medication is used to treat specifically diagnosed mental illness, the medication has been prescribed and is being managed by a psychiatrist who is periodically provided information regarding the effectiveness of and any side effects experienced from the medication. The prescription and management may be by a physician, rather than a psychiatrist, only when requested and agreed to by the person or the person's guardian if one has been appointed, and when based upon the documented need of the person; and

(3) review by a behavior management commit-

tee established by the provider, which shall meet these criteria:

(A) Be made up of a selected number of persons served, guardians of persons served, family members of persons served, interested citizens, and providers, at least $\frac{1}{3}$ of whom shall be otherwise unassociated with the provider; and

(B) periodically review the use of medications and other restrictive interventions to manage behavior or to treat diagnosed mental illness, to ensure that the provisions of this regulation are met and to report to the provider each instance in which the committee determines that any provision of this regulation has not been met. The provider shall immediately correct any instance of noncompliance reported by the behavior management committee.

(c) Requirements for consent from or consultation with the person's guardian shall be considered to have been complied with if the provider documents that it has taken reasonable measures to obtain the consent or consultation and that the person's guardian has failed to respond.

(d) This regulation shall take effect on and after October 1, 1998. (Authorized by and implementing K.S.A. 75-3307b and K.S.A. 1997 Supp. 39-1801, et seq.; effective Aug. 23, 1996; amended Oct. 1, 1998.)

30-63-24. Individual health. (a) A provider shall assist each person served, as necessary, in obtaining the medical and dental services to which the person has access and that may be required to meet the person's specific health care needs, including the following:

(1) Scheduling and receiving preventative examinations and physicals;

(2) practicing for obtaining emergency services;

(3) developing individualized procedures for the administration of medications and other treatments, including training for self-medication or administration; and

(4) obtaining necessary supports, including adaptive equipment, and speech, hearing, physical, or occupational therapies, as appropriate.

(b) Non-licensed personnel shall administer medications and perform nursing tasks or activities in conformance with the provisions of K.S.A. 65-1124, and amendments thereto.

(c) A provider shall train staff who shall be responsible to implement the service provider's written policies and procedures for carrying out medication administration, including the following:

- (1) Self-administration by any person;
- (2) medication checks and reviews;
- (3) emergency medical procedures; and
- (4) any other health care task.

(d) Whenever two or more providers provide services to the same person, the providers shall work together to meet the health care needs of the person. The person, the guardian if one has been appointed, a member of the person's support network, or a provider may take the lead coordination role, and a designation of that person or entity shall be noted in the person-centered support plan.

(e) This regulation shall take effect on and after October 1, 1998. (Authorized by and implementing K.S.A. 75-3307b and K.S.A. 1997 Supp. 39-1801, et seq.; effective July 1, 1996; amended Oct. 1, 1998.)

30-63-25. Nutrition assistance. (a) Except when a provider is providing services to a person living in the home of a member of that person's family, the provider shall assist each person served in obtaining daily access to a well-balanced, nutritious diet consistent with the provisions of K.A.R. 30-63-21 regarding opportunities of choice. If a person being served lives in the home of a family member, a provider shall assist that person similarly with any meals provided outside of that home setting.

(b) A provider that serves a person meals shall serve each modified or special diet meal in a form consistent with both the person's needs and desires and any medical directions with regard thereto.

(c) This regulation shall take effect on and after October 1, 1998. (Authorized by and implementing K.S.A. 75-3307b and K.S.A. 1997 Supp. 39-1801, et seq.; effective July 1, 1996; amended Oct. 1, 1998.)

30-63-26. Staffing; abilities; staff health.

(a) A provider shall provide professional and direct service staff in numbers sufficient to meet the support and service needs of each person being served.

(b) Each employee shall be able to perform the employee's job duties before working without oversight by another trained staff person.

(c) Each employee shall consistently satisfactorily perform the employee's assigned job duties throughout the term of the employee's employment.

(d) Staff who have been certified by a recognized training agency to give CPR and first aid shall be available in sufficient numbers whenever persons being provided services are present.

(e) All staff or consultants representing themselves as professionals subject to national, state, or local licensing, certification or accreditation standards shall be in compliance and maintain compliance with those standards.

(f) Each staff member shall monitor the member's personal health and avoid circumstances in which the member risks exposing a person to whom the member is providing services to contagious disease or other health endangerment.

(g) This regulation shall take effect on and after July 1, 1996. (Authorized by and implementing K.S.A. 75-3307b and K.S.A. 39-1801, et seq.; effective July 1, 1996.)

30-63-27. Emergency preparedness. (a) Each agent of each provider shall be:

(1) trained in general fire, safety and emergency procedures;

(2) trained and able to effectively and efficiently evacuate any building within which the agent is providing services, including knowing:

(A) alternative exit routes;

(B) methods of accounting for persons who might be present in the building at any time; and

(C) a designated meeting place outside the building to which all persons will go in the event of an evacuation;

(3) trained and able to effectively and efficiently seek shelter in any building within which the agent is providing services, in the event of a tornado or other dangerous storm; and

(4) trained and able to respond effectively and efficiently to other emergency conditions, including power outages or flooding.

(b) This regulation shall take effect on and after July 1, 1996. (Authorized by and implementing K.S.A. 75-3307b and K.S.A. 39-1801, et seq.; effective July 1, 1996.)

30-63-28. Abuse; neglect; exploitation.

(a) Whenever any agent of a provider suspects that abuse, neglect, or exploitation is or has taken place, that agent shall immediately take appropriate action to ensure that any specifically involved person or persons and all others are protected while an investigation is conducted.

(b) Each agent shall exercise any authority that the agent has for the purpose of the prevention of abuse, neglect, or exploitation of each person served.

(c) A provider shall regularly conduct training and take other steps to ensure that any agent,

person, parent, guardian, and any other individual from each person's support network is advised about how to contact the appropriate state agency charged with providing adult protective services whenever abuse, neglect, or exploitation is suspected or witnessed.

(d) The provider shall immediately report any incident of suspected abuse, neglect, or exploitation of which the provider has become aware to the appropriate state agency charged with providing adult protective services. Any agent shall immediately report any incident of suspected abuse, neglect, or exploitation, in either manner:

- (1) Directly to the appropriate state agency; or
- (2) in accordance with the provider's written policy for reporting an incident.

A provider shall inform each agent that any report of an incident of suspected abuse, neglect, or exploitation may be made directly or anonymously to the appropriate state agency, shall ensure that each agent has ready access to the phone number for making any report, and shall take no steps to interfere with an agent making any report directly or anonymously.

(e) Each agent shall fully cooperate with any state agency conducting an investigation resulting from a report of abuse, neglect, or exploitation.

(f) A provider shall not employ any individual who is known by a provider to have had a conviction for or a prior employment history of abuse, neglect, or exploitation of children or vulnerable adults.

(g) A provider shall adhere to all laws, regulations, and procedures related to the reporting of, protecting from, and correcting the cause of abuse, neglect, or exploitation.

(h) This regulation shall take effect on and after October 1, 1998. (Authorized by and implementing K.S.A. 75-3307b and K.S.A. 1997 Supp. 39-1801, et seq.; effective July 1, 1996; amended Oct. 1, 1998.)

30-63-29. Records. (a) A provider shall maintain records for each person served. These records shall include the following:

- (1) any application or agreement for services;
- (2) any financial agreement made between the provider and the person;
- (3) any incident or accident reports;
- (4) a health profile, which shall be reviewed for accuracy by a licensed medical practitioner at least every two years, and shall include the following:
 - (A) notations regarding the person's health status;

(B) any medications the person takes; and

(C) any other special medical or health considerations which might exist for that person;

(5) basic assessment and service information system (BASIS) documents and other evaluation materials;

(6) the person's person-centered support plan;

(7) the plan of care for recipients of the home and community based services for persons who are mentally retarded or developmentally disabled program (HCBS/MR);

(8) releases of information, authorizations for publication, and consents for emergency and other medical treatment; as applicable; and

(9) a discharge summary, if applicable.

(b) A provider shall maintain each record confidentially and shall not release any record except:

(1) as authorized in writing by the person or the person's legal guardian, if one has been appointed;

(2) as otherwise authorized by law; or

(3) as necessary to comply with the requirements of this article.

(c) This regulation shall take effect on and after July 1, 1996. (Authorized by and implementing K.S.A. 75-3307b and K.S.A. 39-1801, et seq.; effective July 1, 1996.)

30-63-30. Physical facilities. (a) A provider shall maintain each site in which services are provided to any person and that is owned, leased, or made available by contract to be operated by a provider, any employee or board member of a provider, or any entity owned or controlled by a provider, a provider's employee or a provider's board member, so that the site shall meet these requirements:

(1) Have appropriate fire and safety equipment that is in good repair and is kept on site and readily accessible;

(2) not have any combustible or flammable materials kept in an unsafe location;

(3) be kept clean and well maintained;

(4) be kept safe and secure;

(5) have furniture and equipment in good repair and working order;

(6) be capable of maintaining a comfortable temperature and adequate ventilation;

(7) have adequate lighting;

(8) be free of insect and rodent infestation;

(9) have main routes of travel that are kept free of obstacles and stored materials;

(10) have appropriate assistive devices and any necessary structural modifications so that the fa-

cility meets the needs of persons with physical disabilities;

(11) be sufficiently sized to meet the living space needs of the person or persons residing there as well as the additional space needs of staff working within the premises, specifically including appropriate space or spaces for the following:

- (A) Meal preparation;
- (B) dining;
- (C) sleeping;
- (D) bathing, toileting, and hand washing;
- (E) recreation and day living; and
- (F) storage of personal items; and

(12) meet the needs of each person being served, consistent with the preferred lifestyle of the person or persons; and

(13) be in compliance with all applicable fire and life safety, health, sanitation, and occupancy codes.

(b)(1) A provider shall monitor each facility in which services are provided, but that is not included in subsection (a) above, to determine whether or not the facility meets these requirements:

(A) Is maintained in compliance with all applicable fire and life safety, health, sanitation, and occupancy codes; and

(B) is of sufficient size and is equipped and stocked to permit the provider to provide the necessary services, activities, and training required by the person-centered support plan of any person being served at that site.

(2) If the provider is made aware of circumstances that create a violation of any fire and life safety, health, sanitation, or occupancy code, or that place a person's health, safety, or welfare in imminent danger, or if the provider determines that the facility fails to meet any required standard as specified by any person's person-centered support plan, the provider shall perform the following:

(A) Notify the person's support network of the nature of the deficiency; and

(B) implement any necessary corrective action by appropriate means, including any appropriate revisions to the person's person-centered support plan.

(c) Each facility intended to accommodate eight or more persons or in which eight or more persons are living shall be licensed by the Kansas department of health and environment as a lodging establishment pursuant to K.S.A. 36-501, et seq., and amendments thereto.

(d) A provider shall maintain each facility used for job training or production work in compliance with any applicable occupational health or safety

code or regulation, including any provisions applicable to any equipment or machinery located or used within that facility.

(e) This regulation shall take effect on and after October 1, 1998. (Authorized by and implementing K.S.A. 75-3307b and K.S.A. 1997 Supp. 39-1801, et seq.; effective July 1, 1996; amended Oct. 1, 1998.)

30-63-31. Registration with the community developmental disability organizations (CDDOs). (a) Anytime a provider does not have an affiliation agreement in force with the CDDO for that service area, the provider shall:

(1) register with the CDDO, listing the types of services that the provider provides; and

(2) periodically give notice to the CDDO of the provider's current availability to offer services.

(b) This regulation shall take effect on and after July 1, 1996. (Authorized by and implementing K.S.A. 75-3307b and K.S.A. 39-1801, et seq.; effective July 1, 1996.)

30-63-32. Case management. (a) Each community services provider providing case management services shall perform the following:

(1) Develop and implement policies and procedures concerning the provision of case management services that are consistent with the requirements of this regulation;

(2) provide those services in a manner meeting all applicable requirements of this article; and

(3) ensure that all case management services are provided by case managers who meet the following requirements:

(A) No case manager shall provide any other direct service except case management services to any person receiving any other type of direct service from the same agency that employs the case manager;

(B) no case manager shall be supervised by anyone directly responsible for the provision of any other type of direct service provided to any person or responsible for supervision of those services;

(C) each case manager shall comply with the division's "rules of conduct for case managers serving people with developmental disabilities," as adopted on October 25, 2003, and hereby adopted by reference;

(D) each case manager shall maintain documentation that shows that within 90 calendar days of either the case manager's initial employment or following an announcement by the division posted upon the division's web site of a revision of the

division's required assessment, whichever comes later, the case manager has completed and passed the required assessment that has been established by the division and that has been included in the division's case management-related training; and

(E) each case manager shall have the following documented qualifications:

(i) A minimum of six months of full-time experience in the field of human services; and

(ii) either a bachelor's degree or additional full-time experience in the field of developmental disabilities services, which may be substituted for the degree at the rate of six months of full-time experience for each missing semester of college.

(b) Case management services shall assist the person and the person's support network to identify, select, obtain, coordinate, and use both paid services and natural supports that are available to that person to enhance the person's independence, integration, and productivity consistent with the person's capabilities and preferences as outlined in the person's person-centered support plan. Case management services shall include the following:

(1) Assessment, including an ongoing process for the identification of the person's needs, the determination of a person's preferred lifestyle, and the resources that are available to the person, through both formal and informal evaluation methods;

(2) (A) Support planning, with the participation of the person and the person's support network, including the development or assistance in the development, updating, and reviewing of the person's person-centered support plan and any related service or support plan, building upon assessment information to assist the person in meeting the person's needs and achieving the person's preferred lifestyle; and

(B) providing assistance to the person in being knowledgeable about the types and availability of community services and support options, in receiving information regarding the rights of persons served pursuant to the developmental disabilities reform act and implementing regulations, the content of which shall be approved by the commission, and in obtaining the community services and supports of the person's choice;

(3) support coordination, including the following:

(A) Arranging for and securing supports outlined in the person's person-centered support plan; and

(B) developing and accessing natural supports and generic community support systems, including pursuing means for gaining access to needed

services and entitlements, and seeking modification of service systems when necessary to increase the accessibility to those systems by the person;

(4) monitoring and follow-up, including ongoing activities that are necessary to ensure that the person-centered support plan and related supports and services are effectively implemented and adequately addressing the needs of the person; and

(5) assisting transition and portability, including the planning of and arranging for services to follow the person when the person moves between any of the following:

(A) From school to the adult world;

(B) from an institution to community alternatives;

(C) from one kind of service setting to another kind of service setting;

(D) from one provider to another provider; or

(E) from one service area to another service area. (Authorized by K.S.A. 39-1810; implementing K.S.A. 39-1805 and 39-1806; effective May 30, 2008.)

Article 64.—DEVELOPMENTAL DISABILITIES—COMMUNITY DEVELOPMENTAL DISABILITY ORGANIZATIONS (CDDOS)

30-64-1. Definitions. (a) Words and phrases used in this article shall have the same meanings as those set forth in K.S.A. 39-1803 or as defined in article 63. In addition, the following terms shall have the meaning ascribed to them in this regulation:

(1) "home county" means, as determined by the CDDO in accordance with the following listed order of priority:

(A) the county of residence of a family member of the person with a development disability;

(B) the county of residence of the person's guardian; or

(C) the county in which the person is living; and

(2) "service area" means the counties from which a CDDO receives funding pursuant to K.S.A. 19-4001, et seq.

(b) This regulation shall take effect on and after July 1, 1996. (Authorized by and implementing K.S.A. 39-1801, et seq.; effective July 1, 1996.)

30-64-10. Currently established and recognized community mental retardation centers now recognized as community developmental disability organizations (CDDOs). (a) Each community mental retardation center or

ganized pursuant to the provisions of K.S.A. 19-4001, et seq., currently established and operating as of the effective date of this regulation, shall be recognized as a CDDO. The CDDO shall have the same service area that the community mental retardation center was previously recognized for.

(b) This regulation shall take effect on and after July 1, 1996. (Authorized by and implementing K.S.A. 19-4001 and K.S.A. 39-1801, et seq.; effective July 1, 1996.)

30-64-11. Establishment of new community developmental disability organizations (CDDOs). (a) Except in compliance with this article, a new CDDO shall not be established if the proposed service area is already being served by one or more existing CDDOs.

(b) Except in compliance with this article, an existing CDDO shall not alter its existing service area to include an area already being served by one or more existing CDDOs.

(c) Along with the proposal to establish a new CDDO, anyone proposing the establishment of a new CDDO shall submit an application for a license for the CDDO to operate as a provider of community services in compliance with in article 63, unless the organization, corporation or agency proposed as the new CDDO is already licensed, or unless the proposed CDDO does not intend to provide community services itself.

(d) This regulation shall take effect on and after July 1, 1996. (Authorized by and implementing K.S.A. 19-4001 and K.S.A. 39-1801, et seq.; effective July 1, 1996.)

30-64-12. Application for approval of a proposal to establish a new community developmental disability organization or to re-align the service area of one or more existing CDDOs; requirements. (a) Anyone proposing the establishment of a new CDDO, or the realignment of the service area of any existing CDDO, shall apply for approval of the proposal to the commissioner in writing. The application shall include the following:

(1) A description of the service area or areas to be created;

(2) a copy of the establishing resolution or resolutions adopted pursuant to K.S.A. 19-4001, and amendments thereto, by the affected board or boards of county commissioners;

(3) a statement of the problems thought to exist with the current structure of community

services for persons with developmental disabilities within that service area or areas and how the new or realigned CDDO or CDDOs will address those problems;

(4) a description of what specific services the new or realigned CDDO or CDDOs will provide;

(5) a plan for how any other services needs of the proposed service area will be met;

(6) a description of the planned structure of governance, organization, staffing, and fiscal management procedures that will be used by the new or realigned CDDO;

(7) a long-range financial plan detailing how the new or realigned CDDO proposes to finance itself during the initial five-year period;

(8) a statement of the anticipated fiscal and service impacts that this new or realigned CDDO will have on all other affected service areas of the state;

(9) an endorsement of the proposal by the governing board or boards and chief executive officer or officers of any affected existing CDDOs, or an explanation of why an endorsement has not or cannot be obtained; and

(10) written comments received from the public and a summary of public comments made at a public hearing held for the purpose of receiving comments concerning the proposal. The commission shall have been consulted in advance of this public hearing, and approval of the process to be used for obtaining public comments shall have been given by the commission. Any process for obtaining public comments shall contain a method for notifying all existing CDDOs and licensed community service providers that operate in the service area or areas to be affected by the proposal.

(b) This regulation shall take effect on after October 1, 1998. (Authorized by and implementing K.S.A. 19-4001 and K.S.A. 1997 Supp. 39-1801, et seq.; effective July 1, 1996; amended Oct. 1, 1998.)

30-64-13. Approval or disapproval of a proposal to establish a new community developmental disability organization or to re-align the service area of one or more existing CDDOs. (a) Before the approval or disapproval of a proposal to establish a new CDDO, or to re-align the service area of one or more existing CDDOs, the materials submitted as required by K.A.R. 30-64-12 shall be reviewed by the commission. Additional comments from any of the following may be received or sought out as the commission deems appropriate:

(1) consumer and advocacy organizations or representatives;

(2) other interested individuals and agencies; and

(3) licensed providers in and near the proposed new or re-aligned service area or areas.

(b) The proposal shall be approved or disapproved by the commissioner and the applicant shall be notified of that determination in writing. The notice shall clearly state the reasons why the proposal is disapproved.

(c) An applicant may appeal any decision to disapprove a proposal to establish a new CDDO or to re-align the service area of one or more existing CDDOs to the administrative appeals section pursuant to the provisions of article seven of these regulations.

(d) This regulation shall take effect on and after July 1, 1996. (Authorized by and implementing K.S.A. 19-4001 and K.S.A. 39-1801, et seq.; effective July 1, 1996.)

30-64-20. Contracting community developmental disability organizations; requirements; enforcement actions. (a) Each CDDO established according to this article desiring to contract with the secretary pursuant to the provisions of the developmental disabilities reform act, K.S.A. 39-1801 et seq., and amendments thereto, shall comply with the provisions of this article.

(b) Any CDDO having entered into a contract with the secretary, but failing to maintain compliance with the provisions of this article or with the provisions of the contract, may be subject to one or more of the following enforcement actions:

(1) The requirement of a corrective action plan, approved by the commission, with specific corrective or improvement activities identified and implemented, measurable outcomes, and implementation timelines;

(2) the requirement of a peer review process, approved by the commission, with specific review and improvement activities identified and implemented, measurable outcomes, and implementation timelines;

(3) suspension of part or all of the payments provided for in the contract until the violation is corrected;

(4) civil penalties in an amount not to exceed \$125.00 per day for each violation from a specified date forward until the CDDO complies; or

(5) cancellation of the contract.

The contract may specifically provide for any or all of the penalties specified in this subsection.

(Authorized by and implementing K.S.A. 39-1804, 39-1805, 39-1807, and 39-1810; effective July 1, 1996; amended Feb. 1, 2002.)

30-64-21. Procedures applicable to the service area; development by the CDDO. (a)

The governing board of each CDDO desiring to contract with the secretary shall develop written procedures, subject to approval by the commissioner, which shall specify how the requirements of this article will be met within that service area by the CDDO, and if applicable, by affiliating providers. These procedures shall include provisions which allow any affiliating provider which employs 20 or more direct care employees to contract with the department for direct payment in lieu of receiving payments from the CDDO.

(b) At least 30 days before final adoption, the governing board shall present these procedures to the service area's council of community members organized pursuant to K.A.R. 30-64-22(a)(3), who may provide written comment upon them to the board. The board shall include any comments by the council with the procedures when the procedures are submitted to the commissioner.

(c)(1)(A) At least 30 days before final adoption, the governing board shall present these procedures to interested parties and the public at a public hearing held for the purposes of receiving comments upon these procedures; or

(B) other means may be used to solicit and receive comments about these procedures from interested parties and the public at least 30 days before final adoption.

(2) The commission shall have been consulted in advance of this public hearing or the board's decision to use any other means to obtain public comments, and the commission shall have given approval of the process to be used. The board shall summarize any comments received and include them with the procedures when the procedures are submitted to the commissioner.

(d) The governing board shall obtain approval of these procedures by the commissioner before the CDDO may be awarded a contract by the secretary. The CDDO shall not make any changes to these procedures after their approval except in compliance with the procedures set forth in subsections (b) and (c) above. The CDDO shall obtain approval of these changes by the commissioner, in writing, before those changes may become effective.

(e) This regulation shall take effect on and after July 1, 1996. (Authorized by and implementing K.S.A. 39-1801, et seq.; effective July 1, 1996.)

30-64-22. Implementation responsibilities of CDDOs. Each contracting CDDO shall perform the following:

(a) Implement the approved service area procedures specified in K.A.R. 30-64-21;

(b) collect and report to the secretary, in a manner specified by the commission, all information requested by the commission, including the following:

(1) Information required by the basic assessment and services information system (BASIS);

(2) copies of the plans of care detailing home- and community-based services to be provided to persons served by that program;

(3) copies of independent financial audits obtained by the CDDO, as well as any management letters generated as a result of the audits; and

(4) any other information or records the CDDO has that the commission needs in order to monitor how services are provided in the CDDO's service area;

(c) organize a council of community members as specified in K.A.R. 30-64-31;

(d) organize a local committee on quality assurance as specified in K.A.R. 30-64-27;

(e) ensure that all services are provided in a manner that meets these requirements:

(1) Provides to all persons equal access to services, including to persons currently residing in any ICF/MR or institution but referred to the CDDO for possible services;

(2) provides that each person receiving or applying for community services, and that person's guardian if one has been appointed, receives information at least annually, communicated in a format appropriate for the person to understand, regarding the following:

(A) The types of community services available in the person's service area and information concerning the providers of those services; and

(B) the rights of persons served pursuant to the developmental disabilities reform act and implementing regulations, the content of which shall be approved by the commission;

(3) enables a person or the person's guardian, if one has been appointed, to choose the person's community service provider; and

(4) promotes the efficient delivery of services within the service area; and

(f) ensure that each community service provider entering into an affiliating agreement with the CDDO and operating within the CDDO's service area abides by the procedures applicable to that service area as established by the CDDO according to K.A.R. 30-64-21. In meeting this requirement, the CDDO may establish a procedure that would allow the CDDO to refuse to enter into or continue an affiliation agreement with any community service provider under any of these circumstances:

(1) If the provider refuses to accept a reimbursement rate for services to be provided that is at least equal to that established by the secretary to apply to the CDDO, or as agreed to in the affiliation agreement with the CDDO;

(2) if the provider has established a pattern of failing or refusing to abide by the service area procedures established by the CDDO according to K.A.R. 30-64-21, or failing to comply with its affiliation agreement with the CDDO; or

(3) if the CDDO demonstrates to the satisfaction of the secretary that being required to enter into the affiliating agreement would seriously jeopardize the CDDO's ability to fulfill its responsibilities either under these regulations or pursuant to its contract with the secretary. (Authorized by and implementing K.S.A. 39-1804, 39-1805, 39-1806, and 39-1810; effective July 1, 1996; amended Oct. 1, 1998; amended Feb. 1, 2002.)

30-64-23. Single point of application, determination, and referral. (a) Each contracting CDDO shall develop and implement policies and procedures by which the CDDO shall act as the single point of application, eligibility determination, and referral for persons desiring to receive either information about community services or these services within the service area of that CDDO. Procedures shall be established for the following:

(1) Distributing, completing, accepting, and processing the uniform statewide application for community services, as published by the commission;

(2) determining if the applicant meets the definitional criteria to be considered a person with a developmental disability as defined in K.S.A. 39-1803, and amendments thereto;

(3) impartially informing a person of the types and availability of community services provided within the service area and of the licensed providers and other agencies existing within the service area that the CDDO has been advised might be willing to provide services to the person, and the way to contact those licensed providers or other agencies;

(4) impartially assisting a person in deciding which community services the person may wish to obtain or would accept within the next year from the date of the person's application;

(5) impartially assisting a person in accessing the community services of the person's choice;

(6) maintaining a list of persons who have made application to the CDDO for community services and have been determined eligible, and allowing access to this list, except for the names of those persons who have requested that their names be kept confidential by the licensed providers in the service area who have entered into affiliation agreements with the CDDO; and

(7) ensuring that when any person receiving any services expresses a desire to consider changing service providers, that person is referred directly and only to an individual who is not involved in the delivery of any service, has no involvement in any dispute about the person's current services, and honors the confidentiality of the person considering a change in service providers. The individual shall supply to the person and the person's guardian information about the types and availability of community services within the service area and assist the person in accessing alternative service providers.

(b) Each contracting CDDO shall require any employees or agents of the CDDO who perform any of the functions specified in subsection (a) to maintain records that shall demonstrate compliance with these requirements.

(c) Each contracting CDDO shall require any employees or agents of the CDDO who perform the functions of determining eligibility, processing applications for service or referral of persons for service, or assisting persons in accessing services, to complete a training program that is approved by the division and meets these criteria:

(1) Is developed by the CDDO and approved by the CDDO council of community members required by K.A.R. 30-64-22(c);

(2) includes topics regarding the following:

(A) The types of community services available in the service area and information concerning the licensed providers and other agencies offering those services; and

(B) potential referral contacts for persons who are determined not to be eligible for services; and

(3) is offered in a manner and frequency that shall ensure that employees or agents of the CDDO who perform the duties required by subsection (a) are competent to do so. (Authorized by

and implementing K.S.A. 39-1804, 39-1805 and 39-1810; effective July 1, 1996; amended Oct. 1, 1998; amended Feb. 1, 2002.)

30-64-24. (Authorized by K.S.A. 39-1810; implementing K.S.A. 39-1805 and 39-1806; effective July 1, 1996; amended Oct. 1, 1998; amended Aug. 23, 2002; amended Dec. 8, 2006; revoked May 30, 2008.)

30-64-25. Uniform access to services. (a) Each contracting CDDO shall implement a plan, developed in coordination with the CDDO's affiliates, that results in services being offered and provided in a way that does not discriminate against any person because of the severity of each person's disability.

(1) The plan may require all community service providers to serve all persons regardless of the severity of each person's disability.

(2) The plan may allow individual community service providers to specialize in services, if all persons are offered appropriate services without regard to the severity of each person's disability.

(b) The plan shall not require any community service provider to accept more persons than the community service provider can effectively serve. If all community service providers are at their maximum capacity, the CDDO shall, pursuant to K.S.A. 39-1805(b), assist in establishing new community service providers.

(c) Notwithstanding these provisions, any CDDO that contracts with its affiliates and by mutual agreement provides its affiliates with financial consideration in excess of that required to be provided by the commission may require its affiliates to develop and make available appropriate services for any eligible person.

(d) Notwithstanding these provisions, a CDDO may refuse to serve a person who is determined by the secretary to be inappropriate for community services because the person presents a clear and present danger to self or to the community.

(e) This regulation shall take effect on and after October 1, 1998. (Authorized by and implementing K.S.A. 1997 Supp. 39-1801, et seq.; effective July 1, 1996; amended Oct. 1, 1998.)

30-64-26. Quality enhancement. (a) Each contracting CDDO shall ensure that each service provided by the CDDO or by any affiliate shall be:

(1) provided as specified within, and in a manner that is responsive to, the person-centered support plan under which that service is being provided;

(2) provided in a manner that offers opportunities of choice to the person being served; and

(3) performed in a manner that ensures that all of the person's rights are observed and protected.

(b) This regulation shall take effect on and after July 1, 1996. (Authorized by and implementing K.S.A. 39-1801, et seq.; effective July 1, 1996.)

30-64-27. Quality assurance. (a) Each contracting CDDO shall ensure the quality of the services being provided to persons being served by the CDDO or by an affiliate. Ensuring quality shall include providing for on-site monitoring by a local committee made up of persons served, their families, guardians, interested citizens, and providers. The type and intensity of on-site review shall be determined by the local committee and shall include at least a determination of all of the following:

(1) Services that are paid for are delivered.

(2) Services that are delivered are paid for in accordance with the terms of any agreement or contract in force, including any payment requirement that the person being served or a third party acting on behalf of the person being served has the responsibility to meet.

(3) Services are being provided in a manner meeting applicable requirements provided for in article 63.

(4) The CDDO or affiliate is affording the person being served all of the person's legally protected rights.

(5) The CDDO or affiliate meets both of these requirements:

(A) Is reporting any suspicions of abuse, neglect, or exploitation to the appropriate state agency; and

(B) has corrected or is actively in the process of correcting the cause of any confirmed violation.

(b) This regulation shall take effect on and after October 1, 1998. (Authorized by and implementing K.S.A. 1997 Supp. 39-1801, et seq.; effective July 1, 1996; amended Oct. 1, 1998.)

30-64-28. Continuity and portability of services. (a) Each contracting CDDO shall ensure both of the following:

(1) That each person who has applied for, accepted, and begun receiving community services continues to receive services consistent with the person's person-centered support plan, as long as state or federal funding support for those services continues, or until the person or the person's legal guardian, if one has been appointed, requests that services be discontinued; and

(2) that if the person moves from one service area to another and wants to continue receiving community services, the level of state and federal financial support utilized to provide services and supports for that person is transferred to the person's new service area.

(b) This regulation shall take effect on and after October 1, 1998. (Authorized by and implementing K.S.A. 1997 Supp. 39-1801, et seq.; effective July 1, 1996; amended Oct. 1, 1998.)

30-64-29. Gatekeeping. (a) Each request for admission to an ICF/MR or state institution shall be submitted to the CDDO responsible for the county in which the person is currently residing. The CDDO shall implement a procedure to review each request for admission to an ICF/MR or state institution. The procedure shall result in the following:

(1) Determining whether or not the person requesting admission has a developmental disability and is eligible for ICF/MR services using procedures and standards specified by the commission;

(2) determining if ICF/MR placement is consistent with the person's preferred lifestyle as determined consistent with K.A.R. 30-63-21;

(3) informing the person, the person's family, and the person's guardian if one has been appointed, of all services or supports that are available or could be made available within 90 days in or near the person's home county, and of the person's rights pursuant to the developmental disabilities reform act and implementing regulations, the content of which shall be approved by the commission;

(4) offering to provide or arranging to provide these services or supports; and

(5) providing the commission with the results of items stipulated in (a)(1) through (a)(4) of this subsection for each person who requests admission to an ICF/MR or state institution, using forms specified by the commission, within 15 days of receiving information necessary to determine eligibility and preferred lifestyle.

(b) As described in this subsection, the CDDO shall implement a procedure to, at least annually, review the persons living in ICFs/MR and state institutions. The procedure shall result in all of the following:

(1) The CDDO whose service area includes the county in which the ICF/MR or state institution is located meets these requirements:

(A) Collecting information about the persons living in ICFs/MR and state institutions and sub-

mitting this data to the commission using standards, forms, and procedures specified by the commission; and

(B) making a determination regarding what the person's home county is and providing the CDDO whose service area includes the person's home county of the person's name and address, and the name and address of the person's family and guardian, if one has been appointed.

(2) The CDDO whose service area includes the person's home county informs the person, the person's family, and the person's guardian, if one has been appointed, of all services or supports that are available or could be made available in or near the person's home county, and of the person's rights pursuant to the developmental disabilities reform act and implementing regulations, the content of which shall be approved by the commission.

(3) The CDDO whose service area includes the person's home county provides or arranges to provide these services or supports if the person or the person's guardian, if one has been appointed, chooses them.

(c) This regulation shall take effect on and after October 1, 1998. (Authorized by and implementing K.S.A. 1997 Supp. 39-1801, et seq.; effective July 1, 1996; amended Oct. 1, 1998.)

30-64-30. Statewide service access list.

Each contracting CDDO shall ensure that each person who has applied for services, been determined eligible for services, and agreed to accept services within the next year following the date of the person's application, but who cannot now be provided those services by either the CDDO, or any affiliate, because the maximum number of persons to be served as established in the contract with the secretary are already being served, or because supporting funding is not available, will receive the following services:

(a) Be assisted in the person's current setting by any means the CDDO can provide within existing resources in order to avoid as much as possible a crisis from developing until services can be arranged to be provided by the CDDO or an affiliate;

(b) be referred to other community agencies that may be able to provide any type of support or assistance appropriate to the needs of that person until services can be arranged to be provided by the CDDO or an affiliate;

(c) be reported to the secretary as waiting to access services in accordance with the division's policy governing service access lists; and

(d) be contacted at least annually from the initial application date to determine the continued need for services. (Authorized by and implementing K.S.A. 39-1804, 39-1805, and 39-1810; effective July 1, 1996; amended Feb. 1, 2002.)

30-64-31. Council of community members. (a) A council of community members organized according to K.A.R. 30-64-22(c) shall meet these criteria:

(1) Consist of a selected number of individuals, a majority of whom shall be made up of representatives from each of the following two categories:

(A) Persons with a developmental disability; and

(B) family members or guardians of a person with a developmental disability;

(2) include representatives from the following:

(A) The CDDO; and

(B) affiliates of the CDDO;

(3) not have served more than two consecutive three-year terms as members of the council;

(4) have the right to express opinions and make suggestions and recommendations to the governing board of the CDDO concerning any services issue, including the following:

(A) The types of services being offered by the various providers within the service area; and

(B) the manner in which those services are being provided;

(5) be responsible for the development and implementation of the dispute resolution procedures required by K.A.R. 30-64-32;

(6) be responsible for overseeing development, implementation, and progress reporting as to local capacity building plans, in accordance with guidelines provided by the division; and

(7) meet at least quarterly and at other times as necessary to fulfill the council's responsibilities for dispute resolution according to K.A.R. 30-64-32.

(b) For purposes of initial organization of the council, the CDDO shall appoint each member to the council. Thereafter, the selection of successor members of the council shall be determined pursuant to the bylaws or procedures agreed to and adopted by the council. Those bylaws or procedures shall stipulate a process by which consumer, family member, or guardian council members are chosen in an election by consumers, family members, and guardians following nominations by individuals residing in the service area.

(c) In order for a quorum to exist at any meeting of the council, at least 51 percent of those council members present and qualified to vote

shall meet the provisions of both paragraphs (c) (1) and (2) below:

- (1) Be any of the following:
 - (A) Persons being served;
 - (B) family members of persons being served; or
 - (C) legal guardians of persons being served; and
- (2) not also be either of the following:
 - (A) An employee or paid consultant to any provider or CDDO; or
 - (B) a member of the board of directors of any provider or CDDO. (Authorized by and implementing K.S.A. 39-1804, 39-1805 and 39-1810; effective July 1, 1996; amended Oct. 1, 1998; amended Feb. 1, 2002.)

30-64-32. Dispute resolution. (a) Each contracting CDDO, in conjunction with the council of community members as specified in K.A.R. 30-64-31, shall develop and implement a dispute resolution procedure that shall provide persons being served by the CDDO, or by any community service provider affiliated with that CDDO, with a means for resolving disputes that may arise between the following:

- (1)(A) The person;
 - (B) the person's legal guardian, if one has been appointed; or
 - (C) other individuals from the person's support network; and
 - (2)(A) The CDDO;
 - (B) an affiliated community service provider; or
 - (C) any other component of the community services system.
- (b) These procedures shall provide a means for resolving disputes that may arise between any of the following:
- (1) The CDDO and any affiliated community service provider;
 - (2) the CDDO and any entity that wishes to become an affiliated provider;
 - (3) the CDDO and any other component of the community services system;
 - (4) any affiliated community service providers; or
 - (5) any affiliated provider and any other component of the community service system.

(c) The procedures shall provide for the following:

- (1) A local dispute-resolution process providing the opportunity for resolution between the disputing parties, to be completed no later than 20 calendar days following receipt of written notice to the CDDO of a dispute;
- (2) an opportunity for the intervention into the dispute by a mediator who has no decision-

making authority and is impartial to the issues being discussed, and a mechanism by which any fees charged by the mediator can be shared equally between the parties to the mediation. A person shall not be denied mediation services solely because of an inability to pay the applicable fee. Mediation shall be completed no later than 40 calendar days following the receipt of written notice to the CDDO of a dispute referred to in paragraph (c) (1) above. Any party to the dispute may decline to enter into any process of mediation if that party chooses to proceed directly to the appeal procedures provided for in paragraph (c) (3) below. Any party to the dispute may withdraw from any mediation whenever that party believes further efforts at mediation will not likely result in resolution of the dispute; and

(3) the right of any party to the dispute to appeal to either of the following:

(A) The governing board of the CDDO, or any other body that the board may designate, if the dispute involves the CDDO as a party. The board shall have 20 days from the date of receipt of a written notice of appeal to conduct any appropriate proceedings and issue a written decision concerning the issues in dispute. If the board fails to issue a written decision by the end of this 20-day period, the appeal shall be deemed to have been decided in favor of the appellant. Each decision of the board shall be binding upon the parties unless either party further appeals to the commission as specified in paragraph (c) (3) (B); or

(B) the commission, unless the dispute involves the CDDO as a party, in which case the appeal shall first have been made to the governing board, as specified in paragraph (c) (3) (A). If the appeal is from a decision of the governing board of the CDDO, a written notice of appeal shall be delivered to the commission within 10 calendar days of the appealing party's receipt of the board's decision. If the dispute does not involve the CDDO as a party, a written notice of appeal shall be delivered to the commission within 60 calendar days following the CDDO's receipt of written notice of the dispute as specified in paragraph (c)(1) above. The authority to review the dispute and make an appropriate decision shall be reserved by the commission to assist the parties in resolving the dispute and preventing similar disputes in the future, including by requiring changes of policies, procedures, or practices of community service participants; by requiring corrective action or a peer review

process by community service participants; or by using other resolution guidelines. The decision of the division may be appealed to the office of administrative appeals within the Kansas department of administration pursuant to article 7.

(d) Nothing in this regulation shall be construed to limit the right of any person to bring any action against a CDDO, any affiliated community service provider, or any other individual or entity as may be permitted by law. (Authorized by and implementing K.S.A. 39-1804, 39-1805 and 39-1810; effective July 1, 1996; amended Oct. 1, 1998; amended Feb. 1, 2002.)

30-64-33. Fiscal management. (a) Each contracting CDDO shall expend the funds received pursuant to its contract with the secretary only in accordance with the terms of that contract and this article.

(b) A contracting CDDO shall not use funds received through this contract to supplant funds previously received from local tax levies made pursuant to K.S.A. 19-4004, and amendments thereto.

(c) A contracting CDDO shall not transfer funds received through this contract from the CDDO to any other entity, except as authorized by that contract, or as otherwise expressly authorized in advance, in writing, by the department.

(d) All funds received by a contracting CDDO shall be subject to audit and review by the department.

(e) This regulation shall take effect on and after July 1, 1996. (Authorized by and implementing K.S.A. 39-1801, et seq.; effective July 1, 1996.)

30-64-34. (Authorized by and implementing K.S.A. 39-1801, et seq.; effective July 1, 1996; revoked Feb. 1, 2002.)

**Article 65.—MENTAL RETARDATION
DEVELOPMENTAL DISABILITY
PROVIDER REVOLVING FUND**

30-65-1. Eligible providers, loans, interest, repayment. (a) Only providers of mental retardation or developmental disability (MR/DD) services otherwise recognized and approved pursuant to MR/DD programs administered by the department of SRS shall be eligible to participate in the MR/DD provider revolving fund program.

(b) Loans issued under this program shall not exceed the equivalent of the reimbursable sums which would be allowed for the particular ser-

vices provided over a period of time not to exceed four months.

(c) Interest shall not be charged to the provider on any sums loaned.

(d) Each loan shall be repaid in accordance with the terms and conditions specified in that particular loan agreement, but in no case shall the term during which repayment is to be made exceed twice the length of time upon which the loan amount was calculated. If any provider becomes in arrears or in default on the provider's repayment, then those arrearages or unpaid sums may be offset and deducted by the department from any future reimbursement or grant awards due to the provider from the department. (Authorized by and implementing L. 1993, Chapter 292, Sec. 30(b); effective, T-30-10-21-93, Oct. 21, 1993; effective Dec. 6, 1993.)

30-65-2. Loan application, approval. (a) Any eligible provider may make application for a loan under this program by submitting the designated loan application form to the department. Each application shall:

(1) Specify the individually named client who would be served with the proceeds of the loan;

(2) specify the amount of the loan sought and the services upon which it is based;

(3) include a proposed repayment schedule;

(4) be signed by an authorized official of the provider; and

(5) be accompanied by any additional information that may be required upon the application form, or that may be necessary to adequately explain the nature of the loan.

(b) Each loan application received by the department shall be reviewed and approved or denied within 14 days of receipt.

(1) Any application considered to be incomplete shall be denied, but may be resubmitted by the provider along with the additional information the department specifies as necessary to make the application complete.

(2) All loan approvals shall be subject to available resources.

(3) Nothing herein shall be construed to prevent the department and provider from agreeing to some loan amount or term different from the amount or term sought in the loan application, so long as the final loan agreement is in compliance with the provisions of these regulations.

(c) A loan application shall not be approved for any provider whose cash reserves are more

than the amount regularly necessary to cover two months' operating expenses, including any unusual debt due or expenses expected to be incurred within 90 days of the date of the loan application. (Authorized by and implementing L. 1993, Chapter 292, Sec. 30(b); effective, T-30-10-21-93, Oct. 21, 1993; effective Dec. 6, 1993.)

30-65-3. Loan agreement, proceeds availability. (a) Each loan approved by the department shall be evidenced by a loan agreement signed by the secretary and an authorized official of the provider. The agreement shall be on a form

approved by the department for such purposes and shall specify:

- (1) The loan amount;
- (2) the repayment schedule; and
- (3) other terms and conditions which may be appropriate.

(b) The proceeds of each approved loan shall be made available only on or after the date the client receiving the services that are the subject of the loan is actually placed with the provider. (Authorized by and implementing L. 1993, Chapter 292, Sec. 30(b); effective, T-30-10-21-93, Oct. 21, 1993; effective Dec. 6, 1993.)

Agency 33

Park and Resources Authority

Editor's Note:

The Park and Resources Authority was abolished on July 1, 1987. Powers, duties, functions and property were transferred to the Secretary of Wildlife and Parks. Refer to K.S.A. 74-3904. See also Kansas Department of Wildlife and Parks, Agency 23 and 115.

Articles

- 33-1. *GENERAL PROVISIONS. (Not in active use.)*
- 33-2. *MOTOR VEHICLE PERMITS. (Not in active use.)*
- 33-3. *OTHER FEES AND CHARGES. (Not in active use.)*
- 33-4. *STATE PARK SYSTEM. (Not in active use.)*

Article 1.—GENERAL PROVISIONS

33-1-1 and 33-1-2. (Authorized by K.S.A. 74-4510, 74-4517; effective Jan. 1, 1966; revoked May 1, 1980.)

33-1-3. (Authorized by K.S.A. 74-4510, effective Jan. 1, 1966; revoked May 1, 1980.)

33-1-4 and 33-1-5. (Authorized by K.S.A. 1965 Supp. 74-4510; effective Jan. 1, 1966; revoked Dec. 4, 1989.)

33-1-6. (Authorized by K.S.A. 1979 Supp. 74-4510; effective Jan. 1, 1966; amended May 1, 1980; revoked Dec. 4, 1989.)

33-1-7 and 33-1-8. (Authorized by K.S.A. 1965 Supp. 74-4510; effective Jan. 1, 1966; revoked Dec. 4, 1989.)

33-1-9. (Authorized by K.S.A. 1970 Supp. 74-4510; effective Jan. 1, 1966; amended Jan. 1, 1971; amended Oct. 17, 1988; revoked Dec. 4, 1989.)

33-1-10 and 33-1-11. (Authorized by K.S.A. 1979 Supp. 74-4510; effective Jan. 1, 1966; amended May 1, 1980; revoked Dec. 4, 1989.)

33-1-12 and 33-1-13. (Authorized by K.S.A. 74-4510; effective Jan. 1, 1966; revoked Dec. 4, 1989.)

33-1-14. (Authorized by K.S.A. 1979 Supp. 74-4510; effective Jan. 1, 1966; amended May 1, 1980; revoked Dec. 4, 1989.)

33-1-15. (Authorized by K.S.A. 74-4510; effective Jan. 1, 1966; amended, E-68-20, June 19,

1968; amended Jan. 1, 1971; amended, E-71-13, March 5, 1971; amended Jan. 1, 1972; revoked Dec. 4, 1989.)

33-1-16 and 33-1-17. (Authorized by and implementing K.S.A. 1982 Supp. 74-4510; effective Jan. 1, 1966; amended, T-83-39, Nov. 23, 1982; amended May 1, 1983; revoked Dec. 4, 1989.)

33-1-18. (Authorized by K.S.A. 1979 Supp. 74-4510; effective Jan. 1, 1966; amended May 1, 1980; revoked Jan. 30, 1995.)

33-1-19. (Authorized by K.S.A. 74-4510; effective Jan. 1, 1966; revoked Dec. 4, 1989.)

33-1-20. (Authorized by and implementing K.S.A. 1984 Supp. 74-4510; effective May 1, 1986; revoked Jan. 30, 1995.)

33-1-21. (Authorized by and implementing K.S.A. 1984 Supp. 74-4510; effective May 1, 1983; amended May 1, 1986; revoked March 19, 1990.)

Article 2.—MOTOR VEHICLE PERMITS

33-2-1. (Authorized by K.S.A. 1979 Supp. 74-4509a; effective Jan. 1, 1966; revoked May 1, 1980.)

33-2-2. (Authorized by and implementing K.S.A. 1982 Supp. 74-4509b; effective Jan. 1, 1966; amended Jan. 1, 1974; amended, E-77-35, July 1, 1976; amended Feb. 15, 1977; amended May 1, 1980; amended, T-88-39, Nov. 23, 1982; amended May 1, 1983; revoked Jan. 28, 1991.)

33-2-3. (Authorized by K.S.A. 1979 Supp. 74-4510; effective Jan. 1, 1966; amended Jan. 1, 1974; revoked May 1, 1980.)

33-2-4. (Authorized by and implementing K.S.A. 1985 Supp. 74-4509b, amended by L. 1986, Ch. 291, Sec. 1; effective, T-83-39, Nov. 23, 1982; effective May 1, 1983; amended May 1, 1984; amended May 1, 1987; revoked Jan. 22, 1990.)

Article 3.—OTHER FEES AND CHARGES

33-3-1. (Authorized by K.S.A. 1979 Supp. 74-4510; effective Jan. 1, 1966; revoked May 1, 1980.)

33-3-2. (Authorized by and implementing K.S.A. 1982 Supp. 74-4510; effective Jan. 1, 1966; amended May 1, 1983; revoked April 30, 1990.)

33-3-3. (Authorized by and implementing K.S.A. 1985 Supp. 74-4510, as amended by L. 1986, Ch. 292, Sec. 1; effective Jan. 1, 1966; amended, E-77-26, May 1, 1976; amended Feb.

15, 1977; amended May 1, 1980; amended, T-83-13, July 1, 1982; amended, T-83-39, Nov. 23, 1982; amended May 1, 1983; amended, T-87-45, Dec. 19, 1986; amended May 1, 1987; revoked Jan. 22, 1990.)

33-3-4. (Authorized by and implementing K.S.A. 1982 Supp. 74-4510; effective, T-83-39, Nov. 23, 1982; effective May 1, 1983; revoked April 30, 1990.)

Article 4.—STATE PARK SYSTEM

33-4-5. (Authorized by and implementing K.S.A. 1983 Supp. 74-4510; effective Jan. 1, 1972; amended May 1, 1980; amended May 1, 1984; revoked Dec. 4, 1989.)

33-4-7. (Authorized by K.S.A. 1970 Supp. 74-4510; effective, E-70-10, Dec. 22, 1969; effective Jan. 1, 1971; revoked Dec. 4, 1989.)

33-4-8 through 33-4-10. (Authorized by and implementing K.S.A. 1982 Supp. 74-4510; effective May 1, 1983; revoked Dec. 4, 1989.)

Agency 35

State Salvage Board

Editor's Note:

Effective August 15, 1975, the State Salvage Board was abolished and its powers and duties transferred to the Secretary of Transportation. At the secretary's request, the board's regulations were transferred to Agency 36, article 27.

Articles

- 35-1. *DEFINING AN UNZONED INDUSTRIAL AREA. (Not in active use.)*
- 35-2. *(Not in active use.)*
- 35-3. *(Not in active use.)*
- 35-4. *INJUNCTION RELIEF. (Not in active use.)*
- 35-5. *SCREENING AND ADOPTION OF TEXTBOOKS. (Not in active use.)*
- 35-6. *HEARING. (Not in active use.)*
- 35-7. *MISCELLANEOUS. (Not in active use.)*

Article 1.—DEFINING AN UNZONED INDUSTRIAL AREA

35-1-1. (Authorized by K.S.A. 68-2204, 68-22-12; effective, E-70-7, Nov. 26, 1969; effective Jan. 1, 1971; transferred Aug. 14, 1975 to K.A.R. 36-27-1.)

Article 2.—NOT IN ACTIVE USE

35-2-1. (Authorized by and implementing K.S.A. 68-2212; effective Jan. 1, 1972; transferred Aug. 14, 1975 to 36-27-2.)

35-2-2. (Authorized by and implementing K.S.A. 68-2212; effective Jan. 1, 1972; transferred Aug. 14, 1975 to 36-27-3.)

Article 3.—NOT IN ACTIVE USE

35-3-1. (Authorized by and implementing K.S.A. 68-2212; effective Jan. 1, 1972; amended Jan. 1, 1974; transferred Aug. 14, 1975 to 36-27-4.)

Article 4.—INJUNCTION RELIEF

35-4-1. (Authorized by K.S.A. 1975 Supp. 68-2212; effective Jan. 1, 1972; transferred Aug. 14, 1975 to 36-27-5.)

Article 5.—SCREENING AND ADOPTION OF TEXTBOOKS

35-5-1. (Authorized by and implementing K.S.A. 68-2212; effective Jan. 1, 1972; revoked Jan. 1, 1974.)

35-5-2. (Authorized by and implementing K.S.A. 68-2212; effective Jan. 1, 1972; transferred Aug. 14, 1975 to 36-27-6.)

35-5-3. (Authorized by and implementing K.S.A. 68-2212; effective Jan. 1, 1972; transferred Aug. 14, 1975 to 36-27-7.)

35-5-4. (Authorized by and implementing K.S.A. 68-2212; effective Jan. 1, 1972; transferred Aug. 14, 1975 to 36-27-8.)

35-5-5. (Authorized by and implementing K.S.A. 68-2212; effective Jan. 1, 1972; transferred Aug. 14, 1975 to 36-27-9.)

35-5-6. (Authorized by and implementing K.S.A. 68-2212; effective Jan. 1, 1972; transferred Aug. 14, 1975 to 36-27-10.)

Article 6.—HEARING

35-6-1. (Authorized by and implementing K.S.A. 68-2212; effective Jan. 1, 1972; transferred Aug. 14, 1975 to 36-27-11.)

Article 7.—MISCELLANEOUS

35-7-1. (Authorized by and implementing K.S.A. 68-2212; effective Jan. 1, 1972; transferred Aug. 14, 1975 to 36-27-12.)

35-7-2. (Authorized by and implementing K.S.A. 68-2212; effective Jan. 1, 1972; transferred Aug. 14, 1975 to 36-27-13.)

Agency 36

Kansas Department of Transportation

Editor's Note:

This agency was formerly entitled "Highway Commission." The Highway Commission was reorganized as the Department of Transportation in 1975, see L. 1975, Ch. 426, § 4.

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- 36-2. VEHICLES CARRYING EMERGENCY EQUIPMENT.
- 36-3. HIGHWAY ENTRANCE PERMITS.
- 36-4. SADDLEMOUNTS AND TRANSPORTATION OF EMPTY TRUCKS.
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- 36-39. RAIL SERVICE ASSISTANCE PROGRAM.
- 36-40. TRANSPORTATION REVOLVING FUND.
- 36-41. PUBLIC SAFETY COMMUNICATION SYSTEM AND REVOLVING FUND.
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AND ESCORT VEHICLE OPERATORS.

**Article 1.—SPECIAL PERMITS,
LOADS AND VEHICLES**

36-1-1. (Authorized by K.S.A. 68-404; implementing K.S.A. 1989 Supp. 8-1908, 8-1909, K.S.A. 1989 Supp. 8-1904, as amended by L. 1990, Ch. 50, Sec. 3, and K.S.A. 1989 Supp. 8-1911, as amended by L. 1990, Ch. 50, Sec. 4; effective Jan. 1, 1966; amended, E-70-14, Jan. 19, 1970; amended, E-70-23, April 29, 1970; amended Jan. 1, 1971; amended, E-71-32, Aug. 1, 1971; amended Jan. 1, 1972; amended May 1, 1979; amended May 1, 1983; amended March 4, 1991; revoked Aug. 15, 1997.)

36-1-1a. (Authorized by K.S.A. 1982 Supp. 68-404; implementing K.S.A. 8-1902, 8-1911; effective May 1, 1983; revoked Aug. 15, 1997.)

36-1-2. (Authorized by K.S.A. 1982 Supp. 68-404; implementing K.S.A. 8-1911; effective Jan. 1, 1966; amended May 1, 1979; amended May 1, 1983; revoked Aug. 15, 1997.)

36-1-3. (Authorized by K.S.A. 1982 Supp. 68-404; implementing K.S.A. 8-1911; effective Jan. 1, 1966; amended May 1, 1979; amended May 1, 1983; revoked Aug. 15, 1997.)

36-1-4 to 36-1-6. (Authorized by K.S.A. 8-1911; effective Jan. 1, 1966; revoked May 1, 1979.)

36-1-7. (Authorized by K.S.A. 8-1911; effective Jan. 1, 1966; amended May 1, 1979; revoked May 1, 1983.)

36-1-8. (Authorized by K.S.A. 1982 Supp. 68-404; implementing K.S.A. 8-1911; effective Jan. 1, 1966; amended Jan. 1, 1973; amended May 1, 1979; amended May 1, 1983; revoked Aug. 15, 1997.)

36-1-9. (Authorized by K.S.A. 1982 Supp. 68-404; implementing K.S.A. 8-1911; effective Jan. 1, 1966; amended, E-70-14, Jan. 19, 1970; amended Jan. 1, 1971; modified, L. 1979, ch. 347, May 1, 1979; amended May 1, 1983; revoked Aug. 15, 1997.)

36-1-10. (Authorized by K.S.A. 1982 Supp. 68-404; implementing K.S.A. 8-1911; effective

Jan. 1, 1966; amended May 1, 1979; amended May 1, 1983; revoked Aug. 15, 1997.)

36-1-11. (Authorized by K.S.A. 8-1911; effective Jan. 1, 1966; revoked May 1, 1979.)

36-1-12. (Authorized by K.S.A. 75-5004; effective Jan. 1, 1966; amended, E-70-14, Jan. 19, 1970; amended, E-70-19, March 18, 1970; amended Jan. 1, 1971; amended May 1, 1976; revoked May 1, 1979.)

36-1-13. (Authorized by K.S.A. 74-2004; effective Jan. 1, 1966; amended, E-68-2, Dec. 4, 1967; amended, E-68-11, March 19, 1968; amended Jan. 1, 1969; amended, E-70-14, Jan. 19, 1970; amended, E-70-19, March 18, 1970; amended Jan. 1, 1971; amended May 1, 1976; revoked May 1, 1979.)

36-1-14 to 36-1-17. (Authorized by K.S.A. 8-5,122; effective Jan. 1, 1966; revoked May 1, 1979.)

36-1-18. (Authorized by K.S.A. 74-2004; effective, E-70-8, Dec. 4, 1969; effective Jan. 1, 1971; amended May 1, 1976; revoked May 1, 1979.)

36-1-19. (Authorized by K.S.A. 8-129, 8-191, 74-2011, and K.S.A. 1970 Supp. 8-143i; effective, E-70-14, Jan. 19, 1970; effective Jan. 1, 1971; transferred May 1, 1979 to K.A.R. 92-51-19.)

36-1-20. (Authorized by K.S.A. 1970 Supp. 8-5,144, 8-5,122; effective Jan. 1, 1971; revoked May 1, 1979.)

36-1-21. (Authorized by K.S.A. 68-404(k), 74-2004, 77-415 and K.S.A. 1974 Supp. 8-1911(c); effective, E-72-18, July 6, 1972; effective, E-74-15, Jan. 9, 1974; effective May 1, 1975; revoked May 1, 1979.)

36-1-22. (Authorized by K.S.A. 1978 Supp. 66-1326; effective May 1, 1979; revoked May 1, 1983.)

36-1-23. (Authorized by K.S.A. 8-1911; modified, L. 1979, ch. 347, May 1, 1979; revoked May 1, 1983.)

36-1-24 and 36-1-25. (Authorized by K.S.A. 8-1911; effective May 1, 1979; revoked May 1, 1983.)

36-1-26. (Authorized by K.S.A. 1982 Supp. 68-404; implementing K.S.A. 8-1911; modified, L. 1979, ch. 347, May 1, 1979; modified, L. 1983, ch. 352, May 1, 1983; revoked Aug. 15, 1997.)

36-1-27. (Authorized by K.S.A. 1982 Supp. 68-404; implementing K.S.A. 8-1911; effective May 1, 1979; amended May 1, 1983; revoked Aug. 15, 1997.)

36-1-28. Special vehicle combinations.

(a) Notwithstanding any other regulation, special vehicle combination permits may be issued for a combination of vehicles which exceeds the size and length restriction requirements in K.S.A. 8-1904 and amendments thereto.

(b) A "special vehicle combination" for the purposes of these regulations means a truck-tractor semitrailer-trailer-trailer combination of vehicles. A trailer may consist of a converter dolly and a semitrailer. No converter dolly shall be pulled behind the third trailer. A "special vehicle combination" shall hereby be referred to as "SVC" and the Kansas department of transportation shall hereby be referred to as "KDOT."

(c) Any applicant/owner who applies for an annual SVC permit shall furnish the following before the permit may be issued:

(1) a description of the applicant/owner's training and supervisory programs for drivers;

(2) a description of the applicant/owner's shop facilities and maintenance programs for equipment;

(3) a description of the applicant/owner's compliance with driver qualification standards;

(4) a description of the applicant/owner's safety program;

(5) a list of vehicles for which permits are being applied for including model and vehicle identification numbers;

(6) a list showing the names of drivers to be certified; and

(7) the necessary maps showing all route information to and from the applicant/owner's terminal.

(d) Annual certification shall be required for every SVC. All requests for certification or recertification shall be submitted:

(1) in writing to KDOT, special permit section;

(2) at least one month prior to the expiration of the current permit.

(e) Once certification is approved, the applicant/owner may apply for an annual SVC permit. The application shall include all applicable fees.

(f) Upon approval of the application and payment of associated fees, KDOT will issue annual SVC permits showing the model and vehicle identification numbers (VIN) of the vehicles being certified and provide the applicant/owner with driver certification cards both of which shall be carried in the SVC whenever it is operating. Permits and VIN information shall be displayed to any law enforcement officer, Kansas highway patrol officer or employee of KDOT upon request.

(g) In addition to the annual SVC permit, the applicant/owner must obtain all other necessary permits for travel in Kansas.

(h) SVC permits shall be \$2000.00 per year for each qualified applicant/owner company plus \$50.00 per year for each special vehicle combination power unit operating under such annual SVC permit. Lost or destroyed SVC permits may be reissued upon request to KDOT.

(i) Access routes to terminals will be designated on each annual SVC permit. Such terminal shall be within five miles of the interstate. The applicant/owner shall ensure that the SVC can safely maneuver through any construction work zones or detours. Any deviation from this route must be authorized by a representative of the special permit section of KDOT.

(j) SVC travel may be prohibited or restricted to specific routes, hours of operation, specific days, or seasonal periods, when adverse conditions, traffic, weather or safety considerations make such travel unsafe or inadvisable. A SVC shall not be dispatched during adverse weather conditions, such as high winds, snow, ice, sleet, hail, fog, mist, rain, dust, smog, or smoke. If adverse weather or road conditions are encountered during operation, the driver of the SVC shall:

(1) proceed to the next available exit and wait for conditions to improve; or

(2) proceed to the next available exit and detach a trailer.

(k) No movement of a SVC is allowed on holidays or holiday weekends.

(l) Every applicant/owner approved to operate an SVC shall provide the KDOT special permit section all information relating to accidents, operational costs, safety inspections, equipment, maintenance, Motor Carrier Safety Assistance Program (MCSAP) out-of-service reports or other pertinent operational information.

(m) Notwithstanding other state and federal requirements for reporting motor vehicle accidents, a copy of any accident report involving the SVC being operated under an annual SVC permit shall be delivered or mailed to KDOT, special permit section, within 10 days of the accident. If the accident involves a death, within 24 hours the carrier must provide the information specified in section 394.7(b) of the federal motor carrier safety regulations manual, as in effect April 1, 1990 and adopted herein by reference, to KDOT, special permit section. (Authorized by K.S.A. 68-404; implementing K.S.A. 1989 Supp. 8-1911, as amended by L. 1990, Ch. 50, Sections 2, 4; effective March 4, 1991.)

36-1-29. Violations. (a) The Kansas highway patrol and any local law enforcement agency (enforcement agency) have the authority to enforce the provisions of these SVC regulations.

(b) In the event any SVC does not comply with the restrictions as specified in K.S.A. 1989 Supp. 8-1908, the enforcement agency has the discretionary authority to request the driver to shift or remove any portion of the load or to adjust the configuration in order to bring the SVC into compliance.

(c) The enforcement agency may require the detaching of a trailer if the SVC or driver is in violation of these rules and regulations. If one of the trailers is to be detached:

(1) the SVC shall be driven to an appropriate location as determined by the enforcement agency;

(2) provisions by the applicant/owner of the SVC shall be made to have another truck-tractor sent to retrieve the detached trailer; and

(3) all related expenses and labor costs shall be the responsibility of the applicant/owner.

(d) The responsibility for strict compliance with the requirements shown in this section and the payment of fines shall be the responsibility of the applicant/owner of the SVC.

(e) Noncompliance with these rules and regulations can result in the suspension or the cancellation of the annual SVC permit.

(f) In accordance with the hearing procedures found in K.A.R. 36-1-30, an annual SVC permit may be suspended, cancelled or withheld for any violation of these regulations until such violation is rectified. Repeated or serious violations may result in suspension or cancellation of the applicant/owner's SVC certification. (Authorized by K.S.A. 68-404; implementing K.S.A. 1989 Supp. 8-1911,

as amended by L. 1990, Ch. 50, Sections 2, 4; effective March 4, 1991.)

36-1-30. Cancellation of permit, hearing. (a) Whenever the secretary cancels an annual SVC permit, the applicant/owner shall be notified by certified mail, return receipt requested, at the address on the application, of the following:

(1) the right to a hearing;

(2) the right to be represented by counsel of the applicant's own choosing at the hearing;

(3) that a written request for a hearing must be filed with the secretary within 15 days of the date of mailing of the order of cancellation to the applicant/owner; and

(4) that the timely filing of the request shall suspend the operation of the order of cancellation pending a hearing.

(b) After receipt by KDOT of a request for a hearing, the applicant/owner of the SVC and any person who has made a complaint as to the operation of the SVC shall be given not less than 10 days written notice by the secretary of the time and place of hearing by registered or certified mail, return receipt requested, provided an address is available. If available, the letter will be addressed to the persons at their last known address, as shown by the files of the secretary.

(c) The owner of the SVC and other interested parties may appear at the hearing in person or by counsel and present their reasons for and against cancellation of the permit. Corporations may be represented by an officer or other agent or by an attorney duly authorized to practice law in Kansas.

(d) At the conclusion of the hearing, the order cancelling the annual SVC permit shall be affirmed, vacated or taken under advisement and a final ruling will be issued within 10 days.

(1) If the order is vacated, the permit shall be reinstated and the SVC allowed to operate.

(2) If the order is affirmed, the applicant/owner may not apply for a new annual SVC permit for a period of one year from the date of the final ruling.

(e) If a hearing is not requested, the applicant/owner may not apply for a new annual SVC permit for a period of one year from the date of the original order of cancellation. (Authorized by K.S.A. 68-404; implementing K.S.A. 1989 Supp. 8-1911, as amended by L. 1990, Ch. 50, Sections 2, 4; effective March 4, 1991.)

36-1-31. Equipment. (a) All equipment on the SVC must conform with these regulations and

those of the federal motor carrier safety regulations, 49 C.F.R. 390-399, as in effect on April 1, 1990 and adopted herein by reference. All equipment operated under the annual SVC permit is subject to periodic field inspection to ensure continued compliance with all equipment requirements.

(b) Power. All truck-tractors shall be powered to provide adequate acceleration ability and hill climbing ability under normal operating conditions, and to operate on level grades at speeds compatible with other traffic. The ability to maintain a minimum speed of 40 miles per hour under normal operating conditions on any grade and to be able to resume a speed of 40 miles per hour upon any grade on which the SVC is stopped is required.

(c) Tires. All tires shall be of the same size and construction (radial or non-radial). Tires must be properly inflated for the load being carried. Each axle must have two tires at each end of the axle, except for the steering axle.

(d) Fifth wheels. Every fifth wheel shall be:

- (1) clean and lubricated with a light-duty grease;
- (2) located in a position which provides adequate stability.

(e) King pins. Every king pin shall be solid-type and permanently fastened to the semitrailer. Screw-out or folding king pins are prohibited.

(f) Pick-up plates. Pick-up plates shall be of equal strength to the fifth wheel.

(g) Hitch connections. All hitch connections shall be no-slack air-actuated ram-type and isolated from the primary air transmission system.

(h) Pressure controlling devices. All pressure controlling devices shall be located outside the cab of the tractor and not accessible to the driver while in the cab.

(i) Drawbars. The drawbar length shall be the practical minimum consistent with clearances required between trailers for turning and backing maneuvers.

(j) Axles. All axles permanently attached to the trailer and/or semitrailer shall be designed for the width of the trailer. Drop or lift axles shall not be permitted. An SVC shall have a minimum of six and a maximum of nine axles.

(1) The total weight on any single axle shall not exceed 20,000 pounds. The total weight on any tandem axle shall not exceed 34,000 pounds. Only single and tandem groupings shall be permitted. The total gross weight of the SVC shall not exceed 110,000 pounds.

(2) The total weight on any group of two or more consecutive axles shall not exceed the bridge

formula as set out in 23 U.S.C. 127 as in effect on December 22, 1987 and adopted herein by reference. Compliance with height and length restriction requirements is required.

(k) Brakes. Fast air transmission and release valves shall be provided on all semitrailer and trailer axles. Brakes shall be installed to apply consecutively beginning with the rear axle and proceeding to the front axle. The use of engine-retarder brakes shall be prohibited.

(l) Antispray devices. Antispray mud flaps shall be attached to the rear of each axle except the steering axle. Mud flaps shall have a surface designed to absorb and deflect excess moisture to the road surface.

(m) Trailers/semitrailers. All trailers/semitrailers shall conform as follows:

(1) The heaviest trailer or semitrailer shall be placed in front and the lightest at the rear;

(2) The length of a semitrailer or trailer in a SVC shall not exceed 28½ feet in length; and

(3) A semitrailer used with a converter dolly shall be considered to be a trailer.

(n) Convex mirrors. In addition to the standard mirrors, each SVC shall be equipped with convex mirrors (minimum 6 inches in diameter) on the left and right sides of the truck-tractor. Such mirrors shall be visible by the driver while operating the SVC. (Authorized by K.S.A. 68-404; implementing K.S.A. 1989 Supp. 8-1911, as amended by L. 1990, Ch. 50, Sections 2, 4; effective March 4, 1991.)

36-1-32. Operational procedure. (a) Following distance. A minimum distance of 100 feet for every 10 miles per hour of speed shall be maintained between an SVC and other vehicles except when overtaking and passing.

(b) Lane of travel. An SVC must remain in the right hand lane except when passing another vehicle traveling in the same direction or when emergency conditions exist.

(c) Disabled SVC. If an SVC is disabled for any reason other than an accident, it should be parked as far off the traveled way as possible. The KHP shall be notified as soon as possible, and the SVC shall be removed from the roadway. All expenses and labor costs shall be assumed by the applicant/owner.

(d) Cargo.

(1) All cargo shall be loaded to restrict any movement or shifting of the contents during routine delivery, sudden braking and other emergency maneuvers.

(2) Transportation of the following specified hazardous material types and quantities are prohibited:

(A) Any quantity of a material within the hazard classes specified in 49 C.F.R. 172.504, Table 1 as in effect on December 31, 1990 and as defined in 49 C.F.R. 173 as in effect on December 31, 1990 both of which are adopted herein by reference.

(B) Any material within the hazard classes specified in 49 C.F.R. 172.504, Table 2 as in effect December 31, 1990 and adopted herein by reference, that:

(i) exceeds 55 gallons per package;

(ii) is transported in bulk quantities in excess of a 3500 water gallon capacity.

(C) Is classified as a "Poison-Inhalation Hazard" as defined in 49 C.F.R. 173.3a(b)(2) as in effect on December 31, 1990 and adopted herein by reference.

(e) Stability. Any SVC shall be stable at all times during normal braking and normal operation. When travelling on a level, smooth, paved surface, any SVC shall follow the towing vehicle without shifting or swerving beyond the restraints of the lane of travel.

(f) Bridges. No SVC shall cross any structure if the SVC is over the posted limit. (Authorized by K.S.A. 68-404; implementing K.S.A. 1989 Supp. 8-1911, as amended by L. 1990, Ch. 50, Sections 2, 4; effective March 4, 1991.)

36-1-33. Insurance. Every SVC operated under an annual SVC permit shall be covered by insurance of not less than \$500,000.00 general liability and \$50,000.00 property damage. (Authorized by K.S.A. 68-404; K.S.A. 40-31-01 *et seq.*; implementing K.S.A. 1989 Supp. 8-1911, as amended by L. 1990, Ch. 50, Sections 2, 4; effective March 4, 1991.)

36-1-34. Driver qualification standards.

(a) Each SVC driver shall:

(1) possess a class A chauffeur's or commercial driver's license (CDL) with all appropriate endorsements.

(2) have a minimum of two years combined experience driving a truck-tractor-semitrailer combination;

(3) have at least one year of experience in driving multiple trailer combinations; and

(4) have completed:

(A) a supervised SVC driver training program; and

(B) a road test provided by the employer company.

(b) No more than one year may have elapsed between a driver's certification to these standards and the last time the driver was employed to operate truck-tractor-semitrailer combinations. (Authorized by K.S.A. 68-404; implementing K.S.A. 1989 Supp. 8-1911, as amended by L. 1990, Ch. 50, Sections 2, 4; effective March 4, 1991.)

36-1-35. Definitions. (a) "Carrier" means the person, firm, or company who has been authorized by the Kansas department of transportation to move oversize or overweight loads.

(b) "Convoy" means similar permitted loads traveling together on the same section of highway.

(c) "Critical location" means a section of highway on which, because of limited maneuverability, the driver must reduce the speed of the transporting vehicle to a speed significantly less than that of the prevailing traffic.

(d) "Custom-harvesting operation" means a person, firm, partnership, association, or corporation engaged in custom-harvesting operations, if a truck or truck tractor is used to perform the following:

(1) transport farm machinery, supplies or both, to or from a farm, for custom-harvesting operations on a farm;

(2) transport custom-harvested crops only from a harvested field to initial storage or to initial market locations; or

(3) transport agricultural products produced by that owner or commodities purchased by that owner for use on the farm owned or rented by the owner of that vehicle.

(e) "Daylight hours" means that span of time between one-half hour before sunrise and one-half hour after sunset.

(f) "Department" means the Kansas department of transportation.

(g) "Escort warning sign" means a yellow sign with black lettering and with a minimum dimension of five feet long and 12 inches high. The letters "oversize load" shall be visible on the face of the sign. The letters shall be eight inches in height, with a brush stroke of not less than 1¹/₈ inches.

(h) "Large structure" means any load that exceeds either sixteen feet, six inches in width or 18 feet in height.

(i) "Nondivisible" means any load or vehicle exceeding the applicable dimensions or weight limitations that, if separated into smaller loads or vehicles, would result in having any of the following effects:

- (1) compromise the intended use of the vehicle;
- (2) destroy the value of the load or vehicle; or
- (3) require more than eight work hours to dismantle, using appropriate equipment.

The applicant for a nondivisible load permit has the burden of proof as to the number of work hours required to dismantle the load.

(j) "Oversize or overweight load" or "load" means a vehicle or load exceeding the maximum sizes and weights defined in K.S.A. 8-1902, 8-1904 and 8-1909.

(k) "Oversize warning sign" means a yellow sign, with black letters and having minimum dimensions of seven feet long and 18 inches high. The letters "oversize load" shall be visible on the face of the sign and shall be a minimum of 10 inches high, with a brush stroke of not less than 1 $\frac{2}{5}$ inches.

(l) "Permit" means a document issued by the secretary or secretary's designee and permitting the grantee to move a vehicle or load that is oversize, overweight, or both, over the highways that are under the jurisdiction of the secretary.

(m) "Secretary" means the Kansas secretary of transportation or the secretary's designee.

(n) "Special mobile equipment," for purposes of these regulations, in K.S.A. 8-1467 shall include special purpose machinery either self-propelled or towed as a trailer or semitrailer, or oil field rigging truck-tractor semitrailer combination, for which the useful revenue-producing service is performed at its destination.

(o) "Superload" means either of the following:

- (1) a vehicle transporting a nondivisible load that is in excess of 150,000 pounds gross weight; or
- (2) a vehicle transporting a nondivisible load in which any group or groups of axles exceed the limitations of these regulations. (Authorized by and implementing K.S.A. 1996 Supp. 8-1911; effective Aug. 15, 1997.)

36-1-36. Common requirements. Each applicant moving an oversize or overweight load that is nondivisible may be issued a permit by the secretary to travel on highways under the jurisdiction of the secretary. If the secretary determines that a person has been granted a permit and has not complied with any provision of these regulations, the permit may be canceled, or the issuance of future permits to the applicant may be denied by the secretary, in accordance with the Kansas administrative procedures act.

(a) Application information. The application for any permit shall be filed only by the individual or

company that is doing the actual transporting or by an authorized permit service. Individuals and companies shown on the face of a permit shall be the only parties authorized to use that permit. Transferring permits to parties other than those to whom the permits were issued shall not be permitted. Permits shall be required in order for the individual or company to cross any portion of the state highway system.

(b) Bridge restrictions. Oversize loads shall not obstruct or impede traffic on any bridge for longer than five minutes.

(c) Carrier responsibility. Any applicant who accepts a permit issued by the secretary shall be deemed to have agreed to the following conditions:

(1) to be knowledgeable of the laws contained in K.S.A. 1996 Supp. 8-1911, as amended, and these regulations;

(2) to hold the secretary harmless, and to indemnify the secretary as immune from all suits, claims or damages arising from the movement of vehicles; and

(3) to pay the secretary for damages to state property caused by the permitted vehicle.

(d) Convoy information. Vehicles and loads traveling in convoy shall not have more than 1,000 feet between each transporting vehicle. A maximum of two permitted loads may travel in a convoy.

(e) Enforcement. Each holder of a permit shall make the permit or an authorized permit number readily available upon request to any law enforcement official or employee of the department.

(f) Escort information. When escorting loads or convoys more than 14 feet wide, the following conditions shall apply.

(1) On highways of fewer than four lanes, front and rear escorts shall be required. Except for superloads and large structures, the rear escort may be eliminated if a warning light is attached to the top of the towing vehicle and to the rear of each load and is mounted no less than two feet or more than eight feet above the surface of the road.

(2) On highways consisting of four lanes or more, a rear escort shall be required for superloads and large structures. All other types of loads shall not require escorting.

(3) When moving an oversize or overweight load, the driver of each escort vehicle and the person driving the permitted vehicle shall have the ability to communicate verbally with each other, using two-way equipment.

(4) Unless conditions dictate a different following distance, escorting vehicles shall travel at a

distance not to exceed 300 feet in front or 300 feet to the rear of the load.

(g) Flagging. Movers of oversize loads shall attach warning flags to each side of the widest part of all overwidth loads and to the rear of all overlength loads.

(h) Implement dealers or manufacturer provisions. Implement dealers and manufacturers transporting farm machinery or farm machinery used in farming operations shall not be required to possess a permit if traveling within 100 miles of the implement dealer's or manufacturer's place of business. The mileage limitation shall apply only to Kansas miles. This exception shall not apply to interstate highways.

(i) Insurance information. The following insurance requirements apply to movers of oversize or overweight loads.

(1) Vehicles and loads traveling under the authority of any permit authorized by the secretary shall have in effect all motor vehicle liability insurance coverage as required by federal, state, and local law for the type of vehicle for which the permit is sought.

(2) All insurance requirements shall be in force as of the date when the permit is requested and shall be maintained for the duration of the permit.

(3) As a minimum prerequisite to obtaining any permit, the applicant shall obtain general liability insurance in the amount of \$500,000 and auto liability insurance in the amount of \$500,000 to cover bodily injury that occurs to any person and property damage liability that occurs to any structure or roadway on which the permitted vehicle and load travel. The insuring company shall be duly authorized to conduct business in Kansas.

(4) Except for vehicles registered by the Kansas corporation commission (KCC), each permittee shall keep proof of insurance in the permitted vehicle at all times and shall present this proof to any employee of the department or law enforcement personnel upon request. At a minimum, proof of insurance shall include the date the insurance was purchased, the amount of the insurance, the expiration date of the insurance, the name of the insuring company, and the signature of the person authorized to issue the insurance.

(j) Loading restrictions. These loading restrictions shall apply to all oversize or overweight loads.

(1) When any permit is granted, it shall be for the maximum dimension and weight of the component being transported. Identical components

may be transported, provided that no additional dimension is exceeded.

(2) Multiple-item loads shall not exceed legal axle or gross weights as stated in K.S.A. 8-1908 and K.S.A. 8-1909.

(3) Except as provided in K.A.R. 36-1-28 through 36-1-34, articles transported beside each other shall not be permitted if more than one article makes the load overwidth or overlength.

(4) Every article or unit shall be loaded with the smallest dimension as its width.

(5) Vehicles shall be loaded in a manner that does not exceed the manufacturer's recommended weight-carrying capacity rating of any axle, trailer, or other equipment when transporting oversize or overweight loads under an authorized oversize or overweight permit.

(k) Manufactured homes. Movement of manufactured homes or modular sections of buildings shall be halted when the ground wind exceeds a sustained velocity of 30 miles per hour, as measured and reported by the nearest weather reporting facility.

(l) Size limitations. These general size limitations apply to all oversize or overweight loads.

(1) Overheight permits shall allow a height that is limited only by the constraints existing on the route to be traveled.

(2) Carriers of loads more than 17 feet high shall notify all appropriate utilities before moving the load.

(3) Carriers of overweight loads shall abide by all restrictions on posted bridges and shall not enter the structure if the weight of any group of axles or the gross vehicle weight exceeds the posted limit.

(4) Carriers transporting structural items including poles, pipe, bridge girders, or double derricks used in oil or gas drilling operations not to exceed 140 feet in length may be issued permits.

(m) Time restrictions. The following restrictions shall apply to all types of permits.

(1) Night movements shall be allowed for loads that are only overweight.

(2) Permits for overdimensional loads shall be restricted to daylight movement unless the secretary finds that an emergency exists, in which case a permit for nighttime movement may be issued for the special condition, as the secretary deems advisable. Special conditions shall be noted on the permit.

(3) Carriers transporting oversize or overweight loads may move every day of the year, including holidays.

(n) Transporting requirements. The following transporting requirements shall apply to oversize or overweight loads.

(1) Loads in excess of one-half of the width of the traveled portion of the highway shall be transported in a manner so that no part of the load extends across the centerline of the road, except when necessary to avoid a collision with objects located near the edge of the road.

(2) Farm tractors shall not be used to tow oversize or overweight loads, except in rare circumstances where the secretary or an appointed designee finds that an emergency exists, in which case, a permit for the emergency move may be issued to the customer. Special conditions shall be noted on the permit.

(3) All permitted loads shall be secured according to provisions established by the federal motor carrier safety regulations, part 393, "parts and accessories necessary for safe operation," subpart I, section 393.100 through 393.106, including all charts, figures and appendices regarding these sections, as in effect on August 1996, which are adopted by reference.

(4) Transporting vehicles operating under the authorization of a permit shall follow no closer than 300 hundred feet behind another vehicle, except when attempting to overtake and pass another vehicle.

(5) Except for incidental movements, all oversize or overweight construction machinery or equipment shall be transported on a truck-tractor trailer, truck-tractor semitrailer, or truck combination. Incidental driving of construction machinery on state highways shall be allowed, provided that the section of highway to be used is adjacent to or entirely within the project limits or the distance traveled is less than or equal to one mile and no bridge structures are being crossed.

(6) Derricks used in oil or gas drilling that, when erected, stand more than two connected joints of rotary tubular pipe shall be dismantled before being transported on state highways.

(o) Validity. All movements of oversize or overweight loads are subject to the requirements set forth on the permit. Once a permit has been approved, it shall not be altered.

(p) Visibility. Oversize or overweight loads shall not be transported when visibility is less than one-half mile, or when conditions of moderate to heavy rain, sleet, snow, fog, or smoke exist, or when highway surfaces are slippery due to ice, packed snow, or rain.

(q) Warning flags. Each warning flag shall be a piece of red or orange material that is not less than 12 inches square and is clean and free of lettering.

(r) Warning lights. Warning lights shall be installed on the top of each escort vehicle. Each warning light shall be in good operating condition, emit a rotating or flashing amber light, be mounted on top of the towing vehicle, and be readily visible at a distance of not less than 1,000 feet.

(s) Warning signs. A warning sign shall be used by movers of oversize or overweight loads in the following manner and circumstances.

(1) Each vehicle transporting oversize manufactured houses or modular sections of buildings shall have an oversize warning sign attached to the rear of the manufactured home or modular section being transported.

(2) Oversize and overweight loads shall have attached to the front of the transporting vehicle and to the rear of the load an oversize warning sign.

(3) Warning signs shall be readily visible from a distance of 500 feet from one-half hour before sunrise to one-half hour after sunset and shall be removed from the vehicle when the load being transported does not exceed legal dimensions.

(4) An escort warning sign or oversize warning sign shall be attached to the front or to the top of each vehicle preceding the load being transported, and a similar sign shall be attached to the top or to the rear of the vehicle trailing the load being transported. (Authorized by and implementing K.S.A. 1996 Supp. 8-1911; effective Aug. 15, 1997.)

36-1-37. Maximum dimensions and gross weights. (a) The following maximum dimensions and weights shall apply to annual permits.

(1) Dimensions:

Width	16 feet 6 inches
Length	126 feet
Height	15 feet

(2) Axle weights:

Single, non-drive axle	22,000 pounds
Single, drive axle	24,000 pounds
Tandem	45,000 pounds
Triple	60,000 pounds
Quad or more	65,000 pounds

(3) Weight:

Gross weight	120,000 pounds
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(b) The following maximum dimensions and axle weights shall apply to standard permits.

(1) Dimensions:		External Spacing (feet)	Maximum Gross Wt.
Width	16 feet 6 inches	24	81,200
Length	126 feet	25	82,600
Height	18 feet	26	84,000
		27	85,400
(2) Axle weights:		28	86,800
Single, non-drive axle	22,000 pounds	29	88,200
Single, drive axle	24,000 pounds	30	89,600
Tandem	45,000 pounds	31	91,000
Triple	60,000 pounds	32	92,400
Quad or more	65,000 pounds	33	93,800
		34	95,200
(3) Weight:		35	96,600
Gross weight	150,000 pounds	36	98,000
		37	99,400
(4) Maximum weights for extra-wide axle groups both standard and annual permits:		38	100,800
		39	102,200
		40	103,600
		41	105,000
		42	106,400
		43	107,800
		44	109,200
		45	110,600
		46	112,000
		47	113,400
		48	114,800
		49	116,200
		50	117,600
		51	119,000
		52	120,400
		53	121,800
		54	123,200
		55	124,600
		56	126,000
		57	126,700
		58	127,400
		59	128,100
		60	128,800
		61	129,500
		62	130,200
		63	130,900
		64	131,600
		65	132,600
		66	133,000
		67	133,700
		68	134,400
		69	135,100
		70	135,800
		71	136,500

Width (Feet)	Single Single				
	N-drive	Drive	Tandem	Tridem	Quad
Less than (LT) 8'-07"	22,000	24,000	45,000	60,000	65,000
8'-07" LT 9'-00"	22,500	24,500	46,000	61,500	67,000
9'-00" LT 9'-06"	23,000	25,000	47,000	63,000	69,000
9'-06" LT 10'-00"	23,500	25,500	48,000	64,500	71,000
10'-00" and greater	24,000	26,000	49,000	66,000	73,000

(5) Maximum gross weight spacing table. The external spacing shall be determined by measuring the distance between the center of the steering axle and the center of the last axle of the combination. This chart shall apply to both standard and annual permits.

External Spacing (feet)	Maximum Gross Wt.
8	58,800
9	60,200
10	61,600
11	63,000
12	64,400
13	65,800
14	67,200
15	68,600
16	70,000
17	71,400
18	72,800
19	74,200
20	75,600
21	77,000
22	78,400
23	79,800

External Spacing (feet)	Maximum Gross Wt.
72	137,200
73	137,900
74	138,600
75	139,300
76	140,000
77	140,700
78	141,400
79	142,100
80	142,800
81	143,500
82	144,200
83	144,900
84	145,600
85	146,300
86	147,000
87	147,700
88	148,400
89	149,100
90	149,800
91 or more	150,000

(c) The following maximum dimensions and axle weights shall apply to the movement of special mobile equipment.

(1) Dimensions:

Width	16 feet 6 inches
Length	126 feet
Height	18 feet

(2) Axle weights:

Single, non-drive axle	22,000 pounds
Single, drive axle	24,000 pounds
Tandem	49,000 pounds
Triple	60,000 pounds
Quad or more	65,000 pounds

(3) Weight:

Gross weight	150,000 pounds
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(4) Maximum weights for extra-wide axle groups on special mobile equipment:

Width (Feet)	Single				
	N-drive	Single Drive	Tandem	Tridem	Quad
Less than (LT) 8'-07"	22,000	24,000	49,000	60,000	65,000
8'-07" LT 9'-00"	22,500	24,500	50,000	61,500	67,000
9'-00" LT 9'-06"	23,000	25,000	51,000	63,000	69,000
9'-06" LT 10'-00"	23,500	25,500	52,000	64,500	71,000
10'-00" and greater	24,000	26,000	53,000	66,000	73,000

(5) Maximum gross weight and external spacing table for special mobile equipment. The external spacing shall be determined by measuring the distance between the center of the steering axle and the center of the last axle of the combination.

External Spacing (feet)	Maximum Gross Wt.
8	67,200
9	68,800
10	70,400
11	72,000
12	73,600
13	75,200
14	76,800
15	78,400
16	80,000
17	81,600
18	83,200
19	84,800
20	86,400
21	88,000
22	89,600
23	91,200
24	92,800
25	94,400
26	96,000
27	97,600
28	99,200
29	100,800
30	102,400
31	104,000
32	105,000
33	107,200
34	108,800
35	110,400
36	112,000
37	113,600
38	115,200
39	116,800
40	118,400
41	120,000
42	121,600
43	123,200
44	124,800
45	126,400
46	128,000
47	129,600
48	131,200

External Spacing (feet)	Maximum Gross Wt.
49	132,800
50	134,400
51	136,000
52	137,600
53	139,200
54	140,800
55	142,400
56	144,000
57	144,800
58	145,600
59	146,400
60	147,200
61	148,000
62	148,800
63	149,600
64 or more	150,000

(Authorized by K.S.A. 1996 Supp. 8-1911; implementing K.S.A. 1996 Supp. 8-1904, 8-1908, 8-1909; effective Aug. 15, 1997.)

36-1-38. Types of permits. (a) Annual permits. This permit allows for continuous movement of oversize or overweight loads, special mobile equipment, manufactured houses, or modular sections of buildings during daylight hours.

(1) The annual permit shall be assigned to a specific power unit.

(2) This permit shall be valid for a period of one year, beginning and ending as specified on the permit.

(3) The annual permit shall not be transferable to any other company or vehicle.

(4) Movers operating with an annual permit may deviate from the routes approved by the secretary only at the origin and destination of their trip. Such a deviation shall be limited to using the safest, shortest, and most direct roadways.

(b) Standard permits. This permit allows for single-trip movements in those circumstances where another permit is not appropriate.

(1) Standard permits may be issued for the movement of oversize or overweight vehicles and loads on a multiple-trip or single-trip basis if implementation of another type of permit is not appropriate.

(2) Each standard permit shall be good for a period of seven days.

(3) Standard permits shall be issued only from point of origin to final destination on routes designated by the secretary.

(4) Movers of oversize or overweight loads may make multiple trips, provided that the mover uses the same route and hauls similar loads, trips can be made within the original period of validity, and the information on the standard permit does not change.

(c) Superload permits. These permits shall allow movement of overweight loads that exceed 150,000 pounds of gross weight.

(1) Movers of superloads shall pay for all damages caused by the movement of the superload.

(2) Movers of superloads shall have a valid superload permit that includes a bridge analysis, which must be completed by the department before traveling on any highway within Kansas.

(3) Superload permits shall be issued only for single-trip movements.

(4) Before escorting superloads within Kansas, escorting companies shall obtain certification in a manner approved by the secretary.

(d) Large structure permits. This permit shall allow for movement of oversize loads that exceed the size limitations of the standard permit.

(1) Large structure permits shall be valid for a period of 30 calendar days.

(2) When alternate routes are available, movers of large structures shall reduce the use of state highways to a minimum. Movers of large structures shall contact all appropriate departmental personnel before moving.

(3) Large structure permits shall not be granted to transport loads on interstate highways, except in extreme circumstances. In such cases, prior approval shall be obtained from the secretary, and local enforcement authorities shall accompany the movement to provide traffic control. The transporting vehicle shall be the only vehicle traveling on the applicable section of the interstate.

(4) Movers of large structures shall not park any transporting vehicle on any part of the traveled portion of the highway. Vehicles having to be parked on the right-of-way shall have at least 30 feet of clearance from the traveled portion of the highway.

(5) Movers of large structures shall notify all appropriate utilities and railroads before moving any large structure.

(6) Movers of large structures shall contact all appropriate district engineers before any trees are cut or trimmed.

(7) Movers of large structures shall also make arrangements with the district engineer before removing or relocating signs, hazard markers, or other property of the department.

(8) The final decision with regard to the movement of the large structure, the time of day, date, and the routes to be used shall be approved by a departmental employee of the district in whose area the load travels or by an appointed representative.

(9) An escort vehicle shall be stationed at side road intersections during the movement of large structures in order to hold all vehicles at those intersections until the structure has been moved through the section of road being blocked.

(10) Drivers of escorting vehicles shall not allow large structures to cross a bridge or critical location until all traffic has been stopped at both sides of bridges or before and after a critical location. (Authorized by and implementing K.S.A. 1996 Supp. 8-1911; effective Aug. 15, 1997.)

Article 2.—VEHICLES CARRYING EMERGENCY EQUIPMENT

36-2-1 and 36-2-2. (Authorized by K.S.A. 8-501; effective Jan. 1, 1966; revoked Jan. 1, 1972.)

36-2-3. (Authorized by K.S.A. 1982 Supp. 68-404; implementing K.S.A. 8-1404, 8-2010; effective Jan. 1, 1972; amended May 1, 1976; amended May 1, 1981; amended May 1, 1983; revoked Sept. 15, 2000.)

36-2-4. (Authorized by K.S.A. 1982 Supp. 68-404; implementing K.S.A. 8-1404, 8-2010; effective Jan. 1, 1972; amended May 1, 1976; amended May 1, 1981; amended May 1, 1983; revoked Sept. 15, 2000.)

36-2-5. (Authorized by and implementing K.S.A. 8-1404, 8-1720(a), 8-1738(d), 8-2010, 75-5004; effective Jan. 1, 1972; amended, E-74-66, Feb. 23, 1974; amended May 1, 1975; amended May 1, 1976; amended May 1, 1981; revoked May 1, 1983.)

36-2-6. (Authorized by K.S.A. 1982 Supp. 68-404; implementing K.S.A. 8-1404, 8-2010; effective Jan. 1, 1972; amended May 1, 1976; amended May 1, 1981; amended May 1, 1983; revoked Sept. 15, 2000.)

36-2-7. (Authorized by K.S.A. 8-1404, 8-1720(a), 8-1738(d), 8-2010, 75-5004; implementing K.S.A. 8-1404, 8-1720(a), 8-1738(d), 8-2010; effective Jan. 1, 1972; amended, E-74-66, Feb. 23, 1974; amended May 1, 1975; amended May 1, 1976; amended May 1, 1981; revoked May 1, 1983.)

36-2-8. (Authorized by K.S.A. 8-1404, 8-1738(d), 8-2010, 74-2004, 77-415; effective Jan. 1, 1972; amended May 1, 1976; revoked Sept. 15, 2000.)

36-2-9. (Authorized by K.S.A. 1982 Supp. 68-404; implementing K.S.A. 8-1404, 8-2010; effective Jan. 1, 1972; amended May 1, 1976; amended May 1, 1981; amended May 1, 1983; revoked Sept. 15, 2000.)

36-2-10. (Authorized by K.S.A. 1982 Supp. 68-404; implementing K.S.A. 8-1404, 8-1502, 8-1506, 8-1720, 8-1729, 8-1738(d), 8-2010; effective Jan. 1, 1972; amended May 1, 1976; amended May 1, 1981; amended May 1, 1983; revoked Sept. 15, 2000.)

36-2-11. (Authorized by K.S.A. 1982 Supp. 68-404; implementing K.S.A. 8-1404, 8-1502, 8-1506, 8-1720, 8-1738(d), 8-2010; effective Jan. 1, 1972; amended May 1, 1976; amended May 1, 1981; amended May 1, 1983; amended May 1, 1984; revoked Sept. 15, 2000.)

36-2-12. (Authorized by K.S.A. 1982 Supp. 68-404; implementing K.S.A. 8-1404, 8-1502, 8-1506, 8-1720(a), 8-1729(d), 8-1738(d), 8-2010; effective Jan. 1, 1972; amended May 1, 1976; amended May 1, 1981; amended May 1, 1983; revoked Sept. 15, 2000.)

36-2-13. (Authorized by K.S.A. 1982 Supp. 68-404; implementing K.S.A. 8-1404, 8-1502, 8-1506, 8-1720, 8-1738(d), 8-2010; effective Jan. 1, 1972; amended May 1, 1976; amended May 1, 1981; amended May 1, 1983; revoked Sept. 15, 2000.)

36-2-14. Use of sirens. All sirens used on vehicles traveling the public highways in Kansas shall be tested and approved by the American Association of Motor Vehicle Administration (AAMVA). (Authorized by K.S.A. 1982 Supp. 68-404; implementing K.S.A. 8-1702, 8-1738; effective May 1, 1976; amended May 1, 1981; amended May 1, 1983.)

Article 3.—HIGHWAY ENTRANCE PERMITS

36-3-1 to 36-3-5. (Authorized by K.S.A. 68-413b; effective Jan. 1, 1966; revoked May 1, 1983.)

36-3-6. Driveway permits. Individuals desiring to construct or alter a driveway onto the state

highway system shall be required to obtain a permit from the Kansas department of transportation. Under no circumstances shall an individual be permitted to perform any work on the state highway right-of-way until an approved copy of a highway permit agreement is received. (Authorized by K.S.A. 1982 Supp. 68-404; implementing K.S.A. 1981 Supp. 68-406(e); effective May 1, 1983.)

Article 4.—SADDLEMOUNTS AND TRANSPORTATION OF EMPTY TRUCKS

36-4-1 to 36-4-7. (Authorized by K.S.A. 8-5,118; effective Jan. 1, 1966; revoked May 1, 1981.)

36-4-8. Saddlemounts, transportation of empty trucks. Rules and safety regulations promulgated by the U.S. department of transportation found at 49 C.F.R. part 393.71 and in effect on October 11, 1972, are hereby adopted by reference as the safety rules and regulations by the secretary. (Authorized by K.S.A. 1982 Supp. 68-404; implementing K.S.A. 8-1907; effective May 1, 1981; amended May 1, 1983.)

Article 5.—APPROVAL OF BRAKE FLUID

36-5-1 to 36-5-3. (Authorized by K.S.A. 8-1737; effective Jan. 1, 1966; amended May 1, 1976; revoked, L. 1979, ch. 261, May 1, 1979.)

36-5-4. (Authorized by K.S.A. 8-1737, 74-2004; effective Jan. 1, 1966; amended May 1, 1976; revoked, L. 1979, ch. 261, May 1, 1979.)

36-5-5. (Authorized by K.S.A. 8-1737; effective Jan. 1, 1966; amended May 1, 1976; revoked, L. 1979, ch. 261, May 1, 1979.)

Article 6.—MINIMUM STANDARDS; ANTI-FREEZE COMPOUNDS

36-6-1 and 36-6-2. (Authorized by K.S.A. 8-901, 8-903, 8-906; effective Jan. 1, 1966; amended Jan. 1, 1971; amended Jan. 1, 1973; revoked, L. 1979, ch. 260, May 1, 1979.)

36-6-3 and 36-6-4. (Authorized by K.S.A. 8-901, 8-903, 8-906; effective Jan. 1, 1973; revoked, L. 1979, ch. 260, May 1, 1979.)

Article 7.—STUD TIRES

36-7-1. Definitions. “Stud” as used herein is a pin type device prepared for installation in the

tread design of an automobile tire. It consists of a tungsten carbide core bonded to an outer casing or shell of plastic, aluminum or steel.

“Stud tire” is an automobile tire fitted with studs in the tread design in openings molded for that purpose by the tire manufacturer.

“Body of a tire” is the fabric or cord material to which the rubber tread material is bonded.

“Manufacturer” shall be the person or corporation who makes or fabricates the body of a tire.

(A) The manufacturer or retreader shall prepare precise specifications for new stud tires and newly retread tires covering the number, pattern of installation, type of stud to be used and number of studs to be used in each type of tire for which approval is applied.

(B) Approval may be granted for installation of studs in standard tires and in newly retread tires for which precise specifications are submitted.

(C) When installed, there shall be a minimum of $\frac{2}{32}$ inch of rubber between the base of the stud and the cord body of the tire.

(D) When installed, the tungsten tip of the stud shall project not less than .040 inch nor more than .090 inch above the tread surface of the tire. The measurements that are made to see that this is complied with will be made on tires before they have been in use. However, if there is any question as to their requirements, they will be again measured, after the tires have been driven at speeds not to exceed 50 miles per hour for a distance of at least 10 miles.

(E) The number of studs per tire shall be controlled by the size of the passenger car tire and shall be within a range of a minimum of 60 and a maximum of 150 for the small, standard size and/or larger passenger car tire.

F. The rubber surrounding the stud itself where the stud insertion is made must be a minimum of .500 inch in diameter and must be of solid rubber with the stud in the center of this solid rubber area.

(G) Studs must be imbedded in holes pre-molded in tires.

(H) Studs when inserted, shall be firmly and squarely seated in these holes and in the tire itself.

(I) The studs may not exceed .400 inch diameter inclusive of the stud casing.

(J) Studs may be used in tires on single tire passenger vehicles and other single passenger vehicles with rated capacities up to and including $\frac{3}{4}$ ton.

(K) No stud tire shall be used on a public highway earlier than November 1st or later than April 15 of any winter season.

(L) The tire or rubber manufacturer shall be responsible for the proper installation of studs in all tires where the studs are inserted by the factory and those tires where studs are inserted by the dealers who operate factory-owned stores. Those companies or tire dealers doing retread operations shall be responsible for the proper installation of studs in any retread tires that they manufacture and shall further be responsible for any insertion of studs that these same companies or dealers insert in new tires in which they apply the studs.

A manufacturer of a stud tire or the retreader seeking such approval of his tire for legal sale and/or use in Kansas shall apply by letter to the traffic and safety department of the state highway commission, state office building, Topeka, Kansas, stating that his product meets all the requirements for stud tires as herein contained, and as required by the state highway commission of Kansas. The commission reserves the right to require additional proof of tire or stud conformity with such requirements.

A provisional certificate of approval may be issued for each type tire by the state highway commission providing that:

(1) The manufacturer and/or retreader applies, submitting all required information for each type tire, and therefore certifying that his product conforms with all of the Kansas requirements.

(2) The commission reserves the right to require the submission of one or more pairs of each size tire for which approval is requested as the commission may designate.

(3) The commission reserves the right to deny a certificate of approval for any type of stud tire that does not meet its standards and recommendations. (Authorized by K.S.A. 1965 Supp. 8-5,106; effective Jan. 1, 1966.)

36-7-2. Use of studded traction equipment permitted; definitions; limitations on use. (a) Definitions. (1) "Vehicles" shall have the meaning set forth at K.S.A. 8-1485.

(2) "Highway" shall have the meaning set forth at K.S.A. 8-1424.

(3) "Studded traction equipment" means any device designed to be attached or placed on an automobile tire or small truck tire for the purpose of increasing traction in snow, ice or other conditions tending to cause a vehicle to skid. For purposes of this regulation "truck" shall mean a vehicle registered with the Kansas department of revenue of

a gross vehicle weight of 12,000 lbs. or less. Depending on the design and application, the device may cover all of the tire tread or a portion of the tire tread at frequent intervals from the perimeter of the tire.

(b) Stud-type protrusions consisting of tungsten carbide or other material of similar substances that will not sliver or shatter upon striking concrete or other hard material may extend outward from the periphery of the studded traction device. When installed the tungsten tip of the stud shall project not less than .040 inch nor more than .090 inch above the surface. The device to which the studs or protrusions are attached shall extend across the tread of the tire at intervals of not less than twelve inches when measured along the circumference of the tire. Studs shall be securely attached to the device in such manner that they will not become dislodged from the device by striking some object or from centrifugal force.

(c) The number of studs per device shall be controlled by the size of tire and shall be a minimum of 32 studs.

(d) Studded traction equipment shall be permissible for use on highways within this state on and after November 1 of each year to and including April 1 of the succeeding year.

(e) The manufacturer of studded traction equipment shall be responsible for the proper installation of studs when inserted at the factory and when inserted by dealers who operate factory-owned stores.

(f) A manufacturer of studded traction equipment seeking prior approval of such equipment for legal sale or use in Kansas shall make written application to the secretary of the Kansas department of transportation. The application shall state that the device meets all of the requirements for studded traction equipment as specified in this regulation. The secretary reserves the right to require additional proof of equipment or stud conformity. The additional requirements may include submission to the secretary of one or more pairs of studded traction equipment for which approval is requested.

(g) The secretary of the Kansas department of transportation reserves the right to deny a certificate of approval for studded traction equipment that does not meet the standards and specifications of this regulation. (Authorized by and implementing K.S.A. 1985 Supp. 8-1742; as amended by L. 1986, Ch. 42; effective May 1, 1987.)

**Article 8.—APPROVAL OF
LIGHTING DEVICES**

36-8-1. (Authorized by K.S.A. 8-599; effective Jan. 1, 1966; revoked, L. 1979, ch. 261, May 1, 1979.)

Article 9.—APPROVAL OF SAFETY GLASS

36-9-1. (Authorized by K.S.A. 8-5,107; effective Jan. 1, 1966; revoked, L. 1979, ch. 261, May 1, 1979.)

Article 10.—TRAFFIC CONTROL DEVICES

36-10-1. (Authorized by K.S.A. 8-510, K.S.A. 1971 Supp. 74-2004; effective Jan. 1, 1966; revoked Jan. 1, 1973.)

**Article 11.—PUBLIC AND PRIVATE
UTILITIES ON HIGHWAY RIGHT-OF-WAY**

36-11-1 to 36-11-5. (Authorized by K.S.A. 68-404; effective Jan. 1, 1966; revoked May 1, 1981.)

36-11-6. Utility accommodation policy. Public and private utilities, including pipelines, shall be constructed, reconstructed and maintained (including chemical brush control and tree trimming) under, on or over any state highway right-of-way, including that acquired for controlled access facilities, only with the prior approval of the secretary of transportation. A highway permit agreement shall be obtained from the Kansas department of transportation. In the event of an emergency endangering the life, safety or welfare of the public, no prior approval or permit agreement shall be required. (Authorized by and implementing K.S.A. 1983 Supp. 68-404; modified, L. 1981, ch. 420, May 1, 1981; amended May 1, 1985.)

**Article 12.—CONTROLLED
ACCESS HIGHWAYS**

36-12-1. (Authorized by K.S.A. 1982 Supp. 68-404; implementing 8-1572, 68-1902; effective Jan. 1, 1966; amended May 1, 1983; revoked May 1, 1984.)

36-12-2. (Authorized by K.S.A. 1982 Supp. 68-404; implementing K.S.A. 68-1902; effective Jan. 1, 1966; amended May 1, 1983; revoked May 1, 1984.)

36-12-3. (Authorized by K.S.A. 68-413(b); effective Jan. 1, 1966; revoked May 1, 1984.)

**Article 13.—SCHOOL BUS
TRANSPORTATION**

36-13-1. (Authorized by K.S.A. 8-579, K.S.A. 1971 Supp. 72-8404; effective Jan. 1, 1966; amended Jan. 1, 1972; revoked, E-78-22, Aug. 10, 1977; revoked May 1, 1978.)

36-13-2 and 36-13-3. (Authorized by K.S.A. 8-579, 72-628; effective Jan. 1, 1966; amended Jan. 1, 1972; revoked, E-78-22, Aug. 10, 1977; revoked May 1, 1978.)

36-13-4 and 36-13-5. (Authorized by K.S.A. 8-579; effective Jan. 1, 1966; amended Jan. 1, 1972; amended Jan. 1, 1974; revoked, E-78-22, Aug. 10, 1977; revoked May 1, 1978.)

36-13-6. (Authorized by K.S.A. 8-579, 8-5,120; effective Jan. 1, 1974; revoked, E-78-22, Aug. 10, 1977; revoked May 1, 1978.)

36-13-7. (Authorized by K.S.A. 8-579, 8-5,120; effective Jan. 1, 1966; amended Jan. 1, 1972; revoked Jan. 1, 1974.)

36-13-8. (Authorized by K.S.A. 8-2009; effective Jan. 1, 1966; amended, E-70-21, April 17, 1970; amended Jan. 1, 1971; amended Jan. 1, 1972; amended Jan. 1, 1974; amended, E-78-22, Aug. 10, 1977; amended May 1, 1978; revoked May 1, 1983.)

36-13-9. (Authorized by K.S.A. 8-579; effective Jan. 1, 1966; amended, E-70-21, April 17, 1970; amended Jan. 1, 1971; revoked Jan. 1, 1972.)

36-13-9a. (Authorized by K.S.A. 8-2009; effective Jan. 1, 1974; amended May 1, 1976; amended, E-78-22, Aug. 10, 1977; amended May 1, 1978; revoked May 1, 1983.)

36-13-10. (Authorized by K.S.A. 8-2009; effective Jan. 1, 1966; amended Jan. 1, 1972; amended Jan. 1, 1974; amended May 1, 1976; amended, E-78-22, Aug. 10, 1977; amended May 1, 1978; revoked May 1, 1983.)

36-13-11. (Authorized by K.S.A. 8-2009; effective Jan. 1, 1966; amended Jan. 1, 1972; amended, E-74-16, March 8, 1974; amended, E-74-66, Dec. 23, 1974; amended May 1, 1975; amended May 1, 1976; amended, E-78-22, Aug. 10, 1977; amended May 1, 1978; revoked May 1, 1983.)

36-13-12. (Authorized by K.S.A. 8-579; effective Jan. 1, 1966; revoked Jan. 1, 1972.)

36-13-13. (Authorized by K.S.A. 8-579; effective, E-70-21, April 17, 1970; effective Jan. 1, 1971; revoked Jan. 1, 1972.)

36-13-14 and 36-13-15. (Authorized by K.S.A. 8-579; effective Jan. 1, 1972; revoked May 1, 1978.)

36-13-16. (Authorized by K.S.A. 8-2009; effective, E-78-22, Aug. 10, 1977; effective May 1, 1978; amended May 1, 1979; revoked May 1, 1983.)

36-13-17 and 36-13-18. (Authorized by K.S.A. 8-2009; effective, E-78-22, Aug. 10, 1977; effective May 1, 1978; revoked May 1, 1983.)

36-13-20. This regulation shall be revoked on June 30, 2000. (Authorized by K.S.A. 1977 Supp. 8-2009; effective, E-78-22, Aug. 10, 1977; effective May 1, 1978; revoked June 30, 2000.)

36-13-21. (Authorized by K.S.A. 8-2009; effective, E-78-22, Aug. 10, 1977; effective May 1, 1978; revoked May 1, 1983.)

36-13-30. This regulation shall be revoked on June 30, 2000. (Authorized by and implementing K.S.A. 8-2009; effective May 1, 1983; amended May 1, 1984; amended June 15, 1992; revoked June 30, 2000.)

36-13-31. This regulation shall be revoked on June 30, 2000. (Authorized by and implementing K.S.A. 8-2009; effective, E-78-22, Aug. 10, 1977; effective May 1, 1978; amended May 1, 1983; amended June 15, 1992; revoked June 30, 2000.)

36-13-32. This regulation shall be revoked on June 30, 2000. (Authorized by and implementing K.S.A. 8-2009; effective, E-78-22, Aug. 10, 1977; effective May 1, 1978; amended May 1, 1983; amended May 1, 1984; amended May 1, 1985; amended May 1, 1986; amended June 15, 1992; revoked June 30, 2000.)

36-13-33. This regulation shall be revoked on June 30, 2000. (Authorized by and implementing K.S.A. 8-2009; effective, E-78-22, Aug. 10, 1977; effective May 1, 1978; amended May 1, 1983; amended June 15, 1992; revoked June 30, 2000.)

36-13-34. This regulation shall be revoked on June 30, 2000. (Authorized by and implementing K.S.A. 8-2009; effective, E-78-22, Aug. 10,

1977; effective May 1, 1978; amended June 15, 1992; revoked June 30, 2000.)

36-13-35. This regulation shall be revoked on June 30, 2000. (Authorized by K.S.A. 1977 Supp. 8-2009; effective, E-78-22, Aug. 10, 1977; effective May 1, 1978; revoked June 30, 2000.)

36-13-36. (Authorized by K.S.A. 1978 Supp. 8-2009; effective May 1, 1979; revoked June 15, 1992.)

36-13-37. This regulation shall be revoked on June 30, 2000. (Authorized by and implementing K.S.A. 8-2009; effective May 1, 1979; amended June 15, 1992; revoked June 30, 2000.)

36-13-38. This regulation shall be revoked on June 30, 2000. (Authorized by and implementing K.S.A. 8-2009; effective June 15, 1992; revoked June 30, 2000.)

36-13-39. This regulation shall be revoked on June 30, 2000. (Authorized by and implementing K.S.A. 8-2009; effective June 15, 1992; revoked June 30, 2000.)

Article 14.—INTERSTATE HIGHWAY SYSTEM; USE

36-14-1. Prohibition on the use of the interstate highway system by unauthorized vehicles, animals and pedestrians. The use of the Federal Aid Interstate Highway System facilities in Kansas by pedestrians, bicycles, horse-drawn vehicles, animals led, driven or ridden, other non-motorized traffic or motor driven cycles is prohibited. (Authorized by K.S.A. 8-5,123a, 68-1902; effective Jan. 1, 1966.)

Article 15.—MOTORCYCLISTS

36-15-1 to 36-15-12. (Authorized by K.S.A. 8-574b; effective, E-67-17, Aug. 25, 1967; effective, E-68-5, Jan. 15, 1968; effective Jan. 1, 1969; revoked, L. 1979, ch. 262, May 1, 1979.)

36-15-13 to 36-15-22. (Authorized by K.S.A. 74-2004, 74-2011, K.S.A. 1972 Supp. 8-577k; effective, E-72-21, Aug. 1, 1972; effective Jan. 1, 1973; revoked May 1, 1981.)

36-15-23. (Authorized by and implementing K.S.A. 8-1598; effective May 1, 1981; amended May 1, 1983; amended Aug. 13, 1990; revoked Oct. 13, 2000.)

**Article 16.—HIGHWAY
RELOCATION ASSISTANCE**

36-16-1. Acquisition of real property for state highway purposes; relocation assistance.

(a) 49 C.F.R. Part 24, as of March 2, 1989, and all amendments thereto, is adopted by reference.

(b) The provisions of 49 C.F.R. Part 24, as of March 2, 1989, and all amendments thereto, shall be applicable to all acquisitions of real property by the department of transportation for the state highway system including those acquisitions in which federal funds are not available for or used in payment of acquisitions. (Authorized by K.S.A. 58-3505, 58-3506, 68-402, 68-402b, 68-404; implementing K.S.A. 58-3501 through 58-3506; effective, E-68-16, May 13, 1968; effective, E-69-8, May 28, 1969; effective, E-70-14, Jan. 19, 1970; effective Jan. 1, 1971; amended, E-71-31, Aug. 1, 1971; amended Jan. 1, 1972; amended, E-72-15, June 1, 1972; amended Jan. 1, 1973; amended, E-76-33, July 1, 1975; amended May 1, 1976; amended May 1, 1983; amended May 1, 1986; amended Sept. 18, 1989.)

36-16-2. (Authorized by K.S.A. 68-402, K.S.A. 1972 Supp. 68-174 to 68-181, 68-402b, 74-2004; effective, E-70-14, Jan. 19, 1970; effective Jan. 1, 1971; amended, E-71-31, Aug. 1, 1971; amended Jan. 1, 1972; revoked, E-72-15, June 1, 1972; revoked Jan. 1, 1973.)

36-16-3. (Authorized by K.S.A. 1970 Supp. 74-2020; effective, E-70-14, Jan. 19, 1970; effective Jan. 1, 1971; revoked, E-72-15, June 1, 1972; revoked Jan. 1, 1973.)

36-16-4. Notice of appeal. Any person aggrieved by a determination as to eligibility, under K.S.A. 58-3501 through 58-3506 or these regulations, for a relocation assistance payment, or the amount of such payment, shall file a written notice of appeal with the secretary of transportation, or the secretary's designee. The written notice shall be filed within 60 days after having been advised of the payment, or of the determination as to eligibility for a payment, of which the aggrieved person complains. Any notice in writing received by the secretary or the secretary's designee, in a form as to indicate request for review or reconsideration of a determination for relocation assistance payments or eligibility, shall be considered a valid notice of appeal. (Authorized by K.S.A. 58-3505, 58-3506, 68-402, 68-402b, K.S.A. 1982 Supp. 68-

404; implementing K.S.A. 58-3501 to 58-3506; effective, E-70-14, Jan. 19, 1970; effective Jan. 1, 1971; amended Jan. 1, 1972; amended, E-72-15, June 1, 1972; amended Jan. 1, 1973; amended, E-76-33, July 1, 1975; amended May 1, 1976; amended May 1, 1983.)

36-16-5. Designation of hearing examiner and notice of time and place of hearing.

(a) Upon receipt of a notice of appeal, the relocation assistance officer shall notify the secretary or the secretary's designee, who may appoint a hearing examiner to hear the appeal. The hearing examiner shall designate a time for the appeal which is as early as is practicable and a place for the appeal which is reasonably convenient to the appellant and the examiner.

(b) The secretary of transportation or the secretary's designee may designate an attorney from the department of transportation's legal staff to attend the hearing, cross-examine witnesses testifying on behalf of the aggrieved person, and present testimony of witnesses and documentary evidence related to or concerning the issues involved in the hearing. (Authorized by K.S.A. 58-3505, 58-3506, 68-402, 68-402b, K.S.A. 1982 Supp. 68-404; implementing K.S.A. 58-3501 to 58-3506; effective, E-70-14, Jan. 19, 1970; effective Jan. 1, 1971; amended, E-72-15, June 1, 1972; amended Jan. 1, 1973; amended May 1, 1983.)

36-16-6. Notice of hearing and continuances. The hearing examiner shall give notice of the time and place of hearing to the appellant or his attorney, by mail at least ten (10) days prior to the date of said hearing. The hearing examiner may, upon request and for good cause shown, continue or adjourn said hearing to a subsequent date or may move the hearing to a different place. (Authorized by K.S.A. 68-402, K.S.A. 1972 Supp. 68-174 to 68-181, 68-402b, 74-2004; effective, E-70-14, Jan. 19, 1970; effective Jan. 1, 1971; amended, E-72-15, June 1, 1972; amended Jan. 1, 1973.)

36-16-7. Hearings. On the date, and at the place and time stated in the notice of hearing, the person conducting the hearing shall call the hearing by reading the caption into the record. A record shall be made of all proceedings either by a recording device or by a qualified reporter. The hearing shall be conducted in such a manner as to give the appellant an opportunity to be heard upon relevant issues. The hearing examiner shall

prepare a report containing a summary of the evidence and of the findings and recommendations and shall also prepare a proposed order containing the findings of fact and conclusions of law. The summary and proposed order shall be submitted to the secretary or the secretary's designee within 60 days of the conclusion of the hearing, for the approval of the secretary or the secretary's designee. (Authorized by K.S.A. 58-3505, 58-3506, 68-402, 68-402b, K.S.A. 1982 Supp. 68-404; implementing K.S.A. 58-3501 to 58-3506; effective, E-70-14, Jan. 19, 1970; effective Jan. 1, 1971; amended, E-72-15, June 1, 1972; amended Jan. 1, 1973; amended May 1, 1983.)

36-16-8. (Authorized by K.S.A. 68-402, K.S.A. 1972 Supp. 68-174 to 68-181, 68-502b, 74-2004; effective, E-71-31, Aug. 1, 1971; effective Jan. 1, 1972; revoked, E-72-15, June 1, 1972; revoked Jan. 1, 1973.)

36-16-9 to 36-16-15. (Authorized by K.S.A. 68-402, K.S.A. 1972 Supp. 68-174 to 68-181, 68-402b, 74-2004; effective, E-71-31, Aug. 1, 1971; effective Jan. 1, 1972; revoked, E-72-15, June 1, 1972; revoked Jan. 1, 1973.)

36-16-16. Housing replacement by the department of transportation as a last resort. (a) If the department cannot proceed to actual construction on a project because comparable replacement sale or rental housing is not available, and the department, or its authorized representative, determines that such housing cannot otherwise be made available, it may take action that is necessary or appropriate to provide housing. Funds authorized for the purpose of housing replacement shall be used.

(b) Unless the department or its authorized representative is satisfied that replacement housing in accordance with the provisions of K.A.R. 36-16-1 is available, no person shall be required to move from his or her dwelling because of any state highway project or any county, township or city highway, road or street project for which federal funds are made available under an agreement between an agency of the federal government and the department acting for and on behalf of any of the described governmental entities. (Authorized by K.S.A. 58-3505, 58-3506, 68-402, 68-402b, K.S.A. 1982 Supp. 68-404; implementing K.S.A. 58-3501 to 58-3506; effective, E-71-31, Aug. 1, 1971; effective Jan. 1, 1972; amended, E-72-15, June 1, 1972; amended Jan. 1, 1973; amended May 1, 1983.)

36-16-17. (Authorized by K.S.A. 68-402, K.S.A. 1972 Supp. 68-174 to 68-181, 68-402b, 74-2004; effective, E-71-31, Aug. 1, 1971; effective Jan. 1, 1972; amended, E-72-15, June 1, 1972; amended Jan. 1, 1973; revoked May 1, 1983.)

36-16-18. Department of transportation acting as agent for federal program. Whenever real property is acquired by the department at the request of a federal agency for a federal program or project, that acquisition shall be deemed an acquisition by the federal agency having authority over that program or project, and not an acquisition by the state of Kansas or the department. (Authorized by K.S.A. 58-3505, 58-3506, 68-402, 68-402b, K.S.A. 1982 Supp. 68-404; implementing K.S.A. 58-3501 to 58-3506; effective, E-71-31, Aug. 1, 1971; effective Jan. 1, 1972; amended, E-72-15, June 1, 1972; amended Jan. 1, 1973; amended May 1, 1983.)

36-16-19. (Authorized by K.S.A. 68-402, K.S.A. 1972 Supp. 68-174 to 68-181, 68-402b, 72-2004; effective Jan. 1, 1972; amended, E-72-15, June 1, 1972; amended Jan. 1, 1973; revoked May 1, 1983.)

36-16-20. Relocation assistance in programs receiving federal financial assistance. The department, or its authorized representative may enter into contracts with any individual, firm, association, or corporation for services in connection with relocation assistance programs for displaced persons under K.A.R. 36-16-1. Functions under K.A.R. 36-16-1 may also be carried out through any federal, state or local governmental agency or instrumentality having an established organization for conducting relocation assistance programs. The department shall, whenever practicable in carrying out these relocation assistance activities, use the services of state or local housing agencies, or other agencies having experience in the administration or conduct of similar housing assistance activities. (Authorized by K.S.A. 58-3505, 58-3506, 68-402, 68-402b, K.S.A. 1982 Supp. 68-404; implementing K.S.A. 58-3501 to 58-3506; effective Jan. 1, 1972; amended, E-72-15, June 1, 1972; amended Jan. 1, 1973; amended May 1, 1983.)

36-16-21. Applicable to counties, townships, and cities. (a) The provisions of K.A.R. 36-16-1 et seq. apply to all acquisitions of real property, and displacements of persons for:

(1) any county, township or city highway, road or street, for which federal assistance is made available to that government entity because of any contract between the department on behalf of that governmental entity with a federal agency, under the provisions of K.S.A. 1981 Supp. 68-402b; or

(2) for which department funds are made available though no federal funds are available or used in the acquisition of that real property. The amount of relocation assistance and other payments made to that displaced person shall not exceed the amount that would have been paid that displaced person had federal assistance been made available or used for the acquisition of that real property for that county, township or city highway, road or street project. The department may deduct the amount of any relocation assistance payments owed by that governmental entity described in (1) above from any monies due that entity from the state or the department for highway road or street purposes.

(b) The department shall administer K.S.A. 68-402b and K.A.R. 36-16-1 as to relocation assistance, and real property acquisition by a governmental entity for highway, road or street purposes, under the provisions of K.A.R. 36-16-21(a), except as otherwise agreed between the department and the governmental entity involved. (Authorized by K.S.A. 58-3505, 58-3506, 68-402, 68-402b, K.S.A. 1982 Supp. 68-404; implementing K.S.A. 58-3501 to 58-3506; effective Jan. 1, 1972; amended, E-72-15, June 1, 1972; amended Jan. 1, 1973; amended May 1, 1983.)

36-16-22. (Authorized by K.S.A. 68-402, K.S.A. 1972 Supp. 68-174 to 68-181, 68-402b, 74-2004; effective Jan. 1, 1972; revoked, E-72-15, June 1, 1972; revoked Jan. 1, 1973.)

36-16-23. (Authorized by K.S.A. 68-402, K.S.A. 1972 Supp. 68-174 to 68-181, 68-402b, 74-2004; effective Jan. 1, 1972; amended, E-72-15, June 1, 1972; amended Jan. 1, 1973; revoked May 1, 1983.)

36-16-24. (Authorized by K.S.A. 68-402, K.S.A. 1972 Supp. 68-174 to 68-181, 68-402b, 74-2004; effective Jan. 1, 1972; revoked, E-72-15, June 1, 1972; revoked Jan. 1, 1973.)

Article 17.—BILLBOARDS AND OUTDOOR ADVERTISING

36-17-1. Performance bond to accompany license application or renewal; schedule; inventory; penalty. (a) Each application for or

renewal of a license to own or maintain outdoor advertising required by K.S.A. 68-2236 shall be accompanied by a performance bond in favor of the secretary of transportation conditioned that the applicant shall well and truly abide by the laws of Kansas; including the provisions of the highway advertising control act of 1972, all amendments thereto and all regulations made pursuant thereto. The amount of the performance bond shall be based on the number of signs owned or maintained in the state in accordance with the following schedule:

- (1) One to ten signs \$ 500.00
- (2) Eleven to fifty signs \$2,000.00
- (3) Fifty-one or more signs \$2,500.00

License renewals need not be accompanied by a new performance bond if a continuing bond has previously been submitted.

(b) Each license application or renewal shall include an inventory of the applicants signs on forms provided by the secretary.

(c) Failure of a sign owner to obtain a license or comply with the other provisions of the highway advertising control act of 1972 or the regulations made pursuant thereto shall subject the owner's signs to removal without compensation unless brought into compliance. (Authorized by K.S.A. 1977 Supp. 68-2236; effective, E-72-16, July 1, 1972; effective Jan. 1, 1973; amended May 1, 1978.)

36-17-2. (Authorized by K.S.A. 68-402, 74-2011, K.S.A. 1972 Supp. 68-402b, 68-2231 to 68-2243, 74-2004; effective, E-72-16, July 1, 1972; effective Jan. 1, 1973; revoked May 1, 1978.)

36-17-3. Licenses for outdoor advertising; permit number on sign. From and after January 1, 1973, all signs erected or maintained along federal aid primary or interstate highways except signs described in section 3, paragraphs (b) and (c), of said highway advertising control act of 1972 shall have attached thereto in the lower left hand corner the permit number of the permit issued for such sign. Such permit number shall be in block letters no smaller than three inches. Said numbers may be painted on or attached in any manner that is durable. (Authorized by K.S.A. 68-402, 74-2011, K.S.A. 1972 Supp. 68-402b, 68-2231 to 68-2243, 74-2004; effective, E-72-16, July 1, 1972; effective Jan. 1, 1973.)

36-17-4. (Authorized by K.S.A. 1975 Supp. 68-2233; effective, E-72-16, July 1, 1972; effective Jan. 1, 1973; revoked May 1, 1976.)

36-17-5. Licenses for outdoor advertising; disposition of fees. The city clerk, city treasurer, or other city official having custody of outdoor advertising permit fees collected by a city shall forward such fees to the department of transportation not later than the 10th day of the calendar month immediately following the calendar month in which the fees were received by the city. (Authorized by K.S.A. 1983 Supp. 68-404, K.S.A. 68-2236; implementing K.S.A. 68-2236; effective, E-72-16, July 1, 1972; effective Jan. 1, 1973; amended May 1, 1985.)

36-17-6. Repairs to signs; new signs. From and after March 31, 1972, repairs to any sign in an adjacent area which receives repairs, the cost of which is in excess of sixty (60) percent of the replacement cost of such sign, in any given calendar year, shall constitute a new sign. (Authorized by K.S.A. 68-402, 74-2011, K.S.A. 1972 Supp. 68-402b, 68-2231 to 68-2243, 74-2004; effective, E-72-16, July 1, 1972; effective Jan. 1, 1973.)

36-17-7. Signs beyond 660 feet from right of way prohibited; exceptions. The erection of outdoor advertising signs, displays or devices, outside of urban areas, beyond 660 feet from the nearest edge of the right of way, visible from the main traveled way of the system and erected with the purpose of their messages being read from the main traveled way, is prohibited, except the following: (1) directional and other official signs which meet the selection criteria and conform to the standards established by the state highway commission.

(2) signs, displays and devices advertising the sale or lease of the property upon which they are located.

(3) signs, displays and devices advertising activities conducted on the property on which they are located. (Authorized by K.S.A. 68-401, K.S.A. 1975 Supp. 68-402, 68-404(j), 68-404(k), 68-2233, 68-2241; effective, E-76-30, June 19, 1975; effective May 1, 1976.)

36-17-8. Selection methods and criteria; directional and official signs and notices. (A) Application: The following standards apply to directional and official signs and notices which are erected and maintained along the interstate and federal-aid primary system with the intent of their message being visible from the main traveled way of the system. These standards do not apply to directional and official signs erected on the highway right-of-way.

(B) Definitions. (1) "Directional and official signs and notices," includes only official signs and notices, public utility signs, service club and religious notices, public service signs and directional signs.

(2) "Official signs and notices" means signs and notices erected and maintained by public officers or public agencies within their territorial or zoning jurisdiction and pursuant to and in accordance with direction or authorization contained in federal, state or local law for carrying out an official duty or responsibility. Historical markers authorized by state law and erected by state or local government agencies or nonprofit historical societies may be considered official signs.

(3) "Public utility signs" means warning signs, information signs, notices or markers which are customarily erected and maintained by publicly or privately-owned public utilities, as essential to their operations.

(4) "Service club and religious notices" means signs and notices, whose erection is authorized by law, relating to meetings of nonprofit service clubs of charitable association, or religious services, which signs do not exceed eight (8) square feet in area.

(5) "Public service signs" means signs located on school bus stop shelters, which signs: (a) Identify the donor, sponsor, or contributor of said shelters;

(b) Contain safety slogans or messages which shall occupy not less than sixty (60) percent of the area of the signs;

(c) Contain no other message;

(d) Are located on school bus shelters which are authorized or approved by city, county, or state law, regulation, or ordinance and at places approved by the city, county, or state agency controlling the highway involved; and

(e) May not exceed thirty-two (32) square feet in area. Not more than one sign on each shelter shall face in any one direction.

(6) "Directional signs" means signs containing directional information about public places owned or operated by federal, state or local governments or their agencies; publicly or privately-owned natural phenomena, historic, cultural, scientific, educational and religious sites; and areas of natural scenic beauty or naturally suited for outdoor recreation, deemed to be in the interest of the traveling public.

(C) Standards for directional signs: (1) *General.* The following signs are prohibited: (a) Signs advertising activities that are illegal under federal or

state laws or regulations in effect at the location of those signs or at the location of those activities.

(b) Signs located in such a manner as to obscure or otherwise interfere with the effectiveness of an official traffic sign, signal, or device, or obstruct or interfere with the driver's view of approaching, merging, or intersecting traffic.

(c) Signs which are erected or maintained upon trees or painted or drawn upon rocks or other natural features.

(d) Obsolete signs.

(e) Signs which are structurally unsafe or in disrepair.

(f) Signs which move or have any animated or moving parts.

(g) Signs located in rest areas, parkland, or scenic areas.

(2) *Size.* (a) No sign's display area shall exceed the following limits: (i) Maximum area—150 square feet.

(ii) Maximum height—20 feet.

(iii) Maximum length—20 feet.

(b) All dimensions include border and trim, but exclude supports.

(3) *Lighting.* Signs may be illuminated, subject to the following: (a) Signs which contain, include, or are illuminated by any flashing, intermittent, or moving light or lights are prohibited.

(b) Signs which are not effectively shielded so as to prevent beams or rays of light from being directed at any portion of the traveled way of an interstate or primary highway or which are of such intensity or brilliance as to cause glare or to impair the vision of the driver of any motor vehicle or which otherwise interfere with any driver's operation of a motor vehicle are prohibited.

(c) No sign may be so illuminated as to interfere with the effectiveness of or obscure an official traffic sign, device, or signal.

(4) *Spacing.* (a) Each location of a directional sign must be approved by the secretary of transportation.

(b) No directional sign may be located within two thousand (2,000) feet of an interchange, or intersection at grade along the interstate system or other freeways (measured along the interstate or freeway from the nearest point of the beginning or ending of pavement widening at the exit from or entrance to the main traveled way).

(c) No directional sign may be located within two thousand (2,000) feet of a rest area, parkland, or scenic area.

(d)(i) No two (2) directional signs facing the

same direction of travel shall be spaced less than one (1) mile apart; (ii) Not more than three (3) directional signs pertaining to the same activity and facing the same direction of travel may be erected along a single route approaching the activity; (iii) Signs located adjacent to the interstate system shall be within seventy-five (75) air miles of the activity; and (iv) Signs located adjacent to the primary system shall be within fifty (50) air miles of the activity.

(e) *Message content.* The message on directional signs shall be limited to the identification of the attraction or activity and directional information useful to the traveler in locating the attraction, such as mileage, route numbers, or exit numbers. Descriptive words or phrases and pictorial or photographic representations of the activity or its environs are prohibited.

(D) *Selection methods and criteria.* The following apply to directional signs: (1) Privately owned activities or attractions eligible for directional signing are limited to the following: natural phenomena; scenic attractions; historic, educational, cultural, scientific and religious sites and outdoor recreational areas.

(2) To be eligible, privately-owned attractions or activities must be nationally or regionally known and of outstanding interest to the traveling public.

(3) Each directional sign shall be approved by the right-of-way department of the Kansas department of transportation.

(4) The right-of-way department of the Kansas department of transportation shall make final determinations of eligibility for directional signs and official signs. In making determinations for directional signs the department shall, when it is deemed necessary, avail itself of the experience and knowledge of the following state agencies, hereby recognized as being the state authority on the various categories contained in (D) above: state historical society, state park and resources authority, and the state forestry, fish and game commission. (Authorized by K.S.A. 1977 Supp. 68-2233a; effective, E-76-30, June 19, 1975; effective May 1, 1976; amended May 1, 1978.)

36-17-9. Termination of legal non-conforming status; conditions; effect. The legal non-conforming status of a sign may be deemed terminated upon the occurrence of one or more of the following conditions:

(a) Increase in sign size.

(b) Change in sign location.

(c) Addition or modification of lighting.

(d) Failure of an owner to adequately maintain a sign or effect repairs on a damaged sign for a period in excess of one year.

Upon a determination that the legal non-conforming status of a sign has ceased, the sign shall be subject to removal by the secretary of transportation without compensation. (Authorized by K.S.A. 1977 Supp. 68-402, 68-404, 68-2231 *et seq.*; modified, L. 1978, ch. 472, May 1, 1978.)

Article 18.—LIGHTS ON HIGHWAY CONSTRUCTION AND MAINTENANCE VEHICLES

36-18-1 to 36-18-3. (Authorized by K.S.A. 8-1731; effective, E-76-30, June 19, 1975; effective May 1, 1976; revoked May 1, 1981.)

36-18-4. Lights on highway construction and maintenance vehicles. All highway construction and maintenance vehicles shall be equipped with amber lights which meet or exceed the standards approved and practices recommended by the society of automotive engineers standard J99, as of April, 1980, which are hereby adopted by reference. (Authorized by and implementing K.S.A. 8-1731; effective May 1, 1981; amended May 1, 1983; amended May 1, 1984.)

Article 19.—STANDARD FOR SLOW-MOVING VEHICLE IDENTIFICATION EMBLEM

36-19-1 to 36-19-8. (Authorized by K.S.A. 74-2004 and K.S.A. 1973 Supp. 8-586b; effective Jan. 1, 1974; revoked May 1, 1981.)

36-19-9. Standard for slow-moving vehicle identification emblem. Rules, regulations, and specifications promulgated by the American society of agricultural engineers standard S276.3, as of December 31, 1982, are hereby adopted by reference as the standards and specifications approved by the secretary. (Authorized by and implementing K.S.A. 8-1717; effective May 1, 1981; amended May 1, 1983.)

Article 20.—REGISTRATION OF MOTOR VEHICLES

36-20-1. (Authorized by K.S.A. 8-191, K.S.A. 1971 Supp. 8-143(2)(b), and 74-2004; effective

Jan. 1, 1966; amended, E-71-9, Jan. 1, 1971; amended Jan. 1, 1972; transferred May 1, 1979 to K.A.R. 92-51-2).

36-20-2. (Authorized by K.S.A. 8-191; effective Jan. 1, 1966; transferred May 1, 1976 to K.A.R. 92-50-22).

36-20-3. (Authorized by K.S.A. 8-191; effective Jan. 1, 1966; revoked May 1, 1979.)

36-20-4. (Authorized by K.S.A. 8-191; effective Jan. 1, 1966; transferred May 1, 1976 to K.A.R. 92-50-23).

36-20-5. (Authorized by K.S.A. 8-191, K.S.A. 1971 Supp. 8-135(a) and 74-2004; effective Jan. 1, 1966; amended, E-71-9, Jan. 1, 1971; amended Jan. 1, 1972; transferred May 1, 1979 to K.A.R. 92-51-5).

36-20-6. (Authorized by K.S.A. 8-191; effective Jan. 1, 1966; transferred May 1, 1979 to K.A.R. 92-51-3).

36-20-7. (Authorized by K.S.A. 8-191, K.S.A. 1971 Supp. 8-135(a) and 74-2004; effective Jan. 1, 1966; amended, E-71-9, Jan. 1, 1971; amended Jan. 1, 1972; transferred May 1, 1979 to K.A.R. 92-51-11).

36-20-8. (Authorized by K.S.A. 8-191; effective Jan. 1, 1966; transferred May 1, 1979 to K.A.R. 92-51-8).

36-20-9. (Authorized by K.S.A. 8-191; effective Jan. 1, 1966; transferred May 1, 1979 to K.A.R. 92-51-6).

36-20-10. (Authorized by K.S.A. 8-191; effective Jan. 1, 1966; transferred May 1, 1979 to K.A.R. 92-51-7).

36-20-11. (Authorized by K.S.A. 8-191, 74-2011, and K.S.A. 1971 Supp. 74-2004; effective Jan. 1, 1966; amended, E-71-9, Jan. 1, 1971; amended Jan. 1, 1972; transferred May 1, 1979 to K.A.R. 92-51-9).

36-20-12. (Authorized by K.S.A. 8-191; effective Jan. 1, 1966; revoked May 1, 1979.)

36-20-13. (Authorized by K.S.A. 8-191; effective Jan. 1, 1966; transferred May 1, 1979 to K.A.R. 92-51-12).

36-20-14. (Authorized by K.S.A. 8-191; ef-

fective Jan. 1, 1966; transferred May 1, 1976 to K.A.R. 92-50-24).

36-20-15. (Authorized by K.S.A. 8-191; effective Jan. 1, 1966; transferred May 1, 1979 to K.A.R. 92-51-13).

36-20-16. (Authorized by K.S.A. 8-191; effective Jan. 1, 1966; transferred May 1, 1979 to K.A.R. 92-51-4).

36-20-17. Authorized by K.S.A. 8-191; effective Jan. 1, 1966; transferred May 1, 1979 to K.A.R. 92-51-17).

36-20-18. (Authorized by K.S.A. 8-191, K.S.A. 1965 Supp. 8-143 and 8-143a; effective Jan. 1, 1966; transferred May 1, 1979 to K.A.R. 92-51-18).

36-20-19. (Authorized by K.S.A. 8-191 and K.S.A. 1965 Supp. 8-143; effective Jan. 1, 1966; transferred May 1, 1979 to K.A.R. 92-51-14).

36-20-20. (Authorized by K.S.A. 8-191; effective Jan. 1, 1966; transferred May 1, 1979 to K.A.R. 92-51-15).

36-20-21. (Authorized by K.S.A. 8-143b, 8-143c, 8-143d, 8-191 and K.S.A. 1971 Supp. 74-2004; effective Jan. 1, 1966; amended, E-71-9, Jan. 1, 1971; amended Jan. 1, 1972; transferred May 1, 1979 to K.A.R. 92-51-16).

36-20-22. (Authorized by K.S.A. 8-149a, Uniform Vehicle Registration Proration and Reciprocity Agreement, and Kansas-Oklahoma Proration and Reciprocity Agreement; effective Jan. 1, 1966; transferred May 1, 1976 to K.A.R. 92-51-50).

36-20-23. (Authorized by K.S.A. 8-149a, Uniform Vehicle Registration Proration and Reciprocity Agreement, and Kansas-Oklahoma Proration and Reciprocity Agreement; effective Jan. 1, 1966; transferred May 1, 1976 to K.A.R. 92-51-51).

36-20-24. (Authorized by K.S.A. 8-149a, Uniform Vehicle Registration Proration and Reciprocity Agreement, and Kansas-Oklahoma Proration and Reciprocity Agreement; effective Jan. 1, 1966; transferred May 1, 1976 to K.A.R. 92-51-52).

36-20-25. (Authorized by K.S.A. 8-149a, Uniform Vehicle Registration Proration and Reciprocity Agreement, and Kansas-Oklahoma Proration and Reciprocity Agreement; effective Jan. 1, 1966; transferred May 1, 1976 to K.A.R. 92-51-53).

36-20-26. (Authorized by K.S.A. 8-149a, Uniform Vehicle Registration Proration and Reciprocity Agreement, and Kansas-Oklahoma Proration and Reciprocity Agreement; effective Jan. 1, 1966; transferred May 1, 1976 to K.A.R. 92-51-54).

36-20-27. (Authorized by K.S.A. 8-149a, Uniform Vehicle Registration Proration and Reciprocity Agreement, and Kansas-Oklahoma Proration and Reciprocity Agreement; effective Jan. 1, 1966; transferred May 1, 1976 to K.A.R. 92-51-55).

36-20-28. (Authorized by K.S.A. 8-149a, 8-191, and K.S.A. 1971 Supp. 74-2004; effective Jan. 1, 1966; amended, E-71-9, Jan. 1, 1971; amended Jan. 1, 1972; transferred May 1, 1976 to K.A.R. 92-51-56).

36-20-29. (Authorized by K.S.A. 8-149a, Uniform Vehicle Registration Proration and Reciprocity Agreement, and Kansas-Oklahoma Proration and Reciprocity Agreement; effective Jan. 1, 1966; transferred May 1, 1976 to K.A.R. 92-51-57).

36-20-30. (Authorized by K.S.A. 8-149f and Kansas-Missouri Supplemental Proration and Reciprocity Agreement; effective Jan. 1, 1966; transferred May 1, 1976 to K.A.R. 92-51-58).

36-20-31. (Authorized by K.S.A. 8-191; effective Jan. 1, 1966; transferred May 1, 1976 to K.A.R. 92-50-25).

36-20-32. (Authorized by K.S.A. 8-191; effective Jan. 1, 1966; transferred May 1, 1976 to K.A.R. 92-50-26).

36-20-33. (Authorized by K.S.A. 8-191; effective Jan. 1, 1966; transferred May 1, 1976 to K.A.R. 92-50-27).

36-20-34. (Authorized by K.S.A. 8-143i and 8-191; effective Jan. 1, 1966; transferred May 1, 1976 to K.A.R. 92-50-28).

36-20-35. (Authorized by K.S.A. 8-191, 8-2303, and 8-2304; effective Jan. 1, 1966; transferred May 1, 1976 to K.A.R. 92-50-29).

36-20-36. (Authorized by K.S.A. 8-191; effective Jan. 1, 1966; transferred May 1, 1976 to K.A.R. 92-50-30).

36-20-37. (Authorized by K.S.A. 8-191; effective Jan. 1, 1966; transferred May 1, 1976 to K.A.R. 92-50-31).

36-20-38. (Authorized by K.S.A. 8-191 and 8-2303; effective Jan. 1, 1966; transferred May 1, 1976 to K.A.R. 92-50-32).

36-20-39. (Authorized by K.S.A. 8-191, K.S.A. 1970 Supp. 8-149a, and 8-149b; effective Jan. 1, 1966; amended, E-71-9, Jan. 1, 1971; amended Jan. 1, 1972; transferred May 1, 1976 to K.A.R. 92-51-59).

36-20-40. (Authorized by K.S.A. 8-191, 74-2011, K.S.A. 1971 Supp. 8-135, and 74-2004; effective, E-71-9, Jan. 1, 1971; effective Jan. 1, 1972; transferred May 1, 1979 to K.A.R. 92-51-10).

36-20-41. (Authorized by K.S.A. 8-191, K.S.A. 1970 Supp. 8-149a, and 74-2004; effective, E-71-9, Jan. 1, 1971; effective Jan. 1, 1972; transferred May 1, 1976 to K.A.R. 92-51-60).

36-20-42. (Authorized by K.S.A. 8-191, K.S.A. 1971 Supp. 8-149a, and 74-2004; effective, E-71-9, Jan. 1, 1971; effective Jan. 1, 1972; transferred May 1, 1979 to K.A.R. 92-51-61).

36-20-43. (Authorized by K.S.A. 8-191, K.S.A. 1971 Supp. 8-149a, and 74-2004; effective, E-71-9, Jan. 1, 1971; effective Jan. 1, 1972; transferred May 1, 1976 to K.A.R. 92-51-62).

36-20-50. (Authorized by K.S.A. 8-143; effective Jan. 1, 1971; transferred May 1, 1979 to K.A.R. 92-51-20).

Article 21.—OPERATORS' AND CHAUFFEURS' LICENSES

36-21-1 and 36-21-2. (Authorized by K.S.A. 74-2011; effective Jan. 1, 1966; revoked May 1, 1979.)

36-21-3. (Authorized by K.S.A. 74-2011; effective Jan. 1, 1966; revoked, E-71-9, Jan. 1, 1971; revoked Jan. 1, 1972.)

36-21-4. (Authorized by K.S.A. 74-2011; effective Jan. 1, 1966; transferred May 1, 1979 to K.A.R. 92-52-4).

36-21-5. (Authorized by K.S.A. 74-2011; effective Jan. 1, 1966; transferred May 1, 1979 to K.A.R. 92-52-8).

36-21-6. (Authorized by K.S.A. 8-191, K.S.A. 1971 Supp. 8-240(e), 74-2004; effective Jan. 1, 1966; amended, E-71-9, Jan. 1, 1971; amended Jan. 1, 1972; revoked May 1, 1979.)

36-21-7. (Authorized by K.S.A. 8-191, K.S.A. 1971 Supp. 8-247, and 74-2004; effective Jan. 1, 1966; amended, E-71-9, Jan. 1, 1971; amended Jan. 1, 1972; transferred May 1, 1979 to K.A.R. 92-52-3).

36-21-8 and 36-21-9. (Authorized by K.S.A. 74-2011; effective Jan. 1, 1966; revoked May 1, 1979.)

36-21-10. (Authorized by K.S.A. 8-191, 74-2011, K.S.A. 1970 Supp. 8-235d, and 74-2004; effective Jan. 1, 1972; transferred May 1, 1979 to K.A.R. 92-52-1).

36-21-11. (Authorized by K.S.A. 8-239; effective Jan. 1, 1966; revoked May 1, 1979.)

36-21-12. (Authorized by K.S.A. 74-2011; effective Jan. 1, 1966; revoked, E-71-9, Jan. 1, 1971; revoked Jan. 1, 1972.)

36-21-27. (Authorized by K.S.A. 8-191, 8-245c, K.S.A. 1971 Supp. 8-255, and 74-2004; effective, E-71-9, Jan. 1, 1971; effective Jan. 1, 1972; transferred May 1, 1979 to K.A.R. 92-52-5).

36-21-30. (Authorized by K.S.A. 8-191, K.S.A. 1971 Supp. 8-255(a), and 74-2004; effective, E-71-9, Jan. 1, 1971; effective Jan. 1, 1972; transferred May 1, 1979 to K.A.R. 92-52-6).

36-21-31. (Authorized by K.S.A. 8-191, K.S.A. 1971 Supp. 8-255(a), and 74-2004; effective, E-71-9, Jan. 1, 1971; effective Jan. 1, 1972; transferred May 1, 1979 to K.A.R. 92-52-7).

Article 22.—SAFETY RESPONSIBILITY

36-22-1. (Authorized by K.S.A. 8-191, 8-723, K.S.A. 1971 Supp. 74-2004; effective Jan. 1, 1966; amended, E-67-12, July 1, 1967; amended Jan. 1, 1969; amended, E-71-9, Jan. 1, 1971; amended Jan. 1, 1972; revoked May 1, 1979.)

36-22-2 to 36-22-5. (Authorized by K.S.A. 8-723; effective Jan. 1, 1966; revoked May 1, 1979.)

36-22-6 and 36-22-7. (Authorized by K.S.A. 8-191, 8-723, K.S.A. 1971 Supp. 74-2004; effective Jan. 1, 1966; amended, E-71-9, Jan. 1, 1971; amended Jan. 1, 1972; revoked May 1, 1979.)

36-22-8. (Authorized by K.S.A. 8-723, 8-747(b)(1), K.S.A. 1971 Supp. 74-2004; effective, E-71-9, Jan. 1, 1971; effective Jan. 1, 1972; revoked May 1, 1979.)

36-22-9 to 36-22-14. (Authorized by K.S.A. 8-723, K.S.A. 1971 Supp. 74-2004; effective Jan. 1, 1972; revoked May 1, 1979.)

36-22-15. (Authorized by K.S.A. 7-104, 8-723, K.S.A. 1971 Supp. 74-2004; effective Jan. 1, 1972; revoked May 1, 1979.)

36-22-16 to 36-22-21. (Authorized by K.S.A. 8-723, K.S.A. 1971 Supp. 74-2004; effective Jan. 1, 1972; revoked May 1, 1979.)

**Article 23.—REFUSAL TO TAKE
BLOOD ALCOHOL TEST**

36-23-1. (Authorized by K.S.A. 8-191, 74-2011, K.S.A. 1971 Supp. 8-1001, 74-2004; effective Jan. 1, 1966; amended, E-71-9, Jan. 1, 1971; amended Jan. 1, 1972; revoked May 1, 1979.)

Article 24.—REISSUE TITLE

36-24-1. (Authorized by K.S.A. 74-2011; effective Jan. 1, 1966; revoked May 1, 1979.)

**Article 25.—TRANSPORTATION OF
HAZARDOUS MATERIALS**

36-25-1. (Authorized by K.S.A. 8-1746; effective May 1, 1976; revoked May 1, 1983.)

**Article 26.—RAILROAD
GRADE CROSSINGS**

36-26-1. Railroad grade crossings; stopping required. (a) K.S.A. 8-1553 requires that the drivers of certain types of motor vehicles, before crossing at grade any track or tracks of a railroad, shall stop such vehicle within 50 feet but not less than 15 feet from the nearest rail of such railroad and while so stopped shall listen and look in both directions along such track for any approaching train, and for signals including active flashing light signals with or without gates or bells indicating the approach of a train, and shall not proceed until the driver can do so safely. After stopping as required and upon proceeding when it is safe to do so, the driver of any vehicle shall cross only in such gear of the vehicle that there will be no necessity for manually changing gears while traversing such crossing and the driver shall not manually shift gears while crossing the track or tracks. Following are the types of vehicles for which this regulation applies:

(1) Every school or commercial bus;

(2) every motor vehicle transporting any quantity of chlorine;

(3) every motor vehicle which, in accordance with the regulations of the department of transportation, is required to be marked or placarded with one of the following markings:

- (A) Explosives A;
- (B) Explosives B;
- (C) Poison Gas;
- (D) Flammable solid W;
- (E) Radioactive;
- (F) Flammable;
- (G) Blasting agent;
- (H) Nonflammable gas;
- (I) Chlorine;
- (J) Poison;
- (K) Oxygen;
- (L) Flammable gas;
- (M) Combustible;
- (N) Flammable solid;
- (O) Oxidizer;
- (P) Organic peroxide;
- (Q) Corrosive; or
- (R) Dangerous;

(4) every cargo tank motor vehicle, whether loaded or empty, used for the transportation of any hazardous material as defined in 49 C.F.R. 170-189;

(5) every cargo tank motor vehicle transporting a commodity which at the time of loading has a temperature above its flashpoint as determined by 49 C.F.R. 173.115;

(6) every cargo tank motor vehicle, whether loaded or empty, transporting any commodity under an exemption issued in accordance with 49 C.F.R. 107.101-107.123.

(b) Exceptions to the requirement for vehicles to stop at every railroad grade crossing shall be:

(1) Any railroad grade crossing at which traffic is controlled by a police officer or human flagman;

(2) any railroad grade crossing controlled by a functioning highway traffic signal transmitting a green indication which, under local law, permits the vehicle to proceed across the railroad tracks without slowing or stopping;

(3) any railroad grade crossing which has been abandoned or its use discontinued with track or tracks still in place with a sign reading "TRACKS OUT OF SERVICE";

(4) any industrial or spur line railroad grade crossing marked with a sign reading "EXEMPT." Such exempt signs shall be erected only by or with the consent of the appropriate state or local authority;

(5) a railroad grade crossing used exclusively for industrial switching purposes, within a business district defined in K.S.A. 8-1407, and amendments, thereto. This type of crossing shall also, as in the previous section (d), be marked with a sign reading "EXEMPT." (Authorized by and implementing K.S.A. 1989 Supp. 8-1553; effective May 1, 1976; amended May 1, 1983; amended May 1, 1984; amended May 1, 1989; amended Aug. 13, 1990.)

Article 27.—JUNKYARD AND SALVAGE CONTROL

36-27-1. Unzoned industrial area. (1) For the purposes of this act an unzoned industrial area shall mean the land occupied by the regularly used building, parking lot, storage or processing area of an industrial activity, and that land within 1,000 feet thereof which is,

(a) Located on the same side of the highway as the principal part of said activity

(b) not predominantly used for residential or commercial purposes, and

(c) not zoned by state or local law, regulation or ordinance.

(2) Industrial activities, for purposes of this definition, shall mean those permitted only in industrial zones, or in less restrictive zones by the nearest zoning authority within the state, or prohibited by said authority but generally recognized as industrial by other zoning authorities within the state, except that none of the following shall be considered industrial activities:

(a) Outdoor advertising structures.

(b) Agricultural, forestry, ranching, grazing, farming and related activities; including, but not limited to, wayside fresh produce stands.

(c) Activities normally and regularly in operation less than three months of the year.

(d) Transient or temporary activities.

(e) Activities more than 300 feet from the nearest edge of the main traveled way.

(f) Activities conducted in a building principally used as a residence.

(g) Railroad tracks, minor sidings, and passenger depots.

(h) Junkyards, as defined in K.S.A. 1968 Supp. 68-2203 (c), except junkyards which are appurtenant to and on the same premises as an existing industrial activity. (Authorized by K.S.A. 68-2204, 68-2212; effective, E-70-7, Nov. 26, 1969; effective Jan. 1, 1971)

36-27-2. Locations under same certificate of compliance. One application and one certificate of compliance may be approved by the beautification administrator for salvage storage locations within the same county and under identical ownership if all locations are identified on the application. (Authorized by and implementing K.S.A. 68-2212; effective Jan. 1, 1972; amended May 1, 1978; amended May 1, 1988.)

36-27-3. Transfers of ownership of certified locations. When a transfer occurs in the ownership of a certified salvage storage location, the following will be required:

(a) If a transfer in ownership does not constitute a change in the entire ownership, the owner or owners shall apply for a correction of the owner records at no additional fee. Transfers of ownership may include the following:

(1) The addition of a partner to the business;

(2) the withdrawal of a partner from the business or the sale and transfer of the interest of a partner; or

(3) ownership and operation of the business by a surviving spouse, personal representative, heir, legatee of the deceased owner or one or more of them.

(b) If the change in ownership constitutes a total change in ownership of the certified location, the new owner or owners shall apply for a new certificate of compliance. The application shall be accompanied by the annual or semiannual fee, whichever is applicable. (Authorized by K.S.A. 68-2212; implementing K.S.A. 68-2205, as amended by L. 1987, Ch. 263, Sec. 1; effective Jan. 1, 1972; amended May 1, 1988.)

36-27-4. Persons exempt from junkyard certificate of compliance. Any person storing materials or equipment on property, located within 1,000 feet of the right-of-way of any public road, shall be exempt from obtaining a certificate of compliance if the materials or equipment are included in the following uses and categories:

(a) Any well drilling equipment purchased and stored for its intended use, reconditioning or resale for its intended use; or

(b) Any farm machinery owned by persons engaged in agriculture and intended for agricultural use. Inoperable farm machinery stored by the owner for purposes of removing and reselling parts to other persons or individuals shall be subject to the state salvage control law. (Authorized

by and implementing K.S.A. 68-2212; effective Jan. 1, 1972; amended Jan. 1, 1974; amended May 1, 1988.)

36-27-5. (Authorized by K.S.A. 1975 Supp. 68-2212; effective Jan. 1, 1972; revoked May 1, 1978.)

36-27-5a. Authority of the beautification administrator. The beautification administrator of the department of transportation shall be the designated representative of the secretary of transportation for purposes of administering the provisions of the junkyard and salvage control act. (Authorized by and implementing K.S.A. 1986 Supp. 68-2213, as amended by L. 1987, Ch. 263, Sec. 3; effective May 1, 1988.)

36-27-6. Inspection required for issuance of a certificate of compliance for junkyards created after May 4, 1967. (a) Before approval of any application for a certificate of compliance for junkyards created after May 4, 1967, a physical inspection of the junkyard location shall be made by the landscape architect of the department of transportation to determine whether the junkyard is visible to motorists.

(b) A written report signed by the person making the inspection shall be submitted to the beautification administrator of the department or the administrator's designated representative. The report shall indicate whether screening the applicant's location is feasible. If screening is deemed feasible, the report shall contain a recommendation for either artificial or natural screening to be installed by the owner to conceal the junkyard from the view of motorists on the road. Failure by the owner, owners or operators to install the required screening within 90 days or within any extension of time granted by the beautification administrator, shall be grounds for revocation or suspension of the certificate of compliance. (Authorized by and implementing K.S.A. 68-2212 and K.S.A. 1986 Supp. 68-2213 as amended by L. 1987, Ch. 263, Sec. 3; effective Jan. 1, 1972; amended May 1, 1978; amended May 1, 1988.)

36-27-7. Provisional certificates of compliance; junkyards created after May 4, 1967. Upon written notice from the beautification administrator to the owner or operator of a junkyard created after May 4, 1967 of the screening required, a provisional certificate of compliance may be issued by the department to the owner. The provisional certificate shall be conditioned

on the completed installation of the required screening within 90 days from the written notice. If inclement weather conditions interfere with the installation, an extension of time for the installation of the screening may be granted by the beautification administrator. Failure to install the required screening within 90 days, or within any extension of time granted by the administrator, shall be grounds for revocation or suspension of the provisional certificate of compliance pursuant to the provisions of K.S.A. 1986 Supp. 68-2213, as amended by L. 1987, Ch. 263. (Authorized by K.S.A. 68-2212, implementing K.S.A. 1986 Supp. 68-2213, as amended by L. 1987, Ch. 263, Sec. 3; effective Jan. 1, 1972; amended May 1, 1978; amended May 1, 1988.)

36-27-8. Periodic inspection of junkyard locations. Periodic inspections of certified junkyards shall be made by the designated representatives of the beautification administrator to insure that they are being operated and maintained in accordance with the rules and regulations of the secretary of transportation. Any owner or owners of a junkyard not maintained or operated in accordance with rules and regulations of the secretary of transportation shall be notified by the beautification administrator in writing, by registered mail or certified mail, return receipt requested. The notice shall specify the required corrections to be made within 30 days from receipt of the notice. Any owner who fails to make the corrections shall become subject to the provisions of K.S.A. 68-2209. Failure to make the required corrections shall be grounds for revocation or suspension of the certificate of compliance in accordance with K.S.A. 68-2213 and amendments thereto. (Authorized by K.S.A. 68-2212 and K.S.A. 1986 Supp. 68-2213 as amended by L. 1987, Ch. 263, Sec. 3; implementing K.S.A. 68-2209 and K.S.A. 1986 Supp. 68-2213 as amended by L. 1987, Ch. 263, Sec. 3; effective Jan. 1, 1972; amended May 1, 1978; amended May 1, 1988.)

36-27-9. Types of screening approved. Either artificial or natural screening may be used to conceal a junkyard from the view of motorists traveling on the road. All screening shall be of a type approved by the beautification administrator. The screening shall be serviceable as well as pleasing to sight. Screening may be effected by construction of a fence of metal, wood or other suitable material or by planting shrubs, trees or other types of natu-

ral screening or a combination of these methods as approved by the beautification administrator. When wooden planks or chain-link fence are installed at a junkyard location, the installation shall not permit the junkyard to be seen from the road by a motorist. Wooden planks shall be installed in such a manner that no storage in the junkyard can be seen from the road. Metal slats shall be interwoven into chain-link fence to the degree that no storage in the junkyard can be seen from the road. Either type of fencing must be of sufficient height to achieve the screening necessary and shall be of uniform height unless the beautification administrator approves a variation in such height. (Authorized by K.S.A. 1977 Supp. 68-2212; effective Jan. 1, 1972; amended May 1, 1978.)

36-27-10. Junkyards expanded. Any junkyard which is altered, changed or enlarged after May 4, 1967, so as not to conform to the junkyard and salvage control act, and is not made to conform to the act by its owner, shall constitute a public and private nuisance and shall be subject to abatement. This provision includes both junkyard locations subject to screening at state expense and locations created after May 4, 1967. Where an owner alters, changes or expands the junkyard location after May 4, 1967, the beautification administrator may recommend that additional screening be installed at the owners expense in lieu of the abatement proceedings. (Authorized by K.S.A. 1977 Supp. 68-2209, 68-2212; effective Jan. 1, 1972; amended May 1, 1978.)

36-27-11. (Authorized by K.S.A. 68-2212, implementing K.S.A. 1986 Supp. 68-2213; as amended by L. 1987, Ch. 263, Sec. 3; effective Jan. 1, 1972; amended May 1, 1978; amended May 1, 1988; revoked March 7, 1994.)

36-27-12. Zoning policy. Local government zoning ordinances or regulations affecting a salvage storage location shall not be abrogated or overruled by actions of the beautification administrator. Any owner with a storage location that was in existence prior to the passing of an ordinance or regulation forbidding use of the location for salvage storage shall be approved and certified by the administrator subject to salvage control regulations of the secretary of transportation. If at any time the owner or owners of a salvage storage location is required to abate and discontinue storage of salvage at a non-conforming location due to enforcement action brought about by a zoning authority, the certification of compliance shall be

revoked by the beautification administrator. Any application for a certificate of compliance of a storage location, which, at the time of the creation of the location is not in conformance with applicable zoning ordinances or regulations of a local public authority, shall be denied by the beautification administrator. (Authorized by K.S.A. 68-2212 and K.S.A. 1986 Supp. 68-2213 as amended by L. 1987, Ch. 263, Sec. 3, implementing K.S.A. 68-2204; effective Jan. 1, 1972; amended May 1, 1978; amended May 1, 1988.)

36-27-13. Determination of whether failure to make original or renewal application for a certificate of compliance or to pay annual certification fee was intentional. When any person fails to make an original or renewal application for a certificate of compliance or to pay the annual certification fee within the time prescribed in K.S.A. 68-2205; as amended by L. 1987, Ch. 263, a determination as to whether the failure was willful or intentional shall be made by the beautification administrator. If the administrator finds and determines that failure to apply or pay the annual certification fee within the time prescribed in K.S.A. 68-2205; as amended by L. 1987, Ch. 263, was not willful or intentional, the penalty fee prescribed in K.S.A. 68-2205; as amended by L. 1987, Ch. 263 shall not be assessed by the beautification administrator. (Authorized by K.S.A. 68-2212, implementing K.S.A. 68-2205, as amended by L. 1987, Ch. 263, Sec. 1; effective Jan. 1, 1974; amended May 1, 1978; amended May 1, 1988.)

Article 28.—SERVICE BRAKES AND SECOND TOWED VEHICLES

36-28-1. Service brakes, second towed vehicles. When a combination of three (3) vehicles are connected by means of a tow bar mechanism, the second towed vehicle of the combination shall be equipped with service brakes acting on at least one (1) axle and shall be compatible to the equipment on the towing vehicle. (Authorized by and implementing K.S.A. 1980 Supp. 8-1907; effective May 1, 1981.)

Article 29.—PAYMENT OF MOVING EXPENSES

36-29-1. Relocation and moving assistance. Employees of the department who are transferred or relocated shall be reimbursed for moving expenses in accordance with the provi-

sions and procedures established by the secretary of administration and set forth at K.A.R. 1-16-2a through 1-16-21. (Authorized by K.S.A. 1982 Supp. 68-404; implementing K.S.A. 75-5022; effective May 1, 1983.)

Article 30.—CONSTRUCTION BIDDING PROCEDURES

36-30-1. Definitions. All definitions of terms relevant to this article shall be those which are set forth in the standard specifications for state road and bridge construction, 1980 edition, in subsections 101.01 through 101.77 inclusive, which are adopted by reference. (Authorized by and implementing K.S.A. 68-410, K.S.A. 1982 Supp. 68-404; effective May 1, 1983.)

36-30-2. Bidding requirements and conditions. The rules and regulations set forth in the standard specifications for state road and bridge construction, 1980 edition, subsections 102.01 through 102.17 inclusive, shall govern the bidding procedure for contracts let by the secretary, and are adopted by reference. All current notices and revisions shall be applicable, and shall be included with the proposal form furnished to each prospective bidder. (Authorized by and implementing K.S.A. 68-410, K.S.A. 1982 Supp. 68-404; effective May 1, 1983.)

36-30-3. Qualification of bidders. (a) A prequalification committee composed of the director of operations, the bureau chief of construction and maintenance, and the controller shall determine the qualification rating for all prospective bidders, in accordance with the special provisions set forth at K.A.R. 36-30-2.

(b) Any contractor dissatisfied by the qualification rating of the committee may, within 10 days after its receipt, request in writing a reconsideration of the rating. This request shall list reasons for dissatisfaction.

(1) If a supplemental qualification statement will more accurately reflect the contractor's status, a supplemental statement may be filed along with the request for reconsideration.

(2) Upon receipt of the written request or supplemental qualification statement, the committee shall notify the contractor of the date, time and place it will reconsider the rating.

(3) The contractor may be represented at the reconsideration, and shall have the opportunity to be heard.

(4) Final action on the reconsideration shall be taken within 30 days from the date of receipt of the reconsideration request.

(c) Any contractor who is dissatisfied with the final action taken by the committee may, within 10 days after receipt of notification of the final action, appeal to the secretary, in writing, for a final hearing.

(1) Upon receipt of the written request for final hearing, the secretary shall notify the contractor of the date, time and place of the hearing.

(2) The secretary, or the secretary's designee, shall conduct the hearing. The contractor may be represented, and shall have the opportunity to be heard.

(3) Final action shall be taken by the secretary or the secretary's designee within 15 days after the hearing. (Authorized by K.S.A. 1982 Supp. 68-404, and K.S.A. 68-410; implementing K.S.A. 1982 Supp. 68-404, K.S.A. 68-407, 68-409 and 68-410; effective May 1, 1983; amended May 1, 1984.)

36-30-4. Sworn statement of bidders.

(a) A sworn statement shall be executed by every bidder, or an agent of the bidder, on behalf of each person, firm, association or corporation submitting a proposal, certifying that the person, firm, association or corporation has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with the contract. The sworn statement shall be in the form of an affidavit, and shall be sworn to before a person who is authorized by the laws of Kansas to administer oaths. The original of the sworn statement shall be filed with the department when the proposal is submitted.

(b) Failure to submit a sworn statement concerning collusion or restraint of free competitive bidding shall be grounds for rejection of the proposal. (Authorized by and implementing K.S.A. 68-410, K.S.A. 1982 Supp. 68-404; effective May 1, 1983.)

36-30-5. (Authorized by and implementing K.S.A. 68-410, K.S.A. 1982 Supp. 68-404; effective May 1, 1983; revoked, T-85-3, Jan. 13, 1984; revoked May 1, 1985.)

36-30-6. Award and execution of contracts. (a) The rules and regulations set forth in the standard specifications for state road and bridge construction, 1980 edition, subsections

103.01 through 103.07 inclusive, shall govern the award and execution of contracts let by the secretary, and are adopted by reference.

(b) Partial payment. The procedures set forth in the standard specifications for state road and bridge construction, 1980 edition, subsection 109.07, shall govern the terms and conditions under which the secretary may withhold a part of the contract price from the contractor to assure that the provisions of the contract will be fully satisfied, and are adopted by reference. (Authorized by and implementing K.S.A. 68-410, 68-411, K.S.A. 1982 Supp. 68-404; effective May 1, 1983.)

36-30-7. Authority of secretary. (a) A contract may be awarded by the secretary when only one bid is received for a project or projects, provided the bid is deemed reasonable and the contractor is deemed reliable by the secretary.

(b) This article shall not be construed to limit the authority of the secretary to contract or refrain from contracting within the discretion given to the secretary by law. (Authorized by K.S.A. 68-410, K.S.A. 1982 Supp. 68-404; implementing K.S.A. 68-402, 68-407, 68-410, K.S.A. 1982 Supp. 68-404; effective May 1, 1983.)

Article 31.—DEBARMENT AND SUSPENSION OF CONTRACTORS

36-31-1. Definitions. (a) “Adequate evidence” means evidence sufficient to form the reasonable belief that a particular act or omission occurred. In addition, a conviction, judgment, or an admission regarding the causes in K.A.R. 36-31-2(a) shall constitute adequate evidence.

(b) “Admission” means a statement made by a contractor in a court, or before any public body or public official, that the contractor committed a certain act or omitted to perform a certain act.

(c) “Affiliate” means contractors having a relationship such that:

(1) Any one of them directly or indirectly controls or has the power to control another; or

(2) If the affected contractor is an individual, any other contractor in which the affected individual is an officer, director, or has controlling legal or beneficial financial interest, until the individual's interest is severed from the other contractor.

(d) “Contractor” means any individual person, or other legal entity, including its directors and officers, which submits offers for, is awarded, or reasonably may be expected to submit offers for

or be awarded a contract for labor, services or materials or any combination of these. This definition shall include any subcontractor of this individual person or legal entity.

(e) “Conviction” means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere.

(f) “Debarment” means an exclusion or bar from contracting with or bidding on contracts let by the secretary for a specified period of time.

(g) “Department” means the Kansas department of transportation.

(h) “Hearing official” means a designee of the secretary who may conduct a fact-finding hearing and may recommend debarment or continuance of suspension.

(i) “Judgment” means a judgment in a civil action by any court of competent jurisdiction.

(j) “Secretary” means the secretary of the Kansas department of transportation or an authorized representative or employee.

(k) “Suspension” means an exclusion or bar from contracting with or bidding on contracts let by the secretary for a temporary period of time, pending the completion of legal or debarment proceedings. (Authorized by K.S.A. 68-410, K.S.A. 1982 Supp. 68-404(k); implementing K.S.A. 68-402, 68-407, 68-410, K.S.A. 1982 Supp. 68-404; effective May 1, 1983.)

36-31-2. Debarment. (a) Cause. The secretary may impose debarment upon a contractor for any of the causes listed below:

(1) Conviction, judgment, or admission of:

(A) fraud, collusion, or any criminal offense in connection with obtaining, attempting to obtain, or performing a contract let by the secretary or a subcontract of it;

(B) violation of federal or state anti-trust statutes;

(C) embezzlement, theft, forgery, bribery, perjury, falsification or destruction of records, making false statements, receiving stolen property, and obstruction of justice;

(D) violation of any applicable laws governing hours of labor, minimum wage rates, discrimination in wages, or child labor; and

(E) violation of any laws indicating a lack of business integrity or business honesty which seriously and directly affect the present responsibility of the contractor to public contracts or subcontracts of them.

(2) Violation of the terms of a contract let by the secretary, or a subcontract of a contract let by the secretary, including but not limited to the following:

(A) willful failure to perform in accordance with contract specifications; and

(B) a record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts, provided that the failure or unsatisfactory performance has occurred within a reasonable time preceding the determination to debar and was substantially caused by acts within the control of the contractor.

(3) Any other cause that affects the question of present responsibility as a contractor or subcontractor on contracts let by the secretary, including conduct prescribed in (1) and (2) even if this conduct has not been or may not be prosecuted as violations of the laws or contracts.

(b) Procedures.

(1) The secretary or an authorized representative shall designate a hearing official to conduct any hearing held under these rules. The hearing official, upon determining from the secretary's reports, investigations, and other documents that cause exists under (a) to debar a contractor, shall furnish written notice of a hearing to the contractor and any named affiliates. The notice shall state:

(A) that debarment is being considered;

(B) the facts giving rise to the proposed debarment;

(C) the cause or causes under (a) relied upon for proposing debarment;

(D) that the contractor may, within 30 days of receipt of the notice, submit to the hearing official, in writing, information and argument in opposition to or clarification of the proposed debarment;

(E) that, except when the action is based on a conviction, judgment, or admission, fact-finding shall be conducted if the hearing official determines that the contractor's submission raises a genuine dispute over material facts upon which the proposed debarment is based or whether the causes relied upon for proposing debarment exist;

(F) the time, place, and date of the hearing;

(G) the name and mailing address of the hearing official;

(H) if a suspension is not in effect before the notice being sent, that contracts shall not be awarded to the contractor by the secretary pending the decision by the hearing official.

(2) The hearing official may extend the date of any hearing upon request of the contractor, but the hearing shall not be extended to later than 60 days from the date the notice was sent. The hearing official shall schedule and conduct the hearing within 45 days of sending the notice, except when an extension is granted as provided in this subsection. In the course of the hearing, the hearing official shall:

(A) regulate the course and scheduling of the hearings;

(B) rule on offers of proof, receive relevant evidence, and make the proof and evidence part of the record;

(C) take action necessary to insure an orderly hearing; and

(D) at the conclusion of the hearing, issue to the secretary and the contractor and all named affiliates written findings of fact and recommended administrative action. The hearing officer shall deliver the entire record to the secretary.

(3) The contractor shall have the opportunity to be present and appear with counsel, submit evidence, present witnesses, and cross-examine all witnesses of the secretary. A transcribed record shall be made of the hearing unless the secretary and the contractor waive the transcript requirement. The transcript shall be available to the contractor and all named affiliates upon request and at cost.

In actions where it has been established by conviction, judgment or admission, or where it has been established by findings made in accordance with this regulation, that the named contractor has engaged in conduct prescribed in (a), the sole issue before the hearing official shall be the appropriate length of debarment to recommend to the secretary. In these cases, the hearing official shall not receive evidence relating to the merits of prior judicial or administrative decisions or findings.

The secretary, after receiving the record, findings of fact, and recommendations of the hearing official shall determine the administrative action to be taken. The secretary shall notify the named contractor or contractors of the secretary's determination in writing. If the determination is to impose debarment, the determination shall set forth the period of time the contractor or contractors are to be debarred from bidding on contracts or subcontracts of the secretary and the reasons for debarment.

(c) Period. The secretary shall impose debarment for a period commensurate with the seriousness

of the causes but this period shall not exceed 36 months. The secretary may reduce the period upon the contractor's request, supported by documentation, for reasons including, but not limited to:

- (1) newly discovered evidence;
- (2) reversal of the conviction of judgment upon which the debarment was based; and
- (3) elimination of other causes for which the debarment was imposed.

(d) Scope. The determination made by the secretary may include all known affiliates of the contractor, provided that each decision to include an affiliate is made only after allowing the affiliate to participate in the hearing, with all the procedural rights of a contractor. (Authorized by K.S.A. 68-410, K.S.A. 1982 Supp. 68-404; implementing K.S.A. 68-402, 68-407, 68-410, K.S.A. 1982 Supp. 68-404; effective May 1, 1983.)

36-31-3. Suspension. (a) Cause. The secretary may impose suspension on a contractor when:

- (1) adequate evidence exists so as to raise a reasonable suspicion that any of the causes set forth in K.A.R. 36-31-2(a) are present; and
- (2) the decision of the secretary is in the best interest of the state.

(b) Procedures.

(1) The secretary may, upon determining from reports, investigations, or other documents that cause exists under K.A.R. 36-31-3(a) to suspend a contractor, impose suspension upon the contractor and any named affiliates. The secretary shall furnish written notice to the contractor and any named affiliates at least five days before the effective date of suspension. The notice shall state:

- (A) that a suspension has been imposed;
- (B) the effective date of the suspension;
- (C) the facts giving rise to the suspension;
- (D) the cause or causes under 36-31-2(a) relied upon for the suspension;

(E) that the suspension is for a temporary period pending the completion of an investigation and any ensuing legal or debarment proceedings;

(2) Within 30 days after receipt of the notice, the contractor may submit to the secretary, in writing, information and argument in opposition to or clarification of the suspension.

(3) Except when the suspension is based on a conviction, judgment, or admission, a hearing shall be conducted if the secretary determines that the contractor's submission raises a genuine dispute over material facts upon which the suspension is based. The secretary shall determine

whether this hearing is necessary within 10 days from receipt of the contractor's submission.

(4) If the secretary determines a hearing should be held, the hearing shall be held in accordance with the rules in K.A.R. 36-31-2(b), except that the hearing shall be for suspension and not for debarment.

(c) Period. A suspension shall be for a temporary period pending the completion of investigation and any ensuing legal or debarment proceedings, unless sooner terminated by the secretary. A suspension shall not continue for more than 6 months from its effective date, unless civil or criminal action regarding the alleged violation has been initiated within that period, or unless debarment proceedings have been initiated. The suspension shall continue until the legal or debarment proceedings are completed.

(d) Scope. The scope of suspension shall be the same as that for debarment, set forth in K.A.R. 36-31-2(d). (Authorized by K.S.A. 68-410, K.S.A. 1982 Supp. 68-404(k); implementing K.S.A. 68-402, 68-410, K.S.A. 1982 Supp. 68-404; effective May 1, 1983.)

36-31-4. Effect on current contracts. (a)

The secretary may continue contracts or subcontracts in existence at the time a contractor is debarred or suspended. A decision as to termination by the secretary shall be made only after review of all the facts and circumstances surrounding the debarment or suspension as they affect the responsibility of the contractor.

(b) Contracts shall not be renewed by the secretary once the contractor has been debarred or suspended. (Authorized by K.S.A. 68-410, K.S.A. 1982 Supp. 68-404; implementing K.S.A. 68-402, 68-407, 68-410, K.S.A. 1982 Supp. 68-404; effective May 1, 1983.)

36-31-5. List. The secretary shall maintain a list of all persons, partnerships, corporations, or associations who have been debarred or suspended in accordance with the procedures prescribed in this article. This list shall be made available for public inspection. (Authorized by K.S.A. 68-410, K.S.A. 1982 Supp. 68-404; implementing K.S.A. 68-402, 68-407, 68-410, K.S.A. 1982 Supp. 68-404; effective May 1, 1983.)

36-31-6. Contract authority. This article shall not be construed to limit the authority of the secretary to contract or refrain from contracting within the discretion given to the secretary by

law. (Authorized by K.S.A. 68-410, K.S.A. 1982 Supp. 68-404; implementing K.S.A. 68-402, 68-407, 68-410, K.S.A. 1982 Supp. 68-404; effective May 1, 1983.)

Article 32.—USE OF ROADSIDE FACILITIES

36-32-1. Definitions. (a) “Authorized representative or officer” means any individual person empowered by an organization or group to enter into contract or agreements on behalf of such organization or group.

(b) “Civic or service organization” means any private non-profit organization which provides social services for the general welfare of the public.

(c) “Department” means the Kansas department of transportation.

(d) “Roadside facility” means any rest area, park facility or picnic area under the jurisdiction and supervision of the secretary of transportation. This shall also apply to any structures or features such as entrances or exits, toilets, and camping areas. (Authorized by and implementing K.S.A. 68-423f; effective May 1, 1983.)

36-32-2. Use of roadside facilities. (a) Roadside facilities which are adjacent to Kansas roads shall be available to the traveling public for rest, relaxation and historical information.

(b) The following restrictions shall apply to the use of any roadside facility maintained by the department:

(1) Overnight camping shall be permitted for one night only.

(2) Vehicles shall not be parked in a manner which obstructs the roadside facility.

(3) Parking for more than 24 hours shall be prohibited.

(4) Trucks and equipment shall use temporary parking areas marked for that purpose.

(5) Civic and service organizations may be permitted the use of roadside facilities to serve refreshments to the traveling public on holidays with the following restrictions:

(A) Refreshments may not be sold.

(B) Donations may not be solicited.

(C) Signs advertising the service shall not be permitted, except within the confines of the roadside facility.

(D) Placement of stands, serving trucks or carts shall not obstruct the roadside facility.

(E) An authorized representative or officer of the

organization or civic group shall assume responsibility in writing for use of the facility in accordance with these regulations, and shall be relieved of the responsibility following a satisfactory inspection by a representative of the department.

(6) No person or persons shall engage in any activity or be a party to any activity which would in any way obstruct the public from the use of any roadside facility. (Authorized by and implementing K.S.A. 68-423f; effective May 1, 1983.)

Article 33.—WEIGHT LIMITS FOR TRUCKS

36-33-1. (Authorized by K.S.A. 68-402, K.S.A. 1982 Supp. 68-404; implementing K.S.A. 8-1909a; effective May 1, 1983; revoked May 1, 1984.)

Article 34.—CHILD PASSENGER SAFETY

36-34-1. (Authorized by and implementing K.S.A. 8-1344; effective May 1, 1983; amended May 1, 1984; revoked Oct. 13, 2000.)

Article 35.—TRANSPORTING TWO COMBINE HEADERS

36-35-1. (Authorized by and implementing K.S.A. 8-1902; effective May 1, 1983; revoked Aug. 15, 1997.)

Article 36.—WIDTHS OF VEHICLES AND LOADS

36-36-1. Vehicle widths. The total outside width of any vehicle, excluding side mounted rear view mirrors, shall not exceed the limits prescribed by K.S.A. 8-1902, as amended by L. 1983, Ch. 41, Sec. 1. The following devices shall be permitted to extend three inches out on either side of any vehicle, provided that an overall vehicle/load width of 108 inches is not exceeded: (a) Turn signals;

(b) hand holds equipment;

(c) splash and spray suppressant devices; and

(d) load-induced tire bulge. (Authorized by K.S.A. 1983 Supp. 68-404 and K.S.A. 8-1902; implementing K.S.A. 1983 Supp. 8-1902; effective, T-84-12, July 1, 1983; effective May 1, 1984.)

Article 37.—THE OILFIELD CERTIFICATION PROGRAM

36-37-1. Definition section. (a) “Annual certification fee” means the monetary amount which each company must pay in order to become certified.

(b) "Annual certification permit" means the official form that allows operation of an OSR on state highways and which is valid only when signed by a representative of KDOT and the applicant.

(c) "Bridge analysis" means the evaluation process completed by KDOT bridge design section and staff to determine whether to allow movement of an OSR.

(d) "Holidays" means New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day.

(e) "Inventory number" means the number which uniquely identifies that particular OSR as part of an applicant's inventory.

(f) "KDOT" means the Kansas department of transportation.

(g) "KHP" means Kansas highway patrol.

(h) "Local law enforcement agency" means the area police department or enforcement agency having the responsibility for enforcing the provisions of these regulations.

(i) "Oilfield servicing rig" means a vehicle, which is self-propelled and used in well servicing, well clean-out, and consisting in general of a mast, an engine for power, a draw works, and a chassis permanently constructed or assembled for such purposes. All equipment on the oilfield servicing rig shall be "reasonably non-divisible." An "oilfield servicing rig" shall hereafter be referred to as "OSR."

(j) "OSR certification" means the process each applicant must complete before being allowed to operate an OSR on any state maintained highway.

(k) "Place of business" means the location designated by an owner central to the operation of each OSR.

(l) "Reasonably non-divisible" shall, for the purposes of this section, mean all necessary tools to be used in the servicing of a well. (Authorized by and implementing K.S.A. 8-1911; effective April 19, 1993.)

36-37-2. Violations. (a) The KHP and local law enforcement agencies shall enforce the provisions of these regulations.

(b) The KHP or local law enforcement agency shall halt the movement of an OSR and issue appropriate fines if it determines that:

(1) an OSR does not comply with these regulations;

(2) the annual certification permit cannot be produced; or

(3) further movement of the OSR will create an unsafe condition or may cause injury to the trav-

eling public. (Authorized by and implementing K.S.A. 8-1911; effective April 19, 1993.)

36-37-3. Requirements. (a) When an OSR exceeds the standards defined in K.S.A. 8-1902, 8-1904, 8-1908 and 8-1909, the applicant shall contact KDOT to obtain an annual certification permit before operating the OSR on any state highway.

(b) A certified OSR shall operate only within a 100-mile radius of the designated place of business.

(c) An OSR shall not be allowed to cross any posted bridge or structure which has been restricted to an axle, tandem, or gross weight that is less than the axle, tandem, or gross weight of the OSR.

(d) No OSR shall travel on the Interstate system.

(e) An oversize/overweight permit must be obtained by the owner of any OSR moving outside a 100-mile radius from its designated place of business or when moving an OSR which exceeds the maximum axle or gross weight allowed in these regulations.

(1) The owner of an OSR which moves outside the 100-mile radius from the designated place of business shall:

(A) Obtain an oversize/overweight permit form from KDOT;

(B) Provide the information listed on the form;

(C) Obtain approval from KDOT for the move; and

(D) Pay the appropriate permit fee.

If approval is by telephone, a copy of the oversize/overweight permit and the permit fee must be mailed to KDOT within 24 hours. A return trip shall be allowed on the original OSR permit, if the move can be made within seven calendar days.

(2) An OSR exceeding the axle or gross weights specified in these regulations must make a written request to KDOT for a bridge analysis.

(A) The analysis shall be completed and approval granted before the OSR can be permitted movement on any state highway.

(B) A bridge analysis shall not be required for the return trip, provided that:

(i) The gross weight of the OSR has not changed significantly;

(ii) The route used for the return trip is the same as the route originally used by the OSR to reach the worksite; and

(iii) The return trip is made within 60 days.

The owner of the OSR shall contact the area or district engineer before moving to determine the condition of the route, to furnish the engineer with the time and date of the move and to receive final approval.

(3) Authorizations for oversize/overweight permits are limited to seven calendar days.

(4) An oversize/overweight permit shall not be renewed. If additional time is necessary, a new oversize/overweight permit shall be purchased.

(5) Issuance of an oversize/overweight permit shall not affect the status of any prior OSR certification which has been issued to the owner of the OSR.

(6) Deviation from the route shown on the oversize/overweight permit shall not be permitted, except that marked detours shall be considered part of the original permit.

(7) No oversize/overweight permit shall be modified after it has been issued.

(g) An OSR shall be allowed to operate on Saturdays as part of its regular operation. Movement of an OSR on Sundays and holidays shall be limited to the crossing of state highways at intersections.

(h) No OSR may pass under or cross any structure, bridge overpass or underpass without a minimum clearance of six inches from any part of such structure, bridge overpass or underpass.

(i) An overweight OSR shall not be allowed to cross any posted bridge or structure which has been restricted to an axle, tandem or gross weight that is less than the axle, tandem or gross weight of the OSR.

(j) Acceptance of the annual certification permit or of any oversize/overweight permit by the applicant shall be evidence the applicant assures full compliance with all requirements contained in K.S.A. 8-1911 and these regulations.

(k) Every OSR is subject to periodic inspections at the discretion of KDOT, KHP or the local law enforcement agency.

(l) Each annual certification permit or oversize/overweight permit shall be issued to a specific OSR and applicant, and shall not be transferable to another owner or OSR.

(m) A valid copy of the annual certification permit and any authorized oversize/overweight permit shall be carried in the OSR.

(n) The annual certification permit remains valid for one year.

(o) All axles shall be permanently fastened to the OSR.

(p) Each axle shall be secured in such a fashion to the OSR which eliminates all possibility of any axle being raised or lowered during movement of the OSR.

(q) The tires for an added axle shall be the same size and type as those on the nearest axle.

(r) All pressure-controlling devices shall be located outside the cab of the OSR and shall not be accessible to the driver while inside the cab of the OSR.

(s) Each axle of a tandem or triple configuration of an OSR shall always carry a proportional amount of weight. (Authorized by and implementing K.S.A. 8-1911; effective April 19, 1993.)

36-37-4. Insurance requirements. (a) An applicant shall have all motor vehicle liability insurance coverages as required by federal, state and local law for the type of vehicle for which certification is sought.

(b) All insurance requirements shall be in force as of the date of certification and maintained after that date for the period covered by the certification.

(c) The applicant shall furnish proof of insurance upon demand by the KDOT or local law enforcement agency.

(d) Failure to maintain required coverages shall result in revocation of the certificate. (Authorized by and implementing K.S.A. 8-1911; effective April 19, 1993.)

36-37-5. Fees. (a) Fees associated with the "oilfield certification" program shall be those established in K.S.A. 8-1911.

(b) No refunds or adjusting of fees received by the KDOT shall be permitted. (Authorized by and implementing K.S.A. 8-1911; effective April 19, 1993.)

36-37-6. Weight limitations. (a) The maximum axle weights allowed for an annual certification shall be:

- (1) 24,000 pounds for single axles;
- (2) 49,000 pounds for tandem axles; and
- (3) 60,000 pounds for tridem axles.

(b) The maximum gross weights allowed for an annual certification shall be:

- (1) 89,000 pounds for four axles;
- (2) 95,000 pounds for five axles;
- (3) 110,000 pounds for six axles; and
- (4) 120,000 pounds for seven axles or more.

(Authorized by and implementing K.S.A. 8-1911; effective April 19, 1993.)

Article 38.—THE MULTI-JURISDICTIONAL OVERSIZE, OVERWEIGHT PERMIT PROGRAM

36-38-1. Special limitations. A permit for travel in those states included in the multi-state agreement of the Multi-Jurisdictional Oversize/Overweight program of the Mississippi Valley region may be issued by the secretary or the secretary's designee. Permits issued in accordance with the multi-state agreement shall be issued only on the form approved by the permit officials of each state. (Authorized by and implementing K.S.A. 8-1911; 68-404; effective April 19, 1993.)

36-38-2. Adoption of standards. The Kansas department of transportation adopts by reference the standards established in the General Conditions of the Multi-jurisdictional Oversize/Overweight program. (Authorized by and implementing K.S.A. 8-1911; 68-404; effective April 19, 1993.)

Article 39.—RAIL SERVICE ASSISTANCE PROGRAM

36-39-1. Priorities for loan guarantee applications. (a) Compliance with the following criteria shall increase the priority standing of an application for a loan guarantee:

(1) the rail lines affected have less than 5,000,000 gross tons per mile annually;

(2) the application demonstrates a higher benefit-to-cost ratio than the minimum ratio required by statute and regulation;

(3) the application demonstrates that operations will be made more efficient by raising the minimum operating speed to one of the following F.R.A. classes:

(A) F.R.A. class one to F.R.A. class two; or

(B) F.R.A. class two to F.R.A. class three;

(4) the application demonstrates a positive statewide or regional economic impact;

(5) the application demonstrates that the project for which funding is sought will result in road or highway maintenance cost savings for state and local governmental entities;

(6) the application describes the tangible assets of and the net worth of the applicant; and

(7) the application demonstrates the commitment of capital, or the guarantee of a set amount of rail traffic by local shippers, governmental entities or other interested parties, to the applicant for the continued operations of rail service for which

a loan guarantee is sought. (Authorized by K.S.A. 1995 Supp. 75-5050 and 75-5046; implementing K.S.A. 75-5040; effective Aug. 30, 1993; amended July 11, 1997.)

36-39-2. Definitions. As used in this article, the following terms shall have the meanings specified in this regulation.

(a) "Applicant" means any qualified entity that submits an application to the secretary for a loan guarantee, a loan, or a grant.

(b) "Board" means the surface transportation board.

(c) "Equipment" means any type of new or rebuilt standard gauge locomotive or general service railroad freight car. General service railroad freight cars may include a boxcar, gondola, open-top or covered hopper car, and flatcar.

(d) "Facilities" means the following:

(1) The track, roadbed, and related structures, including rail, ties, ballast, other track materials, grading, tunnels, bridges, trestles, culverts, repair shops, connecting tracks, and public improvements used or usable for rail service operations;

(2) signals and interlockers; and

(3) terminal or yard facilities, including trailer-on-flatcar and container-on-flatcar terminals, railroad terminal and switching facilities, and service to express companies and railroads and their shippers.

(e) "F.R.A." means federal railroad administration of the United States department of transportation.

(f) "Governmental unit" means any town, city, district, county, commission, agency, authority, board, or other instrumentality of the state or of any of its political subdivisions, including any combination thereof, or a port authority established in accordance with Kansas law.

(g) "Lender" means the obligee, holder, or creditor under an obligation, except that when a bank or trust company is acting as agent or trustee for such an obligee, holder, or creditor, pursuant to an agreement to which the obligor is a part, the term shall refer to the bank or trust company.

(h) "Loan guarantee" means a guarantee by the state of Kansas to pay off the remaining principal of a specific loan under the terms of K.A.R. 36-39-3.

(i) "Obligation" means a loan, note, conditional sale agreement, security agreement, or other obligation issued or granted to finance or refinance facilities or equipment acquisition, construction, rehabilitation, or improvement.

(j) “Obligor” means the debtor under an obligation, including the original debtor and any successor or assignee of the debtor who is approved by the secretary.

(k) “Qualified entity” means any of the following:

(1) Any class II railroad or class III railroad, as defined in 49 C.F.R. 1201.1-1(a), holding a certificate of public convenience from the surface transportation board. 49 C.F.R. 1201.1-1(a), as in effect on August 5, 2010, is hereby adopted by reference;

(2) any class I railroad, as defined in 49 C.F.R. 1201.1-1(a), which is adopted by reference in paragraph (k)(1), that holds a certificate of public convenience from the surface transportation board and is engaged in the construction and maintenance of railroads, facilities and equipment in Kansas in conjunction with the development of an intermodal facility, as defined in K.S.A. 75-5082 and amendments thereto; or

(3) any governmental unit or Kansas shipper in coordination with a railroad that seeks to facilitate the financing, acquisition, or rehabilitation of railroads, facilities, equipment, and rolling stock in the state of Kansas.

(l) “Secretary” means the secretary of the Kansas department of transportation or the secretary’s designee. (Authorized by K.S.A. 2009 Supp. 75-5046 and K.S.A. 75-5050; implementing K.S.A. 2009 Supp. 75-5046, K.S.A. 75-5047, K.S.A. 2009 Supp. 75-5048, as amended by L. 2010, ch. 156, sec. 30, and K.S.A. 2009 Supp. 75-5049; effective Aug. 30, 1993; amended July 11, 1997; amended, T-36-6-29-10, June 29, 2010; amended Oct. 15, 2010.)

36-39-3. Requirements and conditions for application for a loan guarantee. (a) Each qualified entity and its lender shall file with the secretary the original and 10 copies of each application.

(b) The loan guarantee program’s aggregate annual obligations shall not exceed \$5,000,000. If, at the time of application, loan guarantees have previously been approved by the legislature or state finance council during the same fiscal year, the amount requested shall not exceed the difference of \$5,000,000 and the amounts previously approved during that fiscal year. The sum of the amounts sought in each fiscal year, including any outstanding loan guarantees previously approved pursuant to K.S.A. 1995 Supp. 75-5046, shall not exceed \$20,000,000.

(c) The applicant and lender shall acknowledge in the application that obligations of the

state of Kansas resulting from the approval of an application shall be limited to payment of the remaining principal of the specific loan after lenders have exhausted all other available remedies against the obligor.

(d) Each application shall include the following:

(1) the full and correct name, principal business address, telephone number and facsimile number of the applicant;

(2) the date of the applicant’s incorporation, or organization if not a corporation, and the name of the government, state, or territory under the laws of which it was incorporated or organized. If the applicant is a partnership, association or other form of organization other than a corporation, a full description of the organization shall be furnished;

(3) the name, title, and address of the person to whom correspondence regarding the application should be addressed;

(4) a certified copy of proposed or executed loan agreements, including related agreements or other documents, and detailed descriptions of the loan guarantee, including:

(A) the total amount of the loan to be guaranteed;

(B) a description of all facilities included in or directly affected by the proposed project, the physical condition of such facilities and a description of the project;

(C) each part or sub-part into which the project may reasonably be divided and the priority and schedule of expenditures for each part or sub-part;

(D) the estimated timing of the expenditure of the proceeds of the loan;

(E) a statement of whether the project involves another railroad or other participant, through joint execution, coordination, or otherwise. The applicant shall include a description of the relative participation of the applicant and the other railroad or participant, including a statement of the financing arrangements of each participant, the portion of the work to be performed by each participant and the contemplated level of usage of the facility by each participant when the work is completed, along with a statement by a responsible officer or official of the other railroad or participant that the information provided reflects their agreement on these matters;

(F) the effective date of the loan;

(G) a schedule of repayment of the principal and interest;

(H) a description of the security to be offered the secretary in connection with any loan guaran-

tee, including a description of the priority of this loan in relation to other liens or security interests on the property that is designated as security, the applicant's opinion of the value of this security, and the basis for the opinion; and

(I) a description of the lender's security and remedies against the obligor or any other parties before the state of Kansas is obligated to pay any defaulted loan; and

(J)(i) if the loan for which a guarantee is sought is outstanding, the effective interest rate of the loan for which a loan guarantee is sought; or

(ii) if the applicant has discussed with a potential lender the terms of a loan guarantee to be issued, the proposed effective rate of interest;

(5) a statement, in summary form, showing financial obligations to or claims against the state of Kansas or obligations for which the state of Kansas is guarantor, if any. Such statements shall be made by the applicant, any affiliated corporate entity of the applicant or the applicant's parent, and shall describe the following:

(A) the status of any and all claims under litigation; and

(B) any other debts or guarantees existing between the applicant and the state of Kansas, including the name of the department or agency involved in such loans, claims or other debts;

(6) an analysis which includes the following:

(A) a statement that the financing is justified by present and future demand for rail services, that the financing will meet existing needs for such services and that the project will provide shippers with improved service. The applicant shall submit supporting evidence with the statement, including copies of all market analyses and studies which have been performed to determine present and future demand for rail services;

(B) a description of the impact of the financing upon the projected traffic to be originated, terminated, or carried by the obligor for at least the five years immediately following completion of the project;

(C) a five-year *pro forma* statement of cash flow attributable to the project; and

(D) a description of any other benefit which would accrue to the applicant from the proceeds of the obligation;

(7) a business plan, with supporting evidence, showing:

(A) that the applicant is financially capable of acquiring, rehabilitating, or improving facilities in an efficient and economical manner;

(B) that the ratio of benefits-to-costs for any project funded by such guaranteed loan will be greater than one. The benefit-to-cost methodology to be used for this determination shall be the "Benefit-cost methodology for the Local Rail Freight Assistance Program" approved by the F.R.A. in July, 1990;

(C) that the applicant will submit with the application audited financial statements, prepared in accordance with generally accepted accounting principles, for the past two annual accounting periods;

(D) any car supply agreements and the estimated rail traffic;

(E) a balance sheet, income statement, statement of changes in financial position or statement of cash flows, notes to financial statements, operating plans and appraisals of the assets to be acquired;

(F) that the applicant has been turned down by a lending institution and that adequate funding for the proposed project is not otherwise available on terms that would make the proposed project financially feasible, in the absence of a state loan guarantee; and

(G) a written opinion from bond counsel that the guarantee of such loan by the secretary would not adversely affect the rating of bonds issued pursuant to K.S.A. 1995 Supp. 68-2314 *et seq.*, and amendments thereto;

(8) a statement, with supporting evidence, that the financing will improve the ability of the applicant to transport freight;

(9) a statement describing the maintenance program for the applicant's entire rail system and the planned maintenance program for the facilities financed by the proceeds of the obligation;

(10) from each existing lender or proposed prospective lender a statement which includes the following:

(A) the lender's full and correct name, principal business address, telephone number and facsimile number;

(B) references to applicable provisions of law, the lender's charter and other governing instruments that confer authority on the lender to accept the obligation;

(C) a copy of the loan agreement between the lender and the applicant;

(D) a brief statement of the circumstances and negotiations leading to the agreement by the lender to accept the proposed obligation;

(E) a copy of the lender's determination that the loan would not be economically feasible without the proposed loan guarantee;

(F) a statement of the nature and extent of any affiliation or business relationship between the existing or prospective lender and any of its directors, partners or principal executive officers, with the applicant and any of its directors, partners, or principal executive officers or with any person whose name is required to be furnished under this article; and

(G) a full and complete statement of all sums to be given to the lender in connection with the proposed obligation, including:

(i) the name and address of each person to whom any payment has been made or will be made and nature of any affiliation, association or prior business relationship between any person named in this paragraph and the lender or any of its directors, partners, or officers;

(ii) the amount of the cash payment or the nature and value of other consideration; and

(iii) any condition upon the obligation of the obligee to make any payment;

(11) a hazardous waste assessment report on the rail lines for which a loan guarantee is requested;

(12) a certificate of title to prove the applicant has the legal ability to allow its property to be encumbered;

(13) proof of liability insurance in effect in the amount of \$5,000,000 per occurrence;

(14) an opinion from applicant's counsel that applicant is legally authorized to make this application and has no outstanding litigation or impediment that would impair its ability to perform the obligation;

(15) an acknowledgement by the applicant that the secretary may conduct a pre-audit of applicant's accounting system to determine if the system is adequate to isolate and accumulate project costs; and

(16) any additional information that the applicant deems appropriate to convey a full and complete understanding of the project and its impact or to otherwise assist the secretary in making a determination. (Authorized by K.S.A. 1995 Supp. 75-5046; implementing K.S.A. 1995 Supp. 75-5046 and 75-5047; effective Aug. 30, 1993; amended July 11, 1997.)

36-39-4. Forms. Each applicant for a loan guarantee shall file an application on the forms provided by the Kansas department of transportation labeled and assembled using the following format:

- (a) Application summary;
- (b) exhibit "A," description of applicant;

(c) exhibit "B," description of project;

(d) exhibit "C," description of the ratio of benefit to cost;

(e) exhibit "D," pro forma cash flow statement;

(f) exhibit "E," rehabilitation, repair, and construction cost estimate;

(g) exhibit "F," historic and current financial statements; and

(h) exhibit "G," identification of officers and directors. (Authorized by and implementing K.S.A. 2009 Supp. 75-5046; effective Aug. 30, 1993; amended, T-36-6-29-10, June 29, 2010; amended Oct. 15, 2010.)

36-39-5. Pre-application conference. A pre-application conference shall be held between the prospective applicant and department of transportation staff before an application for a loan guarantee is filed. The proposed project shall be reviewed and guidance given to the prospective applicant on how to proceed. Applications shall not be filed sooner than 30 days after the pre-application conference. (Authorized by and implementing K.S.A. 1991 Supp. 75-5046; effective Aug. 30, 1993.)

36-39-6. Rail service financial assistance; loans and grants. (a) Compliance with the criteria in K.A.R. 36-39-1(a) shall increase the priority standing of an application for a loan or grant to be used to facilitate the financing, acquisition, or rehabilitation of railroads, facilities, equipment, and rolling stock in the state of Kansas.

(b) Monies to be loaned or granted shall originate from the rail service improvement fund.

(c) All funds loaned shall be repaid to the department of transportation within 10 years or less of the notice of acceptance of the project. The repayment shall include an interest rate established in the loan agreement between the secretary and applicant.

(d) Each application shall be submitted in the form prescribed by the Kansas department of transportation. (Authorized by K.S.A. 75-5050; implementing K.S.A. 2009 Supp. 75-5048, as amended by L. 2010, ch. 156, sec. 30, and K.S.A. 2009 Supp. 75-5049; effective Aug. 30, 1993; amended July 11, 1997; amended, T-36-6-29-10, June 29, 2010; amended Oct. 15, 2010.)

Article 40.—TRANSPORTATION REVOLVING FUND

36-40-1. Definitions. For the purposes of the regulations in this article, the following words

and phrases shall be defined as follows: (a) “Act” means K.S.A. 75-5063 *et seq.*, and amendments thereto.

(b) “Applicant” means any governmental unit filing an application with the secretary for financial assistance under the act.

(c) “Approved project” means the scope of work for a transportation project for which financial assistance is provided.

(d) “Debt service” means the principal, interest, and any premium required to be paid pursuant to a financial assistance agreement.

(e) “Financial assistance” means any credit enhancement, loan, or refunding or acquisition of bonds previously issued by the applicant as approved by the secretary pursuant to the act.

(f) “Financial assistance agreement” means a contract between an applicant and the secretary confirming the purpose of the financial assistance, the amount and terms of the financial assistance, the schedule of financial assistance payments and repayments, if any, and any other agreed-upon conditions applicable to that approved project.

(g) “Final acceptance” means the point at which the contractor has completed all work on an approved project and the licensed professional engineer responsible for the inspection informs the department in writing that all work specified in the construction contract has been completed in substantial conformity with the plans, specifications, and any authorized revisions.

(h) “K DFA” means the Kansas development finance authority, which is a public body, politic and corporate, and an independent instrumentality of the state established at K.S.A. 74-8903 and amendments thereto.

(i) “Inspector” means an individual who meets the following requirements:

(1) (A) Is a licensed professional engineer or is supervised by a licensed professional engineer; and

(B) is provided by the applicant to observe the work performed and test the materials used in an approved project according to its plans and contract documents; and

(2) has successfully completed the department’s certified inspector training appropriate for the work being inspected.

(j) “Licensed professional engineer” means a person licensed as a professional engineer by the state board of technical professions pursuant to K.S.A. 74-7001 *et seq.* and amendments thereto.

(k) “Maintenance” means a type of transportation project that extends the design life of a bridge, culvert, highway, road, or street, or combination of these, but does not, as the major purpose, enhance the structural integrity.

(l) “Opened to unrestricted travel” means that all travel lanes are open to vehicle traffic and no construction speed restrictions remain in place.

(m) “Transportation project” means the acquisition, construction, improvement, repair, rehabilitation, maintenance, or extension of any bridge, culvert, highway, road, or street, or combination of these, for which an application has been filed for financial assistance from the fund. (Authorized by and implementing K.S.A. 2002 Supp. 75-5065; effective Oct. 31, 2003.)

36-40-2. Application and supporting documents.

(a) An application for financial assistance from the fund may be submitted to the secretary at any time.

(b) Each applicant for financial assistance for a transportation project shall submit, for the secretary’s review and consideration for approval, the following application documents:

(1) A completed financial assistance application on a form furnished by the secretary;

(2) a detailed statement that establishes the need for the transportation project;

(3) documentation that provides sufficient detail regarding the transportation project to enable the secretary to determine its estimated costs, the purpose for the financial assistance, and the time period in which the financial assistance is to be used;

(4) an overall completion schedule for the transportation project, submitted in a form prescribed by the secretary; and

(5) information that establishes to the secretary’s satisfaction that the applicant has the financial capability to satisfy its obligations under the financial assistance agreement and addresses at least the following areas:

(A) Projected economic and population growth within the applicant’s jurisdictional boundaries;

(B) existing and forecasted debt obligations of the governmental unit making the application, during the term of the financial assistance agreement; and

(C) anticipated total revenues of the governmental unit making the application, during the term of the financial assistance agreement. (Authorized by K.S.A. 2002 Supp. 75-5065; implementing K.S.A. 2002 Supp. 75-5068; effective Oct. 31, 2003.)

36-40-3. Transportation project eligibility. (a) For a transportation project to be eligible for financial assistance, the following requirements shall be met:

(1) The applicant shall provide the secretary with the applicant's written assurance of the following:

(A) The applicant will use a licensed professional engineer to design the transportation project, if approved, in accordance with the then-existing generally recognized and prevailing engineering standards and with the federal and state laws and regulations applicable at the time of design, which shall include any subsequent design revisions for the approved project.

(B) The transportation project, if approved, will be inspected by an inspector, who shall provide reasonable assurance that the approved project is constructed in substantial conformity with its plans, specifications, and any authorized revisions.

(C) The construction of the transportation project, if approved, will conform to its plans, specifications, and any authorized revisions.

(D) The plans and specifications for the transportation project, if approved, shall not be revised or deviated from without the approval of the approved project's designer.

(2) The transportation project shall be consistent with the existing or planned state highway system, or both, as defined by K.S.A. 68-406, and amendments thereto.

(b) No portion of a transportation project's cost shall be eligible for financial assistance under the act if a federal reimbursement has been received for the same portion of the cost. (Authorized by and implementing K.S.A. 2002 Supp. 75-5065; effective Oct. 31, 2003.)

36-40-4. Fund use. The fund shall be used to finance or refinance approved projects, with priority given to the following types of financial assistance: (a) Loans for all or part of an approved project;

(b) guarantees, security, or another type of credit enhancement, or any combination of these, for bonds to be issued by K DFA or an applicant for financial assistance; and

(c) refunding or acquisition of bonds issued by an applicant. (Authorized by K.S.A. 2002 Supp. 75-5065; implementing K.S.A. 2002 Supp. 75-5066; effective Oct. 31, 2003.)

36-40-5. Financial assistance agreement requirements. Each financial assistance agree-

ment entered into pursuant to the act shall meet the following requirements: (a) The financial assistance shall not exceed the total cost of the approved project.

(b) The term of any financial assistance shall not exceed the design life of the approved project or 20 years, whichever is less.

(c) If any debt service is required, it shall be guaranteed by the applicant in a manner consistent with the applicant's approved application.

(d) The financial assistance agreement shall contain the following sentences:

(1) "All work performed and all materials furnished for the approved project shall be in reasonably close conformity with the plans, specifications, and revisions, which have been approved by the designer of the approved project."

(2) "Technical advice or assistance, or both, provided by the secretary to an applicant pursuant to K.S.A. 75-5068(c), and amendments thereto, shall not be construed as an undertaking by the secretary of the duties of the applicant or the approved project's owner, or both, or the duties of any consultant, licensed professional engineer, or inspector hired by the applicant or the approved project's owner." (Authorized by K.S.A. 2002 Supp. 75-5065; implementing K.S.A. 2002 Supp. 75-5068; effective Oct. 31, 2003.)

36-40-6. Interest rate and servicing fees.

If any of the financial assistance is required to be repaid under the terms of the financial assistance agreement, that portion of the financial assistance shall bear interest in accordance with the applicable financial assistance agreement, at a rate set by the secretary. This rate shall be consistent with the provisions of K.S.A. 10-1009, and amendments thereto. The financial assistance agreement may also establish fees for servicing the financial assistance. (Authorized by K.S.A. 2002 Supp. 75-5065; implementing K.S.A. 2002 Supp. 75-5068; effective Oct. 31, 2003.)

36-40-7. Repayment of financial assistance. (a) Debt service shall be paid in accordance with the terms and conditions of the financial assistance agreement.

(b) If any financial assistance is prepaid in whole or in part, the prepayment shall be made in accordance with the terms and conditions of the financial assistance agreement.

(c) If a recipient of monies from the fund subsequently receives federal reimbursement for

the same costs of an approved project for which financial assistance was received, the recipient shall repay to the secretary those fund monies in an amount equal to the federal reimbursement received, within 30 days after receipt of the federal reimbursement. (Authorized by K.S.A. 2002 Supp. 75-5065; implementing K.S.A. 2002 Supp. 75-5068; effective Oct. 31, 2003.)

36-40-8. Approved project statements.

(a) Each financial assistance recipient shall provide the secretary, when the approved project is opened to unrestricted travel, with the written statement of the recipient's licensed professional engineer indicating that, at the time of design, the plans, specifications, and any authorized revisions for the approved project followed the then-existing generally recognized and prevailing engineering standards and were in compliance with the applicable federal and state laws and regulations.

(b) Each financial assistance recipient shall provide the secretary with the statement of the recipient's inspector indicating that the approved project was constructed in reasonable conformity with its plans, specifications, and any authorized revisions, at each of the following times:

(1) At the time when the approved project is opened to unrestricted travel; and

(2) at the time of the final acceptance. (Authorized by and implementing K.S.A. 2002 Supp. 75-5065; effective Oct. 31, 2003.)

36-40-9. Approved project costs; accounting requirement. Each financial assistance recipient shall maintain an accounting system that segregates and accumulates project costs for the approved project. Project costs may be reviewed or audited, or both, by the secretary at any time during the construction of the approved project and after completion of the approved project. (Authorized by K.S.A. 2002 Supp. 75-5065; implementing K.S.A. 2002 Supp. 75-5065 and 75-5068; effective Oct. 31, 2003.)

**Article 41.—PUBLIC SAFETY
COMMUNICATION SYSTEM AND
REVOLVING FUND**

36-41-1. Definitions. For the purposes of this article, the following words and phrases shall be defined as specified in this regulation: (a) "Access lease agreement" means a contract between the secretary and any one of the following that

permits and confirms the purpose and terms of access to the department's communication system equipment and any other agreed-upon conditions:

(1) An authorized governmental entity;

(2) an authorized nongovernmental entity; or

(3) an authorized public safety agency.

(b) "Act" means K.S.A. 75-5073 through 75-5077, and amendments thereto.

(c) "Applicant" means any of the following:

(1) A governmental entity filing an application under the act with the secretary for an access lease agreement;

(2) a nongovernmental entity filing an application under the act with the secretary for an access lease agreement; or

(3) a public safety agency filing an application under the act with the secretary for an access lease agreement or an equipment lease agreement.

(d) "Authorized governmental entity" means a governmental entity whose application for an access lease agreement has been approved by the secretary. This term shall not include public safety agencies.

(e) "Authorized nongovernmental entity" means a nongovernmental entity whose application for an access lease agreement has been approved by the secretary.

(f) "Authorized public safety agency" means a public safety agency whose application for an access lease agreement or equipment lease agreement has been approved by the secretary.

(g) "Communication system equipment access" means the acquisition, construction, enhancement, installation, improvement, maintenance, repair, rehabilitation, relocation, security, or extension of any equipment necessary to use, implement, support, and maintain the department's communication system.

(h) "Equipment lease agreement" means a contract between an authorized public safety agency and the secretary that confirms the purpose and terms of the lease of communication system equipment from the department and any other agreed-upon conditions.

(i) "Prevailing rate" means the amount of money that the secretary determines shall be charged for the communication system equipment access sought by an authorized nongovernmental entity, as specified in an access lease agreement. (Authorized by K.S.A. 2004 Supp. 75-5076; implementing K.S.A. 2004 Supp. 75-5074; effective, T-36-2-18-05, Feb. 18, 2005; effective July 22, 2005.)

36-41-2. Application and supporting documents. (a) Any governmental entity, nongovernmental entity, or public safety agency may submit an application for an access lease agreement under the act to the secretary for consideration for approval at any time. Any public safety agency may submit an application for an equipment lease agreement under the act to the secretary for consideration for approval at any time.

(b) Each applicant shall submit the following application documents for the secretary's review and consideration for approval:

(1) A completed application for an access lease agreement or an equipment lease agreement, on a form furnished by the department;

(2) a detailed statement that establishes the need for the requested access to communication system equipment or the leasing of communication system equipment;

(3) documentation that provides sufficient detail regarding the need for access to communication system equipment or the leasing of communication system equipment to enable the secretary to determine the following:

(A) The exact nature of the requested access or equipment, or both;

(B) the applicable estimated costs for the access or equipment, or both; and

(C) the proposed lease period; and

(4) financial information regarding the applicant's revenues and expenditures for the three calendar years immediately preceding the date of the application that establishes to the secretary's satisfaction that the applicant has the capability to satisfy its financial obligations under the requested lease agreement. (Authorized by K.S.A. 2004 Supp. 75-5076; implementing K.S.A. 2004 Supp. 75-5074; effective, T-36-2-18-05, Feb. 18, 2005; effective July 22, 2005.)

36-41-3. Access lease agreement and equipment lease agreement: restrictions and requirements. (a) No access lease agreement shall permit interference with or impair the existing use of the department's communication system equipment by any governmental entity, any nongovernmental entity, or any public safety agency.

(b) The initial term of each access lease agreement shall not exceed five years. An access lease agreement may be renewed by the secretary after its initial term for a maximum of four five-year periods.

(c) The rate charged to an authorized governmental entity or an authorized public safety agency for communication system equipment access and the rate charged to an authorized public safety agency for the lease of communication system equipment shall be the actual incremental costs of the administration, equipment, installation, and maintenance attributable to the specific lease activity, as determined by the secretary. The lease agreement shall specifically detail the actual incremental costs upon which the rate is based.

(d) The term of each equipment lease agreement shall not exceed the service life of the equipment or 10 years, whichever is less. (Authorized by K.S.A. 2004 Supp. 75-5076; implementing K.S.A. 2004 Supp. 75-5074; effective, T-36-2-18-05, Feb. 18, 2005; effective July 22, 2005.)

36-41-4. Interest rate and service fees.

(a) Each equipment lease agreement payment shall include an interest component based on the amortized balance of the cost of the equipment, in accordance with the amortization schedule incorporated in the equipment lease agreement. The interest rate for each equipment lease agreement shall be the published rate in effect on the effective date of the agreement, as that rate is established and published by the secretary on the first day of each month. This rate shall be consistent with the provisions of K.S.A. 10-1009 and amendments thereto.

(b) Any access lease agreement with an authorized governmental entity or an authorized public safety agency and any equipment lease agreement with an authorized public safety agency may include fees for services provided by the department related to the applicable lease agreement, which shall be detailed in the agreement. (Authorized by K.S.A. 2004 Supp. 75-5076; implementing K.S.A. 2004 Supp. 75-5074; effective, T-36-2-18-05, Feb. 18, 2005; effective July 22, 2005.)

36-41-5. Prevailing rates. (a) The rate charged to any authorized nongovernmental entity pursuant to an access lease agreement shall be the prevailing rate in effect on the effective date of the access lease agreement. This rate may include fees determined reasonable by the secretary for services provided by the department related to the access lease agreement.

(b) The prevailing rate to be charged to an authorized nongovernmental entity for communication system equipment access shall be established

for the access location sought by that entity for the communication system equipment access. The prevailing rate shall be calculated using the average of rates for similar access and any services related to the access charged by entities other than the entity seeking access and the department, within a 40-mile radius of the location for which access is sought. A good faith effort shall be made by the secretary to secure estimates for the service and access from at least three entities. If estimates from three entities can not be secured within the 40-mile radius, then the radius shall be expanded by the secretary in 10-mile increments until three estimates are received. (Authorized by K.S.A. 2004 Supp. 75-5076; implementing K.S.A. 2004 Supp. 75-5074; effective, T-36-2-18-05, Feb. 18, 2005; effective July 22, 2005.)

Article 42.—KANSAS INTERMODAL TRANSPORTATION REVOLVING FUND

36-42-1. Definitions. For the purposes of this article, the following words and phrases shall be defined as follows: (a) “Act” means K.S.A. 75-5081 et seq., and amendments thereto.

(b) “Applicant” means any governmental unit or private enterprise filing an application with the secretary for financial assistance under the act.

(c) “Approved project” means the scope of work for an intermodal transportation project for which financial assistance is provided.

(d) “Debt service” means the principal, interest, and any premium required to be paid pursuant to a financial assistance agreement.

(e) “Final acceptance” means the point at which the contractor has completed all work on an approved project and the licensed professional engineer responsible for the inspection informs the department in writing that all work specified in all of the approved project contracts has been completed in substantial conformity with the plans, specifications, and any authorized revisions.

(f) “Financial assistance” means any credit enhancement, loan, or refunding or acquisition of bonds previously issued by the applicant, as approved by the secretary pursuant to the act.

(g) “Financial assistance agreement” means a contract between an applicant and the secretary confirming the purpose of the financial assistance, the amount and terms of the financial assistance, the schedule of financial assistance payments and repayments, if any, and any other agreed-upon conditions applicable to that approved project.

(h) “Inspector” means an individual who meets the following requirements:

(1) (A) Is a licensed professional engineer or is supervised by a licensed professional engineer; and

(B) is provided by the applicant to observe the work performed and test the materials used in an approved project according to its plans and contract documents; and

(2) has successfully completed the department’s certified inspector training appropriate for the work being inspected.

(i) “Intermodal transportation project” means the acquisition, construction, improvement, repair, rehabilitation, maintenance, or extension of any bridge, culvert, highway, road, street, underpass, railroad crossing, or combination of these, located within an intermodal transportation area for which an application has been filed for financial assistance from the fund.

(j) “K DFA” means the Kansas development finance authority established by K.S.A. 74-8903 and amendments thereto.

(k) “Licensed professional engineer” means a person licensed as a professional engineer by the state board of technical professions pursuant to K.S.A. 74-7001 et seq. and amendments thereto.

(l) “Maintenance” means a type of intermodal transportation project that extends the design life of a bridge, culvert, highway, road, street, underpass, railroad crossing, or any combination of these, but does not, as the major purpose, enhance the structural integrity.

(m) “Opened to unrestricted travel” means that all travel lanes are open to vehicle traffic and no construction speed restrictions remain in place. (Authorized by and implementing K.S.A. 2009 Supp. 75-5083; effective April 30, 2010.)

36-42-2. Application and supporting documents. (a) An application for financial assistance from the fund may be submitted to the secretary at any time.

(b) Each applicant for financial assistance for an intermodal transportation project shall submit, for the secretary’s review and consideration for approval, the following application documents:

(1) A completed financial assistance application on a form furnished by the secretary;

(2) a detailed statement that establishes the need for the intermodal transportation project;

(3) a detailed description of the intermodal facility that is used to define the intermodal

transportation area where the intermodal transportation project for which the financial assistance is requested would be located;

(4) a detailed description of the cost of the intermodal facility that is used to define the intermodal transportation area where the intermodal transportation project for which the financial assistance is requested would be located;

(5) a detailed description of the intermodal transportation area and documentation that provides sufficient detail to enable the secretary to certify whether the intermodal transportation area is impacted by the intermodal facility used to define the intermodal transportation area;

(6) documentation that provides sufficient detail regarding the intermodal transportation project to enable the secretary to determine its estimated costs, the purpose for the financial assistance, and the time period in which the financial assistance is to be used;

(7) an overall completion schedule for the intermodal transportation project, submitted in a form prescribed by the secretary; and

(8) any information as may be required and deemed relevant by the secretary that establishes to the secretary's satisfaction that the applicant has the financial capability to satisfy its obligations under the financial assistance agreement and addresses at least the following areas:

(A) Projected economic and population growth, including assumptions made to develop the projections within the applicant's jurisdictional boundaries, including a separate projection that indicates the incremental projected economic and population growth as a result of the intermodal transportation project;

(B) existing and forecasted debt obligations and debt service schedules of the governmental unit or private enterprise, or both, submitting the application, during the term of the financial assistance agreement; and

(C) projected total revenues, including identification of revenue sources and all assumptions made to develop the projection of the governmental unit or private enterprise, or both, submitting the application, during the term of the financial assistance agreement, including a separate projection that indicates the incremental projected revenues as a result of the intermodal transportation project. (Authorized by K.S.A. 2009 Supp. 75-5083; implementing K.S.A. 2009 Supp. 75-5086; effective April 30, 2010.)

36-42-3. Intermodal transportation project; eligibility. (a) For an intermodal transportation project to be eligible for financial assistance, the following requirements shall be met:

(1) The qualified borrower shall provide the secretary with the applicant's written assurance of the following:

(A) The qualified borrower shall use a licensed professional engineer to design the intermodal transportation project, if approved, in accordance with the then-existing generally recognized and prevailing engineering standards and with the federal and state laws and regulations applicable at the time of design, which shall include any subsequent design revisions for the approved project.

(B) The intermodal transportation project, if approved, shall be inspected by an inspector, who shall provide reasonable assurance that the approved project is constructed in substantial conformity with its plans, specifications, and any authorized revisions.

(C) The construction of the intermodal transportation project, if approved, shall conform to its plans, specifications, and any authorized revisions.

(D) The plans and specifications for the intermodal transportation project, if approved, shall not be revised or deviated from without the approval of the approved project's designer.

(2) The intermodal transportation project shall be consistent with the existing or planned state highway system, or both, pursuant to K.S.A. 68-406 and amendments thereto.

(b) No portion of an intermodal transportation project's cost shall be eligible for financial assistance under the act if a federal reimbursement has been received for the same portion of the cost. (Authorized by and implementing K.S.A. 2009 Supp. 75-5083; effective April 30, 2010.)

36-42-4. Fund use. The fund shall be used to finance or refinance approved projects, with priority given to the following types of financial assistance:

(a) Loans for all or part of an approved project;

(b) guarantees, security, or another type of credit enhancement, or any combination of these, as may be approved by the secretary for bonds to be issued by KDFEA or an applicant; and

(c) the refunding or acquisition of bonds issued by an applicant. (Authorized by K.S.A. 2009 Supp. 75-5083; implementing K.S.A. 2009 Supp. 75-5084; effective April 30, 2010.)

36-42-5. Financial assistance agreement; requirements. Each financial assistance agree-

ment entered into pursuant to the act shall meet the following requirements: (a) The financial assistance shall not exceed the total cost of the approved project.

(b) The term of any financial assistance shall not exceed the shortest of the following periods:

(1) The economic life of the approved project;

(2) The term of any bonds issued to finance the approved project; and

(3) 30 years.

(c) If any debt service is required, the debt service shall be guaranteed by the applicant in a manner consistent with the applicant's approved application.

(d) The financial assistance agreement shall contain the following sentences:

(1) "All work performed and all materials furnished for the approved project shall be in reasonably close conformity with the plans, specifications, and revisions, which have been approved by the designer of the approved project."

(2) "Technical advice or assistance, or both, provided by the secretary to an applicant pursuant to section six of the act, and amendments thereto, shall not be construed as an undertaking by the secretary of the duties of the applicant or the approved project's owner, or both, or the duties of any consultant, licensed professional engineer, or inspector hired by the applicant or the approved project's owner." (Authorized by K.S.A. 2009 Supp. 75-5083; implementing K.S.A. 2009 Supp. 75-5086; effective April 30, 2010.)

36-42-6. Interest rate and servicing fees. Financial assistance that is required to be repaid under the terms of the financial assistance agreement shall bear interest in accordance with the applicable financial assistance agreement, at a rate set by the secretary. The financial assistance agreement may also establish fees for servicing the financial assistance. (Authorized by K.S.A. 2009 Supp. 75-5083; implementing K.S.A. 2009 Supp. 75-5084 and 75-5086; effective April 30, 2010.)

36-42-7. Repayment of financial assistance. (a) All debt service shall be paid in accordance with the terms and conditions of the financial assistance agreement.

(b) If any financial assistance is prepaid in whole or in part, the prepayment shall be made in accordance with the terms and conditions of the financial assistance agreement.

(c) If a recipient of monies from the fund sub-

sequently receives federal reimbursement for the same costs of an approved project for which financial assistance was received, the recipient shall repay to the secretary those fund monies in an amount equal to the federal reimbursement received, within 30 days after receipt of the federal reimbursement. (Authorized by K.S.A. 2009 Supp. 75-5083; implementing K.S.A. 2009 Supp. 75-5086; effective April 30, 2010.)

36-42-8. Approved project statements.

(a) Each financial assistance recipient shall provide the secretary, when the approved project is opened to unrestricted travel, with the written statement of the recipient's licensed professional engineer unqualifiedly indicating that, at the time of design, the plans, specifications, and any authorized revisions for the approved project followed the then-existing generally recognized and prevailing engineering standards and were in compliance with the applicable federal and state laws and regulations.

(b) Each financial assistance recipient shall provide the secretary with the statement of the recipient's inspector indicating that the approved project was constructed in reasonable conformity with its plans, specifications, and any authorized revisions, at each of the following times:

(1) At the time when the approved project is opened to unrestricted travel; and

(2) at the time of the final acceptance. (Authorized by and implementing K.S.A. 2009 Supp. 75-5083; effective April 30, 2010.)

36-42-9. Approved project costs; accounting requirement. Each financial assistance recipient shall maintain an accounting system that segregates and accumulates all project costs for the approved project. Any project costs may be reviewed or audited, or both, by the secretary at any time during the construction of the approved project and after completion of the approved project. (Authorized by K.S.A. 2009 Supp. 75-5083; implementing K.S.A. 2009 Supp. 75-5086; effective April 30, 2010.)

Article 45.—ESCORT VEHICLES, ESCORT VEHICLE SERVICE PROVIDERS, AND ESCORT VEHICLE OPERATORS

36-45-1. Definitions. Each of the following terms, as used in this article of the department's regulations, shall have the meaning specified in this regulation:

(a) “Department” and “KDOT” mean the Kansas department of transportation.

(b) “Escort vehicle” and “EV” mean a vehicle that accompanies a load and meets the requirements of K.A.R. 36-45-5.

(c) “Escort vehicle operator” and “EVO” mean a person who is driving a vehicle that is accompanying a load and who meets the requirements of K.A.R. 36-45-4.

(d) “Escort vehicle service provider” and “EVSP” mean a person, firm, owner, or company that operates an escort vehicle for the purpose of accompanying a load as required by K.A.R. 36-1-36 and K.A.R. 36-1-38 and that meet the requirements of K.A.R. 35-45-2 and K.A.R. 36-45-3.

(e) “Escort vehicle service provider registrar” and “EVSP registrar” mean a department employee who makes the initial determination to revoke or deny any EVSP registration. The determination made by the EVSP registrar shall be deemed to be the decision of the secretary.

(f) “Height-measuring pole” and “height pole” mean a retractable and flexible device made of nonconductive material that measures vertical clearance. A height pole shall be used when the height of the permitted load exceeds 16 feet when measured from the ground to the highest point on the load.

Each height-measuring pole shall meet the following requirements:

(1) Be set at the height of the permitted load plus three inches;

(2) be securely attached to the EV and be designed and operated in a manner that will notify the EVO that the load cannot safely pass under an overhead obstruction without causing damage to the obstruction, the load, or both; and

(3) not interfere with the ability of the EVO to safely operate the EV and communication equipment.

(g) “Large structure” means any load that exceeds either 16 feet, six inches in width or 18 feet in height.

(h) “Law enforcement agency” means the Kansas highway patrol (KHP) or any local law enforcement agency in Kansas.

(i) “Load” means either of the following:

(1) At least one item, object, or device, including self-propelled, that exceeds the maximum sizes or weights prescribed in K.S.A. 8-1902, 8-1904, 8-1908, and 8-1909, and amendments thereto; or

(2) the combination of an item, object, or device and a vehicle transporting the item, object, or de-

vice if the combination of these two exceeds the maximum sizes or weights prescribed in K.S.A. 8-1902, 8-1904, 8-1908, and 8-1909, and amendments thereto.

(j) “MUTCD” means the most recent edition of the manual on uniform traffic-control devices for streets and highways issued by the federal highway administration and adopted by the secretary of transportation pursuant to K.S.A. 8-2003, and amendments thereto.

(k) “Nondivisible,” when used to describe a load or vehicle, means that the load or vehicle exceeds the applicable dimensions or weight limitations and, if separated into smaller loads or vehicles, would result in having any of the following effects:

(1) Compromise the intended use of the vehicle;

(2) destroy the value of the load or vehicle; or

(3) require more than eight work hours to dismantle, using appropriate equipment.

(l) “Permit” means a document issued by the secretary that grants the movement of a load or vehicle that exceeds the maximum sizes and weights as prescribed in K.S.A. 8-1902, 8-1904, 8-1908, and 8-1909, and amendments thereto, over the highways that are under the jurisdiction of the secretary.

(m) “Permitted route” means a designated course of travel that is over the highways under the jurisdiction of the secretary and has been approved by the secretary.

(n) “Secretary” means Kansas secretary of transportation or Kansas secretary of transportation’s designee.

(o) “Superload” means either of the following:

(1) A load or a vehicle transporting a nondivisible load that exceeds a gross weight of 150,000 pounds; or

(2) a load or a vehicle transporting a nondivisible load in which any group or groups of axles exceed the limitations prescribed in K.A.R. 36-1-37.

(p) “Traffic-control operation” means the temporary suspension of normal traffic activity at locations of limited maneuverability, including any bridge or intersection, for the purpose of allowing a load to safely traverse the area in accordance with the MUTCD.

(q) “Vehicle” means any self-propelled device in, upon, or by which any person or property is or can be transported or drawn upon a public highway. The self-propelled device is designed to travel on at least four wheels in contact with the ground. This term shall not include electric personal assistive mobility devices, devices moved by

human power or used exclusively upon stationary rails or tracks, devices propelled by electric power obtained from overhead trolley wires but not operated on rails, and motorized nonhighway devices. (Authorized by K.S.A. 2019 Supp. 8-1921 and K.S.A. 68-404; implementing K.S.A. 2019 Supp. 8-1911, K.S.A. 2019 Supp. 8-1921, and K.S.A. 66-1326; effective, T-36-8-28-20, Aug. 28, 2020; effective Dec. 18, 2020.)

36-45-2. Registration. Each EVSP shall register annually with the secretary. Each registration shall meet the requirements of this regulation.

- (a) Each registration shall specify the following:
 - (1) The name and address of the EVSP;
 - (2) the name and address of the registered agent for the EVSP;
 - (3) the vehicle identification number (VIN) of each EV operated in Kansas; and
 - (4) the license plate number of each EV operated in Kansas.

(b) Each registrant shall attest to the following under penalty of perjury and revocation of the registration:

- (1) That each EV operated in Kansas maintains the required insurance specified in K.A.R. 36-45-3;
- (2) that the vehicle registration of each EV operated in Kansas is current in a state or territory of the United States;
- (3) that each EVO possesses a current driver's license issued by the state or jurisdiction in which the EVO resides and, when operating as an EVO, the EVO is operating within any restrictions on the driver's license;
- (4) that each EVO has successfully completed an escort vehicle training course from one of the states accepted and approved by the secretary and listed on the department's web site;
- (5) that each EVO has a driving history without any conviction of driving while impaired, driving reckless, or both within the previous 36 months; and
- (6) that each EVO is authorized to operate an EV for the EVSP. (Authorized by K.S.A. 2019 Supp. 8-1921 and K.S.A. 68-404; implementing K.S.A. 2019 Supp. 8-1911, K.S.A. 2019 Supp. 8-1921, and K.S.A. 66-1326; effective, T-36-8-28-20, Aug. 28, 2020; effective Dec. 18, 2020.)

36-45-3. Insurance. (a) Each EVSP shall have in effect all motor vehicle liability insurance

coverage required for each EV traveling pursuant to any EVSP registration approved under this article of the department's regulations on the date of EVSP registration. As a prerequisite for EVSP registration under K.A.R. 36-45-2, each EVSP shall maintain the minimum required insurance, self-insurance, or other financial security required by K.S.A. 40-3104, and amendments thereto, to cover any damage that could occur to any person or property, including highways and highway features, during movement of the load. Each insuring company shall be authorized to conduct business in Kansas.

(b) Each EVSP shall maintain the required insurance coverage for the duration of the EVSP registration and shall furnish proof of insurance upon demand by the department or any law enforcement agency.

(c) Failure to maintain the required insurance coverage throughout the duration of the EVSP registration shall result in revocation of the EVSP registration. (Authorized by K.S.A. 2019 Supp. 8-1921 and K.S.A. 68-404; implementing K.S.A. 2019 Supp. 8-1911, K.S.A. 2019 Supp. 8-1921, and K.S.A. 66-1326; effective, T-36-8-28-20, Aug. 28, 2020; effective Dec. 18, 2020.)

36-45-4. Escort vehicle operator. Each EVO shall meet the following requirements before operating any EV in Kansas:

- (a) Have a driving history without any conviction of driving while impaired, driving reckless, or both within 36 months before operating any EV;
- (b) successfully complete an escort vehicle training course from one of the states accepted and approved by the secretary and listed on the department's web site;
- (c) be at least 18 years of age; and
- (d) possess a current driver's license issued by the state or jurisdiction in which the EVO resides. (Authorized by K.S.A. 2019 Supp. 8-1921 and K.S.A. 68-404; implementing K.S.A. 2019 Supp. 8-1911, K.S.A. 2019 Supp. 8-1921, and K.S.A. 66-1326; effective, T-36-8-28-20, Aug. 28, 2020; effective Dec. 18, 2020.)

36-45-5. Escort vehicle. Each EVSP shall ensure that each EV that is registered to the EVSP and operated in Kansas meets the following requirements:

- (a) Meets all statutory requirements to operate legally on the highways;
- (b) has at least two axles;

(c) is able to operate safely under the conditions found to exist upon any highway without endangering the safety of the traveling public and the persons involved in moving and escorting the load;

(d) does not exceed a gross vehicle weight rating of 16,000 pounds;

(e) has a clearly visible and current license plate attached to the rear of the EV at least 12 inches from the ground;

(f) has an unobstructed outside rear-view mirror on each side of the EV;

(g) has current registration in the state in which the EV is registered;

(h) has left and right signal lamps on the front and rear of the EV that are in operable condition;

(i) is equipped with a horn that is in operable condition and capable of emitting sound audible under normal conditions from a distance of at least 200 feet;

(j) is at least 60 inches wide and does not exceed 102 inches wide;

(k) has full visibility in all directions from the driver's side from within the vehicle; and

(l) has a sign on the driver's side and the passenger's side of the EV displaying the name of the EVSP during movement of the load. The name of the EVSP shall visibly contrast with the background of the sign so that the name of the EVSP is easily visible. (Authorized by K.S.A. 2019 Supp. 8-1921 and K.S.A. 68-404; implementing K.S.A. 2019 Supp. 8-1911, K.S.A. 2019 Supp. 8-1921, and K.S.A. 66-1326; effective, T-36-8-28-20, Aug. 28, 2020; effective Dec. 18, 2020.)

36-45-6. Equipment. Each EVSP shall ensure that each EV that is accompanying a load in Kansas has, at a minimum, the following equipment meeting the requirements specified in this regulation:

(a) Communication equipment: one two-way communication device capable of transmitting and receiving signals for at least ½ mile and compatible with the device used by the driver of the load and the device used by each EVO during movement of the load;

(b) emergency equipment: one full-size spare tire compatible with the EV to continue travel, one vehicle jack appropriate for the EV, one lug wrench, eight bidirectional reflective triangles, eight red light-emitting flares, three 18-inch cones that are orange in color, and one fire extinguisher having an underwriters' laboratories rating of 5 B:C or more;

(c) handheld warning flags: two handheld flags that are red or orange in color and at least 24 inches square;

(d) height-measuring pole;

(e) paddle signs: at least one standard "Stop" paddle sign and one standard "Slow" paddle sign. Each paddle sign shall be at least 18 inches wide with letters at least six inches high and shall meet the requirements of the MUTCD;

(f) personal safety equipment: one high-visibility hard hat and one high-visibility vest or jacket that meet the requirements of the MUTCD;

(g) warning sign: one warning sign that states "OVERSIZE LOAD." The letters shall be black on a yellow background and shall be at least eight inches high with a minimum brush stroke of 1.125 inches. The sign shall not obstruct the warning light or lights. The sign shall be at least five feet long and 12 inches high and shall be visible from a minimum distance of 500 feet;

(h) warning light or lights: either one oscillating or rotating light or two flashing lights. Each warning light shall be amber in color, at least six inches in diameter, and fully visible from all directions from a minimum distance of 500 feet. The warning light or lights shall not be obstructed by the warning sign; and

(i) vehicle warning flags: two vehicle flags red or orange in color and at least 18 inches square. Each flag shall be capable of being placed on the driver's or passenger's side of the EV. (Authorized by K.S.A. 2019 Supp. 8-1921 and K.S.A. 68-404; implementing K.S.A. 2019 Supp. 8-1911, K.S.A. 2019 Supp. 8-1921, and K.S.A. 66-1326; effective, T-36-8-28-20, Aug. 28, 2020; effective Dec. 18, 2020.)

36-45-7. Documentation for permitted route. (a) Pretrip requirements. Each designated EVO shall ensure and document that the requirements of this subsection are met before accompanying each load.

(1) Planning and coordination meeting. A planning and coordination meeting shall be held no more than seven days before accompanying a load. Each person who will be accompanying or moving the load shall attend the meeting. The meeting shall accomplish each of the following:

(A) Designate one or more EVO to complete the pretrip and posttrip evaluation;

(B) establish the communication equipment and hand signals used during movement of the load;

(C) discuss the conditions and restrictions of the permitted route;

(D) review the procedures and requirements of this article of the department's regulations for compliance; and

(E) verify the type and dimensions of the load.

(2) Equipment inspections. Each EVO shall inspect the equipment to verify compliance with K.A.R. 36-45-6.

(3) Escort vehicle inspections. Each EVO shall inspect the EV for defects and verify that the EV meets the requirements of K.A.R. 36-45-5.

(b) Route survey. An EVO who will be accompanying the load shall conduct a survey of the permitted route no more than 14 days before accompanying the load.

(c) Posttrip requirements. A designated EVO shall complete a posttrip evaluation at the conclusion of movement of the load within Kansas. Each posttrip evaluation shall document the following:

(1) Each incident in which any communication equipment was defective, blocked, or otherwise failed to properly function and resulted in property damage, personal injury, or both;

(2) any warnings, citations, and enforcement actions taken by any law enforcement agency, the identity of each law enforcement agency, and, if applicable, each accident report number and citation number;

(3) any issues with the equipment required by K.A.R. 36-45-6 resulting in property damage, personal injury, or both;

(4) any injuries to persons resulting from accompanying the load;

(5) any load incidents, including tipping, spilling, or breaking, and the time, date, and location of each load incident;

(6) any incidents involving property damage resulting from movement of the load, accompanying the load, or both, and the time, date, location, and the property damaged in the incident;

(7) any traffic-control operations that exceeded 15 minutes, and the time, date, location, and purpose of each traffic-control operation;

(8) any vehicle issues, including any signal lamp failure, brake failure, tire failure, and engine failure, if any failure resulted in property damage, bodily injury, or both; and

(9) the identity of any additional persons or entities not identified in the pretrip evaluation that were utilized or contacted during the movement of the load for emergency purposes.

(d) Trip report. The trip report shall consist of each pretrip and posttrip evaluation. The EVSP shall retain each trip report for at least three

years from the date of conclusion of movement of the load within Kansas. The EVSP shall submit a complete copy of the trip report to the department upon the department's request. (Authorized by K.S.A. 2019 Supp. 8-1921 and K.S.A. 68-404; implementing K.S.A. 2019 Supp. 8-1911, K.S.A. 2019 Supp. 8-1921, and K.S.A. 66-1326; effective, T-36-8-28-20, Aug. 28, 2020; effective Dec. 18, 2020.)

36-45-8. Trip procedures. Each EVO shall follow the procedures specified in this regulation when accompanying a load in Kansas.

(a) Limitation of the EV. No EV shall carry any item, object, or device that meets any of the following conditions:

(1) Exceeds the maximum sizes and weights specified in K.S.A. 8-1902, 8-1904, 8-1908, and 8-1909, and amendments thereto;

(2) exceeds the width, length, or height of the EV, excluding the height pole and the required safety and visibility equipment;

(3) renders the EV unrecognizable as an EV by the traveling public;

(4) obstructs the view of the EVO, the driver of the load, or the view of the traveling public;

(5) poses a safety risk to the EVO, the driver of the load, or the traveling public; or

(6) restricts or impairs the EVO's ability to operate the EV or limits the EVO's ability to comply with this article of the department's regulations.

(b) Number of EVs required.

(1) Superloads. At least one front EV and one rear EV shall be required when accompanying a superload. If the permit requires the superload to slow down at bridges, an additional EV shall be required.

(2) Large structures. At least one front EV and one rear EV shall be required when accompanying a large structure.

(3) Loads exceeding 16 feet in height. At least one front EV shall be required when accompanying a load exceeding 16 feet in height.

(4) Loads exceeding 14 feet in width. At least one front EV and one rear EV shall be required when accompanying a load exceeding 14 feet in width. The rear EV may be eliminated if all of the following conditions are met:

(A) A warning light is attached to the top of the load.

(B) A warning light is attached to the rear of the load no less than two feet but no more than eight feet above the surface of the road.

(C) A warning sign meeting the requirements of K.S.A. 8-1911(l)(1), and amendments thereto, is attached to the rear of the load.

(c) Height-measuring pole. At least one EV preceding a load that exceeds a height of 16 feet shall have a height pole.

(d) Load. No EV shall transport, push, or pull any portion of the load while accompanying the load.

(e) Permitted route. No EVO shall accompany the load on any roadway on which the load has not been authorized to travel.

(f) Restrictions. No EV shall tow a trailer during movement of the load.

(g) Traffic-control operations.

(1) Any EVO may conduct a traffic-control operation during the movement of the load for the purpose of accompanying the load, not to exceed 15 minutes. A traffic-control operation may be appropriate if any of the following conditions is met:

(A) A bridge or roadway is temporarily closed to allow the load to cross.

(B) An intersection with limited maneuverability is temporarily closed to allow the load to turn.

(C) The load or an EV malfunctions.

(D) An event makes load movement unsafe or impossible.

(2) Each traffic-control operation shall be conducted from outside the EV using the equipment specified in K.A.R. 36-45-6(a), (c), (e), (f), and (h). Each traffic-control operation shall follow the procedures specified in the MUTCD.

(3) If a traffic-control operation is anticipated to last longer than 15 minutes, the law enforcement agency or the local area KDOT office shall be notified.

(h) Travel distance.

(1) Front EV and rear EV. Except as specified in paragraph (h)(2), the requirements of paragraph (h)(1) shall apply. When traveling within city limits, the EV immediately preceding the load shall not travel more than 500 feet to the front of the load. When traveling outside of city limits, the EV immediately preceding the load shall not travel more than 1,000 feet to the front of the load. The EV immediately following the load shall not travel more than 500 feet to the rear of the load.

(2) Visibility; temporary conditions. The load shall be visible to the EVs immediately preceding and following the load at all times unless temporary conditions, including curves with limited visibility, steep grades, upcoming bridges and overhead obstructions, and intersections requir-

ing traffic-control operations, temporarily dictate a greater lead or follow distance than specified in this subsection.

(i) Trip communications. Each EVO shall communicate verbally using two-way communication equipment with the person transporting the load and with each EVO accompanying the load.

(j) Warning flags. A warning flag shall be securely attached to the driver's side of the EV and to the passenger's side of the EV.

(k) Warning lights. The warning light or lights attached to the EV shall be activated during movement of the load and shall meet the requirements in K.A.R. 36-45-6(h).

(l) Warning signs.

(1) Front EV. Each EV preceding a load shall have a warning sign, as specified in K.A.R. 36-45-6(g), attached to the front or top of the EV and shall be visible to the traveling public preceding or approaching the EV.

(2) Rear EV. Each EV following a load shall have a warning sign, as specified in K.A.R. 36-45-6(g), attached to the top or rear of the EV and shall be visible to the traveling public approaching the load from the rear.

(m) Responsibilities when any EV is not accompanying a load. Each EVO shall meet all of the following requirements when the EV is being driven and not accompanying the load:

(1) The height pole shall be retracted or removed from the EV.

(2) The warning flags shall be removed from the EV.

(3) The warning light or lights attached to the EV shall be removed, deactivated, or covered.

(4) The warning sign attached to the EV shall be removed or covered. (Authorized by K.S.A. 2019 Supp. 8-1921 and K.S.A. 68-404; implementing K.S.A. 2019 Supp. 8-1911, K.S.A. 2019 Supp. 8-1921, and K.S.A. 66-1326; effective, T-36-8-28-20, Aug. 28, 2020; effective Dec. 18, 2020.)

36-45-10. Determination of registration revocation or denial; registration committee. The procedures specified in this regulation shall be followed for each determination to revoke or deny any EVSP registration.

(a) Determination of registration revocation or denial.

(1) The registration of an EVSP shall be revoked or denied by the EVSP registrar for failing to comply with any provision of this article of the department's regulations or any other applicable law.

(2) If the registration of an EVSP is revoked or denied by the EVSP registrar, the EVSP registrar shall provide written notice of the revocation or denial to the EVSP. Each notice of revocation or denial shall be sent by certified mail to the EVSP no more than 15 business days from the date the EVSP registrar revokes or denies the registration of the EVSP.

(b) Appeals of registration revocation or denial.

(1) Each EVSP whose EVSP registration is revoked or denied shall be entitled to an appeal if the EVSP files a written appeal with the EVSP registrar and the appeal is received by the EVSP registrar, either electronically or by U.S. mail, within 30 days of notification of the registration revocation or denial.

(2) Each appeal shall be filed on a form provided by the department. The appeal form for EVSP registration revocation or denial shall be available on the department's web site. Upon the request of the EVSP, the EVSP registrar shall provide a paper copy of the appeal form by certified mail.

(3) If an EVSP files an appeal of a revocation of registration according to this regulation, the EVSP registration shall be valid, pending final determination of revocation by the EVSP registration committee.

(4) If an EVSP files an appeal of a denial of registration according to this regulation, the EVSP registration shall be deemed invalid, pending a final determination of the denial by the EVSP registration committee.

(5) If an EVSP fails to file an appeal according to this regulation, the revocation or denial determination by the EVSP registrar shall become final, upon expiration of the appeal period.

(c) Registration committee.

(1) A committee of at least three members shall be established by the secretary to act as an appellate body to hear and determine appeals concerning revocations and denials of EVSP registrations. The members of the registration committee shall be appointed by the secretary and shall serve at the pleasure of the secretary.

(2) The registration committee shall be chaired by the EVSP registrar. The EVSP registrar shall be a non-voting member of the committee.

(d) Decisions of registration committee.

(1) If an appeal is filed according to this regulation, the EVSP registration committee shall make a final determination to revoke, deny, or reinstate the EVSP registration.

(2) Pursuant to K.S.A. 77-601 et seq. and amendments thereto, the decisions of the registration committee shall not be subject to further administrative review by any officer or committee of the department.

(3) If the registration committee determines that the EVSP registration of the appealing EVSP should not have been revoked or denied, the registration of the EVSP shall be reinstated, effective immediately.

(4) If the registration committee affirms the revocation of the EVSP registration of the appealing EVSP, the EVSP shall not register with the secretary for one year from the original date of the initial revocation made by the EVSP registrar.

(5) If the registration committee affirms the denial of the EVSP registration, the EVSP shall not register with the secretary until the EVSP remedies the cause or causes for the denial. (Authorized by K.S.A. 2019 Supp. 8-1921 and K.S.A. 68-404; implementing K.S.A. 2019 Supp. 8-1911 and K.S.A. 2019 Supp. 8-1921; effective, T-36-8-28-20, Aug. 28, 2020; effective Dec. 18, 2020.)

Agency 37
Kansas Highway Patrol

Articles

37-1. *MOTOR VEHICLE INSPECTIONS. (Not in active use.)*

**Article 1.—MOTOR VEHICLE
INSPECTIONS**

37-1-1 through 37-1-5. (Authorized by and implementing K.S.A. 8-1752; effective, E-74-65, Jan. 1, 1975; effective, E-76-48, Oct. 1, 1975; amended, E-77-22, May 1, 1976; effective Feb. 15, 1977; amended, T-83-46, Dec. 8, 1982; amended May 1, 1983; revoked Dec. 22, 1995.)

37-1-5a. (Authorized by and implementing K.S.A. 8-1752; effective, T-83-46, Dec. 8, 1982; effective May 1, 1983; revoked Dec. 22, 1995.)

37-1-6 through 37-1-11. (Authorized by and implementing K.S.A. 8-1752; effective, E-74-65, Jan. 1, 1975; effective, E-76-48, Oct. 1, 1975; amended, E-77-22, May 1, 1976; effective Feb. 15, 1977; amended, T-83-46, Dec. 8, 1982; amended May 1, 1983; revoked Dec. 22, 1995.)

37-1-12. (Authorized by and implementing K.S.A. 8-1752; effective, T-83-46, Dec. 8, 1982; effective May 1, 1983; revoked Dec. 22, 1995.)

Agency 38

Savings and Loan Department

Articles

- 38-1. ESTABLISHMENT OF BRANCH OFFICES AND RELOCATION OF HOME AND BRANCH OFFICES.
- 38-2. AGENTS.
- 38-3. NOTICE THAT ACCOUNTS OR DEPOSITS ARE NOT INSURED AS REQUIRED BY K.S.A. 17-5825.
- 38-4. UNSECURED LOANS FOR PROPERTY ALTERATION.
- 38-5. LINE OF CREDIT REAL ESTATE LOANS.
- 38-6. *PARTICIPATION LOANS. (Not in active use.)*
- 38-7. *EDUCATIONAL LOANS. (Not in active use.)*
- 38-8. MANUFACTURED HOME FINANCING.
- 38-9. SAFETY DEPOSIT BOXES.
- 38-10. INTERSTATE BRANCHING.

Article 1.—ESTABLISHMENT OF BRANCH OFFICES AND RELOCATION OF HOME AND BRANCH OFFICES

38-1-1. Establishment of branch offices.

The application for the establishment of a new branch office shall be filed in six (6) copies with the savings and loan commissioner. The application may be in letter form and shall include or be accompanied by the following exhibits: (1) Copy of resolution adopted by the board of directors of the association declaring its intention to establish a new branch office and authorizing the officers to file an application for approval of the branch office.

(2) Statement showing the location and address of the proposed new branch office; evidence that the site is or will be available; and a full description of the facilities to be provided and used.

(3) The proposed operating budget of the proposed branch for the first two years, including branch expenses which will be paid by the home office or another branch office.

(4) Information designed to show:

(a) There will be at the time the branch is opened, a necessity for the proposed facility in the community to be served by it;

(b) There is a reasonable probability of usefulness and success of the proposed branch;

(c) The proposed branch can be established without undue harm or injury to properly conducted existing associations.

(5) Check for fee in the amount of \$200. (Authorized by K.S.A. 17-5427, 17-5601, K.S.A. 1972 Supp. 17-5225; effective Jan. 1, 1966; amended Jan. 1, 1973.)

38-1-2. Relocation of home or branch offices.

The application and all exhibits for the move or relocation of any previously established home office or branch office shall be filed in six (6) copies with the savings and loan commissioner. The petition may be in letter form and shall be accompanied by the following exhibits: (1) Copy of a resolution adopted by the board of directors of the association declaring its intention to move or relocate a previously established home or branch office and authorizing the officers to file an application for a move or relocation of such home or branch office.

(2) Statement showing the location and address of the new location for the home or branch office; evidence that the site is or will be available; and a full description of the facilities to be provided and used.

(3) Statement of the reasons for the proposed move or relocation.

(4) Information designed to show:

(a) There will be a necessity for the services to be provided at the new location;

(b) There is a reasonable probability of usefulness and success at the new location;

(c) The move or relocation will not cause undue harm or injury to properly conducted existing associations.

(5) Check for fee in the amount of \$100. (Authorized by K.S.A. 17-5427, 17-5601, K.S.A. 1972 Supp. 17-5225; effective Jan. 1, 1973.)

38-1-3. Processing of applications for establishment or relocation of a home office or branch office. Upon receipt of an application meeting the requirements for the establishment, move or relocation of a home office or branch office, the commissioner shall promptly schedule a place and time for hearing by the savings and loan board, the date of such hearing to be not later than sixty (60) days following receipt of the complete and proper application. At least thirty (30) days in advance of the date set for hearing, the commissioner shall, by registered or certified mail, give notice of the application and the place and time of hearing to all savings and loan associations having an office in the county where the new or relocated home office or branch office is sought to be located. (Authorized by K.S.A. 17-5427, 17-5601, K.S.A. 1972 Supp. 17-5225; effective Jan. 1, 1973.)

38-1-4. Hearing. The savings and loan board shall hold a hearing on the application for establishment, move or relocation of a home office or a branch office at the time and place scheduled by the commissioner. At such hearing, all interested persons shall be afforded an opportunity to present oral or written evidence in support of or opposition to the application. Should the hearing be continued for the purpose of providing additional information for consideration by the board, the commissioner shall give written notice to the applicant and other parties who appeared at the hearing of the time and place that the hearing will be reconvened. (Authorized by K.S.A. 17-5427, 17-5601, K.S.A. 1972 Supp. 17-5225; effective Jan. 1, 1973.)

38-1-5. Decision. Within ten (10) business days following completion of the hearing, the board shall issue an order either approving or disapproving the application. If the application is disapproved, the board shall state the reasons for disapproval. In the event the application is approved, the board shall state in writing the following findings based upon the evidence presented to the board:

(1) There is or will be at the time the home office or branch is opened, the necessity for same in the community to be served by it.

(2) There is a reasonable probability of usefulness and success of the proposed home office or branch.

(3) The proposed home office or branch can be established without undue injury to properly conducted existing associations or federal savings and loan associations.

The commissioner shall promptly furnish the applicant a copy of the board's order and the commissioner shall promptly give written notice of the board's decision to all associations given advance notice of the hearing. (Authorized by K.S.A. 17-5427, 17-5601, K.S.A. 1972 Supp. 17-5225; effective Jan. 1, 1973.)

Article 2.—AGENTS

38-2-1. Designation. The officers of an association may, when authorized by a resolution adopted by the board of directors of the association, appoint agents to perform specific duties for the association in geographical areas not conveniently served by the approved home office or branches of the association. (Authorized by K.S.A. 17-5427, 17-5601, K.S.A. 1972 Supp. 17-5501; effective Jan. 1, 1973.)

38-2-2. Notification required. Each association employing agents on the effective date of this regulation shall furnish the commissioner a certified listing of the names and addresses of all its designated agents. Thereafter, an association officer shall by written notice promptly inform the commissioner of the name and address of each newly designated agent and each agent named as substitute for a previously designated agent. (Authorized by K.S.A. 17-5427, 17-5601, K.S.A. 1972 Supp. 17-5501; effective Jan. 1, 1973.)

38-2-3. Written agreements required. The authorized activities of all designated agents shall be described in written agreements between an association and each designated agent. The agent shall have no greater authority to bind the association than the authority set forth in the written agreement. (Authorized by K.S.A. 17-5427, 17-5601, K.S.A. 1972 Supp. 17-5501; effective Jan. 1, 1973.)

38-2-4. Restricted activities. Agents may not be authorized to:

(1) Approve loans.

(2) Issue passbook certificates or other evidence of savings accounts or deposits.

(3) Pay withdrawals. (Authorized by K.S.A. 17-5427, 17-5601, K.S.A. 1972 Supp. 17-5501; effective Jan. 1, 1973.)

38-2-5. Collections. Agents may be authorized to collect and accept moneys due the association and may accept savings payments for transmission to the association; provided any such collection or payment may not be recognized as received by the association until actually received and recorded in an office of the association. Any written receipt issued by a designated agent shall clearly state that the amount has been accepted for transmittal to the association. (Authorized by K.S.A. 17-5427, 17-5601, K.S.A. 1972 Supp. 17-5501; effective Jan. 1, 1973.)

38-2-6. Remuneration. Remuneration to agents, whether paid directly or indirectly by the association, the amount or rate of which shall be stated in the written agreement, shall be limited to commissions and fees (including retainer) commensurate with the services performed and to reimbursement for actual expenses incurred in connection with such services. (Authorized by K.S.A. 17-5427, 17-5601, K.S.A. 1972 Supp. 17-5501; effective Jan. 1, 1973.)

38-2-7. Advertising. Any advertising in which an agent is named or in which an agent's address is given shall include the complete name and home office address of the association, and shall state that the individual or firm named is an agent of the association. (Authorized by K.S.A. 17-5427, 17-5601, K.S.A. 1972 Supp. 17-5501; effective Jan. 1, 1973.)

Article 3.—NOTICE THAT ACCOUNTS OR DEPOSITS ARE NOT INSURED AS REQUIRED BY K.S.A. 17-5825

38-3-1. Printed presentations. (a) In every printed presentation which solicits savings investments, or contains a reference to interest rate or rates paid on savings investments, the absence of insurance shall be set forth in sufficient prominence that such fact shall not be rendered obscure. The required information shall not be presented in an ambiguous fashion or intermingled with the context of other material.

(b) For purposes of this article, printed presentations include but are not limited to circulars, leaflets, booklets, window displays, sign boards, advertisements, notices in periodicals, and letters soliciting savings investments. (Authorized by K.S.A. 1976 Supp. 17-5601, 17-5825; effective, E-76-59, Jan. 1, 1976; effective Feb. 15, 1977.)

38-3-2. Video presentations. In every video presentation which by visual and audio trans-

mission solicits savings investments, or contains a reference to interest rate or rates paid on savings investments, the absence of insurance shall be set forth in the visual transmission. The required information shall not be presented in an ambiguous fashion or obscured within the context of other material. The information shall remain in view long enough to be read and interpreted by a person with normal vision. (Authorized by K.S.A. 1976 Supp. 17-5601, 17-5825; effective, E-76-59, Jan. 1, 1976; effective Feb. 15, 1977.)

38-3-3. Audio presentations. In every audio presentation (including video without visual material) which solicits savings investments, or contains a reference to interest rate or rates paid on savings investments, the absence of insurance shall be set forth in the transmission. The required information shall not be presented in an ambiguous fashion, obscured within the context of other material, or diminished in clarity by sound modulation or speed of presentation. (Authorized by K.S.A. 1976 Supp. 17-5601, 17-5825; effective, E-76-59, Jan. 1, 1976; effective Feb. 15, 1977.)

Article 4.—UNSECURED LOANS FOR PROPERTY ALTERATION

38-4-1. Conditions under which loans may be made. Any association may, on adoption of such a loan plan by its board of directors, make or purchase unsecured loans for property alteration, repair, equipping or improvement, subject to the limitations set forth in K.S.A. 1983 Supp. 17-5501(t) and acts amendatory thereof, and the following additional prohibitions, limitations, and conditions: (a) Each such loan investment shall be evidenced by one or more notes, and shall be repayable in at least quarterly installments, with the first installment due no later than 120 days from the date the loan is made, and a final installment due no later than 20 years and 32 days from such date.

(b) Any such loan investment made for equipping property shall be restricted to home loans. (Authorized by and implementing K.S.A. 1983 Supp. 17-5501(t)(2); effective May 1, 1979; amended May 1, 1985.)

Article 5.—LINE OF CREDIT REAL ESTATE LOANS

38-5-1. Conditions under which loans may be made. Any association may, on adoption of such a loan plan by its board of directors, make

or purchase secured or unsecured line of credit real estate loans subject to the limitations set forth by K.S.A. 1978 Supp. 17-5501(t)(C) and acts amendatory thereof, and the following additional prohibitions, limitations and conditions: (a) Only those associations with general reserve accounts in compliance with K.S.A. 17-5409, and acts amendatory thereof, may make or purchase such loans.

(b) The real property must be located in the association's regular lending area.

(c) Such loans shall be fully documented to establish

- (1) the purpose of the loan;
- (2) the source and reliability of repayment;
- (3) the reputation and proven capacity of the borrower;
- (4) the quality of the security interest in any security other than real estate that is used as support;
- (5) if the loan is for a business purpose, full financial statements of the borrower or the borrower's predecessor for three (3) years prior to the loan;
- (6) if the loan is for a business purpose, income forecasts, projections, cash flow statements, and budgets;
- (7) anything else necessary to establish the soundness of the loan;
- (8) controls employed to ensure that actions on which the association relies are proceeding as scheduled.

(d) Such loans shall not be sold or assigned to other associations for servicing. (Authorized by K.S.A. 1978 Supp. 17-5501(t)(C); effective May 1, 1979.)

Article 6.—PARTICIPATION LOANS

38-6-1. (Authorized by K.S.A. 1979 Supp. 17-5501(u); effective May 1, 1979; revoked May 1, 1985.)

Article 7.—EDUCATIONAL LOANS

38-7-1. (Authorized by K.S.A. 1978 Supp. 17-5501(v); effective May 1, 1979; revoked May 1, 1985.)

Article 8.—MANUFACTURED HOME FINANCING

38-8-1. Conditions concerning manufactured home financing. (a) As used in this regulation:

(1) "Manufactured home" shall have the meaning ascribed thereto in 42 U.S.C. Sec. 5402(6).

(2) "Chattel paper" shall mean written evidence of both a monetary obligation and a security interest.

(b) Subject to subsection (c), any association may:

- (1) make or buy any manufactured home loans;
- (2) provide inventory financing for manufactured home dealers; and

(3) invest in manufactured home chattel paper.

(c) All financings relating to manufactured homes shall be subject to the following limitations.

- (1) All financing shall involve secured obligations.
- (2) Chattel paper securing inventory shall be a direct obligation of the dealer.

(3) Chattel paper shall provide for the lender's protection regarding insurance, taxes, other governmental levies, maintenance and repairs. (Authorized by and implementing K.S.A. 1983 Supp. 17-5501 (u) and (w); effective May 1, 1979; amended May 1, 1985.)

Article 9.—SAFETY DEPOSIT BOXES

38-9-1. Conditions concerning safety deposit box rental. An association may maintain safety deposit boxes and rent the same for public use subject to limitations set forth in K.S.A. 1978 Supp. 17-5501(x), and the following prohibitions, limitations, and conditions: (a) An association shall, by contract, limit its liability to the lessee or lessees of such safety deposit box or boxes to the replacement or loss value of the contents of each box to an amount not more than one thousand dollars (\$1,000), or carry insurance of a type protecting the association against any and all legal liabilities arising out of the rental of the safety deposit boxes as set forth in said paragraph (2).

(b) Such insurance shall provide coverage equal to twenty-five thousand dollars (\$25,000) for any number of boxes up to one hundred (100), plus one thousand dollars (\$1,000) for each additional twenty (20) boxes or fraction thereof, available for rent up to a maximum coverage of one hundred thousand dollars (\$100,000).

(c) An association shall not contractually incur liabilities beyond the general liabilities incident to the conduct of such safety deposit business. (Authorized by K.S.A. 1978 Supp. 17-5501(x); effective May 1, 1979.)

Article 10.—INTERSTATE BRANCHING

38-10-1. Permission to establish branches. (a) A Kansas state-chartered savings and loan association may be permitted by the savings and

loan commissioner to establish branches within another state provided:

(1) the establishment of the branch office will be achieved in conjunction with a transaction in which

(A) the assets and/or liabilities are acquired by the Kansas state-chartered association by merger or otherwise; and

(B) the insured accounts of the failing non-Kansas state-chartered institution are assumed by and transferred to the insured Kansas state-chartered association as a means of payment of insurance by the federal savings and loan insurance corporation or pursuant to an action by the federal savings and loan insurance corporation undertaken to prevent the liquidation of the non-Kansas state-chartered association; and

(2) the commissioner determines that the acquiring of the non-Kansas state-chartered association poses no excessive risk to the acquiring Kansas state-chartered association.

(b) The association shall apply to the commissioner in the form and under the conditions required by the commissioner.

(C) A Kansas state-chartered association that acquires a failing institution may establish or operate branch offices in a state or states, other than the state in which the failing institution operates, if branching rights under this subsection do not in any event exceed three states other than the state in which the failing institution operates. (Authorized by and implementing 1987 HB 2157; effective, T-88-26, Aug. 19, 1987; effective May 1, 1988.)

38-10-2. Parity of branching rights. Each Kansas state-chartered association with branches in another state shall be afforded the same branching rights as the associations operating under a charter granted by the supervisory authorities of that state. (Authorized by and implementing 1987 HB 2157; effective, T-88-26, Aug. 19, 1987; effective May 1, 1988.)

38-10-3. Fees for Kansas state-chartered associations. Each Kansas state-chartered association with branches in other states shall be billed for supervisory fees as if all assets were present within the state of Kansas except that the association shall be credited for fees paid to supervisory authorities in the other states. Credit extended for the fees paid shall not exceed the amounts that would be assessed upon the assets or liabilities if the assets or liabilities were present within the state of Kansas. (Authorized by and implementing

1987 HB 2157; effective, T-88-26, Aug. 19, 1987; effective May 1, 1988.)

38-10-4. Non-Kansas association branch establishment. (a) Any non-Kansas state-chartered association may establish branches within Kansas if:

(1) the branch office will be established in conjunction with a transaction in which;

(A) the assets or liabilities of a failing insured Kansas state-chartered association are acquired by the non-Kansas state-chartered association, by merger or otherwise; and

(B) the insured accounts of the failing Kansas state-chartered association are assumed by and transferred to an insured non-Kansas state-chartered association as a means of payment of insurance by the federal savings and loan insurance corporation or pursuant to an action by the federal savings and loan insurance corporation undertaken to prevent the liquidation of the Kansas state-chartered association; and

(2) the non-Kansas state-chartered association meets the requirements for insurance of accounts as specified in K.S.A. 17-5824.

(b) The non-Kansas state-chartered association shall apply to the commissioner for approval of the transaction to establish the branch in the form and under the terms required by the commissioner. (Authorized by and implementing 1987 HB 2157; effective, T-88-26, Aug. 19, 1987; effective May 1, 1988.)

38-10-5. Branching rights of non-Kansas associations. Each non-Kansas state-chartered association permitted to establish branches in the state of Kansas shall have the same branching rights as a Kansas state-chartered association. (Authorized by and implementing 1987 HB 2157; effective, T-88-26, Aug. 19, 1987; effective May 1, 1988.)

38-10-6. Non-Kansas association fees. Each non-Kansas state-chartered association shall pay supervisory fees to the Kansas savings and loan department at the same rate as Kansas state-chartered savings and loans. The fees shall be based upon the amount of savings accounts deposited, rather than total assets, at branches located within Kansas. (Authorized by and implementing 1987 HB 2157; effective, T-88-26, Aug. 19, 1987; effective May 1, 1988.)

38-10-7. Examinations of non-Kansas associations. (a) The books and records maintained

by non-Kansas state-chartered associations at branches within the state of Kansas shall be open for inspection and examination by duly appointed representatives of the Kansas savings and loan department during the normal hours of operation for these associations.

(b) Costs associated with an examination conducted by the Kansas savings and loan department shall be paid by the association.

(c) Each non-Kansas state-chartered association permitted to do business within the state of Kansas shall supply the state of Kansas with at least one copy of the examination report conducted by the federal home loan bank of the district within which the home office of the association is located. (Authorized by and implementing 1987 HB 2157; effective, T-88-26, Aug. 19, 1987; effective May 1, 1988.)

Agency 39

Kansas Turnpike Authority

Articles

- 39-1. LIMITATIONS ON USE OF TURNPIKE.
- 39-2. TOLLS. (*Exempt from publication.*)
- 39-3. BONDS AND COUPONS FOR TURNPIKE NO. 1. (*Not in active use.*)
- 39-4. DESIGNATION OF OFFICE.
- 39-5. DISCOUNT RATES. (*Not in active use.*)
- 39-6. CLASSIFICATION AND TOLLS FOR KANSAS CITY EXPRESSWAY.

Article 1.—LIMITATIONS ON USE OF TURNPIKE

39-1-1. Entry upon and use of turnpike prohibited; application. (a) Entry upon and the use of the Kansas turnpike by the following shall be prohibited:

- (1) Pedestrians;
- (2) bicycles with or without motors, and motor scooters;
- (3) animals or animal-drawn vehicles;
- (4) farm implements or machinery, either self-propelled or towed;
- (5) vehicles loaded with poultry or livestock not properly confined;
- (6) vehicles with improperly secured loads;
- (7) vehicles that, in the judgment of a member of the highway patrol, are unsafe;
- (8) vehicles with deflated pneumatic tires; also vehicles with tires in this condition, in the judgment of a member of the highway patrol, as to be unsafe for use upon the turnpike;
- (9) vehicles with metal tires, or solid tires worn to metal;
- (10)(A) vehicles, including the load thereon, exceeding 14 feet in height, unless measured and cleared by a member of the turnpike highway patrol troop at the point of turnpike entry; and
- (B) vehicles, including the load thereon, exceeding 12 feet six inches in width during the hours of darkness, or 14 feet in width during the hours of daylight, without authorization from the chief engineer or the turnpike highway patrol commander before entry. Use of the turnpike by these vehicles shall be subject to any special requirements imposed by the chief engineer or the turnpike highway patrol commander to ensure the safety of turnpike customers;
- (11) Vehicles without adequate liability insurance;

(12) vehicles with axle weight in excess of the maximum established by Kansas law or with a combined gross weight in excess of 120,000 pounds; and

(13) vehicles with an overall length greater than 119 feet.

(b) Vehicles carrying explosives and either detonators or caps in the same load shall not be permitted use of the turnpike.

(c)(1) Vehicles in tow by nonrigid connection shall not be permitted to enter the turnpike under any circumstances.

(2) Disabled vehicles in tow shall be prohibited unless towed with a rigid tow bar or connection, or by an emergency vehicle with the proper equipment and permits to adequately handle the type of vehicle disabled.

(d) Vehicles with loads extending more than six inches beyond the sides or more than four feet beyond the body of the vehicle or other supporting member shall be prohibited, except when properly flagged for daytime travel or properly lighted for nighttime travel.

(e) Restrictions on the movement of some or all oversize vehicles or combinations of vehicles may be temporarily implemented due to wind, weather, road, or construction conditions.

(f) Use of spotlights and sirens on the turnpike shall be prohibited, except for emergency and police vehicles.

(g) Use of the turnpike system for landing of aircraft shall be prohibited, except in the case of extreme emergency.

(h) It shall be the duty of the toll collection personnel and the members of the highway patrol to enforce the provisions set forth above, and all persons shall comply with the orders given by these employees and members of the highway patrol to

prevent the use of or entry upon the turnpike by any of the forbidden vehicles listed in this regulation. (Authorized by and implementing K.S.A. 68-2004; effective Jan. 1, 1966; amended Jan. 8, 1999.)

39-1-2. Hitchhiking and loitering. Solicitation of rides, commonly known as hitchhiking, on any portion of the turnpike is prohibited. Loitering in or about toll plazas or any other portion of the turnpike is prohibited. Stopping of vehicles by patrons for the purpose of picking up or discharging hitchhikers is prohibited. (Authorized by K.S.A. 68-2004; effective Jan. 1, 1966.)

39-1-3. Waste and rubbish. Littering or disposing of bottles, cans, paper, waste or rubbish of any kind on the turnpike is prohibited. (Authorized by K.S.A. 68-2004; effective Jan. 1, 1966.)

39-1-4. Damage to property. No person shall cut, mutilate or remove any trees, shrubs or plants located on the turnpike, nor shall he deface, damage, mutilate, or remove any sign, delineator, structure, fence or any other property of the turnpike. (Authorized by K.S.A. 68-2004; effective Jan. 1, 1966.)

39-1-5. Alcoholic beverages, gambling and weapons. The consumption of alcoholic beverages, participation in games of chance, and brandishing of weapons by any person is prohibited on the turnpike. Patrons obviously under the influence of drugs or intoxicating beverages shall be refused entry upon the turnpike. (Authorized by K.S.A. 68-2004; effective Jan. 1, 1966.)

39-1-6. Solicitation of funds—other commercial activity. No person shall solicit funds for any purpose on the turnpike without written permit granted by the authority. Commercial activity of any nature on the turnpike without the written permission of the authority is prohibited. No person shall post, distribute, or display signs, advertisements, circulars and printed or written matter on the turnpike without written permission from the authority. (Authorized by K.S.A. 68-2004; effective Jan. 1, 1966.)

39-1-7. Definitions. In addition to words and terms defined elsewhere in this manual, the following words and terms as used in this manual shall have the following meanings unless some other meaning is plainly intended:

(a) *Kansas turnpike authority or authority.* The governmental unit created by section 68-2003,

Kansas Statutes Annotated and any amendments thereto.

(b) *Turnpike system or turnpike.* All traffic lanes, acceleration lanes, deceleration lanes, structures, bridges, shoulders, medial strips, service areas and any other areas within the rights-of-way of the divided highway under the jurisdiction of the turnpike authority, and including all easements or other property outside its right-of-way.

(c) *Vehicle.* Any device in, upon or by which any person or property is or may be transported or drawn upon a public highway.

(d) *Motor vehicle.* Any vehicle propelled by any power other than muscular power.

(e) *Emergency vehicles.* Vehicles such as highway patrol cars, ambulances, tow trucks, or fire engines when used during emergency situations.

(f) *Operator.* A person who operates or causes a vehicle to move. (Authorized by K.S.A. 68-2004; effective, E-66-2, Feb. 14, 1966; effective Jan. 1, 1967.)

39-1-8. (Authorized by K.S.A. 68-2004; effective, E-66-2, Feb. 14, 1966; effective Jan. 1, 1967; revoked Jan. 8, 1999.)

39-1-9. Speed limits. Vehicles shall not be operated on the Kansas turnpike at a speed greater than that which is reasonable and prudent under the conditions then existing. Where signs are erected indicating a particular speed, all vehicles within the area or zone or sections where these signs are erected shall not at any time be operated in excess of the speed indicated by these signs. No vehicle shall be operated on the Kansas turnpike at a speed less than 40 miles per hour, except when necessary to do so because of inclement weather or other hazards existing upon the turnpike. (Authorized by and implementing K.S.A. 68-2004; effective, E-66-2, Feb. 14, 1966; effective Jan. 1, 1967; amended, E-70-38, Aug. 17, 1970; amended, E-71-10, Dec. 28, 1970; amended Jan. 1, 1973; amended, E-74-23, April 22, 1974; amended May 1, 1975; amended Jan. 8, 1999.)

39-1-10. Uniform direction of traffic. No vehicle shall be operated, pushed, or otherwise caused to be moved in a direction which is against the normal flow of traffic on any traffic lane, deceleration lane, acceleration lane, access ramp, shoulder, or other travel way on the Kansas turnpike. Upon entering a traffic lane from a service area, interchange or access ramp, the operator of a vehicle shall use the acceleration lane and he

shall enter the turnpike with caution so as not to interfere with or endanger other traffic. (Authorized by K.S.A. 68-2004; effective, E-66-2, Feb. 14, 1966; effective Jan. 1, 1967.)

39-1-11. Use of medial strip. The medial strip of the turnpike system is the area separating traffic moving in opposite directions. No person or persons shall operate a vehicle across such medial strip. Driving a vehicle on such medial strip is prohibited. Parking, standing or stopping on such medial strip is prohibited. These provisions shall not apply to Kansas highway patrol vehicles, to Kansas turnpike officials or maintenance vehicles, or to emergency vehicles operated under agreement with the turnpike authority when operated in the performance of their official duties, provided that the operator uses caution so as not to interfere with or endanger traffic. (Authorized by K.S.A. 68-2004; effective, E-66-2, Feb. 14, 1966; effective Jan. 1, 1967.)

39-1-12. No U-turns. The making of a U-turn at any point on the turnpike system is prohibited. Excepted from the provisions of this paragraph are such authorized vehicles as are described under section 3, above, and then only under such conditions as are described therein. (Authorized by K.S.A. 68-2004; effective, E-66-2, Feb. 14, 1966; effective Jan. 1, 1967.)

39-1-13. Driving in traffic lane, overtaking and passing. Lane traffic (the right to drive in right or left lane of traffic going in the same direction) is authorized on the Kansas turnpike. A vehicle shall be driven as nearly as practicable entirely within a single lane, and shall not be moved from such lane until the operator has first ascertained that such movement can be made with safety. A driver of a vehicle may overtake and pass upon the right or left side of another vehicle only when this can be done by staying within lane 1 and 2, but said overtaking and passing cannot be done if the driver has to drive off the main portion of the turnpike. Any driver of a vehicle intending to change lanes shall give proper and sufficient signal of intention to turn right or left before making said lane change, then yield right-of-way. (Authorized by K.S.A. 68-2004; effective, E-66-2, Feb. 14, 1966; effective Jan. 1, 1967.)

39-1-14. (Authorized by K.S.A. 68-2004; effective, E-66-2, Feb. 14, 1966; effective Jan. 1, 1967; revoked Jan. 8, 1999.)

39-1-15. Accidents. In addition to the provisions of the traffic laws of the state of Kansas, the operator of a vehicle involved in an accident on the turnpike system resulting in injury or death to any person or damage to any property, real or personal, shall immediately stop such vehicle at the scene of the accident, render such assistance as may be needed, and give his name, address, license and registration number to the person injured or the person sustaining the damage and to a member of the Kansas highway patrol or to a toll collector at the nearest toll booth. (Authorized by K.S.A. 68-2004; effective, E-66-2, Feb. 14, 1966; effective Jan. 1, 1967.)

39-1-16. Impounding of vehicles. Vehicles illegally parked or abandoned on the turnpike system may be towed off the turnpike system and impounded. Such vehicles may not be removed from the storage compound until after payment of towing, storage and other charges. (Authorized by K.S.A. 68-2004; effective, E-66-2, Feb. 14, 1966; effective Jan. 1, 1967.)

39-1-17. Following too closely. The operator of a passenger car shall not follow within two hundred (200) feet of another vehicle and the operator of any truck or tractor shall not follow within three hundred (300) feet of another vehicle. (Authorized by K.S.A. 68-2004; effective, E-66-2, Feb. 14, 1966; effective Jan. 1, 1967.)

39-1-18. Vehicle and traffic law. Except for those sections which are inconsistent with or modified by the above rules and regulations, the provisions of all of the articles and sections of the Kansas Statutes Annotated, and any amendments thereto, shall apply on the turnpike system. (Authorized by K.S.A. 68-2004; effective, E-66-2, Feb. 14, 1966; effective Jan. 1, 1967; amended, E-74-40, Aug. 16, 1974; amended May 1, 1975.)

39-1-19. Obedience to officers, signs, and signals. No person shall fail, neglect, or refuse to comply with any traffic control sign, signal, or device erected or displayed by the turnpike authority on the turnpike system, unless directed otherwise by a member of the highway patrol or turnpike authority employee. (Authorized by and implementing K.S.A. 68-2004; effective, E-66-2, Feb. 14, 1966; effective Jan. 1, 1967; amended Jan. 8, 1999.)

Article 2.—TOLLS

Editor's Note:

Provisions of this article are exempt from the publication requirements of K.S.A. 77-415 et seq.

**Article 3.—BONDS AND COUPONS
FOR TURNPIKE NO. 1**

**DUPLICATION OF LOST, STOLEN,
DESTROYED OR MUTILATED BONDS AND
COUPONS AND PAYMENT OF SAME, ETC.**

39-3-1. (Authorized by K.S.A. 68-2004, 68-2010 and section 211 of the trust agreement dated Oct. 1, 1954; effective Jan. 1, 1966; revoked Jan. 8, 1999.)

39-3-2. (Authorized by K.S.A. 68-2004, 68-2010 and section 211 of the trust agreement dated Oct. 1, 1954; effective Jan. 1, 1966; revoked Jan. 8, 1999.)

39-3-3. (Authorized by K.S.A. 68-2004, 68-2010 and section 211 of the trust agreement dated Oct. 1, 1954; effective Jan. 1, 1966; revoked Jan. 8, 1999.)

39-3-4. (Authorized by K.S.A. 68-2004, 68-2010 and section 211 of the trust agreement dated Oct. 1, 1954; effective Jan. 1, 1966; revoked Jan. 8, 1999.)

39-3-5. (Authorized by K.S.A. 68-2032, 68-2038 and section 211 of the trust agreement dated Aug. 1, 1957; effective Jan. 1, 1966; revoked Jan. 8, 1999.)

39-3-6. (Authorized by K.S.A. 68-2032, 68-2038 and section 211 of the trust agreement dated Aug. 1, 1957; effective Jan. 1, 1966; revoked Jan. 8, 1999.)

39-3-7. (Authorized by K.S.A. 68-2032, 68-2038 and section 211 of the trust agreement dated Aug. 1, 1957; effective Jan. 1, 1966; revoked Jan. 8, 1999.)

39-3-8. (Authorized by K.S.A. 68-2032, 68-2038 and section 211 of the trust agreement dated Aug. 1, 1957; effective Jan. 1, 1966; revoked Jan. 8, 1999.)

Article 4.—DESIGNATION OF OFFICE

39-4-1. Designation of office. The office of the Kansas Turnpike authority shall be and is hereby designated to be in Sedgwick county, Kansas, at 9401 East Kellogg, Wichita, Kansas. (Authorized by K.S.A. 68-2004 (c); effective Jan. 1, 1966.)

Article 5.—DISCOUNT RATES

39-5-1. (Authorized by K.S.A. 68-2004(g); effective Jan. 1, 1966; revoked Jan. 8, 1999.)

**Article 6.—CLASSIFICATION AND TOLLS
FOR KANSAS CITY EXPRESSWAY**

39-6-1. (Authorized by Chapter 68, Article 20, K.S.A. specifically sections 68-2030 to 68-2049 thereof, and sections 501 and 502 of the trust agreement dated Aug. 1, 1957; effective Jan. 1, 1966; revoked Jan. 8, 1999.)

39-6-2. (Authorized by K.S.A. 68-2030 to 68-2049 and sections 501 and 502 of the trust agreement dated Aug. 1, 1957; effective Jan. 1, 1966; revoked Jan. 8, 1999.)

Agency 40

Insurance Department

Articles

- 40-1. GENERAL.
- 40-2. LIFE INSURANCE.
- 40-3. FIRE AND CASUALTY INSURANCE.
- 40-4. ACCIDENT AND HEALTH INSURANCE.
- 40-5. CREDIT INSURANCE.
- 40-6. *INVESTMENTS AND DEPOSITS OF SECURITIES. (Not in active use.)*
- 40-7. AGENTS.
- 40-8. EXCESS COVERAGE.
- 40-9. ADVERTISING.
- 40-10. FIREFIGHTER'S RELIEF FUND TAX.
- 40-11. PROXIES, CONSENTS, AND AUTHORIZATIONS.
- 40-12. SALE OF STOCK.
- 40-13. INSIDER STOCK TRADING.
- 40-14. *INSURANCE PREMIUM FINANCE COMPANIES. (Not in active use.)*
- 40-15. VARIABLE ANNUITIES OR SEPARATE ACCOUNTS.
- 40-15a. VARIABLE LIFE INSURANCE.
- 40-15b. UNIVERSAL LIFE INSURANCE.
- 40-16. PROFESSIONAL EMPLOYER ORGANIZATIONS.

Article 1.—GENERAL

40-1-1. Officers, directors, trustees; financial interest in sale or loan by company; prohibited. (a) Except as permitted by K.S.A. 1984 Supp. 40-2a13 and 40-2b10 respectively, an officer, director, or trustee of an insurance company, association, or society doing business in this state shall not:

(1) Receive any money or valuable item for negotiating, soliciting, procuring, recommending, or aiding in the purchase or sale of property by the company, association, or society;

(2) receive a loan from the company, association, or society; or

(3) have a financial interest as principal, coprincipal, agent, or beneficiary in a purchase, sale or loan prohibited by subsections (a)(1) and (a)(2).

(b) An appraisal of the property shall be made prior to purchase or sale of real estate to or from an officer, director or trustee of any insurance company, association or society doing business in this state by an insurance company, association or society. A true copy of the appraisal shall be provided to the commissioner upon request.

(c) A company, association, or society doing

business in this state shall not make any loan, other than a policy loan, to an officer, director, trustee or other person having authority in the management of its funds.

(d) This regulation shall not apply to loans permitted by K.S.A. 1984 Supp. 40-2a12 and 40-2b09. (Authorized by K.S.A. 40-103, 40-205; implementing K.S.A. 40-222, 40-225; effective Jan. 1, 1966; amended Jan. 1, 1969; amended May 1, 1979; amended May 1, 1983; amended May 1, 1984; amended May 1, 1986.)

40-1-2. (Authorized by K.S.A. 40-103, 40-209, 40-216, K.S.A. 1978 Supp. 40-214; effective Jan. 1, 1966; revoked May 1, 1979.)

40-1-3. Foreign insurance companies; deposit requirements. Each insurance company organized under the laws of a country other than the United States shall be treated as a United States domestic company of the state in which the principal office of the company in this country is located. (Authorized by K.S.A. 40-103; implementing K.S.A. 40-209, 40-210; effective Jan. 1, 1966; amended May 1, 1986.)

40-1-4. (Authorized by K.S.A. 40-103, 40-201, 40-214; effective Jan. 1, 1966; revoked Jan. 1, 1968.)

40-1-5. Insurance companies; changes in charter, bylaws, officers, management; reports to commissioner. The following information shall be filed with the commissioner within 30 days after the changes or actions become effective or are otherwise finalized:

(a) Each change in the charter of an insurance company authorized to transact business in this state;

(b) Each change in the bylaws of insurance companies organized under the laws of this state;

(c) Each change in officers and directors of insurance companies organized under the laws of this state as listed on page one of the annual statement. A biographical sketch of each officer or director shall be filed unless previously filed;

(d) Each entry into or change in management contracts by insurance companies authorized to transact business in this state; and the sale of controlling stock interests. (Authorized by K.S.A. 40-103; implementing K.S.A. 40-209, 40-216, 40-222d, 40-225; effective Jan. 1, 1966; amended May 1, 1979; amended May 1, 1980; amended May 1, 1981; amended May 1, 1986.)

40-1-6. (Authorized by K.S.A. 40-103, 40-225, 40-404a; effective Jan. 1, 1966; amended Jan. 1, 1970; amended Jan. 1, 1971; revoked May 1, 1979.)

40-1-7. (Authorized by K.S.A. 40-103, 40-235, 40-242, 40-2404, 58-2265; effective Jan. 1, 1966; revoked May 1, 1979.)

40-1-8. (Authorized by K.S.A. 40-103, 40-928(f); implementing K.S.A. 40-216, 40-246a, 40-1113; effective Jan. 1, 1966; amended May 1, 1979; amended May 1, 1986; revoked June 22, 2001.)

40-1-9. Insurance companies; insurance contracts; premiums defined. (a) (1) The following charges made by insurance companies or their representatives, in connection with the issuance or servicing of policies of their insureds, shall be considered "premiums":

(A) Membership fees;

(B) policy fees;

(C) service charges; and

(D) charges made by title insurance companies or their agents for the assumption of the risk created by issuance of the title insurance policy.

(2) "Premiums" shall be subject to each applicable fee and tax, shall be authorized by the applicable rate filings of the company required by chapter 40, Kansas Statutes Annotated, and shall be subject to any other applicable statutes.

(b) This regulation shall not apply to interest permitted or required by K.S.A. 40-282 and 40-283 (Authorized by K.S.A. 40-103; implementing K.S.A. 40-252, 40-283, 40-928, 40-1113; effective Jan. 1, 1966; amended Jan. 1, 1969; amended Jan. 1, 1971; amended May 1, 1979; amended May 1, 1986.)

40-1-10. Insurance companies; premium financing plans; requirements. (a) For the purpose of this regulation, premium financing plans are defined as:

(1) Plans whereby the company offers the insured an installment method of paying premiums for each type of coverage purchased, such as life, casualty, fire, and inland marine or any combination, by combining the total of the premiums and charging an additional finance or service charge for the payment plan; and

(2) plans whereby the company offers the insured an installment method of paying premiums for a line of insurance that is in addition to any installment payment plan recognized by the company's existing rule and rate filings. This includes premium financing plans that are normally handled separately from the insurance contract and handled directly by the insurer or an affiliated insurer.

(b) The following rules are applicable to all insurance companies using a premium financing plan:

(1) Each interest or service charge shall be considered as premium income and the applicable premium taxes shall be paid.

(2) Each interest or service charge shall be reported as separate items on one line in the exhibit of premiums:

(A) contained in exhibit I, page 7, of the annual statement relating to life insurance companies; or

(B) on page 14 of the annual statement relating to other than life insurance companies.

(3) Each fire or casualty insurer shall file with the commissioner each manual of rules and rates, together with each form and modification of any rules, rates and forms used in connection with premium financing plans. Each filing shall indicate the character and extent of the interest or service charges contemplated and shall be accompanied by all pertinent information supporting the filing.

(4) Except as provided in K.S.A. 40-411 or K.S.A. 40-420, each form shall provide at least five days written notice of cancellation to an insured before the policy may be cancelled as a result of a premium installment nonpayment. (Authorized by K.S.A. 40-103, 40-2203(G); implementing K.S.A. 40-252, 40-928, 40-1113, 40-2203; effective Jan. 1, 1966; amended May 1, 1979; amended May 1, 1986.)

40-1-11. (Authorized by K.S.A. 40-103, 40-216, 40-2207, 40-2404; effective Jan. 1, 1966; revoked May 1, 1979.)

40-1-12. Insurance companies; unauthorized writing of insurance; premium tax. Each insurance company writing insurance in this state on the life or person of state residents, or on property located within this state, without authorization from the commissioner of insurance shall, after receiving authorization to transact business in this state, be assessed the amount of premium tax specified in K.S.A. 40-252(B) for the calendar year in which the company receives authorization and for the two preceding years. Companies conducting business by mail or on federal installations within this state shall not be exempt from this requirement. (Authorized by K.S.A. 40-103; implementing K.S.A. 40-214, 40-246a, 40-252; effective Jan. 1, 1966; amended May 1, 1986.)

40-1-13. (Authorized by K.S.A. 40-103; implementing 40-246a, 40-252; effective Jan. 1, 1966; amended Jan. 1, 1973; amended May 1, 1986; revoked June 22, 2001.)

40-1-14. (Authorized by K.S.A. 40-103, 40-208, 40-209, 40-216, 40-926, 40-1111, K.S.A. 1978 Supp. 40-928, 40-1113; effective Jan. 1, 1966; revoked May 1, 1979.)

40-1-15. Insurance companies; approval of forms; company names. (a) A policy form shall not contain the name of an insurance company that is unauthorized to transact business in Kansas.

(b) If the policy contains the name of more than one company authorized to transact business in Kansas, the policy shall clearly provide for the designation, when issued, of the company, or companies, assuming direct liability on the contract. (Authorized by K.S.A. 40-103, 40-2404a; implementing K.S.A. 40-214, 40-216, 40-2215(C); effective Jan. 1, 1966; amended May 1, 1979; amended May 1, 1981; amended May 1, 1986.)

40-1-16. Insurance companies; approval of forms; advertising. (a) An application form, policy form, plan, certificate of coverage, rider, endorsement, or other form to be attached to a policy, shall not contain advertising which:

- (1) Misleads,
- (2) does not materially facilitate understanding of the form; or
- (3) does not facilitate identification of the insurer. (Authorized by K.S.A. 40-103, 40-2404a; implementing K.S.A. 40-216, 40-2404; effective Jan. 1, 1966; amended Jan. 1, 1968; amended May 1, 1979; amended May 1, 1986.)

40-1-17. Insurance companies; policy forms; return of unearned premium; condition precedents prohibited. When an insurance policy provision provides for the return of unearned premium, the provision shall not require the insured to request the return of premium, or that the premium is returned only "upon demand." (Authorized by K.S.A. 40-103, 40-2203(G); implementing K.S.A. 40-216, 40-2203(8), 40-2215; effective Jan. 1, 1966; amended May 1, 1979; amended May 1, 1986.)

40-1-18. (Authorized by K.S.A. 40-103, 40-216, 40-235, 40-2203, 40-2203(G); effective Jan. 1, 1966; revoked May 1, 1979.)

40-1-19. Insurance companies; combination policies; requirements. Each company authorized to transact business in this state shall be prohibited from issuing a policy which combines insurance for which rate filings are required with insurance for which rate filings are not required. This regulation shall not apply to the following:

- (a) any policy for which:
 - (1) the premium for insurance coverage which is not subject to rate control is less than 50% of the total premium; or
 - (2) the rate for each insurance coverage which is included in the policy is filed with and approved by the commissioner; or
- (b) any policy combining life and accident and sickness insurance pursuant to K.S.A. 40-401. (Authorized by K.S.A. 40-103, 40-2204(G); implementing K.S.A. 40-926, 40-927, 40-1111, 40-1112, 40-1113, 40-2203; effective Jan. 1, 1966; amended Jan. 1, 1967; amended May 1, 1979; amended May 1, 1986; amended May 16, 1997.)

40-1-20. Same; subrogation clause prohibited for certain coverages. No insurance company or health insurer, as defined in K.S.A.

40-4602 and amendments thereto, may issue any contract or certificate of insurance in Kansas containing a subrogation clause, or any other policy provision having a purpose or effect similar to that of a subrogation clause, applicable to coverages providing for reimbursement of medical, surgical, hospital, or funeral expenses. (Authorized by K.S.A. 40-103; implementing K.S.A. 40-2204; effective Jan. 1, 1966; amended Jan. 1, 1967; amended May 1, 1985; amended May 1, 1986; amended May 1, 1987; amended March 1, 2013.)

40-1-21. (Authorized by K.S.A. 40-103, 40-209, 40-239, K.S.A. 1978 Supp. 40-214, 40-246; effective Jan. 1, 1966; revoked May 1, 1979.)

40-1-22. Insurance policies and certificates; change of name or merger of an insurance company; assumption of risk endorsements. (a) Each assuming company shall attach to each insurance policy and each certificate of accident and sickness coverage an “assumption of risk” endorsement that displays the name and address of the assuming company when any outstanding insurance policy or certificate of accident and sickness coverage issued to a resident of Kansas is affected by any of the following:

- (1) A change in the name of the issuing company;
- (2) a merger, consolidation, or similar transaction involving the issuing company;
- (3) a change of domicile in which policy liability is assumed by another company; or

(4) an assumption reinsurance agreement.

(b) The “assumption of risk” endorsement shall be approved by the commissioner of insurance before issuance to residents of the state of Kansas.

(c) Each “assumption of risk” endorsement originating from an assumption reinsurance agreement shall meet the following requirements:

(1) Not require the insured to take affirmative action to reject the substitution of one insurer for another; and

(2) not state that failure to reject the substitution or the continued payment of premium will constitute acceptance of the substitution. (Authorized by K.S.A. 40-103; implementing K.S.A. 2010 Supp. 40-221a, K.S.A. 2010 Supp. 40-309, and K.S.A. 40-510; effective Jan. 1, 1967; amended May 1, 1979; amended May 1, 1986; amended March 28, 1994; amended June 24, 2011.)

40-1-23. (Authorized by K.S.A. 40-103, K.S.A. 1978 Supp. 40-252; effective Jan. 1, 1971; revoked May 1, 1979.)

40-1-24. (Authorized by K.S.A. 40-103, 40-2801, 40-2802, 40-2803, 40-2804, 40-2805, 40-2806, 40-2807, 40-2808, 40-2810, 40-2811, K.S.A. 1978 Supp. 40-2809; effective Jan. 1, 1971; revoked May 1, 1979.)

40-1-25. (Authorized by K.S.A. 40-103, 40-226; effective Jan. 1, 1973; amended May 1, 1979; revoked May 1, 1986.)

40-1-26. (Authorized by K.S.A. 40-103, 40-254; effective Jan. 1, 1973; revoked May 1, 1986.)

40-1-27. (Authorized by K.S.A. 40-103, 40-251, 40-2214; effective Jan. 1, 1973; amended May 1, 1979; revoked May 1, 1986.)

40-1-28. Insurance holding companies; reporting forms and instructions. The Kansas insurance department’s “policy and procedure providing insurance holding company system reporting forms and instructions,” dated September 15, 2020, is hereby adopted by reference. (Authorized by K.S.A. 40-103, K.S.A. 2019 Supp. 40-3309; implementing K.S.A. 2019 Supp. 40-3304, 40-3305, and 40-3306; effective May 1, 1976; amended May 1, 1979; amended May 1, 1986; amended May 1, 1988; amended May 15, 1989; amended, T-40-9-26-91, Sept. 26, 1991; amended Dec. 16, 1991; amended Jan. 31, 2014; amended March 27, 2015; amended Feb. 26, 2021.)

40-1-29. (Authorized by K.S.A. 40-103, 40-3309; implementing K.S.A. 40-3306(c); effective May 1, 1976; amended May 1, 1986; revoked May 1, 1988.)

40-1-30. (Authorized by K.S.A. 40-103; implementing K.S.A. 40-222, 40-225; effective Feb. 15, 1977; amended May 1, 1986; revoked May 25, 2001.)

40-1-31. Insurance policies; prohibiting certain discriminations. An insurance policy, plan or binder, or a rider or endorsement there-to, shall not be delivered or issued for delivery in this state if the amount of benefits payable, or a term, condition, or type of coverage is or may be restricted, modified, excluded, or reduced on the basis of the sex or marital status of the insured or prospective insured. This requirement shall not apply when the amount of benefits, terms, conditions, or type of coverage vary as a result of the application of rate differentials permitted under chapter 40, Kansas statutes annotated, or as a re-

sult of negotiations between the insurer and insured. Nothing in this regulation shall prohibit an insurer from taking marital status into account for the purpose of defining persons eligible for dependents benefits. (Authorized by K.S.A. 40-103, 40-2404a; implementing K.S.A. 40-2404(7); effective Feb. 15, 1977; amended May 1, 1986.)

40-1-32. Insurance companies; riders or endorsements; change in coverage or benefits; consent of policyholder. Consent of the policyholder is required if an endorsement or rider attached to an insurance contract or policy subsequent to the issuance date of such contract or policy reduces or eliminates coverage or benefits of the contract or policy. (Authorized by K.S.A. 40-103, 40-2404(a); implementing K.S.A. 40-9228, 40-1113, 40-2404; effective May 1, 1979; amended May 1, 1986; amended May 1, 1987.)

40-1-33. Suspension of form filing requirements. The filing requirements of K.S.A. 40-216 shall be suspended when insurance policies, endorsements, riders, and other forms cannot be filed before use because:

(a) A change in company officers makes obsolete the signatures appearing on existing forms. If the validity of contracts issued subsequent to such a change in officers would be affected, the filing requirements shall not be suspended; or

(b) an existing supply of forms is depleted and the replacement forms bear a different printing date or edition identity.

This suspension shall not apply to any other changes. (Authorized by K.S.A. 40-103, 40-216; implementing K.S.A. 40-216; effective May 1, 1981; amended May 1, 1986.)

40-1-34. Unfair claims settlement practices. The national association of insurance commissioners' "unfair claims settlement practices model regulation," January 1981 edition, is hereby adopted by reference, subject to the following exceptions:

(a) Section 1 is not adopted.

(b) The first sentence of section 2 is not adopted.

(c) In section 2, the phrase "Section 4(9) of the Act" is replaced with the phrase "K.S.A. 40-2404, and amendments thereto."

(d) In section 3, the phrase "Section 2 of the Unfair Trade Practice Act" is replaced with the phrase "K.S.A. 40-2404, and amendments thereto."

(e) Section 8(d) is not adopted.

(f) Section 8 is amended by the addition of the following subsection: "(e) An insurer shall not at-

tempt to settle a loss with a first party claimant on the basis of a cash settlement which is less than the amount the insurer would pay if repairs were made, other than in total loss situations, unless such amount is agreed to by the insured."

(g) Section 8 is further amended by the addition of the following subsection: "(f) If a claim is denied for reasons other than those described in section 8(a) and is made by any other means than writing, an appropriate notation shall be made in the claim file of the insurer."

(h) Section 8 is further amended by the addition of the following subsection: "(g) Insurers shall not fail to settle first party claims on the basis that responsibility for payment should be assumed by others except as may otherwise be provided by policy provisions."

(i) Section 8 is further amended by the addition of the following subsection: "(h) Insurers shall not continue negotiations for settlement of a claim directly with a claimant who is neither an attorney nor represented by an attorney when the claimant's rights may be affected by a statute of limitations or a policy or a contract time limit, without giving the claimant written notice that the time limit may be expiring and may affect the claimant's rights. Such notice shall be given to first party claimants thirty days and to third party claimants sixty days before the date on which such time limit may expire."

(j) Section 8 is further amended by the addition of the following subsection: "(i) No insurer shall make statements which indicate that the rights of a third party claimant may be impaired if a form or release is not completed within a given period of time unless the statement is given for the purpose of notifying the third party claimant of the provision of a statute of limitations."

(k) Section 9(a) is amended by deleting the phrase "first party."

(l) In section 9(a), subsection (1) is amended by replacing the word "insured" with the word "claimant."

(m) In section 9(a), subsection (2) is not adopted by reference and is replaced with the following language: "The insurer may elect to pay a cash settlement, based upon the actual cost, less any deductible provided in the policy, to purchase a comparable automobile including all applicable taxes, license fees and other fees incident to transfer of evidence of ownership of a comparable automobile. Such cost shall be determined by any source or method for determining statistically

valid fair market value that meets both of the following criteria:"

"(A) The source or method's database, including nationally recognized automobile evaluation publications, shall provide values for at least eighty-five percent (85%) of all makes and models of private passenger vehicles for the last fifteen (15) model years taking into account the values for all major options for such vehicles; and"

"(B) the source, method, or publication shall provide fair market values for a comparable automobile based on current data available for the local market area as defined in subsection (j)(2)."

(n) In section 9(a), subsection (3) is not adopted by reference and is replaced with the following language: "When an automobile total loss is settled on a basis which deviates from the methods and criteria described in subsections (a)(1) and (a)(2)(A) and (B) of this section, the deviation must be supported by documentation giving the particulars of the automobile condition and the basis for the deviation. Any deviations from such cost, including deduction for salvage, must be measurable, discernible, itemized and specified as to dollar amount and shall be appropriate in amount. The basis for such settlement shall be fully explained to the claimant."

(o) Section 9 is amended by the addition of the following subsection: "(h) Insurers shall include consideration of applicable taxes, license fees, and other fees incident to transfer of evidence of ownership in third party automobile total losses and shall have sufficient documentation relative to how the settlement was obtained in the claim file. A measure of damages shall be applied which will compensate third party claimants for the reasonable loss sustained as the proximate result of the insured's negligence."

(p) Section 9 is further amended by the addition of the following subsection: "(i) A claimant has the right of recourse if the claimant notifies the insurer, within thirty (30) days after the receipt of the claim draft, that claimant is unable to purchase a comparable automobile for the amount of the claim draft. Upon receipt of this notice, the insurer shall reopen its claim file within five (5) business days, and one of the following actions shall apply:"

"(1) the insurer shall either pay the claimant the difference between the market value as determined by the insurer and the cost of the comparable vehicle of like kind and quality which the claimant has located, or negotiate and effect the purchase of this vehicle for the claimant; or"

"(2) the insurer may elect to offer a replacement in accordance with provisions of subsection 9(a)(1)."

(q) Section 9 is further amended by the addition of the following subsection: "(j) As used in this regulation, the following terms shall have the following meanings:"

"(1) comparable automobile means a vehicle of the same make, model, year, style and condition, including all major options of the claimant vehicle;"

"(2) local market area means the fifty (50) mile area surrounding the place where the claimant vehicle was principally garaged." (Authorized by K.S.A. 40-103, 40-2404a; implementing K.S.A. 2001 Supp. 40-2404; effective May 1, 1981; amended May 1, 1986; amended July 10, 1989; amended Jan. 10, 2003.)

40-1-35. (Authorized by K.S.A. 40-103, 40-2404a; implementing K.S.A. 40-2404; effective May 1, 1981; amended May 1, 1986; revoked Dec. 28, 1998.)

40-1-36. Life and health insurance applications; underwriting; acquired immunodeficiency syndrome (AIDS); defined. (a) As used in this regulation, these terms shall have the following meanings:

(1) "Acquired immunodeficiency syndrome (AIDS)" means one or more opportunistic diseases which are at least moderately indicative of underlying cellular immunodeficiency, along with the absence of all known underlying causes of cellular immunodeficiency and all other causes of reduced resistance reported to be associated with at least one of those opportunistic diseases.

(2) "AIDS related complex (ARC)" means a syndrome in which the individual displays many of the same symptoms of AIDS, including the presence of the HIV antibody.

(3) "Adverse underwriting decisions" mean the actions described in K.S.A. 40-2,111(a).

(4) "Applicant" means the individual proposed for coverage.

(b) All individual and group applications for insurance that require health information or questions shall comply with the following standards:

(1) Whenever an applicant is requested to take an HIV antibody test in connection with an application for insurance, the insurer shall:

(A) Obtain written informed consent from the applicant;

(B) reveal the use of the test to the applicant;

(C) provide the applicant printed material prior to testing containing factual information describing AIDS, its causes, symptoms, how it is and can be spread, the tests used to detect the HIV antibody and what a person should do whose test results are positive; or, arrange for the applicant to receive relevant counseling from a qualified practitioner who has had extensive training and experience in addressing the fears, questions and concerns of persons tested for the HIV antibody;

(D) administer an initial test which meets the test protocol established by the food and drug administration of the federal department of health and human services;

(E) administer a second test, the immunoelectroprecipitate using disrupted whole virus antigen test (western blot), to substantiate an initial positive test result; and

(F) disclose the results of the testing in accordance with K.S.A. 40-2,112(b)(2) and (3).

(2) Insurers may ask diagnostic questions on applications for insurance.

(3) Application questions shall be formed in a manner designed to elicit specific medical information and not lifestyle, sexual orientation or other inferential information.

(4) Questions which are vague, subjective, unfairly discriminatory, or so technical as to inhibit a clear understanding by the applicant are prohibited.

(c) All underwriting shall be based on individual review of specific health information furnished on the application, any reports provided as a result of medical examinations performed at the company's request, medical record information obtained from the applicant's health care providers or any combination of the foregoing. Adverse underwriting decisions shall not be based on less than conclusive responses to application questions.

(d) Adverse underwriting decisions shall be based on sound actuarial principles pursuant to K.S.A. 40-2,109. (Authorized by K.S.A. 40-103, 40-2404a; implementing K.S.A. 40-2,109, 40-2404(7) as amended by L. 1987, Ch. 171, Sec. 1; effective, T-88-35, Sept. 17, 1987; amended May 1, 1988.)

40-1-37. Audited financial reports; filing requirements. The Kansas insurance department's "policy and procedure requiring annual audited financial reports," dated November 30, 2016, is hereby adopted by reference. (Authorized by K.S.A. 40-103 and 40-225; implementing K.S.A. 40-222b, K.S.A. 2016 Supp. 40-222, and

K.S.A. 40-225; effective July 10, 1989; amended Jan. 4, 1993; amended Sept. 14, 2001; amended Sept. 21, 2007; amended July 6, 2009; amended March 18, 2011; amended June 29, 2012; amended Jan. 31, 2014; amended Feb. 27, 2015; amended Aug. 18, 2017.)

40-1-38. Insurance companies; hazardous financial condition; standards; corrective actions. The Kansas insurance department's "policy and procedure for companies deemed to be in hazardous financial condition," dated August 4, 2009, is hereby adopted by reference. (Authorized by K.S.A. 40-103; implementing K.S.A. 40-222b and K.S.A. 40-222d; effective, T-40-9-26-91, Sept. 26, 1991; effective Jan. 6, 1992; amended Nov. 20, 2009.)

40-1-39. Insurance; endorsements and riders; change in coverage; consent of policyholder. (a) No company, or company representative shall be permitted to add coverage to new, renewal, or existing policies if the insured or policyowner has not consented to additional coverage.

(b) This regulation does not apply if a coverage addition is:

(1) Provided without any additional premium charge;

(2) mandated by law; or

(3) required by filings approved for the company's use. (Authorized by K.S.A. 40-103, 40-2404a; implementing K.S.A. 40-443, 40-444, 40-941, 40-2403, K.S.A. 1992 Supp. 40-928, 40-1113, 40-2215; effective Nov. 29, 1993.)

40-1-41. Insurance companies; managing general agents; management agreements or contracts; definitions; requirements; prohibitions. (a) This regulation shall:

(1) Apply to managing general agents as defined by K.S.A. 1992 Supp. 40-2,130; and

(2) not apply to administrators holding a certificate of registration pursuant to K.S.A. 40-3810, as amended.

(b) Definitions.

(1) "Payments" means amount paid to any person, organization or corporation pursuant to a management contract or agreement in excess of reimbursement of actual expenses.

(2) "Reimbursement" means amounts paid to any person, organization or corporation pursuant to a management contract or agreement to cover the costs or actual expenses incurred in procuring or otherwise managing the business of any insurer.

(c) Any management agreement or contract which provides for payments, other than reimbursement for actual expenses, in excess of the guidelines contained in subsections (c) through (g) of this regulation shall be deemed by the commissioner of insurance to be in violation of K.S.A. 1992 Supp. 40-2,132, as operating to the financial detriment of the insurer in such a manner as to endanger the financial stability of the insurer or otherwise be hazardous to policyholders and creditors of the insurer.

(d) No payment shall exceed reimbursement plus a percentage of the reimbursement equal to the percentage profit experienced by the company over the previous five years.

(e) Profit shall be calculated as follows:

(1) For property/casualty insurers—net income divided by premium earned;

(2) for life/health/accident insurers—net income divided by premium and annuity consideration, annuity and other fund deposits, and consideration for supplementary contracts; and

(3) for health maintenance organizations—net income divided by premium.

(f) For insurers with fewer than five years experience, the payments shall not exceed 15 percent of the actual expenses reimbursed.

(g) In no case shall the payments exceed 20 percent of the actual expenses reimbursed.

(h) No management agreement or contract shall allow for reimbursement based on a percentage of premium. (Authorized by K.S.A. 40-103, K.S.A. 1992 Supp. 40-2,136; implementing K.S.A. 1992 Supp. 40-2,136; effective Nov. 29, 1993.)

40-1-42. Electronic filing and filing financial statements. (a) “Insurer,” as used in this regulation, shall mean the following entities that are operating under the designated articles of chapter 40 of the Kansas statutes annotated and amendments thereto:

(1) An insurance company operating under article 3, 4, 5, 6, 8, 9, 10, 11, 12, 12a, 13, 15, or 35;

(2) a fraternal benefit society operating under article 7;

(3) a reciprocal operating under article 16;

(4) a nonprofit dental service corporation operating under article 19a;

(5) a nonprofit medical and hospital service corporation operating under article 19c; and

(6) a health maintenance organization operating under article 32.

(b) Each insurer that does business in this state and files a statement of its condition dated De-

ember 31 of the preceding year on a form prescribed by the national association of insurance commissioners shall, pursuant to K.S.A. 40-225 and amendments thereto, submit the statement of its condition by electronically readable means to the national association of insurance commissioners on January 1 of each year or within 60 days thereafter. The statement of the insurer’s condition shall be prepared in accordance with the instructions and the accounting practices and procedures prescribed and adopted periodically by the national association of insurance commissioners and any additions or amendments that the commissioner of insurance requires.

(c) Each insurer organized under the laws of this state and either licensed or operating in any other state shall file quarterly statements of its condition dated the preceding March 31, June 30, and September 30 on a form prescribed by the national association of insurance commissioners.

(1) Each quarterly statement shall be prepared in accordance with the instructions and the accounting practices and procedures prescribed and adopted periodically by the national association of insurance commissioners and any additions or amendments that the commissioner of insurance requires.

(2) Each insurer shall submit the quarterly statement of its condition by electronically readable means to the national association of insurance commissioners within 45 days after the end of that reporting period. (Authorized by K.S.A. 40-103 and 40-225; implementing K.S.A. 40-225; effective Jan. 24, 1997; amended May 25, 2001; amended Dec. 2, 2005.)

40-1-43. Reinsurance trust instruments; letters of credit. (a) Sections 10 and 11 of the national association of insurance commissioners’ “credit for reinsurance model regulation,” January 1997 edition, with amended pages 5 through 22 dated July 2001, are adopted by reference, subject to the following exceptions:

(1) In section 10(B)(1), delete “Section [insert citation to state law equivalent to Section 4B of the Credit for Reinsurance Model Law],” and replace it with “K.S.A. 40-221a and amendments thereto.”

(2) In section 10(B)(11)(c), delete “Section [insert citation to state law equivalent of Section 4B of the Credit for Reinsurance Model Law],” and replace it with “K.S.A. 40-221a and amendments thereto.”

(3) Section 10(D)(4) is not adopted by reference.

(4) In section 11(A), delete “Section [insert citation to state law equivalent of Section 4A of the Credit for Reinsurance Model Law],” and replace it with “K.S.A. 40-221a and amendments thereto.”

(5) In section 11(G), delete “Section [insert citation to state law equivalent to 4A of the Credit for Reinsurance Model Law],” and replace it with “K.S.A. 40-221a and amendments thereto.”

(b) Each trust that is used by an insurer, organized under the laws of this state, to demonstrate compliance with K.S.A. 40-221a(b)(1) and (3), and amendments thereto, shall be established in a form approved by the commissioner. The trust instrument shall include all of the following provisions:

(1) Entry of the final order of any court of competent jurisdiction in the United States will make contested claims valid and enforceable.

(2) Legal title to the assets of the trust will be vested in the trustee for the benefit of the grantor’s United States ceding insurers, their assigns, and successors in interest.

(3) The commissioner will have the power to examine the trust.

(4) The trust will remain in effect for as long as the assuming group or insurer has outstanding obligations under reinsurance agreements subject to the trust.

(5) On or before February 28 of each year, a written report prepared by the trustees will be sent to the commissioner of insurance containing the following:

(A) The balance in the trust;

(B) a listing of the trust’s investments at the end of the preceding year; and

(C) a certification of the termination date of the trust, or a certification that the trust will not expire before the following December 31.

(c) Each amendment to the trust shall be reviewed and approved by the commissioner before that amendment becomes effective. (Authorized by K.S.A. 40-221a and K.S.A. 40-103; implementing K.S.A. 40-221a; effective Jan. 24, 1997; amended May 25, 2001; amended, T-40-12-11-01, Dec. 11, 2001; amended April 19, 2002.)

40-1-44. Actuarial opinions and memorandums. The Kansas insurance department’s “policy and procedure relating to actuarial opinions and memorandums,” dated July 9, 2004, is hereby adopted by reference. (Authorized by and implementing K.S.A. 40-409, as amended by L. 2004, ch. 128, sec. 1; effective Jan. 24, 1997; amended June 3, 2005.)

40-1-45. Release of data from the insurance database. (a) Although the data collected by and furnished to the commissioner of insurance pursuant to K.S.A. 40-2251, and amendments thereto, is not an open record pursuant to K.S.A. 1997 Supp. 45-221(16), and amendments thereto, compilations of this data may be released, subject to the following limitations.

(1) These reports shall include comparative information on averages of data collected. Compilations of data shall not contain patient-identifying information or trade secrets.

(2) The raw data shall be released by the commissioner of insurance only to each data provider that has submitted that particular data to the database and that requests to see and review its dataset for purposes of verifying information in the database pertaining to that data provider. These datasets shall not be made available to the public.

(3) External data used for normative values that are not within the public domain shall not be released.

(b) Any person, organization, governmental agency, or other entity may request the preparation of compilations of data collected by and furnished to the commissioner of insurance, in accordance with the following procedure and limitations.

(1) All requests for compilations of data shall be made in writing to the commissioner of insurance. The written request shall contain the name, address, and telephone number of the requester, and a description of the legitimate purpose of the requested compilation. A “legitimate purpose” is defined as a purpose consistent with the intent, policies, and purposes of K.S.A. 40-2251, and amendments thereto. Whether or not a legitimate purpose exists may be determined by the commissioner of insurance.

(2) Each request for a compilation of data shall be reviewed by the commissioner of insurance to determine whether to approve or deny the request. A request for compilation of data may be denied by the commissioner of insurance for reasons including any of the following.

(A) The data is unavailable.

(B) The requested compilation is already available from another source.

(C) The requested compilation of data would endanger patient confidentiality.

(D) The commissioner lacks sufficient resources to fulfill the request.

(E) The request would disclose a trade secret.

(F) The requester has previously violated the rules for dissemination from the insurance database.

(G) The request is not a legitimate purpose.

(3) The requester may ask for compilations of data collected by and furnished to the commissioner of insurance in a specific manner or format not already used by the commissioner. This shall include any request for subsets of information already available from the commissioner in compiled form.

(4) The requester shall be notified by the commissioner of insurance in writing of its decision within 30 days. Each denial of a request shall include a brief explanation of the reason for the denial.

(5) Determination of a fee to be charged to the requesting person, organization, governmental agency, or other entity to cover the direct and indirect costs for producing compilations shall be made by the commissioner of insurance or designee in consultation with the commissioner. The fee shall include staff time, computer time, copying costs, and supplies. For charging purposes, each compilation shall be considered an original. The fee may be waived at the commissioner's discretion.

(c) No person, organization, governmental agency, or other entity receiving data from the commissioner shall redisclose or redistribute that information for commercial purposes. Any violation of this section shall result in denial of all further requests to the insurance database.

(d) Any publication using data from the insurance database shall include a written acknowledgment of the Kansas insurance department. A copy of any publication of data from the insurance database shall be sent to the commissioner of insurance before its publication. (Authorized by K.S.A. 1997 Supp. 40-2251 and K.S.A. 40-221; implementing K.S.A. 1997 Supp. 40-2251; effective Aug. 21, 1998.)

40-1-46. Privacy of consumer financial and health information. The national association of insurance commissioners' "privacy of consumer financial and health information regulation," as adopted by the national association of insurance commissioners on September 26, 2000, is hereby adopted by reference subject to the following exceptions: Sections 1 and 24 are not adopted by reference. This amended regulation shall be effective on and after February 1, 2002. (Authorized by K.S.A. 40-103 and K.S.A. 40-2404(15), as amended by L. 2001, ch. 202, sec.

1; implementing K.S.A. 40-2404(15), as amended by L. 2001, ch. 202, sec. 1; effective July 1, 2001; amended March 1, 2002.)

40-1-47. Insurance companies; deposits; requirements. (a) For the purposes of this regulation, the following terms shall be defined as follows:

(1) "Custodial account" means an account established by written agreement between a company and a custodian pursuant to K.S.A. 40-229a and amendments thereto.

(2) "Custodial agreement" means a written agreement entered into between a company and a custodian pursuant to K.S.A. 40-229a and amendments thereto.

(3) "Custodian" means an institution meeting the requirements of subsection (b) of this regulation that has entered into a custodial agreement with a company.

(4) "Custodied securities" means securities held by the custodian or held for the account of the custodian in an authorized clearing corporation, in the federal reserve bank book-entry system, or in a United States bank.

(5) "Securities" means all assets that may be used to satisfy the deposit requirements of K.S.A. 40-229a and amendments thereto, including mortgages, certificates of deposit, cash, securities of the kind or character in which the company is allowed to invest its funds, and investment income due and accrued on custodied securities that are not in default. "Securities" shall not include real estate, other than the company's interest as a mortgagee or secured party.

(b) To qualify as a custodian, pursuant to this regulation, an institution shall meet all of the following requirements:

(1) It shall be a financial institution as defined in K.S.A. 40-229a(e)(2) and amendments thereto.

(2) It shall possess a combined capital and surplus that at all times equals or exceeds \$500,000.

(3) It shall maintain blanket bond coverage relating to the custodied securities with limits satisfactory to the commissioner.

(c) Securities deposited as described in K.S.A. 40-229a, and amendments thereto, shall include an executed custodial agreement in writing that provides the following:

(1) That the custodian shall be obligated to indemnify the insurance company for any loss of securities of the insurance company in the bank or trust company's custody occasioned by the negligence or dishonesty of the bank or trust company's

officers or employees, or burglary, robbery, hold-up, theft, or unexplained disappearance, including losses by damage or destruction;

(2) that if there is a loss of the securities for which the bank or trust company is obligated to indemnify the insurance company, the securities shall be promptly replaced, or the value of the securities and the value of any loss of rights or privileges resulting from the loss of securities shall be promptly replaced;

(3) that the bank or trust company shall not be liable for any failure or delay in taking any action required to be taken in the event of any of the following:

(A) War, whether declared or not and including existing wars;

(B) revolution;

(C) insurrection;

(D) riot;

(E) civil commotion;

(F) act of God;

(G) accident;

(H) fire;

(I) explosion;

(J) stoppage of labor, strikes, or other differences with employees;

(K) laws, regulations, orders, or the acts of any governmental authority; or

(L) any other cause whatever beyond its reasonable control;

(4) a provision stating where the securities held in physical form are located;

(5) a provision stating that the custodian's records shall identify the following:

(A) The name of the clearing corporation, securities depository, or United States bank;

(B) the location of the securities; and

(C) if held through an agent, the name of the agent;

(6) a provision stating that all custodied securities that are registered shall be registered under the name of any of the following:

(A) The company;

(B) a nominee of the company;

(C) the custodian or its nominees, if held in a securities depository;

(D) the securities depository or its nominee; or

(E) the clearing corporation or its nominee, if held in an authorized clearing corporation as provided in K.S.A. 40-2a20 and K.S.A. 40-2b20 and amendments thereto;

(7) a provision stating that the obligations of the custodian of securities shall not be released as a

result of a clearing corporation or a securities depository holding the custodied securities;

(8) a provision stating that securities may be held under a "filing of security by issuer" (FOSBI) system, in fungible or commingled form as part of a "jumbo" certificate;

(9) a provision stating that the custodian bank or trust company may utilize the federal reserve system book-entry program; and

(10) a provision stating that the custodian bank or trust company may utilize the facilities of a securities depository or an authorized clearing corporation.

(d) A company may satisfy its deposit requirement by depositing assets with a custodian bank having its principal place of business in Kansas, pursuant to a written agreement with the custodian bank. If otherwise authorized by the laws of this state, the custodian bank may utilize the services of another United States bank to physically hold custodied securities and to prepare any reports required by the custodial agreement, on behalf of the custodian. The custodian bank shall remain responsible for the safekeeping of all custodied securities, the submission of any reports required by this regulation, and compliance with all other requirements imposed by K.S.A. 40-229a, and amendments thereto, and this regulation.

(e) The custodian shall ensure the following:

(1) That the custodial account is titled to indicate that the custodied securities are held in trust for the use and benefits of the company;

(2) during the course of the custodian's regular business hours, the commissioner or the commissioner's representative and authorized employees and representatives of the company are entitled to examine on the premises of the custodian the custodian's records relating to custodied securities of the company;

(3) that the custodial agreement and all amendments to it are submitted by the company to the commissioner for the commissioner's review and approval before execution. The custodial agreement and all amendments to it shall be deemed approved unless disapproved by the commissioner within 30 days of the date of the agreement and any amendments received by the commissioner. The custodial agreement may be terminated only with the prior approval of the commissioner; and

(4) that the commissioner or his duly authorized assistant commissioner or representative may at any time inspect the securities held under a custodian agreement.

(f) The custodial agreement may contain additional provisions if these provisions are not in conflict with this regulation.

(g) In addition to the joint custody receipt arrangement recognized in K.S.A. 40-229a and amendments thereto, the custodian may utilize a custodial or controlled account arrangement pursuant to K.S.A. 40-229a and amendments thereto. Within the custodial or controlled account arrangement, the custodian shall meet the following requirements:

(1) The custodian shall not allow the company to withdraw or exchange securities that would at any time reduce the aggregate value of the securities held by the custodian in the company's custodial account to a value less than the minimum aggregate value of securities currently in effect, as determined under subsection (h) of this regulation. The aggregate value of securities on deposit with the custodian shall be determined by utilizing the same procedure for valuing securities as that used by the commissioner for valuing other deposits made pursuant to K.S.A. 40-229a and amendments thereto. The custodian may effect a transfer of securities that would reduce the aggregate value of the securities held by the custodian in the company's custodial account to a value less than the minimum aggregate value of securities currently in effect if the securities or their proceeds are immediately transferred directly by the custodian to the commissioner for deposit pursuant to K.S.A. 40-229a and amendments thereto and the commissioner authorizes the transfer in writing.

(2) The custodian shall, within 30 days after the last day of each month, provide evidence to the commissioner in a form acceptable to the commissioner that the aggregate value of securities held by the custodian for the company on the last day of the prior month was at least equal to the minimum aggregate value of securities effective on this date, as determined under subsection (h) of this regulation. This evidence shall include the following information relevant to each type of security:

- (A) The balance in any cash account;
- (B) the name of the issuer;
- (C) a description of the security;
- (D) the number of shares;
- (E) the face value;
- (F) the form of ownership registration;
- (G) the location of the security;
- (H) the original cost;
- (I) the current market value; and
- (J) the unpaid balance.

(h) The minimum aggregate value of securities shall be stated in the original custodial agreement referred to in subsection (g) of this regulation but may be changed with the written consent of the commissioner. The company may deposit securities in, withdraw securities from, or exchange securities in the custodial account subject to the provisions of subsection (g) of this regulation.

(i) Each adjudicative proceeding conducted by the insurance commissioner shall be conducted in accordance with the Kansas administrative procedure act, K.S.A. 77-501, et seq., and amendments thereto. After providing notice and an opportunity for hearing, either or both of the following actions may be taken by the commissioner:

(1) Termination of the acceptance of deposits made with any custodian not in compliance with the requirements of this regulation; or

(2) acquisition of custody or otherwise assumption of control of the custodied securities, registration, delivery, or other disposition as may be ordered by the commissioner and deemed appropriate under the circumstances if either of the following conditions is met:

(A) The custodian fails to provide information, or the commissioner has reason to believe that the custodian may be insolvent or that the custodian's financial condition endangers the custodied securities.

(B) The custodian fails to provide the evidence of the aggregate value of the securities as described in subsection (g) of this regulation and otherwise endangers the custodied securities. (Authorized by K.S.A. 40-103, 40-229a; implementing K.S.A. 40-229a; effective May 10, 2002.)

40-1-48. Risk-based capital instructions for health organizations. The following document prepared by the national association of insurance commissioners is hereby adopted by reference:

"2016 NAIC health risk-based capital report including forecasting and instructions for companies as of December 31, 2016," including the appendices and excluding the unnumbered page titled "companion products" and the preceding unnumbered page; the NAIC health risk-based capital newsletter, volume 18.1, dated August 2016; pages i through iii; pages 18 through 24 titled "underwriting risk – XR012-A (for informational purposes only)"; pages 36 and 37 titled "operational risk informational section instructions (for informational purposes only) XR022"; the last sentence on page 40; page XR012-A titled

“underwriting risk (for informational purposes only) experience fluctuation risk”; page XR022 titled “operational risk XR022 (for informational purposes only)”; the health risk-based capital forecasting spreadsheet instructions; and the “health forecasting” CD-ROM attached to the inside back cover. (Authorized by K.S.A. 40-2d29; implementing K.S.A. 40-2d01(f), K.S.A. 2017 Supp. 40-2d02(a), K.S.A. 40-2d03(a), and K.S.A. 2017 Supp. 40-2d05; effective Dec. 28, 2001; amended July 5, 2002; amended Oct. 17, 2003; amended April 23, 2004; amended March 17, 2006; amended Dec. 1, 2008; amended Jan. 3, 2011; amended June 29, 2012; amended Jan. 31, 2014; amended Feb. 27, 2015; amended Aug. 18, 2017; amended April 20, 2018.)

40-1-49. Stop loss or excess loss insurance; policy standards. (a) As used in these regulations, these terms shall have the following meanings:

(1) “Aggregate attachment point” means the dollar amount per plan beyond which the carrier issuing the policy assumes some or all of the plan’s liability for payment of covered services or benefits.

(2) “Expected claims” means the amount of covered claims under the plan that is projected to be incurred by a policyholder under the plan.

(3) “Specific attachment point” means the dollar amount per person or participant, for each policy year beyond which the carrier issuing the insurance coverage assumes some or all of the plan’s liability for payment of covered services or benefits.

(b) Each insurer or other entity licensed to sell insurance in this state shall comply with the following requirements for stop loss or excess loss insurance issued to a small employer as defined by K.S.A. 40-2209d(u), and amendments thereto:

(1) Each stop loss or excess loss policy shall be issued to and shall insure the plan or the plan’s sponsor, not the individual participants.

(2) Payment by the insurer shall be made to the plan’s sponsor or the policyholder, not the employees, members, participants, or providers.

(3) The specific attachment point for stop loss or excess loss coverage shall be no less than \$10,000 per covered person or individual participant.

(4) The aggregate attachment point for stop loss or excess loss coverage shall be no less than 120 percent of expected claims.

(5) Each stop loss or excess loss policy shall contain a provision that the bankruptcy or insolvency

of the plan or plan’s sponsor does not relieve the stop loss or excess loss insurer from its obligation to pay claims under the stop loss or excess loss policy.

(6) In the case of incurred basis stop loss or excess loss coverage, the claims settlement period shall be no less favorable than a period in which claims are incurred in 12 months and paid in 13 months.

(c) Any stop loss or excess loss insurance policy not in compliance with this regulation shall be disapproved for sale or issue in this state. (Authorized by K.S.A. 40-103 and 40-2201(b); implementing K.S.A. 40-2201(b); effective Oct. 18, 2002.)

40-1-50. Insurance scoring; definitions; requirements. (a) As used in this regulation and K.S.A. 40-5101 through K.S.A. 40-5114 and amendments thereto, these terms shall have the following meanings:

(1) “Farmowner insurance policy” means a policy that provides coverage for a dwelling and its contents, barns, stables, and other buildings. This term shall include liability coverage.

(2) “Insurer” means an insurance company.

(3) “Policy” means any personal insurance or individual farmowner insurance policy.

(4) “Premium charge” means the payment required for an insurance policy as determined by rates and rating factors.

(5) “Rerate” means to calculate premiums based on rates, rating factors, or rating procedures filed with the Kansas insurance department as required by K.S.A. 40-951 through K.S.A. 40-967 and amendments thereto.

(6) “Reunderwrite” means to reexamine insurance risks to determine whether or not to renew policies.

(7) “Third party” means any person or entity that creates an insurance score.

(8) “Underwriting” means examining, accepting, or rejecting insurance risks.

(b) No insurer authorized to write business in the state of Kansas shall use credit information or an insurance score that has an adverse premium or coverage impact on an insured, unless all of the following conditions are met:

(1) The insurer has considered applicable factors other than credit.

(2) The insurer has documented the factors considered.

(3) The insurer provides the insured with each reason for the change in the premium or coverage.

(c) Each insurer using credit information for the purpose of rating shall have specific, written crite-

ria governing how credit information is utilized by the insurer in underwriting, tier placement, and insurance scoring.

(d) If an insurer takes an adverse action against a consumer, the insurer shall perform the following:

(1) Maintain evidence of the notice to the consumer and a record of the contents of the credit information used, for a minimum of five years after the adverse action was taken;

(2) provide to the consumer a written, electronic, or oral notice and an explanation. If an oral notice is given, the notice shall be followed by a written or electronic notice and an explanation to the consumer pursuant to K.S.A. 40-5107, and amendments thereto; and

(3) provide underwriting guidelines to the department upon request. All underwriting guidelines shall be considered trade secrets and confidential under the Kansas open records act.

(e) Any insurer may require that a consumer provide documentation to establish the existence and duration of personal circumstances justifying that certain adverse credit information not be used. (Authorized by K.S.A. 40-103 and K.S.A. 2003 Supp. 40-5113; implementing K.S.A. 40-222(a) and K.S.A. 2003 Supp. 40-5102, K.S.A. 2003 Supp. 40-5104, K.S.A. 2003 Supp. 40-5107, K.S.A. 2003 Supp. 40-5108, K.S.A. 2003 Supp. 40-5112, and K.S.A. 2003 Supp. 40-5113; effective, T-40-2-19-04, Feb. 19, 2004; effective July 2, 2004.)

40-1-51. (Authorized by K.S.A. 40-103; implementing K.S.A. 40-229; effective April 9, 2004; amended Dec. 2, 2005; revoked Sept. 14, 2007.)

40-1-52. Corporate governance annual disclosure; reporting forms and instructions. The Kansas insurance department's "policy and procedure providing corporate governance annual disclosure filing instructions," dated September 9, 2020, is hereby adopted by reference. (Authorized by and implementing K.S.A. 2019 Supp. 40-2,203; effective Feb. 26, 2021.)

Article 2.—LIFE INSURANCE

40-2-1. (Authorized by K.S.A. 40-103; effective Jan. 1, 1966; amended May 1, 1975; revoked May 1, 1979.)

40-2-2. (Authorized by K.S.A. 40-103, 40-216; effective Jan. 1, 1966; revoked Jan. 1, 1974.)

40-2-3. (Authorized by K.S.A. 40-103, 40-216, 40-2208, K.S.A. 1965 Supp. 40-401, 40-

428(e); effective Jan. 1, 1966; revoked May 1, 1986.)

40-2-4. (Authorized by K.S.A. 40-103; effective Jan. 1, 1966; amended Jan. 1, 1969; amended, E-76-29, June 19, 1975; amended May 1, 1976; revoked May 1, 1986.)

40-2-5. (Authorized by K.S.A. 40-103, 40-216, 40-415, 40-434; effective Jan. 1, 1966; revoked May 1, 1986.)

40-2-6. (Authorized by K.S.A. 40-103, 40-235, 40-2401 *et seq.*; effective Jan. 1, 1966; amended Jan. 1, 1971; revoked May 1, 1986.)

40-2-7. Life insurance companies and fraternal benefit associations; lapse of policies providing for automatic term insurance or fractional paid-up insurance; notice to policyholders required. (a) Each life insurance company and fraternal benefit association writing contracts of insurance on Kansas citizens shall give written notice to its insureds upon the lapse of any insurance policy which provides for either automatic term insurance or fractional paid-up insurance.

(b) The following rules of notice shall be observed:

(1) The notice shall be sent to residents of Kansas only.

(2) The notice shall be sent within six months after the due date of the premium in default.

(3) The notice shall be sent only if paid-up or extended insurance value was available at date of lapse.

(4) A notice regarding lapse of industrial insurance shall be sent only if the premiums have been paid for three years or more.

(5) The notice shall show the amount of fractional paid-up insurance.

(6) A notice regarding lapse of extended term insurance need not show the amount of insurance. However, the notice shall show:

(A) The date of expiration; or

(B) the date of lapse and period of extension.

(Authorized by K.S.A. 40-103; implementing K.S.A. 40-410, 40-411; effective Jan. 1, 1966; amended May 1, 1986.)

40-2-8. Life insurance policies; premium deposit fund provisions; requirements. Premium deposit fund provisions shall not be included in or attached to life insurance contracts issued in this state unless:

(a) The provisions allow withdrawal of all or any part of the fund at the request of the policy owner; and

(b) the withdrawal may be effected not later than the next succeeding policy anniversary date. (Authorized by K.S.A. 40-103; implementing K.S.A. 40-401; effective Jan. 1, 1966; amended May 1, 1986; amended May 1, 1987.)

40-2-9. Life insurance companies; extra premium payments; limits. Premium deposit fund provision and other funds which provide for extra premium payments exceeding the cost of insurance, shall be limited to an amount which, together with the policy reserve, would pay the net single policy premium. An insurance company authorized to do business in the state of Kansas shall not be authorized to accept an excess payment. (Authorized by K.S.A. 40-103; implementing K.S.A. 40-401; effective Jan. 1, 1966; amended May 1, 1986.)

40-2-10. Same; deficiency reserves; requirements. Any life insurance company may establish deficiency reserves when gross premium charges are less than net premiums. However, the company shall give the department a complete description of the reserve establishment. (Authorized by K.S.A. 40-103; implementing K.S.A. 40-409; effective Jan. 1, 1966; amended May 1, 1986.)

40-2-11. Life insurance policies; “wholesale” or “franchise” plan; requirements. (a) Definitions.

(1) “Wholesale” or “franchise” insurance means a life insurance plan under which a number of individual life insurance policies are issued at special rates to a group of five or more persons.

(2) “Special rate” means any rate lower than the rate shown in the issuing insurance manual for individual policies of the same type and class.

(3) “Employee” means the officers, managers, employees, and retired employees of the employer and the individual proprietor or partner, if the employer is an individual proprietorship or partnership.

(b) “Wholesale” or “franchise” life insurance premiums may be paid to the insurer periodically by:

(1) the employer, with or without payroll deductions;

(2) the insured;

(3) an association or union acting for its members; or

(4) designated persons acting on behalf of the employer, association, or union.

(c) Each life insurance policy form issued on the “wholesale” or “franchise” plan may be approved by the commissioner only if the policy is issued to:

(1) Five or more employees of a common employer or affiliated employers, including a governmental agency or department;

(2) five or more members of a trade or professional association, a labor union, or an association of members in the same or related occupations if the organizations have a constitution or by-laws and are formed in good faith for purposes other than obtaining insurance; or

(3) five or more debtors of a common creditor or affiliated creditors.

(d) (1) “Wholesale” or “franchise” life plan policies shall be issued in the same form as an individual policy, varying only in amounts and type of coverage.

(2) Any “wholesale” or “franchise” life policy, issued to an individual may be cancelled if the insured member or eligible employee no longer qualifies because of job termination or another reason. The cancellation shall provide for conversion to a level premium life policy as follows:

(A) Each person no longer qualifying shall be entitled to an individual policy of life insurance without providing evidence of insurability and without disability or other supplementary benefits within 31 days after the cancellation.

(B) The insurance shall be in an amount that does not exceed the amount of insurance that was cancelled. The insurance shall be offered at the insurers’ customary rate, applicable to the form and amount of the individual policy, to the class of risk to which the person belonged, and to the person’s attained age on the effective date of the policy issued at the time of conversion. The policy shall be on any form, except term insurance, customarily issued by the insurer.

(e) Existing “wholesale” or “franchise” policies may continue in force whether or not they meet the standards of this regulation and may be continued for persons currently insured. New “wholesale” or “franchise” life insurance policies shall not be written unless qualified under this regulation. (Authorized by K.S.A. 40-103; implementing K.S.A. 40-420; effective Jan. 1, 1967; amended Jan. 1, 1968; amended May 1, 1979; amended May 1, 1986.)

40-2-12. Replacement of life insurance and annuities. (a) Definitions.

(1) "Agent" means each agent, broker, or other person representing an insurer in the sale of any type of policy.

(2) "Company" or "insurer" means each company, society, association or other financial institution which issues a policy subject to the supervision of the Kansas insurance department.

(3) "Life insurance" means each life insurance policy, annuity, or variable annuity contract, unless specifically exempted in subsection (b).

(4) "Substantial cash values" means each transaction in which an amount exceeding 50 percent of the tabular cash value may be released on one or more of the existing policies.

(5) "Substantial borrowings" means each transaction in which an amount exceeding 50 percent of the tabular cash value may be borrowed on one or more existing policies.

(6) "Securities," as used in this regulation, shall not include any insurance or endowment policy, or annuity contract under which an insurance company promises to pay a fixed or variable sum of money either in a lump sum or periodically for life or for some other specified period.

(7) "Replacement" means each transaction in which new life insurance may be purchased from an agent who knows, or reasonably should know that, as a part of the transaction or in consequence of it, a previously existing life insurance has been or is likely to be:

(A) Lapsed or surrendered;

(B) converted into paid-up insurance, continued as extended term insurance or another form of non-forfeiture benefit;

(C) converted to effect a reduction either in the amount of the existing life insurance, or in the period of time the existing life insurance will continue in force;

(D) reissued with a reduction in amount so that substantial cash values are released; or

(E) assigned as collateral for a loan or subjected to substantial borrowing of loan values in single or multiple transactions.

(8) "Sales proposal" means individualized, written sales aids. Sales aids of a general nature, which are maintained in the insurer's advertising compliance file, shall not be considered a sales proposal.

(b) This regulation shall not apply when:

(1) The application for the new life insurance is made to the same insurer that issued the existing

life insurance, and a contractual policy change or conversion privilege is being exercised;

(2) the new life insurance is provided under:

(A) A group life insurance policy; or

(B) policies covering employees of an employer, debtors of a creditor, or members of an association, which are distributed on a mass merchandising basis and administered by group-type methods;

(3) the existing life insurance is a non-convertible term policy with five years or less to expire and which cannot be renewed;

(4) the solicitation is made by direct mail and:

(A) All sales material is standard and printed;

(B) the insurance company notifies the existing insurance company within three business days that the proposed insured has answered "yes" to the replacement question in the application; and

(C) concurrent with the notice to the existing company, the insurance company mails to the applicant a copy of the "notice to applicant regarding replacement of life insurance" described in subsection (h); or

(5) the policy is issued in connection with a pension, profit sharing, an individual retirement account or other benefit plan qualifying for an income tax deduction of premiums.

(c) Each life insurance agent shall:

(1) Obtain a statement signed by the applicant as a part of each life insurance application as to whether the new insurance will replace existing life insurance; and

(2) submit to the insurer in connection with each life insurance application a statement as to whether, to the best of the agent's knowledge, a life insurance replacement is involved in the transaction.

(d) When a replacement is involved, each life insurance agent shall:

(1) Include as part of each application a list of all existing life insurance policies to be replaced and the name of each insurer which issued the insurance being replaced;

(2) present to the applicant, when the application is submitted, a copy of each sales proposal used, and a "notice to applicants regarding replacement of life insurance" described in section (h) in a form acceptable to the commissioner. The agent shall leave the forms with the applicant after explaining their content;

(3) submit with the application a copy of each sales proposal used; and

(4) have the applicant acknowledge receipt of

the “notice to applicant regarding replacement of life insurance.”

(e) Each insurer shall:

(1) Inform its field representatives of the requirements of this regulation;

(2) require with each application a statement signed by the applicant as to whether the insurance will replace existing life insurance; and

(3) require in connection with each application for life insurance a statement signed by the agent as to whether, to the best of the agent’s knowledge, a life insurance replacement is involved in the transaction.

(f) When a replacement is involved, the replacing insurer shall:

(1) Require with each application a list prepared by the agent of all existing life insurance policies to be replaced;

(2) obtain a copy of any sales proposal used, proof of the receipt by the applicant of the “notice to applicant regarding replacement of life insurance,” and the name of each insurer whose insurance is being replaced;

(3) within three working days, notify each insurer whose insurance is being replaced by another insurer;

(4) delay, if it is not the existing insurer, policy issuance for 20 days after sending the notification required by subparagraph (3). The replacing insurer may issue its policy immediately when:

(A) The policy or a separate written notice states that, except as provided in K.A.R. 40-2-15 with respect to adjustments necessary to reflect investment risk on variable annuity contracts and variable life insurance policies, the applicant has a right to an unconditional refund of all premiums paid, within 20 days after delivery of the policy; and

(B) notice to the existing insurer is sent within three working days of the date its policy is issued;

(5) maintain copies of each sales proposal used, proof of receipt by the applicant of the “notice to applicant regarding replacement,” and the applicant’s signed statement with respect to replacement, in its home office for at least three years or until the conclusion of the next succeeding regular examination by the insurance department of its state of domicile, whichever is later. Each insurer receiving notice that its existing insurance may be replaced shall maintain a copy of the notice, indexed by insurer, for three years after receipt or until the conclusion of the next regular examination conducted by the insurance department of its state of domicile, whichever is later; and

(6) either by inclusion in the replacement policy or by a rider attached thereto, provide that the new life insurance issued by the replacing insurer will not be contestable by the replacing insurer, in the event of the insured’s death, to any greater extent than the replaced life insurance would have been contestable by the insurer providing the replaced coverage had a replacement not occurred. Subsection (f) (6) shall not apply to any amount of insurance provided by the replacement policy which exceeds the amount of insurance provided by the replaced policy.

(g) With the exception of the reference to a comparative information form, the forms set forth in exhibits A, B, and C of the national association of insurance commissioners’ model life insurance replacement regulation, December 1978 edition, are hereby adopted by reference. Equivalent forms may be adopted with the prior approval of the insurance commissioner. If the forms adopted by reference require modification for replacements involving annuity contracts or contracts sold by direct mail methods, each company shall modify the form and submit the modified form to the insurance commissioner for approval. A copy of the modified forms shall be filed with the insurance commissioner.

(h) If an agent, who holds both a life insurance license and a securities license, proposes to sell securities to a policyholder which will result in situations set forth in paragraph (7) of subsection (a), the agent shall give written notice to the policyholder before consummating the proposal. Each written notice shall:

(1) Be dated and signed by the licensed agent, and state the agent’s address;

(2) state the name and address of the policyholder;

(3) describe the insurance which has been or is to be affected, including the policy number, amount of insurance, plan of insurance, issue age, effective date, and the total premium;

(4) state how the insurance will be affected, the amount of cash value affected and the facts which support replacement; and

(5) list the company or companies involved.

(i) Each agent, who holds both a life insurance license and a securities license, shall keep a file containing a copy of each written notice. The agent shall keep a copy of each notice for three years. The file shall be subject to inspection and review by the insurance department, upon written request.

(j) When any licensed agent solicits life insurance in connection with the sale of securities not prohibited by K.S.A. 40-232, this agent shall, in addition to complying with the requirements of subsections (c) and (d), submit a copy of the notice required by subsection (i) to the insurer. Each notice shall be attached to and become a part of exhibit A referenced in section (g) of this regulation.

(k) Any violation of this rule shall be presumed to constitute a misleading representation for the purpose of inducing or tending to induce an insured to lapse, forfeit or surrender the insured's existing insurance. (Authorized by K.S.A. 40-103, 40-2404a; implementing K.S.A. 1991 Supp. 40-2404; effective Jan. 1, 1971; amended Jan. 1, 1972; amended, E-72-20, Sept. 1, 1972; amended Jan. 1, 1973; amended Feb. 15, 1977; amended May 1, 1982; amended May 1, 1983; amended May 1, 1986; amended May 1, 1987; amended May 15, 1989; amended Jan. 4, 1993.)

40-2-13. Life insurance policies; promissory notes and installment contracts; college students; requirements. In addition to the provisions of K.S.A. 40-283a, the following requirements shall apply to premium financing arrangements between an insurer or agent and the insured for the first premium payable on any life insurance policy sold to any college student.

(a) Each premium financing arrangement shall be set out in the application over the applicant's signature and shall include the total amount of the loan, the amount of any down payment made to an agent at the time of sale, and the unpaid balance.

(b) If a note or installment contract is used to finance less than the full first year premium, the balance shall be paid by the applicant when the application is taken.

(c) A copy of the note or installment contract and any assignment shall be attached to the policy. In lieu of attachment, the policy may contain a provision or endorsement which describes the financing arrangement.

(d) Upon delivery, a policy receipt or acceptance form shall be executed which states that:

(1) The policy has been issued as represented; and

(2) The insured acknowledges and understands the provisions and obligations of the financial indebtedness incurred.

(e) The receipt or acceptance form required by subsection (d) above shall be registered in the

home office by a number corresponding to the policy number.

(1) The receipt shall be sent with the policy at time of delivery only; and

(2) the receipt or acceptance forms shall not be made available as supplies to field representatives or agents, but shall be furnished from the home office in transmittal of the policy to the writing agent.

(f) Promissory notes shall not be sold or transferred by the payee (agent). Commissions on the sale shall not be paid to the agent until the policy receipt or acceptance form has been received in the home or executive office of the company.

(g) The note purchaser, assignee, or company shall notify the notemaker (insured) and all co-makers regarding the purchase or transfer of the note, after the purchase or transfer, inviting any questions about the note or the policy which is used as collateral security for the note.

(h) If, at the time the policy receipt or acceptance form is presented with the policy to the applicant for signature and the applicant decides that he or she does not desire the plan, the policy shall be returned to the company with a signed request for release. The policy and note shall be canceled, the applicant shall be released from liability, and when applicable, the down payment shall be refunded.

(i) If a sales presentation is made for an amount of insurance greater than that sold, an appropriate explanation shall be given to the insured when the policy is delivered. (Authorized by K.S.A. 40-103; implementing K.S.A. 40-283a; effective Jan. 1, 1972; amended Feb. 15, 1977; amended May 1, 1986.)

40-2-14. Life insurance and annuities; deceptive practices; requirements; prohibitions.

(a) This regulation shall apply to each solicitation, negotiation, or procurement of life insurance or annuities occurring within this state. This regulation shall apply to each authorized issuer of life insurance or annuity contracts. This regulation shall not apply to invitations to inquire about an insurance product if the invitations do not constitute a solicitation of insurance. The policy summary required by this regulation shall not apply to annuities, variable life insurance, life insurance policies issued in connection with pension and welfare plans subject to the employee retirement income security act of 1974, credit life insurance, or group life insurance.

(b) In selling life insurance or annuities, an agent shall, at the beginning of a solicitation, inform the prospective purchaser that he or she is acting as an insurance agent. Each applicant shall be furnished a policy summary at or before the time of policy delivery. For the purpose of this regulation, a policy summary means a written statement describing the elements of the policy. The summary shall include the following information:

(1) The name and address of the insurance agent or if an agent is not involved, the name, address and telephone number of the person designated to receive inquiries regarding the policy summary;

(2) the full name and home office or administrative office address of the company writing the life insurance or annuity policy;

(3) the generic name of the basic policy or contract and each rider;

(4) amounts, where applicable, for the first five policy years, the tenth and twentieth policy years, and for at least one age from 60 through 65 or at maturity as follows:

(A) The annual premium for the basic policy;

(B) the annual premium for each optional rider;

(C) the guaranteed amount payable upon death, at the beginning of the policy year, for all causes of death other than suicide, or other specifically enumerated exclusions. The guaranteed amount payable under the basic policy and each rider shall be listed separately;

(D) the total guaranteed cash surrender values at the end of the year with values shown separately for the basic policy and each rider;

(E) the cash dividends payable to the end of the year with values shown separately for the basic policy and each rider, except that dividends need not be displayed beyond the twentieth policy year; and

(F) the guaranteed endowment amounts payable under the policy which are not included under guaranteed cash surrender values above;

(5) (A) if a policy summary includes dividend illustrations, a statement that dividends are based on the company's current dividend scale and are not guaranteed;

(B) if a policy summary includes interest rate illustrations, a statement that projected or assumed interest rates are based on current interest rates and cannot be guaranteed;

(6) the effective policy loan annual percentage interest rate, if the policy contains a loan provision. The policy summary shall state whether this rate is

applied in advance or in arrears. If the policy loan interest rate is variable, the policy summary shall include the maximum annual percentage rate;

(7) the date on which the policy summary is prepared; and

(8) a statement to the effect that the presentation does not recognize that, because of interest, a dollar in the future has less value than a dollar today, unless the policy summary includes index figures which recognize the time-value of money. If index figures are included in the policy summary, the applicant shall receive written notification at the time the policy summary is delivered that those figures may be used only for comparing the relative costs of similar policies.

The policy summary shall consist of a separate document. All disclosure information required shall be set out in a manner that will not minimize or render any portion of it obscure. Amounts which remain level for two or more years may be represented by a single number if it clearly indicates what amounts apply to each policy year. Amounts in paragraph (4) of this subsection shall be listed in total. If multiple insureds are covered under one policy or rider, guaranteed death benefits shall be displayed separately for each insured, or for each class of insureds when death benefits do not differ within the class. Zero amounts shall be displayed as zero and shall not be displayed as a blank space.

(c) The following shall be deemed prohibited, unfair or deceptive acts or practices in the selling of insurance:

(1) Making a misrepresentation or false, deceptive or misleading statement;

(2) using comparisons or analogies or manipulating amounts and numbers in a way that will mislead the prospective purchaser concerning the cost of the insurance protection coverage;

(3) referring to an insurance premium as a deposit, an investment, a savings or the use of other phrases of similar import when referring to an insurance premium. This subsection shall not prohibit discussion of the savings values of a life insurance policy having cash values;

(4) describing the policy dividend as other than a refund or return of part of the aggregate premiums paid to the company, which is not guaranteed and which is dependent on the investment earnings, mortality experience and expense experience of the company; and

(5) recommending to a prospective purchaser the purchase or replacement of any life insur-

ance policy or annuity contract with reasonable grounds to believe that the recommendation is unsuitable for the applicant on the basis of information furnished by this person, or otherwise obtained.

(d)(1) No annuity shall be advertised or solicited using any language in advertisements or solicitation material of any kind that refers to the annuity as being “risk free,” or a similar connotation.

(2) At the time an application is taken for a single premium deferred annuity, the disclosure form prescribed by the commissioner shall be executed by the applicant and the selling agent and attached to the application. (Authorized by K.S.A. 40-103, 40-2404a; implementing K.S.A. 40-2404 as amended by L. 1987, Ch. 171, Sec. 1; effective Jan. 1, 1974; amended May 1, 1981; amended May 1, 1982; amended May 1, 1986; amended May 1, 1987; amended May 1, 1988.)

40-2-14a. Life insurance and annuities; recommendation standards. The Kansas insurance department’s “policy and procedure regarding suitability in annuity transactions,” dated November 29, 2012, is hereby adopted by reference.

This regulation shall be effective on and after June 1, 2013. (Authorized by K.S.A. 40-103, K.S.A. 2012 Supp. 40-4916, and K.S.A. 40-2404a; implementing K.S.A. 2012 Supp. 40-222, K.S.A. 40-2403, K.S.A. 2012 Supp. 40-2404, K.S.A. 40-2407, and K.S.A. 2012 Supp. 40-4916; effective May 20, 2005; amended Dec. 2, 2005; amended June 1, 2013.)

40-2-14b. (Authorized by K.S.A. 40-103 and 40-2404a; implementing K.S.A. 40-2403 and K.S.A. 2002 Supp. 40-2404; effective May 20, 2005; revoked Dec. 2, 2005.)

40-2-15. Individual life insurance policies; right to return policy. (a) Each individual life insurance policy and annuity contract issued for delivery in this state shall contain a notice.

(b) The notice shall be printed on or attached to the first page of the policy. The notice shall be printed in not less than 10 point type and shall be printed in a bold face type or in some other manner that distinguishes it from the print otherwise appearing in the policy. It shall state that the person to whom the policy is issued shall be permitted to return the policy or contract within at least 10 days of its delivery to the purchaser and, except with respect to variable annuity contracts and variable life insurance policies as defined in

K.A.R. 40-15-1 and K.A.R. 40-15a-1 respectively, have the total premium paid refunded if the purchaser is not satisfied. With respect to variable annuity contracts and variable life insurance policies, the person to whom the policy is issued shall be entitled to a premium refund equal to the sum of:

(1) The difference between the premiums paid, including any policy fees or other charges and the amounts allocated to any separate accounts under the policy; and

(2) the value of the amounts allocated to any separate accounts under the policy on the date the returned policy is received by the insurer or its agent.

(c) Each policy returned to the company or association at its home or branch office or to the agent through whom it was purchased shall be void. Each party shall be in the same position as if no policy had been issued. (Authorized by K.S.A. 40-103, 40-2404a; implementing K.S.A. 1990 Supp. 40-2404; effective Feb. 15, 1977; amended May 1, 1979; amended May 1, 1986; amended May 1, 1987; amended May 1, 1988; amended Jan. 6, 1992.)

40-2-16. Life insurance and annuities; mortality tables; sexual distinctions; permits and prohibitions. (a) For each policy of life insurance delivered or issued for delivery in this state, the blended 1980 CSO and CET mortality tables A through G, adopted December 1983 and tables SA through SG and NA through NG adopted December 1986 by the national association of insurance commissioners, may be substituted for the 1980 CSO or CET table, with or without ten-year select mortality factors.

(b) It shall not be a violation of K.S.A. 40-2404(7) for an insurer to issue the same type of life insurance policy on both a sex-distinct and sex-neutral basis. (Authorized by K.S.A. 40-103, 40-428; implementing K.S.A. 40-428; effective, T-85-11, April 11, 1984; effective May 1, 1985; amended May 1, 1986; amended May 1, 1988.)

40-2-17. Life insurance and annuities; mortality tables; smokers and nonsmokers; permits and prohibitions. The national association of insurance commissioners’ model regulation permitting smoker-nonsmoker mortality tables, December 1983 edition, is adopted by reference subject to the following exceptions: (a) Sections 1, 2, 6 and 7 are not adopted; and

(b) Section 4 is amended by the addition of “428 of chapter 40, Kansas Statutes Annotated” immediately following the word “section” in paragraph A. (Authorized by K.S.A. 40-103; implementing K.S.A. 1984 Supp. 40-428(3-d); effective May 1, 1986.)

40-2-18. Annuities; mortality tables; permits; effective dates. The Kansas insurance department’s “policy and procedure recognizing a new annuity mortality table for use in determining reserve liabilities for annuities,” dated January 29, 2016, including the appendices, is hereby adopted by reference. (Authorized by K.S.A. 40-103; implementing K.S.A. 2015 Supp. 40-428; effective May 1, 1986; amended May 20, 2016.)

40-2-19. Kansas life and health insurance guaranty association act; notice to policyholders; requirements. (a) The disclaimer required by L. 1986, Ch. 180, Sec. 15(c) shall be printed in bold face type and included on the face page of the summary document required by L. 1986, Ch. 180, Sec. 15(b). The disclaimer shall be entitled, “Disclaimer”, and shall contain the following statements:

(1) the policy or contract, or a portion of it, may not be covered by the Kansas life and health insurance guaranty association;

(2) even if coverage is available for a portion of the policy, coverage is subject to significant limitations and exclusions and is conditioned upon continued residency in this state;

(3) the Kansas life and health insurance guaranty association or the Kansas insurance department will respond to any questions regarding the extent of coverage, if any, under the Kansas life and health insurance guaranty fund. The addresses of the association and insurance department shall follow this statement;

(4) the insurance company and agent are prohibited by law from using the existence of the Kansas life and health insurance guaranty association or its coverage to sell an insurance policy or contract; and

(5) the policy or contract holder should not rely on coverage from the Kansas life and health insurance guaranty association when selecting an insurance company.

(b) The notice to policyholders required by L. 1986, Ch. 180, Sec. 15(d) shall be printed in bold face type on a separate one page document not less than eight inches by five inches, with type not

less than 10-point. The notice shall be entitled, “Special Notice”, and shall contain the following information:

(1) Company name and address;

(2) a statement disclosing that all or a portion of the policy or contract is not guaranteed by the insurer or all or a portion of the risk under the policy or contract is borne by the policy or contract holder and is not covered by the Kansas life and health insurance guaranty association; and

(3) the statements required by subparagraphs (2), (3) and (4) of subsection (a) of this regulation. (Authorized by and implementing L. 1986, Ch. 180, Secs. 15(c) and (d); effective May 1, 1987.)

40-2-20. Life insurance; accelerated benefits; contract requirements and restrictions.

(a) As used in this regulation or in a life insurance or annuity contract providing for accelerated benefits, each of the following terms shall have the meaning specified in this subsection:

(1) “Accelerated benefits” means benefits that meet the following conditions:

(A) Are payable under an individual or group life insurance or annuity contract to a policyowner or certificate holder during the lifetime of the insured for the occurrence of a qualifying condition;

(B) reduce the death or annuity benefit otherwise payable under the contract; and

(C) are payable upon the occurrence of a qualifying condition, which results in the payment of a benefit amount fixed at the time of acceleration.

(2) “Commissioner” means commissioner of insurance.

(3) “Elimination period” means a specified period of time during which the insured continuously meets the requirements of a qualifying condition before an accelerated benefit becomes payable.

(4) “Qualifying condition” means a prerequisite designated in a contract for the payment of accelerated benefits. Each contract providing for accelerated benefits shall include as a qualifying condition a medical condition that a health care provider licensed to practice medicine and surgery or osteopathy predicts will result in a limited life expectancy of 24 months or less. Any contract providing for accelerated benefits may include any of the following as a qualifying condition:

(A) A medical condition that has required or requires extraordinary medical intervention, including a major organ transplant or continuous artificial life support, without which the insured would die;

(B) any condition that is reasonably expected to require continuous confinement in an eligible institution as defined in the contract if the insured is expected to remain there for the rest of the insured's life;

(C) a medical condition that medical evidence indicates would, in the absence of extraordinary medical intervention, result in a limited life expectancy of 24 months or less;

(D) a chronic illness, which shall mean either of the following:

(i) An illness that renders the insured permanently unable to perform, without substantial assistance from another individual, a specified number of activities of daily living, except that a company's definition of chronic illness shall not require the inability to perform more than two activities of daily living; or

(ii) permanent severe cognitive impairment and similar forms of dementia; or

(E) any other similar condition approved by the commissioner as a qualifying condition.

(b) Each contract providing for an accelerated benefit shall have a title printed on or attached to the first page of the contract or rider. The title shall describe the coverage provided and shall be followed or accompanied by a description of the coverage containing the phrase "accelerated benefit" or words of similar meaning.

(c) Each applicant for a contract providing for an accelerated benefit shall be given a summary of the accelerated benefit provisions at or before the time the application is completed. For group policies, each certificate holder shall be given a copy of the summary with the certificate. This summary shall include the following:

(1) A brief description of the accelerated benefit and definitions of the qualifying conditions that would result in payment of the benefit;

(2) the existence and amount of any separately identifiable premium for the accelerated benefit and a description of any charge for administrative expense;

(3) a generic illustration numerically demonstrating the effect of the payment of a benefit on cash values, accumulation accounts, death benefits, premiums, policy loans, and policy liens;

(4) a statement that receipt of the accelerated benefit could be taxable;

(5) a statement that receipt of accelerated benefits could affect medicaid eligibility; and

(6) an acknowledgement, signed and dated by the agent and the applicant for the group or

individual coverage, that the summary has been furnished. Each direct response insurer shall incorporate the summary and acknowledgement in the application or attach them to the application.

(d) Contract payment options shall include the option to take the accelerated benefit as a lump sum. The accelerated benefit shall not be made available as an annuity contingent upon the life of the insured.

(e) No contract shall restrict the use of the proceeds.

(f) No contract shall limit the time frame within which a claim must be submitted following the occurrence of a qualifying condition.

(g) If the accelerated benefit is offered without an additional premium, a separate written explanation of how the accelerated benefit is funded shall be filed with the commissioner and included with the summary.

(h) Each time an accelerated benefit is requested and whenever a previous summary becomes invalid, the irrevocable beneficiary and either the individual policyowner or group certificate holder shall be given a summary. This summary shall include statements meeting the following conditions:

(1) Warning that receipt of the accelerated benefit could be taxable and that assistance from a tax advisor is suggested;

(2) showing the effect that the payment of the accelerated benefit will have on cash values, accumulation accounts, death benefits, premiums, policy loans, and policy liens; and

(3) disclosing that receipt of accelerated benefit payments may adversely affect the recipient's eligibility for medicaid or other government benefits or entitlements.

(i) Each time an accelerated benefit option is exercised, the policyowner and certificate holder shall be given an endorsement, rider, or schedule page that reflects any revisions to cash values, death benefits, accumulation accounts, premiums, policy loans, policy liens, and any other values that change as a result of the payment or payments.

(j) Insurers shall not unfairly discriminate among insureds with different or similar qualifying conditions covered under the policy. Insurers shall not apply any additional conditions to the payment of the accelerated benefits other than those conditions specified in the policy or rider.

(k) Any insurer may offer a waiver of premium for the accelerated benefit provision if a regular waiver of premium provision is not in effect.

When the accelerated benefit is claimed, the insurer shall explain any continuing premium requirement to keep the policy in force.

(l) Accelerated benefits shall be funded by any of the following methods:

(1) Requiring the policyowner to pay an additional premium;

(2) utilizing the present value of the face amount of the policy if the following conditions are met:

(A) The present value calculation is based on an actuarial discount appropriate to the policy design;

(B) the interest rate used in the present value calculation is based on sound actuarial principles and disclosed in the contract or actuarial memorandum; and

(C) the maximum interest rate is no more than the greater of either of the following:

(i) The current yield on 90-day treasury bills; or

(ii) the current maximum policy loan interest rate permitted by K.S.A. 40-420c, and amendments thereto; or

(3) accruing an interest charge on the amount of the accelerated benefits at an interest rate based on sound actuarial principles and disclosed in the contract or actuarial memorandum and no more than the greater of either of the following:

(A) The current yield on 90-day treasury bills; or

(B) the current maximum policy loan interest rate permitted by K.S.A. 40-240c, and amendments thereto.

(m) When an accelerated benefit is payable, no more than a proportionate reduction in the cash value shall be made, unless the payment of the accelerated benefits and any accrued interest can be treated as a lien against the death benefit of the policy or rider. Therefore, access to the cash value may be restricted to any excess of the cash value over the sum of any other outstanding loans, and the lien and access to additional policy loans may be limited to the difference between the cash value and the sum of the lien and any other outstanding policy loans on the policy under which the accelerated benefits were paid.

(n) (1) If payment of an accelerated benefit results in a proportionate reduction in the cash value, the payment shall not be applied toward repaying an amount greater than a proportionate portion of any outstanding policy loans; or

(2) if the payment is considered a lien as provided in subsection (m), the insurance company may require any accelerated death benefit payment to be applied toward repaying the portion of any oth-

er outstanding policy loan that causes the sum of the accelerated benefit and policy loan to exceed the cash value.

(o) The death benefit shall not be reduced more than the amount of the accelerated benefits after adjustment for any actuarial discount or accrued interest as provided in subsection (l) and any administrative expense charge required by policies providing accelerated benefits without an additional premium charge as disclosed on the summary required by subsection (c).

(p) If any death benefit remains after payment of an accelerated benefit, the accidental death benefit, if any, in a policy or rider shall not be affected by the payment of an accelerated benefit.

(q) The valuation method and assumptions used to produce the accelerated benefit provisions shall be filed with the insurance department with the related policy form or rider. The assumptions shall reflect the statutory mortality and interest rate assumptions for the life insurance provisions and appropriate assumptions for the other provisions incorporated in the policy or rider. Each insurer shall maintain in its files descriptions of the bases and procedures used to calculate benefits, which shall be made available for examination by the commissioner or a designee upon request.

(r) A qualified actuary shall describe the accelerated benefits, the risks, the expected costs, and the calculation of statutory reserves in an actuarial memorandum accompanying each filing of accelerated benefits products with the commissioner. Each insurer shall maintain in its files descriptions of the bases and procedures used to calculate benefits payable under these provisions. These descriptions shall be made available for examination by the commissioner upon request.

(1) If benefits are provided through the acceleration of benefits under group or individual life policies or riders to these policies, policy reserves shall be determined in accordance with the standard valuation law. All valuation assumptions used in constructing the reserves shall be determined as appropriate for statutory valuation purposes by a member in good standing of the American academy of actuaries. Mortality tables and interest rates currently recognized for life insurance reserves by the national association of insurance commissioners, as well as appropriate assumptions for other provisions incorporated in the contract, may be used. The actuary shall follow both actuarial standards and certification for good and

sufficient reserves. Reserves in the aggregate shall be sufficient to cover the following:

(A) Policies upon which no claim has yet arisen; and

(B) policies upon which an accelerated claim has arisen.

(2) For policies and certificates that provide actuarially equivalent benefits, no additional reserves shall be required to be established.

(3) Policy liens and policy loans, including accrued interest, shall represent assets of the company for statutory reporting purposes. For any policy on which the policy lien exceeds the policy's statutory reserve liability, the excess shall be held as a non-admitted asset.

(s) The accelerated benefit provision shall become effective on the effective date of the policy or rider.

(t) Any contract may include an elimination period for the qualifying conditions of continuous confinement and chronic illness, other than chronic illness meeting the requirements of 26 U.S.C. sections 7702B and 202(g) of the United States internal revenue code or any subsequent corresponding internal revenue code, as amended. The elimination period shall not exceed 90 days from the time the qualifying condition first manifests itself after the effective date of the contract.

(u) The individual and group life insurance and annuity contracts subject to this regulation shall not be described or marketed as being long-term care insurance or as providing long-term care benefits. (Authorized by K.S.A. 40-103 and K.S.A. 2014 Supp. 40-401; implementing K.S.A. 2014 Supp. 40-401; effective, T-40-11-29-90, Nov. 29, 1990; effective April 15, 1991; amended Feb. 9, 2007; amended Nov. 30, 2015.)

40-2-21. (Authorized by K.S.A. 40-103; implementing K.S.A. 40-221a; effective Dec. 16, 1991; revoked June 20, 1997.)

40-2-22. (Authorized by K.S.A. 40-103, 40-404(e)(4) as amended by L. 1987, Ch. 162, Sec. 1; implementing K.S.A. 40-404(e) as amended by L. 1987, Ch. 162, Sec. 1; effective, T-88-44, Oct. 27, 1987; amended May 1, 1988; revoked May 10, 2002.)

40-2-23. Life insurance; preneed funeral contracts or arrangements; disclosure; requirements. (a) This regulation shall apply to any solicitation, negotiation or procurement occurring within this state with respect to life insurance or annuity contracts used to fund a preneed

funeral contract or arrangement. As used in this regulation, the term "preneed funeral contract or arrangement" shall mean an agreement by or for an individual before that individual's death relating to the purchase or provision of specific funeral or cemetery merchandise or services.

(b) The following information shall be adequately disclosed at the time an application is made, prior to accepting the applicant's initial premium, for a preneed funeral contract or arrangement:

(1) The fact that a life insurance policy or annuity contract is involved or being used to fund a preneed funeral contract or arrangement;

(2) the nature of the relationship between the soliciting agent or agents, the provider of the funeral or cemetery merchandise or services, the administrator and any other person. This requirement shall not apply to officers, directors or bonafide employees of the funeral home or cemetery to which the original preneed funeral contract or arrangement applies;

(3) the relationship of the life insurance policy or annuity contract to the funding of the preneed funeral contract or arrangement and the nature and existence of any guarantees relating to such contract or arrangement;

(4) the impact on the preneed funeral contract or arrangement:

(A) Of any changes in the life insurance policy or annuity contract including but not limited to, changes in the assignment, beneficiary designation or use of the proceeds;

(B) of any penalties to be incurred by the policyholder as a result of failure to make premium payments; and

(C) of any penalties to be incurred or monies to be received as a result of cancellation or surrender of the life insurance policy or annuity contract;

(5) a list of the merchandise and services which are applied or contracted for in the preneed funeral contract or arrangement and all relevant information concerning the price of the funeral services, including a clear disclosure that the purchase price is either guaranteed at the time of purchase or to be determined at the time of need;

(6) all relevant information concerning what occurs and whether any entitlements or obligations arise if there is a difference between the proceeds of the life insurance policy or annuity contract and the amount actually needed to fund the preneed funeral contract or arrangement; and

(7) any penalties or restrictions, including but not limited to geographic restrictions or the in-

ability of the provider to perform, on the delivery of merchandise, services or the preneed funeral contract or arrangement guarantee.

(c) In accordance with the provisions of K.S.A. 40-283a, the following requirements shall apply to premium financing arrangements between an insurer or agent and the insured for the first and any future premium payable on any life insurance policy or annuity contract sold to fund a preneed funeral contract or arrangement.

(1) Each premium financing arrangement and any renewal of such arrangement shall be signed by the applicant and shall include the total amount of the loan, the amount of any down payment made to an agent at the time of sale, and the unpaid balance.

(2) The policy shall contain a provision or endorsement which fully describes the financing arrangement.

(3) Upon delivery, a policy receipt or acceptance form shall be executed which states that the insured acknowledges and understands the provisions and obligations of the financial indebtedness incurred, including the fact that the premium financing arrangement cannot be effective for a term exceeding one year. (Authorized by K.S.A. 40-103, 40-2404a; implementing K.S.A. 40-283a, K.S.A. 1992 Supp. 40-2404(l); effective Nov. 29, 1993.)

40-2-24. Life and health reinsurance agreements. Sections 3, 4, 5, and 6 of the national association of insurance commissioners' "life and health reinsurance agreements model regulation," adopted by the NAIC on September 20, 1992, are hereby adopted by reference, subject to the following additions and exceptions:

(a) The formula in section 4A(7)(b) is hereby amended to read as follows: "The following formula shall be acceptable:

$$\text{Rate} = \frac{2(I + CG)}{X + Y - I - CG}$$

"Where: 'I' is the net investment income [(exhibit 2, line 16, column 7 of the life and accident and health annual statement) or (underwriting and investment exhibit part 1, line 15, column 8 of the property and casualty annual statement)];

" 'CG' is the capital gains less capital losses [(exhibit 3, line 12, column 4 plus exhibit 4, line 10, column 4 of the life and accident and health annual statement) or (part 1A, line 10, column 7 of the property and casualty annual statement)];

" 'X' is the current year cash and invested assets [(page 2, line 11, column 4 of the life and accident and health annual statement) or (page 2, line 9, column 4 of the property and casualty annual statement)] plus investment income due and accrued [(page 2, line 17, column 4 of the life and accident and health annual statement) or (page 2, line 16, column 4 of the property and casualty annual statement)] less borrowed money [(page 3, line 22, column 1 of the life and accident and health annual statement) or (page 3, line 7, column 1 plus line 8, column 1 of the property and casualty annual statement)]; and

" 'Y' is the same as X but for the prior year."

(b) The first paragraph of section 4C(2) is hereby amended to read as follows: "Any increase in the surplus net of federal income tax resulting from arrangements described in subsection C(1) shall be identified separately on the insurer's statutory financial statement as a surplus item [(aggregate write-ins for gains and losses in surplus in the capital and surplus account, page 4, line 46, column 1 of the life and accident and health annual statement) or (aggregate write-ins for gains and losses in surplus in the capital and surplus account, page 4, line 30, column 1 of the property and casualty annual statement)], and recognition of the surplus increase as income shall be reflected on a net of tax basis in "commissions and expense allowances on reinsurance ceded" (page 4, line 5, column 1 of the life and accident and health annual statement) or in "other underwriting expenses incurred" (page 4, line 4, column 1 of the property and casualty annual statement) as earnings emerge from the reinsured business."

(c) Section 6 is hereby amended to read as follows: "Insurers subject to this regulation shall reduce to zero by December 31, 1997 any reserve credits or assets established with respect to reinsurance agreements entered into prior to the effective date of this regulation that, under the provisions of this regulation, would not be entitled to recognition of the reserve credits or assets. However, these reinsurance agreements shall have been in compliance with laws or regulations in existence immediately preceding the effective date of this regulation. (Authorized by K.S.A. 40-103; implementing K.S.A. 1996 Supp. 40-221a; effective April 11, 1997.)

40-2-25. Life insurance illustrations. The national association of insurance commissioners' "life insurance illustrations model regulation,"

January 1996 edition, is hereby adopted by reference, subject to the following alterations.

(a) Section 3(E) shall be inserted and shall read as follows:

“If a policy change requiring underwriting or a sales effort is made to a policy issued prior to the effective date of this regulation and that policy change involves use of a presentation or depiction that includes non-guaranteed elements of that policy of life insurance over a period of years, the scale used in the presentation or depiction shall not be greater than the currently payable scale for that block of business. If no presentation or depiction of non-guaranteed elements is used for such policy change, the producer or representative shall certify to that effect in writing on a form provided by the insurer. On the same form, the policyowner shall acknowledge that presentation or depiction was not used.”

(b) The text of Section 10(A)(1)(g) shall be deleted, and the following new language shall be inserted in its place:

“The projected termination date of the policy, based on guaranteed assumptions:

For fixed premium policies, this date is when the policy’s net cash surrender value is such that it would not maintain the insurance in force, assuming guaranteed interest, mortality and expense loads, and continued scheduled premiums; or

For flexible premium policies, this date is when the policy’s net cash surrender value is such that it would not maintain the insurance in force, assuming guaranteed interest, mortality and expense loads, and no further premium payments.”

(c) Section 10(A)(1)(h) shall be deleted. (Authorized by K.S.A. 40-103, 40-2401, *et seq.*; implementing K.S.A. 40-103, 40-2401, *et seq.*; effective Dec. 29, 1997; amended Oct. 23, 1998.)

40-2-26. Valuation of life insurance policies. Section one, sections three through seven, and the appendix of the national association of insurance commissioners’ “valuation of life insurance policies model regulation,” 2003 edition, are hereby adopted by reference, with the following exception: subsection 4A, 4C(1), 4E, and 5F are amended by replacing the bracketed text with the following phrase: “K.S.A. 40-409 and amendments thereto.” (Authorized by and implementing K.S.A. 40-103 and 40-409; effective Dec. 29, 1997; amended Jan. 1, 2000; amended Feb. 20, 2004.)

40-2-27. Minimum reserve liabilities and nonforfeiture benefits. Sections three through seven of the national association of insurance commissioners’ “recognition of the 2001 CSO mortality table for use in determining reserve liabilities and nonforfeiture benefits model regulation,” January 2003 edition, are hereby adopted by reference for use in determining the minimum standard of valuation for life insurance policies, with the following exceptions: (a) Subsection 4A is amended by replacing the phrase “January 1, 200[]” and the bracketed text that immediately follows with the following phrase: “the effective date of this regulation.” Subsection 4A is amended further by replacing the next bracketed text with the following phrase: “K.S.A. 40-409(d)(1)(i) and (iii) and amendments thereto, 40-428(d-3)(8)(F) and amendments thereto, and subsections 5A and 5B of the model regulation adopted by reference in K.A.R. 40-2-26.”

(b) Subsection 4B is amended by replacing the bracketed text with the following phrase: “K.S.A. 40-409(d)(i) and (iii) and amendments thereto, 40-428(d-3)(8)(F) and amendments thereto, and subsections 5A and 5B of the model regulation adopted by reference in K.A.R. 40-2-26.”

(c) Subsection 5A(2) is amended by replacing the bracketed text and the word “Section” immediately preceding the bracketed text with the following phrase: “K.S.A. 40-409(d)(5) and amendments thereto.”

(d) Subsection 5C is amended by replacing the bracketed text with the following phrase: “Subsection 6C of the model regulation adopted by reference in K.A.R. 40-2-26.”

(e) Subsection 5D is amended by replacing the first bracketed text and the word “Sections” immediately preceding the bracketed text with the following phrase: “Section 5A of the model regulation adopted by reference in K.A.R. 40-1-44.”

(f) The title of Section 6 is amended by replacing the bracketed text with the following phrase: “the valuation of life insurance policies regulation, K.A.R. 40-2-26.”

(g) Subsection 6A is amended by replacing each bracketed text with the following phrase: “the valuation of life insurance policies regulation, K.A.R. 40-2-26.”

(h) Subsection 7A is amending by replacing the phrase “January 1, 200[]” and the bracketed text that immediately follows with the following phrase: “the effective date of this regulation.”

(i) Subsection 7C is amended by replacing the bracketed text with the following phrase: “K.S.A.

40-2404 and amendments thereto.” (Authorized by K.S.A. 40-103 and 40-409(f); implementing K.S.A. 40-409; effective June 18, 2004.)

40-2-28. Preneed insurance contracts; minimum standards for determining reserves. The Kansas insurance department’s “policy and procedure pertaining to preneed life insurance minimum standards for determining reserve liabilities and nonforfeiture values,” except section 1, dated November 25, 2008, is hereby adopted by reference. (Authorized by K.S.A. 40-103 and K.S.A. 40-409; implementing K.S.A. 40-409; effective March 27, 2009.)

40-2-29. Life insurance; valuation of credit life insurance policies. The Kansas insurance department’s “policy and procedure regarding determining reserve liabilities for credit life insurance,” dated August 23, 2007, including the appendix, is hereby adopted by reference. (Authorized by K.S.A. 40-103 and K.S.A. 2006 Supp. 40-409(f); implementing K.S.A. 2006 Supp. 40-409(d); effective Jan. 18, 2008.)

40-2-30. Military sales practices. The Kansas insurance department’s “policy and procedure relating to military sales practices,” dated June 26, 2007, is hereby adopted by reference. (Authorized by K.S.A. 40-103 and L. 2007, Ch. 103, Sec. 1; implementing L. 2007, Ch. 103, Sec. 1; effective, T-40-7-26-07, July 26, 2007; effective Oct. 12, 2007.)

Article 3.—FIRE AND CASUALTY INSURANCE

40-3-1. Insurance companies; capital, surplus and deposit requirements. A certificate of authority shall not be issued or renewed with respect to companies writing insurance specified in K.S.A. chapter 40, articles 9, 11, 12 and 16, without compliance with the applicable Kansas capital, surplus, and deposit requirements pertaining to each type of insurance written by the company in any state or country. The company shall comply with the Kansas requirements regardless of the fact the company is not authorized to write each type of insurance in Kansas. (Authorized by K.S.A. 40-103; implementing K.S.A. 40-209, 40-1203, 40-1207, 40-1601, 40-901, 40-1102, 40-1104, 40-1204, 40-1605; effective Jan. 1, 1966; amended May 1, 1986.)

40-3-2. Foreign stock or mutual fire and casualty companies; deposit requirements.

Capital stock or mutual fire and casualty insurance companies not organized under the laws of this state shall comply with the deposit requirements contained in articles 9, 10, 11, 12, 15 and 16 of chapter 40, Kansas Statutes Annotated, pertaining to companies organized under the laws of this state. (Authorized by K.S.A. 40-103; implementing K.S.A. 40-209, 40-901, 40-902, 40-1102, 40-1104, 40-1204, 40-1207, 40-1210; effective Jan. 1, 1966; amended Jan. 1, 1970; amended May 1, 1979; amended May 1, 1986.)

40-3-3. (Authorized by K.S.A. 40-103, 40-209, 40-901, 40-902, 40-1102, 40-1104, 40-1204, 40-1207; effective Jan. 1, 1966; revoked May 1, 1979.)

40-3-4. (Authorized by K.S.A. 40-103, 40-216, 40-926, 40-1111, K.S.A. 1978 Supp. 40-928, 40-1113; effective Jan. 1, 1966; revoked May 1, 1979.)

40-3-5. Fire and casualty insurance; rating organizations; filing of forms. For the purpose of this regulation, the word “company” shall include a company of any type that is required to file rates pursuant to K.S.A. 40-955 and amendments thereto. The word “forms” shall mean policies, endorsements, and standard provisions used in policies or endorsements. The term “rating organizations” shall mean any organization licensed pursuant to K.S.A. 40-956 and amendments thereto.

(a) When the constitution, articles of association, bylaws, or regulations of a rating organization grant control over the forms to be used by its member and subscriber companies, the forms shall be filed in compliance with K.S.A. 40-216 and amendments thereto. An individual company shall not be required to file declarations pages or forms that have been filed on its behalf by a rating organization and approved by the commissioner of insurance.

(b) After approval, each member and subscriber of the rating organization making the filings shall adhere to the forms. Each deviation from approved filings shall be deemed to be in violation of K.S.A. 40-216 and amendments thereto, except as provided under K.S.A. 40-958 and amendments thereto.

(c) Except as provided in subsection (a), each company shall be responsible for the following:

- (1) Controlling its filings of forms;
- (2) promptly discontinuing individual filings of those forms filed on its behalf by a rating organization; and

(3) complying with Kansas individual filings of those forms filed on its behalf by a rating organization. Each company that is not a member of or subscriber to a rating organization shall be required to make an individual filing in accordance with K.S.A. 40-216, and amendments thereto, for each standardized form filed by a rating organization that is accepted by the company.

(d) Each company that becomes a member or subscriber of a rating organization shall be presumed to be issuing the forms of the rating organization from the effective date of membership or subscribership.

(e) Each company that retires from membership or subscribership in a rating organization shall meet the filing requirements by making individual filings. (Authorized by K.S.A. 40-103 and 40-961; implementing K.S.A. 40-216 and 40-955; effective Jan. 1, 1966; amended Jan. 1, 1967; amended May 1, 1979; amended May 1, 1986; amended May 15, 1989; amended May 16, 1997; amended March 10, 2006.)

40-3-6. Fire and casualty insurance; rates and forms; fictitious classification prohibited.

(a) No insurer writing Kansas risks shall write fire, casualty, inland marine, or surety coverage upon any firm, corporation, individual, or association of individuals at any preferred rate, coverage, or premium based on any fictitious grouping or classification of risks.

(b) A fictitious grouping or classification of risks shall mean risks that meet the following conditions:

(1) Are inconsistent with the classification or grouping of risks recognized by an insurer's approved rate and policy form filings for individual risks;

(2) do not possess the necessary homogeneous characteristics for group rating and classification; and

(3) do not comply with the provisions of the Kansas insurance code. (Authorized by K.S.A. 40-103, 40-961; implementing K.S.A. 40-953, 40-954; effective Jan. 1, 1966; amended Jan. 1, 1967; amended May 1, 1979; amended May 1, 1986; amended Sept. 3, 2004.)

40-3-7. Fire and casualty insurance; mutual insurers; reciprocal interinsurance exchanges; capital stock insurers issuing participating policies; dividends; requirements. (a) Each fire and casualty insurance contract issued in Kansas by a mutual insurer or reciprocal interin-

surance exchange, and each participating fire and casualty insurance contract issued in Kansas by a capital stock insurer, shall contain a provision stating that dividends may be paid on the policy.

(b) A capital stock insurer shall not issue participating policies in Kansas unless:

(1) Issuance authority exists in its charter or articles of incorporation;

(2) The supreme court of its state of domicile has held that a domestic capital stock insurer has inherent authority to issue participating policies; or

(3) The attorney general or chief legal official of its state of domicile has ruled that a domestic capital stock insurer has inherent authority to issue participating policies. (Authorized by K.S.A. 40-103, 40-216; implementing K.S.A. 40-901, 40-1102, 40-1501, 40-1603, 40-1008; effective Jan. 1, 1966; amended May 1, 1979; amended May 1, 1986.)

40-3-8. Fire and casualty insurance; participating policies; filing requirements.

Each company writing fire, casualty, inland marine or surety coverages in Kansas on participating policies shall file each participating plan with the insurance department if the plan includes dividend payments on a basis other than the payment of a uniform percentage of the policy premium to all insureds of the company covered by the same policy form. (Authorized by K.S.A. 40-103, 40-2404a; implementing K.S.A. 40-941, 40-1122, 40-2404; effective Jan. 1, 1966; amended May 1, 1986.)

40-3-9. Fire and casualty companies; participating policies; payment of dividends to insured required; conditioning dividends on continuance of policy prohibited.

(a) Each fire and casualty company issuing participating or dividend-paying policies shall issue dividend checks that are payable to the insured.

(b) Dividends shall not be credited to the account of the agent, except in those cases where the insured has not made payment of all premiums due on the policy under which the dividends are being paid. In such cases, the dividend portion equal to the unpaid premium may be credited to the agent's account, but the company shall retain evidence substantiating notice to the insured of the dividend amount due and the agent to whom the dividends have been credited.

(c) Each fire and casualty company issuing participating or dividend paying policies shall be prohibited from conditioning the payment of

dividends on the continuance of the policy. To prevent unfair discrimination, the dividend shall be payable to the insured regardless of whether the policy is continued or terminated. Crediting of a dividend to the renewal premium shall not be prohibited where the insured desires to renew the policy. When the policy is not continued, the dividend shall be payable in accordance with subsection (a) above. (Authorized by K.S.A. 40-103, 40-2404a; implementing K.S.A. 40-941, 40-1122, 40-2404; effective Jan. 1, 1966; amended May 1, 1979; amended May 1, 1986.)

40-3-10. (Authorized by K.S.A. 40-103, 40-2404a; implementing K.S.A. 40-941, 40-1122, 40-928, 40-1113, 40-2403; effective Jan. 1, 1966; amended May 1, 1979; amended May 1, 1981; amended May 1, 1986; revoked Nov. 29, 1993.)

40-3-11. Property insurance; possession of policy in person other than insured; copy for insured. (a) The agent of the insurer shall provide to the insured a certificate or copy of each property insurance policy when:

(1) The property insurance policy is issued to the insured, mortgagee, trustee, or other party having an insurable interest in the involved property; and

(2) the mortgagee, trustee, or other party retains the policy of insurance in his or her possession.

(b) The certificate or copy shall bear complete information as to the type of coverage, the amount of liability, the amount of the premium, and the terms of the contract. (Authorized by K.S.A. 40-103; implementing K.S.A. 16a-4-105; effective Jan. 1, 1966; amended May 1, 1979; amended May 1, 1986.)

40-3-12. Fire and casualty insurance companies; rating plans; requirements. (a) "Individual risk rating plans" shall mean individual risk premium modification plans, schedule rating plans, and similar plans applicable to commercial lines of property and casualty insurance that include one or more of the following types of premium modification:

(1) "Risk modification," which shall mean the application of judgment debits and credits through schedule rating or individual risk premium modification plans to the individual rates otherwise applicable, based on the individual risk's variations in hazard and characteristics of the risk not reflected in the insured's experience. Risk modification shall not include variations in expenses;

(2) "expense modification," which shall mean the variation of the premium for an individual risk that corresponds to the variation in the expenses of this risk from the provision for losses applicable to that entire class of risk; or

(3) "experience modification, excluding retrospective rating plans," which shall mean a variation in the premium for an individual risk that corresponds to that risk's variation in past loss experience from the provision for losses applicable to that entire class of risk.

(b) Individual risk rating plans permitted by K.S.A. 40-954, and amendments thereto, shall meet the following requirements:

(1) Each plan shall specify the kind of insurance or subdivision, or combination, to which the plan applies.

(2) The maximum credit or debit resulting from risk modification shall not exceed 25 percent.

(3) Each plan shall establish standards that bear a relationship to the variation in hazard or expense, or both, to be measured.

(4) Each plan shall be mandatory for all eligible risks and shall be applied by company representatives responsible for underwriting the risk or risks involved in a manner that is uniform and not unfairly discriminatory.

(5) Each company using individual risk rating plans shall obtain all information necessary to determine the proper application of the plans to any particular risk. Each company shall maintain adequate supporting information for examination by the commissioner upon request.

(6) Each change or removal of credits or debits that results from the application of individual risk rating plans shall occur only on the anniversary or renewal of a policy but not during the policy period.

(7) Each change or removal of a debit or credit that was applied under an individual risk rating plan or expense modification shall be based on conclusive evidence that either the conditions that produced the most recent debits or credits no longer exist or their impact has been reduced in direct proportion to the new rating treatment applied. (Authorized by K.S.A. 40-103 and 40-961; implementing K.S.A. 40-954; effective Jan. 1, 1966; amended May 1, 1979; amended May 1, 1986; amended May 1, 1988; amended March 10, 2006.)

40-3-13. Fire and casualty insurance companies; rating plans; duplication prohibited. Risk modification, as described in K.A.R. 40-3-12, shall not be applied to duplicate factors

already fully recognized in the otherwise applicable rate. (Authorized by K.S.A. 40-103 and 40-961; implementing K.S.A. 40-955; effective Jan. 1, 1966; amended May 1, 1979; amended May 1, 1986; amended Sept. 16, 2005.)

40-3-14. Mutual fire and tornado insurance companies; extended coverage endorsement. (a) For the purpose of this regulation, “extended coverage endorsement” means that endorsement insuring the perils of wind-storm, hail, explosion, riot, riot attending a strike, civil commotion, aircraft, vehicles, and smoke, except as provided and set out in the extended coverage endorsement prescribed and generally used and in force or hereafter amended and being approved by the insurance commissioner for use by a fire insurance company.

(b) Each Kansas mutual fire and tornado insurance company, organized and operating under article 10 of chapter 40, Kansas Statutes Annotated, and writing the classes of business authorized in K.S.A. 40-1001 only, may issue policies insuring classes of coverage included in the extended coverage endorsement. (Authorized by K.S.A. 40-103; implementing K.S.A. 40-1001; effective Jan. 1, 1966; amended May 1, 1979; amended May 1, 1986.)

40-3-15. Fire and casualty insurance contracts; cancellation at option of insurer; notice required. (a) Each policy or contract, that is issued by fire or casualty insurers within the state of Kansas, and that provides for cancellation at the option of the insurer, shall contain a provision within the policy, or at the discretion of the commissioner, within an amending rider, that the insured will be notified in writing at least 30 days in advance of the effective date of cancellation.

(b) Each fire or casualty insurer that cancels a policy or insurance contract in the state of Kansas, shall provide written notice of cancellation to the insured. Each cancellation notice shall specify the cancellation date and shall state in clear language that the policy is being cancelled. The following statement or one that is substantially the same shall be used: “You are hereby notified that your policy number _____ is cancelled effective _____.”

(c) This regulation shall not apply to:

- (1) Health, accident or hospitalization policies issued by casualty companies;
- (2) crop-hail policies or contracts; or

(3) policies or contracts cancelled as a result of non-payment of premium. (Authorized by K.S.A. 40-103; implementing K.S.A. 40-216, 40-1603(c); effective Jan. 1, 1966; amended Jan. 1, 1968; amended May 1, 1979; amended May 1, 1986.)

40-3-16. Fire and casualty insurance policies and applications; “warranties” prohibited. (a) As used in this regulation, the word “warranty” means a promise that certain facts are truly as they are represented to be and that they will remain so, subject to any specified limitations.

(b) Companies writing fire or casualty insurance, or both, shall not require their Kansas insureds or applicants to make a “warranty,” either expressed or implied, of any fact or allegation, either in the application for an insurance policy or in the policy provisions.

(c) The word “representations” or words of similar import shall not be prohibited, nor shall the word “warranty” in an insurance contract be prohibited if the contract contains a definition of “warranty” approved by the commissioner of insurance. (Authorized by K.S.A. 40-103, 40-2404a; implementing K.S.A. 40-2404; effective Jan. 1, 1966; amended May 1, 1979; amended May 1, 1986.)

40-3-17. Liability insurance contracts; liability of insuring company. A company shall not issue a liability contract in this state which provides, in effect, that an action may not be maintained against the insuring company unless for recovery of money actually paid by the insured in full satisfaction of a judgment against the insured after trial of the issue. Each liability contract issued in this state shall provide that the insuring company will become liable whenever final judgment is rendered against the insured. (Authorized by K.S.A. 40-103, 40-2404a; implementing K.S.A. 40-2404; effective Jan. 1, 1966; amended May 1, 1979; amended May 1, 1986.)

40-3-18. Fire and casualty insurance; private passenger automobiles; rating information. Each company writing insurance on private passenger automobiles in Kansas shall include, in all filings submitted to this department, procedures that meet the following conditions:

(a) Obtain from the insured information necessary to permit the company to rate the risk in accordance with applicable filings; and

(b) advise the insured of the proper classification in accordance with the company’s applicable rate filings approved by the commissioner. (Au-

thorized by K.S.A. 40-103 and 40-961; implementing K.S.A. 40-216 and 40-955; effective Jan. 1, 1966; amended May 1, 1979; amended May 1, 1986; amended Sept. 16, 2005.)

40-3-19. Fire and casualty insurance; auto physical damage policies; insured's duty to protect property from further loss. The wording, "and any further loss due to the insured's failure to protect, shall not be recoverable under this policy," or wording of similar import, shall be deleted from auto physical damage insurance policy conditions on each policy covering property of the insured. (Authorized by K.S.A. 40-103, 40-2404a; implementing K.S.A. 40-216, 40-2404; effective Jan. 1, 1966; amended May 1, 1979; amended May 1, 1986.)

40-3-20. (Authorized by K.S.A. 40-103, 40-2404a; implementing K.S.A. 40-216, 5-201 to 5-213, 40-2404, 5-401; effective Jan. 1, 1966; amended May 1, 1979; amended May 1, 1986; revoked May 28, 2004.)

40-3-21. Fire and casualty insurance; medical payments coverage; interpretation. Each insurance company providing "medical payments insurance," pursuant to K.S.A. 40-1110, that affords coverage for reasonable expenses incurred for necessary "funeral services" shall be required to interpret the words "funeral services" in accordance with applicable Kansas law and the terms of the insurance contract. If the words "funeral services" are not specifically interpreted by the contract of insurance or applicable Kansas law, the phrase shall be interpreted to mean:

- (a) The opening and closing of a grave; and
- (b) a burial plot for one person, if the cost is necessarily incurred after an accident covered by the policy. (Authorized by K.S.A. 40-103, 40-2404a; implementing K.S.A. 40-2404; effective Jan. 1, 1966; amended May 1, 1979; amended May 1, 1986.)

40-3-22. Marine, inland marine, and transportation insurance. (a) Risks and coverage that may be classified under Kansas insurance laws as marine, inland marine, or transportation insurance shall be those specified in this regulation. This regulation shall not limit the insuring powers granted under charters and licenses.

(b) Unless otherwise permitted, marine, inland marine, and transportation insurance shall not insure any of the following:

(1) Storage of insured's merchandise, unless specially permitted by this regulation;

(2) merchandise during manufacture that is the property of the manufacturer and is on the manufacturer's premises;

(3) furniture and fixtures, or other improvements to buildings; or

(4) money and securities stored in safes, vaults, and safety deposit vaults at any bank, or on the insured's premises, except while being transported.

(c) Any marine, inland marine, or transportation policy may insure the following:

(1) Imported property wherever located, if the coverage includes risks of transportation. Property shall qualify for coverage as an import if the property maintains its separate identity and has not become mixed with other property in general commerce until one of the following occurs:

(A) The property is sold or delivered by the importer;

(B) the property is taken from its place of storage and put on sale as part of the importer's stock in trade at any sale or distribution point; or

(C) the property is delivered for manufacture, processing, or change in form;

(2) exported property wherever located, if the coverage includes risks of transportation. Property shall qualify for coverage as an export if it meets the following conditions:

(A) Is designated for export or is being prepared for export; and

(B) has not been diverted for domestic trade;

(3) a domestic shipment that begins and ends within the United States, if the coverage includes risks of transportation, including the following:

(A) Property on consignment while it is for sale or distribution; for exhibit, trial, approval, or auction; in transit; in the custody of others; or being returned. Coverage shall not apply to property while on any premises owned, leased, or operated by the consignor;

(B) property that is not on consignment, except under either of the following conditions:

(i) The property is on any manufacturing premises; or

(ii) the property has arrived at any premises owned, leased, or operated by the insured or purchaser;

(4) an instrumentality of transportation or communication, excluding buildings and their improvements, furniture, furnishings, ordinary contents, and stored supplies. Instrumentalities of transportation or communication shall include the following:

(A) Bridges, tunnels, and similar transportation facilities, including their auxiliary structures and equipment;

(B) piers, wharves, docks, slips, dry docks, and marine railways;

(C) pipelines, including on-line propulsion, regulating, and other related appurtenant equipment and excluding property at manufacturing, producing, refining, converting, treating, or conditioning plants;

(D) power transmission lines or telephone and telegraph lines, excluding all property at generating, converting, or transforming stations, substations, and exchanges;

(E) radio and television communication equipment, including towers and antennae with their auxiliary equipment and appurtenant electrical operating and control apparatus; and

(F) outdoor cranes, loading bridges, or similar equipment used for loading, unloading, and transport;

(5) a policy for an individual, including the following:

(A) A personal effects policy;

(B) a personal property policy;

(C) a government service policy;

(D) a personal fur policy;

(E) a personal jewelry policy;

(F) a wedding present policy, for up to 90 days after the wedding day;

(G) a silverware policy;

(H) a fine art policy, insuring paintings, etchings, pictures, tapestries, art glass windows, and other works of art that are rare or that have historical value or artistic merit;

(I) a stamp and coin policy;

(J) a musical instrument policy. "Musical instrument" shall not include a radio, television, or record player, or any combination of these items;

(K) a mobile articles policy covering identified property of a mobile nature common to a household. A floater shall not cover furniture and fixtures that are customarily used on the premises where the property is usually kept;

(L) a machinery and equipment policy, except for policies covering motor vehicles, auto homes, trailers, or semitrailers designed for highway use. Trailers or semitrailers hauled by a tractor not designed for highway use may be covered under this policy, however;

(M) an installment sales and leased property policy covering property, except for motor vehi-

cles designed for highway use, that is in transit and meets either of the following conditions:

(i) Is sold under a conditional contract of sale, partial payment contract, or installment sales contract; or

(ii) is leased. This policy shall not cover beyond the termination of seller's or lessor's interest in the property; or

(N) a live animal policy; or

(6) a commercial property policy for business or professions, including the following:

(A) A radium policy;

(B) a physicians' and surgeons' instrument policy. The policy may also cover furniture, fixtures, and the insured's interest in improvements to buildings located in those portions of the premises occupied by the insured for professional purposes;

(C) a pattern and die policy;

(D) a theatrical policy. However, the policy shall not cover buildings and their improvements and furniture and fixtures that do not travel with theatrical troupes;

(E) a film policy covering either of the following:

(i) A film during production; or

(ii) a completed negative, positive, and sound recording;

(F) a salesmen's samples policy;

(G) an exhibition policy covering property while on exhibition and while in transit to or from an exhibition;

(H) a live animal policy;

(I) a builders' risk or installation risk policy, covering machinery, equipment, building materials, or supplies being used with and during installation, testing, building, renovating, or repairing. A policy may cover property designated for and awaiting specific installation, building, renovating, or repairing under any of the following conditions:

(i) While at a point or place where work is being performed;

(ii) while in transit; or

(iii) during temporary storage or deposit. The policy shall cover against perils in addition to fire and extended coverage perils. Coverage shall cease when an insured owner completes and accepts the building or installation and the insured seller's or contractor's interest ceases;

(J) a mobile articles policy covering identified property of a mobile nature that is in the custody or control of a party who intends to use the property for its manufactured or created purpose. The policy shall not cover furniture and fixtures that

are not customarily used away from the premises where the property is usually kept;

(K) a machinery and equipment policy, except for a motor vehicle or snow plow designed for highway use, an auto home, or a trailer or semi-trailer unless hauled by a tractor not designed for highway use;

(L) a bailment policy covering property in the custody of any bailee and while in transit to or from the bailee. Any bailment policy may include coverage that will indemnify the owner of the property for loss from specific perils subject to approval by the commissioner of insurance pursuant to K.S.A. 40-216(a) and amendments thereto. The application of an additional or separate charge for the indemnity coverage shall not constitute the transaction of the business of insurance if the charge does not exceed the premium approved by the commissioner and the bailee and if the bailee's employees or other organizations receive no compensation or other valuable consideration for performing the administrative tasks associated with the insurance coverage. The policy shall not insure property if either of the following conditions is met:

(i) The property is owned by the bailee at the bailee's premises; or

(ii) the property is in the custody of any bailee owned, controlled, or operated by the bailor;

(M) an installment sales and leased property policy covering property, except a motor vehicle designed for highway use, that is in transit and meets either of the following conditions:

(i) Is sold under a conditional contract of sale, partial payment contract, or installment sales contract; or

(ii) is leased. The policy shall not cover any point beyond the termination of the seller's or lessor's interest in the property and shall not cover machinery and equipment subject to certain "lease-back" contracts. A "lease-back" contract shall mean a contract, expressed or implied, under which the property is purchased by the lessor for the benefit and use of the lessor. This provision shall not apply to "lease-back" contracts involving machinery and equipment for which marine or inland marine coverage is otherwise permitted by this definition while the machinery and equipment are in the custody of the lessee;

(N) a garment contractors policy;

(O) a furrier or fur storer policy covering specified articles belonging to a customer for which the furrier or fur storer issues a certificate or receipt to the customer;

(P) an accounts receivable policy and valuable papers and records policy;

(Q) a floor plan policy covering property for sale, except for an automobile or other motor vehicle designed for highway use, while in transit and while in possession of any dealer under a plan by which the dealer borrows money from a bank or lending institution with which to pay the manufacturer. In addition, the following requirements shall be met:

(i) The property shall be specifically identifiable as encumbered to the bank or lending institution;

(ii) the dealer's right to sell or otherwise dispose of the property shall be conditioned upon its being released from encumbrance by the bank or lending institution; and

(iii) the policy shall not cover any point beyond the termination of the dealer's interest in the property;

(R) a sign and street clock policy. The policy may include insurance of a neon sign, an automatic or mechanical sign, and a street clock while in use;

(S) a fine art policy for the account of a museum, gallery, university, business, municipality, or other similar interest, covering paintings, etchings, pictures, tapestries, art glass windows, and other works of art that are rare or have historical value or artistic merit;

(T) a dealers policy insuring a dealer in personal property that may be covered specifically under an inland marine policy by the ultimate purchaser. A policy under this paragraph may cover money stored in locked safes or vaults on the insured's premises, furniture, fixtures, tools, machinery, patterns, molds, dies, and the insured's interest as a tenant in improvements to buildings. This policy may include the following:

(i) Any musical instrument dealer covering property consisting principally of musical instruments and their accessories. Musical instruments shall not include radios, televisions, record players, and any combinations of these items;

(ii) any camera dealer covering property consisting principally of cameras and their accessories;

(iii) any fur dealer covering property consisting principally of furs and fur garments;

(iv) any equipment dealer covering mobile agricultural and construction equipment and accessories, except for motor vehicles designed for highway use;

(v) any stamp or coin dealer covering property of a philatelic or numismatic nature;

(vi) any jeweler's block; and

- (vii) any fine art dealer;
- (U) a woolgrower's policy;
- (V) a domestic bulk liquid policy, covering tanks and domestic bulk liquids stored in them;
- (W) a difference-in-conditions policy. The policy shall not insure against fire and extended coverage perils; and
- (X) any electronic data processing policy. (Authorized by K.S.A. 40-103; implementing K.S.A. 40-901; effective Jan. 1, 1966; amended Jan. 1, 1967; amended May 1, 1986; amended Jan. 6, 1992; amended March 17, 2006.)

40-3-23. Fire and casualty insurance except accident and health; binder forms required to be filed. Binders or other temporary contracts of insurance are subject to K.S.A. 40-216. These forms shall be filed with and approved by the commissioner in accordance with applicable statutory provisions. (Authorized by K.S.A. 40-103, 40-216; implementing K.S.A. 40-216; effective Jan. 1, 1967; amended May 1, 1986.)

40-3-24. Fire and casualty insurance; inland marine rules, rates, and rating plans; general custom of industry defined. (a) The following types of risks shall be the inland marine classes that are, by general custom of the industry, written according to manual rates or rating plans:

- (1) Bicycle floater;
- (2) cameras;
- (3) fine art in private collections;
- (4) golfer's equipment floater;
- (5) musical instruments;
- (6) personal articles floater;
- (7) personal effects;
- (8) personal furs or fur floater;
- (9) personal jewelry or jewelry floater;
- (10) personal property floater;
- (11) silverware floater;
- (12) stamp and coin collection floater;
- (13) tourist baggage;
- (14) travel baggage, if issued in combination with accident and sickness insurance; and
- (15) wedding presents.

(b) Inland marine rates required for filing pursuant to K.A.R. 40-1-19 shall not be subject to this regulation. (Authorized by K.S.A. 40-103; implementing K.S.A. 40-955; effective Jan. 1, 1967; amended May 1, 1979; amended May 1, 1986; amended Sept. 16, 2005.)

40-3-25. Same; writing of risks rated differently from normal market; requirements.

(a) As used in this regulation, "normal market" shall mean insurance companies that sell policies to preferred or standard risks. Preferred or standard risks are applicants or policyholders who qualify for coverage at favorable premiums due to their underwriting characteristics.

(b) Each company issuing a fire and casualty insurance policy in this state with a premium rate that results from the insured's inability to obtain coverage in the normal market shall include a statement on the application or policy form, signed by the applicant or named insured, that contains the following statements, as applicable, or statements with similar wording:

(1) "I am unable to obtain _____ (state kind) insurance at normal rates and hereby request the issuance of this policy at rates in excess of normal rates."

(2) "I have been unable to procure similar insurance at normal rates although my risk has been submitted to at least three other insurance companies authorized to transact insurance business in Kansas."

(3) For automobile liability insurance, the statements in the following paragraphs shall be included:

(A) "(1) I have been unable to procure similar insurance at normal rates, or (2) I have been unable to procure similar insurance at normal rates because my previous insurance company nonrenewed or canceled my insurance."

(B) "I understand that liability limits sufficient to meet the financial responsibility requirements of the state may be available through the Kansas automobile insurance plan." The preceding statement shall not apply if the policy is issued through the Kansas automobile insurance plan.

(4) For workers compensation and employers liability insurance, the following statement shall be included: "I understand that I may obtain workers compensation and employers liability insurance through the Kansas workers compensation insurance plan." The preceding statement shall not apply if the policy is issued through the Kansas workers compensation insurance plan.

(5) For fire and extended coverage insurance, the following statement shall be included: "I understand that I may be able to obtain adequate fire and extended coverage insurance through the Kansas all-industry placement facility." The preceding statement shall not apply if the policy is issued through the Kansas all-industry placement facility.

(6) For a health care provider required to comply with K.S.A. 40-3402 and amendments thereto, the following statement shall be included: "I understand that I may be able to obtain adequate basic professional liability coverage through the Kansas health care provider insurance availability plan." The preceding statement shall not apply if the policy is issued through the Kansas health care provider insurance availability plan. (Authorized by K.S.A. 40-103, 40-961(d), 40-2116, and 40-3417; implementing K.S.A. 40-954(d), 40-2,124, 40-2102, 40-2109, and 40-3413; effective Jan. 1, 1967; amended Jan. 1, 1970; amended May 1, 1986; amended Jan. 18, 2008.)

40-3-26. Modification of rate filing requirements for individual risks. Rates modified for individual risks pursuant to K.S.A. 40-954(d) and amendments thereto shall be retained in the insurer's underwriting file for five years after the rate is no longer applicable to the insured. These rates shall be made available upon the request of the commissioner. These rate filings shall otherwise comply with the applicable provisions set forth in K.S.A. 40-954 and 40-955 and amendments thereto, and K.A.R. 40-3-25. (Authorized by K.S.A. 40-103; implementing K.S.A. 1998 Supp. 40-954, 40-955, as amended by L. 1999, Ch. 63, § 2; effective, E-76-19, May 1, 1975; effective May 1, 1976; amended May 1, 1979; amended May 1, 1986; amended May 16, 1997; amended March 24, 2000.)

40-3-27. (Authorized by K.S.A. 40-103; implementing K.S.A. 40-1113a, 40-928(g); effective Jan. 1, 1968; amended May 1, 1979; amended May 1, 1986; amended May 16, 1997; revoked May 19, 2000.)

40-3-28. Fire and casualty insurance; automobile liability policies; limits of liability. When an insurance company effects a unilateral reduction in the limits of liability contained in a policy of automobile liability insurance as defined in K.S.A. 40-276, the action shall be deemed a cancellation of the policy and shall be subject to the provisions of K.S.A. 40-276, 40-277, 40-278, 40-279, and 40-280. (Authorized by K.S.A. 40-103; implementing K.S.A. 40-276, 40-277; effective Jan. 1, 1968; amended May 1, 1979; amended May 1, 1986.)

40-3-29. (Authorized by K.S.A. 40-103; implementing K.S.A. 40-281; effective Jan. 1, 1968; amended May 1, 1986; revoked June 22, 2001.)

40-3-30. Fire and casualty insurance; assigned risk plans; forms and procedures. (a) Each insurance company authorized to transact fire and casualty business in this state shall inform its certified agents of the following:

(1) The Kansas assigned risk plans, their availability, eligibility, and other related procedures; and
(2) the location of forms necessary to place risks in the various Kansas assigned risk plans.

(b) All agents shall be informed of the assigned risk plans upon their initial appointment. All appointed agents shall be informed of the assigned risk plans at least annually.

(c) This regulation shall apply only to agents certified to write insurance for which a Kansas assigned risk plan is available. (Authorized by K.S.A. 40-103; implementing K.S.A. 40-2102 and 40-2109; effective Jan. 1, 1969; amended May 1, 1979; amended May 1, 1986; amended Feb. 13, 2009.)

40-3-31. Fire and casualty insurance; automobile liability policies; notices of cancellation or nonrenewal; requirements. (a) Each company writing a private passenger automobile liability policy, with the exception of a policy written through the Kansas automobile insurance plan, shall include, in filings submitted to this department, all forms designed to give direct notice of cancellation or nonrenewal to an insured. Filings may be made either independently or through a licensed rating organization with which the insurer is affiliated.

(b) The notice of cancellation or nonrenewal, or accompanying forms, shall include words similar to the following statements:

(1) Within 10 days after receiving a written request, this company will furnish, the reason for the cancellation or nonrenewal in writing. This statement is required only when reasons for cancellation or nonrenewal are not sent with the cancellation or nonrenewal notice.

(2) (When cancellation or nonrenewal is for any reason other than nonpayment of premium.) The provisions of K.S.A. 40-278 require that you be advised that liability limits sufficient to meet the financial responsibility requirements of the state may be available through the Kansas automobile insurance plan. Each agent writing automobile liability insurance for this company has been informed, and must be able to assist, in the preparation of the necessary forms for the Kansas automobile insurance plan. (Authorized by K.S.A.

40-103; implementing K.S.A. 40-276a, 40-277, 40-278; effective Jan. 1, 1968; amended, E-72-20, July 17, 1972; amended Jan. 1, 1973; amended May 1, 1979; amended May 1, 1986.)

40-3-32. Fire and casualty insurance; modification of form filing requirements. (a) Bond forms. Bonds that cannot practicably be filed before they are used shall not be required to be filed with the commissioner if they are required by any of the following:

- (1) Law;
- (2) court order; or
- (3) any federal, state, or municipal government or agency.

(b) Marine or inland marine forms. Each marine or inland marine form that cannot practicably be filed before use shall not be required to be submitted for approval pursuant to K.S.A. 40-216 and amendments thereto. This exception shall not apply to marine or inland marine policy and endorsement forms that contain standardized wording.

(c) Aircraft hull or aircraft liability endorsement forms. Each aircraft hull or aircraft liability endorsement form that cannot practicably be filed before use shall not be required to be submitted for approval pursuant to K.S.A. 40-216 and amendments thereto. This subsection shall not apply to aircraft hull or aircraft liability endorsement forms that contain standardized wording or that are so designated by the commissioner. Basic aircraft hull or aircraft liability insurance policies shall be subject to the filing requirement of K.S.A. 40-216 and amendments thereto.

(d) Restrictive endorsements. Each fire and casualty endorsement or form used on an individual risk that restricts coverage otherwise applicable, shall be considered an increase in the rate otherwise applicable and considered as forms that cannot practicably be filed before they are used. These forms shall be retained in the insurer's underwriting file for a period of five years after the form is no longer applicable to the insured. These forms shall be made available for review upon the request of the commissioner. The disapproval of any form shall be effective as of the inception date of the policy to which it is attached and shall be deleted from the policy.

(e) Policy or endorsement form prescribed by committee on surety bonds and insurance. Each property and casualty policy or endorsement form specifically prescribed by the committee on surety bonds and insurance pursuant to K.S.A. 75-4109,

and amendments thereto, shall not be required to be filed with the commissioner of insurance. The phrase "forms specifically prescribed by the committee on surety bonds and insurance" shall mean each property and liability policy, endorsement, or amendment, the exact wording for which is contained in an invitation for bids authorized by the committee.

(f) Each form submitted pursuant to this regulation shall be deemed approved unless disapproved by the commissioner within 30 days of receipt. (Authorized by K.S.A. 40-103, 40-216, as amended by L. 1999, Ch. 63, § 1; implementing K.S.A. 40-216, as amended by L. 1999, Ch. 63, § 1; effective Jan. 1, 1968; amended Jan. 1, 1973; amended Jan. 1, 1974; amended May 1, 1975; amended May 1, 1979; amended May 1, 1986; amended Nov. 29, 1993; amended March 24, 2000.)

40-3-33. (Authorized by K.S.A. 40-103, 40-2116; implementing K.S.A. 40-2101; effective, E-69-3, Oct. 7, 1968; amended, E-69-5, Jan. 8, 1969; effective Jan. 1, 1970; amended, E-70-41, Sept. 1, 1970; amended Jan. 1, 1970; amended May 1, 1988; amended Nov. 29, 1993; amended July 30, 1999; revoked March 25, 2011.)

40-3-34. (Authorized by K.S.A. 40-103; implementing K.S.A. 40-295, 40-296, 40-297; effective, E-71-29, July 16, 1971; effective Jan. 1, 1972; amended May 1, 1979; amended May 1, 1986; revoked Sept. 28, 2007.)

40-3-35. Fire and casualty insurance; Kansas automobile injury reparations act; Kansas automobile assigned claims plan; requirements; review of plan; approval; disapproval; procedure; amendments. (a) The Kansas automobile assigned claims plan shall consist of every insurer and self-insurer authorized to write motor vehicle liability insurance in this state. Each authorized insurer and self-insurer shall, in accordance with K.S.A. 1988 Supp. 40-3116, cooperate in preparing and submitting to the commissioner of insurance a plan or plans for the assignment of applicants for certain motor vehicle personal injury protection claims for certain persons injured in automobile accidents in Kansas. The plan or plans shall provide:

(1) Reasonable rules governing the operating procedures of the Kansas automobile assigned claims plan, including:

- (A) The designation of servicing insurers;

(B) the distribution of claims to servicing insurers; and

(C) adequate provision for the equitable payment of assigned claims;

(2) a method providing applicants for personal injury protection benefits and insurers with a hearing on grievances and the right of appeal to the commissioner; and

(3) for the establishment of procedures regarding records to be kept of all financial transactions of the Kansas automobile assigned claims plan and the submission of an annual financial report to the commissioner of insurance.

(b) Each plan shall be subject to the approval of the commissioner and may be disapproved if it fails to meet the requirements set forth in paragraphs (1), (2), and (3) of subsection (a).

(c) A submitted plan that does not meet the standards set forth in paragraphs (1), (2), and (3) above shall be, after a hearing, revised to meet the requirements. If after a hearing, the commissioner finds that an activity or practice of an insurer or rating organization in connection with the operation of the plan or plans is unfair or unreasonable or otherwise inconsistent with the provisions of this regulation, the commissioner may issue a written order specifically identifying the unfair, unreasonable, or inconsistent activity or practice, and may require discontinuance of the activity or practice.

(d) For each plan or plans, a governing committee shall be appointed by the commissioner of insurance. The committee shall meet at least once annually to review and prescribe operating rules.

(e) The committee shall consist of nine members who shall be appointed as follows:

(1) Three members shall be representatives of foreign insurance companies.

(2) Two members shall be representatives of domestic insurance companies.

(3) Two members shall be licensed independent insurance agents.

(4) Two members shall be representative of the general public interest.

(f) Each member shall be appointed for a term specified by the commissioner. (Authorized by K.S.A. 40-103, 40-3119, K.S.A. 1988 Supp. 40-3116(d); implementing K.S.A. 1988 Supp. 40-3116; effective, E-74-8, Jan. 1, 1974; effective May 1, 1975; amended May 1, 1976; amended May 1, 1979; amended May 1, 1986; amended April 16, 1990.)

40-3-36. Same; Kansas automobile injury reparations act; motor vehicle liability insurance policy defined. For the purpose of compliance with K.S.A. 40-3118a, "policy of motor vehicle liability insurance" shall mean a contract meeting the requirements of K.S.A. 40-3104, issued by an insurer defined in K.S.A. 40-3103(g), at the date of issuance and inception date of the contract. (Authorized by K.S.A. 40-103, 40-3119; implementing K.S.A. 40-3118; effective, E-76-19, May 1, 1975; effective May 1, 1976; amended May 1, 1986.)

40-3-37. Fire and casualty insurance; cancellation of automobile liability insurance policies; premium finance plan defined. The reference to "premium finance plan" contained in K.S.A. 40-277 shall mean a premium financing plan as defined in K.A.R. 40-1-10, an installment payment plan recognized by the insurer's existing rule and rate filings, or the extension of credit to an automobile liability insurance policyholder by an insurance agent as permitted by K.S.A. 40-282. (Authorized by K.S.A. 40-103; implementing K.S.A. 40-277; effective May 1, 1976; amended May 1, 1979; amended May 1, 1986.)

40-3-38. Mortgage guaranty insurance; unearned premium reserves. Each mortgage guaranty insurance company, defined by K.S.A. 40-3502(a), shall compute and maintain an unearned premium reserve in an amount not less than the unearned premium or reserves required by the provisions of K.S.A. 40-234. (Authorized by K.S.A. 40-103, 40-3521; implementing K.S.A. 40-3516; effective, E-79-3, Jan. 19, 1978; effective May 1, 1979; amended May 1, 1981; amended May 1, 1986.)

40-3-39. Fire and casualty insurance; crediting against future personal injury protection benefits; terms defined. The phrase "the amount of such judgment, settlement, or recovery," as contained in and applied to, the second sentence of K.S.A. 40-3113a(b), means amounts which are duplicative of payable personal injury protection benefits. (Authorized by K.S.A. 40-103, 40-3119; implementing K.S.A. 40-3113a; effective, E-78-24, Sept. 7, 1977; effective May 1, 1979; amended May 1, 1986.)

40-3-40. Fire and casualty insurance; unfair rate discrimination; certain acts and practices included. (a) Unfair rate discrimina-

tion practices between individuals of the same rating class, as prohibited by K.S.A. 40-953 and amendments thereto, shall include the following:

- (1) Refusing to insure;
- (2) refusing to continue to insure;
- (3) limiting the amount, extent, or kind of coverage available to an individual; and
- (4) charging an individual a different rate for the same coverage solely because of the geographic location of the risk.

(b) When an act or practice is permitted by rate filings in accordance with K.S.A. 40-955 and amendments thereto, the provisions of subsection (a) shall not apply. (Authorized by K.S.A. 40-103 and 40-961; implementing K.S.A. 40-953; effective May 1, 1979; amended May 1, 1986; amended March 17, 2006.)

40-3-41. Fire and casualty insurance; automobile business defined; application of automobile business liability insurance. (a) The term “automobile business” contained in K.S.A. 40-3107(h)(2) shall mean a business which sells, leases, repairs, services, transports, stores, or parks motor vehicles designed primarily for use on public highways. The definition shall include road testing and delivery.

(b) Each motor vehicle liability insurance coverage provided pursuant to K.S.A. 40-3107 shall be primary, duplicative, participative, or excess over any liability insurance coverage available from an automobile business. (Authorized by K.S.A. 40-103, 40-3119; implementing K.S.A. 40-3107; effective May 1, 1982; amended May 1, 1986.)

40-3-42. Title insurance; unfair inducements; prohibited acts. (a) As used in this regulation:

(1) “Title entity” means a title insurance company, title insurance agent, title insurance agency or any other organization directly involved in the sale, underwriting, or servicing of title insurance.

(2) “Producer of title business” means any natural person, firm, association, organization, partnership, business trust, corporation, or other legal entity engaged in this state in the trade, business, occupation, or profession of:

- (A) buying or selling interests in real property;
- (B) making loans secured by interests in real property; or
- (C) acting as broker, agent, representative, or attorney of natural persons or other legal entities

that buy or sell interests in real property or that lend money with such interests as security.

(b) The following acts constitute rebates or unlawful inducements in the marketing of title insurance on property located in this state:

(1) The disbursement, on behalf of a customer or prospective customer, of funds prior to the actual deposit thereof with the escrow or closing agent;

(2) disbursement of escrow funds before the conditions of the escrow have been met;

(3) making a charge for any title commitment which does not have a reasonable relation to the cost of production of the commitment or is less than the minimum fee or charge for the type of policy applied for, as set forth in the agent’s filed schedule of fees and charges. This provision does not apply where a title commitment is furnished in good faith in furtherance of a bona fide sale, purchase or loan transaction which for good reason is not consummated;

(4) paying a producer of title business to make an inspection of property;

(5) any transaction in which any person receives, or is to receive, securities of the title entity at prices below the normal market price, or bonds or debentures which guarantee a higher than normal interest rate, whether or not the consummation of the transaction is directly or indirectly related to the number of escrows or title orders coming to the title entity through the efforts of such person;

(6) charging a subdivision discount rate which is not applicable in the particular transaction because the volume required to qualify for the discount includes ineligible lots or parcels;

(7) paying for, or offering to pay for, the cancellation fee, the fee for the preliminary title report or other fee on behalf of any producer of title business before or after inducing such producer of title business to cancel an order with another title entity;

(8) giving, receiving or guaranteeing, or offering to give, receive or guarantee, either directly or indirectly, any loan with any producer of title business, regardless of the terms of the note or guarantee;

(9) guaranteeing, or offering to guarantee, the performance of escrow services or any other undertaking by any producer of title business;

(10) providing, or offering to provide, either directly or indirectly, a “compensating balance” or deposit in a lending institution either for the express or implied purpose of influencing the

extension of credit by such lending institution to any producer of title business, or for the express or implied purpose of influencing the placement or channeling of title insurance business by such lending institution;

(11) paying for, or offering to pay for, the fees or charges of an outside professional including but not limited to an attorney, engineer, appraiser, or surveyor whose services are required by any producer of title business to structure or complete a particular transaction;

(12) providing, or offering to provide, without reasonable charge non-title services including but not limited to escrow services, computerized bookkeeping, forms management, computer programming, or any similar benefit to any producer of title business;

(13) furnishing, or offering to furnish, without reasonable charge all or any part of the time or productive effort of any employee of the title entity including but not limited to office manager, escrow officer, secretary, clerk or messenger to any producer of title business. However, messenger service normally provided by a title entity in the ordinary course of its title insurance business shall not constitute a violation of this provision;

(14) paying for, or offering to pay for, all or any part of the salary of an employee of any producer of title business;

(15) paying for, or offering to pay for, the salary or any part of the salary of a relative of any producer of title business which payment is in excess of the reasonable value of work performed by such relative on behalf of the title entity;

(16) paying, or offering to pay, any fee to any producer of title business for making an inspection or appraisal of property unless the fee bears a reasonable relationship to the services performed;

(17) paying for, or offering to pay for, services by any producer of title business which services are required to be performed by the producer of title business or title agency in his or her capacity as a real estate or mortgage broker or salesman or agent including but not limited to the drafting of documents that are required for the initiation of an escrow;

(18) furnishing or offering to furnish, paying for or offering to pay for, furniture, office supplies, telephones, facsimile machines, computer and other business equipment or automobile to any producer of title business, or paying for, or offering to pay for, any portion of the cost of renting, leasing, operating or maintaining any of the aforementioned items;

(19) paying for, furnishing, or waiving, or offering to pay for, furnish, or waive, all or any part of the rent for space occupied by any producer of title business;

(20) renting, or offering to rent space:

(A) from any producer of title business that does not serve a necessary purpose;

(B) at a rental rate which is excessive when compared with rental rates for comparable space in the geographic area; or

(C) paying, or offering to pay, rent based in whole or in part on the volume of business generated by any producer of title business;

(21) furnishing or offering to furnish, paying for or offering to pay for any economic opportunity, gift, gratuity, special discount, favor, hospitality, or service to any producer of title business having an aggregate value of \$25 or more in any calendar year where a purpose of the donor is to influence any producer of title business in the placement or channeling of title insurance business. Hospitality in the form of incidental food and beverages are presumed not to be given to influence such producer of title business in the placement or channeling of title insurance business except when a particular transaction is conditioned thereon;

(22) paying for, or offering to pay for, money, prizes or other things of value for any producer of title business in any kind of a contest or promotional endeavor. This prohibition applies whether or not the offer or payment of a benefit relates to the number of title orders placed or escrows opened with a title entity or group of such entities;

(23) paying for, or offering to pay for, any advertising for the benefit of the title entity through any advertising medium, the end result of which is the substantial subsidization of a product, service or publication used by, or published or printed by or for the benefit of, any producer of title business, building or financing businesses or any association or group of such persons. In determining whether there has been a violation of this subsection "substantial subsidization" will exist whenever 50 percent or more of the advertising revenue or printing costs, whichever is less, of any pamphlet, program, announcement, register, directory, index, book, brochure, periodical, newsletter, bulletin, information sheet or printed matter of any kind intended for distribution or circulation is paid for by one or more title entities;

(24) paying for, or furnishing, or offering to pay for or furnish, any advertising effort made in the

name of, for, or on behalf of, any producer of title business through any advertising medium, whether or not the advertising is used, or is intended to be used, in connection with the promotion, sale or encumbrance of real property;

(25) paying for or furnishing, or offering to pay for or furnish, any business form to any producer of title business other than a form regularly used in the conduct of the title entity's business;

(26) giving of trading stamps, cash redemption coupons or similar items to any producer of title business;

(27) advancing or paying into escrow, or offering to advance or pay into escrow, any of the title entity funds;

(28) buying from or selling to, or exchanging with, or offering to buy from or sell to, or exchange with, any producer of title business, shares of stock, promissory notes or other securities in any title entity or any other business concern owned by, or affiliated with, a title entity, regardless of the price or relative value except for purchases or exchanges made through a general public offering. This prohibition also applies to the furnishing, or offer to furnish, legal or other professional services by any title entity to any producer of title business or group of persons to assist such producer(s) of title business in the formation of a title entity. The burden will be placed on any existing title entity that invests in a title entity formed by one or more of such producer(s) of title business to show that such investment does not represent a benefit coming within the prohibition of this subsection; or

(29) charging, contracting or offering to contract with any producer of title business to perform services for which the title entity is making a charge either directly or indirectly. (Authorized by K.S.A. 40-103 and 40-2404a; implementing K.S.A. 40-2404(14) as amended by L. 1989, Ch. 139, Sec. 1; effective Oct. 23, 1989.)

40-3-43. Title insurance; controlled business; definitions; requirements. (a) For purposes of K.S.A. 40-2404(14)(f) through (i) and amendments thereto, the following terms shall have the meanings specified in this subsection:

(1) "Closed title order" shall mean an order for which a policy or policies of title insurance have actually been issued.

(2) "Controlled business" shall mean any portion of a title insurer's or title agent's business in this state that was referred by any producer

of title business if the producer of title business with a financial interest in the title insurer or title agent to which the business is referred initiates the referral.

(3) "Title insurance order" shall mean an order for an owner's title insurance policy or an order for a loan policy of title insurance, or both. Each pair of orders for an owner's title insurance policy and a loan policy of title insurance to be issued simultaneously for the same real estate transaction shall constitute one order. The policies of title insurance issued under this transaction shall constitute one closed title order only if both policies are issued by the same title insurer or title agency.

(b) Each title agent shall keep all records of escrow operations and escrow trust accounts for at least three years. (Authorized by K.S.A. 40-103, K.S.A. 40-1140, and K.S.A. 2009 Supp. 40-2404; implementing K.S.A. 40-1138 and K.S.A. 2009 Supp. 40-2404; effective, T-40-7-27-89, July 27, 1989; effective Sept. 11, 1989; amended March 10, 2006; amended Sept. 24, 2010.)

40-3-44. Automobile insurance; underwriting information; restrictions. (a) Except as otherwise specified in subsection (b), information regarding motor vehicle accidents, traffic violations, or related convictions occurring more than three years before the date of the application shall not be requested or utilized by insurers in connection with or in making an underwriting decision.

(b) Any information regarding convictions for violations enumerated in K.S.A. 8-285, and amendments thereto, occurring no more than five years before the date of the application may be utilized for underwriting purposes. (Authorized by K.S.A. 40-103 and 40-961; implementing K.S.A. 40-954; effective May 15, 1989; amended March 17, 2006.)

40-3-45. Fire and casualty insurance; rate filings; investment income; requirements. (a) Every rate filing required by K.S.A. 40-955 and amendments thereto shall include specific consideration of earnings or losses resulting from the investment of assets equal to the unearned premiums and loss reserves of the company or companies making the filing.

(b) These earnings or losses shall consist of the historical after-tax rate of return on net worth derived from investments and shall be calculated by developing an average rate of return as a percent of earned premiums. Any explanatory memoran-

dum submitted with a rate filing shall include an explanation of how the investment earnings or losses are considered in the rate indications. The actual methodology used to derive the investment earnings or losses shall not be required to be included in the filing, but the methodology shall be made available upon the request of the commissioner. (Authorized by K.S.A. 40-103, K.S.A. 1998 Supp. 40-955, as amended by L. 1999, Ch. 63, § 2; implementing K.S.A. 1998 Supp. 40-955, as amended by L. 1999, Ch. 63, § 2; effective Aug. 14, 1989; amended March 24, 2000.)

40-3-46. (Authorized by K.S.A. 40-103 and L. 1990, Ch. 154, Secs. 1 and 2; implementing L. 1990, Ch. 154, Secs. 1 and 2; effective May 6, 1991; revoked March 10, 2006.)

40-3-47. Fire and casualty insurance; rating organizations; kinds of insurance affected. (a) Each rating organization shall develop and file only prospective loss costs for the following kinds of insurance and coverage:

(1) All lines of business specified in K.S.A. 40-901 and amendments thereto, except rates, rules, and forms filed by the midwest rating and service bureau, inc.; and

(2) all lines of business specified in K.S.A. 40-1102, and amendments thereto.

(b) For the filing of supplementary rating information by insurers, any insurer may satisfy its obligation by performing the following:

(1) Referencing the prospective loss costs filed by a licensed rating organization; and

(2) completing and filing the information required by the Kansas insurance department's "policy and procedure regarding prospective loss costs filing," dated February 15, 2005, which is hereby adopted by reference. (Authorized by K.S.A. 40-103, 40-961(d); implementing K.S.A. 40-955; effective May 6, 1991; amended Feb. 8, 1993; amended March 28, 1994; amended March 10, 2006.)

40-3-48. Insurance companies; managing general agents; definitions; requirements. (a) The terms "managing general agent" and "MGA," as defined in K.S.A. 40-2,130(d) and amendments thereto, shall include any person who, in addition to the criteria set forth in that statute, adjusts or pays any claim in excess of \$10,000 per claim or negotiates reinsurance on behalf of the insurer.

(b) The term "total annual written premium" shall include all direct premiums written by a

managing general agent regardless of where the risks are located.

(c)(1) Each managing general agent shall acquire and maintain a fidelity bond for the protection of the insurer contracting with the managing general agent. The bond shall be in the amount of at least \$100,000 or 10 percent of the managing general agent's total annual written premium nationwide that was produced by the MGA for the insurer in the prior calendar year. The bond shall not exceed \$500,000. The bond amount shall be adjusted accordingly on or before April 1 of each year.

(2) Coverage shall not be written by the insurer or an affiliate of the insurer contracting with the managing general agent. The bond shall be executed by a fidelity insurer admitted to do business in Kansas, or an insurer appearing on the list maintained by the commissioner pursuant to K.S.A. 40-246e and amendments thereto, on a form supplied by the department.

(3) A copy of the executed bond shall be filed with the department.

(d) Each contract entered into between a managing general agent and a domestic insurer shall be retained by the insurer.

(e) Each managing general agent shall keep the usual and customary records pertaining to transactions taking place under the managing general agent agreements at the managing general agent's place of business. All books, bank accounts, and records shall be kept available and open to the inspection of the commissioner or the commissioner's representatives at any time during business hours. These records shall be retained by the managing general agent until the insurer and the business to which the records pertain has been the subject of an examination pursuant to the provisions of K.S.A. 40-222 and amendments thereto.

(f) If the contract between an insurer and a managing general agent is terminated for any reason, the managing general agent shall, upon request of the insurer, deliver all records to the insurer within 90 days of the request.

(g) Each managing general agent shall send the insurer a claim file when the managing general agent first knows that the claim might exceed a limit set by the insurer, or one-quarter of one percent of the policyholder surplus as reported in the last annual statement of the insurer, whichever is less.

(h) Each managing general agent shall send the insurer a claim file when the managing general agent first knows that the claim file is closed by payment of an amount set by the insurer, or an

amount in excess of one-quarter of one percent of the policyholder surplus as reported in the last annual statement of the insurer, whichever is less.

(i) Each insurer licensed to write business in the state of Kansas shall file with the department, on or before March 1 of each year, a current list of names and addresses of all managing general agents with which the insurer has a contract and the name of an officer of the insurer responsible for the contract. The insurer shall provide written notification of changes to the list on a continuing basis.

(j) An independent audit by a certified public accountant shall be conducted annually upon managing general agents currently under contract and shall be contracted for by the insurer. The independent audit shall include the following:

(1) A report of an independent certified public accountant;

(2) a balance sheet;

(3) a statement of income;

(4) a statement of cash flows;

(5) a statement of income and retained earnings;

(6) the notes to financial statements required by generally accepted accounting principles; and

(7) a listing of all exceptions and internal control weaknesses noted in the course of the audit.

(k) Each insurer shall retain a current independent audit report by a certified public accountant of each managing general agent with which the insurer has done business.

(l) The authority to examine a managing general agent shall be retained by the commissioner, notwithstanding termination of the managing general agent's contractual authority. The insurer employing the managing general agent shall reimburse the department for the expense of the examination according to the provisions of K.S.A. 40-223 and amendments thereto. (Authorized by K.S.A. 40-103 and K.S.A. 40-2,136; implementing K.S.A. 40-2,130(d)(1), K.S.A. 2004 Supp. 40-2,131, K.S.A. 40-2,132, and K.S.A. 40-2,133; effective Dec. 16, 1991; amended Dec. 5, 2003; amended March 17, 2006.)

40-3-49. Fire and casualty insurance; modification of rate filing requirements; rates that cannot be practicably filed before use. (a) Any insurer or rating organization identifying those kinds of insurance, subdivisions, classes of risk, contracts, or combinations of these for which the required rating rule has been filed by the insurer with the commissioner shall retain in

the underwriting file the rate or rating procedure used, which shall be made available to the commissioner upon request.

(b) Nothing in this regulation shall be construed as a suspension, preemption, or modification of any provision of K.S.A. 40-955 and amendments thereto, except as specifically permitted in this regulation. (Authorized by K.S.A. 40-103, 40-216, as amended by L. 1999, Ch. 63, § 1, and K.S.A. 1998 Supp. 40-955, as amended by L. 1999, Ch. 63, § 2; implementing K.S.A. 40-216, as amended by L. 1999, Ch. 63, § 1, and K.S.A. 1998 Supp. 40-955, as amended by L. 1999, Ch. 63, § 2; effective Jan. 4, 1993; amended May 16, 1997; amended March 24, 2000.)

40-3-50. (Authorized by K.S.A. 40-103; implementing K.S.A. 1992 Supp. 40-1117; effective Nov. 29, 1993; revoked June 3, 2005.)

40-3-52. Fire and casualty insurance; title insurers; controlled business arrangements. (a) For the purpose of this regulation, "controlled business" shall have the meaning specified in K.A.R. 40-3-43.

(b) As a part of the report stating the percentage of closed title orders originating from a controlled business arrangement pursuant to K.S.A. 40-2404(14)(h) and amendments thereto, each title insurer or title agent engaged in a controlled business arrangement shall submit the following information to the commissioner:

(1) The identity of each producer of title business involved in the controlled business arrangement;

(2) the date on which the business year began for the controlled business arrangement;

(3) the identity of any federally chartered bank or savings association affiliated with the title insurer, if such an affiliation exists; and

(4) the date of the end of the title insurer's or title agency's business year.

(c) Each insurer or title agent required by subsection (b) to file a report shall submit the report to the commissioner pursuant to K.S.A. 40-2404(14)(h) and amendments thereto. (Authorized by K.S.A. 40-103 and K.S.A. 2006 Supp. 40-2404(14)(j); implementing K.S.A. 40-2403 and K.S.A. 2006 Supp. 40-2404(14); effective Feb. 15, 2008.)

40-3-53. Fire and casualty insurance; electronic verification of insurance. (a) Each motor vehicle liability insurer writing insurance in the state shall provide the secretary of revenue with verification of each insured's insurance on-

line or electronically by January 1, 2005. An exemption from this requirement may be granted upon request for any company that has less than 0.01 percent of the market share based on that company's commercial or personal automobile insurance written premiums or that has stated its intent to leave the automobile insurance market pursuant to K.S.A. 40-2,123 and amendments thereto. The 0.01 percent threshold shall be based on the specific line of coverage for which the company is seeking this exemption. Except as provided in subsection (b), the verification required by this subsection shall be in conformity with the following documents, which are hereby adopted by reference:

(1) The "Kansas insurance reporting guide," published by the Kansas department of revenue and dated November 2004; and

(2) the "Kansas insurance reporting map example," published by the Kansas department of revenue and dated July 2004.

(b) Any motor vehicle liability insurer that provided verification of insurance on-line or electronically before July 1, 2004 may continue to provide this verification in the same manner. (Authorized by K.S.A. 40-103, K.S.A. 8-173, as amended by L. 2004, ch. 128, sec. 3(d); implementing K.S.A. 8-173, as amended by L. 2004, ch. 128, sec. 3(d); effective, T-40-12-29-04, Jan. 1, 2005; effective May 13, 2005.)

40-3-56. Controlled insurance programs. Each controlled insurance program providing coverage for general liability or workers compensation, or both, shall meet the following requirements:

(a) Establish a method for the quarterly reporting of the participant's respective claims details and loss information to that participant;

(b) provide that cancellation of any or all of the coverage provided to a participant before completion of work on the applicable project shall require the owner or contractor who establishes a controlled insurance program to either replace the insurance or pay the subcontractor's cost to do so;

(c) not charge enrolled participants who are not the sponsoring participants a deductible in excess of \$2,500 per occurrence or a per claim assessment by the sponsor;

(d) keep self-insured retentions fully funded or collateralized by the owner or contractor establishing the controlled insurance program, except that this subsection shall not apply to deductible programs;

(e) disclose specific requirements for safety or equipment before accepting bids from contractors and subcontractors on a construction project; and

(f) allow monetary fines for alleged safety violations to be assessed only by government agencies. (Authorized by K.S.A. 40-103 and 2009 HB 2214, sec. 3; implementing 2009 HB 2214, sec. 3; effective Oct. 30, 2009.)

40-3-57. Controlled insurance programs including general liability. Each controlled insurance program including general liability coverage for the participants shall require the following:

(a) Coverage for completed operations liability shall not, after substantial completion of a construction project, be canceled, lapse, or expire before the limitation on actions has expired as established by K.S.A. 60-513(b), and amendments thereto, but in no case more than 10 years. If another carrier takes responsibility for completed operations liability coverage, any and all prior completed operation liability carriers shall be released from completed operations liability unless specified otherwise in subsequent policies.

(b) General liability coverage shall not be required of project participants except for liabilities not arising on the site or sites of the construction project, and any coverage maintained by the participants shall cover liabilities not arising on the site or sites of the construction project.

(c) The general liability coverage provided to participants shall provide for severability of interest, except with respect to limits of liability, so that participants shall be treated as if separately covered under the policy.

(d) Participants shall be given the same shared limits of liability coverage as those that apply to the sponsoring participant under the controlled insurance program.

(e) Participants shall not be required to waive rights of recovery for claims covered by the controlled insurance program against another participant in the controlled insurance program covered by general liability insurance provided by the controlled insurance program. (Authorized by K.S.A. 40-103 and 2009 HB 2214, sec. 3; implementing 2009 HB 2214, sec. 3; effective Oct. 30, 2009.)

40-3-58. Controlled insurance programs including workers compensation liabilities. Each controlled insurance program including coverage for workers compensation liabilities of the participants shall require the following:

(a) Workers compensation coverage shall include all workers compensation for which payroll attributable to the contractual agreement has been reported and the premiums collected covering all services performed incidental to, arising out of, or emanating from the construction site or sites and the coming or going to or from the site or sites. Nothing in this regulation shall be construed to expand, reduce, or otherwise modify current statutory law, regulations, or judicial decisions regarding the scope of workers compensation obligations regarding off-site injuries. This regulation shall be limited to requiring that any controlled insurance program provide coverage for the work-related off-site injuries only to the extent that the injuries would otherwise be covered under existing law and regulations. This regulation shall be construed to require that any controlled insurance program provide coverage for work-related off-site injuries to the extent that the injuries would be covered under existing law as interpreted by the courts.

(b) Participants shall not be required to provide employment to a worker who has been injured on the job unless both of the following conditions are met:

(1) The worker's treating health care provider certifies that the worker is fit to perform the participant's work on the job site consistent with the treating physician's limitations.

(2) The employer has the preinjury job or modified work available. (Authorized by K.S.A. 40-103, 2009 HB 2214, sec. 3, and 2009 HB 2214, sec. 4; implementing 2009 HB 2214, sec. 3 and sec. 4; effective Oct. 30, 2009.)

40-3-59. Workers compensation policies.

(a) For the purpose of this regulation and K.S.A. 40-955 and amendments thereto, each of the following terms shall have the meaning specified in this subsection:

(1) "Advisory organization" means an entity licensed by the commissioner for the reporting of claims and experience data for the administration of the workers compensation experience rating system.

(2) "Client" has the meaning specified in L. 2012, ch. 142, § 2, and amendments thereto.

(3) "Covered employee" has the meaning specified in L. 2012, ch. 142, § 2, and amendments thereto.

(4) "Master policy" means a single policy issued to a professional employer organization or profes-

sional employer group for the covered employees and any direct-hire employees of the professional employer organization or the professional employer group.

(5) "Multiple coordinate policy" means an agreement under which a separate policy is issued to or on behalf of each client or group of affiliated clients of a professional employer organization or a professional employer group, but payment of obligations and certain policy communications are coordinated through the professional employer organization or the professional employer group. This term is also known as a "multiple coordinated policy."

(6) "Professional employer group" has the meaning specified in L. 2012, ch. 142, § 2, and amendments thereto.

(7) "Professional employer organization" has the meaning specified in L. 2012, ch. 142, § 2, and amendments thereto.

(8) "Shared employment relationship" means "co-employment relationship" as defined in L. 2012, ch. 142, § 2, and amendments thereto.

(b) When submitting a master policy to the commissioner for examination, the insurer's filing shall include a detailed rule stating the manner in which the insurer will track and report payroll and claims data for each client to the advisory organization in a manner that identifies both the client and the professional employer organization and that is acceptable to the advisory organization. The adjustment of annual premiums based on previous loss experience, which is also known as experience rating modification, shall be calculated for each client as if the client were the sole employer of the client's covered employees. Failure of the insurer to provide this detailed rule with the insurer's filing to the commissioner shall result in the disapproval of the master policy.

(c) Each master policy shall cover only one professional employer organization or professional employer group.

(d) Each master policy shall be issued in the name of the professional employer organization or professional employer group and shall require that each covered client hold a certificate of coverage identifying that client as an alternate employer.

(e) Each insurer or its authorized representative shall issue a certificate of coverage to each client covered under a master policy. Each certificate of coverage shall meet the following requirements:

(1) The certificate of coverage shall specify the effective date of the client's coverage and the expiration date of the underlying master policy.

A renewal certificate of coverage shall be issued to each client each time the master policy is renewed. If the insurer cancels the master policy for nonpayment of premium, the insurer shall give the professional employer organization or professional employer group and each client at least 10 days' written notice before the effective date of cancellation.

(2) The certificate of coverage shall provide that the client is entitled to 30 days' notice before coverage can be cancelled or nonrenewed with the client's consent, unless either of the following conditions is met:

(A) Replacement coverage is provided by the professional employer organization or professional employer group with no break in coverage.

(B) The insurer has notified the client when the certificate of coverage is first issued that the master policy will be cancelled or nonrenewed in less than 30 days.

(f) Cancellation or nonrenewal of a client's coverage at the initiative of the professional employer organization or professional employer group without the written consent of the client shall not be effective, unless at least one of the following conditions is met:

(1) The insurer has given at least 30 days' advance notice to the client.

(2) The professional employer organization or professional employer group has given at least 30 days' advance notice to the insurer and the client.

(3) Coverage for all covered clients has been replaced with no break in coverage, and the professional employer organization has given advance notice to the insurer and the clients.

(g) Each professional employer organization or professional employer group shall be responsible for payment to the insurer of any premiums, policyholder assessments, and deductible reimbursement charges under a master policy or a multiple coordinated policy, whether or not the professional employer organization or professional employer group has received timely payment from the client. A client's failure to pay any fees to the professional employer organization or professional employer group when the fees are due shall not constitute nonpayment of premium pursuant to K.S.A. 40-2,120, and amendments thereto, or K.A.R. 40-3-15. (Authorized by K.S.A. 40-103 and K.S.A. 2012 Supp. 40-955; implementing K.S.A. 2012 Supp. 40-955; effective Jan. 31, 2014.)

40-3-60. Workers compensation; affidavit of exempt status. Each company that underwrites workers compensation insurance in Kansas shall accept each executed affidavit of exempt status provided by each insured, pursuant to K.S.A. 2016 Supp. 44-5,127 and amendments thereto, unless there is sufficient evidence that the individual who signed the affidavit is required to be covered under the workers compensation act. (Authorized by and implementing K.S.A. 2016 Supp. 44-5,127; effective March 2, 2018.)

Article 4.—ACCIDENT AND HEALTH INSURANCE

40-4-1. Accident and health insurance; individual policies; rate filings; requirements. The national association of insurance commissioners' "guidelines for filing of rates for individual health insurance forms," July 1989 edition, is hereby adopted by reference subject to the following exceptions: (a) Section II, subsection A.2. is amended by the addition of the following sentence to the definition of "Optionally Renewable":

"Short-term major medical policies are considered to be optionally renewable."

(b) Section II, subsection A.3. is not adopted, and the following is substituted:

"When the expected average annual premium for a policy, including riders and endorsements, is \$100 or more but less than \$200, five percentage points shall be subtracted from the anticipated loss ratios shown in Section II A.1. If the expected average annual premium is less than \$100, 10 percentage points shall be subtracted from the anticipated loss ratios shown in Section II A.1."

(c) Section II, subsection A.4. is not adopted.

(d) Section II, subsection A.8. is not adopted.

(e) Section II, subsection C.1.(b) is not adopted.

(f) The appendix is not adopted. (Authorized by K.S.A. 40-103 and 40-2215; implementing K.S.A. 40-2215; effective May 1, 1981; amended May 1, 1986; amended Oct. 17, 2003.)

40-4-2. Accident and sickness insurance policies; franchise plan; requirements. (a) Forms for accident and sickness insurance policies shall be approved for writing on a franchise plan when:

(1) Accident and sickness insurance on a franchise plan may be issued to:

(A) Three or more employees of any corporation, co-partnership, or individual employer, or

any governmental corporation, agency or department; or

(B) 10 or more members of any trade or professional association, a labor union, or any other association that has been in active existence for at least two years when the association or union has a constitution or bylaws and is formed in good faith for purposes other than that of obtaining insurance; and

(2) Each person, with or without their dependents, will be issued the same individual policy form varying only as to amounts and kinds of coverage applied for, under an arrangement whereby the premiums on the policies may be paid to the insurer periodically by:

(A) The employer, with or without payroll deductions;

(B) the association for its members; or

(C) some designated person on behalf of the employer or association.

(b) The term “employees” includes the officers, managers, employees and retired employees of the employer and the individual proprietor or partners if the employer is an individual proprietor or partnership. (Authorized by K.S.A. 40-103, K.S.A. 1992 Supp. 40-2203(G); implementing K.S.A. 1992 Supp. 40-2215; effective Jan. 1, 1966; amended May 1, 1986; amended Nov. 29, 1993.)

40-4-3. Accident and health insurance policies; renewal and cancellation conditions; description required; cross-reference of renewal and cancellation provisions.

(a) When an individual or family policy does not contain either a brief description or separate statement printed on the first page and on the filing back referring to the policy’s renewal conditions, a separately captioned provision shall appear on the first page of the policy setting forth the conditions under which the policy may be renewed. The following captions shall be acceptable descriptions of the applicable renewal provisions:

Renewable At Option of Company
Guaranteed Renewable to Age 65 or Eligibility
for Medicare—Premium rates may be
changed on a class basis
Noncancellable and Guaranteed Renewable
to Age 65
or
Eligibility for Medicare

Noncancellable and Guaranteed Renewable to Age () or—while actively or regularly employed to age () *
Guaranteed Renewable to Age () or—while actively or regularly employed to age ()—Premium rates may be changed on a class basis *

NOTE:

* (For disability income policies only. Insert minimum age of not less than 60 and maximum age of not less than 65.)

(b) Other captions may be submitted to the commissioner for approval and may be approved if the commissioner determines that they are equally clear or more definite as to the subject matter.

(c) If the policy is not renewable, a statement to that effect shall appear in a separate provision on the first page of the policy.

(d) If the policy contains a cancellation provision, the cancellation provision shall appear separately, and shall be captioned “cancellation”. The existence of the cancellation provision shall be referred to in the renewal provision by specific cross-reference in the renewal caption on the first page of the policy. (Authorized by K.S.A. 40-103; implementing K.S.A. 40-2203(B)(8), 40-2215; effective Jan. 1, 1966; amended May 1, 1975; amended May 1, 1979; amended May 1, 1986.)

40-4-4. Accident and health insurance policies; limitation on the use of the terms “non-cancellable”, “non-cancellable and guaranteed renewable” and “guaranteed renewable”.

(a) The terms “non-cancellable”, “non-cancellable and guaranteed renewable”, or “guaranteed renewable” may be used only in a policy which the insured has the right to continue in force by the timely payment of premiums set forth in the policy until the age of 65 or to eligibility for medicare. During this period, the insurer shall not have any right to make any change unilaterally in any provision of the policy except as otherwise provided by this regulation.

(b) Each accident and health or accident only policy which provides for weekly or monthly payments, for a specified period during the continuance of a disability resulting from accident or sickness may provide that the insured has the right to continue the policy only to age 60 if, at age 60, the insured has the right to continue the policy in force at least to age 65 while regularly employed.

(c) Any insurer may make changes in premium rates by classes in policies using the term “guaranteed renewable”.

(d) The foregoing limitation on use of the term “noncancellable” shall also apply to any synonymous term such as “not cancellable” and the limitation on use of the term “guaranteed renewable” shall apply to any synonymous term such as “guaranteed continuable.”

(e) The development of policies having other guarantees of renewability shall not be restricted. Accurate description of terms of renewability or classification of policies as “guaranteed renewable” or “noncancellable” for any other specified period shall not be prohibited, if the terms used to describe them in policy contracts and advertising cannot readily be confused with the above terms. (Authorized by K.S.A. 40-103; implementing K.S.A. 40-2215(C); effective Jan. 1, 1966; amended May 1, 1975; amended May 1, 1979; amended May 1, 1986.)

40-4-5. (Authorized by K.S.A. 40-103, 40-216, 40-2203(G), 40-2215(C); effective Jan. 1, 1966; amended Jan. 1, 1967; revoked May 1, 1979.)

40-4-6 to 40-4-11. (Authorized by K.S.A. 40-103, 40-216, 40-2203(G), 40-2215(C), 40-2403, 40-2404; effective Jan. 1, 1966; revoked May 1, 1979.)

40-4-12. Accident and health policies; application as part of the policy; notice required. (a) Each individual policy of accident, sickness, or hospitalization insurance shall not be delivered in this state unless the following notice is attached to the policy:

IMPORTANT NOTICE

Please read the copy of the application attached to this policy. Carefully check the application and write to _____, _____, within 10 days, if

(Company) (Address)

any information shown on it is not correct and complete, or if any past medical history has been left out of the application. This application is a part of the policy and the policy was issued on the basis that answers to all questions and the information shown on the application are correct and complete.

(b) The statement, preferably in the form of a sticker to be placed on the policy, shall be printed in a prominent manner on paper or in ink of a contrasting color. The insurer may, with the approval of the commissioner, substitute similar wording. This rule shall not apply if the application for insurance is not attached to and made a part of the contract. (Authorized by K.S.A. 40-103; implementing K.S.A. 40-2215; effective Jan. 1, 1966; amended May 1, 1979; amended May 1, 1986.)

40-4-13. Accident and health insurance; applications; “catchall” questions. An application for accident and health insurance shall not contain a nonspecific question concerning the general medical history of the applicant unless the question is limited in application to a specific peri-

od of time not in excess of five years. (Authorized by K.S.A. 40-103; implementing K.S.A. 40-2215; effective Jan. 1, 1966; amended May 1, 1979; amended May 1, 1986.)

40-4-14 to 40-4-16. (Authorized by K.S.A. 40-103, 40-216, 40-246, 40-2203(G), 40-2215(C); effective Jan. 1, 1966; revoked May 1, 1979.)

40-4-17. Accident and health insurance companies; record of loss experience required; form adopted by the national association of insurance commissioners; filing date. (a) Each insurance company transacting accident and health insurance business in the state of Kansas shall maintain a record of country-wide loss experience for each policy form. The record shall be maintained on a “premium earned” and “losses incurred” basis or, optionally, on a “premium received” and “losses paid” basis.

(b) The insurance company shall maintain loss experience on each policy form currently issued and on any policy form not currently issued from which the renewal premiums represent five percent or more of the total premiums received.

(c) The insurance company shall record loss experience on total group business written. The insurance company need not maintain separation of loss experience on individual group policies.

(d) The insurance company shall report experience on the form adopted by the national association of insurance commissioners, as of 1994, which is hereby adopted by reference, and shall file the form not later than May 1 of each year. (Authorized by K.S.A. 40-103; implementing K.S.A. 40-2215(C) (1); effective Jan. 1, 1966; amended May 1, 1979; amended May 1, 1986; amended Feb. 9, 1996.)

40-4-18. Accident and health insurance companies; releases; requirements. Each insurance company writing health and accident insurance shall not limit or attempt to limit its liability under a contract by obtaining a release from the insured either in the form of enclosed check, proof of loss, or other release. The payment of benefits shall not be withheld on the grounds that the insured will not sign a release. Releases shall be permitted only where there is a definite question of liability and a compromise settlement is to be effected. (Authorized by K.S.A. 40-103, 40-2404a; implementing K.S.A. 40-2404; effective Jan. 1, 1966; amended May 1, 1979; amended May 1, 1986.)

40-4-19. (Authorized by K.S.A. 40-103, 40-216, 40-1109, 40-2203(G), 40-2215(C); effective Jan. 1, 1966; amended May 1, 1979; revoked May 1, 1986.)

40-4-20. (Authorized by K.S.A. 40-103, 40-235, 40-2403, 40-2404(1); effective Jan. 1, 1966; revoked May 1, 1979.)

40-4-21. Accident and health insurance; reserve standards for individual policies. The national association of insurance commissioners' reserve standards for individual health insurance policies, June 1985 edition, are hereby adopted by reference. (Authorized by K.S.A. 40-103; implementing K.S.A. 40-234a; effective Jan. 1, 1968; amended May 1, 1986.)

40-4-22. Accident and health insurance policies; right to return policy. Each individual accident and health policy, except travel accident policies or policies of a similar type, issued for delivery in this state, shall have printed on, or attached to the first page of the policy, a notice stating that the person to whom the policy is issued shall be permitted to return the policy or contract within at least 10 days of its delivery to the purchaser and to have the premium paid refunded if purchaser dissatisfaction exists. The notice shall be printed in not less than 10 point type and shall be printed in bold face type or in some other manner that distinguishes it from the print otherwise appearing in the policy. When a policyholder or purchaser, pursuant to the notice, returns the policy to the company or association at its home or branch office or to the agent through whom it was purchased, the policy shall be void from the beginning and the parties shall be in the same position as if no policy or contract had been issued. (Authorized by K.S.A. 40-103, 40-2404a; implementing K.S.A. 40-2404 as amended by L. 1987, Ch. 171, Sec. 1; effective Jan. 1, 1972; amended May 1, 1975; amended May 1, 1979; amended May 1, 1986; amended May 1, 1987; amended May 1, 1988.)

40-4-23. Accident and sickness insurance; deceptive practices; requirements; prohibitions. (a) Paragraphs (3), (4) and (5) of subsection (b) shall not apply to credit accident and sickness insurance, group accident and sickness insurance, nor to medicare supplement policies as defined in K.A.R. 40-4-35.

(b) Each authorized issuer of accident and sickness insurance contracts and each authorized in-

surance agent who solicits, negotiates or procures such insurance within this state shall meet the following requirements:

(1) Each agent shall, at the beginning of any solicitation, inform the prospective purchaser that he or she is acting as an insurance agent.

(2) The prospective purchaser shall be informed of the insurer's full name.

(3) The agent or insurer shall provide to the prospective purchaser before or with the delivery of a contract, a dated outline of coverage describing the elements of the contract including:

(A) The name and signature of the insurance agent, or if no agent is involved, the name of the employee of the insurer who assumes responsibility for completing the outline;

(B) the full name of the company writing the accident and sickness insurance;

(C) a statement identifying the applicable category or categories of coverage provided by the policy or contract and any supplemental riders as prescribed in K.S.A. 40-2218(a);

(D) a statement disclosing any provision in the policy or any supplemental riders which will reduce the benefits payable while the policy and riders are maintained in force on a premium-paying basis;

(E) the premiums for the accident and sickness insurance policy and a separate listing of the premiums for each optional or supplemental benefit provided by the contract;

(F) a statement disclosing the provisions of the policy and any supplemental riders relating to renewability, cancelability and termination and any modification of benefits, losses covered or premiums because of age or for other reasons. The description shall be written in a manner which will not minimize or render obscure the qualifying conditions;

(G) a statement disclosing those exceptions, reductions and limitations affecting the basic provisions of the policy and any supplemental riders;

(H) a statement disclosing the existence of any waiting, elimination, probationary or similar time period between the effective date of the policy and effective date of coverage under the policy and any supplemental riders, or a period of time between the date that loss occurs and the date the benefits begin to accrue for the loss;

(I) a statement disclosing the extent to which any loss is not covered under the policy and any supplemental riders, if the cause of the loss is traceable to a condition existing before the effective date of the policy or rider;

(J) a statement disclosing all the principal benefits provided by the policy or contract and any supplemental riders;

(K) a statement that the outline of coverage is a summary of the policy or contract and any supplemental riders issued or applied for and that the policy or contract and any supplemental riders should be consulted to determine governing contractual provisions; and

(L) if the policy or contract and any supplemental riders do not provide the standards for benefits promulgated by the commissioner, as provided in K.A.R. 40-4-24 through 40-4-33, a statement which clearly sets forth the policy restrictions.

(4) The outline of coverage shall accompany the policy. Alternatively, the outline may be delivered to the prospective purchaser at the time application is made, if an acknowledgment of receipt or certificate of delivery of the outline is obtained with the application. If an outline of coverage was delivered at the time of application, and the policy or contract is issued on a basis which would require revision of the outline, a substitute outline of coverage properly describing the policy or contract and any supplemental riders shall accompany the policy or contract and any supplemental riders when it is delivered. The substitute outline shall state clearly that the policy or contract and any supplemental riders are not the same as that for which application was made.

(5) The outline of coverage may consist of a separate written presentation or the outline may be included in the solicitation material advertising the policy. All information required to be disclosed shall be set out prominently in an uninterrupted sequence in one location in the separate, written presentation or advertising material. Additional material, other than that required, shall not be inserted between each required disclosure item. The style, arrangement and overall appearance of the outline of coverage shall not give any undue prominence to any portion of the text. Each printed portion of the text of the outline of coverage shall be plainly printed in lightfaced type of a style in general use. The size of the type shall be uniform and shall not be less than tenpoint with a lowercase, unspaced alphabet length not less than 120 point.

(c) Unfair or deceptive acts or practices in the selling of the insurance subject to this regulation shall include:

(1) Making any misrepresentation or false, deceptive or misleading statement;

(2) using comparisons or analogies or manipulating amounts and numbers in a way that will mislead the prospective purchaser concerning the cost of the insurance protection to be provided by the insurance contract, or any other significant aspect of the contract;

(3) referring to an insurance premium as a deposit, an investment, a savings, or using other similar phrases when referring to an insurance premium; and

(4) Recommending to a prospective purchaser the purchase or replacement of any accident and sickness insurance policy or contract with reasonable grounds to believe that the recommendation is unsuitable for the applicant on the basis of any information furnished by the person or otherwise obtained. (Authorized by K.S.A. 40-103, 40-2404a; implementing K.S.A. 40-2219, 40-2221; effective May 1, 1975; amended Feb. 15, 1977; amended May 1, 1979; amended May 1, 1982; amended May 1, 1986.)

40-4-24. (Authorized by K.S.A. 1978 Supp. 40-2218; effective Feb. 15, 1977; revoked May 1, 1979.)

40-4-25. Accident and sickness insurance standards for benefits. (a) K.A.R. 40-4-26 through 40-4-33 shall apply to each individual accident and sickness insurance policy and subscriber contract of hospital and medical and dental service corporations delivered or issued for delivery in this state. These regulations shall not apply to the following:

(1) A credit accident and health insurance policy subject to K.A.R. 40-5-102 through 40-5-110;

(2) an individual policy or contract issued pursuant to a conversion privilege under a policy or contract of group or individual insurance when this group or individual policy or contract includes provisions that are inconsistent with the requirements of these regulations;

(3) a policy being issued to employees or members as additions to franchise plans in existence on the effective date of these regulations; and

(4) medicare supplement policies as defined in K.A.R. 40-4-35.

(b) The requirements in these regulations shall be in addition to the requirements in any other regulations previously adopted but shall not preclude the solicitation or issuance of policies or contracts that do not meet the standards for benefits set forth in K.A.R. 40-4-26 through 40-

4-33. (Authorized by K.S.A. 40-103, 40-2218; implementing K.S.A. 40-2218; effective Feb. 15, 1977; amended May 1, 1979; amended May 1, 1982; amended May 1, 1986; amended March 31, 2006.)

40-4-26. Same; basic hospital expense coverage. (a) “Basic hospital expense coverage” means a policy of accident and sickness insurance which provides coverage for a period of not less than 31 days during any one period of confinement, for each person insured under the policy, and for expenses incurred for necessary treatment and services rendered as a result of accident and sickness. Minimum basic hospital expense coverage shall include the following:

(1) Daily hospital room and board in an amount not less than the lesser of:

(A) 80 percent of the charges for semi-private room accommodations; or

(B) \$100 per day;

(2) miscellaneous hospital charges for services and supplies which are customarily rendered by the hospital and provided for use only during any one period of confinement, in an amount not less than either 80 percent of the charges incurred, up to at least \$2,000, or 10 times the daily hospital room and board benefits; and

(3) Hospital outpatient services consisting of:

(A) Hospital services on the day surgery is performed;

(B) hospital services rendered within 72 hours after accidental injury, in an amount not less than \$100; and

(C) x-ray and laboratory tests of not less than \$200.

(b) Benefits provided under paragraphs (1) and (2) of subsection (a) may be subject to a combined deductible amount not in excess of \$100. (Authorized by K.S.A. 40-103, 40-2218; implementing K.S.A. 40-2218; effective Feb. 15, 1977; amended May 1, 1984; amended May 1, 1986.)

40-4-27. Same; basic medical-surgical expense coverage. “Basic medical-surgical expense coverage” means a policy of accident and sickness insurance which, for each person insured under the policy, provides coverage for the expenses incurred in providing the necessary services, rendered by a legally qualified physician, for treatment of an injury or sickness. Basic medical-surgical expense coverage shall provide at least the following:

(a) Surgical services consisting of benefits providing not less than:

(1) an amount for any procedure at least equal to \$1,000, based on the relative values contained in the “relative value study” of the Kansas medical society, adopted May 5, 1966, as amended May 19, 1968; or

(2) 80 percent of the reasonable charges;

(b) Anesthesia services, consisting of administration of necessary general anesthesia and related procedures, in connection with covered surgical service, which is rendered by a physician other than the physician or the physician’s assistant performing the surgical services:

(1) In an amount not less than 80 percent of the reasonable charges; or

(2) 15 percent of the surgical service benefit;

(c) In-hospital medical services, consisting of physician services rendered to a person who is a bed patient in a hospital for treatment of sickness or injury other than that for which surgical care is required, in an amount not less than:

(1) 80 percent of the reasonable charges; or

(2) \$10 per day for not less than 21 days during any one period of confinement. (Authorized by K.S.A. 40-103, 40-2218; implementing K.S.A. 40-2218; effective Feb. 15, 1977; amended May 1, 1984; amended May 1, 1986.)

40-4-28. Same; hospital confinement indemnity coverage. “Hospital confinement indemnity coverage” means a policy of accident and sickness insurance which provides, for each person insured under the policy, daily benefits for hospital confinement, on an indemnity basis, in an amount not less than \$50 per day and for not less than 31 days during any one period of confinement. (Authorized by K.S.A. 40-103, 40-2218; implementing K.S.A. 40-2218; effective Feb. 15, 1977; amended May 1, 1984; amended May 1, 1986.)

40-4-29. Same; major medical expense coverage. (a) “Major medical expense coverage” means an accident and sickness insurance policy which:

(1) Provides hospital, medical and surgical expense coverage to an aggregate maximum of not less than \$25,000;

(2) is not subject to a co-payment by the covered person of more than 25 percent of covered charges; and

(3) limits any deductible, stated on a per person, per family, per illness, per benefit period, or per

year basis, or a combination of these bases, to five percent of the aggregate maximum limit under the policy.

(b) If the policy is written to complement underlying hospital and medical insurance, the deductible may be increased by the amount of the benefits provided by the underlying insurance.

(c) For each covered person, major medical expense coverage shall provide coverage for at least:

(1) Daily hospital room and board expenses of not less than \$100 daily, prior to application of the co-payment percentage and for a period of not less than 31 days during any one period of confinement;

(2) miscellaneous hospital services, prior to application of the co-payment percentage, of an aggregate maximum of not less than \$2,500 or 15 times the daily room and board rate, if specified in dollar amounts;

(3) surgical services, prior to application of co-payment percentage, of not less than \$1,200 for the most severe operation, with the amounts provided for other operations reasonably related to the maximum amount;

(4) anesthesia services, prior to application of the co-payment percentage, of not less than 15 percent of the covered surgical fees. If the surgical schedule is based on a relative value schedule, coverage for anesthesia services shall not be less than the amount provided in the policy for anesthesia services at the same unit value used for the surgical schedule;

(5) in-hospital medical services, prior to application of the co-payment percentage, as defined in subsection (c) of K.A.R. 40-4-27;

(6) out-of-hospital care, prior to application of the co-payment percentage, consisting of physicians' services rendered on an ambulatory basis when coverage is not provided elsewhere in the policy for diagnosis and treatment of sickness or injury, and for diagnostic x-ray and laboratory services, radiation therapy, and hemodialysis ordered by a physician; and

(7) not fewer than three of the following additional benefits, prior to application of the co-payment percentage, for an aggregate maximum of the covered charges of not less than \$2,000:

(A) In-hospital, private duty, graduate registered nurse services;

(B) convalescent nursing home care;

(C) diagnosis and treatment by a radiologist or physiotherapist;

(D) rental of special medical equipment, as defined by the insurer in the policy;

(E) artificial limbs or eyes, casts, splints, trusses or braces;

(F) treatment for functional nervous disorders, and mental and emotional disorders; and

(G) out-of-hospital prescription drugs and medications. (Authorized by K.S.A. 40-103, 40-2218; implementing K.S.A. 40-2218; effective Feb. 15, 1977; amended May 1, 1984; amended May 1, 1985; amended May 1, 1986.)

40-4-29a. Same; renewability of individual hospital, medical, or surgical expense policy.

(a) Except as specifically authorized by K.S.A. 40-2257(b) and amendments thereto, an insurer shall not terminate an individual hospital, medical, or surgical expense policy for any insured who is eligible for medicare if the insured wishes to continue the individual's coverage.

(b) Each insurer shall mail to its current individual medical policyholders approaching the age of 65 or medicare eligibility a notice provided by the Kansas insurance department explaining the options available to them. (Authorized by K.S.A. 40-103 and 40-2257(i); implementing K.S.A. 40-2257; effective Jan. 12, 2007; amended Sept. 18, 2015.)

40-4-30. Same; disability income protection coverage.

(a) "Disability income protection coverage" means a policy which provides for weekly or monthly payments, for a specified period during the continuance of disability resulting from either sickness or injury, or a combination of both, and which:

(1) Provides that periodic payments which are payable at ages after 62 and reduced solely on the basis of age are at least 50 percent of amounts payable immediately prior to 62;

(2) Contains an elimination period no greater than:

(A) 90 days, in the case of coverage providing a benefit of one year or less;

(B) 180 days, in the case of coverage providing a benefit of more than one year but not greater than two years; or

(C) 365 days in all other cases.

(3) Has a maximum period of time for which benefits are payable during disability of at least six months. Reduction in benefits shall not be put into effect because of an increase in social security or similar benefits during a benefit period.

(b) This regulation does not apply to those policies providing business buy-out coverage. (Autho-

rized by K.S.A. 40-103, 40-2218; implementing K.S.A. 40-2218; effective Feb. 15, 1977; amended May 1, 1986.)

40-4-31. Same; standards for benefits, accident only coverage. “Accident only coverage” means a policy of accident insurance which provides coverage, singly or in combination, for death, dismemberment, disability or hospital and medical care caused by accident. Accidental death and double dismemberment amounts under such policy shall be at least \$1,000 and a single dismemberment amount shall be at least \$500. (Authorized by K.S.A. 40-103, 40-2218; implementing K.S.A. 40-2218; effective Feb. 15, 1977; amended May 1, 1986.)

40-4-32. Same; standards for benefits; specified disease coverage. “Specified disease coverage” means a policy which meets one of the following definitions:

(a) A policy which provides coverage, for each person insured under the policy, for a specifically named disease or diseases with a deductible amount not in excess of \$250, an overall aggregate benefit limit of no less than \$10,000 and a benefit period of not less than two years for the following incurred expenses:

(1) Hospital room and board and any other hospital-furnished medical services or supplies;

(2) treatment by a legally qualified physician or surgeon;

(3) private duty services of a registered nurse (R.N.);

(4) x-ray, radium and other therapy procedures used in diagnosis and treatment;

(5) professional ambulance for local service to and from a local hospital;

(6) blood transfusions, including expense incurred for blood donors;

(7) drugs and medicines prescribed by a physician;

(8) rental of an iron lung or similar mechanical apparatus;

(9) braces, crutches and wheelchairs, as deemed necessary by the attending physician, for the treatment of the disease; and

(10) emergency transportation, if in the opinion of the attending physician, the insured requires transportation to another locality for treatment of the disease.

(b) A specified disease policy may include coverage of other expenses necessarily incurred in the treatment of the disease.

(c) A policy which provides coverage, for each person insured under the policy, for a specifically named disease or diseases with no deductible amount, an overall aggregate benefits limit of not less than \$25,000, payable at the rate of not less than \$50 a day while confined in a hospital, and a benefit period of not less than 500 days. (Authorized by K.S.A. 40-103, 40-2218; implementing K.S.A. 40-2218; effective Feb. 15, 1977; amended May 1, 1984; amended May 1, 1986.)

40-4-33. Same; standards for benefits; specified accident coverage. “Specified accident coverage” means an accident insurance policy which provides coverage for a specifically identified kind of accident or accidents for each person insured under the policy for accidental death or accidental death and dismemberment combined, with a benefit amount not less than:

(a) \$1,000 for accidental death;

(b) \$1,000 for double dismemberment; and

(c) \$500 for single dismemberment. (Authorized by K.S.A. 40-103, 40-2218; implementing K.S.A. 40-2218; effective Feb. 15, 1977; amended May 1, 1986.)

40-4-34. Accident and health insurance; coordination of benefits. The Kansas insurance department’s “policy and procedure relating to coordination of benefits,” dated January 27, 2016, including the appendices, is hereby adopted by reference. (Authorized by K.S.A. 40-103, 40-2404a; implementing K.S.A. 2015 Supp. 40-2404; effective May 1, 1981; amended May 1, 1982; amended May 1, 1984; amended May 1, 1985; amended, T-86-13, May 9, 1985; amended May 1, 1986; amended May 1, 1987; amended Feb. 19, 1999; amended May 13, 2016.)

40-4-35. Medicare supplement policies; minimum standards. (a) The Kansas insurance department’s “policy and procedure to implement medicare supplement insurance minimum standards,” including the appendices, dated May 18, 2017, is hereby adopted by reference, except for sections 1, 2, 25, and 26 and page 651-120.

(b) This regulation shall supersede any other Kansas insurance department regulation to the extent that the other regulation or any provision of it is inconsistent with or contrary to this regulation.

(c) If any provision of the document adopted in subsection (a) or the application of any provision of this document to any person or circumstance is for any reason deemed invalid, the remainder of

this regulation and the application of the provision to other persons or circumstances shall not be affected. (Authorized by K.S.A. 40-103, K.S.A. 40-2221, and K.S.A. 40-2404a; implementing K.S.A. 2016 Supp. 40-2215, K.S.A. 40-2221, and K.S.A. 40-2404; effective May 1, 1982; amended May 1, 1984; amended May 1, 1986; effective, T-40-12-16-88, Dec. 16, 1988; amended, T-40-3-31-89, March 31, 1989; amended June 5, 1989; amended Oct. 15, 1990; amended April 1, 1992; amended May 24, 1996; amended, T-40-3-18-99, April 29, 1999; amended Aug. 20, 1999; amended Jan. 1, 2001; amended Sept. 7, 2001; amended Aug. 26, 2005; amended June 26, 2009; amended Sept. 8, 2017.)

40-4-35a. Medicare supplement policies; medicare catastrophic coverage repeal act of 1989; transitional requirements. Sections 3, 4, 5, 6, 7, 8, 9, 10 and appendix A of the national association of insurance commissioner's model regulation to implement transitional requirements for the conversion of medicare supplement insurance benefits and premiums to conform to repeal of medicare catastrophic coverage act, December 1989 edition, are hereby adopted by reference, subject to the following additions or exceptions:

(a) Section 5C.(2) is hereby amended to read as follows: "(2) Coverage for all of the medicare part A inpatient hospital deductible amount."

(b) Section 5D.(1) is hereby amended to read as follows: "(1) No later than January 31, 1990, every insurer, health care service plan or other entity providing medicare supplement insurance or benefits to a resident of this state shall notify its policyholders, contract holders and certificate holders of modifications it has made to medicare supplement insurance policies or contracts. Such notice shall be in the format adopted by the NAIC as appendix A."

(c) Section 5D.(1)(b) is hereby amended to read as follows: "(b) The notice shall inform each covered person as to when any premium adjustment resulting from changes in medicare benefits will be effective."

(d) Section 6C. is hereby amended to read as follows: "C. Any premium adjustments shall produce an expected loss ratio under such policy or contract necessary to conform with minimum loss ratio standards for medicare supplement policies and shall result in an expected loss ratio at least as great as that originally anticipated by the insurer, health care service plan or other entity for such medicare supplement insurance policies or contracts."

(e) The provisions entitled "accelerated policy adjustment procedures" included in the drafting note which follows section 6C. are not adopted. (Authorized by K.S.A. 40-103; implementing K.S.A. 40-2221; effective, T-40-12-16-88, Dec. 16, 1988; effective May 15, 1989; amended April 16, 1990.)

40-4-36. Accident and sickness insurance; conversion policies; reasonable notice of right to convert. (a) The requirements for reasonable notice by the insurer of the right to convert specified in K.S.A. 40-19c06, K.S.A. 40-2209, and K.S.A. 40-3209, and amendments thereto, shall be fulfilled if, during the 18-month continuation period, a form meeting the following requirements is transmitted to the person eligible for conversion:

- (1) Describes the conversion options;
- (2) describes the premiums or subscriber's charges for each option;
- (3) provides instructions regarding the action required to effect conversion; and
- (4) describes the availability of types of coverage through the Kansas health insurance association.

(b) Insurers may include provisions in their group policies, subscription agreements, and certificates of coverage that are necessary to identify or obtain identification of persons and events that would activate the continuation and conversion rights created by K.S.A. 40-19c06, K.S.A. 40-2209, and K.S.A. 40-3209, and amendments thereto. (Authorized by K.S.A. 40-103 and K.S.A. 2007 Supp. 40-2209, as amended by L. 2008, Ch. 164, §5; implementing K.S.A. 2007 Supp. 40-19c06, as amended by L. 2008, Ch. 164, §3, 40-2209, as amended by L. 2008, Ch. 164, §5, and 40-3209, as amended by L. 2008, Ch. 164, §7; effective, T-86-3, Jan. 9, 1985; effective May 1, 1985; amended May 1, 1986; amended May 29, 1998; amended April 25, 2003; amended Sept. 4, 2009.)

40-4-37. Long-term care insurance; application; definitions. (a) These regulations shall apply to individual or group long-term care insurance policies, subscriber contracts, endorsements, and riders delivered or issued for delivery in this state by the following:

- (1) Insurance companies;
- (2) fraternal benefit societies;
- (3) nonprofit hospital and medical service corporations; and
- (4) health maintenance organizations.

(b) A policy, rider, or endorsement shall not be advertised, described, solicited, or issued for delivery in this state as long-term care insurance unless it conforms to the requirements of these regulations.

(c) As used in these regulations, these terms shall have the following meanings:

(1) “Long-term care insurance,” “group long-term care insurance,” “commissioner,” “applicant,” “certificate,” and “policy” shall have the meanings set forth in K.S.A. 40-2227, and amendments thereto.

(2) “Medicare” means programs established by the “health insurance for the aged act,” Title XVIII of the social security amendments of 1965, as then constituted or later amended.

(3) “Nursing facility” means a home, residence, or institution, other than a hospital, that is primarily engaged in providing nursing care and related services on an inpatient basis under a license issued by the appropriate licensing agency. A nursing facility may be a freestanding facility, including the following:

- (A) Nursing facility;
- (B) skilled nursing home;
- (C) intermediate nursing care home;
- (D) assisted living facility; and
- (E) residential health care facility.

Each definition of a nursing facility shall adhere to the above definition unless otherwise approved by the commissioner of insurance.

(4) No insurance carrier shall define “mental or nervous disorder” more restrictively than any of the following:

- (A) Neurosis;
- (B) psychoneurosis;
- (C) psychopathy;
- (D) psychosis; or

(E) any mental or emotional disease or disorder. However, no policy, contract, or rider shall exclude or limit benefits on the basis of organic brain disease, including Alzheimer’s disease or senile dementia.

(5) The insurer may define “nurse” so that the description is restricted to a certain type of nurse, whether a registered graduate professional nurse, a licensed practical nurse, or a licensed vocational nurse. If the words “nurse,” “trained nurse,” or “registered nurse” are used without specific instruction, then the insurer shall recognize the services of any individual who qualified under this terminology in accordance with the applicable statutes or administrative regulations of the licensing or registry board of the state.

(6) The insurer may include the words “duly qualified physician” or “duly licensed physician” in its definition of “physician.” An insurer using these terms shall recognize and accept, to the extent of its obligation under the contract, all providers of medical care and treatment when these services are within the scope of the provider’s licensed authority and are provided pursuant to applicable laws.

(7) “Sickness” shall include an illness or disease of an insured person that first manifests itself after the effective date of insurance and while the insurance is in force. A definition of sickness may provide for a waiting period, which shall not exceed 30 days after the effective date of the coverage of the insured person. The definition may be further modified to exclude illnesses or diseases for which benefits are provided under any workers’ compensation, occupational disease, employer’s liability, or similar law.

(8) “Guaranteed renewable” means both of the following:

(A) The insured may continue the long-term care insurance in force by the timely payment of premiums; and

(B) the insurer shall not unilaterally make any change in any provision of the policy or rider while the insurance is in force and shall not decline to renew the policy. However, the insurer may revise the rates on a class basis.

(9) “Noncancellable” means that the insured may continue the long-term care insurance in force by timely paying premiums during which period the insurer shall not unilaterally make any change in any provision of the insurance or in the premium rate.

(10) “Lapse” means termination of a policy due to the policyholder’s failure to pay the premium within the time required.

(11)(A) “Exceptional increase” means only an increase filed by an insurer as exceptional for which the commissioner determines that the need for the premium rate increase is justified due to changes in laws or regulations applicable to long-term care coverage in this state, or due to increased and unexpected utilization that affects the majority of insurers of similar products.

(B) Exceptional increases shall be subject to the following:

(i) Except as provided in K.A.R. 40-4-37t, exceptional increases shall be subject to the same requirements as those for other premium rate schedule increases.

(ii) A review by an independent actuary or a professional actuarial body of the basis for a request than an increase be considered an exceptional increase may be requested by the commissioner.

(iii) Potential offsets to higher claim costs shall also be determined by the commissioner in determining that the necessary basis for an exceptional increase exists.

(12) "Incidental," as used in K.A.R. 40-4-37t(j), means that the value of the long-term care benefits provided is less than 10 percent of the total value of the benefits provided over the life of the policy. These values shall be measured from the date of issue.

(13) "Qualified actuary" means a member in good standing of the American academy of actuaries.

(14) "Similar policy forms" means all of the long-term care insurance policies and certificates issued by an insurer in the same long-term care benefit classification as the policy form being considered. Certificates of groups that meet the definition in K.S.A. 40-2227(e), and amendments thereto, shall not be considered similar to certificates or policies otherwise issued as long-term care insurance, but shall be considered similar to other comparable certificates with the same long-term care benefits classifications. For purposes of determining similar policy forms, long-term care benefit classifications shall be defined as follows:

(A) Institutional long-term care benefits only;

(B) noninstitutional long-term care benefits only; or

(C) comprehensive long-term care benefits.

(d) K.A.R. 40-4-37a, 40-4-37f, and 40-4-37i shall not apply to group long-term care insurance policies issued to an employer-employee group. (Authorized by K.S.A. 40-103, K.S.A. 40-2228; implementing K.S.A. 40-2228; effective, T-89-9, March 18, 1988; effective Sept. 12, 1988; amended Jan. 6, 1992; amended Jan. 4, 1993; amended Feb. 9, 1996; amended May 31, 2002.)

40-4-37a. Long-term care insurance; renewal provisions; requirements. (a) A certificate or individual policy delivered or issued for delivery shall not contain renewal provisions less favorable to the insured than "guaranteed renewable" for life. Any insurer may receive approval of another type of renewal provision if the insurer demonstrates to the satisfaction of the commissioner that the approval would be in recognition of the unique, developing and experimental nature of long-term care insurance.

(b) Individual long-term care insurance policies shall include a renewal provision which complies with subsection (a) of this regulation. The provision shall:

(1) Be appropriately captioned;

(2) appear on the first page of the policy; and

(3) clearly state the terms of renewability. (Authorized by K.S.A. 40-103, K.S.A. 1991 Supp. 40-2228; implementing K.S.A. 1991 Supp. 40-2228; effective Jan. 4, 1993.)

40-4-37b. Long-term care insurance; marketing practices; prohibitions; limitations. A policy shall not be advertised, described, solicited, delivered or issued for delivery in this state as long-term care insurance if the policy, contract or rider limits or excludes coverage by type of illness, treatment, medical condition or accident, except for the following:

(a) Mental or nervous disorders without demonstrable organic disease. This provision shall not exclude coverage for loss which results from organic brain disease, including alzheimer's disease or senile dementia;

(b) alcoholism and drug addiction;

(c) illness, treatment, medical condition or accident arising from:

(1) Participation in a felony, riot or insurrection;

(2) suicide, attempted suicide, or intentionally self-inflicted injury, whether sane or insane;

(3) aviation; or

(4) war or act of war, whether declared or undeclared;

(d) benefits provided under medicare or governmental programs other than medicaid, any state or federal workers' compensation or employer's liability or occupational disease law;

(e) services performed by a member of the covered person's immediate family; and

(f) services for which no charge is normally made in the absence of insurance. (Authorized by K.S.A. 40-103, K.S.A. 1991 Supp. 40-2228; implementing K.S.A. 1991 Supp. 40-2228; effective Jan. 4, 1993.)

40-4-37c. Long-term care insurance; termination; recurrent confinements; continuation of benefits. (a) If a long-term care insurance policy is terminated while an insured is confined in a nursing facility, benefits provided as a result of receiving nursing facility services shall continue until discharge from the nursing facility, expiration of the policy benefit period, if any, or payment of

the maximum benefits for nursing facility services or maximum aggregate benefits under the policy, whichever comes first. For the purpose of this provision, continuous nursing confinement shall include transfer to another nursing facility or receiving another level of nursing care in a nursing facility. This subsection shall not apply if coverage under the policy terminates because of a lapse as defined in subsection (c) (11) of K.A.R. 40-4-37.

(b) A policy may contain a provision relating to recurrent confinements. However, a provision shall not specify that a recurrent condition be separated by a period greater than six months.

(c) Family coverage shall continue for any child who:

(1) is incapable of self-sustaining employment due to mental retardation or physical handicap on the date that the child's coverage would otherwise terminate under the policy due to the attainment of a specified age limit; and

(2) is chiefly dependent on the insured for support and maintenance. The policy may require that within 31 days of the date that the child's coverage would otherwise terminate, the insured must furnish the company due proof of the child's incapacity and a notice of the insured's election to continue the policy in force with respect to the child, or the policy may require that a separate converted policy be issued at the option of the insured or policyholder. (Authorized by K.S.A. 40-103, K.S.A. 1991 Supp. 40-2228; implementing K.S.A. 1991 Supp. 40-2228; effective Jan. 4, 1993.)

40-4-37d. Long-term care insurance; benefits; medical condition; activities of daily living; definitions; requirements. (a) A long-term care policy may require a recommendation by a physician that the services are necessary due to illness, injury, or functional impairment but shall not condition benefits on medical necessity.

(b)(1) In addition to or in lieu of a recommendation by a physician as described in section (a) of this regulation, group long-term care insurance policies covering employees, dependents and retirees of a single employer may include provisions which condition the payment of benefits on an assessment of the insured's ability to perform activities of daily living or cognitive impairment.

(2) As used in this section, activities of daily living consist of the following defined activities and performance criteria:

(A) "Bathing" means the ability to get into and out of the tub or shower, turn on the water, get

the soap or other cleansing product, and bathe the entire body including back and feet. A person is dependent if the person cannot bathe in a bathtub or shower without the assistance of another person or is able to participate only minimally, such as washing face and hands only.

(B) "Dressing" means the ability to get clothes from closets or drawers and put them on or take them off, including undergarments and outer-garments, as well as fasteners and braces, if worn. Dressing includes the ability to fasten one's shoes. A person is dependent if the person can dress only with the assistance of another person or is able to participate only minimally, such as putting on outer-garments only.

(C) "Eating" means the ability to bring food to the mouth or hold a glass to the mouth, and chew and swallow food. A person is dependent if the person is fed by hand, is being fed intravenously or through a feeding tube, is unable to bring food to the mouth or is unable to chew and swallow the food.

(D) "Maintaining continence" means the ability to maintain control of urination or bowel movement. A person is dependent if the person loses bladder control three times per week or more, loses bowel control two times per week or more, or needs assistance in maintaining a catheter or colostomy bag.

(E) "Toileting" means the ability to get to and from the toilet, onto and off the toilet, clean oneself after elimination, and adjust clothes after toileting. A person is dependent if the person needs help with one or more of these tasks, maintaining balance, or caring for a catheter or colostomy bag.

(F) "Transferring from bed to chair" means the ability to get into or out of bed or a chair. A person is dependent if the person is unable to get into or out of bed or a chair without human assistance.

(G) "Mobility" means the ability to walk or move from one place to another. A person is dependent if the person requires assistance or supervision from another person to safely walk or if the person needs to be wheeled from one place to another.

(3) "Cognitive impairment" means a deficiency in the ability to think, perceive, reason, remember or otherwise routinely display an ability to take care of oneself without the ongoing assistance of or supervision by another person.

(4) Any determination of impairment shall not be more restrictive than requiring either a deficiency in the ability to perform three of the activities of daily living or the presence of cognitive impairment.

(5) Only properly credentialed, experienced, trained professionals, such as physicians, registered nurses or licensed specialist social workers shall perform assessments of activities of daily living and cognitive impairment.

(6) Group long-term care insurance policies which condition the payment of benefits on an assessment of the insured's ability to perform activities of daily living or cognitive impairment shall include a clear and understandable description of the method for resolving insured grievances. (Authorized by K.S.A. 40-103, 40-2228; implementing K.S.A. 40-2228; effective, T-40-9-25-92, Sept. 25, 1992; effective Feb. 8, 1993; amended Feb. 9, 1996.)

40-4-37e. Long-term care insurance; prohibitions. Each long-term care policy shall be prohibited from the following:

(a) Containing more than one elimination period for periods of confinement in a nursing home that are due to the same or related causes and separated from each other by less than six months;

(b) excluding coverage for confinement to an intermediate nursing facility if benefits for nursing care are provided;

(c) providing coverage for skilled nursing care only or providing significantly more coverage for skilled care in a facility than coverage for lower levels of care;

(d) being delivered or issued for delivery to any person in this state, unless every printed portion of the text of the policy is plainly printed in not less than 10-point type;

(e) requiring prior confinement to a hospital or prior confinement for a greater level of nursing care as a condition for paying inpatient benefits;

(f) being delivered in this state, unless the following notice is attached to the policy:

“IMPORTANT NOTICE

Please read the copy of the application attached to this policy. Carefully check the application and write to the company within 30 days if any information shown is incorrect or incomplete or if any past medical history has been left out of the application. This application is a part of the policy and the policy was issued on the basis that answers to all questions and the information shown on the application are correct and complete.”

This statement, preferably in the form of a sticker to be placed on the policy, shall be printed in a prominent manner on paper or in ink of a

contrasting color. The insurer may, with the approval of the commissioner of insurance, substitute wording of similar import if equal results are obtained. This requirement shall not apply if the application for insurance is not attached to and made a part of the contract;

(g) being cancelled, nonrenewed, or otherwise terminated on the grounds of the age or the deterioration of the mental or physical health of the insured individual or certificate holder; and

(h) if the policy provides benefits for home health care or community care services, limiting or excluding benefits by any of the following means:

(1) Requiring that the insured or claimant would need care in a skilled nursing facility if home health care services were not provided;

(2) requiring that the insured or claimant first or simultaneously receive nursing or therapeutic services in a home, community, or institutional setting before home health care services are covered;

(3) limiting eligible services to services provided by registered nurses or licensed practical nurses;

(4) requiring that a nurse or therapist provide services covered by the policy if the services can be provided instead by a home health aide or other licensed or certified home care worker acting within the scope of the home care worker's licensure or certification;

(5) excluding coverage for personal care services provided by a home health aide;

(6) requiring that the provision of home health care services be at a level of certification or licensure greater than that required by the eligible service;

(7) requiring that the insured or claimant have an acute condition before home health care services are covered;

(8) limiting benefits to only those services provided by medicare-certified agencies or providers; or

(9) excluding coverage for adult day care services. (Authorized by K.S.A. 40-103, K.S.A. 2013 Supp. 40-2228; implementing K.S.A. 2013 Supp. 40-2228; effective Jan. 4, 1993; amended Feb. 27, 2015.)

40-4-37f. Long-term care insurance; notices, limited policy; right to return requirements. (a) A long-term care insurance policy shall have the words “this is a limited policy—read it carefully” printed on or attached to the face of the policy in not less than 18 point bold face type or in some other manner that distinguishes it from the print otherwise appearing in the policy.

(b) Right to return—free look provision. Long-term care insurance policies or certificates shall have a notice printed on or attached to the first page of the policy stating that the policyholder shall have the right to return the policy within 30 days of its delivery and to have the premium refunded if, after examination of the policy, the insured person is not satisfied for any reason. Any refund made pursuant to this section shall be paid directly to the applicant or named insured by the insurer within 10 business days following receipt of the returned policy by the insurer or its agent. The notice required by this section shall be printed in bold face type or in some other manner which distinguishes it from the print otherwise appearing in the policy. (Authorized by K.S.A. 40-103, K.S.A. 1991 Supp. 40-2228; implementing K.S.A. 1991 Supp. 40-2228; effective Jan. 4, 1993.)

40-4-37g. Long-term care insurance; benefit standards; definitions; explanations.

(a) A long-term care insurance policy that provides for the payment of benefits based on standards described as “usual and customary,” “reasonable and customary” or words of similar import shall include a definition and an explanation of these terms in its accompanying outline of coverage.

(b) Definitions or provisions of the words “accident,” “accidental injury,” or “accidental means” shall not:

(1) Include words which establish an accidental means test or use words such as “external, violent, visible wounds” or similar words of description or characterization;

(2) be more restrictive than the following: “Injury or injuries for which benefits are provided means accidental bodily injury sustained by the insured person which is the direct result of an accident, independent of disease or bodily infirmity or any other cause, and occurs while insurance coverage is in force.”

(3) Such definitions may provide that injuries shall not include injuries for which benefits are provided under workers’ compensation, employer’s liability or any similar law. (Authorized by K.S.A. 40-103, K.S.A. 1991 Supp. 40-2228; implementing K.S.A. 1991 Supp. 40-2228; effective Jan. 4, 1993.)

40-4-37h. Long-term care insurance; pre-existing conditions; requirements; prohibitions. (a) If a long-term care insurance policy or certificate contains any limitations with

respect to pre-existing conditions, the limitations shall appear as a separate paragraph of the policy or certificate and be labeled as “pre-existing condition limitations.”

(b) The definition of preexisting condition shall not prohibit an insurer from using an application form designed to elicit the complete health history of an applicant, and, on the basis of the answers on that application, from underwriting in accordance with that insurer’s established underwriting standards. Unless otherwise provided in the policy or certificate, a preexisting condition, regardless of whether it is disclosed on the application, need not be covered until the waiting period described in K.S.A. 1991 Supp. 40-2228(e) (1) expires. No long-term care insurance policy or certificate may exclude or use waivers or riders of any kind to exclude, limit or reduce coverage or benefits for specifically named or described preexisting diseases or physical conditions beyond the waiting period of the policy or certificate.

(c) No long-term care insurance policy or certificate shall exclude coverage for a loss or confinement which is the result of a preexisting condition unless such loss or confinement begins within the preexisting waiting period following the effective date of coverage of an insured person. (Authorized by K.S.A. 40-103, K.S.A. 1991 Supp. 40-2228; implementing K.S.A. 1991 Supp. 40-2228; effective Jan. 4, 1993.)

40-4-37i. Long-term care insurance; re- placement; notice; waiver of waiting periods.

(a) Long-term care insurance application forms shall request information as to other accident and health insurance coverage in force and whether the insurance to be issued is intended to replace any other accident and sickness policy presently in force. A supplementary application or other form to be signed by the applicant containing such a question may be used.

(b) Upon determining that a sale will involve replacement, an insurer or its agent, other than a direct response insurer, shall furnish the applicant, prior to issuance or delivery of the individual long-term care insurance policy, notice regarding replacement of accident and sickness coverage. One copy of the notice shall be retained by the applicant and an additional copy signed by the applicant shall be retained by the insurer. A direct response insurer shall deliver to the applicant upon issuance of the policy the notice regarding replacement of accident and sickness coverage.

(c) If a long-term care policy replaces another long-term care policy issued by the company or an affiliated company, the replacing insurer shall waive any time periods applicable to pre-existing conditions, waiting periods, elimination periods and probationary periods present in the new long-term care policy for similar benefits to the extent such time was spent under the original policy.

(d) Solicitations other than direct response. Upon determining that a sale will involve replacement, an insurer or its agent, other than an insurer using direct response solicitation methods, shall furnish the applicant, prior to issuance or delivery of the individual long-term care insurance policy, a notice regarding replacement of accident and sickness or long-term care coverage. One copy of such notice shall be retained by the applicant and an additional copy signed by the applicant shall be retained by the insurer. The required notice shall be provided in the following form:

NOTICE TO APPLICANT REGARDING REPLACEMENT OF INDIVIDUAL ACCIDENT AND SICKNESS OR LONG-TERM CARE INSURANCE

(Insurance company's name and address)
SAVE THIS NOTICE! IT MAY BE IMPORTANT TO YOU IN THE FUTURE.

According to (your application) (information you have furnished), you intend to lapse or otherwise terminate existing accident and sickness or long-term care insurance and replace it with an individual long-term care insurance policy to be issued by (company name) Insurance Company. Your new policy provides 30 days within which you may decide, without cost, whether you desire to keep the policy. For your own information and protection, you should be aware of and seriously consider certain factors which may affect the insurance protection available to you under the new policy.

You should review this new coverage carefully, comparing it with all accident and sickness or long-term care insurance coverage you now have, and terminate your present policy only if, after due consideration, you find that purchase of this long-term care coverage is a wise decision.
STATEMENT TO APPLICANT BY AGENT (BROKER OR OTHER REPRESENTATIVE):
 (Use additional sheets, as necessary.)

I have reviewed your current medical or health insurance coverage. I believe the replacement of insurance involved in this transaction materially improves your position. My conclusion has taken

into account the following considerations, which I call to your attention:

1. Health conditions which you may presently have (preexisting conditions), may not be immediately or fully covered under the new policy. This could result in denial or delay in payment of benefits under the new policy, whereas a similar claim might have been payable under your present policy.
2. State law provides that your replacement policy or certificate may not contain new preexisting conditions or probationary periods. The insurer will waive any time periods applicable to preexisting conditions or probationary periods in the new policy (or coverage) for similar benefits to the extent such time was spent (depleted) under the original policy.
3. If you are replacing existing long-term care insurance coverage, you may wish to secure the advice of your present insurer or its agent regarding the proposed replacement of your present policy. This is not only your right, but it is also in your best interest to make sure you understand all the relevant factors involved in replacing your present coverage.
4. If, after due consideration, you still wish to terminate your present policy and replace it with new coverage, be certain to truthfully and completely answer all questions on the application concerning your medical health history. Failure to include all material medical information on an application may provide a basis for the company to deny any future claims and to refund your premium as though your policy had never been in force. After the application has been completed and before you sign it, reread it carefully to be certain that all information has been properly recorded.

 (Signature of Agent, Broker or
 Other Representative)

(Typed Name and Address of
 Agent or Broker)

The above "Notice to Applicant" was delivered to me on:

 (Date)

 (Applicant's Signature)

(e) Direct response solicitations. Insurers using direct response solicitation methods shall deliver a notice regarding replacement of accident and sickness or long-term care coverage to the applicant upon issuance of the policy. The required notice shall be provided in the following form:

NOTICE TO APPLICANT REGARDING
REPLACEMENT OF ACCIDENT AND SICK-
NESS OR LONG-TERM CARE INSURANCE
(Insurance company's name and address)
SAVE THIS NOTICE! IT MAY BE IMPORT-
ANT TO YOU IN THE FUTURE.

According to (your application) (information you have furnished), you intend to lapse or otherwise terminate existing accident and sickness or long-term care insurance and replace it with the long-term care insurance policy delivered herewith issued by (company name) Insurance Company. Your new policy provides 30 days within which you may decide, without cost, whether you desire to keep the policy. For your own information and protection, you should be aware of and seriously consider certain factors which may affect the insurance protection available to you under the new policy.

You should review this new coverage carefully, comparing it with all accident and sickness or long-term care insurance coverage you now have, and terminate your present policy only if, after due consideration, you find that purchase of this long-term care coverage is a wise decision.

1. Health conditions which you may presently have (preexisting conditions), may not be immediately or fully covered under the new policy. This could result in denial or delay in payment of benefits under the new policy, whereas a similar claim might have been payable under your present policy.
2. State law provides that your replacement policy or certificate may not contain new preexisting conditions or probationary periods. Your insurer will waive any time periods applicable to preexisting conditions or probationary periods in the new policy (or coverage) for similar benefits to the extent such time was spent (depleted) under the original policy.
3. If you are replacing existing long-term care insurance coverage, you may wish to secure the advice of your present insurer or its agent regarding the proposed replacement of your

present policy. This is not only your right, but it is also in your best interest to make sure you understand all the relevant factors involved in replacing your present coverage.

4. (To be included only if the application is attached to the policy.) If, after due consideration, you still wish to terminate your present policy and replace it with new coverage, read the copy of the application attached to your new policy and be sure that all questions are answered fully and correctly. Omissions or misstatements in the application could cause an otherwise valid claim to be denied. Carefully check the application and write to (company name and address) within 30 days if any information is not correct and complete, or if any past medical history has been left out of the application.

(Company Name)

(f) Where replacement is intended, the replacing insurer shall notify, in writing, the existing insurer of the proposed replacement. The existing policy shall be identified by the insurer, name of the insured and policy number or address including zip code. Such notice shall be made within five working days from the date the application is received by the insurer or the date the policy is issued, whichever is sooner.

(g)(1) Every insurer shall maintain records for each agent of the agent's amount of replacement sales as a percent of the agent's total annual sales and the amount of lapses of long-term care insurance policies sold by the agent as a percent of the agent's total annual sales.

(2) Each insurer shall, by June 30 of each year, report to the commissioner the names and addresses of the ten percent of its agents with the greatest percentages of lapses and replacements as measured by subsection (1) above.

(3) Reported replacement and lapse rates do not alone constitute a violation of insurance laws or imply wrongdoing. The reports are for the purpose of monitoring agent activities regarding the sale of long-term care insurance.

(4) Every insurer shall, by June 30 of each year, report to the commissioner the number of lapsed policies as a percent of its total number of policies sold and as a percent of its total number of policies in force as of the end of the preceding calendar year.

(5) Every insurer shall, by June 30 of each year, report to the commissioner the number of replacement policies sold as a percent of its total number of policies sold and as a percent of its total number of policies in force as of the preceding calendar year.

(6) For purposes of this section of this regulation, "policy" shall mean only long-term care insurance and "report" means on a statewide basis. (Authorized by K.S.A. 40-103, K.S.A. 1991 Supp. 40-2228; implementing K.S.A. 1991 Supp. 40-2228; effective Jan. 4, 1993.)

40-4-37j. Long-term care insurance; outline of coverage; content; format. (a)(1) An outline of coverage shall be delivered to a prospective applicant for long-term care insurance at the time of initial solicitation. The outline of coverage shall prominently direct the attention of the recipient to such outline of coverage and explain its purpose.

(A) The commissioner shall prescribe a standard format, including style, arrangement, and overall appearance, and the content of the outline of coverage.

(B) In the case of agent solicitations, the agent shall deliver the outline of coverage prior to the presentation of an application or enrollment form.

(C) In the case of direct response solicitations, the outline of coverage shall be presented in conjunction with any application or enrollment form.

(2) The outline of coverage shall display prominently by type, stamp or other appropriate means, on the first page of the outline of coverage and policy the following:

"Notice to buyer: This policy may not cover all of the costs associated with long-term care incurred by the buyer during the period of coverage. The buyer is advised to review carefully all policy limitations."

(3) The outline of coverage shall include:

(A) A description of the principal benefits and coverage provided in the policy;

(B) a statement of the principal exclusions, reductions, and limitations contained in the policy;

(C) a statement of the terms under which the policy or certificate, or both, may be continued in force or discontinued, including any reservation in the policy of a right to change premium. Continuation or conversion provisions of group coverage shall be specifically described;

(D) a statement that the outline of coverage is a summary only, not a contract of insurance, and

that the policy or group master policy contains governing contractual provisions;

(E) a description of the terms under which the policy or certificate may be returned and premium refunded;

(F) a brief description of the relationship of cost of care and benefits;

(G) a graphic comparison of the benefit levels of a policy that increases benefits over the policy period with a policy that does not increase benefits. The graphic comparison shall show benefit levels over at least a 20 year period; and

(H) any expected premium increases or additional premiums to pay for automatic or optional benefit increases.

(b)(1) A long-term care insurance shopper's guide in the format developed by the national association of insurance commissioners, or a guide developed or approved by the commissioner, shall be provided to all prospective applicants of a long-term care insurance policy or certificate.

(A) In the case of agent solicitations, an agent must deliver the shopper's guide prior to the presentation of an application or enrollment form.

(B) In the case of direct response solicitations, the shopper's guide must be presented in conjunction with any application or enrollment form.

(2) Life insurance policies or riders containing accelerated long-term care benefits are not required to furnish the above referenced guide, but shall furnish the policy summary required under K.A.R. 40-2-20. (Authorized by K.S.A. 40-103, K.S.A. 1991 Supp. 40-2228; implementing K.S.A. 1991 Supp. 40-2228; effective Jan. 4, 1993.)

40-4-37k. Long-term care insurance; minimum loss ratios. (a) Long-term care insurance policies shall return the following to policyholders in the form of aggregate benefits under the policy:

(1) At least 65 percent of the aggregate amount of premiums earned in the case of group policies; and

(2) at least 60 percent of the aggregate amount of premiums earned in the case of individual policies.

(b) Subsection (a) of this regulation shall not apply to the following policies:

(1) Any long-term care policy or certificate issued in this state on or after January 1, 2003; and

(2) certificates issued on or after January 1, 2003 under group long-term care insurance policy as defined in K.S.A. 40-2227(e), and amendments thereto, if the policy was in force at the

time this amended regulation became effective. Subsection (a) of this regulation shall not apply to the policy anniversary following 12 months after January 1, 2003.

(c) Insurers shall determine aggregate benefits returned under the policy on the basis of incurred claims experience and earned premiums for the entire period for which rates are computed, in accordance with accepted actuarial principles and practices.

(d) Long-term care benefits provided through the acceleration of the death benefit under a life insurance policy or annuity, if the payment of the long-term care benefits does not result in the decrease of the total amount of benefits payable under the policy, shall be subject to the following requirements in lieu of subsection (a), (b), or (c) of this regulation:

(1) The separately identifiable charge for the acceleration benefit shall not be excessive and shall meet either of the following criteria:

- (A) Be a permanent and guaranteed charge; or
- (B) have a guaranteed maximum cost that can never be increased.

(2) At the time of policy form filing, the insurer shall file a cost disclosure illustration with the insurance department.

(A) The cost disclosure illustration shall state separately the charges for the life insurance policy and for the accelerated death benefit provision provided for either in the policy or by rider, and the method of application of those charges.

(B) If the separately identifiable charge is illustrated as a percentage, the value or policy feature against which the percentage is to be applied shall also be disclosed.

(C) The cost disclosure illustration shall clearly state whether the accelerated death benefit provision is offered either as a permanent and guaranteed charge or with a guaranteed maximum cost. In policies offering a guaranteed maximum cost, the exact figure of the guaranteed maximum cost shall be clearly and unambiguously disclosed.

(3) At the time of delivery of the outline of coverage, a cost disclosure illustration identical to or substantially similar to that filed with the insurance department shall be delivered to the prospective applicant for review. The cost disclosure illustration shall include all the information required to be filed with the insurance department as set out in paragraphs (2)(A) and (B) of this subsection.

(4) The provisions of paragraphs (1)(A) and (B) shall not apply to and shall have no effect upon the

underlying mortality costs and calculations that make up the basic premium for the life insurance policy itself.

(5) In the case of a single premium life insurance policy or annuity providing long-term care benefits via acceleration of the death benefit, the loss ratio requirements of this regulation shall be satisfied if the following conditions are met:

(A) Long-term care benefits are not separately terminated.

(B) At the time of policy form filing, the insurer files a benefit-to-premium illustration, relating cash values to premiums over a 15-year period of time, that is certified as appropriate by a member of the American academy of actuaries using the following assumptions:

(i) Mortality costs according to the appropriate percentage of the 1975-80 select and ultimate mortality tables as annually determined by the society of actuaries;

(ii) cash values calculated using minimum guaranteed interest and maximum total mortality and morbidity charges;

(iii) minimum reserves; and

(iv) lapses as follows:

1st year	20%
2nd year.....	15%
3rd year	13%
4th year.....	10%
5th year.....	8%
6th year through 14 th year.....	7%
15th year.....	100%

The resulting benefit-to-premium ratio shall, in the aggregate, not be less than 75% when based upon an expected distribution of insureds for the age range for which the policy is issued.

(6) At the time of delivery of the single premium life policy or annuity, the insurer shall provide the policyholder with a cost disclosure setting out the year-by-year cash value increases on both a guaranteed and projected basis using current assumptions, for at least 20 years if any, and the total gross premium. The illustration shall include the following, clearly and unambiguously:

(A) A statement that specifies that the long-term care accelerated death benefit is an integral part of the policy or annuity and shall not be separately terminated;

(B) a statement of the maximum total charge for mortality and long-term care accelerated death benefit and the method of application of that charge; and

(C) a statement that the maximum total charge includes a charge for a long-term care accelerated death benefit. (Authorized by K.S.A. 40-103, K.S.A. 40-2228; implementing K.S.A. 40-2228; effective Jan. 4, 1993; amended Aug. 16, 2002.)

40-4-37L. Long-term care insurance; applications. All applications for long-term care insurance policies or certificates, except those which are guaranteed issue, shall contain clear and unambiguous questions designed to ascertain the health condition of the applicant.

(a)(1) If an application for long-term care insurance contains a question which asks whether the applicant has had medication prescribed by a physician, it must also ask the applicant to list the medication that has been prescribed.

(2) If the medications listed in such application were known by the insurer, or should have been known at the time of application, to be directly related to a medical condition for which coverage would otherwise be denied, then the policy or certificate shall not be rescinded for that condition.

(3) Application forms shall include the following questions designed to elicit information as to whether, as of the date of the application, the applicant has another long-term care insurance policy or certificate in force or whether a long-term care policy or certificate is intended to replace any other accident and sickness or long-term care policy or certificate presently in force. A supplementary application or other form to be signed by the applicant and agent, except where the coverage is sold without an agent, containing such questions may be used. With regard to a replacement policy issued to a group defined by K.S.A. 1991 Supp. 40-2209(3), if the certificateholder has been notified of the replacement, the following questions may be modified only to the extent necessary to elicit information about health or long-term care insurance policies other than the group policy being replaced.

(A) Do you have another long-term care insurance policy or certificate in force (including health care service contract, health maintenance organization contract)?

(B) Did you have another long-term care insurance policy or certificate in force during the last 12 months?

(i) If so, with which company?

(ii) If that policy lapsed, when did it lapse?

(C) Are you covered by medicaid?

(D) Do you intend to replace any of your med-

ical or health insurance coverage with this policy (certificate)?

(b) Agents shall list any other health insurance policies they have sold to the applicant:

(1) Which are still in force; and

(2) in the past five years which are no longer in force.

(c) Except for policies or certificates which are guaranteed issue:

(1) The following language shall be set out conspicuously and in close conjunction with the applicant's signature block on an application for a long-term care insurance policy or certificate:

Caution: If your answers on this application are incorrect or untrue, (company) has the right to deny benefits or rescind your policy.

(2) The following language, or language substantially similar to the following, shall be set out conspicuously on the long-term care insurance policy or certificate at the time of delivery:

Caution: The issuance of this long-term care insurance (policy) (certificate) is based upon your responses to the questions on your application. A copy of your (application) (enrollment form) (is enclosed) (was retained by you when you applied). If your answers are incorrect or untrue, the company has the right to deny benefits or rescind your policy. The best time to clear up any questions is now, before a claim arises! If, for any reason, any of your answers are incorrect, contact the company at this address: (insert address).

(3) Prior to issuance of a long-term care policy or certificate to an applicant age 80 or older, the insurer shall obtain one of the following:

(A) A report of a physical examination;

(B) an assessment of functional capacity;

(C) an attending physician's statement; or

(D) copies of medical records.

(d) A copy of the completed application or enrollment form (whichever is applicable) shall be delivered to the insured no later than at the time of delivery of the policy or certificate unless it was retained by the applicant at the time of application. (Authorized by K.S.A. 40-103, K.S.A. 1991 Supp. 40-2228; implementing K.S.A. 1991 Supp. 40-2228; effective Jan. 4, 1993.)

40-4-37m. Long-term care insurance; rescissions; annual report required. Every insurer or other entity selling or issuing long-term care insurance benefits shall maintain a record of all policy or certificate rescissions, both state and countrywide, except those which the insured voluntarily

effectuated and shall annually furnish this information to the insurance department in the format prescribed by the commissioner. This information shall be provided for each rescission no later than March 1 of the calendar year following the date of rescission. This information shall include:

- (a) Policy form number;
- (b) policy and certificate number;
- (c) name of insured;
- (d) date of policy issuance;
- (e) date each claim is submitted;
- (f) date of rescission; and
- (g) detailed reason for rescission. (Authorized by K.S.A. 40-103, K.S.A. 1991 Supp. 40-2228; implementing K.S.A. 1991 Supp. 40-2228; effective Jan. 4, 1993.)

40-4-37n. Long-term care insurance; home health or community care services.

(a) A long-term care insurance policy or certificate, if it provides for home health or community care services, shall provide total home health or community care coverage that is a dollar amount equivalent to at least one-half of one year's coverage available for nursing home benefits under the policy or certificate at the time covered home health or community care services are being received. This requirement shall not apply to policies or certificates issued to residents of continuing care retirement communities.

(b) Home health care coverage may be applied to the non-home health care benefits provided in the policy or certificate when determining maximum coverage under the terms of the policy or certificate. (Authorized by K.S.A. 40-103, K.S.A. 1991 Supp. 40-2228; implementing K.S.A. 1991 Supp. 40-2228; effective Jan. 4, 1993.)

40-4-37o. Long-term care insurance; inflation protection; increased benefits; offer required.

(a) No insurer may offer a long-term care insurance policy unless the insurer also offers to the policyholder, in addition to any other inflation protection, the option to purchase a policy that provides for benefit levels to increase with benefit maximums or reasonable durations which are meaningful to account for reasonably anticipated increases in the costs of long-term care services covered by the policy. Insurers shall offer to each policyholder, at the time of purchase, the option to purchase a policy with an inflation protection feature no less favorable than one of the following:

(1) Benefit levels increase annually in a manner so that the increases are compounded annually at a rate not less than five percent;

(2) the insured individual is guaranteed the right to periodically increase benefit levels, without providing evidence of insurability or health status, so long as the option for the previous period has not been declined. The amount of the additional benefit shall be no less than the difference between the existing policy benefit and that benefit compounded annually at a rate of at least five percent for the period beginning with the purchase of the existing benefit and extending until the year in which the offer is made; or

(3) a specified percentage of actual or reasonable charges are covered and a maximum specified indemnity amount or limit is not included.

(b) Where the policy is issued to a group, the required offer in subsection (a) above shall be made to the group policyholder and each proposed certificateholder.

(c) The offer in subsection (a) above shall not be required for life insurance policies or riders containing accelerated long-term care benefits.

(d) Inflation protection benefit increases under a policy which contains such benefits shall continue without regard to an insured's age, claim status or claim history, or the length of time the person has been insured under the policy.

(e) An offer of inflation protection which provides for automatic benefit increases shall include an offer of a premium which the insurer expects to remain constant. Such offer shall disclose in a conspicuous manner that the premium may change in the future unless the premium is guaranteed to remain constant.

(f)(1) Inflation protection as provided in subsection (a)(1) of this section shall be included in a long-term care insurance policy unless an insurer obtains a rejection of inflation protection signed by the policyholder as required in this subsection.

(2) The rejection of inflation protection shall be considered a part of the application and shall state:

I have reviewed the outline of coverage and the graph or graphs contained therein that compare the benefits and premiums of this policy with and without periodic increases in benefits to provide inflation protection. Specifically, I have reviewed the plans offered by the insurer, and I reject inflation protection.

(Authorized by K.S.A. 40-103, K.S.A. 1991 Supp. 40-2228; implementing K.S.A. 1991 Supp. 40-2228; effective Jan. 4, 1993.)

40-4-37p. Long-term care insurance; advertisements; marketing. (a) Every insurer, health care service plan or other entity providing long-term care insurance or benefits in this state shall provide a copy of any long-term care insurance advertisement intended for use in this state, whether through written, radio or television medium, to the commissioner of insurance of this state for review or approval by the commissioner to the extent it may be required under state law. In addition, all advertisements shall be retained by the insurer, health care service plan or other entity for at least three years from the date the advertisement was first used.

(b) The commissioner may exempt from these requirements any advertising form or material, when in the commissioner's opinion, this requirement may not be reasonably applied.

(c)(1) Every insurer, health care service plan or other entity marketing long-term care insurance coverage in this state, directly or through its producers, shall:

(A) Establish marketing procedures to assure that any comparison of policies by its agents or other producers will be fair and accurate;

(B) establish marketing procedures to assure excessive insurance is not sold or issued;

(C) inquire and otherwise make every reasonable effort to identify whether a prospective applicant or enrollee for long-term care insurance already has accident and sickness or long-term care insurance and the types and amounts of any such insurance;

(D) establish auditable procedures for verifying compliance with this subsection (1); and

(E) provide written notice to the prospective policyholder and certificateholder at solicitation that a senior insurance counselling, senior citizen seminars and other information services programs are available through the Kansas Department on Aging and Kansas Insurance Department and the address and telephone number of such agencies.

(2) In addition to the practices prohibited in K.S.A. 1991 Supp. 40-2404, the following acts and practices are prohibited:

(A) Twisting. Twisting is knowingly making any misleading representation or incomplete or fraudulent comparison of any insurance policies or in-

surers for the purpose of inducing, or tending to induce, any person to lapse, forfeit, surrender, terminate, retain, pledge, assign, borrow on or convert any insurance policy or to take out a policy of insurance with another insurer.

(B) High pressure tactics. High pressure tactics include employing any method of marketing having the effect of or tending to induce the purchase of insurance through force, fright, threat, whether explicit or implied, or undue pressure to purchase or recommend the purchase of insurance.

(C) Cold lead advertising. Cold lead advertising is making use directly or indirectly of any method of marketing which fails to disclose in a conspicuous manner that a purpose of the method of marketing is solicitation of insurance and that contact will be made by an insurance agent or insurance company. (Authorized by K.S.A. 40-103, K.S.A. 1991 Supp. 40-2228; implementing K.S.A. 1991 Supp. 40-2228; effective Jan. 4, 1993.)

40-4-37q. Initial filing requirements. (a) This regulation shall apply as follows:

(1) To any long-term care policy issued in this state on or after January 1, 2003; or

(2) for certificates issued on or after January 1, 2003 under a group long-term care insurance policy as defined in K.S.A. 40-2227(e), and amendments thereto, which policy was in force at the time this regulation became effective, on the policy anniversary following 12 months after January 1, 2003.

(b)(1) Each insurer shall provide the following information and, as required, the information specified in paragraph (b)(2)(A), (B), or (C) to the commissioner 30 days before making a long-term care insurance form available for sale:

(A) A copy of the disclosure documents required in K.A.R. 40-4-37s; and

(B) an actuarial certification containing the following:

(i) A statement that the initial premium rate schedule is sufficient to cover anticipated costs under moderately adverse experience and that the premium rate schedule is reasonably expected to be sustainable over the life of the form with no future premium increases anticipated;

(ii) a statement that the policy design and coverage provided have been reviewed and taken into consideration;

(iii) a statement that the underwriting and claims adjudication processes have been reviewed and taken into consideration; and

(iv) a statement that the premium rate schedule is not less than the premium rate schedule for existing similar policy forms also available from the insurer except for reasonable differences attributable to benefits or a comparison of the premium schedules for similar policy forms that are currently available from the insurer with an explanation of the differences.

(2) In addition to providing the information specified in paragraph (b)(1), each insurer shall also furnish information that provides a complete description of the basis for contract reserves that are anticipated to be held under the form, which shall include the information specified in paragraph (b)(2)(A), (B), or (C):

(A)(i) Sufficient detail or sample calculations provided so as to have a complete depiction of the reserve amounts to be held;

(ii) a statement that the assumptions used for reserves contain reasonable margins for adverse experience;

(iii) a statement that the net valuation premium for renewal years does not increase, except for attained-age rating where permitted; and

(iv) a statement that the difference between the gross premium and the net valuation premium for renewal years is sufficient to cover expected renewal expenses or, if such a statement cannot be made, a complete description of the situations in which this does not occur;

(B) if the insurer does not provide the statement required in paragraph (b)(2)(A)(iv), an aggregate distribution of anticipated issues, if the underlying gross premiums maintain a reasonably consistent relationship; or

(C) if the insurer does not provide the information required in either paragraph (b)(2)(A)(iv) or paragraph (b)(2)(B), and if the gross premiums for certain age groups appear to be inconsistent with this requirement, a demonstration under subsection (c) of this regulation, based on standard age distribution as may be requested by the commissioner.

(c) An actuarial demonstration that benefits are reasonable in relation to premiums and that shall include one of the following, or both, may be requested by the commissioner:

(1) Premium and claim experience on similar policy forms, adjusted for any premium or benefit differences; or

(2) relevant and credible data from other studies.

(d) If the commissioner asks for additional information under subsection (c) of this regulation, the time period specified in subsection (a) of this

regulation shall not include the period during which the insurer is preparing the requested information. (Authorized by K.S.A. 40-103 and K.S.A. 40-2228; implementing K.S.A. 40-2228; effective Aug. 16, 2002.)

40-4-37r. Long-term care insurance; non-duplication provisions. A long-term care policy may contain non-duplication of coverage provisions consistent with Kansas insurance statutes, administrative regulations or which have been specifically approved by the commissioner. (Authorized by K.S.A. 40-103, K.S.A. 1991 Supp. 40-2228; implementing K.S.A. 1991 Supp. 40-2228; effective Jan. 4, 1993.)

40-4-37s. Long-term care insurance; required disclosure of rating practices to consumers. (a) Except as provided in subsection (b) of this regulation, this regulation shall apply to any long-term care policy or certificate issued in this state six or more months after the adoption of this regulation.

(b) For certificates issued on and after the effective date of this regulation under a group long-term care insurance policy as defined in K.S.A. 40-2227(e) and amendments thereto, which policy was in force at the time this regulation became effective, the provisions of this regulation shall apply on the policy anniversary following the date that is 12 months after the adoption of this regulation.

(c) Other than for policies for which no applicable premium rate or rate schedule increases can be made or for which the method of application does not allow for delivery at the time of application or enrollment, each insurer shall provide all the following information to the applicant at the time of application or enrollment:

(1) A statement that the policy may be subject to rate increases in the future;

(2) an explanation of potential future premium rate revisions, and the policyholder's or certificate holder's option in the event of a premium rate revision;

(3) the premium rate or rate schedules applicable to the applicant that will be in effect until a request is made for an increase;

(4) a general explanation for applying premium rate or rate schedule adjustments that shall include the following:

(A) A description of when premium rate or rate schedule adjustments will be effective, including the next anniversary date, next billing date; and

(B) the right to a revised premium rate or rate schedule as specified in paragraph (c)(2) of this regulation if the premium rate or rate schedule is changed;

(5) information regarding each premium rate increase on this policy form or similar policy forms over the past 10 years for this state or any other state that, at a minimum, identifies the following:

(A) The policy forms for which premium rates have been increased;

(B) the calendar years when the form was available for purchase; and

(C) the amount or percent of each increase. The percentage may be expressed as a percentage of the premium rate before the increase, and may also be expressed as minimum and maximum percentages if the rate increase is variable by rating characteristics.

(d)(1) The insurer may, in a fair manner, provide additional explanatory information related to rate increases.

(2) Each insurer shall have the right to exclude from the disclosure premium rate increases that apply only to blocks of business acquired from other nonaffiliated insurers or the long-term care policies acquired from other nonaffiliated insurers if those increases occurred before the acquisition.

(3) If an acquiring insurer files for a rate increase on a long-term care policy form acquired from nonaffiliated insurers or a block of policy forms acquired from nonaffiliated insurers on or before the later of the effective date of this regulation, or the end of a 24-month period following the acquisition of the block or policies, the acquiring insurer may exclude that rate increase from the disclosure. However, the nonaffiliated selling company shall include the disclosure of that rate increase in accordance with paragraph (c)(5) of this regulation.

(4) If the acquiring insurer described in paragraph (d)(3) of this regulation files for a subsequent rate increase, even within the 24-month period, on the same policy form acquired from nonaffiliated insurers or block of policy forms acquired from nonaffiliated insurers referenced in paragraph (d)(3) of this regulation, the acquiring insurer shall make all disclosures required by paragraph (c)(5) of this regulation, including disclosure of the earlier rate increase referenced in paragraph (d)(3) of this regulation.

(e) Each applicant shall sign an acknowledgment at the time of application, unless the method of application does not allow for signature at

that time, that the insurer made the disclosures required under paragraphs (c)(1) and (5) of this regulation. If due to the method of application the applicant cannot sign an acknowledgment at the time of application, the applicant shall sign no later than at the time of delivery of the policy or certificate.

(f) Each insurer shall provide notice of an upcoming premium rate schedule increase to all policyholders or certificate holders, if applicable, at least 45 days before the implementation of the premium rate increase by the insurer. The notice shall include the information required by subsection (c) of this regulation when the rate increase is implemented.

(g) Each insurer shall use the forms found in appendices B and F of the national association of insurance commissioners' "long-term care insurance model regulation," June 13, 2000 edition, which are hereby adopted by reference, to comply with the requirements of subsections (a), (b), and (c) of this regulation. (Authorized by K.S.A. 40-103 and K.S.A. 40-2228; implementing K.S.A. 40-2228; effective May 31, 2002.)

40-4-37t. Premium rate schedule increases. (a) This regulation shall apply as follows:

(1) Except as provided in paragraph (a)(2) of this regulation, to any long-term care policy or certificate issued in this state on or after January 1, 2003; or

(2) for certificates issued on or after January 1, 2003 under a group long-term care insurance policy as defined in K.S.A. 40-2227(e) and amendments thereto, which policy was in force when this regulation became effective, on the policy anniversary following 12 months after January 1, 2003.

(b) Each insurer shall provide notice of a pending premium rate schedule increase, including an exceptional increase, to the commissioner at least 30 days before the notice to the policyholders and shall include the following:

(1) Information required by K.A.R. 40-4-37s;

(2) certification of both of the following by a qualified actuary:

(A) If the premium rate schedule increase is implemented and the underlying assumptions, which reflect moderately adverse conditions, are realized, no further premium rate schedule increases are anticipated; and

(B) the premium rate filing is in compliance with the provisions of this regulation;

(3) an actuarial memorandum justifying the rate schedule change request that includes the following:

(A) Lifetime projections of earned premiums and incurred claims based on the filed premium rate schedule increase and the method and assumptions used in determining the projected values, including reflection of any assumptions that deviate from those used for pricing other forms currently available for sale:

(i) Annual values for the five years preceding and the three years following the valuation date shall be provided separately;

(ii) the projections shall include the development of the lifetime loss ratio, unless the rate increase is an exceptional increase;

(iii) the projections shall demonstrate compliance with subsection (c); and

(iv) for exceptional increases, the projected experience shall be limited to the increases in claims expenses attributable to the approved reasons for the exceptional increase. If the commissioner determines as provided in K.A.R. 40-4-37(c)(11) that offsets may exist, the insurer shall use appropriate net projected experience;

(B) disclosure of how reserves have been incorporated in this rate increase whenever the rate increase will trigger contingent benefit upon lapse;

(C) disclosure of the analysis performed to determine why a rate adjustment is necessary, which pricing assumptions were not realized and why, and what other actions taken by the company have been relied on by the actuary;

(D) a statement that policy design, underwriting, and claims adjudication practices may have been taken into consideration; and

(E) if it is necessary to maintain consistent premium rates for new certificates and certificates receiving a rate increase, composite rates filed by the insurer reflecting projections of new certificates;

(4) a statement that renewal premium rate schedules are not greater than new business premium rate schedules except for differences attributable to benefits, unless sufficient justification is provided to the commissioner; and

(5) sufficient information for review before use of the premium rate schedule increase by the commissioner.

(c) All premium rate schedules shall be determined in accordance with the following requirements:

(1) Exceptional increases shall provide that 70 percent of the present value of projected addi-

tional premiums from the exceptional increase will be returned to policyholders in benefits.

(2) Premium rate schedule increases shall be calculated so that the sum of the accumulated value of incurred claims without the inclusion of active life reserves, and the present value of future projected incurred claims, without the inclusion of active life reserves, will not be less than the sum of the following:

(A) The accumulated value of the initial earned premium times 58 percent;

(B) 85 percent of the accumulated value of prior premium rate schedule increases on an earned basis;

(C) the present value of future projected initial earned premiums times 58 percent; and

(D) 85 percent of the present value of future projected premiums not included in paragraph (c)(2)(C) of this regulation on an earned basis;

(3) If a policy form has both exceptional and other increases, the values in paragraphs (c)(2)(B) and (D) of this regulation shall also include 70 percent for exceptional rate increase amounts.

(4) All present and accumulated values used to determine rate increases shall use the maximum valuation interest rate for contract reserves as specified in K.S.A. 40-409, and amendments thereto. The actuary shall disclose as part of the actuarial memorandum the use of any appropriate averages.

(d) For each rate increase that is implemented, the insurer shall file before use for review by the commissioner updated projections, as defined in paragraph (b)(3)(A) of this regulation, annually for the next three years and shall include a comparison of actual results to projected values. The period may be extended by the commissioner to greater than three years if actual results are not consistent with projected values for prior projections. For group insurance policies that meet the conditions in subsection (k) of this regulation, the projections required by subsection (d) shall be provided to the policyholder in lieu of filing with the commissioner.

(e) If any premium rate in the revised premium rate schedule is greater than 200 percent of the comparable rate in the initial premium schedule, lifetime projections, as defined in paragraph (b)(3)(A) of this regulation, shall be filed for review by the commissioner before use every five years following the end of the required period in subsection (d) of this regulation. For group insurance policies that meet the conditions in subsection (k)

of this regulation, the projections required by subsection (e) shall be provided to the policyholder in lieu of filing with the commissioner.

(f)(1) If the commissioner has determined that the actual experience following a rate increase does not adequately match the projected experience and that the current projections under moderately adverse conditions demonstrate that incurred claims will not exceed the proportions of premiums specified in subsection (c) of this regulation, the insurer may be required by the commissioner to implement either of the following:

(A) Premium rate schedule adjustments; or

(B) other measures to reduce the difference between the projected and actual experience.

(2) In determining whether the actual experience adequately matches the projected experience, consideration shall be given to paragraph (b)(3)(E) of this regulation, if applicable.

(g) If the majority of the policies or certificates to which the increase is applicable are eligible for the contingent benefit upon lapse, the insurer shall file the following:

(1) A plan, subject to commissioner approval, for improved administration or claims processing designed to eliminate the potential for further deterioration of the policy form requiring further premium rate increases, or both, or to demonstrate that appropriate administration and claims processing have been implemented or are in effect. If this plan fails to eliminate the potential for further deterioration of the policy form, the conditions in subsection (h) of this regulation may be imposed by the commissioner; and

(2) the original anticipated lifetime loss ratio and the premium rate schedule increase that would have been calculated according to subsection (c) of this regulation if the greater of the original anticipated lifetime loss ratio or 58 percent had been used in the calculations described in paragraphs (c)(2)(A) and (C) of this regulation.

(h)(1) For a rate increase filing and all policies included in the filing, the projected lapse rates and past lapse rates during the 12 months following each increase shall be reviewed by the commissioner to determine if a significant adverse lapsation has occurred or is anticipated and meets the following criteria:

(A) The rate increase is not the first rate increase requested for the specific policy form or forms;

(B) the rate increase is not an exceptional increase; and

(C) the majority of the policies or certificates to which the increase is applicable are eligible for the contingent benefits upon lapse.

(2) If a significant adverse lapsation has occurred, is anticipated in the filing, or is evidenced in the actual results as presented in the updated projections provided by the insurer following the requested rate increase, a determination that a rate spiral exists may be made by the commissioner. Following the determination that a rate spiral exists, the insurer may be required by the commissioner to offer, without underwriting, to all insureds subject to the rate increase the option to replace existing coverage with one or more reasonably comparable products being offered by the insurer or its affiliates.

(A) The offer shall meet the following conditions:

(i) Be subject to the approval of the commissioner;

(ii) be based on actuarially sound principles, but not be based on attained age; and

(iii) provide that maximum benefits under any new policy accepted by an insured shall be reduced by comparable benefits already paid under the existing policy.

(B) The insurer shall maintain the experience of all the replacement insureds separate from the experience of insureds originally issued the policy forms. In the event of a request for a rate increase on the policy form, the rate increase shall be limited to the lesser of the following:

(i) The maximum rate increase determined based on the combined experience; or

(ii) the maximum rate increase determined based only on the experience of the insureds originally issued the form plus 10 percent.

(i) If the commissioner determines that the insurer has exhibited a persistent practice of filing inadequate initial premium rates for long-term care insurance, in addition to the provisions of subsection (h) of this regulation, the insurer may be prohibited by the commissioner from either of the following:

(1) Filing and marketing comparable coverage for a period of up to five years; or

(2) offering all other similar coverage and limiting marketing of new applications to the products subject to recent premium rate schedule increases.

(j) Subsections (a) through (i) of this regulation shall not apply to policies with the long-term care benefits provided by the policy age incidental as defined in K.A.R. 40-4-37 (c)(12), if the policy complies with all of the following provisions:

(1) The interest credited internally to determine cash value accumulations, including long-term care, if any, is guaranteed not to be less than the minimum guaranteed interest rate for cash value accumulations without long-term care set forth in the policy.

(2) The portion of the policy that provides insurance benefits other than long-term care coverage meets the nonforfeiture requirement as applicable in any of the following:

(A) K.S.A. 40-428, and amendments thereto;

(B) K.S.A. 40-428a, and amendments thereto; and

(C) K.A.R. 40-15-1.

(3) The policy meets the disclosure requirements of K.S.A. 40-2228(g), and amendments thereto, and K.A.R. 40-2-25.

(4) The portion of the policy that provides insurance benefits other than long-term care coverage meets the requirements, as applicable, in the following:

(A) Policy illustrations as required by K.A.R. 40-2-25;

(B) disclosure requirements in K.A.R. 40-2-25; and

(C) disclosure requirements in K.A.R. 40-15-1.

(5) An actuarial memorandum is filed with the insurance department that includes the following:

(A) A description of the basis on which the long-term care rates were determined;

(B) a description of the basis for the reserves;

(C) a summary of the type of policy, benefits, renewability, general marketing method, and limits on ages of issuance;

(D) a description and a table of each actuarial assumption used. For expenses, each insurer shall include the percent of premium dollars per policy and dollars per unit of benefits, if any;

(E) a description and a table of the anticipated policy reserves and additional reserves to be held in each future year for active lives;

(F) the estimated average premium per policy and the average issue age;

(G) a statement as to whether underwriting is performed at the time of application. The statement shall indicate whether underwriting is used, and if used, the statement shall include a description of the type or types of underwriting used, including medical underwriting and functional assessment underwriting. Concerning a group policy, the statement shall indicate whether the enrollee or any dependent will be underwritten and when underwriting will occur; and

(H) a description of the effect of the long-term care policy provisions on the required premiums, nonforfeiture values, and reserves on the underlying insurance policy, both for active lives and those in long-term care claim status.

(k) Subsections (f) and (h) of this regulation shall not apply to group insurance policies as defined in K.S.A. 40-2209(f)(1) through (6), and amendments thereto, if either of the following conditions is met:

(1) The policies insure 250 or more persons, and the policyholder has 5,000 or more eligible employees of a single employer.

(2) The policyholder, and not the certificate holder, pays a material portion of the premium, which shall not be less than 20 percent of the total premium for the group in the calendar year before the year a rate increase is filed. (Authorized by K.S.A. 40-103 and K.S.A. 40-2228; implementing K.S.A. 40-2228; effective Aug. 16, 2002.)

40-4-37u. Contingent-benefit-upon-lapse requirement. (a) This regulation shall not apply to life insurance policies or riders containing accelerated long-term care benefits.

(b) Each long-term care policy or certificate issued in this state shall offer a nonforfeiture benefit subject to the following requirements:

(1) A policy or certificate offered with nonforfeiture benefits shall have coverage elements, eligibility, benefit triggers, and benefit lengths that are the same as coverage to be issued without nonforfeiture benefits. The nonforfeiture benefit included in the offer shall be the benefits described in subsection (f) of this regulation; and

(2) the offer shall be in writing if the nonforfeiture benefit is not otherwise described in the outline of coverage or other materials given to the prospective policyholder.

(c) Each long-term care policy or certificate issued in this state after the effective date of this regulation shall provide contingent benefit upon lapse.

(d) The contingent benefit upon lapse shall be triggered every time an insurer increases the premium rates to a level that results in a cumulative increase of the annual premium equal to or exceeding the percentage of the insured's initial annual premium set forth below based on the insured's issue age, and the policy or certificates lapses within 120 days of the due date of the premium so increased. Unless otherwise required, policyholders and certificate holders shall be no-

tified at least 30 days before the due date of the premium reflecting the rate increase.

Triggers for a Substantial Premium Increase

Issue Age	Percent Increase Over Initial Premium
29 and under	200%
30-34	190%
35-39	170%
40-44	150%
45-49	130%
50-54	110%
55-59	90%
60	70%
61	66%
62	62%
63	58%
64	54%
65	50%
66	48%
67	46%
68	44%
69	42%
70	40%
71	38%
72	36%
73	34%
74	32%
75	30%
76	28%
77	26%
78	24%
79	22%
80	20%
81	19%
82	18%
83	17%
84	16%
85	15%
86	14%
87	13%
88	12%
89	11%
90 and over	10%

(e) On or before the effective date of a substantial premium increase as defined in subsection (d) of this regulation, the insurer shall perform the following:

(1) Offer to reduce policy benefits provided by the current coverage without the requirement of

additional underwriting so that required premium payments are not increased;

(2) offer to convert the coverage to a paid-up status with a shortened benefits period in accordance with the terms of subsection (d) of this regulation. This option may be elected at any time during the 120-day period specified in subsection (d) of this regulation; and

(3) notify the policyholder or certificate holder that a default or lapse at any time during the 120-day period specified in subsection (d) of this regulation shall be deemed to be the election of the offer to convert in subsection (d) of this regulation.

(f) Benefits continued as contingent benefit upon lapse shall be as follows:

(1) For purposes of this subsection, attained age rating shall be defined as the schedule of premiums starting from the issue date that increases age at least one percent per year before or at age 50, and at least three percent per year after age 50.

(2) For purposes of this subsection, the contingent-benefit-upon-lapse benefit shall consist of a shortened benefit period providing paid-up long-term care insurance coverage after lapse. The same benefits, with amounts and frequency in effect at the time of the lapse but not increased thereafter, shall be payable for a qualifying claim, but the lifetime maximum dollars or days of benefits shall be determined as specified in paragraph (f)(3) of this regulation.

(3) The standard contingent-benefit-upon-lapse credit shall be equal to 100% of the sum of all premiums paid, including the premiums paid before any changes in the benefits. The insurer may offer additional shortened benefits period options, if the benefits for each duration equal or exceed the standard contingent-benefit-upon-lapse credit for that duration. However, the minimum contingent-benefit-upon-lapse credit shall not be less than 30 times the daily nursing home benefit at the time of lapse. In either event, the calculation of the contingent-benefit-upon-lapse credit shall be subject to the limitations of subsection (g) of this regulation.

(4) The contingent benefit upon lapse shall be effective during the first three years as well as thereafter.

(5) Notwithstanding paragraph (f)(4) for a policy or certificate with attained age rating, the contingent benefit upon lapse shall begin on the earlier of the following:

(A) The end of the 10th year following the policy or certificate issue date; or

(B) the end of the second year following the date the policy or certificate is no longer subject to attained age rating.

(6) Contingent-benefit-upon-lapse credits may be used for all care and services qualifying for benefits under the terms of the policy or certificate, up to the limits specified in the policy or certificate.

(g) The benefits paid by the insurer while the policy or certificate is in premium-paying status and in the paid-up status shall not exceed the maximum benefits, which would be payable if the policy or certificate had remained in premium-paying status.

(h) There shall be no difference in the minimum contingent-benefit-upon-lapse benefit as required under this regulation for group and individual policies.

(i) The requirements set forth in this regulation shall be effective on and after January 1, 2003 and shall apply as follows:

(1) Except as provided in paragraph (i)(2), the provisions of this regulation shall apply to any long-term care policy issued in this state on or after January 1, 2003; or

(2) for any certificate issued on or after January 1, 2003, under a group long-term care insurance policy as defined in K.S.A. 40-2227(e) and amendments thereto, which policy was in force at the time this proposed regulation became effective, the provisions of this regulation shall not apply.

(j) Premiums charged for a policy or certificate containing a contingent benefit upon lapse shall be subject to the loss ratio requirements of K.A.R. 40-4-37k treating the policy as a whole.

(k) To determine whether contingent-benefit-upon-lapse provisions are triggered under subsection (d) of this regulation, each replacing insurer that purchased or otherwise assumed a block or blocks of long-term care insurance policies from another insurer shall calculate the percentage increase based on the initial annual premium paid by the insurer when the policy was first purchased from the original insurer. (Authorized by K.S.A. 40-103, K.S.A. 40-2228, as amended by L. 2002, ch. 168, sec. 1; implementing K.S.A. 40-2228, as amended by L. 2002, ch. 168, sec. 1; effective Aug. 30, 2002.)

40-4-37v. Long-term care; agent training. (a) On and after July 1, 2010, each licensed insurance agent who is an individual and who sells, solicits, or negotiates a long-term care partnership program policy shall have four hours of

initial training in courses certified by the commissioner of insurance as long-term care partnership program training. For each biennium after obtaining the initial training, each licensed insurance agent who is an individual and who sells, solicits, or negotiates a long-term care partnership program policy shall obtain at least one hour of training in any course certified by the commissioner of insurance as long-term care partnership program training.

(b) The number of hours required by this regulation may be used to meet the requirements of K.S.A. 40-4903, and amendments thereto, if the training is submitted to and approved by the commissioner of insurance for continuing education credit. (Authorized by K.S.A. 2008 Supp. 40-2137; implementing K.S.A. 2008 Supp. 40-2136; effective May 29, 2009.)

40-4-38. Accident and health insurance policies; limited benefits; notice required.

Each limited individual policy of accident and health insurance shall have the words “this is a limited policy—read it carefully” printed on or attached to the face of the policy in not less than 18 point bold face type or in some other manner that distinguishes it from the print otherwise appearing in the policy. For the purposes of this regulation, a limited policy is one that provides long-term care coverage, accident only coverage, specified disease coverage, specific accident coverage, or one that contains unusual exclusions, limitations, reductions or conditions of such a restrictive nature that the benefits under the policy are limited in frequency or in amounts. (Authorized by K.S.A. 40-103 and 40-2404a; implementing K.S.A. 1988 Supp. 40-2404(1); effective May 15, 1989.)

40-4-39. Accident and sickness insurance; specified disease policies; replacement; credit for waiting periods and other time sensitive limitations.

(a) This regulation shall apply to individual specified disease policies as defined in K.A.R. 40-4-32 issued by any insurance company, health maintenance organization, or nonprofit hospital and medical service corporation.

(b) Whenever a specified disease policy issued or issued for delivery in this state replaces or is in addition to an existing specified disease policy, the issuing entity shall give credit for the expired portion of any waiting period, elimination period, probationary period or any similar provision.

(c) The credit required by section (b) shall not exceed that earned by the insured under the replaced or previously existing policy and need not be used to place the insured in a more favorable position than would have been the case had a replacement or additional policy not been issued. (Authorized by K.S.A. 40-103 and 40-2404a; implementing K.S.A. 1988 Supp. 40-2404, as amended by L. 1989, Ch. 139, Sec. 1; effective April 16, 1990.)

40-4-40. Accident and sickness insurance; claim forms; acceptance required. (a) As used in this regulation:

(1) “Commissioner” means the commissioner of insurance, state of Kansas.

(2) “Claim form” shall mean any of the forms devised and promulgated by the commissioner pursuant to K.S.A. 1991 Supp. 40-2253.

(3) “Insurer” means insurance companies, health maintenance organizations, mutual non-profit medical and hospital service corporations, nonprofit dental service corporations, nonprofit optometric service corporations and nonprofit pharmacy service corporations.

(b) Insurers transacting business in this state shall accept and process any claim for benefits designated and submitted on a claim form as defined in subsection (a) of this regulation.

(c) Insurers shall not require health care providers, insureds or other persons to utilize a claim form promulgated by the commissioner if a simplified form will produce the information necessary to process the claim.

(d) This regulation does not prohibit an insurer from requesting additional information from a health care provider when such information is essential to a proper determination of benefit payments.

(e) Claim forms may be modified as necessary to accommodate the transmission and administration of claims by electronic means.

(f) The requirements imposed by this regulation shall take effect and be in force from and after 180 days following the regulation’s effective date. (Authorized by K.S.A. 40-103; implementing K.S.A. 1991 Supp. 40-2253; effective Jan. 4, 1993.)

40-4-41. Utilization review organizations; standards. The Kansas insurance department’s “policy and procedure relating to health utilization management standards,” dated March 22, 2016, is hereby adopted by reference. (Authorized by K.S.A. 40-103, 40-22a04, and 40-22a11;

implementing K.S.A. 40-22a04; effective, T-40-4-26-95, April 26, 1995; effective June 12, 1995; amended June 22, 2001; amended Jan. 12, 2007; amended April 18, 2008; amended July 22, 2016.)

40-4-41a. (Authorized by K.S.A. 40-103 and K.S.A. 1994 Supp. 40-22a01, et seq.; implementing K.S.A. 1994 Supp. 40-22a04; effective, T-40-4-26-95, April 26, 1995; effective June 12, 1995; revoked April 18, 2008.)

40-4-41b. (Authorized by K.S.A. 40-103, 40-22a04, and 40-22a11; implementing K.S.A. 40-22a04; effective, T-40-4-26-95, April 26, 1995; effective June 12, 1995; amended June 22, 2001; amended Jan. 12, 2007; revoked April 18, 2008.)

40-4-41c. (Authorized by K.S.A. 40-103, 40-22a04, and 40-22a11; implementing K.S.A. 40-22a04; effective, T-40-4-26-95, April 26, 1995; effective June 12, 1995; amended May 16, 1997; amended June 22, 2001; amended Jan. 12, 2007; revoked April 18, 2008.)

40-4-41d. (Authorized by K.S.A. 40-103, 40-22a04, and 40-22a11; implementing K.S.A. 40-22a04; effective, T-40-4-26-95, April 26, 1995; effective June 12, 1995; amended June 22, 2001; amended Jan. 12, 2007; revoked April 18, 2008.)

40-4-41e. (Authorized by K.S.A. 40-103, 40-22a04, and 40-22a11; implementing K.S.A. 40-22a04; effective, T-40-4-26-95, April 26, 1995; effective June 12, 1995; amended June 22, 2001; amended Jan. 12, 2007; revoked April 18, 2008.)

40-4-41f. (Authorized by K.S.A. 40-103, 40-22a04, and 40-22a11; implementing K.S.A. 40-22a04; effective, T-40-4-26-95, April 26, 1995; effective June 12, 1995; amended June 22, 2001; amended Jan. 12, 2007; revoked April 18, 2008.)

40-4-41g. (Authorized by K.S.A. 40-103, 40-22a04, and 40-22a11; implementing K.S.A. 40-22a04 and 40-22a11; effective, T-40-4-26-95, April 26, 1995; effective June 12, 1995; amended June 22, 2001; revoked April 18, 2008.)

40-4-41h. (Authorized by K.S.A. 40-103 and K.S.A. 1999 Supp. 40-22a04 and 40-22a11; implementing K.S.A. 1999 Supp. 40-22a04 and 40-22a11; effective June 22, 2001; revoked April 18, 2008.)

40-4-41i. (Authorized by K.S.A. 40-103, 40-22a04, and 40-22a11; implementing K.S.A. 40-

22a04; effective June 22, 2001; amended Jan. 12, 2007; revoked April 18, 2008.)

40-4-41j. (Authorized by K.S.A. 40-103, 40-22a04, and 40-22a11; implementing K.S.A. 40-22a04 and 40-22a09; effective June 22, 2001; amended Jan. 12, 2007; revoked April 18, 2008.)

40-4-42. Definitions; external review. (a) “Authorized representative” means any of the following:

(1) A person to whom the insured has given express written consent to represent the insured in an external review, unless the request for external review involves either of the following conditions:

(A) A situation exists in which the insured has an emergency medical condition and the time frame for standard external review pursuant to K.A.R. 40-4-42d would result in a serious impairment to bodily functions, serious dysfunction of a bodily organ or part, or would place a person’s health in serious jeopardy; or

(B) express written consent cannot be obtained in a timely manner or is impracticable;

(2) a person authorized by law to provide substituted consent for an insured; or

(3) a family member of the insured or the insured’s treating health care professional if the insured is unable to provide consent.

(b) “Business day” is a day that is not a Saturday, Sunday, or legal holiday. A legal holiday is either of the following:

(1) Any day designated as a holiday by the congress of the United States or by the Kansas legislature; or

(2) any additional day that is designated by the governor in a particular year, on which state offices are closed in observance of a holiday or a holiday season.

(c) “Certification” means a determination by an insurer or its designee utilization review organization that an admission, availability of care, continued stay, or other health care service has been reviewed and, based on the information provided, satisfies the insurer’s requirements for medical necessity, appropriateness, health care setting, level of care, and effectiveness.

(d) “Clinical peer” means a physician or other health care professional who holds a nonrestricted license in a state of the United States and, for a physician, who holds a current certification by a recognized American medical specialty board in the same or similar specialty that typically manag-

es the medical condition, procedure, or treatment under review.

(e) “Clinical review criteria” means the written screening procedures, decision abstracts, clinical protocols, and practice guidelines used by an insurer to determine the necessity and appropriateness of health care services.

(f) “Commissioner” means the commissioner of insurance of the state of Kansas.

(g) “Covered benefits” or “benefits” means those health care services to which an insured is entitled under the terms of a health benefit plan.

(h) “Discharge planning” means the formal process for determining, before discharge from a facility, the coordination and management of the care that a patient receives following discharge from a facility.

(i) “Emergency services” means health care items and services furnished or required to evaluate and treat an emergency medical condition as defined in L. 1999, Ch. 162, Sec. 6, and amendments thereto.

(j) “External review” means an independent review of adverse decisions by an entity designated as an external review organization as defined in L. 1999, Ch. 162, Sec. 6, and amendments thereto.

(k) “Facility” means an institution providing health care services or a health care setting, including the following:

(1) Hospitals and other licensed inpatient centers;

(2) ambulatory surgical or treatment centers;

(3) skilled nursing centers;

(4) residential treatment centers;

(5) diagnostic, laboratory, and imaging centers; and

(6) rehabilitation and other therapeutic health settings.

(l) “Final adverse decision” means an adverse decision, as defined in L. 1999, Ch. 162, Sec. 6, and amendments thereto, that has been upheld by an insurer, or its designee utilization review organization, at the completion of the insured’s internal grievance procedures. When the term “adverse decision” is used in K.A.R. 40-4-42 through 40-4-42g, it shall mean the same as “final adverse decision.”

(m) “Health care professional” means a physician or other health care practitioner licensed, accredited, or certified to perform specified health services consistent with state law.

(n) “Health care provider” or “provider” means a health care professional or a facility.

(o) “Health care services” means services for the diagnosis, prevention, treatment, cure, or relief of a health condition, illness, injury, or disease.

(p) “Prospective review” means a utilization review conducted before an admission or a course of treatment.

(q) “Retrospective review” means a utilization review of medical necessity conducted after services have been provided to a patient. This term shall not include the review of a claim that is limited to an evaluation of reimbursement levels, veracity of documentation, accuracy of coding, or adjudication for payment.

(r) “Utilization review” means the evaluation of the necessity, appropriateness, and efficiency of the use of health care services, procedures, and facilities as defined in K.S.A. 40-22a01, et seq., and amendments thereto.

(s) “Utilization review organization” means any entity that conducts a utilization review and determines the certification of an admission, extension of stay, or other health care service, as defined in K.S.A. 40-22a01, et seq., and amendments thereto.

This regulation shall take effect on and after January 1, 2000. (Authorized by K.S.A. 40-103 and L. 1999, Ch. 162, § 9; implementing L. 1999, Ch. 162, §§ 6-9; effective Jan. 7, 2000.)

40-4-42a. Notice requirements of adverse decisions. (a) Each written notification of an adverse decision shall be printed in clear, legible type and in at least 12-point type.

(b) The notice of adverse decision shall explain the principal reason for the adverse decision in language easily understood by a person with an eighth-grade reading level. An insurer may meet this requirement by omitting medical terminology that describes an insured’s medical condition. The notice shall include the legal names of all impacted parties and their telephone numbers and addresses.

(c) The notice of adverse decision shall explain how an insured, as defined in K.S.A. 40-22a13, and amendments thereto, can initiate an external review with the commissioner. If an insured is eligible for an expedited review due to an emergency medical condition as defined in K.S.A. 40-22a13, and amendments thereto, then the notice shall explain how an insured can initiate an expedited review.

(d) The notice shall explain that an insured may file for an external review with the commissioner within 120 days of receipt of a final adverse deci-

sion. The notice shall also list the Kansas insurance department’s toll-free number.

(e) The notice of adverse decision shall describe how the insured can request a written statement of the clinical rationale and clinical review criteria used to make the adverse decision. (Authorized by K.S.A. 40-103 and K.S.A. 2015 Supp. 40-22a16; implementing K.S.A. 2015 Supp. 40-22a14; effective Jan. 7, 2000; amended Sept. 1, 2017.)

40-4-42b. Preliminary determination by commissioner. (a) Within 10 business days after receiving the written request for external review and all necessary information, a preliminary determination shall be completed by the commissioner. The insured, the treating physician or insured’s authorized representative or health care provider acting on behalf of the insured, and the insurer or health insurance plan shall be notified by the commissioner in writing of any of the following:

(1) If the request for external review is complete and has been accepted;

(2) If the request for external review is not complete; or

(3) if the request for external review is not accepted.

(b) Preliminary determination by the commissioner shall be to determine the following:

(1) If the individual is or was an insured in the insurance plan at the time the health care service was requested or, in the case of a retrospective review, was an insured in the insurance plan at the time the health care service was provided;

(2) if the health care service that is the subject for the adverse decision reasonably appears to be a covered service under the insured’s insurance plan;

(3) if the insured has exhausted all available internal review procedures provided by the health insurance plan or insurer, unless the insured has an emergency medical condition as defined in L. 1999, Ch. 162, Sec. 6, and amendments thereto, in which case an expedited procedure is used;

(4) if the insured has received an adverse decision as defined in L. 1999, Ch. 162, Sec. 6(a), and amendments thereto, and K.A.R. 40-4-42(l);

(5) if the insured has not exhausted all internal review procedures, but is entitled to external review pursuant to L. 1999, Ch. 162, Sec. 7, and amendments thereto; and

(6) if the insured has provided all the information and forms required by the commissioner that are necessary to process an external review request.

(c) If the request for external review is accepted, the following steps shall be taken by the commissioner:

(1) Assign an independent review organization to conduct the external review that has been approved pursuant to L. 1999, Ch. 162, Secs. 6 and 8, and amendments thereto, and K.A.R. 40-4-42e; and

(2) notify the insured, the treating physician or health care provider acting on behalf of the insured or the insured's authorized representative, and the insurer or health insurance plan in writing that the request has been accepted for external review and provide the name, address, and telephone number of the external review organization who has been assigned to conduct the external review.

(d) If the request for external review is not complete, the insured or the insured's authorized representative shall be informed by the commissioner of the information or materials needed to make the request complete.

(e) If the request for external review is not accepted, the insured, the treating physician or health care provider acting on behalf of the insured or the insured's authorized representative, and the insurer or health insurance plan shall be informed by the commissioner, in writing, of the reasons for its nonacceptance.

This regulation shall take effect on and after January 1, 2000. (Authorized by K.S.A. 40-103 and L. 1999, Ch. 162, § 9; implementing L. 1999, Ch. 162, §§ 6-9; effective Jan. 7, 2000.)

40-4-42c. Standard external review procedures. (a) At the time a request for external review is accepted pursuant to K.A.R. 40-4-42b, an external review organization that has been approved pursuant to K.S.A. 40-22a15, and amendments thereto, shall be assigned by the commissioner to conduct the external review.

(b) In reaching a decision, the assigned external review organization shall not be bound by any decisions or conclusions reached during the insurer's utilization review process as set forth in K.S.A. 40-22a13 through 40-22a16, and amendments thereto, or the insurer's internal grievance process.

(c) The notice provided in K.A.R. 40-4-42b shall notify both the insurer or its designee utilization review organization and the insured or the insured's authorized representative that any of these persons may, within seven business days after the receipt of the notice, provide the assigned external review organization with additional docu-

ments and information that the person wants the assigned external review organization to consider in making its decision. Within one business day of receipt of any additional documents or information from the insured or the insured's authorized representative, the assigned external review organization shall forward a copy of these documents or this information to the insurer or its designee utilization review organization.

(d) Failure by the insurer to provide the documents and information within the time specified in K.S.A. 40-22a14(g), and amendments thereto, shall not delay the conduct of the external review.

(e) The assigned external review organization shall review all of the information and documents received pursuant to subsection (c) and any other information submitted in writing by the insured or the insured's authorized representative pursuant to K.A.R. 40-4-42b.

(f)(1) Upon receipt of the information required to be forwarded pursuant to subsection (e), the insurer may reconsider its adverse decision that is the subject of the external review.

(2) Reconsideration by the insurer of its adverse decision as provided in paragraph (f)(1) shall not delay or terminate the external review.

(3) The external review may be terminated only if the insurer reconsiders its adverse decision and decides to provide coverage or payment for the health care service that is the subject of the adverse decision.

(4)(A) Immediately upon making the decision to reverse its adverse decision as provided in paragraph (f)(3), the insurer shall notify, in writing, the insured or the insured's authorized representative, the assigned external review organization, and the commissioner of the insurer's decision.

(B) The assigned external review organization shall terminate the external review upon receipt of the notice from the insurer sent pursuant to paragraph (f)(4)(A).

(g) In addition to the documents and information provided pursuant to subsection (c), the assigned external review organization, to the extent that the documents or information is available, shall consider the following in reaching a decision:

(1) The insured's pertinent medical records;

(2) the attending health care professional's recommendation;

(3) consulting reports from appropriate health care professionals and other documents submitted by the insurer, the insured, the insured's authorized representative, or the insured's treating provider;

(4) the terms of coverage under the insured's insurance plan with the insurer, to ensure that the external review organization's decision is not contrary to the terms of coverage under the insured's insurance plan with the insurer;

(5) the most appropriate practice guidelines, including generally accepted practice guidelines, evidence-based practice guidelines, or any other practice guidelines developed by the federal government and national or professional medical societies, boards, and associations; and

(6) any applicable clinical review criteria developed and used by the insurer or its designee utilization review organization.

(h) Within 30 business days after the date of receipt of the request for external review, the assigned external review organization shall provide written notice of its decision to uphold or reverse the adverse decision to the following:

(1) The insured or the insured's authorized representative;

(2) the insurer; and

(3) the commissioner.

(i) The external review organization shall include the following in the notice sent pursuant to subsection (h):

(1) A general description of the reason for the request for external review;

(2) the date the external review organization received the assignment from the commissioner to conduct the external review;

(3) the date the external review was conducted;

(4) the date of the external review organization's decision;

(5) the principal reason or reasons for the external review organization's decision;

(6) the rationale for the external review organization's decision; and

(7) references, as needed, to the evidence or documentation, including the practice guidelines that the external review organization considered in reaching its decision. (Authorized by K.S.A. 40-103 and 40-22a16; implementing K.S.A. 40-22a13, 40-22a14, 40-22a15, and 40-22a16; effective Jan. 7, 2000; amended Feb. 17, 2012.)

40-4-42d. Expedited external review. (a) If the insured has an emergency medical condition, as defined in L. 1999, Ch. 162, Sec. 6, and amendments thereto, and receives an adverse decision involving that medical condition, the insured or the insured's authorized representative may make a written request for an expedited

review with the commissioner at the time the insured receives the adverse decision.

(b) At the time the commissioner receives a request for an expedited external review, a preliminary determination shall immediately be completed by the commissioner to determine the following:

(1) If the individual is or was an insured in the insurance plan at the time the health care service was requested; and

(2) if the health care service that is the subject of the adverse decision reasonably appears to be a covered service under the insured's health insurance plan.

(c) At the time the commissioner completes the preliminary determination as provided in subsection (b) of this regulation, the following actions shall immediately be taken by the commissioner:

(1) Assign an external review organization that has been approved pursuant to L. 1999, Ch. 162, Secs. 6 and 8, and amendments thereto, to conduct the review and to make a decision to uphold or reverse the adverse decision; and

(2) send a copy of the request for the review to the insurer or health plan that made the adverse decision that is the subject of the request and notify the insured, the treating physician or health care provider, and the insurer or health plan of the name, address, and telephone number of the external review organization assigned to conduct the expedited external review.

(d) In reaching a decision, the assigned external review organization shall not be bound by any decision or conclusions reached during the insurer's utilization review process as set forth in K.S.A. 40-22a01 and L. 1999, Ch. 162, Secs. 6 through 9, and amendments thereto, or the insurer's internal grievance process.

(e) At the time the insurer receives the notice pursuant to paragraph (c)(2), the insurer or its designee utilization review organization shall provide or transmit all necessary documents and information that were considered in making the adverse decision to the assigned external review organization by electronic means, by telephone or facsimile, or by any other available expeditious method by 5:00 p.m. central standard time of the next business day after receiving notice pursuant to paragraph (c)(2) of this regulation.

(f) In addition to the documents and information provided or transmitted pursuant to subsection (e) of this regulation and to the extent that

the information or documents are available, the assigned external review organization shall consider the following in reaching a decision:

- (1) The insured's pertinent medical records;
- (2) the attending health care professional's recommendation;
- (3) consulting reports from appropriate health care professionals and any other documents submitted by the insurer, the insured, the insured's authorized representative, or the insured's treating provider;
- (4) the terms of the coverage under the insured's insurance plan with the insurer, to ensure that the external review organization's decision is not contrary to the terms of coverage under the insured's health benefit plan with the insurer;
- (5) the most appropriate practice guidelines, including generally accepted practice guidelines, evidence-based practice guidelines, and any other practice guidelines developed by the federal government and national or professional medical societies, boards, and associations; and
- (6) any applicable clinical review criteria developed and used by the insurer or its designee utilization in making adverse decisions.

(g)(1) As expeditiously as the insured's medical condition or circumstances require, but not more than seven business days after the date of receipt of the request for an expedited external review, the assigned external review organization shall perform the following:

- (A) Make a decision to uphold or reverse the adverse decision; and
- (B) notify the insured or the insured's authorized representative, the insurer, and the commissioner of the decision.

(2) If the notice provided pursuant to paragraph (g)(1) of this regulation was not in writing, within two days after the date of providing that notice, the assigned external review organization shall perform the following:

- (A) Provide written confirmation of the decision to the insured or the insured's authorized representative, the insurer, and the commissioner; and
- (B) include the information set forth in K.A.R. 40-4-42c(h).

(h) An expedited external review shall not be provided for retrospective adverse decisions.

This regulation shall take effect on and after January 1, 2000. (Authorized by K.S.A. 40-103 and L. 1999, Ch. 162, § 9; implementing L. 1999, Ch. 162, §§ 6-9; effective Jan. 7, 2000.)

40-4-42e. Minimum qualifications for external review organizations. (a) To be approved under K.A.R. 40-4-42e and L. 1999, Ch. 162, Secs. 6 through 9, and amendments thereto, to conduct external reviews, an external review organization shall have and maintain written policies and procedures that govern all aspects of both the standard external review process and the expedited external review process set forth in K.A.R. 40-4-42c and K.A.R. 40-4-42d and that include at minimum:

(1) A quality assurance mechanism in place that meets the following criteria:

(A) Ensures that external reviews are conducted within the specified time frames and required notices are provided in a timely manner;

(B) ensures the selection of qualified and impartial clinical peer reviewers to conduct external reviews on behalf of the external review organization and suitable matching of reviewers to specific cases;

(C) ensures the confidentiality of medical and treatment records and clinical review criteria; and

(D) ensures that any person employed by or under contract with the external review organization adheres to requirements of L. 1999, Ch. 162, Secs. 6 through 9, and amendments thereto, and K.A.R. 40-4-42 through 40-4-42g;

(2) a toll-free telephone service to receive, on a 24 hours per day, seven days per week basis, information related to external review that is capable of accepting, recording, or providing appropriate instructions to incoming telephone callers during other than normal business hours; and

(3) an agreement to maintain and provide to the commissioner the information set out in K.A.R. 40-4-42g.

(b) All clinical peer reviewers assigned by an external review organization to conduct external reviews shall be physicians or other appropriate health care providers who meet the following minimum qualifications:

(1) Are qualified and credentialed in the treatment of the insured's medical condition that is the subject of the external review;

(2) are knowledgeable about the recommended health care service or treatment through actual or recent clinical experience that may be based on the following:

(A) The actual treatment of patients with the same or similar medical condition as that of the insured; and

(B) the period of time that has elapsed between the clinical experience and the present;

(3) hold a nonrestricted license in a state of the United States and, for physicians, a current certification by a recognized American medical specialty board in the area or areas appropriate to the subject of the external review; and

(4) have no history of disciplinary actions or sanctions, including loss of staff privileges or any participation restriction that has been taken or is pending by any hospital, governmental agency or unit, or regulatory body, that raises a substantial question as to the clinical peer reviewer's physical, mental, or professional competence, or moral character.

(c) In addition to the requirements set forth in subsection (a) of this regulation, an external review organization shall not own or control, be a subsidiary of, or in any way be owned or controlled by, or exercise control, with any of the following:

(1) An insurance plan;

(2) a national, state, or local trade association of health insurance plans; or

(3) a national, state, or local trade association of health care providers.

(d) In addition to the requirements set forth in subsections (a), (b), and (c) of this regulation, to be approved pursuant to L. 1999, Ch. 162, Sec. 8, and amendments thereto, to conduct an external review of a specified case, neither the external review organization selected to conduct the external review nor any clinical peer review assigned by the external organization to conduct the external review may have a material professional, familial, or financial conflict of interest with any of the following:

(1) The insurer that is the subject of the external review;

(2) the insured whose treatment is the subject of the external review or the insured's authorized representative;

(3) any officer, director, or management employee of the insurer that is the subject of the external review;

(4) the health care provider, the health care provider's medical group, or the independent practice association recommending the health care service or treatment that is the subject of the external review;

(5) the facility at which the recommended health care service or treatment would be provided; or

(6) the developer or manufacturer of the principal drug, device, procedure, or other therapy being recommended for the insured whose treatment is the subject of the external review.

This regulation shall take effect on and after January 1, 2000. (Authorized by K.S.A. 40-103 and L. 1999, Ch. 162, § 9; implementing L. 1999, Ch. 162, §§ 6-9; effective Jan. 7, 2000.)

40-4-42f. External review reporting requirements. (a) An external review organization assigned pursuant to K.A.R. 40-4-42c and 40-4-42d to conduct an external review shall maintain written records in the aggregate and by health carrier on all requests for external review for which it conducted an external review during a calendar year and submit a report to the commissioner as required in paragraph (b)(1) of this regulation.

(b)(1) Each external review organization required to maintain written records on all requests for external review pursuant to subsection (a) of this regulation for which it was assigned to conduct an external review shall submit to the commissioner, upon request, a report in the format specified by the commissioner.

(2) The report shall include the following, at a minimum, in the aggregate and for each insurer:

(A) The total number of requests for external review;

(B) the number of requests for external review resolved and, of those resolved, the number resolved upholding the adverse decision and number resolved reversing the adverse decision;

(C) the average length of time for resolution;

(D) the number of external reviews pursuant to K.A.R. 40-4-42c(e) that were terminated as the result of a reconsideration by the insurer of its adverse decision after the receipt of additional information from the insured or the insured's authorized representative; and

(E) any other information that the commissioner may request or require.

(c) The external review organization shall retain the written records required pursuant to this regulation for at least five years after the final decision has been issued.

This regulation shall take effect on and after January 1, 2000. (Authorized by K.S.A. 40-103 and L. 1999, Ch. 162, § 9; implementing L. 1999, Ch. 162, §§ 6-9; effective Jan. 7, 2000.)

40-4-42g. Exhaustion of internal review process. (a)(1) Except as provided in subsection (b) of this regulation, a request for external review pursuant to K.A.R. 40-4-42c and K.A.R. 40-4-42d shall not be made until the insured has exhausted the insurer's internal review process.

(2) An insured shall be considered to have exhausted the insurer's internal review process for the purposes of this regulation if the insured or the insured's authorized representative meets either of the following criteria:

(A) Has filed a request for internal review and received an adverse decision pursuant to the internal review procedures provided by the health insurance plan or insurer; or

(B) except to the extent that the insured or the insured's authorized representative requested or agreed to a delay, has not received a final decision from the insurer within 60 days of seeking the internal review.

(b)(1) A request for external review of an adverse decision may be made before the insured has exhausted the insurer's or health insurance plan's internal grievance procedures, if either of the following circumstances applies:

(A) The insured has a emergency medical condition as defined in L. 1999, Ch. 162, Sec. 6, and amendments thereto.

(B) The insurer agrees to waive the exhaustion requirement.

(2) Notwithstanding paragraph (b)(1), an insured or the insured's authorized representative shall not make a request for an external review of an adverse decision involving a retrospective review decision made pursuant to K.S.A. 40-22a01 and L. 1999, Ch. 162, Secs. 6 through 9, and amendments thereto, until the insured has exhausted the insurer's internal review process.

(c) If the requirement to exhaust the insurer's internal review process is waived under paragraph (b)(1)(B), the insured or the insured's authorized representative may request a standard external review pursuant to K.A.R. 40-4-42d.

This regulation shall take effect on and after January 1, 2000. (Authorized by K.S.A. 40-103 and L. 1999, Ch. 162, § 9; implementing L. 1999, Ch. 162, §§ 6-9; effective Jan. 7, 2000.)

40-4-43. Hospital, medical, and surgical expense insurance policies and certificates; prohibiting certain types of discrimination.

(a) A hospital, medical, or surgical expense policy or certificate issued by an insurance company, nonprofit health service corporation, nonprofit medical and hospital service corporation, or health maintenance organization shall not be delivered or issued for delivery in this state on an individual, group, blanket, franchise, or association basis if the amount of benefits payable or a

term, condition, or type of coverage is or could be restricted, modified, excluded, or reduced on the basis of whether both of the following conditions are met:

(1) The insured or prospective insured has been diagnosed with cancer and accepted into a phase I, phase II, phase III, or phase IV clinical trial for cancer.

(2) The treating physician who is providing covered health care services to the insured recommends participation in the clinical trial after determining that participation in the clinical trial has a meaningful potential to benefit the insured.

(b) Each policy or certificate covered by this regulation shall provide coverage for all routine patient care costs associated with the provision of health care services, including drugs, items, devices, treatments, diagnostics, and services that would otherwise be covered under the insurance policy or certificate if those drugs, items, devices, treatments, diagnostics, and services were not provided in connection with an approved clinical trial program, including health care services typically provided to patients not participating in a clinical trial.

(c) For purposes of this regulation, "routine patient care costs" shall not include the costs associated with the provision of any of the following:

(1) Drugs or devices that have not been approved by the federal food and drug administration and that are associated with the clinical trial;

(2) services other than health care services, including travel, housing, companion expenses, and other nonclinical expenses, that an insured could require as a result of the treatment being provided for purposes of the clinical trial;

(3) any item or service that is provided solely to satisfy data collection and analysis needs and that is not used in the clinical management of the patient;

(4) health care services that, except for the fact that they are being provided in a clinical trial, are otherwise specifically excluded from coverage under the insured's hospital, medical, or surgical expense policy or certificate; or

(5) health care services customarily provided by the research sponsors of a trial free of charge for any insured in the trial.

(d) This regulation shall not apply if the amount of benefits, the terms, the conditions, or the type of coverage varies as a result of the application of permissible rate differentials or as a result of negotiations between the insurer and insured. (Au-

thorized by K.S.A. 40-103 and K.S.A. 40-2404a; implementing K.S.A. 2009 Supp. 40-2404(7); effective June 4, 2010.)

Article 5.—CREDIT INSURANCE

40-5-1 and 40-5-2. (Authorized by K.S.A. 16-507, 16-413, 40-103; effective Jan. 1, 1966; revoked Jan. 1, 1974.)

40-5-3. (Authorized by K.S.A. 16-413, 16-507, 40-103, 40-234 and K.S.A. 1965 Supp. 40-433; effective Jan. 1, 1966; revoked Jan. 1, 1974.)

40-5-4. (Authorized by K.S.A. 40-103 and K.S.A. 1969 Supp. 16-413, 16-507, 40-216, 40-434; effective Jan. 1, 1966; amended Jan. 1, 1970; revoked Jan. 1, 1974.)

40-5-5. (Authorized by K.S.A. 40-103, 40-415; effective Jan. 1, 1966; revoked Jan. 1, 1974.)

40-5-6. Credit insurance; property and liability; insurance sold in connection with the uniform consumer credit code; types. The following types of insurance shall be authorized for sale:

(a) For motor vehicles:

(1) Fire, theft, windstorm coverage; or comprehensive coverage, including fire, theft and windstorm;

(2) collision coverage with a deductible of \$50 or more; and

(3) bodily injury and property damage liability insurance in accordance with K.S.A. 16a-4-303.

(b) For real property and tangible personal property, other than motor vehicles:

(1) Fire, including lightning coverage and extended coverage. Extended coverage shall be limited to perils of windstorm, hail, explosion, riot, riot attending a strike, civil commotion, aircraft, vehicles, and smoke;

(2) other perils as set out in the extended coverage endorsement approved by the Kansas insurance commissioner for use by a fire or multiple line insurance company; and

(3) bodily injury and property damage liability insurance. (Authorized by K.S.A. 40-103, 16a-4-112; implementing K.S.A. 16a-4-301, 16a-4-303; effective Jan. 1, 1966; amended Jan. 1, 1969; amended Jan. 1, 1974; amended May 1, 1986.)

40-5-7. (Authorized by K.S.A. 40-103, 16a-4-112; implementing K.S.A. 16a-4-301; effective Jan. 1, 1966; amended Jan. 1, 1974; amended May

1, 1975; amended May 1, 1979; amended May 1, 1986; revoked Feb. 10, 2012.)

40-5-8. Same; vendors single interest. Insurers are prohibited from selling to purchasers, or mortgagors of automobile vendors, single interest coverages including loss by wrongful conversion, embezzlement, or secretion or any other vendors single interest coverage in which a purchaser or mortgagor has no insurable interest. When a vendor single interest coverage is included in an insurance policy covering the interest of a purchaser or mortgagor, the insurance contract shall clearly indicate that the premium for the vendor single interest coverage has been charged to the vendor or mortgagee. (Authorized by K.S.A. 40-103, 16a-4-112; implementing K.S.A. 16a-4-202; effective Jan. 1, 1966; amended Jan. 1, 1974; amended May 1, 1986.)

40-5-9. Credit insurance; fire, casualty and allied lines; mortgagors and mortgagees; conditional sales vendors; and vendors; requirements. (a) All insurers writing insurance specified in Kansas Statutes Annotated, chapter 40, articles 9, 10, 11, 12, and 16 shall be prohibited from issuing policies covering the interests of a mortgagor and a mortgagee or conditional sales vendor where the mortgagee or conditional sales vendor is, in any manner, the named insured on the policy.

(b) The policy shall be issued only in the name of the mortgagor and mortgagee or conditional sales vendor's interest in the policy shall be limited to participation in recoveries under the perils insured as its interest may appear.

(c) The mortgagee or conditional sales vendor shall not be entitled to the return of unearned premium unless the insurer has notice of assignment of unearned premium by the mortgagor to the mortgagee or conditional sales vendor. (Authorized by K.S.A. 40-103, 16a-4-112; implementing K.S.A. 16a-4-301; effective Jan. 1, 1966; amended Jan. 1, 1974; amended May 1, 1979; amended May 1, 1986.)

40-5-10. Credit insurance; fire and extended coverage; issuance for single indivisible premium; requirements. Fire and extended coverage insurance permitted by Kansas administrative regulation 40-5-6 may be issued for a single indivisible premium subject to the following requirements:

(a) The location of the property insured shall be extended by the policy provisions to insure the

property at any location within the continental limits of the United States.

(b) The maximum amount of insurance permitted under this policy shall not exceed \$10,000.

(c) The insurer shall be required to obtain a statement from the insured that indicates all of the following:

(1) No other valid and collectible insurance on the insured property exists.

(2) The purchase of insurance from any insurer or agent was the choice of the insured.

(3) The purchase of insurance in connection with the credit transaction is entirely voluntary and not a prerequisite to the extension of credit.

(d) The creditor shall not refuse or decline the insurance provided by the consumer except for reasonable cause. (Authorized by K.S.A. 40-103, 16a-4-112; implementing K.S.A. 16a-4-301, 16a-4-111; effective Jan. 1, 1966; amended Jan. 1, 1974; amended May 1, 1979; amended May 1, 1986; amended May 1, 1987; amended Oct. 30, 1998.)

40-5-11. (Authorized by K.S.A. 40-103 and K.S.A. 1969 Supp. 16-211; effective, E-69-20, Sept. 1, 1969; effective Jan. 1, 1970; revoked Jan. 1, 1974.)

40-5-12. Consumer credit insurance; termination of coverage; prohibited contractual provisions. (a) A policy or certificate of consumer credit insurance as defined in K.S.A. 16a-4-103, that may be issued, delivered, renewed or continued within or outside this state covering residents of this state, shall not contain provisions which permit coverage to be terminated by the insurer with respect to any policyholder, certificate holder or other insured person unless:

(1) The policy or certificate is formally and specifically terminated;

(2) the insured and any affected certificate-holder is provided not less than ten days written notice of termination; and

(3) any unearned premium is returned to the borrower or credited to the account of the consumer as required by K.S.A. 16a-4-108.

(b) The restrictions imposed by section (a) of this regulation shall not apply with respect to transactions permitted or required by K.S.A. 16a-4-108. (Authorized by K.S.A. 40-103; 16a-4-112; implementing K.S.A. 16a-4-203; effective Nov. 29, 1993.)

40-5-101. (Authorized by K.S.A. 16a-4-112; effective Jan. 1, 1974; revoked May 1, 1979.)

40-5-102. Consumer credit insurance; definitions. (a) "Credit life insurance" means insurance on the life of a consumer pursuant to or in connection with a consumer credit transaction.

(b) "Credit accident and health insurance" means insurance, written in connection with a consumer credit transaction, to provide benefits in the event of disability of a consumer.

(c) "Claims incurred" means claims actually paid during the year, appropriately adjusted for the yearly change in claim reserves, including reserves for reported claims in process of settlement and claims incurred but not reported.

(d) "Claims" means benefits payable on death or disability excluding loss adjustment expense, claims settlement costs, or other additions of any kind.

(e) "Premiums earned" means the total gross premiums which become due to the insurance company, without reduction of any kind, except the premiums refunded or adjusted on account of termination of coverage, and appropriately adjusted for changes in gross unearned premiums in force upon a pro rata basis or a "sum of the digits" basis consistent with K.A.R. 40-5-108(a).

(f) "Commissioner" means the commissioner of insurance of the state of Kansas. (Authorized by K.S.A. 40-103, 16a-4-112; implementing K.S.A. 16a-4-101 through 16a-4-203; effective Jan. 1, 1974; amended May 1, 1979; amended May 1, 1983; amended May 1, 1986.)

40-5-103. Same; rights and treatment of consumers. (a) Multiple plans of insurance. If a creditor makes available to consumers more than one plan of credit life insurance, or more than one plan of credit accident and health insurance, all appropriate consumers shall be informed of all available plans.

(b) Substitution. When a creditor requires credit life insurance, credit accident and health insurance, or both, as additional security for an indebtedness, the debtor shall be given the option of furnishing the required amount of insurance through existing policies of insurance, or procuring and furnishing the required coverage through any insurer authorized to transact insurance business in this state. In such a case, the debtor shall be informed by the creditor of the right to provide alternative coverage before the transaction is completed.

(c) Evidence of coverage.

(1) All consumer credit insurance shall be evidenced by an individual policy, or in the case of

group insurance, by a certificate of insurance. The individual policy or certificate of insurance shall be delivered to the consumer in accordance with K.S.A. 16a-4-105.

(2) Policy provisions.

(A) Each insurance policy or certificate used in connection with a loan or credit transaction shall contain:

(i) the name and home office address of the insurer;

(ii) the name or names of the debtor;

(iii) the premium, or amount of payment by the debtor, if any, for credit life insurance and for credit accident and health insurance;

(iv) a statement specifying when the insurance of the debtor will become effective and its termination conditions, or the month, day, and year the insurance begins and terminates;

(v) any exceptions, limitations, or restrictions; and

(vi) a statement that the life of the debtor is insured under the policy and that any death benefit paid by reason of death of the debtor shall be applied first to reduce or extinguish the indebtedness.

(B) In addition to the requirements of paragraph (A), each insurance policy issued in connection with a credit transaction or loan shall set forth the kind or kinds of insurance included, the coverages, and all the terms, exceptions, limitations, restrictions, and conditions of the contract or contracts of insurance. Certificates shall contain all provisions of the master policy applicable to the debtor.

(C) The requirements of paragraph (2) are in addition to other requirements imposed by law concerning policy forms and their approval.

(3) Settlement of claims. Separate credit life insurance payments shall be made to the creditor, beneficiary, and to the named second beneficiary, if any, as their interests may appear. If the policy contains no provision for the designation of a second beneficiary, the insurance shall go to the estate of the insured. Each payment made to the creditor shall reduce the indebtedness.

(d) Termination of coverage.

(1) If a debtor is covered by a group insurance policy on which a single premium is charged for insurance, the policy shall provide that the group policy may terminate only with respect to debtors who would otherwise become eligible for coverage after the date of termination, and that insurance coverage with respect to any debtor insured under the policy shall be continued for the entire

period for which a single charge has been made, subject to subsections (g) and (h).

(2) If a debtor covered by a group credit insurance policy is charged for insurance on a monthly outstanding balance basis, the policy shall provide that, if the policy is terminated, the insured debtor shall be notified that coverage will terminate not less than 15 days after mailing of the notice. If notice is not given to each insured debtor, coverage shall continue for 30 days from the date of notice to the policyholder, except where replacement of the coverage by the same or another insurer in the same or greater amount takes place without lapse of coverage. The notice to insured debtors required in this paragraph shall be given by the insurer, or at the option of the insurer, by the creditor.

(e) Interest on premiums. If the creditor adds identifiable insurance charges or premiums for consumer credit insurance to the indebtedness, and any direct or indirect finance, carrying, credit, or service charge is made to the consumer on the insurance charges or premiums, the creditor shall remit and the insurer shall collect on a single premium basis only.

(f) Renewal or refinancing of indebtedness. If the indebtedness is discharged due to renewal or refinancing prior to the scheduled maturity date, the insurance in force shall be terminated before any new insurance may be issued in connection with the renewed or refinanced indebtedness. In all cases of termination prior to scheduled maturity, a refund shall be paid or credited to the debtor as provided in K.A.R. 40-5-108. In any renewal or refinancing of indebtedness, the effective date of the coverage of any policy provision shall be the first date on which the debtor became insured under the policy covering the indebtedness which was renewed or refinanced, at least in the amount of the indebtedness outstanding at the time of renewal and refinancing of the debt.

(g) Voluntary prepayment of indebtedness. If a debtor prepays indebtedness for a reason other than death or a lump sum disability payment:

(1) Any credit life insurance covering an indebtedness shall be terminated and an appropriate refund shall be paid or credited to the debtor by the creditor at the time of prepayment pursuant to K.A.R. 40-5-108; and

(2) any credit accident and health insurance covering an indebtedness shall be terminated and an appropriate refund shall be paid or credited to the debtor by the creditor at the time of prepayment. If the indebtedness is prepaid by the debtor

during any period of disability for which benefits are payable, the disability coverage shall continue in force and the insurer shall make periodic payments directly to the debtor until the disability no longer exists or until the end of the term of insurance, whichever occurs first.

(h) Involuntary prepayment of indebtedness. If an indebtedness is prepaid by the proceeds of a credit life insurance policy covering the debtor or by a lump sum payment of a disability claim under a credit accident and health insurance policy covering the debtor, the insurer shall ensure that the following refunds are made by the creditor at the time of prepayment:

(1) In case of prepayment by the proceeds of a credit life insurance policy, an appropriate refund under the credit accident and health insurance coverage; and

(2) in the case of prepayment by a lump sum disability claim, an appropriate refund under the credit life insurance coverage. (Authorized by K.S.A. 40-103, 16a-4-112; implementing K.S.A. 16a-4-101 through 16a-4-203; effective Jan. 1, 1974; amended May 1, 1979; amended May 1, 1986.)

40-5-104. Same; coverage without separate charge. (a) If no separate charge is made to the consumer for consumer credit insurance, the consumer shall be charged a specific amount for insurance if an identifiable charge for insurance is disclosed in the credit or other instrument furnished the consumer setting out the financial elements of the credit transactions, or if there is a differential in the finance charge (as defined in section 16a-1-301(19)) made to consumers in like circumstances, except for their insured or non-insured status.

(b) The rate standards set out in K.A.R. 40-5-107 shall apply to the premiums for consumer credit insurance. The insurer issuing the coverage must obtain form and rate approval by the commissioner. (Authorized by K.S.A. 40-103, 16a-4-112; implementing K.S.A. 16a-4-101 through 16a-4-203; effective Jan. 1, 1974; amended May 1, 1986.)

40-5-105. Same; filing requirements. (a) Each policy form, certificate of insurance, notice of proposed insurance, application for insurance, endorsement, and rider to be delivered or issued for delivery in this state and the schedule of premium rates or charges pertaining thereto shall be filed with the commissioner as required by K.S.A.

16a-4-203 (UCCC), including those approved prior to the effective date of this regulation.

(b) Each filing shall be accompanied by supporting information which establishes that the rates meet the standards set out in K.A.R. 40-5-107 or are the actuarial equivalent.

(c) When forms providing benefits as described in K.A.R. 40-5-107 are filed at or below the rates described, supporting information shall not be submitted. (Authorized by K.S.A. 40-103, 16a-4-112; implementing K.S.A. 16a-4-101 through 16a-4-203; effective Jan. 1, 1974; amended May 1, 1986.)

40-5-106. (Authorized by K.S.A. 40-103, 16a-4-112; implementing K.S.A. 16a-4-101 through 16a-4-203; effective Jan. 1, 1974; amended May 1, 1979; amended May 1, 1986; revoked Aug. 3, 2001.)

40-5-107. Same; credit insurance rates and forms. (a) The basic test of the reasonableness of the relation of benefits to the premium charges shall be an anticipated loss ratio of "claims incurred" to "premiums earned" of not less than 50 percent. Due consideration shall be given to a reasonable allowance for expenses.

(b) Benefits shall not be reasonable in relation to the premium charged if the premiums or premium rates filed with the commissioner exceed the following, or actuarially equivalent, rates:

(1) Credit life insurance.

(A) For decreasing term life insurance the rate shall not exceed \$.65 per \$100 insurance per annum;

(B) for joint life insurance the rate shall not exceed one and two-thirds of the appropriate single life rate;

(C) for level term life insurance the rate shall not exceed \$1.20 per \$100 insurance per annum;

(D) for monthly outstanding balance insurance the rate shall not exceed \$1.00 per month per \$1,000 of insurance; and

(E) The rates shall be presumed reasonable only if the policies contain:

(i) No exceptions, limitations or exclusions, except for suicide, during the first two years; and

(ii) no age restriction or only age restrictions making ineligible for coverage debtors 65 years or over at the time the indebtedness is incurred, or debtors who have attained age 66 years or over on the maturity date of the indebtedness.

(2) Credit accident and health insurance.

(A) For credit accident and health insurance the following single premium rates per \$100 initial insured indebtedness:

NONRETROACTIVE BASIS

Number of months in which indebtedness is repayable	14 day elimination period	30 day elimination period
6 or less	1.00	.40
12	1.40	.80
24	2.20	1.60
36	3.00	2.40
48	3.50	2.90
60	3.90	3.30

RETROACTIVE BASIS

	14 day elimination period	30 day elimination period
6 or less	1.80	1.30
12	2.20	1.70
24	3.00	2.50
36	3.80	3.30
48	4.30	3.80
60	4.70	4.20

(B) Rates for policies of credit accident and health insurance, the premiums for which are paid other than on a single premium basis, for benefits on a basis different than as provided in (C) below, or for different monthly durations than illustrated, shall be actuarially consistent with the rates specified above.

(C) The premium rates specified shall be for policies which contain no exclusion for pre-existing conditions except for those conditions which manifest themselves to the insured by requiring medical diagnosis or treatment, or would cause a reasonably prudent person to seek medical diagnosis or treatment within six months preceding the effective date of the coverage as to the insured debtor, and which cause loss within the six months following effective date of coverage. Disabilities thereafter resulting from the condition shall be covered.

(c) Each contract to which the foregoing rules apply may contain provisions excluding or restricting coverage in the event of total disability resulting from pregnancy, intentionally self-inflicted injuries, flight in nonscheduled aircraft, or war. The policies may contain the same age limitation on eligibility as set forth for credit life policies.

(d) Each new policy or certificate of consumer credit insurance issued after the effective date of this regulation shall not be at a rate exceeding any provision of this regulation.

(e) Each insurer may receive approval of a higher premium rate or schedule of rates to be used in

connection with a particular policy form providing insurance on the debtors of a creditor or a class or classes of debtors if the insurer demonstrates, to the satisfaction of the commissioner, that the mortality or morbidity experience which may reasonably be anticipated shall develop a loss ratio in excess of 60 percent when the rate standards in K.A.R. 40-5-107 are used.

(f) On the basis of mortality or morbidity experience reported under K.A.R. 40-5-109, the premium rates may be continued, allowed to be increased, or required to be decreased. (Authorized by K.S.A. 40-103, 16a-4-112; implementing K.S.A. 16a-4-203; effective Jan. 1, 1974; amended May 1, 1979; amended May 1, 1986; amended May 1, 1988.)

40-5-108. Same; refunds. (a) Formulas for computing refunds of credit insurance premiums shall be acceptable to the commissioner for coverage as follows:

(1) Pro rata method. The pro rata unearned gross premium method for level term credit life insurance, credit accident and health insurance where the insured is covered for a constant maximum indemnity for a given period of time, after which the maximum indemnity begins to decrease in even amounts per month, and for credit insurance coverages under which premiums are collected from the consumer on a basis other than the single premium basis.

(2) Sum of the digits method. The "rule of 78" or "sum of the digits" unearned premium method of coverages other than those included in paragraph (1).

(b) At the option of the insurer but consistent with subsection (a):

(1) Any charge for credit insurance may not be made for the first 15 days of a loan month and a full month may be charged for 16 days or more of a loan month; or

(2) a refund may be made on a pro rata basis for each day within the loan month.

(c) The requirements of K.S.A. 16a-4-108 that refund formulas be filed with the commissioner shall be considered fulfilled if the refund formulas shall be set forth in the individual policy or group certificate filed with the commissioner. If the appropriate refund formula is the "sum of the digits" formula, commonly known as the "rule of 78," reference by either phrase shall be sufficient.

(d) Any insurance refund need not be made to the consumer if all refunds and credits due to the

consumer amount to less than \$1. (Authorized by K.S.A. 40-103, 16a-4-112; implementing K.S.A. 16a-4-108; effective Jan. 1, 1974; amended May 1, 1979; amended May 1, 1986; amended May 1, 1988; amended July 10, 1989.)

40-5-109. Same; experience reports. Each insurer doing consumer credit insurance business in this state shall annually file with the insurance department a report of credit life and credit accident and health business written on a calendar year basis. This report shall utilize the credit insurance supplement-annual statement blank promulgated by the national association of insurance commissioners June 1985. The filing shall be made each year not later than the filing date stated on the most recently adopted "NAIC Credit Insurance Experience Exhibit Form of 1985," which is hereby adopted by reference. (Authorized by K.S.A. 40-103, 16a-4-112; implementing K.S.A. 16a-4-203; effective Jan. 1, 1974; amended May 1, 1979; amended May 1, 1986; amended May 1, 1988; amended Feb. 9, 1996.)

40-5-110. Same; supervision of credit insurance operations. (a) Each insurer transacting credit insurance in this state shall be responsible to conduct a reasonable annual review of the procedures of each creditor with respect to credit insurance business to insure compliance with the insurance laws of this state and the regulations promulgated by the commissioner.

(b) The review required in subsection (a) shall include a determination that all of the following conditions are met:

(1) The proper charges are being made by the creditor.

(2) The proper refunds are being made.

(3) All claims are being filed and properly handled.

(4) All amounts of insurance payable on death in excess of the amounts necessary to discharge the indebtedness are properly refunded.

(5) The creditor is promptly and fairly processing complaints concerning credit insurance operations and is maintaining proper procedures for, and records of, the complaints processed.

(c) Each insurer shall provide the results of the annual reviews for inspection during an examination, upon the request of the commissioner or the commissioner's designee. (Authorized by K.S.A. 40-103 and K.S.A. 2002 Supp. 16a-4-112; implementing K.S.A. 16a-4-103, 16a-4-104, 16a-4-107, 16a-4-108, and K.S.A. 2002 Supp. 16a-4-

112; effective Jan. 1, 1974; amended May 1, 1979; amended May 1, 1986; amended Oct. 17, 2003.)

40-5-111. (Authorized by K.S.A. 40-103, 16a-4-112; implementing K.S.A. 16a-4-101 through 16a-4-203; effective Jan. 1, 1974; amended May 1, 1979; amended May 1, 1986; revoked Aug. 3, 2001.)

Article 6.—INVESTMENTS AND DEPOSITS OF SECURITIES

40-6-1. (Authorized by K.S.A. 40-103, 40-403; effective Jan. 1, 1966; revoked Jan. 1, 1969.)

40-6-2. (Authorized by K.S.A. 40-103, 40-227, 40-403; effective Jan. 1, 1966; amended Jan. 1, 1967; amended Jan. 1, 1968; revoked Jan. 1, 1969.)

40-6-3 and 40-6-4. (Authorized by K.S.A. 40-103, 40-227, 40-404; effective Jan. 1, 1966; revoked Jan. 1, 1969.)

40-6-5. (Authorized by K.S.A. 40-103, 40-227, 40-230, 40-404 *et seq.* effective Jan. 1, 1967; revoked Jan. 1, 1969.)

40-6-6. (Authorized by K.S.A. 40-103, 40-403 *et seq.* effective Jan. 1, 1967; revoked Jan. 1, 1969.)

40-6-7. (Authorized by K.S.A. 40-103, 40-229; effective Jan. 1, 1968; revoked Jan. 1, 1969.)

40-6-8. (Authorized by K.S.A. 40-103, 40-2a05, 40-2b05; effective Jan. 1, 1969; amended Jan. 1, 1970; amended Jan. 1, 1973; revoked May 1, 1979.)

40-6-9. (Authorized by K.S.A. 40-103, 40-253, 40-401, 40-402, 40-404, 40-901, 40-1001(a), 40-1027, 40-1102, 40-1104, 40-1204, 40-1519, 40-1605, 40-2a18, 40-2b18; effective Jan. 1, 1969; amended Jan. 1, 1973; revoked May 1, 1979.)

40-6-10. (Authorized by K.S.A. 40-103, 40-2a01 to 40-2a19, inclusive, 40-2b01 to 40-2b20, inclusive; effective Jan. 1, 1969; amended Jan. 1, 1970; amended Jan. 1, 1973; revoked May 1, 1979.)

40-6-11. (Authorized by K.S.A. 40-103, 40-216, 40-2a01 to 40-2a19, inclusive, 40-2b01 to 40-2b20, inclusive; effective Jan. 1, 1969; amended Jan. 1, 1973; revoked May 1, 1979.)

40-6-12. (Authorized by K.S.A. 40-103, 40-2b09, 40-2b13; effective Jan. 1, 1969; amended Jan. 1, 1973; revoked May 1, 1979.)

40-6-13. (Authorized by K.S.A. 40-103, 40-2a01 to 40-2a19, inclusive, 40-2b01 to 40-2b20, inclusive; effective Jan. 1, 1969; amended Jan. 1, 1970; revoked May 1, 1979.)

40-6-14. (Authorized by K.S.A. 40-103, 40-2a01 to 40-2a19, inclusive, 40-404; effective Jan. 1, 1969; revoked May 1, 1979.)

40-6-15. (Authorized by K.S.A. 40-103, 40-230, 40-404, 40-405, 40-406; effective Jan. 1, 1969; amended Jan. 1, 1973; revoked May 1, 1979.)

40-6-16. (Authorized by K.S.A. 40-103, 40-229; effective Jan. 1, 1969; amended Jan. 1, 1973; revoked May 1, 1979.)

Article 7.—AGENTS

40-7-1. (Authorized by K.S.A. 40-103; implementing K.S.A. 40-239, 40-245, 40-214; effective Jan. 1, 1966; amended Jan. 1, 1974; amended, E-79-25, Oct. 19, 1978; amended May 1, 1979; amended May 1, 1986; revoked Jan. 12, 2007.)

40-7-2. (Authorized by K.S.A. 40-103, 40-214, 40-241; effective Jan. 1, 1966; revoked, E-79-25, Oct. 19, 1978; revoked May 1, 1979.)

40-7-3. (Authorized by K.S.A. 40-103, 40-214, 40-239, 40-240; effective Jan. 1, 1966; revoked, E-79-25, Oct. 19, 1978; revoked May 1, 1979.)

40-7-4. (Authorized by K.S.A. 40-103, 40-239, 40-240; effective Jan. 1, 1966; revoked May 1, 1979.)

40-7-5. Agents; signatures; powers of attorney; rubber-stamped facsimiles; mechanical devices. (a) Each agent licensed by the department shall be prohibited from executing powers of attorney authorizing other individuals to sign policies in the name of the agent.

(b) The placing of the facsimile signature or name and the address of the agent by mechanical means on policies that are issued or sold by or from any vending machine or appliance or any other medium, device, or object designed or used for vending purposes and that provide travel accident coverage only in airports or air terminals shall be acceptable. (Authorized by K.S.A. 40-103 and K.S.A. 2004 Supp. 40-4916; implementing K.S.A. 40-244 and K.S.A. 2004 Supp. 40-4905; effective Jan. 1, 1966; amended May 1, 1981; amended May 1, 1986; amended June 30, 2006.)

40-7-6. (Authorized by K.S.A. 40-103; implementing K.S.A. 40-246; effective Jan. 1, 1966; amended Jan. 1, 1968; amended May 1, 1979; amended May 1, 1981; amended May 1, 1982; amended May 1, 1986; amended May 1, 1987; revoked Aug. 3, 2001.)

40-7-7. Agents; resident procedure for obtaining company certification. (a) The company certification shall be completed to show the company name, the name and address of the agent to be certified, the effective date, and the address of the office submitting the certification.

(b) Company certification shall be made only by an authorized representative of the insurance company or, on and after May 1, 1989, by an authorized representative of a corporation, association, partnership, proprietorship, or other legal entity holding a direct agency appointment from an insurance company.

(c) For purposes of company certification, a licensed director, employee, or nonresident officer of a resident agency shall be deemed to be a resident agent. (Authorized by K.S.A. 40-103 and K.S.A. 2004 Supp. 40-4916; implementing K.S.A. 2004 Supp. 40-4904 and 40-4912; effective Jan. 1, 1966; amended Jan. 1, 1967; amended Jan. 1, 1970; amended, E-70-28, July 1, 1970; amended Jan. 1, 1971; amended, E-71-24, July 1, 1971; amended Jan. 1, 1972; amended Feb. 15, 1977; amended, E-79-25, Oct. 19, 1978; amended May 1, 1979; amended May 1, 1983; amended May 1, 1986; amended May 1, 1987; amended May 1, 1988; amended May 15, 1989; amended Jan. 4, 1993; amended Feb. 8, 1993; amended Dec. 30, 2005.)

40-7-7a. (Authorized by K.S.A. 40-103; implementing K.S.A. 40-246; effective Jan. 4, 1993; revoked Dec. 30, 2005.)

40-7-8. (Authorized by K.S.A. 40-103; effective Jan. 1, 1966; amended Jan. 1, 1972; amended Feb. 15, 1977; revoked, E-79-25, Oct. 19, 1978; revoked May 1, 1979.)

40-7-9. Agents; change in the information contained on the most recent application for a license. Each person licensed in this state as an insurance agent shall report the following to the commissioner of insurance within 30 days of occurrence: (a) Each disciplinary action on the agent's license or licenses by the insurance regulatory agency of any other state or territory of the United States;

(b) each disciplinary action on an occupational license held by the licensee, other than an insurance agent's license, by the appropriate regulatory authority of this or any other jurisdiction;

(c) each judgment or injunction entered against the licensee on the basis of conduct involving fraud, deceit, or misrepresentation, or a violation of any insurance law;

(d) all details of any conviction of a misdemeanor or felony. The details shall include the name of the arresting agency, the location and date of the arrest, the nature of the charge or charges, the court in which the case was tried, and the disposition rendered by the court. Minor traffic violations may be omitted;

(e) each change in name. If the change of name is effected by court order, a copy of the court order shall be furnished to the commissioner of insurance;

(f) each change in residence address; and

(g) each change in the name or address of the agency with which the agent is associated. (Authorized by K.S.A. 40-103 and K.S.A. 2004 Supp. 40-4916; implementing K.S.A. 2004 Supp. 40-4909; effective Jan. 1, 1966; amended Jan. 1, 1968; amended Jan. 1, 1973; amended, E-76-26, June 16, 1975; amended May 1, 1976; amended May 1, 1986; amended Dec. 30, 2005.)

40-7-10. (Authorized by K.S.A. 40-103; implementing K.S.A. 40-215, 40-241j, 40-241i; effective Jan. 1, 1966; amended Jan. 1, 1967; amended Jan. 1, 1970; amended, E-79-25, Oct. 19, 1978; amended May 1, 1979; amended May 1, 1981; amended May 1, 1986; revoked May 1, 1987.)

40-7-11. Agents; cancellation of licenses or certification; procedure. (a) Licenses or certifications, or both, shall be cancelled upon written request of the agent.

(b) Certifications shall be cancelled upon written request of insurance companies or corporations, associations, partnerships, sole proprietorships and other legal entities acting as insurance agents and holding a direct agency appointment from an insurance company. The cancellation form prescribed by the commissioner shall be submitted to the department upon termination of the contract of the agent. The requesting entity shall notify the agent of certification cancellation. (Authorized by K.S.A. 40-103; implementing K.S.A. 40-241i as amended by L.

1988, Ch. 151; effective Jan. 1, 1966; amended, E-70-28, July 1, 1970; amended Jan. 1, 1971; amended, E-79-25, Oct. 19, 1978; amended May 1, 1979; amended May 1, 1981; amended May 1, 1986; amended April 16, 1990.)

40-7-12. (Authorized by K.S.A. 40-103, K.S.A. 1978 Supp. 40-241; effective Jan. 1, 1966; amended, E-70-28, July 1, 1970; amended Jan. 1, 1971; revoked May 1, 1979.)

40-7-13. Agents; scope, subclassification; type and conduct of examinations; reexamination. (a) The licensing examination for each agent shall test the applicant's knowledge in the following areas:

(1) The laws of Kansas, including:

(A) pertinent provisions of the statutes of Kansas; and

(B) rules and regulations of the insurance department;

(2) general insurance, including:

(A) duties and responsibilities of a licensed agent; and

(B) basic insurance knowledge; and

(3) the specific classes or subclasses of insurance for which application is made.

(b) For examination purposes, the classifications and subclassifications of insurance shall be as follows:

Class	Subclass
(1) Life insurance;	
(2) health insurance;	
(3) casualty insurance;	title insurance and bail bonds;
(4) property insurance;	crop insurance

(c) Persons failing to score at least 70 percent on any examination shall have failed that examination and shall not be qualified for a license for that class or subclass. Notification of the result of each examination shall be provided to the applicant only.

(d) Examinations shall be conducted as follows.

(1) Each applicant shall be advised of eligibility for examination by the commissioner or the commissioner's designee.

(2) The applicant's licensing application shall remain effective for a period of one year from the date received. On and after May 1, 1989, an examination registration shall be effective for a period of 90 days from the date the registration is validated. (Authorized by K.S.A. 40-103, K.S.A. 1991 Supp. 40-241; implementing K.S.A. 1991 Supp. 40-241; effective Jan. 1, 1966; amended Jan. 1,

1968; amended Jan. 1, 1969; amended Jan. 1, 1970; amended, E-70-28, July 1, 1970; amended Jan. 1, 1971; amended, E-71-24, July 1, 1971; amended Jan. 1, 1972; amended Jan. 1, 1973; amended Jan. 1, 1974; amended, E-78-24, Sept. 7, 1977; amended May 1, 1978; amended May 1, 1979; amended May 1, 1981; amended May 1, 1982; amended May 1, 1985; amended May 1, 1986; amended May 1, 1987; amended Dec. 26, 1988; amended May 15, 1989; amended Feb. 8, 1993.)

40-7-14. (Authorized by K.S.A. 40-103, 40-241c; effective Jan. 1, 1966; revoked May 1, 1979.)

40-7-15. (Authorized by K.S.A. 40-103, 40-240, 40-241; effective Jan. 1, 1966; revoked May 1, 1979.)

40-7-16. (Authorized by K.S.A. 40-103, 40-246, 40-401; effective Jan. 1, 1966; amended Jan. 1, 1968; revoked May 1, 1979.)

40-7-17. (Authorized by K.S.A. 40-103, 40-240, 40-241, 40-252; effective Jan. 1, 1972; revoked May 1, 1979.)

40-7-18. (Authorized by K.S.A. 40-103, 40-240, 40-246; effective Jan. 1, 1973; revoked May 1, 1979.)

40-7-19. Agents; individual records; fees.

(a) Each person, company, or organization requesting a paper copy of any verification of license record, duplicate license, certification of home state, or clearance letter from the commissioner shall pay a fee of \$10.00.

(b) The fee established by this regulation shall be charged for each document requested and shall not be refunded for any reason. (Authorized by K.S.A. 40-103, 40-241k; implementing K.S.A. 40-241k; effective May 1, 1984; amended May 1, 1986; amended May 1, 1987; amended Jan. 4, 1993; amended June 8, 2007.)

40-7-20. (Authorized by and implementing L. 1986, ch. 170, Sec. 1; effective, T-88-1, Jan. 5, 1987; effective May 1, 1987; revoked May 15, 1989.)

40-7-20a. Agents; continuing education; approval of courses; requirements. (a) Definitions. For the purposes of this regulation, the following definitions shall apply:

(1) "Coordinator" means an individual who is responsible for monitoring continuing education offerings.

(2) "Course" means a series of lectures or lessons that deals with a particular subject following a prearranged agenda or study plan and that may culminate in a written examination.

(3) "Instructor" means an individual lecturing in a continuing education offering.

(4) "Licensee," "licensed agent," and "agent" mean a natural person licensed by this state as an agent.

(5) "Person" means a natural person, firm, institution, partnership, corporation, or association.

(6) "Provider" and "providing organization" mean a person or firm offering or providing insurance education.

(7) "Self-study courses" means courses that are primarily delivered or conducted in other than a classroom setting or with on-site instruction and are designed to be completed independently by the student.

(b) General requirements.

(1) Only courses that impart substantive and procedural knowledge relating to insurance and are beneficial to the insuring public after initial licensing shall be approved for credit. Approved courses shall be classified as life, health, and variable contracts courses; property and casualty courses; general courses; ethics courses; or general management courses. Credit earned from general courses, ethics courses, or general management courses shall be acceptable in meeting the requirements for the property and casualty insurance or the life and health insurance license classifications.

(2) Courses of the following types shall not meet the basic criteria for approvable courses described in paragraph (1) of this subsection:

(A) Courses designed to prepare students for a license examination;

(B) courses in mechanical office skills, including typing, speed reading, and the use of calculators or other machines or equipment; and

(C) courses in sales promotion, including meetings held in conjunction with the general business of the licensee.

(3)(A) Each licensee shall attend a course in its entirety in order to receive full credit.

(B) Upon completion of each approved course, the student shall receive credit for the number of hours approved for the course, which shall be equivalent to one hour of credit for each hour of instruction.

(C) If the number of credit hours for which a course is approved is fewer than the total number

of hours of the course presentation, the student shall attend the entire course in order to receive credit for the number of approved hours.

(D) The number of approved hours shall not include time spent on introductions, breaks, or other activities not directly related to approved educational information or material.

(E) Neither a student nor an instructor shall earn full credit for attending or instructing any subsequent offering of the same course in the current biennial license period after attending or teaching the course.

(4) Course examinations shall not be required for approval of continuing education courses except self-study courses.

(5) Each provider shall submit proposed courses to the commissioner or the commissioner's designee for preapproval at least 30 days before the date on which the course is to be held.

(6) An advertisement shall not state or imply that a course has been approved by the commissioner or the commissioner's designee unless written confirmation of this approval has been received by the provider or the course is advertised as having approval pending.

(7) If approval has been granted for the initial offering of a course, approval for subsequent offerings not disclosed in the initial submission may be obtained by providing written notification to the commissioner or the commissioner's designee at least 30 days before the date the program is to be held, indicating that no change has been made in the course and specifying the additional times and places the course will be presented.

(8) The provider shall submit all fees required for individual course approval with the course submission. If the provider elects to pay the prescribed fee for all courses, the provider shall pay the fee annually and shall submit the fee with the first course submission each year.

(9) Each course of study, except self-study courses, shall be conducted in a classroom or other facility that comfortably accommodates the faculty and the number of students enrolled. The provider may limit the number of students enrolled in a course.

(10)(A) Each successfully completed course leading to a nationally or regionally recognized designation shall receive credit as approved by the commissioner or the commissioner's designee.

(B) Any agent attending at least 80 but less than 100 percent of regularly scheduled classroom sessions for any single course may receive full ed-

ucational credit if the course is filed as a formal classroom course. This credit may be earned to the extent that adequate records are maintained and appropriate certification of such attendance is provided by the course instructor.

(11)(A) The amount of credit received by an agent for a self-study course shall be based upon successful completion of the course and an independently monitored examination subject to the number of hours assigned by the commissioner or the commissioner's designee.

(B) Examination monitors shall not be affiliated in any way with the providing organization or the licensee and shall be subject to approval by the commissioner or the commissioner's designee. Each examination utilized or to be utilized shall be included in the material submitted for course approval. No examination shall be approved unless the commissioner is satisfied that security procedures protecting the integrity of the examination can be maintained. If security is compromised, no credit shall be granted.

(C) Each provider of self-study courses shall clearly disclose to any agent wishing to receive credit in Kansas the number of hours for which that particular course has been approved by the commissioner or the commissioner's designee.

(D) Each self-study course provided online shall meet the following requirements:

(i) Require the agent to enroll and pay for the course before having access to the course materials;

(ii) prevent access to the course exam before review of the course materials;

(iii) prevent the downloading of any course exam;

(iv) provide review questions at the end of each unit or chapter and prevent access to the following unit or chapter until the review questions after the previous unit or chapter have been correctly answered;

(v) provide exam questions that do not duplicate unit review questions;

(vi) prevent alternately accessing course materials and course exams; and

(vii) prevent the issuance of a monitor affidavit until the course and course examination are successfully completed.

(c) Each licensee or provider found to have falsified a continuing education report to the commissioner shall be subject to suspension or revocation of the licensee's or provider's insurance license in accordance with K.S.A. 40-4909 and amendments thereto, a penalty as prescribed in K.S.A. 40-254

and amendments thereto, or termination of approval as a provider.

(d) Course requirements.

(1) Each course of study shall have a coordinator who is responsible for supervising the course and ensuring compliance with the statutes and regulations governing the offering of insurance continuing education courses.

(2)(A) Each provider and each providing organization shall maintain accurate records relating to course offerings, instructors, and student attendance. If the coordinator leaves the employ of the provider or otherwise ceases to monitor continuing education offerings, the records shall be transferred to the replacement coordinator or an officer of the provider. If a provider ceases operations, the coordinator shall maintain the records or provide a custodian of the records acceptable to the commissioner. In order to be acceptable, a custodian shall agree to make copies of student records available to students free of charge or at a reasonable fee. The custodian of the records shall not be the commissioner, under any circumstances.

(B) Each provider shall provide students with course completion certificates, in a manner prescribed or approved by the commissioner, within 30 days after completion of the course. A provider may require payment of the course tuition as a condition for receiving the course completion certificate.

(3) Each instructor shall possess at least one of the following qualifications:

(A) Recent experience in the subject area being taught; or

(B) an appropriate professional designation in the area being taught.

(4) Each instructor shall perform the following:

(A) Comply with all laws and regulations pertaining to insurance continuing education;

(B) provide the students with current and accurate information;

(C) maintain an atmosphere conducive to learning in a classroom; and

(D) provide assistance to the students and respond to questions relating to course material.

(5) Each provider, coordinator, and instructor shall notify the commissioner within 10 days after the occurrence of any of the following:

(A) A felony or misdemeanor conviction or disciplinary action taken against a provider or against an insurance or other occupational license held by the coordinator or instructor; and

(B) any change of information contained in an application for course approval.

(e) Licensee reporting requirement.

(1) Each licensee shall report continuing education credit on forms and in a manner prescribed by the commissioner. Each course shall be completed or attended during the reporting period for which the credit hours are to be applied.

(2) Each request for an extension permitted by K.S.A. 40-4903 and amendments thereto shall be submitted in writing not later than the reporting deadline and shall include an explanation and independent verification of the hardship. (Authorized by K.S.A. 40-103 and K.S.A. 2008 Supp. 40-4916; implementing K.S.A. 2008 Supp. 40-4903; effective May 15, 1989; amended, T-40-8-28-90, Aug. 30, 1990; amended Oct. 15, 1990; amended Feb. 8, 1993; amended April 11, 1997; amended Feb. 9, 2007; amended May 22, 2009.)

40-7-21. Agents; examination fee; amount.

On and after May 1, 1989, each person attempting to pass the examination shall pay the following fees for each attempt to pass the examination:

(a) \$62 for each single line examination of 100 items or limited line examination of up to 50 items; or

(b) \$85 for each combination examination of 130 items or more covering two or more lines of coverage included in two different classes of insurance as prescribed K.A.R. 40-7-13. (Authorized by and implementing K.S.A. 40-241, as amended by L. 1996, Ch. 45, Sec. 2; effective, T-88-1, Jan. 5, 1987; effective May 1, 1987; amended, T-40-3-31-89, May 1, 1989; amended May 15, 1989; amended April 11, 1997.)

40-7-22. Agents; appointment by company; classes of business.

Each insurance company shall appoint each agent in any agency that represents the company, for each class of business that the agent is qualified to transact. (Authorized by K.S.A. 40-103, K.S.A. 2004 Supp. 40-4916; implementing K.S.A. 2004 Supp. 40-4912; effective April 16, 1990; amended Sept. 16, 2005.)

40-7-23. Agents; license; identification.

Each business entity holding a contract with an insurance company under the business entity's "doing business as" (DBA) name shall be licensed in the "DBA" name. (Authorized by K.S.A. 40-103, K.S.A. 2004 Supp. 40-4916; implementing K.S.A. 40-4905(d); effective April 16, 1990; amended Sept. 16, 2005.)

40-7-24. Agencies; agents; employees. Each business entity holding an agency license shall have at least one licensed agent in its employ, except any business entity offering only credit life or credit health insurance products or auto rental products. (Authorized by K.S.A. 40-103, K.S.A. 2005 Supp. 40-4916; implementing K.S.A. 2005 Supp. 40-4904(b)(8) and (10); effective April 16, 1990; amended Jan. 12, 2007.)

40-7-25. Agencies; termination of contract; certification. The termination of an agency's contract by an insurer shall automatically terminate the certification of each individual agent in that agency if the certification of each agent is derived solely from the agency's certification. (Authorized by K.S.A. 40-103 and K.S.A. 2005 Supp. 40-4916; implementing K.S.A. 2005 Supp. 40-4912; effective April 16, 1990; amended April 27, 2007.)

40-7-26. Public adjuster; examinations. (a) The public adjuster licensing examination shall test the applicant's knowledge in the following areas:

- (1) The laws of Kansas, including the following:
 - (A) The pertinent provisions of the statutes of Kansas; and
 - (B) the regulations of the insurance department;
 - (2) duties and responsibilities of a public adjuster; and
 - (3) basic insurance.
- (b) Each applicant shall be required to score at least 70 percent on the examination, unless the applicant is exempt.

(c) Each applicant shall be advised of eligibility to take the examination by the commissioner or the commissioner's designee, unless the applicant is exempt. (Authorized by K.S.A. 40-103, K.S.A. 2009 Supp. 40-5506, and K.S.A. 2009 Supp. 40-5518; implementing K.S.A. 2009 Supp. 40-5506 and K.S.A. 2009 Supp. 40-5507; effective Jan. 3, 2011.)

40-7-27. Public adjuster; reporting requirements. Each person licensed in this state as a public adjuster shall report the following to the commissioner of insurance:

(a) Each change in the information submitted on the application within 30 days of the change pursuant to K.S.A. 40-5509 and amendments thereto, including the following:

(1) Each change in the public adjuster's name. If the change of name is effected by court order,

a copy of the court order shall be furnished to the commissioner of insurance;

(2) each change in the public adjuster's residential and mailing addresses; and

(3) each judgment or injunction entered against the licensee on the basis of conduct involving fraud, deceit, misrepresentation, or a violation of any insurance law; and

(b) each legal action pursuant to K.S.A. 40-5517 and amendments thereto, including the following:

(1) Each administrative action within 30 days of final disposition, including the following:

(A) Each action taken against the public adjuster's license or licenses by the insurance regulatory agency of any other state or any territory of the United States; and

(B) each action taken against an occupational license held by the licensee, other than a public adjuster's license, by the appropriate regulatory authority of this or any other jurisdiction; and

(2) the details of each criminal prosecution, other than minor traffic violations, within 30 days of the initial pretrial hearing date for any felony offense and the first appearance date for any misdemeanor offense. The details shall include the name of the arresting agency, the location and date of the arrest, the nature of the charge or charges, the court where the case was filed, the judge assigned to the case, and the disposition of the charges. (Authorized by K.S.A. 40-103 and K.S.A. 2009 Supp. 40-5518; implementing K.S.A. 2009 Supp. 40-5509 and K.S.A. 2009 Supp. 40-5517; effective Jan. 3, 2011.)

Article 8.—EXCESS COVERAGE

40-8-1. (Authorized by K.S.A. 40-103, 40-246b, 40-246c, 40-246d; effective Jan. 1, 1966; revoked May 1, 1979.)

40-8-2. Excess line insurance; refusal of admitted carriers; rate differentials; artificial divisions of coverage; portions of risk unacceptable. Risks which may be written but are declined by admitted insurers may be placed with non-admitted insurers in accordance with K.S.A. 40-246b subject to the following conditions:

(a) When the coverage sought would be acceptable as a single contract to admitted insurers, artificial divisions of coverage into two or more proposed contracts shall be prohibited for the purpose of:

(1) Rendering a portion of the coverage unacceptable to admitted companies; or

(2) obtaining a rate advantage upon the entire risk.

(b) With prior approval of the commissioner, a risk involving a single class of coverage may be placed with a non-admitted insurer if a portion of the risk is unacceptable to admitted insurers and the non-admitted insurer will not write the unacceptable portion separately.

(c) A risk shall not be placed with a non-admitted insurer if the risk includes a combination of classes of insurance that may be procured from separate admitted insurers under separate contracts.

(d) A risk shall not be placed with a non-admitted insurer if the risk includes a combination of classes of insurance that a single admitted insurer is prohibited from writing in either a single contract or in separate contracts, or both. In these cases, separate forms of contracts, each incorporating a class or a lawful combination of classes, shall be offered to and refused by admitted insurers for each class or combination of classes, before the insurance can be placed with non-admitted insurers. (Authorized by K.S.A. 40-103; implementing K.S.A. 1984 Supp. 40-246b; effective Jan. 1, 1966; amended May 1, 1979; amended May 1, 1983; amended May 1, 1986.)

40-8-3. (Authorized by K.S.A. 40-103, 40-246c, 40-246d, K.S.A. 1978 Supp. 40-246b; effective Jan. 1, 1966; amended Jan. 1, 1968; revoked May 1, 1979.)

40-8-4 and 40-8-5. (Authorized by K.S.A. 40-103, 40-246c, 40-246d, K.S.A. 1978 Supp. 40-246b; effective Jan. 1, 1966; revoked May 1, 1979.)

40-8-6. (Authorized by K.S.A. 40-103; implementing K.S.A. 40-246d, 40-246b, 40-246e; effective Jan. 1, 1966; amended May 1, 1979; amended May 1, 1986; revoked May 1, 1987.)

40-8-7. Excess lines insurance; agents; submission of affidavit required. (a) The excess lines agent who actually places business with a non-admitted insurer shall file the affidavit and annual statement reporting forms prescribed by the commissioner. Other excess lines agents shall file only the affidavit form prescribed by the commissioner. Each excess line agent shall file the appropriate form or forms with the department, on or before March 1st of each year, and shall include a tax remittance in the amount of 6% of the gross premium for all policies written on risks that were placed during the preceding calendar year.

(1) "Gross premium" means the amount charged to the insured for the insurance procured. When an audit or gross receipts contract requires a deposit premium, the amount collected during the calendar year either as a deposit or partial payment shall be reported on the affidavit and annual statement reporting forms as gross premium for that calendar year. Gross premium shall not include the tax due on the premium nor shall that tax be charged to the insured unless specifically identified and provided for in the policy.

(2) When a policy is renewed or an adjustment, addition, or reduction is made on a risk previously placed, the excess lines agent shall make the appropriate adjusting entry on the annual statement reporting form.

(b) If the excess lines agent fails to submit a statement and pay the premium tax as required by subsection (a) of this regulation, an assessment equaling two times the amount of excess premium tax required by K.S.A. 40-246c shall be collected by the commissioner. This subsection shall not apply under the following circumstances:

(1) If the required statement and excess premium tax payment is submitted by mail on or before the 1st day of March of each year;

(2) if the required statement and the excess premium tax payment is received by the commissioner before the 1st day of January of each year and the statement and premium include all transactions of the excess coverage licensee during the year; or

(3) if the required statement and excess premium tax payment is not received by the commissioner because no transactions contemplated by the statute occurred during the preceding year. (Authorized by K.S.A. 40-103; implementing K.S.A. 40-246b, as amended by L. 1996, Ch. 45, Sec. 3, 40-246c; effective Jan. 1, 1966; amended Jan. 1, 1968; amended Jan. 1, 1970; amended Jan. 1, 1971; amended, E-76-29, June 19, 1975; amended May 1, 1976; amended May 1, 1979; amended, T-83-22, Aug. 11, 1982; amended May 1, 1983; amended May 1, 1984; amended May 1, 1986; amended May 1, 1987; amended, T-40-10-23-92, Oct. 23, 1992; amended Feb. 8, 1993; amended May 16, 1997.)

40-8-8. Excess line insurance contracts; signature of agents; required endorsement. Each insurance contract procured and delivered as excess coverage pursuant to K.S.A. 40-246b shall bear the signature of the agent who placed

the coverage with a non-admitted insurer. (Authorized by K.S.A. 40-103; implementing K.S.A. 40-246d, K.S.A. 1984 Supp. 40-246b, 40-246c; effective Jan. 1, 1966; amended Jan. 1, 1970; amended May 1, 1979; amended, T-83-22, Aug. 11, 1982; amended May 1, 1983; amended May 1, 1986.)

40-8-9. (Authorized by K.S.A. 40-103; effective Jan. 1, 1966; amended Jan. 1, 1967; amended, E-76-29, June 19, 1975; amended May 1, 1976; revoked May 1, 1979.)

40-8-10. Agents; placing risks with employer prohibited. Any excess line agent shall not place risks or effect insurance or reinsurance for themselves, or for the persons, company, or corporation with whom the excess line agent is employed. (Authorized by K.S.A. 40-103; implementing K.S.A. 1984 Supp. 40-246b; effective Jan. 1, 1966; amended, E-76-29, June 19, 1975; amended May 1, 1976; amended May 1, 1979; amended May 1, 1986.)

40-8-11. Excess line agents; records required. The record required to be maintained by each excess lines agent pursuant to K.S.A. 1985 Supp. 40-246b shall include the following:

(a) A duplicate copy of the combined affidavit-annual statement;

(b) the exact amount of each kind of insurance permitted under this act which has been procured for each assured;

(c) the home address of the insurer and the kind or kinds of insurance effected;

(d) the address of the insured, and a brief description of the property insured;

(e) the insurance cancelled or added, and its premiums; and

(f) a duplicate of the policy with each rider, endorsement, and attachment.

(g) Evidence that the information and consent of the insured required by K.S.A. 1985 Supp. 40-246b was provided and obtained. (Authorized by K.S.A. 40-103; implementing K.S.A. 1985 Supp. 40-246b, 40-246c; effective Jan. 1, 1966; amended Jan. 1, 1968; amended Jan. 1, 1970; amended, T-83-22, Aug. 11, 1982; amended May 1, 1983; amended May 1, 1986; amended May 1, 1987.)

40-8-12. (Authorized by K.S.A. 40-103; effective Jan. 1, 1966; amended Jan. 1, 1973; amended, E-76-29, June 19, 1975; amended May 1, 1976; revoked May 1, 1979.)

40-8-13. (Authorized by K.S.A. 40-103, 40-2001 *et seq.*; effective Jan. 1, 1966; revoked May 1, 1979.)

Article 9.—ADVERTISING

40-9-1. Insurance companies; advertising; assets and liabilities; capital; advertisement defined. (a) Whenever any insurance company doing business in this state advertises its assets, the insurance company shall advertise its liabilities in the same connection and in a manner equally conspicuous. The amount of company liability in an advertisement shall be the amount determined in the manner required in making the annual statements to this department, and the amount of its assets shall be the admitted assets of the company. In the case of a company organized under the laws of a foreign country, its assets shall be considered only the amount deposited with the official of the several states of the union or held by trustees in the United States for the benefit of the policyholders and creditors of the company in the United States.

(b) Each advertisement purporting to show the capital of any insurance company doing business in this state shall exhibit only the amount of capital actually paid up in cash.

(c) Each policy, sign, circular, card, or other means by which public announcements are made, shall be held to be an advertisement within the meaning of K.A.R. 40-9-1. (Authorized by K.S.A. 40-103; implementing K.S.A. 40-235; effective Jan. 1, 1966; amended May 1, 1986.)

40-9-2 to 40-9-22. (Authorized by K.S.A. 40-103, 40-2401 *et seq.*; effective Jan. 1, 1966; revoked Jan. 1, 1974.)

40-9-23. Insurance companies; advertising; senior-specific certifications and professional designations. The Kansas insurance department's "policy and procedure for use of senior-specific certifications and professional designations in the sale of life insurance annuities," dated August 25, 2010, is hereby adopted by reference. (Authorized by K.S.A. 40-103 and K.S.A. 40-2404a; implementing K.S.A. 2009 Supp. 40-2404; effective Jan. 14, 2011.)

40-9-100. Accident and sickness insurance; advertising. The national association of insurance commissioners' "advertisements of accident and sickness insurance model regulation,"

April 1999 edition, is hereby adopted by reference, subject to the following exceptions:

(a) Section 1 is not adopted.

(b) Section 13 C is not adopted by reference and is replaced with the following language: "An advertisement which is seen or heard in this state shall not directly or indirectly create the impression that the policy being advertised is approved for issuance in the state, unless that is the fact. If the policy is not approved for issuance in this state, that fact shall be disclosed in the advertisement by a statement reading, 'This policy is not available in Kansas.'"

(c) Section 16 A(2) is completed by the insertion of "6" in the space requiring specification of a number of months.

(d) Section 18 B is not adopted. (Authorized by K.S.A. 40-2404a; implementing K.S.A. 1999 Supp. 40-2404(1); effective May 1, 1982; amended May 1, 1987; amended June 22, 2001.)

40-9-101. (Authorized by K.S.A. 40-2404a; implementing K.S.A. 40-2404 (1) and (2); effective, E-73-13, May 1, 1973; effective Jan. 1, 1974; amended May 1, 1975; amended May 1, 1979; revoked May 1, 1982.)

40-9-102. (Authorized by K.S.A. 40-2404a; implementing K.S.A. 40-2404 (1) and (2); effective, E-73-13, May 1, 1973; effective Jan. 1, 1974; amended May 1, 1975; revoked May 1, 1982.)

40-9-103 and 40-9-104. (Authorized by K.S.A. 40-2404a; implementing K.S.A. 40-2404 (1) and (2); effective, E-73-13, May 1, 1973; effective Jan. 1, 1974; revoked May 1, 1982.)

40-9-105 to 40-9-107. (Authorized by K.S.A. 40-2404a; implementing K.S.A. 40-2404 (1) and (2); effective, E-73-13, May 1, 1973; effective Jan. 1, 1974; amended May 1, 1975; revoked May 1, 1982.)

40-9-108. (Authorized by K.S.A. 40-2404a; implementing K.S.A. 40-2404 (1) and (2); effective, E-73-13, May 1, 1973; effective Jan. 1, 1974; revoked May 1, 1982.)

40-9-109. (Authorized by K.S.A. 40-2404a; implementing K.S.A. 40-2404 (1) and (2); effective, E-73-13, May 1, 1973; effective Jan. 1, 1974; amended May 1, 1975; revoked May 1, 1982.)

40-9-110 and 40-9-111. (Authorized by K.S.A. 40-2404a; implementing K.S.A. 40-2404

(1) and (2); effective, E-73-13, May 1, 1973; effective Jan. 1, 1974; revoked May 1, 1982.)

40-9-112. (Authorized by K.S.A. 40-2404a; implementing K.S.A. 40-2404 (1) and (2); effective, E-73-13, May 1, 1973; effective Jan. 1, 1974; amended May 1, 1975; revoked May 1, 1982.)

40-9-113 to 40-9-116. (Authorized by K.S.A. 40-2404a; implementing K.S.A. 40-2404 (1) and (2); effective, E-73-13, May 1, 1973; effective Jan. 1, 1974; revoked May 1, 1982.)

40-9-117. (Authorized by K.S.A. 40-2404a; effective Feb. 15, 1977; revoked May 1, 1979.)

40-9-118. Life insurance and annuities; advertising. The Kansas insurance department's "policy and procedure regarding advertisements of life insurance and annuities," dated October 16, 2014, is hereby adopted by reference. (Authorized by K.S.A. 40-103 and 40-2404a; implementing K.S.A. 40-103, K.S.A. 2014 Supp. 40-2404, and K.S.A. 40-2407; effective Feb. 15, 1977; amended May 1, 1979; amended May 1, 1986; amended May 1, 1987; amended May 1, 1988; amended Jan. 4, 1993; amended July 10, 1998; amended Feb. 20, 2015.)

40-9-119 to 40-9-125. (Authorized by K.S.A. 40-103, 40-2404a; implementing K.S.A. 40-2404(1); effective Feb. 15, 1977; amended May 1, 1986; revoked May 1, 1987.)

40-9-126. Advertising of medicare supplement insurance. The Kansas insurance department's "policy and procedure regarding advertisements of medicare supplement insurance," dated October 16, 2014, including the appendix, is hereby adopted by reference. (Authorized by K.S.A. 40-2404a; implementing K.S.A. 40-103, K.S.A. 2014 Supp. 40-2404, and K.S.A. 40-2404a; effective Feb. 20, 2015.)

Article 10.—FIREFIGHTER'S RELIEF FUND TAX

40-10-1. Firefighter's relief fund tax; fire marshal tax; companies subject to; amount of premiums taxed. (a) Each insurance company, authorized to transact business in the state of Kansas, that issues a policy which covers the hazard of fire is subject to the firefighter's relief fund tax and the fire marshal tax. Unless a verifiable, separate charge is made for fire coverage, the fol-

lowing portion of the respective policy premiums shall be allocated as fire premium:

- (1) 25 percent of all premium collected on homeowners multiple-peril policies;
- (2) 55 percent of all premium collected on the property coverage section of commercial multiple-peril policies;
- (3) 20 percent of all premium collected on aircraft policies;
- (4) eight percent of all premium collected on automobile physical damage coverage;
- (5) 15 percent of all premium collected on marine policies;
- (6) 35 percent of all premium collected on farmowners multiple-peril policies; and
- (7) 33 $\frac{1}{3}$ percent of all premium on all other single premium policies that provide coverage for damage caused by fire and perils other than fire.

(b) The words "fire insurance company" as used in K.S.A. 75-1508, and any amendments, are construed to mean each company issuing a policy which includes coverage for property against the hazard of fire. (Authorized by K.S.A. 40-103, 40-1707(g); implementing K.S.A. 1984 Supp. 75-1508, K.S.A. 1984 Supp. 40-1703; effective Jan. 1, 1966; amended May 1, 1981; amended May 1, 1985; amended May 1, 1986.)

40-10-2. Firefighter's relief association; requirements for participation; procedure.

(a) Members of a fire department who desire to participate in the distribution of firefighter's relief funds shall meet these requirements:

- (1) Apply for a charter and incorporate as a not-for-profit corporation;
- (2) file with the commissioner of insurance a certified copy of the articles of incorporation of the firefighter's relief association; and
- (3) file with the commissioner of insurance evidence of establishment of a fire district within a township or county in accordance with applicable Kansas statutes. This requirement shall not apply to fire departments under the exclusive control of the governing body of an incorporated city.

(b) When the members of a city, township, county, or fire district fire department notify the commissioner of insurance of their desire to participate in the firefighter's relief fund tax and have otherwise qualified for participation, the proper officials shall complete a declaration form, provided by the commissioner, that declares their right to participate in the firefighter's relief fund. The completed form shall be returned to the commis-

sioner. The declaration form shall be executed by the chief executive officer of the city, township, county, or fire district. The clerk of the city, township, or county, or the equivalent official of the fire district shall attest to the execution of the form.

(c) A declaration form shall be filed annually with the commissioner of insurance.

(d) Qualified firefighter's relief associations shall submit for newly established associations and for associations requesting redetermination hearings pursuant to K.S.A. 40-1706(c)(6), on forms provided by the commissioner, a certification by the county clerk, of the population and assessed tangible property valuation of the geographic area provided fire protection services by the fire department of the association. The population figure shall be computed using the most recent population figures available from the United States bureau of the census, as certified to the secretary of state by the division of the budget on July 1 of each year. The assessed tangible property valuation figure provided on the form shall be computed using the tangible assessed valuation, as shown on the latest November 1 assessment roll prepared and maintained by the county clerk.

(e) Each firefighter's relief association shall adopt bylaws to cover all activities of the association and shall set forth the procedures for disbursing funds for the payment of benefits provided by the association. A copy of the bylaws and the procedures shall be filed with the commissioner. (Authorized by K.S.A. 40-103, 40-1707(g); implementing K.S.A. 40-1701; effective Jan. 1, 1966; amended May 1, 1979; amended May 1, 1981; amended May 1, 1985; amended May 1, 1986; amended Oct. 17, 1997.)

40-10-3. (Authorized by K.S.A. 40-103, 17-3001(C); effective Jan. 1, 1966; revoked May 1, 1979.)

40-10-4. (Authorized by K.S.A. 40-103, 40-1701 *et seq.*; effective Jan. 1, 1966; revoked May 1, 1979.)

40-10-5. Firefighter's relief associations; purchase of insurance; on duty coverage.

(a) Except as provided in K.S.A. 40-1707(b), 40-1707(c)(1)(A) and 40-1707(c)(1)(B), and its amendments, any insurance for coverage while on duty which is paid for in whole or in part by a firefighter's relief association from funds paid by the commissioner of insurance shall meet the following conditions:

(1) Each policy shall be purchased, owned and held by the firefighter's relief association.

(2) Each policy shall name the firefighter's relief association as beneficiary of the policy. The policy shall not contain a provision which would permit the beneficiary to be other than a firefighter's relief association.

(3) The policy shall provide that each indemnity shall be paid to the firefighter's relief association.

(4) Except as provided by subsection (b), the policy shall be limited to cover only accidental injuries, diseases, or death resulting from duties as a member of the fire department as set forth in K.S.A. 40-1707.

(b) Each volunteer fire department may establish annuities in accordance with K.S.A. 40-1707(c)(1), and its amendments. Prior to the purchase of any annuity contract by a firefighter's relief association for and on behalf of the volunteer firefighters, the purchase of the annuity contract shall be approved by the attorney of the governing body.

(c) K.S.A. 40-1707(c)(1)(A) and 40-1707(c)(1)(B), and its amendments, shall be applicable only to group term, group permanent or individual permanent life insurance contracts. (Authorized by K.S.A. 40-103, 40-1707(g); implementing K.S.A. 1984 Supp. 40-1707; effective Jan. 1, 1966; amended Jan. 1, 1968; amended May 1, 1975; amended May 1, 1979; amended May 1, 1985; amended May 1, 1986.)

40-10-6. Firefighter's relief associations; purchase of insurance; 24 hour coverage.

(a) Except as provided in K.S.A. 40-1707(b), 40-1707(c)(1)(A) and 40-1707(c)(1)(B), and its amendments, any insurance for 24 hour coverage which is paid in part by a firefighter's relief association from funds paid to it by the commissioner of insurance shall meet the following conditions:

(1) Each policy shall be purchased, owned, and held by the firefighter's relief association.

(2) Except as provided in subsection (b)(4), each policy shall name the firefighter's relief association as the beneficiary of the policy. The policy shall not contain a provision which would permit the beneficiary to be other than a firefighter's relief association.

(3) Except as provided in subsection (b)(4), the insurance policy shall provide that each indemnity shall be paid to the firefighter's relief association.

(b) Where individual members of a firefighter's relief association desire to have their dependents

insured under a group or franchise accident and health policy issued to the association:

(1) Dependent's coverage shall be evidenced by endorsements attached to the policy.

(2) The association shall have authorized the addition of coverage for dependents to its policy.

(3) The cost of coverage for dependents shall be paid by the individual firefighter. Firefighter's relief tax funds cannot be used to pay for the coverage.

(4) The endorsement shall provide that benefits under the endorsement for dependents shall be paid directly to the firefighter who has paid for them or to another beneficiary of the firefighter's choice. The association shall not be a beneficiary.

(c) When a firefighter's relief association purchases 24 hour coverage for its members, each individual member shall pay that portion of the cost (premiums) which is beyond "on duty" coverage. The contribution by the individual members shall not be less than 15 percent of the total premium for this coverage.

(d) K.S.A. 40-1707(c)(1)(A) and 40-1707(c)(1)(B), and its amendments, shall be applicable only to group term, group permanent or individual permanent life insurance contracts. (Authorized by K.S.A. 40-103, 40-1707(g); implementing K.S.A. 1984 Supp. 40-1707; effective Jan. 1, 1966; amended Jan. 1, 1968; amended May 1, 1975; amended May 1, 1979; amended May 1, 1985; amended May 1, 1986.)

40-10-7 to 40-10-9. (Authorized by K.S.A. 40-103, 40-1701 *et seq.*; effective Jan. 1, 1966; revoked May 1, 1979.)

40-10-10. Firefighter's relief association; permissible disbursements.

The cost of the bond for the treasurer of a firefighter's relief association, as prescribed by K.S.A. 40-1706, and reasonable administrative expenses, to be determined at the discretion of the commissioner of insurance, including stamps, stationery, safe deposit box rent, the expense of having the funds of the association audited, and other similar expenses, shall be permissible disbursements from the firefighter's relief funds. Each expenditure shall be itemized in the financial statement. (Authorized by K.S.A. 40-103, 40-1707(g); implementing K.S.A. 40-1707(g); effective Jan. 1, 1966; amended May 1, 1979; amended May 1, 1986; amended Oct. 17, 1997.)

40-10-11 to 40-10-13. (Authorized by K.S.A. 40-103, 40-1701 *et seq.*; effective Jan. 1, 1966; revoked May 1, 1979.)

40-10-14. Same; purchase of bonds; requirements. Each bond purchased with firefighter's relief funds shall be shown on the financial statement at the initial purchase price. Bonds shall not be carried at market or maturity value. When the bonds mature or are sold, each change in the value from the initial purchase price shall be reflected in the financial statement. (Authorized by K.S.A. 40-103, 40-1707(g); implementing K.S.A. 40-1706; effective Jan. 1, 1966; amended May 1, 1986; amended May 1, 1987.)

40-10-15. Firefighters relief act; application of statutory formula. In applying the formula set forth in L. 1987, Ch. 168, Sec. 1(c)(5), the result of the calculation prescribed by subsection (A)(ii) and (B)(ii) shall be the "amount received from taxes collected for all of calendar year 1983" referenced in subsections (A)(iv) and (B)(iv) respectively. (Authorized by L. 1987, Ch. 168, Sec. 2(g); implementing L. 1987, Ch. 168, Sec. 1(c)(5); effective, T-88-21, July 1, 1987; amended May 1, 1988.)

40-10-16. Firefighters relief act; fund allocation. (a) The annual redetermination allocation shall be calculated using a formula based on the population and the assessed tangible property valuation of the area served by the association that requests redetermination in relation to the population and the assessed tangible property valuation of the state. The assessed tangible property valuation of the area served by the association and the state to be used in the formula shall be as reported by the Kansas department of revenue's statistical report of property assessment and taxation for the year during which redetermination is requested. The populations of the area served by the association and the state to be used in the formula shall be those population totals certified by the Kansas secretary of state for the year during which redetermination is requested.

(b) The following formula shall be used to calculate a new base allocation percentage for the association that requests redetermination:

(1) The assessed tangible property valuation of the area served by the association shall be divided by the assessed tangible property valuation of the state, and the quotient shall be divided by two to form one-half of the new base allocation percentage.

(2) The population of the area served by the association shall be divided by the population of the

state, and the quotient shall be divided by two to form the second half of the new base allocation percentage.

(3) The sum of the amounts calculated in paragraphs (b)(1) and (2) shall be the new base allocation percentage for the association.

(c) The next distribution of firefighters relief funds following a redetermination shall be computed as follows:

(1) The new base allocation percentage for each association that was redetermined shall be added to the new base allocation percentage of any associations eligible for the distribution that were new or merged since the last distribution and the prior year's allocation percentage for all other active associations.

(2) The sum computed in paragraph (c)(1) shall be divided into 100.

(3) The quotient computed in paragraph (c)(2) shall be multiplied by each new base allocation percentage for associations that were redetermined, new, or merged in the prior year and each prior year's allocation percentage for other associations to receive distributions so that the total of all percentages of associations eligible for the distribution equals 100.

(d) The allocation formula prescribed by this regulation shall also be used when distributions are determined for new or merged associations. Any association that has failed to qualify for funds for two consecutive years may resume participation as a new association by submitting the information required by K.A.R. 40-10-2(d) and K.S.A. 40-1706(a), and amendments thereto. (Authorized by K.S.A. 40-1707(g); implementing K.S.A. 2010 Supp. 40-1706; effective May 27, 2011.)

Article 11.—PROXIES, CONSENTS AND AUTHORIZATIONS

40-11-1 to 40-11-7. (Authorized by K.S.A. 40-264 *et seq.*, 40-272; effective Jan. 1, 1966; amended Jan. 1, 1970; revoked May 1, 1980.)

40-11-9 to 40-11-11. (Authorized by K.S.A. 40-264 *et seq.*, 40-272; effective Jan. 1, 1966; amended Jan. 1, 1970; revoked May 1, 1980.)

40-11-12. Domestic stock insurance companies; proxies, consents and authorizations; application of regulation. The national association of insurance commissioners regulation regarding proxies, consents and authorizations of domestic stock insurers, June 1980 edition,

is hereby adopted by reference. (Authorized by K.S.A. 40-103, 40-272; implementing K.S.A. 40-272; effective May 1, 1980; amended May 1, 1981; amended May 1, 1986.)

Article 12.—SALE OF STOCK

40-12-1. (Authorized by K.S.A. 40-103, 40-205; implementing K.S.A. 40-209a; effective Jan. 1, 1966; amended May 1, 1980; amended May 1, 1986; revoked May 25, 2001.)

40-12-2 and 40-12-3. (Authorized by K.S.A. 40-103 and K.S.A. 1965 Supp. 40-204, 40-205; effective Jan. 1, 1966; revoked Jan. 1, 1968.)

40-12-4. Stock insurance companies; sale of stock; permit; amount paid-in; requirements. A domestic insurance company in the process of organization and offering its stock for sale under a permit issued by the commissioner of insurance shall not be issued a certificate of authority to transact the business of insurance, as required by K.S.A. 40-214, until the full amount of stock authorized under the permit has been paid-in. (Authorized by K.S.A. 40-103, 40-205; implementing K.S.A. 40-205; effective Jan. 1, 1966; amended May 1, 1986.)

40-12-5. (Authorized by K.S.A. 40-103, 40-205; implementing K.S.A. 40-205; effective Jan. 1, 1966; amended May 1, 1980; amended May 1, 1986; revoked May 1, 1987.)

40-12-6. Stock insurance companies; sale of stock; permits; holding companies. A permit shall not be issued to a domestic insurance company in the process of organization where the company's stock plan provides that sufficient shares to effect control of the insurance company shall be issued to a holding company or other legal entity which is offering for sale shares of its authorized but unissued stock or of its treasury stock. (Authorized by K.S.A. 40-103, 40-205; implementing K.S.A. 40-204, 40-205; effective Jan. 1, 1966; amended May 1, 1980; amended May 1, 1986.)

40-12-7. Stock insurance companies; sale of stock; permits; organizers and promoters; requirements. Except as provided in K.A.R. 40-12-8, the organizers and promoters of a domestic insurance company in the process of organization shall, as a group and prior to the offer or sale of any shares of stock to any other person, purchase for their own account shares equal to not less than

20 percent of the total number of shares to be offered under the permit. Each share of stock of a domestic insurance company in the process of organization purchased directly or indirectly by its organizers and promoters shall be deposited in escrow pursuant to an escrow agreement approved by the commissioner of insurance. The escrow agreement shall include a provision that the shares shall not be sold, transferred, assigned, encumbered, or alienated in any manner except by operation of law without the prior approval of the commissioner of insurance for such period of time as the commissioner shall deem reasonable, necessary, or advisable to protect the interests of the company, its policyholders and stockholders. (Authorized by K.S.A. 40-103, 40-205; implementing K.S.A. 40-205; effective Jan. 1, 1966; amended May 1, 1980; amended May 1, 1986.)

40-12-8. Stock insurance companies; sale of stock; permits; organizers and promoters; holding companies; requirements. (a) When the plan by which a domestic insurance company in the process of organization proposes to offer its stock for sale provides that the insurance company shall be sponsored by a holding company or other legal entity which will subscribe for and purchase sufficient shares to control the operation of the insurance company, the organizers and promoters of the insurance company shall not be subject to K.A.R. 40-12-7.

(b) When the provision of paragraph (a) shall apply, each share of the insurance company purchased by the organizers and promoters and each share purchased by the holding company or other legal entity shall be deposited in escrow pursuant to an escrow agreement approved by the commissioner of insurance.

(c) The escrow agreement shall include a provision that the shares shall not be sold, transferred, assigned, encumbered or alienated in any manner except by operation of law without the prior approval of the commissioner of insurance. The sale restriction shall be effective for a period of time as the commissioner shall deem reasonable, necessary or advisable to protect the interests of the company, its policyholders, and stockholders. (Authorized by K.S.A. 40-103, 40-205; implementing K.S.A. 40-205; effective Jan. 1, 1966; amended May 1, 1980; amended May 1, 1986.)

40-12-9. Impounding of stock sale proceeds; when required; impound agent; certif-

icates of no lien. (a) A permit issued to a domestic stock insurer prior to a certificate of authority shall require 100 percent of all stock sale proceeds to be impounded until release upon written order of the commissioner. This requirement shall not apply if the applicant can demonstrate to the commissioner's satisfaction that an impoundment of funds is not necessary to guarantee full return of stock purchase moneys in the event a certificate of authority is not issued. If the applicant does not qualify for a certificate of authority within two years, subscription money shall be returned in full to all subscribers without deduction of expenses. Extensions beyond two years shall not be granted without the consent of all subscribers.

(b) Application for a permit which will entail impoundment of stock sale proceeds shall name a duly authorized bank or trust company within the state which has consented to act as impound agent.

(c) Before an order is made releasing stock sale proceeds from impoundment, written assurance shall be requested from the bank or trust company serving as impound agent that it has no lien, general, special, bankers, or otherwise, against the funds, and knows of no claims asserted against the funds. (Authorized by K.S.A. 40-103, 40-205; implementing K.S.A. 40-205; effective Jan. 1, 1968; amended May 1, 1980; amended May 1, 1986; amended May 1, 1987.)

40-12-10. Promotional stock. Stock issued for consideration of the promotion of a domestic stock insurer shall be prohibited. The prohibition does not preclude, for promoters, officers or employees, a stock option plan which meets the standards set forth in Kansas administrative regulation 40-12-12(a). (Authorized by K.S.A. 40-103, 40-205; implementing K.S.A. 40-205; effective Jan. 1, 1968; amended May 1, 1980; amended May 1, 1981; amended May 1, 1986; amended May 1, 1987.)

40-12-11. Sales to promoters. In the event of a public offering, a security of a domestic insurer shall not be authorized for promoters at less than the net offering price. (Authorized by K.S.A. 40-103, 40-205; implementing K.S.A. 40-205; effective Jan. 1, 1968; amended May 1, 1980; amended May 1, 1986; amended May 1, 1987.)

40-12-12. Options to promoters, officers or employees. (a) Issuance of an option of stock of a domestic insurer to promoters, officers or employees shall be authorized only when it is sat-

isfactorily demonstrated that the promoters, officers or employees have rendered a genuine service of value to the company for which they have not otherwise been fully compensated.

(b) The issuance shall be permitted if:

(1) The total number of shares subject to the option shall not exceed 10 percent of the number of authorized shares initially sold and issued for cash.

(2) The exercise price stated in the option to be issued by a domestic insurer is not less than the net price at which shares are sold to public investors at the time the option is granted, plus an increase of 10 percent for each year thereafter elapsing during the life of the option.

(3) The option shall be non-transferable except upon death of the optionee or by operation of law.

(4) The option terms shall not be exercisable more than five years after the date of issue.

(c) The intention to issue an option and the approximate extent shall be fully disclosed in the prospectus or offering circular.

(d) An option shall be a form of promotional expense and shall be justified by a showing of the nature of the service rendered or other consideration justifying the grant of the option. The aggregate of all organizational expenses and promotional expenses, including the value of the option as determined by the board of directors and subject to review by the commissioner, shall be subject to a permissible maximum of 12½ percent of the total amount actually paid for the issuer's capital stock. (Authorized by K.S.A. 40-103; implementing K.S.A. 40-205; effective Jan. 1, 1968; amended May 1, 1980; amended May 1, 1981; amended May 1, 1986; amended May 1, 1987.)

40-12-13. Officers, directors, and employee stock purchase plans. Stock option plans in a domestic insurer shall conform to the following specifications:

(a) Stock options shall be provided for by a fair and reasonable plan which has been submitted to and approved by the board of directors and stockholders after the company has been in operation for at least one full year.

(b) The granting of the stock option shall bear a reasonable incentive relationship to the continual employment of the optionee.

(c) The stock option shall be for a stated number of shares, to be paid for in cash.

(d) If the stock is widely traded, the options shall be for the full market value at the time the options are granted. If the stock is not widely trad-

ed, the options shall be for a price fixed by the company's board of directors and approved by the commissioner.

(e) The stock option shall fully set forth employment qualifications, conditions for complete exercise of the options, conditions under which cessation of employment shall terminate the option, and the effect of death, resignation, or other similar events.

(f) The stock option shall contain an anti-dilution or proration clause. The clause shall provide that the number of shares allocated to the plan and the number of shares carried by each individual option, and price per share, shall automatically be proportionately adjusted for each increase or decrease in the number of issued and outstanding shares of the corporation. This shall be accomplished without a corresponding increase or decrease in the corporation's paid-in capital.

(g) Only the optionee, or a court appointed guardian, shall exercise the option during the optionee's lifetime. For a specified time after death, only the heirs, administrator or executor shall exercise the option.

(h) The period of time in which an option may be exercised after death shall be no longer than five years.

(i) The total number of shares set aside at any one time for this purpose shall not be inequitably proportioned to the number of shares issued and outstanding. (Authorized by K.S.A. 40-103, 40-205; implementing K.S.A. 40-205; effective Jan. 1, 1968; amended May 1, 1980; amended May 1, 1986; amended May 1, 1987.)

40-12-14. Purchasing of shares through options. A stock purchase plan or option in a domestic insurer shall provide that the optionee shall sign a stipulation when the option is exercised that the purchase of the shares shall be for investment and not for resale. (Authorized by K.S.A. 40-103, 40-205; implementing K.S.A. 40-205; effective Jan. 1, 1968; amended May 1, 1986; amended May 1, 1987.)

40-12-15. Pro rata exercising of options. A stock plan or option shall provide that the optionee shall exercise a pro rata portion of the options each year or the relevant portion shall automatically expire. (Authorized by K.S.A. 40-103, 40-205; implementing K.S.A. 40-205; effective Jan. 1, 1968; amended May 1, 1986.)

40-12-16. Agents' production stock option plans. In order to be authorized, each agent's stock option plan in a domestic insurer shall:

(a) Be clear and unambiguous in its term and as simple as the subject matter permits;

(b) provide that the plan shall be submitted to and approved by the company's directors and stockholders before it becomes effective;

(c) provide that no securities shall be issued without a prior permit of the commissioner authorizing the issue. The company shall promptly and diligently endeavor to process the necessary authorization contemplated by the plan;

(d) provide that business written shall serve as a basis for earning options only after the business shall have been in force and effect for two policy years and premiums for the same period shall have been fully paid in cash. A policy that shall terminate by a death claim prior to expiration of the persistency period shall be regarded as having run the full two years;

(e) govern the earning of conditional rights to options and the grant of options by a conservative formula based on one of the following:

(1) Annual premiums written and paid on policies issued during a given calendar quarter;

(2) commissions earned per calendar quarter;

or,

(3) another reliable criterion of production of business, per calendar quarter, having intensive value to the company;

(f) provide for notifying each participating agent within 30 days after the close of each calendar quarter of the number of shares to which conditional rights have been earned by virtue of production for the calendar quarter, according to the stated formula. Notification shall constitute evidence of the conditional rights to receive options for an appropriate number of shares after expiration of the persistency period and subject to all other conditions precedent. The notification form shall not be used without prior approval in writing by the commissioner;

(g) provide for the issuance of an option with reasonable promptness after expiration of the persistency period according to the formula chosen in subparagraph (e), and subject to fulfillment of all other conditions outlined in this section;

(h) specify that an option to be granted shall be exercisable for not longer than 180 days after issuance, after which they shall become null and void;

(i) specify that an option granted shall be nonassignable and nontransferable;

(j) limit the maximum number of shares optionable at any given time to a number equivalent to 10 percent of the company's then issued and outstanding or authorized shares;

(k) provide that options shall not be granted to any agent on the basis of personal or controlled business;

(l) provide in effect that agents appointed by the same company shall not transact insurance on each other or on each other's families for the purpose of avoiding the foregoing provision;

(m) provide that no agent shall be required to purchase any insurance personally, or that no agent's immediate family shall be required to participate;

(n) state that the price for issuance of the shares of stock shall be determined by the company's board of directors and approved by the commissioner;

(o) provide that rights to options for shares earned by an agent's production in accordance with the production formula shall abate pro rata at conclusion of the persistency period or prior to issuance of the actual options in any case where issuance of options would exceed the amount authorized by permit of the commissioner; and

(p) specify that after due notice to the persons concerned the commissioner may modify or terminate any or all of the following:

(1) The plan when continuation of the plan is inequitable;

(2) rights to options when issuance of options upon maturity is or shall be inequitable; and

(3) outstanding, issued but unexercised, options when issuance of shares is or shall be inequitable. (Authorized by K.S.A. 40-103, 40-205; implementing K.S.A. 40-205; effective Jan. 1, 1968; amended May 1, 1980; amended May 1, 1981; amended May 1, 1986; amended May 1, 1987.)

40-12-17. Limitation of options. If the total number of shares of a domestic insurer are, at any one time, subject to outstanding unexercised option rights which exceed or will exceed 20 percent of the number of the then-issued and outstanding shares, it shall be presumed that an unfair, unjust and inequitable situation exists. The number of outstanding unexercised option rights shall include promotional options, employee incentive options, and agents production options. (Authorized by K.S.A. 40-103, 40-205; implementing K.S.A. 40-205; effective Jan. 1, 1968; amended May 1, 1986; amended May 1, 1987.)

40-12-18. Options to attorneys-at-law, actuaries, and underwriters. An option in a domestic insurer to an attorney at law, or an actuary employed on a consulting basis, and to an underwriter under agents' production stock option plans shall be prohibited. (Authorized by K.S.A. 40-103, 40-205; implementing K.S.A. 40-205; effective Jan. 1, 1968; amended May 1, 1986; amended May 1, 1987.)

40-12-19. Directors' resolution as to fairness of price; commissioner's approval. (a) Each application for authorization to issue options in a domestic insurer shall be supported by a certified copy of a resolution of the applicant's board of directors containing its findings, as follows:

(1) In the case of an applicant who demonstrates to the commissioner's reasonable satisfaction that:

(A) its shares have, through substantial trading in a free market, achieved a recognizable value in the market place;

(B) the market price reported is a bona fide market price;

(C) in the opinion of its board of directors, the market price represents the fair value of the shares; and

(D) the issuance at the proposed price will be equitable to the company, to its present and future stockholders, and to other optionees.

(2) In the case of an applicant which is either newly organized, or, if not newly organized, whose shares have not yet achieved a recognized value in the market place as described in paragraph (1) of this regulation, that:

(A) the value of the shares as stated represents, the fair value of the same; and

(B) that the option price sought to be authorized is an equitable price with respect to the company, its present and future stockholders, and the optionees.

(b) An application for authorization to issue options shall be approved by the commissioner if the price is equitable with respect to the company, its present and future stockholders, and other optionees, and the proposed plan complies with the other provisions of Kansas law and regulations. (Authorized by K.S.A. 40-103, 40-205; implementing K.S.A. 40-205; effective Jan. 1, 1968; amended May 1, 1980; amended May 1, 1981; amended May 1, 1986; amended May 1, 1987.)

Article 13.—INSIDER STOCK TRADING

40-13-1. Definition of certain terms. (a) "Insurer" means any domestic insurance compa-

ny with an equity security subject to the terms of K.S.A. 40-264, 40-265, 40-266, 40-267, 40-268, 40-269, and not exempt by the provisions of K.S.A. 40-270.

(b) "Director" means those persons named as directors in the articles of incorporation for the first year, or those persons elected as directors by the stockholders.

(c) "Officer" means the president, vice-president, treasurer, secretary, controller, actuary or any other person who performs at the election or appointment by the board of directors of the corporation.

(d) Securities "held of record":

(1) Securities shall be deemed to be "held of record" by each person who is identified as the owner of the securities on a record of security holders maintained by or on behalf of the insurer, subject to the following:

(A) In each case where the records of security holders have not been maintained in accordance with accepted practice, each additional person who would be identified as an owner on such records if they had been maintained in accordance with accepted practice shall be included as a holder of record.

(B) Securities identified as held of record by a corporation, a partnership, a trust whether or not the trustees are named, or other organization shall be considered to be held by one person.

(C) Securities identified as held of record by one or more persons as trustees, executors, guardians, custodians or in other fiduciary capacities with respect to a single trust, estate or account shall be considered to be held of record by one person.

(D) Securities held by two or more persons as co-owners shall be considered to be held by one person.

(E) Each outstanding unregistered or bearer certificate shall be considered to be held of record by a separate person, except to the extent the insurer can establish that if the securities were registered they would be held of record under the provisions of this rule by a lesser number of persons.

(F) Securities registered in substantially similar names where the insurer has reason to believe, because of the address or other indications, that the names represent the same person, may be included as held of record by one person.

(2) Notwithstanding subsection (1) of this paragraph:

(A) Securities held with the knowledge of the insurer that they are subject to a voting trust, deposit agreement, or similar arrangement shall be

of interest in the securities. The insurer may rely in good faith on information received in response to its request from a nonaffiliate of the certificates or evidence of interest.

(B) If the insurer knows or has reason to know that the method of holding securities of record is used primarily to circumvent the provisions of a statute or these regulations, the beneficial owners of the securities shall be deemed the record owners.

(e) "Class" means all securities of an insurer which are of similar character and the holders of which enjoy similar rights and privileges. (Authorized by K.S.A. 40-103, 40-271; implementing K.S.A. 40-264; through 40-271; effective Jan. 1, 1967; amended May 1, 1980; amended May 1, 1981; amended May 1, 1986; amended May 1, 1987.)

40-13-2. (Authorized by K.S.A. 40-103, 40-271; implementing K.S.A. 40-265; effective Jan. 1, 1967; amended May 1, 1986; revoked May 1, 1987.)

40-13-3. Reporting of securities. Information concerning the beneficial ownership of securities shall be given as of January 31, 1966, or in the case of persons who subsequently assume any of the relationships specified in K.S.A. 40-264, as of the date that the relationship was assumed. (Authorized by K.S.A. 40-103, 40-271; implementing K.S.A. 40-264; effective Jan. 1, 1967; amended May 1, 1986.)

40-13-4. (Authorized by K.S.A. 40-264 *et seq.*, 40-271; effective Jan. 1, 1967; revoked May 1, 1980.)

40-13-5. Ownership of more than 10 percent of an equity security. (a) In determining whether a person is the beneficial owner, directly or indirectly, of more than 10 percent of any class of any equity security for the purpose of K.S.A. 40-264, the class shall be deemed to consist of the total number of shares of the class outstanding, but shall not include any securities of the class held by or for the account of the insurer or a subsidiary of the insurer.

(b) The class of voting trust certificates or certificates of deposit shall consist of the number of shares of voting trust certificates or certificates of deposit issuable out of the total amount of outstanding shares of the class which may be deposited under the voting trust agreement or deposit agreement in question, whether or not all of the outstanding securities have been so deposited.

(c) A person acting in good faith may rely on the information contained in the latest annual statement filed with the commissioner concerning the number of shares outstanding in a class or, in the case of voting trust certificates or certificates of deposit, the number issuable.

(d) In determining whether a person is the beneficial owner, directly or indirectly, of more than 10 percent of any class of equity security for the purpose of K.S.A. 40-264, a person shall be deemed to be the beneficial owner of securities of the class in which the person has the right to acquire securities through the exercise of presently exercisable options, warrants or rights, or through the conversion of presently convertible securities.

(e) The securities subject to the options, warrants, rights or conversion privileges held by a person shall be deemed to be outstanding for the purpose of computing the percentage of outstanding securities of the class owned by the person described in paragraphs (a), (b) and (c), but shall not be deemed outstanding for the purpose of computing the percentage of the class owned by any other person. This paragraph shall not be construed to relieve a person of any duty to comply with K.S.A. 40-264 with respect to equity securities consisting of options, warrants, rights or convertible securities which are otherwise subject, as a class, to K.S.A. 40-264. (Authorized by K.S.A. 40-103, 40-271; implementing K.S.A. 40-264; effective Jan. 1, 1967; amended Jan. 1, 1970; amended May 1, 1986; amended May 1, 1987.)

40-13-6. Disclaimer of beneficial ownership. Each person filing a statement may expressly declare that the filing of the statement shall not be construed as an admission that the person is, for the purpose of K.S.A. 40-264 and 40-265, the beneficial owner of any equity securities covered by the statement. (Authorized by K.S.A. 40-103, 40-271; implementing K.S.A. 40-264, 40-265; effective Jan. 1, 1967; amended May 1, 1986.)

40-13-7. Exemptions from K.S.A. 40-264 and 40-265. (a) During the period of 12 months following their appointment and qualification, securities held by the following persons shall be exempt from K.S.A. 40-264 and 40-265.

(1) An executor or administrator of the estate of the decedent;

(2) a guardian or conservator; and

(3) a receiver, trustee in bankruptcy, assignee for the benefit of creditors, conservator, liquidat-

ing agent, and other similar persons duly authorized by law to administer the estate or assets of other persons.

(b) After the 12 month period following their appointment or qualification, the foregoing persons shall be required to file reports with respect to the securities held by the estates which they administer under K.S.A. 40-264, and shall be liable for profits realized from trading in securities pursuant to K.S.A. 40-265 of the code when the estate being administered is a beneficial owner of more than 10 percent of any class of equity security of an insurer subject to the code.

(c) Securities reacquired by or for the account of an insurer and held by it or for its account shall be exempt from K.S.A. 40-264 and 40-265 during the time they are held by the insurer. (Authorized by K.S.A. 40-103, 40-271; implementing K.S.A. 40-264, 40-265; effective Jan. 1, 1967; amended Jan. 1, 1970; amended May 1, 1986; amended May 1, 1987.)

40-13-8. (Authorized by K.S.A. 40-271; implementing K.S.A. 40-264 *et seq.*; effective Jan. 1, 1967; amended May 1, 1980; revoked May 1, 1981.)

40-13-9. Certain transactions subject to K.S.A. 40-264 of the code. The acquisition or disposition of each transferable option, put, call, spread or straddle shall be a sufficient change in the beneficial ownership of the security to which the privilege relates to require the filing of a statement reflecting the acquisition or disposition of the privilege. This section shall not exempt a person from filing the statement required upon the exercise of an option, put, call, spread or straddle. (Authorized by K.S.A. 40-103, 40-271; implementing K.S.A. 40-264; effective Jan. 1, 1967; amended May 1, 1986.)

40-13-10. Ownership of securities held in trust. (a) Beneficial ownership of a security, for the purpose of K.S.A. 40-264, shall include:

(1) The ownership of securities as a trustee where either the trustee or members of the immediate family have a vested interest in the income or corpus of the trust;

(2) the ownership of a vested beneficial interest in a trust; and

(3) the ownership of securities as a settlor of a trust in which the settlor has the power to revoke the trust without obtaining the consent of all the beneficiaries.

(b) Beneficial ownership of a security, for the purpose of K.S.A. 40-264, shall not include:

(1) Beneficial ownership of securities solely as a settlor or beneficiary of a trust if less than 10 percent in market value of the securities having a readily ascertainable value held by the trust at the end of the preceding fiscal year of the trust consists of equity securities; and

(2) an obligation which would otherwise be imposed solely by reason of ownership as settlor or beneficiary of securities held in trust where the ownership, acquisition, or disposition of securities by the trust is made without prior approval by the settlor or beneficiary. An exemption under this subsection shall not be acquired or lost solely as a result of changes in the value of the trust assets during any fiscal year or during any time when there is no transaction by the trust in the securities otherwise subject to the reporting requirements of K.S.A. 40-264.

(c) In the event any class of any equity security of an insurer is held in a trust, the trust and the trustees shall file the reports specified in K.S.A. 40-264.

(d) One report shall be filed to report any holdings or any transaction in securities held by a trust, regardless of the number of officers, directors or 10 percent stockholders who are either trustees, settlors, or beneficiaries of a trust. The report shall disclose the names of each trustee, settlor, and beneficiary who is an officer, director or 10 percent stockholder. A person having an interest only as a beneficiary of a trust shall not be required to file a report so long as the person shall rely in good faith upon an understanding that the trustee of the trust shall file whatever reports may be required of the beneficiary.

(e) As used in this section the "immediate family" of a trustee means:

(1) A son or daughter of the trustee, or a descendant of either;

(2) a stepson or stepdaughter of the trustee;

(3) the father or mother of the trustee, or an ancestor of either;

(4) a stepfather or stepmother of the trustee; and

(5) a spouse of the trustee.

(f) A legally adopted child shall qualify the determination of the "immediate family" relationship.

(g) In determining, for the purposes of K.S.A. 40-264, whether a person is the beneficial owner, directly or indirectly, of more than 10 percent of

any class of any equity security, the interest of the person in the remainder of trust shall be excluded from the computation.

(h) A report shall not be required by any person whether or not otherwise subject to the requirement of filing reports under K.S.A. 40-264, with respect to the indirect interest in portfolio securities held by:

(1) A pension or retirement plan holding securities of an insurer whose employees generally are the beneficiaries of the plan,

(2) a business trust with over 25 beneficiaries.

(i) This section shall not impose any duties or liabilities with respect to reporting any transaction or holding prior to its effective date. (Authorized by K.S.A. 40-103, 40-271; implementing K.S.A. 40-264; effective Jan. 1, 1967; amended May 1, 1980; amended May 1, 1981; amended May 1, 1986.)

40-13-11. Exemption for small transactions. (a) An acquisition of a security or securities shall be exempt from K.S.A. 40-264 where:

(1) The person acquiring the security or securities does not dispose of them within six months therefore, except by a gift of securities of the same class; and

(2) the person acquiring the security or securities does not participate in acquisitions or in dispositions of securities of the same class having a total market value in excess of \$3,000 for any six month period during which the acquisitions occur.

(b) Each acquisition or disposition of securities by gift, where the total amount of the gifts does not exceed \$3,000 in market value for any six month period, shall be exempt from K.S.A. 40-264 and may be excluded from the computations prescribed in paragraph (a)(2).

(c) Each person exempted by section (a) or (b) of this regulation shall include in the first report filed after a transaction within the exemption, a statement showing the acquisitions and dispositions for each six month period and portion thereof, which has elapsed since the last filing. (Authorized by K.S.A. 40-103, 40-271; implementing K.S.A. 40-264; effective Jan. 1, 1967; amended May 1, 1980; amended May 1, 1981; amended May 1, 1986.)

40-13-12. Exemption from K.S.A. 40-265 of transactions which will not be reported under K.S.A. 40-264. Any transactions exempt from the requirements of K.S.A. 40-264 shall, be exempt from K.S.A. 40-265. (Authorized by

K.S.A. 40-103, 40-271; implementing K.S.A. 40-264, 40-265; effective Jan. 1, 1967; amended May 1, 1986; amended May 1, 1987.)

40-13-13. Exemption from K.S.A. 40-265 of certain transactions effected in connection with a distribution. (a) Each purchase and sale, or sale and purchase, of a security which is effected in connection with the distribution of a substantial block of securities shall be exempt from the provisions of K.S.A. 40-265 if:

(1) The person effecting the transacting buys and sells securities in the ordinary course of business;

(2) the person is acting in good faith;

(3) the security involved in the transaction is:

(A) Acquired with the intent to distribute it for the insurer or other person on whose behalf it is being offered; or

(B) purchased in good faith by or for the account of the person initiating the transaction in order to stabilize the market price of securities of the type being offered, or to cover an over-allotment or other short position created by the offering, and

(4) other persons not within the purview of K.S.A. 40-265 participating in the offering shall be doing so on terms at least as favorable as the person initiating the transaction and all other persons exempted from the provisions of K.S.A. 40-265. Bona fide payment for performing the functions of a distributing group shall not preclude an exemption otherwise available under this section.

(b) The exemption of a transaction pursuant to this section, with respect to the participation of one party, shall not render the transaction exempt to the extent of any other person unless that party also meets the conditions of this section. (Authorized by K.S.A. 40-103, 40-271; implementing K.S.A. 40-265; effective Jan. 1, 1967; amended May 1, 1986.)

40-13-15. Exemption from K.S.A. 40-265 of certain transactions in which securities are received by redeeming other securities. Each acquisition of an equity security (other than a convertible security or right to purchase a security) by a director or officer of the insurer issuing the security shall be exempt from the operation of K.S.A. 40-265, upon condition that:

(a) The equity security is acquired by way of redemption of another security of an insurer substantially all of those assets other than cash (or government bonds) consist of securities of the

insurer issuing the equity security so acquired, and which:

(1) Represented substantially a stated or readily ascertainable amount of the equity security;

(2) had a value which was substantially determined by the value of such equity security; and

(3) conferred upon the holder the right to receive the equity security without the payment of a consideration other than the security redeemed.

(b) A security of the same class as the security redeemed was not acquired by the director or officer within six months prior to the redemption or shall be acquired within six months after the redemption;

(c) The insurer issuing the equity security acquired has recognized the applicability of paragraph (a) of this section by appropriate corporate action. (Authorized by K.S.A. 40-103, 40-271; implementing K.S.A. 40-265; effective Jan. 1, 1967; amended May 1, 1986.)

40-13-16. Exemption of long-term profits incident to sales within six months of the exercise of an option. (a) Subject to the limitations of subsection (b), each transaction involving the purchase and sale, or sale and purchase, of an equity security which is pursuant to the exercise of an option or similar right shall be exempt from the provisions of K.S.A. 40-265 if it is acquired:

(1) More than six months before its exercise; or

(2) pursuant to the terms of an employment contract entered into more than six months before its exercise if the contracts are approved by the commissioner of insurance.

(b) For transactions specified in paragraph (a), the profits inuring to the insurer shall not exceed the difference between the proceeds of sale and the lowest price of any security of the same class within six months before or after the date of sale. Nothing in this section shall enlarge the amount of profit which would inure to the insurer in the absence of this section.

(c) Transactions of the following character are exempt from the provisions of K.S.A. 40-265:

(1) The disposition of a security purchased in a transaction specified in section (a) of this regulation pursuant to a plan or agreement for merger or consolidation, or reclassification of the insurer's securities;

(2) a plan or agreement for the exchange of the insurer's securities for the securities of another person who has acquired the insurer's assets or who is in control of a person that has acquired the

insurer's assets, as defined in section 368(c) of the internal revenue code of 1954;

(3) where the terms of the plan or agreement are binding upon all stockholders of the insurer except to the extent that dissenting stockholders may be entitled under statutory provision or provisions contained in the certificate of incorporation, to receive the appraised or fair value of their holdings.

(d) The exemptions provided by this regulation shall not apply to any transaction made unlawful by K.S.A. 40-266 or by any rules and regulations thereunder.

(e) The burden of establishing market price of a security for the purpose of this regulation shall rest upon the person claiming the exemption. (Authorized by K.S.A. 40-103, 40-271; implementing K.S.A. 40-265; effective Jan. 1, 1967; amended May 1, 1980; amended May 1, 1981; amended May 1, 1986.)

40-13-17. Exemption from K.S.A. 40-265 of certain acquisitions and dispositions of securities pursuant to merger or consolidations. (a) The following transactions shall be exempt from the provisions of K.S.A. 40-265:

(1) The acquisition of a security of an insurer, pursuant to a merger or consolidation, in exchange for a security of a company which, prior to the merger or consolidation, owned 85 percent or more of the equity securities of all other companies involved in the merger or consolidation except, in the case of consolidation, the resulting company;

(2) the disposition of a security, pursuant to a merger or consolidation of an insurer which, prior to the merger or consolidation, owned 85 percent or more of the equity securities of the other companies involved in the merger or consolidation except, in the case of consolidation, the resulting company;

(3) the acquisition of a security of an insurer, pursuant to a merger or consolidation in exchange for a security of a company which, prior to the merger or consolidation, held over 85 percent of the combined assets of the companies undergoing merger or consolidation, computed according to their book values prior to the merger or consolidation as determined by their most recent available financial statements for a 12 month period prior to the merger or consolidation.

(4) the disposition of a security, pursuant to a merger or consolidation, of an insurer which, prior to the merger or consolidation, held over 85 percent of the combined assets of the companies

undergoing merger or consolidation computed according to their book values prior to merger or consolidation, as determined by their most recent available financial statements for a 12 month period prior to the merger or consolidation.

(b) A merger within the meaning of this regulation shall include the sale or purchase of substantially all of the assets of one insurer by another in exchange for stock which is then distributed to the security holders of the insurer which sold its assets.

(c) The exemption provided by this regulation shall be unavailable to an officer, director, or stockholder who shall:

(1) Make any purchase, other than a purchase exempted by this regulation, of a security in any company involved in the merger or consolidation; and

(2) make any sale, other than a sale exempted by this regulation, of a security in any other company involved in the merger or consolidation. (Authorized by K.S.A. 40-103, 40-271; implementing K.S.A. 40-265; effective Jan. 1, 1967; amended Jan. 1, 1970; amended May 1, 1986.)

40-13-18 and 40-13-19. (Authorized by K.S.A. 40-264 *et seq.*, 40-271; effective Jan. 1, 1967; revoked Jan. 1, 1970.)

40-13-20. Certain securities transactions not violative of K.S.A. 40-266. (a) A person shall not be deemed to have violated the provisions of K.S.A. 40-266 if:

(1) the security transaction is in the process of execution by a broker of an order for an account in which the person has no direct or indirect interest; or

(2) a sale made by, or on behalf of, a dealer in connection with a distribution of a substantial block of securities meets the following conditions:

(A) The sale is represented by an over-allotment in which the dealer is participating as a member of an underwriting group, or the dealer or a person acting for the dealer intends to offset the sale with a security to be acquired by or on behalf of the dealer as a participant in an underwriting, selling, or soliciting-dealer group of which the dealer is a member at the time of the sale, whether or not the security to be acquired shall be subject to a prior offering to existing securityholders or some other class of persons; and

(B) other persons not within the purview of K.S.A. 40-266 shall be participating in the distribution of the block of securities on terms at least

as favorable as those on which the dealer is participating and to an extent at least equal to the aggregate participation of each person exempted from the provisions of K.S.A. 40-266 by this section. The performance of the functions of a manager of a distributing group and the receipt of a bona fide payment for performing the functions shall not preclude an exemption which would otherwise be available under this subsection.

(3) The security shall be acquired by any person who is entitled as an incident to ownership of an issued security, and without the payment of consideration to receive another security "when issued" or "when distributed," if:

(A) The sale shall be made subject to the same conditions as those attached to the right of acquisition;

(B) the person shall exercise reasonable diligence to deliver the security to the purchaser promptly after the right of acquisition matures; and

(C) the person shall report the sale on the appropriate form for reporting transactions by persons subject to K.S.A. 40-264.

(b) This subsection shall not be construed as exempting transactions involving both a sale of a security "when issued," or "when distributed," and a sale of the security where the seller expects to receive the "when issued" or "when distributed" security, if the two transactions result in the sale of more units than the aggregate owned by the seller, and those to be received by him or her pursuant to his or her right of acquisition. (Authorized by K.S.A. 40-103, 40-271; implementing K.S.A. 40-266; effective Jan. 1, 1967; amended May 1, 1980; amended May 1, 1986.)

40-13-21 and 40-13-22. (Authorized by K.S.A. 40-264 *et seq.*, 40-271; effective Jan. 1, 1967; revoked May 1, 1980.)

40-13-23. Arbitrage transactions under K.S.A. 40-268. It shall be unlawful for any director or officer of an insurer to effect any foreign or domestic arbitrage transaction in any equity security of an insurer, unless the transaction shall be included in the statements required by K.S.A. 40-264, and the director or officer shall account to the insurer for the profits arising from the transaction as provided in K.S.A. 40-265. The provisions of K.S.A. 40-266 shall not apply to arbitrage transactions. The provisions of chapter 40, Kansas statutes annotated shall not apply to any bona fide foreign or domestic

arbitrage transaction effected by any person other than a director or officer of the insurer. (Authorized by K.S.A. 40-103, 40-271; implementing K.S.A. 40-268; effective Jan. 1, 1967; amended May 1, 1980; amended May 1, 1986.)

40-13-24. Exemption from K.S.A. 40-265 of certain transactions; conversion of equity securities. (a) Deposit or withdrawal of equity securities under a voting trust or deposit agreement. Each acquisition or disposition of an equity security involved in the deposit of a security under, or the withdrawal of security from, a voting trust or deposit agreement, and the acquisition or disposition in connection therewith of the certificate representing the security, shall be exempt from the operation of K.S.A. 40-265 if all assets held under the voting trust or deposit agreement immediately after the deposit or immediately prior to the withdrawal consisted of equity securities of the same class as the security deposited or withdrawn. This section shall not apply if the following conditions exist:

(1) A purchase of an equity security of the class deposited and a sale of any certificate representing an equity security of the class; or

(2) a sale of an equity security of the class deposited and purchase of a certificate representing an equity security of the class, other than in a transaction involved in the deposit or withdrawal or in a transaction exempted by another provision of the regulations under K.S.A. 40-265, within a period of less than six months which includes the date of the deposit or withdrawal.

(b) Any acquisition or disposition of an equity security involved in the conversion of an equity security which, by its terms or pursuant to the terms of the insurer's charter or other governing instruments, shall be converted immediately or after a stated period of time into another equity security of the same insurer, shall be exempt from the operation of K.S.A. 40-265. This section shall not apply if the following conditions exist:

(1) A purchase of an equity security of the class convertible (including any acquisition of or change in a conversion privilege) and a sale of any equity security of the class issuable upon conversion, or

(2) a sale of an equity security of the class convertible and a purchase of any equity security issuable upon conversion, other than in a transaction involved in the conversion or in a transaction exempted by another provision of K.S.A. 40-265, within a period of less than six months which includes the date of conversion.

(c) An equity security shall not be acquired or disposed of upon conversion of an equity security if the terms of the equity security converted require the payment or entail the receipt, in connection with the conversion, of cash or other property, other than equity securities involved in the conversion, equal in value at the time of conversion to more than 15 percent of the value of the equity security issued upon conversion.

(d) An equity security shall be convertible if it is convertible at the option of the holder or of some other person or by operation of the terms of security or the governing instruments. (Authorized by K.S.A. 40-103, 40-271; implementing K.S.A. 40-265; effective Jan. 1, 1970; amended May 1, 1980; amended May 1, 1986.)

40-13-25. (Authorized by K.S.A. 40-264 *et seq.*, 40-271; effective Jan. 1, 1970; revoked May 1, 1980.)

40-13-26. Exemption from K.S.A. 40-265 of certain transactions involving the sale of subscription rights. (a) Each sale of a subscription right to acquire a subject security of the same insurer shall be exempt from the provision of K.S.A. 40-265 if:

(1) The subscription right is acquired, directly or indirectly, from the insurer without the payment of consideration;

(2) the subscription right by its terms expires within 45 days after the issuance thereof;

(3) the subscription right by its terms is issued on a pro rata basis to all holders of the beneficiary security of the insurer; and

(4) a registration statement under the securities act of 1933 is in effect for each subject security, or the applicable terms of each exemption from registration have been met.

(b) When used within this section, the following terms shall have the meaning indicated:

(1) "Subscription right" means any warrant or certificate evidencing a right to subscribe to or otherwise acquire an equity security;

(2) "beneficiary security" means a security registered pursuant to section 12 of the securities exchange act, to the holders of which a subscription right is granted; and

(3) "subject security" means a security which is the subject of a subscription right.

(c) The sale of subscription rights, otherwise exempted by this section, shall not be exempted purchases within the six month period preceding

or following the sale. (Authorized by K.S.A. 40-103, 40-281; implementing K.S.A. 40-265; effective Jan. 1, 1970; amended May 1, 1986.)

Article 14.—INSURANCE PREMIUM FINANCE COMPANIES

40-14-1. Insurance premium finance companies; changes in officers; management. (a) Each premium finance company authorized in Kansas shall report to the commissioner of insurance each change in officers and directors, as listed on page one of the application form, and file for each a biographical sketch, unless a biographical sketch has been previously filed upon admission to this state.

(b) Each premium finance company authorized in this state shall report the sale of controlling stock interests to the insurance department within 30 days after such sale is completed and the controlling interests are transferred. (Authorized by K.S.A. 40-103, 40-2608; implementing K.S.A. 40-2604; effective Jan. 1, 1969; amended May 1, 1986; amended April 16, 1990.)

40-14-2. (Authorized by K.S.A. 40-2604, 40-2608; effective Jan. 1, 1969; revoked May 1, 1979.)

40-14-3. Insurance premium finance companies; annual reports. (a) Each licensee shall file a report annually with the commissioner of insurance. The report shall contain information concerning the business and operations during the preceding calendar or fiscal year within the state.

(b) The report shall be filed on or before the first day of April. The time for filing may be extended by the commissioner of insurance for a period not in excess of 60 days.

(c) The report shall be subscribed and affirmed by the licensee under the penalty of perjury. The report shall be in the form prescribed by the commissioner of insurance who may make and publish annually an analysis and recapitulation of the reports. (Authorized by K.S.A. 40-103, 40-2608; implementing K.S.A. 40-2607; effective Jan. 1, 1969; amended May 1, 1986.)

40-14-4. Same; printing of forms. The printing of the items required by K.S.A. 40-2609, paragraph C, must be in at least 10 point, pica style type and print at least as bold as any other printing on the premium finance agreement. The style of type required by this regulation shall be used on all premium finance agreements deliv-

ered on and after January 1, 1991. (Authorized by K.S.A. 40-103, 40-2608; implementing K.S.A. 40-2609; effective Jan. 1, 1969; amended May 1, 1986; amended April 16, 1990.)

40-14-5. Same; duplicate to borrower. A duplicate of each premium finance agreement shall be delivered to the borrower before the due date of the first installment. (Authorized by K.S.A. 40-103, 40-2608; implementing K.S.A. 40-2609; effective Jan. 1, 1969; amended May 1, 1986.)

40-14-6. Same; notice of assignment; payments. Unless the borrower has notice of actual or intended assignment of a premium finance agreement, payment by the borrower to the last known holder of the agreement shall be binding upon all subsequent holders or assignees. (Authorized by K.S.A. 40-103, 40-2608; implementing K.S.A. 40-2609, 40-2611, 40-2612; effective Jan. 1, 1969; amended May 1, 1986.)

40-14-7. Same; service charges. (a) A service charge on a premium finance agreement written at the inception of the applicable insurance policy may be computed from the effective date of the policy. A 30 day delay shall be allowed between the inception date of the insurance policy and the consummation date of the premium finance agreement for computing service charges.

(b) A service charge of less than \$1.00 need not be refunded due to elapsed time frames between inception and consummation of the insurance policy and the consummation date of the premium finance agreement, or because of prepayment of the premium finance agreement. (Authorized by K.S.A. 40-103, 40-2608; implementing K.S.A. 40-2610; effective Jan. 1, 1969; amended May 1, 1979; amended May 1, 1986.)

40-14-8. (Authorized by K.S.A. 40-103, 40-2608; implementing K.S.A. 40-2609; effective Jan. 1, 1969; amended May 1, 1986; revoked May 1, 1987.)

40-14-9. Same; disclosure of annual percentage rate. (a) Each premium finance company shall include in its premium finance agreement a provision to disclose the annual percentage rate pursuant to Kansas administrative regulation 75-6-26.

(b) The total service charges included for a premium finance agreement and the total interest charged on the agreement shall be added together when computing the annual percentage rate of the disclosure. (Authorized by K.S.A. 40-103, 40-2608; implementing K.S.A. 40-2609, 16a-3-206;

effective, E-69-20, Sept. 1, 1969; effective Jan. 1, 1970; amended May 1, 1979; amended May 1, 1986; amended May 1, 1987.)

40-14-10. Same; rates; filing. Each premium finance company shall file with the commissioner of insurance a complete listing of all scheduled interest rates and service charges which the company intends to use in Kansas. Such listing shall be revised and refiled as necessary to continuously reflect current rates and charges. (Authorized by K.S.A. 40-103 and 40-2608; implementing K.S.A. 40-2609; effective, T-40-9-25-92, Sept. 25, 1992; effective Feb. 8, 1993.)

Article 15.—VARIABLE ANNUITIES OR SEPARATE ACCOUNTS

40-15-1. Variable annuity or separate accounts; definition. (a) The term “contract on a variable basis” or “variable contract,” when used in this regulation, shall mean each policy or contract which provides for variable insurance or annuity benefits according to the investment experience of a separate account or accounts maintained by the insurer as to a policy or contract, as provided for in K.S.A. 40-436 of the laws of this state.

(b) “Variable contract agent,” when used in this regulation, shall mean an agent who shall sell or offer to sell any variable contract.

(c) “Securities examination,” as used in paragraph 40-15-8 of this regulation, shall mean any one of the following examinations:

(1) Each state securities sales examination accepted by the securities and exchange commission;

(2) the national association of securities dealers, inc. examination for principals, or examination for qualification as a registered representative;

(3) the various securities examinations required by the New York stock exchange, the American stock exchange, Pacific stock exchange, or any other registered national securities exchange;

(4) the securities and exchange commission test given pursuant to section 15(b)(8) of the securities exchange act of 1934; or

(5) the examination recommended for the testing of variable contract agents by the national association of insurance commissioners, when adopted by the insurance department of any state or territory of the United States and approved for use by the department by the securities and exchange commission. (Authorized by K.S.A. 40-103, 40-436; implementing K.S.A. 40-436; effective Jan.

1, 1969; amended Jan. 1, 1970; amended, E-71-24, July 1, 1971; amended Jan. 1, 1972; amended May 1, 1986.)

40-15-2. Same; qualification of insurance companies. (a) Before any company shall deliver or issue for delivery variable contracts within this state the company shall submit to the commissioner of insurance a general description of the kinds of variable contracts it intends to issue.

(b) A copy of the statutes and regulations of the domicile state under which the company is authorized to issue variable contracts shall be submitted upon the commissioner's request. (Authorized by K.S.A. 40-103, 40-436; implementing K.S.A. 40-436; effective Jan. 1, 1969; amended May 1, 1981; amended May 1, 1986.)

40-15-3. Same; conditions. (a) A domestic company issuing variable contracts shall establish one or more separate accounts pursuant to K.S.A. 40-436.

(b) The investments and liabilities of a separate account shall be clearly identifiable and distinguishable from the other investments and liabilities of the corporation. An investment of a separate account shall not be pledged or transferred as collateral for a loan.

(c) The sale, exchange or other transfer of assets may not be made by a company between its separate accounts, or between any other investment account and one or more of its separate accounts unless:

(1) In case of a transfer into a separate account, the transfer is made solely to establish the account or to support the operation of the contracts with respect to the separate account to which the transfer is made; and

(2) the transfer, whether into or from a separate account, is made:

(i) by a transfer of cash; or

(ii) by a transfer of securities having a valuation which could be readily determined in the marketplace and the transfer of securities is approved by the commissioner of insurance. The commissioner may authorize other transfers among accounts if, in his opinion, the transfers would not be inequitable.

(d) The company shall maintain in each separate account assets with a value at least equal to the reserves and other contract liabilities with respect to the account, except as approved by the commissioner of insurance.

(e) An officer or director of the company or a member of the committee, board or body of a separate account shall not receive, directly or indirectly, any commission or any other compensation with respect to the purchase or sale of assets of the separate account. (Authorized by K.S.A. 40-103, 40-436; implementing K.S.A. 40-436; effective Jan. 1, 1969; amended May 1, 1986.)

40-15-4. Same; filing of contracts. The filing requirements applicable to variable contracts shall be the filing requirements for individual and group life insurance contract form filings under K.S.A. 40-216, 40-420, 40-421 and 40-434. (Authorized by K.S.A. 40-103, 40-436; implementing K.S.A. 40-436; effective Jan. 1, 1969; amended May 1, 1986; amended May 1, 1987.)

40-15-5. Same; variable benefits requirements. (a) The commissioner shall disapprove or withdraw approval of any contract form or certificate if:

(1) the contract or certificate contains provisions which are unjust, unfair, inequitable, ambiguous, misleading, likely to result in misrepresentation or contrary to law; or

(2) sales of the contracts are being solicited by any means of advertising, communication or dissemination of information which involves misleading or inadequate description of the provisions of the contract.

(b) Illustrations of benefits payable under any contract providing benefits payable in variable amounts shall not include projections of past investment experience into the future or attempted predictions of future investment experience. Use of hypothetical assumed rates of return to illustrate possible levels of annuity payments shall not be prohibited.

(c) An individual variable contract calling for the payment of periodic stipulated payments or premiums shall not be delivered or issued for delivery in this state unless it contains in substance one of the following provisions:

(1) A provision that there shall be a period of grace of 30 days or of one month, within which any stipulated payment or premium to the insurer falling due after the first day may be made, during which period of grace the contract shall continue in force. The contract may include a statement of the basis for determining the date for which the payment received during the period of grace shall be applied to produce the contract values;

(2) a provision that, at any time within three years from the date of default, in making periodic stipulated payments or premiums to the insurer during the life of the annuitant and unless the cash surrender value has been paid, the contract may be reinstated upon payment to the insurer of the overdue payments, and of all indebtedness to the insurer on the contract, including interest. The contract may include a statement of the basis for determining the date for which the amount to cover overdue payments and indebtedness shall be applied to produce the contract values; or

(3) a provision specifying the available options in case of default in a periodic stipulated payment. The options may include an option to surrender the contract for a cash value as determined by the contract, and shall include an option to receive a paid-up annuity if the contract is not surrendered for cash. The amount of the paid-up annuity shall be determined by applying the value of the contract at the annuity commencement date in accordance with the terms of the contract.

(d) Each individual variable annuity contract delivered or issued for delivery in this state shall stipulate the expense, mortality, and investment increment factors used in computing the dollar amount of variable benefits or other contractual payments or values, and may guarantee that expense and/or mortality results shall not adversely affect the dollar amounts.

“Expense,” as used in this paragraph, may exclude some or all taxes, as stipulated in the contract.

In computing the dollar amount of variable benefits or other contractual payments or values under an individual variable annuity contract:

(1) The annual net investment increment assumption shall not exceed five percent, except with the approval of the commissioner;

(2) to the extent that the level of benefits may be affected by mortality results, the mortality factor shall be determined from the annuity mortality table for 1949, ultimate, or any modification of that table not having a higher mortality rate at any age, or, if approved by the commissioner, from another table.

(e) The reserve liability for variable annuities shall be established pursuant to the requirements of the standard valuation law in accordance with actuarial procedures that recognize the variable nature of the benefits provided. (Authorized by K.S.A. 40-103, 40-436; implementing K.S.A. 40-436; effective Jan. 1, 1969; amended May 1, 1986.)

40-15-6. Same; required reports. (a) Each company issuing an individual variable contract providing benefits in variable amounts shall mail to the contractholder at least once a year following the first contract year, at the last address known to the company, a statement or statements reporting the investments held in the separate account. In the case of contracts under which payments have not begun, the statement shall report as of a date not more than four months previous to the date of mailing.

(b) In both instances, the report shall contain:

(1) The number of accumulation units credited to the contracts and the dollar value of a unit; or

(2) the value of the contractholder’s account.

(c) The company shall submit annually to the commissioner of insurance a statement of the business of its separate account or accounts in such form as may be prescribed by the national association of insurance commissioners. (Authorized by K.S.A. 40-103, 40-436; implementing K.S.A. 40-436; effective Jan. 1, 1969; amended May 1, 1986; amended May 1, 1987.)

40-15-7. Same; agents; qualification. (a) Unless licensed as a variable contract agent, an agent shall not be eligible to sell or offer for sale a variable contract.

(b) An agent who participates only in the sale or offering for sale of variable contracts that are not registered under the federal securities act of 1933 shall not be required to be licensed as a variable contract agent. (Authorized by K.S.A. 40-103, 40-436; implementing K.S.A. 40-241; effective Jan. 1, 1969; amended Jan. 1, 1970; amended May 1, 1986.)

40-15-8. Variable annuity or separate accounts; agents; procedure for obtaining licenses. (a) Each agent desiring to sell, pursuant to K.S.A. 40-436, individual or group contracts on behalf of a life insurance company regularly admitted to do business in this state, shall apply for a license to sell the contracts on a form designated by the commissioner of insurance.

(b) An application for a license shall be accepted only from an individual who:

(1) At the time of application, is licensed to write life insurance on behalf of the company certifying the application;

(2) submits evidence of passing a security examination defined in K.A.R. 40-15-1; or

(3) submits evidence of being currently registered with the federal securities and exchange

commission as a broker-dealer, or of being currently associated with a broker-dealer and having met qualification requirements with respect to the broker-dealer association.

(c) A broker-dealer or a person associated with a broker-dealer who is engaged directly or indirectly in the sale of securities, or who supervises, recruits or trains securities sales persons, shall have passed a "securities examination" or shall have been continuously engaged in the securities business since July 1, 1963.

(d) Except as otherwise provided by this regulation, each applicant shall be governed by the provisions of K.A.R. 40-7-1 through K.A.R. 40-7-19. (Authorized by K.S.A. 40-103, 40-436; implementing K.S.A. 40-241; effective Jan. 1, 1969; amended, E-71-24, July 1, 1971; amended Jan. 1, 1972; amended May 1, 1979; amended May 1, 1986.)

40-15-9. (Authorized by K.S.A. 40-103, 40-436; effective Jan. 1, 1969; amended Jan. 1, 1970; amended, E-71-24, July 1, 1971; amended Jan. 1, 1972; amended Jan. 1, 1973; revoked May 1, 1979.)

40-15-10. (Authorized by K.S.A. 40-103, 40-436; effective Jan. 1, 1969; amended, E-71-24, July 1, 1971; amended Jan. 1, 1972; revoked May 1, 1979.)

40-15-11. (Authorized by K.S.A. 40-103, 40-436; effective Jan. 1, 1969; amended Jan. 1, 1970; amended, E-71-24, July 1, 1971; amended Jan. 1, 1972; revoked May 1, 1979.)

40-15-12. (Authorized by K.S.A. 40-103, 40-436; effective Jan. 1, 1969; revoked May 1, 1979.)

Article 15a.—VARIABLE LIFE INSURANCE

40-15a-1. Variable life insurance; definitions; qualifications; requirements; reports. The national association of insurance commissioners' variable life insurance model regulation, December 1982 edition, is hereby adopted by reference, subject to the following exceptions and additions: (a) Article I, Article IV Section 3a(5), and Article XII are not adopted.

(b) Section 2, Article II is hereby amended by adding the words "or broker" immediately following the words "insurance agent."

(c) Section 8, Article II is hereby completed by inserting "K.S.A. 40-436" in the space provided.

(d) Section 16, Article II is hereby completed by inserting "K.S.A. 40-436" in the space provided.

(e) Section 19, Article II is hereby completed by inserting "K.S.A. 40-437" in the space provided.

(f) Section 4, Article III is hereby completed by inserting "K.A.R. 1984 Supp. 40-9-118 *et seq.*" in the space provided.

(g) Section 2(f), Article IV is hereby completed by inserting "K.S.A. 40-428" in the space provided.

(h) Section 3c(1), Article IV is hereby amended to read as follows: "All overdue premiums, with interest at a rate not exceeding 6% per annum compounded annually, and any indebtedness in effect at the end of the grace period following the date of default, with interest as provided in K.S.A. 1984 Supp. 40-420a through 40-420d, inclusive; or"

(i) Section 3c(2), Article IV is hereby completed by inserting "6%" in the space provided.

(j) Section 4a, Article IV is hereby completed by inserting "2" in the space immediately preceding the words "full years."

(k) Section 5a, Article IV is hereby completed by inserting "2" in the space provided.

(l) Section 1, Article VI is hereby completed by inserting "K.S.A. 40-436 and 40-437" in the space provided.

(m) Section 1c, Article VI is hereby amended to read as follows: "Each person with access to the cash, securities, or other assets of the separate account shall be under bond as provided by K.S.A. 40-207." (Authorized by K.S.A. 40-103, 40-436; implementing K.S.A. 40-436, 40-437; effective May 1, 1975; amended May 1, 1984; amended May 1, 1986.)

40-15a-2 to 40-15a-8. (Authorized by K.S.A. 40-436; effective May 1, 1975; revoked May 1, 1984.)

40-15a-9. (Authorized by K.S.A. 40-436; effective May 1, 1975; amended May 1, 1979; revoked May 1, 1984.)

Article 15b.—UNIVERSAL LIFE INSURANCE

40-15b-1. Universal life insurance; definitions; qualifications; requirements; reports. The national association of insurance commissioners' universal life insurance model regulation, 1996 edition, is hereby adopted by reference, subject to the following exceptions and additions:

(a) Section 1, Section 2, and Subsections (F) and (I) of Section 3 are not adopted.

(b) Section 4 is hereby amended by striking “Section 25 of the NAIC Model Variable Life Insurance Regulation” and substituting “Kansas Administrative Regulation 40-15a-1.”

(c) Section 4 is further amended by adding the following paragraph: “Nothing in this regulation shall be construed as superseding any statutory provision or any Kansas administrative regulation except to the extent this regulation or a provision of it is inconsistent with or contrary to another regulation.”

(d) Section 7, Subsection F, second paragraph is not adopted and shall be replaced with the following: “As required by K.S.A. 40-420, a flexible premium policy shall provide for a grace period of at least 30 days after it lapses. Unless otherwise defined in the policy in a way that is more favorable to the insured, lapse shall occur on the date the net cash surrender value first equals zero.”

(e) Section 10, Subsection A is hereby amended by deleting the last sentence of the first paragraph.

(f) Section 10, Subsection B, paragraph 3 is hereby amended by the addition of the following paragraph: “Each foreign insurer shall be subject to the same information requirements as domestic insurers unless the required descriptions are filed on a timely basis with the insurer’s state of domicile.”

(g) Section 10, Subsection B, paragraph 1 is not adopted.

(h) Section 10, Subsection C is not adopted. (Authorized by K.S.A. 40-103, 40-436; implementing K.S.A. 40-436, 40-437; effective May 1, 1985; amended May 1, 1986; amended Oct. 23, 1998.)

Article 16.—PROFESSIONAL EMPLOYER ORGANIZATIONS

40-16-1. Professional employer organizations; definition. For the purpose of this article, “act” shall mean professional employer organization registration act. (Authorized by K.S.A. 40-103 and L. 2012, ch. 142, sec. 10; implementing L. 2012, ch. 142, sec. 1; effective Jan. 31, 2014.)

40-16-2. Professional employer organizations; fees. The following fees shall be paid to the department:

(a) For each professional employer organization, the following fees:

(1) For an initial application for registration, \$1,000;

(2) for a renewal application for registration, \$500; and

(3) for an initial or a renewal application for limited registration, \$500; and

(b) for each professional employer group, the following fees:

(1) For an initial application for registration, \$1,000 for each professional employer organization within the professional employer group that would otherwise be required to individually register under the act;

(2) for a renewal application for registration, \$500 for each professional employer organization within the professional employer group that would otherwise be required to individually register under the act; and

(3) for an initial or a renewal application for limited registration, \$500 for each professional employer organization within the professional employer group that would otherwise be required to individually register under the act. (Authorized by K.S.A. 40-103 and L. 2012, ch. 142, sec. 10; implementing L. 2012, ch. 142, sec. 5; effective Jan. 31, 2014.)

Agency 41
Food Service and Lodging Board

Editor's Note:

Effective July 1, 1975, the Food Service and Lodging Board was abolished and its powers and duties transferred to the Secretary of Health and Environment. See Agency 28, article 36.

Agency 42
Commission on Alcoholism

Editor's Note:

Effective July 1, 1975, the Commission on Alcoholism was abolished and its powers and duties transferred to the Secretary of Social and Rehabilitation Services. See Agency 30, article 31.

Agency 43
Corrections Ombudsman Board

Articles

43-1. ADMINISTERING OATHS.

Article 1.—ADMINISTERING OATHS

43-1-1. Administering oaths. (a) The ombudsman or designated ombudsman associates may take sworn statements from a person, if that person is likely to have information deemed by the ombudsman or designated ombudsman associates to be relevant to any matter under inquiry and that person is or has been at any time:

(1) Within any premises under the control of the secretary of corrections;

(2) Committed to the custody of the secretary of corrections; or

(3) Employed by or under contract with the secretary of corrections.

(b) Whenever possible, oaths shall be administered at a time and location convenient to the person making the statement.

(c) Under no circumstances shall anyone be compelled to submit a sworn statement. (Authorized by and implementing K.S.A. 1983 Supp. 74-7407; effective, T-84-24, Sept. 19, 1983; effective May 1, 1984.)

Agency 44

Department of Corrections

Articles

- 44-1. GENERAL ADMINISTRATION.
- 44-2. FACILITIES MANAGEMENT.
- 44-4. TRAINING.
- 44-5. INMATE MANAGEMENT.
- 44-6. GOOD TIME CREDITS AND SENTENCE COMPUTATION.
- 44-7. PROGRAMS AND ACTIVITIES.
- 44-8. WORK RELEASE.
- 44-9. PAROLE, POSTRELEASE SUPERVISION, AND HOUSE ARREST.
- 44-11. COMMUNITY CORRECTIONS.
- 44-12. CONDUCT AND PENALTIES.
- 44-13. DISCIPLINARY PROCEDURE.
- 44-14. *ADMINISTRATIVE AND DISCIPLINARY SEGREGATION. (Not in active use.)*
- 44-15. GRIEVANCE PROCEDURE FOR INMATES.
- 44-16. REPORTING AND CLAIMS; LOST OR DAMAGED PROPERTY OR PERSONAL INJURY.

Article 1.—GENERAL ADMINISTRATION

44-1-101. Definitions. (a) Institutional director. The institutional director is the principal administrator of a correctional institution.

(b) Unit supervisor. The unit supervisor is the principal administrator of a correctional unit.

(c) Correctional facility. Either a correctional institution or correctional unit.

(d) Correctional institution. A correctional institution is a correctional organizational entity operating within the department of corrections as an agency of the state of Kansas under a separate budget.

(e) Correctional unit. A correctional unit is any correctional organization entity providing direct services to inmates and operating as a function of the central office of the department of corrections within the budget of the department. (Authorized by K.S.A. 75-5251 and K.S.A. 1979 Supp. 75-5205, 75-5210, 75-5210(f); effective May 1, 1980.)

44-1-102. News media and public information. (a) Each institutional director and each facility supervisor shall promulgate orders to establish the methods and system of dealing with the news media and public information for their institution or facility. Such order shall assure the efficient flow of accurate information to the public under circumstances consistent with and in a

manner conducive to safety, security, and the recognition of the right to privacy.

(b) News media representatives may visit a correctional institution or facility with permission of the principal administrator. The use of the facility, personnel, inmates, or records in connection with the making of motion pictures, television documentaries and the writing of books, magazine articles, and syndicated columns shall not be made without the written approval of the secretary of corrections. Interviewing and photographing an inmate shall be allowed only with the inmate's written consent and liability waiver.

(c) Correspondence between the media and inmates is subject to the same guidelines and restrictions as are applicable to general correspondence and mail as established by the regulations of the secretary and the general orders of the institutional director or facility supervisor. (Authorized by K.S.A. 75-5251 and K.S.A. 1979 Supp. 75-5205, 75-5210, 75-5210(d) and (f); effective May 1, 1980.)

44-1-103. Public or educational visits and tours. (a)(1) As part of an overall program of crime prevention and aversion, any institution or facility warden may develop a program, in cooperation with the courts and other agencies, to educate the public concerning the consequences of felony conviction and incarceration.

(2) Request for participation in this program may be made by the court or court services, school districts, state and local governmental agencies, criminal justice agencies, service organizations, and religious denominations. Participation by citizens may be by a group or by an individual. Adults and juveniles 10 years of age or older may participate in this educational program. The number of participants in any group and the conditions and time of the program shall be at the discretion of the institutional or facility warden. Sponsoring agencies shall apply to the warden at least 10 days before the desired date of participation.

(3) No recordings by video or audio methods, including film and videotape, shall be made without the approval of the warden and the written consent of any person who is identifiable in the recording.

(b) The general public, groups, or individuals may tour an institution or facility only while escorted by appointed personnel. Tours shall be conducted only at times convenient for the staff and conducive to efficient operation of the institution or facility, and to the safety and security of the staff, inmates, and general public.

(c) No group or individual shall be permitted in the institution without the approval of the institutional or facility warden. While on the premises, the visitors shall be subject to the regulations of the secretary of corrections and the orders of the warden. All visitors shall be subject to search and fingerprinting at the discretion of the warden. (Authorized by and implementing K.S.A. 75-5251, K.S.A. 75-5210; effective May 1, 1980; amended May 1, 1984; amended, T-44-1-25-99, Jan. 25, 1999; amended April 16, 1999.)

44-1-104. (Authorized by K.S.A. 75-5251, 75-5253; effective May 1, 1980; revoked May 1, 1981.)

44-1-105. Oaths, administration of; authorization and method. (a) Those persons responsible for the conduct of investigations within the prison, including those persons acting as hearing officers in hearings regarding inmate discipline and transfers to mental health institutions, shall be authorized to administer oaths.

(b) Oaths shall be administered in a form and manner that is in accordance with K.S.A. 54-101 *et seq.* (Authorized by K.S.A. 75-5210 and K.S.A. 75-5251; effective, T-85-37, Dec. 19, 1984; effective, May 1, 1985.)

Article 2.—FACILITIES MANAGEMENT

44-2-102. Telephone usage by inmates.

(a) The principal administrator of each institution and facility shall formulate the orders for inmate use of telephones.

(b) Each institution or facility principal administrator shall publish orders governing the frequency, length, and permitted hours for inmate telephone calls.

(c) All inmate telephone calls, whether personal or business, outside or intra-institutional, may be monitored, unless the call is to an attorney, priest or minister, judge, ombudsman, or other person for which the protection of statutory privilege exists for the inmate.

(d) Inmate initiated calls shall be collect unless approved by the principal administrator for the state to pay for the call or for charge to inmate account. (Authorized by K.S.A. 75-5251 and K.S.A. 1979 Supp. 75-5210, 75-5210(d) and (f); effective May 1, 1980.)

44-2-103. Trafficking in contraband.

(a) A person, including an employee, inmate, visitor, or volunteer shall not, without the consent of the warden:

(1) introduce or attempt to introduce any item into or upon the grounds of a correctional facility;

(2) take, send, or attempt to take or send any item from any correctional facility;

(3) possess any item while in any correctional facility; or

(4) distribute any item within a correctional facility.

(b) "Any item," as used in subsection (a), shall include but not be limited to the following:

(1) Guns or firearms of any type, or the components, diagrams, or plans thereof;

(2) ammunition, explosives, or the diagrams, formulas or plans thereof;

(3) knives, tools, and materials such as sandpaper, whet stones or similar items used to make such knives or tools;

(4) hazardous or poisonous chemicals, flammable liquids and gases or formulas thereof;

(5) escape paraphernalia such as ropes, grappling hooks, hacksaw blades, jewelers' wire, bar spreaders, maps, lock picks, handcuff keys, or similar devices which could be used to aid an escape;

(6) identification documents or individual photographs of the inmate of the style suitable for the production of identification documents;

(7) documents, plans, diagrams, or schematics that refer to secure electrical systems, escape alarms, overhead lighting, facility power supply, gate operations, body alarms, radio communications, and similar systems;

(8) narcotics or other controlled substances, including any synthetic narcotic, drug, stimulant, sleeping pill, barbiturate, or medicine, prescription or non-prescription, which was not dispensed or approved by the facility health authority. Medicines dispensed or approved by the health authority shall be considered contraband if not consumed or utilized in the manner prescribed;

(9) intoxicants, including but not limited to liquor or alcoholic beverages;

(10) currency, in the form of paper, checks, money orders, coins, stamps or similar instruments with monetary value;

(11) hypodermic needles, hypodermic syringes, nasal inhalers or other devices or any component thereof which could be used to inject substances into the body;

(12) food items;

(13) cameras, recording devices, one or two-way transmitting devices, and similar devices and components thereof, including tapes, batteries, and film; or

(14) letters, notes, books, or other written communications. (Authorized by and implementing K.S.A. 1992 Supp. 75-5210; effective July 5, 1993.)

Article 4.—TRAINING

44-4-101. Definitions. For the purpose of this article the following definitions apply. (a) “Secretary” means the secretary of corrections.

(b) “Director” means the director of personnel and training.

(c) “Basic training” means a 200 hour block of instruction approved by the secretary.

(d) “Instructor” means any person selected to deliver training to correctional employees.

(e) “Certification” means successful completion of basic training.

(f) “Training officer” means those persons employed at each correctional facility to schedule, plan, coordinate and deliver orientation, basic and annual training to correctional employees. (Authorized by and implementing K.S.A. 1983 Supp. 75-5212; effective May 1, 1980; amended May 1, 1984.)

44-4-102. Equivalent training or substitutions for training. (a) Requests for waiver of all or part of the basic training requirements for

corrections officers and parole officers, as provided for in K.S.A. 75-5212(c), shall be reviewed and approved by the director.

(b) Such requests shall be made in the form and manner prescribed in the department of corrections’ internal management policies and procedures.

(c) Non-waivable requirements. The following training requirements shall not be waived: firearms, use of force, secretary of corrections’ regulations, and department of corrections’ internal management policies and procedures. (Authorized by and implementing K.S.A. 1983 Supp. 75-5212; effective May 1, 1980; amended May 1, 1984.)

44-4-103. (Authorized by and implementing K.S.A. 1983 Supp. 75-5212; effective May 1, 1980; amended May 1, 1984; revoked March 22, 2002.)

44-4-104. (Authorized by and implementing K.S.A. 1983 Supp. 75-5212; effective May 1, 1980; amended May 1, 1984; revoked March 22, 2002.)

44-4-105. (Authorized by K.S.A. 1979 Supp. 75-5212; effective May 1, 1980; revoked May 1, 1984.)

44-4-106. (Authorized by and implementing K.S.A. 1983 Supp. 75-5212; effective May 1, 1980; amended May 1, 1984; revoked March 22, 2002.)

44-4-107. (Authorized by and implementing K.S.A. 1983 Supp. 75-5212; effective May 1, 1984; revoked March 22, 2002.)

44-4-108. (Authorized by and implementing K.S.A. 1983 Supp. 75-5212; effective May 1, 1984; revoked March 22, 2002.)

44-4-109. (Authorized by and implementing K.S.A. 1983 Supp. 75-5212; effective May 1, 1984; revoked March 22, 2002.)

Article 5.—INMATE MANAGEMENT

44-5-101. (Authorized by K.S.A. 75-5251, K.S.A. 1979 Supp. 75-5205; effective May 1, 1980; revoked March 22, 2002.)

44-5-102. (Authorized by and implementing K.S.A. 75-5251, K.S.A. 1983 Supp. 75-5205, 75-5210, 75-5252; effective May 1, 1980; amended May 1, 1984; revoked July 11, 1994.)

44-5-103. (Authorized by K.S.A. 75-5251, 75-5253, K.S.A. 1983 Supp. 75-5210, 75-5252, 75-5268; implementing K.S.A. 58-208, 75-5254,

K.S.A. 1983 Supp. 75-5257, 75-5268, 76-173, 76-174, 76-175; effective May 1, 1980; amended May 1, 1981; amended May 1, 1984; revoked March 22, 2002.)

44-5-104. Classification for security. (a) The security classification assigned to each inmate shall determine the security measures which are to be applied to that inmate at any particular time and under various circumstances, according to:

(1) The secretary of corrections' internal management policy and procedure (IMPP) number 011-107, which provides instructions for the classification process and for security designation;

(2) internal management policy and procedure number 012-101, which provides a description of supervision requirements for each security level; and

(3) the general and special orders of the principal administrator at the institution where the inmate is housed.

There shall be three basic security levels to which an inmate may be assigned during that inmate's period of incarceration. The security classification shall determine, in whole or in part, the security procedures applied to the inmate including the type of housing, area of assignment or activity, and the kind of supervision for maintaining control of that inmate. The level of security shall also partially determine the level of privileges and freedoms allowed to an inmate since the required security measures affect the availability of such privileges and freedoms. The security measures exercised over an inmate at any particular level may be greater, but shall never be less, than those prescribed as applicable to that level of security to which the inmate has been assigned.

(b) The basic levels of security classification are as follows:

- (1) Maximum;
- (2) medium; and
- (3) minimum.

(c) Security classification levels shall be assigned in accordance with the security classification manual, secretary of corrections' internal management policy and procedure (IMPP) 011-107.

(d) Each security classification is defined by the description of security measures applied to inmates with that security classification. The description shall be developed and published in the security manual of the secretary of corrections' internal management policies and procedures, chapter 12.

(e) The institution director or facility supervisor shall establish security procedures to be applied to each security classification, which are appropriate for the operation of their respective institutions or facilities.

(f) Any change in an inmate's security classification shall be based on a recommendation of the program management committee of the institution or facility, consistent with the secretary of corrections' IMPP 011-107. The change in security classification shall be made under the authority and by the order of the principal administrator.

(g) The principal administrator may designate any needed security procedures for temporary or special situations, subject to other regulations of the secretary of corrections, that are not inconsistent with secretary of corrections' IMPP 012-101. (Authorized by and implementing K.S.A. 75-5251, 75-5210, 75-5252; effective May 1, 1980; amended May 1, 1984; amended May 1, 1987.)

44-5-105. The program plan and timetable. (a) Within one month after each inmate's admission or re-admission evaluation, an initial classification committee shall meet with the offender to develop a program plan. The development of an inmate's program plan and timetable for projected completion shall be based on an interview of the inmate by the initial classification committee and on review of available information concerning the inmate, including any specific recommendations made by state reception and diagnostic center or Kansas correctional institution at Lansing regarding needed features in the program plan for that particular inmate. The program plan shall then be modified according to the availability of programs and services at the institution or facility. The initial classification committee shall also consider the inmate's personal preference for particular programs. The committee shall consider opinions of the security officers as they relate to the formulation of a plan.

(b) The program plan shall include various tasks which the inmate agrees to perform over an estimated period of time. The tasks shall be designed to assist the inmate in making changes that will better allow the inmate to re-enter the community and live without coming in conflict with the law. The tasks shall be of several types and may include activities in education, vocational training, psychological or psychiatric counseling or therapy, work, hobbies or leisure time activities, and participation in social, special interest or special

counseling groups. The program plan shall include, as a basic and continuing requirement, the assessment, development, and maintenance of the characteristics of acceptable social behavior, obedience to the regulations of the secretary and the orders of the principal administrator and all laws, and the effort to solve problems identified by valid psychological testing so the inmate may live in the community without coming in conflict with the law.

(c) (1) Any inmate may elect not to participate in a formal program plan. In such an event, that inmate shall not be prohibited from participating in any programs as are available, but the inmate shall first obtain the recommendation and approval of the unit team. The unit team may recommend the inmate for parole eligibility based on the inmate's rehabilitation progress accomplished by the inmate's own initiative. The inmate shall not be penalized for refusal to participate in a formal program plan. The inmate shall nevertheless be subject to all the regulations of the secretary and the orders of the principal administrator, and shall be required to participate in any work assignments which are made by the unit team.

(2) Any inmate may, at any time, request the creation of a formal program plan. The unit team shall, within 60 days, confer with the inmate and shall draft a program plan and timetable for the inmate.

(d) The unit team members shall be available to attend the Kansas adult authority initial hearing, at the order of the authority pursuant to K.A.R. 45-5-1, to confer with the Kansas adult authority and to assist the Kansas adult authority in establishing or identifying the parole eligibility date. (Authorized by K.S.A. 1983 Supp. 75-5210; implementing K.S.A. 1983 Supp. 75-5210, 75-5220, 75-5229; effective May 1, 1980; amended May 1, 1984.)

44-5-106. Use of force or restraint on inmates. (a) K.S.A. 21-3215, regarding use of force by a law enforcement officer in making an arrest, shall be applied to correctional officers and parole officers in making arrests, preventing escapes, apprehending escapees or parole violators and absconders, and in maintaining security, control, and discipline in the correctional situation.

(b) The use of mechanical restraints on an inmate for punitive purposes shall be prohibited. Mechanical restraints may be used only when necessary in the following instances:

(1) When transporting the inmate;

(2) upon the advice of clinical personnel that the inmate may cause injury to self or others, or when, based on the past history or present behavior, it appears likely that the inmate will cause injury to self or others;

(3) when hospitalized outside the correctional security setting; and

(4) when part of authorized practice in routine security procedures applied to an inmate based on the inmate's security classification.

(c) No restraining device shall be applied in a manner which would cause significant physical pain or undue discomfort, restrict blood circulation or breathing, or otherwise injure or incapacitate the inmate beyond the extent necessary to maintain security and control. (Authorized by K.S.A. 75-5251; implementing K.S.A. 21-4609, 75-5252, 75-5210; effective May 1, 1980; amended May 1, 1984; amended May 1, 1987.)

44-5-107. (Authorized by K.S.A. 75-5201, 75-5251, K.S.A. 1979 Supp. 75-5205, 75-5210, 75-5210(b) and (f), 75-5252; effective May 1, 1980; revoked March 22, 2002.)

44-5-108. (Authorized by and implementing K.S.A. 75-5251, K.S.A. 1983 Supp. 75-5210, 75-5210(f), 75-5252; effective May 1, 1980; amended May 1, 1984; revoked March 22, 2002.)

44-5-109. (Authorized by K.S.A. 75-5251, K.S.A. 1979 Supp. 75-5205, 75-5206, 75-5210, 75-5210(c) and (f), 75-5252; effective May 1, 1980; revoked March 22, 2002.)

44-5-110. (Authorized by and implementing K.S.A. 75-5251, K.S.A. 1983 Supp. 75-5210; effective, May 1, 1980; amended May 1, 1981; amended May 1, 1984; amended May 1, 1985; revoked March 22, 2002.)

44-5-111. Disposition of contraband. (a) Contraband shall be divided into three (3) categories as follows:

(1) Items which are contraband because mere possession is illegal in the state of Kansas or the United States.

(2) Items, including money, which are made contraband in the prison environment by the laws of the state of Kansas, by the regulations of the secretary of corrections, or by the orders of a principal administrator.

(3) Items which are neither illegal in themselves nor defined as contraband in a prison under all circumstances, but which because of their misuse

or excessive accumulation, or because they constitute the subject of a rule violation or illegal act, have become contraband.

(b) Upon admission to the department of corrections, an inmate's property is restricted. Money and any property not permitted in the facility is disposed of according to the regulations of the secretary of corrections.

(c) If, at any time following admission to any correctional facility, the inmate is found in possession of any item which by law or regulations is contraband, including money, such items shall be confiscated and the inmate shall forfeit all rights to such item, and, where applicable, it shall be held as evidence in a prosecution for a crime or an administrative disciplinary process, or both. Following the completion of any prosecution and disciplinary proceedings, the contraband, depending on type, shall be disposed of as follows:

(1) If inherently illegal under laws of the United States or Kansas, it shall be left in the custody of local officials or destroyed, and a record shall be made and retained at the facility for three (3) years.

(2) If illegal only in the prison environment, in lieu of both options in (c) (1) above, it may be donated to any charitable not-for-profit corporation, and a record shall be made and retained at the facility for three (3) years; except that money which shall be placed in the inmate benefit fund.

(d) When it is determined that property held by an inmate should be confiscated because of its misuse, or excessive accumulation, but the property is otherwise not a violation, the following action shall be taken.

(1) If the inmate can show ownership of the property and the property has not been the subject of any rule violation, the property may be sent out of the correctional facility to some person designated by the inmate at the inmate's expense.

(2) If the property constitutes the subject of some violation, it shall be held as evidence in a prosecution or disciplinary hearing and thereafter may be disposed of by donation to any charitable not-for-profit corporation and a record made and retained for three (3) years, or by sending it to some person outside the correctional facility at the inmate's expense and at the principal administrator's discretion.

(3) If the property does not belong to the inmate, the property shall be returned to the rightful owner if such owner can be determined. If the property was stolen, it may be used as evidence in a disciplinary hearing or prosecution before be-

ing returned to its rightful owner. If the property was the subject of a loan or other violation of the property registration rules, or if the rightful owner of the property cannot be determined, then the property may be donated to any charitable not-for-profit corporation and a record made and retained for three (3) years.

(e) The inmate shall be given an opportunity to explain any mitigating or extenuating circumstances which would excuse his or her possession of the contraband. The principal administrator shall make the final decision.

(f) If a finding is made that the item is not contraband, it shall be returned to the inmate. (Authorized by K.S.A. 21-3826, 75-5254, 75-5257, K.S.A. 1979 Supp. 21-4206, 75-5205, 75-5210, 75-5210(f), 75-5252; effective May 1, 1980.)

44-5-112. Clinical services, inmate treatment.

(a) The principal administrator in cooperation with the administrator's chief physician shall arrange for services to inmates both on an outpatient and on a hospital basis, and shall also make proper plans and arrangements for an inmate to be taken, when necessary, to a medical facility outside the correctional institution. All such plans and arrangements shall be in compliance with internal management policies and procedures of the secretary of corrections. Procedures for inmates reporting a personal injury or medical problem shall be established, in writing, by order of the principal administrator and inmates shall be informed thoroughly regarding procedures.

(b) Adequate and necessary basic care shall be made available to inmates. The principal administrator shall establish, by order, a system for inmate medical care during normal working hours and for emergency medical care during evenings, weekends and holidays. The system shall be in compliance with internal management policies and procedures of the secretary.

(c) Medical assistants shall be certified according to current standards in Kansas and the principal administrator shall provide a program of continuing education.

(d) Adequate and necessary basic care, treatment and maintenance procedures shall be available for diabetics and hypoglycemics. The clinic shall provide diet requirements for these persons to the principal administrator and shall consult with the food service staff to plan necessary dietary modifications. A diet from which reasonable selection may be made and which is sufficient for

their needs, may be used in lieu of special menus. Other dietary needs, verified by clinical personnel as being necessary and basic for adequate health care, shall be met. (Authorized by and implementing K.S.A. 75-5251, K.S.A. 1983 Supp. 75-5210, 75-5252; effective May 1, 1980; amended May 1, 1981; amended May 1, 1984.)

44-5-113. (Authorized by and implementing K.S.A. 75-5251, K.S.A. 1983 Supp. 75-5210; effective May 1, 1980; amended May 1, 1981; amended May 1, 1984; amended May 1, 1985; revoked March 22, 2002.)

44-5-114. (Authorized by and implementing K.S.A. 75-5251, K.S.A. 1983 Supp. 75-5210; effective May 1, 1984; revoked March 22, 2002.)

44-5-115. Service fees. (a) Each inmate in the custody of the secretary of corrections shall be assessed a charge of one dollar each payroll period, not to exceed \$12.00 per year, as a fee for administration by the facility of the inmate's trust account. The facility shall be authorized to transfer the fee from each inmate's account from the balance existing on the first of each month. If an inmate has insufficient funds on the first of the month to cover this fee, the fee shall be transferred as soon as the inmate has sufficient funds in the account to cover the fee. All funds received by the facility pursuant to this subsection shall be paid on a quarterly basis to the crime victims' compensation fund.

(b)(1) Each offender under the department's parole supervision, conditional release supervision, postrelease supervision, house arrest, and interstate compact parole and probation supervision in Kansas shall be assessed a supervision service fee of a maximum of \$30.00 per month. This fee shall be paid by the offenders to the department's designated collection agent or agents. Payment of the fee shall be a condition of supervision. All fees shall be paid as directed by applicable internal management policy and procedure and as instructed by the supervising parole officer.

(2) A portion of the supervision service fees collected shall be paid to the designated collection agent or agents according to the current service contract, if applicable. Twenty-five percent of the remaining amount collected shall be paid on at least a quarterly basis to the crime victims' compensation fund. The remaining balance shall be paid to the department's general fees fund for the department's purchase or lease of enhanced pa-

role supervision services or equipment including electronic monitoring, drug screening, and surveillance services.

(3) Indigent offenders shall be exempt from this subsection, as set forth by criteria established by the secretary in an internal management policy and procedure.

(4) The fees authorized by subsection (d) shall not be considered a portion of the monthly supervision service fee.

(c) Each inmate in the custody of the secretary of corrections shall be assessed a fee of \$2.00 for each primary visit initiated by the inmate to an institutional sick call. A primary visit shall be the initial visit for a specific complaint or condition. Inmates shall not be charged for the following:

(1) Medical visits initiated by medical or mental health staff;

(2) institution intake screenings;

(3) routinely scheduled physical examinations;

(4) clinical service reports, including reports or evaluations requested by any service provider in connection with participation in the reentry program;

(5) evaluations requested by the prisoner review board;

(6) referrals to a consultant physician;

(7) infirmary care;

(8) emergency treatment, including initial assessments and first-aid treatment for injuries incurred during the performance of duties on a work detail or in private industry employment;

(9) mental health group sessions;

(10) facility-requested mental health evaluations;

(11) follow-up visits initiated by medical staff; and

(12) follow-up visits initiated by an inmate within 14 days of an initial visit.

No inmate shall be refused medical treatment for financial reasons. If an inmate has insufficient funds to cover the medical fee, the fee shall be transferred as soon as the inmate has sufficient funds in the account to cover the balance of the fee.

(d) Each inmate assigned to a batterers intervention program shall be assessed a fee for admission to and continued participation in the program.

(e) Each offender shall be assessed a fee for each urinalysis or other test approved by the secretary of corrections that is administered to the offender for the purpose of determining the use of illegal substances and that has a positive result. The amount of the fee shall be adjusted periodically to reflect the actual cost of administering these tests, including staff participation.

(f) Each inmate or offender shall be assessed a fee, if applicable, for the following:

- (1) Global positioning system (GPS) tracking;
- (2) electronic or any other appropriate form of monitoring;
- (3) an application for transfer under the interstate compact for adult offender supervision;
- (4) polygraph examinations;
- (5) community residential bed housing;
- (6) sexual abuser's treatment services; and
- (7) batterers intervention program services. The fee for each service specified in this subsection shall be assessed only if the service is required as a part of house arrest or postincarceration release supervision.

If applicable, each offender on postincarceration release supervision or house arrest shall also be assessed a fee for the collection of specimens of blood and saliva for the purpose of providing DNA profiles to the Kansas bureau of investigation, pursuant to K.S.A. 21-2511 and amendments thereto. (Authorized by K.S.A. 2011 Supp. 21-6609, as amended by L. 2012, Ch. 172, §29, K.S.A. 2011 Supp. 75-5210, K.S.A. 2011 Supp. 75-5251, K.S.A. 75-52,139; implementing K.S.A. 2011 Supp. 21-6609, as amended by L. 2012, Ch. 172, §29, K.S.A. 2011 Supp. 22-3717, as amended by L. 2012, Ch. 150, §43, K.S.A. 75-52,139; effective Jan. 3, 1995; amended, T-44-3-19-04, March 19, 2004; amended July 2, 2004; amended March 23, 2012; amended Feb. 1, 2013.)

Article 6.—GOOD TIME CREDITS AND SENTENCE COMPUTATION

44-6-101. Definitions. (a) For purposes of sentence computation, as used in this article, terms dealing with good time credits shall be defined as follows:

(1) "Establishment of good time credits" means the creation of that pool of credits that decreases part of the term of actual imprisonment for good work and behavior over a period of time. Good time credits shall not forgive or eliminate the sentence but shall function only to allow the inmate to earn the privilege of being released from incarceration earlier than the full minimum, maximum, or guidelines prison sentence, subject to conditions specified and imposed pursuant to applicable law. Following a revocation of parole or conditional release, good time credits shall not be available to reduce the period of incarceration before a prisoner review board hearing for reparole.

Following a revocation of postrelease supervision, good time credits shall be available to reduce the incarceration penalty period as authorized by applicable statutes.

(2) "Allocation of good time credits" means the breakdown of the total number of established good time credits into groups of credits that are available to the inmate in separate time periods.

(3) To "earn good time credits" means that the inmate has acted in a way that merits a reduction of the term of actual imprisonment by those credits.

(4) "Award of good time credits" means the act of the unit team, as approved by the program management committee and the warden or designee, granting all or part of the allocation of credits available for the time period under review.

(5) "Application of good time credits" means the entry of the credits of forfeitures into the official record of the inmate and the consequent adjustment of parole eligibility, conditional release, the guidelines release date, or the guidelines sentence discharge date.

(6) "Forfeiture of good time credits" means the removal of the credits and consequent reinstatement of a term of actual imprisonment by the disciplinary board according to article 12 and article 13, as published in the inmate rule book.

(b) For purposes of sentence computation, as used in this article, terms dealing with sentence structure shall be defined as follows:

(1) "Composite sentence" means any sentence formed by the combination of two or more sentences.

(2) "Concurrent sentence" means two or more sentences imposed by the court with minimum and maximum terms, respectively, to be merged, or two or more sentencing guidelines sentences imposed by the court with their prison terms to be merged.

(3) "Consecutive sentence" means a series of two or more sentences imposed by the court in which the minimum terms and the maximum terms, respectively, are to be aggregated, or a series of two or more sentencing guidelines sentences in which the prison terms are to be aggregated pursuant to K.S.A. 2011 Supp. 21-6819 and amendments thereto.

(4) "Controlling sentence" means the sentence made up of the controlling minimum term and the controlling maximum term of any sentence or composite sentence or the sentencing guidelines sentence made up of two or more sentences, whether concurrent or consecutive, that results in the longest prison term.

(5) “Aggregated controlling sentence” means a controlling sentence composed of two or more sentences. An aggregated controlling sentence has a minimum term consisting of the sum of the minimum terms and a maximum term consisting of the sum of the maximum terms. In the case of sentencing guidelines sentences, an aggregated controlling sentence has a prison term that is the sum of all the prison terms of the sentences that are aggregated, pursuant to K.S.A. 2011 Supp. 21-6819 and amendments thereto. The term “aggregated” shall be applied only to consecutive sentences.

(c) For purposes of sentence computation, as used in this article, terms dealing with sentence service credits, other than good time credits, shall be defined as follows:

(1) “Jail credit” and “JC” mean the time spent in confinement, pending the disposition of the case, before the sentencing to the custody of the secretary of corrections pursuant to K.S.A. 2011 Supp. 21-6615, and amendments thereto, or on or after May 19, 1988, time spent in a residential center while on probation or assignment to a community correctional residential services program, pursuant to K.S.A. 2011 Supp. 21-6615 and amendments thereto.

(2) “Maximum sentence credit” means the total period of incarceration served on a sentence beyond the limitation for credit awarded as prison service credit. This credit shall be used to adjust the maximum expiration date of the sentence.

(3) “Prison service credit” means the penal time credited for time the inmate previously was incarcerated on the sentence and time credited on the sentence while actually incarcerated during release in custody to a law enforcement agency. Prison service credit shall be given for time spent incarcerated on a sentence that has subsequently been aggregated due to the imposition of a consecutive sentence.

(4) “Program credit” means the pool of credits that serve to decrease the term of actual imprisonment awarded for a completion of a program designated by the secretary. Program credits shall not decrease or eliminate the sentence but shall function only to allow the inmate to earn the privilege of being released from incarceration earlier than the prison sentence adjusted for earned and retained good time credits. Program credits earned and retained while an offender is incarcerated shall be added to the offender’s postrelease supervision period.

(d) For purposes of sentence computation, as used in this article, terms dealing with terms or length of sentences shall be defined as follows:

(1) “Controlling minimum term” means the length of the sentence to be served to reach the controlling minimum date as determined according to applicable case, statutory, and regulatory law.

(2) “Controlling maximum term” means the length of the maximum sentence imposed by the court that constitutes the longest required period of incarceration, determined according to applicable case and statutory law and these regulations.

(e) For purposes of sentences computation, as used in this article, terms dealing with calculation of specific dates in the execution of sentences shall be defined as follows:

(1) “Sentencing date” means the date on which the sentence is imposed by the court upon conviction. “Sentencing date” is also known as the sentence imposition date.

(2) “Sentence begins date” means the calendar date on which service of the sentence is to begin running. This date, as established by the court, shall reflect the time allowances as defined in jail time credit. This date shall be adjusted by department of corrections staff if prison service credit is applicable. If no jail credit is involved but prison service credit exists, the prison service credit shall be subtracted from the sentence imposition date to determine the sentence begins date.

(3) “Controlling minimum date” means the calendar date derived by adding the controlling minimum term to the sentence begins date.

(4) “Controlling maximum date” means the calendar date derived by adding the controlling maximum term imposed by the court to the sentence begins date.

(5) “Guidelines release date” means, for offenders with sentences imposed pursuant to the sentencing guidelines act, K.S.A. 2011 Supp. 21-6801 et seq. and amendments thereto, the date yielded by adding the prison portion of the sentence to the sentence, less any good time credits earned and awarded pursuant to K.S.A. 2011 Supp. 21-6821 and amendments thereto, plus any good time credits forfeited.

(6) “Conditional release date” and “CR date” mean the controlling maximum date minus the total number of authorized good time credits not forfeited.

(7) “Parole eligibility” means the status that results if the inmate has served the sentence required by law to the extent that the law allows the

inmate's immediate release if the prisoner review board grants a parole to that inmate.

(8) "Program release date" means the date the offender may be released with the application of the actually earned, awarded, and retained good time and program credits.

(f) For purposes of sentence computation, as used in this article, terms dealing with loss of forfeiture of sentence service credit while on parole or postrelease supervision status as well as escape status shall be defined as follows:

(1) "Postincarceration supervision" means supervision of any offender released to the community after service of the requisite term of incarceration. This term shall include parole, conditional release, and postrelease supervision.

(2) "Abscond" means departing without authorization from a geographical area or jurisdiction prescribed by the conditions of one's parole or postrelease supervision.

(3) "Delinquent time lost on postincarceration status" and "DTLOPIS" mean the time lost on the service of sentence from which the offender was paroled or released to postrelease supervision due to being on absconder status after a condition violation warrant was issued and until the warrant was served.

(4) "Forfeited good time on postincarceration status" means the amount of good time ordered forfeited by the prisoner review board from the amount earned from the date of authorized release to the date delinquent time on parole or postincarceration began or to the date of admission to a department of corrections facility.

(5) "Time lost on escape" means the time not counted on the service of sentence while the inmate is on escape status. This term shall mean the time from which the escape took place to the time of apprehension. (Authorized by K.S.A. 2011 Supp. 21-6821, as amended by L. 2012, Ch. 150, §37, K.S.A. 2011 Supp. 75-5210, K.S.A. 2011 Supp. 75-5251; implementing K.S.A. 2011 Supp. 21-6606, as amended by L. 2012, Ch. 16, §4, K.S.A. 2011 Supp. 21-6821, as amended by L. 2012, Ch. 150, §37, K.S.A. 2011 Supp. 22-3717, as amended by L. 2012, Ch. 150, §43, K.S.A. 2011 Supp. 22-3725, K.S.A. 2011 Supp. 75-5210, K.S.A. 2011 Supp. 75-5217, as amended by L. 2012, Ch. 16, §36, K.S.A. 2011 Supp. 75-5251; effective May 1, 1981; amended, T-84-32, Nov. 23, 1983; amended May 1, 1984; amended Nov. 12, 1990; amended Sept. 6, 2002; amended June 1, 2007; amended Aug. 8, 2008; amended Feb. 1, 2013.)

44-6-102. (Authorized by K.S.A. 75-5251, K.S.A. 1980 Supp. 75-5205; implementing K.S.A. 1980 Supp. 22-3717; effective May 1, 1981; revoked, T-84-32, Nov. 23, 1983; revoked May 1, 1984.)

44-6-106. Authority to interpret court documents. (a) Department of corrections' staff, authorized by the secretary of corrections, shall have the authority to analyze and interpret the journal entry of judgment, the judgment form, and any other documents from the court to the extent necessary to execute the sentence and commitment.

(b) Authorized staff shall include wardens, records officers, classification officers, sentence computation specialists, and attorneys.

(c) If correction of a journal entry is necessary, the authorized staff shall refer the matter to the sentencing court and notify either the county or district attorney and the defense attorney. (Authorized by K.S.A. 75-5210, 75-5251; implementing K.S.A. 21-4608, K.S.A. 2001 Supp. 22-3717, K.S.A. 75-5210, 75-5251; effective, T-84-32, Nov. 23, 1983; effective May 1, 1984; amended Sept. 30, 1991; amended Sept. 6, 2002.)

44-6-107. Application of law on date of crime; statutes repealed still applied. (a)(1) The statutes constituting the substantive law in effect at the time the crime is committed shall apply to compute the sentence term and the release dates. No subsequent change in the statute constituting substantive law shall be applied if that law adversely affects the inmate. Changes in statute constituting substantive law that benefit the inmate may be applied to compute the inmate's sentence term and the release dates, but shall not be required to be applied except in the computation of parole eligibility.

(2) Parole eligibility shall be computed by applying the statute in effect at the time the inmate committed the crime for which imprisoned unless subsequent changes in the statute provide an earlier parole date. If the amendment would yield an earlier parole eligibility date, that amendment shall be applied. Statutes establishing the formula for computation of parole eligibility shall be considered substantive law and not procedural law.

(b) Any statute or regulation that has been repealed or revoked shall continue to apply to sentences of inmates if other statutes, regulations, or the principles of constitutional law require its terms to be applied to that inmate, or if law per-

mits its continued application and the policy of the department of corrections is to continue its application for reasons of fairness or economy.

(c) The following chart shall establish the description of categories of law systems applicable to sentences of inmates who are subject to the custody of the secretary of corrections:

TITLE OF LAW SYSTEM	EFFECTIVE DATE OF APPLICATION	SESSION LAW OR STATUTORY REFERENCE
(1) "Old code"	All before July 1970	
(2) "New code"	After July 1, 1980	
(3) Penal reform act of 1973	After July 1, 1974	S.B. 72, L. 1973, ch. 339
(4) "Firearms mandatory," "mandatory firearms," "mandatory gun," "gun act," all referring to the combination of mandatory prison term and prohibition of parole before minimum is served.	After July 1, 1976	K.S.A. 21-4618 and K.S.A. 22-3717. L. 1976, ch. 168
(5) "Parole eligibility reform law"	On and after January 1, 1979	K.S.A. 22-3717, L. 1978, ch. 120
(6) "Aid and abet parole limitation"	After July 1, 1981	K.S.A. 22-3717, L. 1981, ch. 156
(7) "Parole eligibility law split"	After July 1, 1981	K.S.A. 22-3717, 22-3717a, L. 1981, ch. 156
(8) "Sentence toughening law" or "legislative good time credit law"	After July 1, 1982	H.B. 3104 and H.B. 2757, L. 1982, ch. 137 and 150
(9) "Previous consecutive credit limitation law"	After July 1, 1983	H.B. 2212, L. 1983, ch. 111, K.S.A. 21-4608(6), (d) and (e)
(10) "Sentencing guidelines act"	On or after July 1, 1993	S.B. 423, L. 1993, ch. 291, K.S.A. 21-4701 <i>et seq.</i> and K.S.A. 22-3717

(d) The history of the pertinent statutes shall be reviewed to determine the form of the law applicable at the time the crime was committed, as follows:

(1) K.S.A. 21-4608—Prior law: K.S.A. 62-1512, G.S. 1868, ch. 82, § 250, R.S. 1923, 62-1512, L. 1963, ch. 306, § 1, June 30, 1963, Repealed L. 1969, ch. 180, July 1, 1970; K.S.A. 62-2251, L. 1957, ch. 331, § 26; July 1, 1957, Repealed L. 1969, ch. 180; July 1, 1970; L. 1969, ch. 180, § 21-4608, July 1, 1970; L. 1978, ch. 120, § 8; January 1, 1979; L. 1982, ch. 150, § 1, July 1, 1982; L. 1983, ch. 111, § 1, July 1, 1983.

(2) K.S.A. 22-3717, L. 1970, ch. 129, § 22-3717, July 1, 1970; [L. 1972, ch. 317, § 90, Never Effective], L. 1973, ch. 339, § 88, July 1, 1974; L. 1974, ch. 403, § 10, July 1, 1974; L. 1975, ch. 203, § 1, July 1, 1975; L. 1976, ch. 168, § 2, July 1, 1976; L. 1978, ch. 120, § 13, January 1, 1979; L. 1979, ch. 94, § 2, July 1, 1979; L. 1981, ch. 156, § 1, July 1,

1981; L. 1982, ch. 137, § 3, July 1, 1982; L. 1982, ch. 150, § 2, July 1, 1982.

(3) K.S.A. 22-3717a, L. 1981, ch. 156, § 2, July 1, 1981, Repealed L. 1982, ch. 137, § 4, July 1, 1982.

(e) Statutes specifically relating to the granting of credit for time served shall be applied according to the terms, the court's order, and the statute, and their histories shall be described as follows:

(1) K.S.A. 21-4614. Prior law K.S.A. 62-1533, L. 1969, ch. 180, § 21-4614; L. 1979, ch. 124, § 13; L. 1972, ch. 317, § 101; L. 1973, ch. 339, § 72; L. 1980, ch. 104, § 2, April 24, 1980.

(2) K.S.A. 21-4608 [see subsection (d)].

(3) K.S.A. 22-3431. Prior law K.S.A. 62-1537; L. 1970, ch. 129, § 22-3431; L. 1971, ch. 114, § 8, July 1.

(4) K.S.A. 22-3717 [see subsection (d)].

(5) K.S.A. 22-3717a [see subsection (d)].

(6) K.S.A. 21-4614a. L. 1988, ch. 115, § 4, July 1, 1988; L. 1989, ch. 92, §5, July 1, 1989. (Authorized by K.S.A. 75-5251, K.S.A. 75-5210; implementing K.S.A. 75-5251, K.S.A. 75-5210; effective, T-84-32, Nov. 23, 1983; effective May 1, 1984; amended Sept. 6, 2002.)

44-6-108. Application of good time credits. (a) For the purposes of awarding and applying good time credits, all calculations shall be based upon a year, which shall be considered a 360-day period with each month consisting of 30 days.

(b) Good time credits may be awarded by the warden of the correctional facility, the regional parole director, or the interstate compact administrator, or their designees.

(c) Good time credits may be awarded only for time served on a sentence on and after the beginning date of the sentence. Good time credits shall not be awarded for any period of time served before the sentence begins date. Good time credits shall not be awarded or withheld if a sentence is not being served due to an escape, or for delinquent time lost on postincarceration supervision. (Authorized by K.S.A. 2001 Supp. 21-4722, 2001 Supp. 22-3717, as amended by L. 2002, Ch. 163, Sec. 5, K.S.A. 2001 Supp. 22-3725, K.S.A. 75-5210, as amended by L. 2002, Ch. 154, Sec. 1, K.S.A. 75-5251; implementing K.S.A. 21-4608, 21-4722, K.S.A. 2001 Supp. 22-3717, as amended by L. 2002, Ch. 163, Sec. 5, K.S.A. 75-5210, as amended by L. 2002, Ch. 154, Sec. 1, K.S.A. 75-5251; effective, T-84-32, Nov. 23, 1983; effective May 1, 1984; amended Sept. 30, 1991; amended Sept. 6, 2002.)

44-6-108a to 44-6-114b. (Authorized by K.S.A. 75-5251, K.S.A. 1983 Supp. 75-5210; implementing K.S.A. 22-3427, 75-5251, K.S.A. 1983 Supp. 21-4608, 22-3717, 75-5210; effective, T-84-32, Nov. 23, 1983; effective May 1, 1984; revoked Nov. 12, 1990).

44-6-114c. Parole eligibility computation. (a) For concurrent and aggregated consecutive terms not involving class A felonies, parole eligibility shall be set at the minimum term less any award for good time credits. The minimum term, less good time credits awarded and retained, shall determine the parole eligibility date for concurrent and aggregated consecutive sentences for crimes committed before July 1, 1993, including sentences pursuant to K.S.A. 21-4618 and amendments thereto, but not including class A felonies.

(b) Concurrent class A felony sentences shall have a fixed parole eligibility date of 15 years, except as follows:

(1) For capital murder offenses committed on or after July 1, 1990 but before July 1, 1994, with a sentence imposed under former K.S.A. 21-4628, a parole eligibility date of 40 years shall be established.

(2) For capital murder offenses committed on or after July 1, 1994, but before July 1, 1999, if a death sentence is not imposed, then under K.S.A. 21-4635 and 21-4638, and amendments thereto, a parole eligibility date of 40 years shall be established.

(3) For capital murder offenses committed on or after July 1, 1999, if a death sentence is not imposed, then under K.S.A. 21-4635 and 21-4638, and amendments thereto, a parole eligibility date of 50 years shall be established.

(c) Parole eligibility for consecutive sentences that include one or more class A felonies shall be determined by the following:

(1) Computing the parole eligibility on the aggregate minimum terms for crimes that are not class A felonies; and

(2) adding an additional 15 years for each class A felony or, in the case of an offender whose class A felony was committed before July 1, 1994, and who was sentenced pursuant to the provisions of former K.S.A. 21-4628, an additional 40 years. A class A felony sentence shall be served first with the 15-year or 40-year parole eligibility period, as appropriate, added to the sentence begins date, to determine the parole eligibility date on the class A felony sentence. An additional 15 or 40 years, as appropriate, shall be added for each additional consecutive class A felony sentence. Good time

credits shall not be applied to class A felony sentences. Good time credits shall be applied to non-class A felony sentences only after service of the fixed parole eligibility requirements for the class A felonies.

(d)(1) Except for a violation of K.S.A. 21-3402(a) and amendments thereto committed on or after July 1, 1996, but before July 1, 1999, parole eligibility for off-grid crimes shall be computed as follows:

(A) For off-grid crimes committed on or after July 1, 1993, but before July 1, 1994, parole eligibility shall be computed in the same manner as for class A felonies.

(B) For off-grid crimes committed on or after July 1, 1994, but before July 1, 1999, parole eligibility shall be computed in the same manner as for class A felonies except that the fixed parole eligibility date shall be at 15, 25, or 40 years, as specified by the court.

(C) For off-grid crimes committed on or after July 1, 1999, parole eligibility shall be computed in the same manner as for class A felonies except that the fixed parole eligibility date shall be at 20, 25, or 50 years, as specified by the court.

(2) For violations of K.S.A. 21-3402(a) committed on or after July 1, 1996, but before July 1, 1999, a fixed parole eligibility date of 10 years shall be established.

(3) Good time credits shall not be applied to that portion of a sentence controlled by a fixed parole eligibility date and shall be applied to sentencing grid crime sentences pursuant to K.S.A. 21-4722 and amendments thereto only after service of the fixed parole eligibility requirements for off-grid crimes. (Authorized by K.S.A. 75-5210, 75-5251; implementing K.S.A. 2001 Supp. 22-3717, K.S.A. 75-5210, 75-5251; effective Nov. 12, 1990; amended Sept. 30, 1991; amended Sept. 6, 2002.)

44-6-114d. Conditional release date.

When computing a conditional release date, it shall be presumed that 100% of the available good time credits are earned. Conditional release good time credits may be forfeited in accordance with applicable regulations of the secretary. The conditional release date shall be based on the controlling maximum date. No conditional release date shall be computed for a maximum sentence of life. (Authorized by and implementing K.S.A. 2001 Supp. 22-3718, 22-3725, K.S.A. 75-5210, as amended by L. 2002, Ch. 154, Sec. 1, K.S.A. 75-5251; effective Sept. 6, 2002.)

44-6-114e. Guidelines release date. (a) Except for off-grid crimes, the prison portion of sentences for crimes committed on or after July 1, 1993 but before April 20, 1995, crimes at non-drug severity levels 7 through 10 committed on or after January 1, 2008, crimes at drug grid severity level 3 or 4 committed on or after January 1, 2008 but before July 1, 2012, and crimes at drug grid severity level 4 or 5 committed on or after July 1, 2012, may be reduced by no more than 20% through awarded and retained good time credits.

(b) Except for off-grid crimes, the prison portion of sentences for all crimes committed on or after April 20, 1995 but before January 1, 2008, crimes at non-drug grid severity levels 1 through 6 and drug grid severity levels 1 and 2 committed on or after January 1, 2008, and crimes at drug severity level 3 committed on or after July 1, 2012, may be reduced by no more than 15% through awarded and retained good time credits. Partial days shall be rounded to the next whole number, but over the length of the sentence no more than

15% of the imprisonment portion of the sentence may be awarded as good time.

(c) Concurrent and consecutive sentences for off-grid crimes committed on or after July 1, 1993 shall not be subject to reduction through application of good time credits.

(d) For determinate sentences that are concurrent or consecutive with indeterminate sentences, good time may be awarded on the indeterminate sentence term as described in these regulations and applicable law.

(e) Good time credits awarded and retained on the prison portion of a determinate sentence shall be added to the period of postrelease supervision applicable to the offender's sentence.

(f) The following charts shall establish the good time credit rate for a 20% reduction of the prison portion of a determinate sentence.

(1) Total good time credits available for the length of sentence imposed.

(2) Except as provided in subsection (h), allocation of good time credits available during the service of sentence.

**TOTAL GOOD TIME AVAILABLE (20% RATE)
OFFENSES COMMITTED ON OR AFTER JULY 1, 1993
THROUGH APRIL 19, 1995**

<i>Length of Sentence [Months]</i>	<i>Possible Good Time Earned</i>			<i>Time To Serve [All GT Kept]</i>		
	<i>Years</i>	<i>Months</i>	<i>Days</i>	<i>Years</i>	<i>Months</i>	<i>Days</i>
5	0	1	0	0	4	0
6	0	1	6	0	4	24
7	0	1	12	0	5	18
8	0	1	18	0	6	12
9	0	1	24	0	7	6
10	0	2	0	0	8	0
11	0	2	6	0	8	24
12	0	2	12	0	9	18
13	0	2	18	0	10	12
14	0	2	24	0	11	6
15	0	3	0	1	0	0
16	0	3	6	1	0	24
17	0	3	12	1	1	18
18	0	3	18	1	2	12
19	0	3	24	1	3	6
20	0	4	0	1	4	0
21	0	4	6	1	4	24
22	0	4	12	1	5	18
23	0	4	18	1	6	12
24	0	4	24	1	7	6
25	0	5	0	1	8	0
26	0	5	6	1	8	24
27	0	5	12	1	9	18

<i>Length of Sentence [Months]</i>	<i>Possible Good Time Earned</i>			<i>Time To Serve [All GT Kept]</i>		
	<i>Years</i>	<i>Months</i>	<i>Days</i>	<i>Years</i>	<i>Months</i>	<i>Days</i>
28	0	5	18	1	10	12
29	0	5	24	1	11	6
30	0	6	0	2	0	0
31	0	6	6	2	0	24
32	0	6	12	2	1	18
33	0	6	18	2	2	12
34	0	6	24	2	3	6
35	0	7	0	2	4	0
36	0	7	6	2	4	24
37	0	7	12	2	5	18
38	0	7	18	2	6	12
39	0	7	24	2	7	6
40	0	8	0	2	8	0
41	0	8	6	2	8	24
42	0	8	12	2	9	18
43	0	8	18	2	10	12
44	0	8	24	2	11	6
45	0	9	0	3	0	0
46	0	9	6	3	0	24
47	0	9	12	3	1	18
48	0	9	18	3	2	12
49	0	9	24	3	3	6
50	0	10	0	3	4	0
51	0	10	6	3	4	24
52	0	10	12	3	5	18
53	0	10	18	3	6	12
54	0	10	24	3	7	6
55	0	11	0	3	8	0
56	0	11	6	3	8	24
57	0	11	12	3	9	18
58	0	11	18	3	10	12
59	0	11	24	3	11	6
60	1	0	0	4	0	0
61	1	0	6	4	0	24
62	1	0	12	4	1	18
63	1	0	18	4	2	12
64	1	0	24	4	3	6
65	1	1	0	4	4	0
66	1	1	6	4	4	24
67	1	1	12	4	5	18
68	1	1	18	4	6	12
69	1	1	24	4	7	6
70	1	2	0	4	8	0
71	1	2	6	4	8	24
72	1	2	12	4	9	18
73	1	2	18	4	10	12
74	1	2	24	4	11	6
75	1	3	0	5	0	0
76	1	3	6	5	0	24
77	1	3	12	5	1	18
78	1	3	18	5	2	12
79	1	3	24	5	3	6

<i>Length of Sentence [Months]</i>	<i>Possible Good Time Earned</i>			<i>Time To Serve [All GT Kept]</i>		
	<i>Years</i>	<i>Months</i>	<i>Days</i>	<i>Years</i>	<i>Months</i>	<i>Days</i>
80	1	4	0	5	4	0
81	1	4	6	5	4	24
82	1	4	12	5	5	18
83	1	4	18	5	6	12
84	1	4	24	5	7	6
85	1	5	0	5	8	0
86	1	5	6	5	8	24
87	1	5	12	5	9	18
88	1	5	18	5	10	12
89	1	5	24	5	11	6
90	1	6	0	6	0	0
91	1	6	6	6	0	24
92	1	6	12	6	1	18
93	1	6	18	6	2	12
94	1	6	24	6	3	6
95	1	7	0	6	4	0
96	1	7	6	6	4	24
97	1	7	12	6	5	18
98	1	7	18	6	6	12
99	1	7	24	6	7	6
100	1	8	0	6	8	0

**ALLOCATION OF GOOD TIME CREDITS
AVAILABLE DURING THE SERVICE OF SENTENCE-20% RATE
OFFENSES COMMITTED ON OR AFTER JULY 1, 1993 THROUGH APRIL 19, 1995**

<i>MONTHS SERVED</i>	<i>YEARS</i>	<i>TIME EARNED MONTHS</i>	<i>DAYS</i>
1			08
2			15
3			23
4		1	00
5		1	08
6		1	15
7		1	23
8		2	00
9		2	08
10		2	15
11		2	23
12		3	00
13		3	08
14		3	15
15		3	23
16		4	00
17		4	08
18		4	15
19		4	23
20		5	00
21		5	08
22		5	15
23		5	23
24		6	00

<i>MONTHS SERVED</i>	<i>YEARS</i>	<i>TIME EARNED MONTHS</i>	<i>DAYS</i>
25		6	08
26		6	15
27		6	23
28		7	00
29		7	08
30		7	15
31		7	23
32		8	00
33		8	08
34		8	15
35		8	23
36		9	00
37		9	08
38		9	15
39		9	23
40		10	00
41		10	08
42		10	15
43		10	23
44		11	00
45		11	08
46		11	15
47		11	23
48	1	00	00
49	1	00	08
50	1	00	15
51	1	00	23
52	1	1	00
53	1	1	08
54	1	1	15
55	1	1	23
56	1	2	00
57	1	2	08
58	1	2	15
59	1	2	23
60	1	3	00
61	1	3	08
62	1	3	15
63	1	3	23
64	1	4	00
65	1	4	08
66	1	4	15
67	1	4	23
68	1	5	00
69	1	5	08
70	1	5	15
71	1	5	23
72	1	6	00
73	1	6	08
74	1	6	15
75	1	6	23
76	1	7	00

MONTHS SERVED	YEARS	TIME EARNED	
		MONTHS	DAYS
77	1	7	08
78	1	7	15
79	1	7	23
80	1	8	00
81	1	8	08
82	1	8	15
83	1	8	23
84	1	9	00
85	1	9	08
86	1	9	15
87	1	9	23
88	1	10	00
89	1	10	08
90	1	10	15
91	1	10	23
92	1	11	00
93	1	11	08
94	1	11	15
95	1	11	23
96	2	00	00
97	2	00	08
98	2	00	15
99	2	00	23
100	2	01	00

(g) The following charts shall establish the good time credit rate for a 15% reduction of the prison portion of a determined sentence.

(2) Except as provided in subsection (h), allocation of good time credits available during the service of sentence.

(1) Total good time credits available for the length of sentence imposed.

**TOTAL GOOD TIME AVAILABLE (15% RATE)
OFFENSES COMMITTED ON OR AFTER APRIL 20, 1995**

Length of Sentence [Months]	Possible Good Time Earned			Time to Serve [All GT Kept]		
	Years	Months	Days	Years	Months	Days
5	0	0	23	0	4	7
6	0	0	27	0	5	3
7	0	1	2	0	5	28
8	0	1	6	0	6	24
9	0	1	11	0	7	19
10	0	1	15	0	8	15
11	0	1	20	0	9	10
12	0	1	24	0	10	6
13	0	1	29	0	11	1
14	0	2	3	0	11	27
15	0	2	8	0	12	22
16	0	2	12	0	13	18
17	0	2	17	0	14	13
18	0	2	21	0	15	9
19	0	2	26	0	16	4
20	0	3	0	0	17	0
21	0	3	5	0	17	25

<i>Length of Sentence [Months]</i>	<i>Possible Good Time Earned</i>			<i>Time to Serve [All GT Kept]</i>		
	<i>Years</i>	<i>Months</i>	<i>Days</i>	<i>Years</i>	<i>Months</i>	<i>Days</i>
22	0	3	9	0	18	21
23	0	3	14	0	19	16
24	0	3	18	0	20	12
25	0	3	23	0	21	7
26	0	3	27	0	22	3
27	0	4	2	0	22	28
28	0	4	6	0	23	24
29	0	4	11	0	24	19
30	0	4	15	0	25	15
31	0	4	20	0	26	10
32	0	4	24	0	27	6
33	0	4	29	0	28	1
34	0	5	3	0	28	27
35	0	5	8	0	29	22
36	0	5	12	0	30	18
37	0	5	17	0	31	13
38	0	5	21	0	32	9
39	0	5	26	0	33	4
40	0	6	0	0	34	0
41	0	6	5	0	34	25
42	0	6	9	0	35	21
43	0	6	14	0	36	16
44	0	6	18	0	37	12
45	0	6	23	0	38	7
46	0	6	27	0	39	3
47	0	7	2	0	39	28
48	0	7	6	0	40	24
49	0	7	11	0	41	19
50	0	7	15	0	42	15
51	0	7	20	0	43	10
52	0	7	24	0	44	6
53	0	7	29	0	45	1
54	0	8	3	0	45	27
55	0	8	8	0	46	22
56	0	8	12	0	47	18
57	0	8	17	0	48	13
58	0	8	21	0	49	9
59	0	8	26	0	50	4
60	0	9	0	0	51	0
61	0	9	5	0	51	25
62	0	9	9	0	52	21
63	0	9	14	0	53	16
64	0	9	18	0	54	12
65	0	9	23	0	55	7
66	0	9	27	0	56	3
67	0	10	2	0	56	28
68	0	10	6	0	57	24
69	0	10	11	0	58	19
70	0	10	15	0	59	15
71	0	10	20	0	60	10
72	0	10	24	0	61	6
73	0	10	29	0	62	1

<i>Length of Sentence [Months]</i>	<i>Possible Good Time Earned</i>			<i>Time to Serve [All GT Kept]</i>		
	<i>Years</i>	<i>Months</i>	<i>Days</i>	<i>Years</i>	<i>Months</i>	<i>Days</i>
74	0	11	3	0	62	27
75	0	11	8	0	63	22
76	0	11	12	0	64	18
77	0	11	17	0	65	13
78	0	11	21	0	66	9
79	0	11	26	0	67	4
80	1	0	0	0	68	0
81	1	0	5	0	68	25
82	1	0	9	0	69	21
83	1	0	14	0	70	16
84	1	0	18	0	71	12
85	1	0	23	0	72	7
86	1	0	27	0	73	3
87	1	1	2	0	73	28
88	1	1	6	0	74	24
89	1	1	11	0	75	19
90	1	1	15	0	76	15
91	1	1	20	0	77	10
92	1	1	24	0	78	6
93	1	1	29	0	79	1
94	1	2	3	0	79	27
95	1	2	8	0	80	22
96	1	2	12	0	81	18
97	1	2	17	0	82	13
98	1	2	21	0	83	9
99	1	2	26	0	84	4
100	1	3	0	0	85	0

**ALLOCATION OF GOOD TIME CREDITS
AVAILABLE DURING THE SERVICE OF SENTENCE-15% RATE
OFFENSES COMMITTED ON OR AFTER APRIL 20, 1995**

<i>MONTHS SERVED</i>	<i>YEARS</i>	<i>TIME EARNED</i>	
		<i>MONTHS</i>	<i>DAYS</i>
1			5
2			11
3			16
4			21
5			26
6			02
7		1	07
8		1	12
9		1	18
10		1	23
11		1	28
12		2	03
13		2	09
14		2	14
15		2	19
16		2	25
17		3	00
18		3	05

<i>MONTHS SERVED</i>	<i>YEARS</i>	<i>TIME EARNED MONTHS</i>	<i>DAYS</i>
19		3	10
20		3	16
21		3	21
22		3	26
23		4	02
24		4	07
25		4	12
26		4	18
27		4	23
28		4	25
29		5	03
30		5	09
31		5	14
32		5	19
33		5	25
34		6	00
35		6	05
36		6	10
37		6	16
38		6	21
39		6	26
40		7	02
41		7	07
42		7	12
43		7	17
44		7	23
45		7	28
46		8	03
47		8	09
48		8	14
49		8	19
50		8	25
51		9	00
52		9	05
53		9	10
54		9	16
55		9	21
56		9	26
57		10	02
58		10	07
59		10	12
60		10	17
61		10	23
62		10	28
63		11	03
64		11	09
65		11	14
66		11	19
67		11	24
68		12	00
69		12	05
70		12	10

<i>MONTHS SERVED</i>	<i>YEARS</i>	<i>TIME EARNED MONTHS</i>	<i>DAYS</i>
71		12	16
72		12	21
73		12	26
74	1	01	01
75	1	01	07
76	1	01	12
77	1	01	17
78	1	01	23
79	1	01	28
80	1	02	03
81	1	02	08
82	1	02	14
83	1	02	19
84	1	02	24
85	1	03	00
86	1	03	05
87	1	03	10
88	1	03	16
89	1	03	21
90	1	03	26
91	1	04	01
92	1	04	06
93	1	04	12
94	1	04	17
95	1	04	23
96	1	04	28
97	1	05	03
98	1	05	08
99	1	05	14
100	1	05	19

(h) The charts in subsections (f) and (g) shall be used to compute the total pool of good time credits available on composite sentences for crimes committed on or after January 1, 2008, except that good time credit shall be allocated over the period of time equal to the inmate's composite sentence term less a number that is the sum of the total pool of available good time credits and four months. (Authorized by and implementing K.S.A. 2011 Supp. 21-6821, as amended by L. 2012, Ch. 150, §37, K.S.A. 2011 Supp. 75-5210, K.S.A. 2011 Supp. 75-5251; effective Sept. 6, 2002; amended Aug. 8, 2008; amended Feb. 1, 2013.)

44-6-115. (Authorized by K.S.A. 75-5251, K.S.A. 1983 Supp. 75-5210; implementing K.S.A. 22-3427, 75-5251, K.S.A. 1983 Supp. 21-4608, 22-3717, 75-5210; effective, T-84-32, Nov. 23, 1983; effective May 1, 1984; revoked Sept. 6, 2002.)

44-6-115a. Awarding and withholding good time credits for incarcerated offenders.

(a) With the exception of calculation of good time credits affecting the conditional release dates, which are controlled by K.A.R. 44-6-114d, this regulation shall govern the award and withholding of good time credits.

(b)(1) At the conclusion of the initial inmate classification, 100% of the good time credits available from the sentence begins date to the date of the initial good time award shall be awarded, unless there is written documentation of maladjustment before the date of the initial award.

(2) The initial award of good time credits shall be made on the same day of the month on which the sentence was established. If a full month has not elapsed between the computed sentence begins date and the conclusion of the initial classification, good time credits shall not be awarded until the first classification review following the initial classification.

(c) Following the initial award, good time credits may be awarded at each classification review from credits available since the previous classification review.

(d) The following factors shall be considered in determining whether or not an inmate is awarded good time credits:

(1) The inmate's performance in a work assignment;

(2) the inmate's performance in a program assignment;

(3) the inmate's maintenance of an appropriate personal and group living environment;

(4) the inmate's participation in release planning activities;

(5) the inmate's disciplinary record; and

(6) any other factors related to the inmate's general adjustment, performance, behavior, attitude, and overall demonstration of individual responsibility and accountability.

(e)(1) If an inmate refuses to work constructively or participate in assigned programs, 100% of the good time credits available for program classification review periods shall be withheld until the inmate reenters and constructively participates in the assigned program at a time that permits the inmate to complete the program, unless the facility health authority determines that the inmate is physically or mentally incapable of working or participating in a particular program or detail. If an assigned program is terminated or no longer offered due to financial constraints, the inmate's program plan shall be modified accordingly, and the inmate shall again be eligible to earn good time credits. Misconduct resulting in a disciplinary conviction not directly related to the program assignment shall result in the withholding of good time credits for only one program review period, pursuant to subsection (g).

(2) If an inmate refuses to work on an assigned work detail or is removed from the work detail for a disciplinary conviction, the inmate shall have 100% of available good time credits withheld for only one program review period.

(f) If an inmate fails to cooperate in the development of an acceptable release plan, the good time credits available for award during the 120-day period immediately before the inmate's projected or scheduled release date shall not be awarded.

(g) Award of good time credits shall be withheld on the basis of an inmate's disciplinary record, including consideration of the degree of actual injury, damage, or disruption caused by the mis-

conduct at issue. Further consideration shall be given to other sanctions or interventions available to address the inmate's misconduct.

(1) If a facility disciplinary hearing officer finds the inmate guilty of a class I disciplinary offense, the amount of good time withheld during the review period in which the violation occurred shall reflect the degree of injury, damage, or disruption caused by the misconduct at issue.

(2) If a facility disciplinary hearing officer finds the inmate guilty of a class II disciplinary offense, not more than 50% of the good time credits available for the classification review period in which the violation occurred shall be withheld. For purposes of this paragraph, summary disciplinary judgments pursuant to K.A.R. 44-13-201b shall not be considered a guilty finding.

(3) If a facility disciplinary hearing officer finds the inmate guilty of a class III disciplinary offense, not more than 25% of the good time credits available for that classification review period in which the violation occurred shall be withheld. For purposes of this paragraph, summary disciplinary judgments pursuant to K.A.R. 44-13-201b shall not be considered a guilty finding.

(4) If a facility disciplinary hearing officer finds the inmate guilty of multiple disciplinary violations within a single disciplinary report, only the most serious violation shall be used in determining the percentage of good time credits to be withheld.

(5) If an inmate is removed from an assigned program due to a disciplinary conviction, 100% of the available good time credits shall be withheld until the inmate reenters the assigned program.

(h) The percentage of good time credits withheld during a classification review period shall be cumulative but shall not exceed 100% of that available for that classification review period. The good time award record for a period in which good time has already been awarded may be adjusted upon a subsequent conviction of a violation committed during the review period or upon discovery of an error in computing good time credits, pursuant to K.A.R. 44-6-128 through 44-6-132.

(i) On and after February 1, 2013, good time credits withheld for any reason may be restored to an inmate in accordance with internal management policies and procedures promulgated by the secretary of corrections. Good time credits withheld for any review period commencing before that date shall not be restored.

(j) Good time credits and program credits forfeited as a result of a penalty imposed by a facility

disciplinary hearing officer shall not be restored to an inmate without the approval of the secretary or secretary's designee. (Authorized by and implementing K.S.A. 2011 Supp. 21-6821, as amended by L. 2012, Ch. 150, §37, K.S.A. 2011 Supp. 75-5210, K.S.A. 2011 Supp. 75-5251; effective Sept. 6, 2002; amended, T-44-3-11-03, March 11, 2003; amended July 25, 2003; amended Aug. 8, 2008; amended Feb. 1, 2013.)

44-6-115b. Awarding, withholding, and restoring good time credits for offenders on supervised release. (a) Offenders on supervised release may be awarded good time credits at the following rates:

(1) Offenders on parole release for indeterminate sentences shall be eligible for good time credits at the rate of one day of good time for each day under supervision and as provided by K.A.R. 44-6-114d.

(2) For offenders convicted of crimes that were committed on or after July 1, 1993 but before April 20, 1995 and that fall into non-drug severity levels 1 through 4 or drug severity level 1 or 2, the period of postrelease supervision shall be 24 months plus the amount of good time awarded and retained on the imprisonment portion of a sentence for such a conviction. Good time credits shall not be available for the reduction of postrelease supervision.

(3) For offenders convicted of crimes committed on or after April 20, 1995, but before July 1, 2012, that fall into non-drug severity levels 1 through 4 or drug severity level 1 or 2 and crimes committed on or after July 1, 2012 that fall into drug severity levels 1 through 3, the period of postrelease supervision shall be 36 months plus the amount of good time awarded and retained on the imprisonment portion of a sentence for such a conviction. The 36-month portion of the postrelease supervision period may be reduced by up to 12 months through award of good time credits. Awarded good time credits shall be applied at the rate of one day for every two days served from the date of release from prison, but not to exceed a total of 12 months. That portion of the period of postrelease supervision resulting from the addition of good time credits awarded and retained while in prison pursuant to K.S.A. 2011 Supp. 21-6821, and amendments thereto, shall not be reduced through application of good time credits while on postrelease supervision.

(4) For offenders who are convicted of crimes committed on or after July 1, 1993 that fall into

non-drug severity level 5 or 6, drug severity level 3 crimes committed or after July 1, 1993 but before July 1, 2012, and drug severity level 4 crimes committed on or after July 1, 2012 and who are sentenced to serve a period of postrelease supervision, the period of postrelease supervision shall be 24 months plus the amount of good time awarded and retained on the imprisonment portion of the sentence for any such conviction. The 24-month portion of the postrelease supervision period may be reduced by 12 months through award of good time credits. Awarded good time credits shall be applied at the rate of one day for each day served from the date of release from prison. That portion of the postrelease supervision period resulting from application of good time credits awarded and retained while in prison shall not be subject to reduction through the application of good time credits while on postrelease supervision.

(5) For offenders who are convicted of crimes committed on or after July 1, 1993 that fall into non-drug severity levels 7 through 10, drug severity level 4 crimes committed on or after July 1, 1993 but before July 1, 2012, and drug severity level 5 crimes committed on or after July 1, 2012 and who are sentenced to serve a period of postrelease supervision, the period of postrelease supervision shall be 12 months plus the amount of good time awarded and retained on the imprisonment portion of the sentence for any such conviction. The 12-month portion of the period of postrelease supervision period may be reduced by six months through award of good time credits. Awarded good time credits shall be applied at the rate of one day for each day served from the date of release from prison. That portion of the postrelease supervision period resulting from application of good time credits awarded and retained while in prison shall not be subject to reduction through the application of good time credits while on postrelease supervision.

(b) All subsequent awards during a single supervision release period shall be made at six-month intervals, unless, in the judgment of the offender's parole officer, good cause exists to shorten the interval.

(c) No good time credits shall be awarded during the time an offender is on absconder status or for a review period in which a violation resulting in revocation of postrelease supervision occurs.

(d) Factors that shall be considered in determining whether or not an offender on supervised release is awarded good time credits shall include the following:

- (1) Reporting to the parole officer as scheduled;
- (2) maintaining steady employment, participating in treatment, or both;
- (3) refraining from criminal activity;
- (4) following the conditions of release; and
- (5) maintaining behavior indicative of rehabilitation.

(e) Each of the following violations, if committed by the offender during the review period, shall result in the withholding of 100% of the good time credits available during the review period:

(1) Any felonious conduct established with probable cause by a district court, or any misdemeanor conviction, including driving under the influence (DUI) or driving while suspended (DWS);

(2) engagement in assaultive activities, violence, or threats of violence of any sort, or possession of a dangerous weapon, ammunition, or explosives as established by reliable information, including witness statements and police reports;

(3) engagement in contact with victims or contact with specific persons or categories of persons with whom contact is prohibited by special condition;

(4) failure to agree to be subject to a search by any parole officer, enforcement, apprehensions, and investigations officer, or other law enforcement officer as specified by the conditions of supervision;

(5) absconding from supervision.

(f) Each of the following violations shall result in the mandatory withholding of 50% of the good time credits available during the review period for each violation:

(1) Violation of any specific prohibition assigned to sex offenders;

(2) leaving the state of Kansas without permission;

(3) violation of any special condition not specifically identified in this regulation; or

(4) refusal to work or participate in programs during the review period.

(g) Each of the following violations shall result in the mandatory withholding of 25% of the good time credits available for the reward period for each violation:

(1) Changing jobs without notifying the supervising office;

(2) leaving the assigned supervision district without permission, but remaining in the state;

(3) refusing to provide urinalysis or to otherwise submit to substance abuse testing;

(4) moving from the place of residence without notifying the supervising officer; or

(5) each documented instance of the use of drugs, alcohol, or inhalants, either through positive urin-

alysis, through admission, or based upon reliable information from law enforcement or special agents.

(h) Either of the following violations shall result in the mandatory withholding of 10% of the good time credits available for the reward period for each violation:

(1) Failure to pay supervision fees as directed after it has been established that the offender is able to but unwilling to pay; or

(2) failure to report unless excused by the parole officer.

(i) If multiple violations that result from the same set of circumstances occur, the most severe violation shall be utilized for consideration of the good time award.

(j) Violations resulting in the withholding of good time shall not serve as the basis for withholding of additional good time during subsequent award periods.

(k) Good time credits shall be withheld during the award period in which the criteria for withholding good time has been met. The award of good time for a review period for which good time has already been awarded may be adjusted upon the subsequent discovery of a violation committed during the review period in question or upon discovery of any error in computing good time credits.

(l) On and after February 1, 2013, offenders on postrelease supervision may be eligible for the restoration of good time withheld while on postrelease supervision due solely to nonpayment of supervision fees, in accordance with internal management policies and procedures established by the secretary of corrections. Good time credits withheld for any review period commencing before that date may be restored. (Authorized by and implementing K.S.A. 2011 Supp. 22-3717, as amended by L. 2012, Ch. 150, §43; effective Sept. 6, 2002; amended Feb. 1, 2013.)

44-6-115c. Service of postrelease supervision revocation incarceration penalty period; awarding, withholding, and forfeiture of good time credits for offenders serving incarceration penalty period. (a) For offenders

who were convicted of committing offenses on or after July 1, 1993, but before April 20, 1995, and whose postrelease supervision is revoked for reasons other than commission of a new crime, good time credits shall not be available for the purpose of reducing the applicable 90-day incarceration penalty period.

(b) For offenders who were convicted of crimes committed on or after April 20, 1995, and whose postrelease supervision is revoked for reasons other than commission of a new crime, good time credits may be earned toward reduction of the applicable six-month incarceration penalty period by up to three months. Awarded good time credits shall be applied at the rate of one day for each day served from the date of the revocation hearing or, if applicable, the effective date of waiver of the revocation hearing before the prisoner review board.

(c) For offenders who are serving a sentencing guidelines sentence and whose postrelease supervision is revoked due to commission of a new crime, good time credits shall not be available to reduce the period of the incarceration penalty. Offenders whose postrelease supervision is revoked due to commission of a new felony shall serve the entire remaining balance of postrelease supervision in prison. Offenders whose postrelease supervision is revoked due to commission of a misdemeanor shall serve the remaining balance of postrelease supervision in prison unless released by order of the prisoner review board.

(d) Awards of good time shall be made at 30-day intervals from the date of the revocation hearing before the board, or from the effective date of the waiver of the revocation hearing, as applicable. If an offender who waives the revocation hearing has not yet been transferred to a correctional facility when any 30-day interval occurs, the initial award shall be made when the offender is so transferred. When the offender waives the revocation hearing before the board, 100% of good time credits available for any time spent in detention from the effective date of the waiver and before the offender's transfer to a correctional facility shall be awarded, unless there is written documentation of maladjustment during the detention.

(e) For purposes of forfeiture, award, and withholding of good time credits, offenders serving a postrelease revocation penalty period for reasons other than commission of a new crime shall be subject to the provisions of articles 12 and 13 that prescribe rules of inmate conduct, penalties for violation thereof, and the procedures employed for processing charges of rules violations.

(f) The following factors shall be considered in determining whether or not an offender is awarded good time credits:

(1) The offender's performance in a work assignment;

(2) the offender's performance in a program assignment;

(3) the offender's maintenance of an appropriate personal and group living environment;

(4) the offender's participation in release planning activities;

(5) the offender's disciplinary record, unless the offender incurred a forfeiture of good time credits based on the same disciplinary conviction; and

(6) any other factors related to the offender's general adjustment, performance, behavior, attitude, and overall demonstration of individual responsibility and accountability.

(g) If an offender refuses to work constructively or to participate in assigned programs, 100% of the good time credits available for program classification review periods shall be withheld until the offender participates in the assigned program at a time that permits the offender to complete the program, unless the facility health authority determines that the offender is physically or mentally incapable of working or participating in a particular program or detail.

(h) If an offender fails to cooperate in the development of an acceptable release plan, the good time credits available for award during the 30-day period immediately before the offender's scheduled release date shall not be awarded.

(i) Award of good time credits shall be withheld on the basis of an offender's disciplinary record in the following manner:

(1) If a facility disciplinary hearing officer finds the offender guilty of a class I disciplinary offense, at least 50% of the good time credits available for that classification review period in which the violation occurred shall be withheld.

(2) If a facility disciplinary hearing officer finds the offender guilty of a class II disciplinary offense, at least 25% but not more than 50% of the good time credits available for that classification review period in which the violation occurred shall be withheld.

(3) If a facility disciplinary hearing officer finds the offender guilty of a class III disciplinary offense, at least 10% but not more than 25% of the good time credits available for that classification review period in which the violation occurred shall be withheld. For purposes of this paragraph, summary disciplinary judgments pursuant to K.A.R. 44-13-201b shall not be considered a guilty finding.

(4) If a facility disciplinary hearing officer finds the offender guilty of multiple disciplinary violations within a single disciplinary report, only the

most serious violation shall be used in determining the percentage of good time credits that shall be withheld.

(j) The percentage of good time credits withheld during a classification review period shall be cumulative but shall not exceed 100% of that available for that classification review period. Good time credits awarded and applied during the final review period shall not vest until the offender is actually released from the incarceration penalty period and may be withheld due to the offender's misconduct before actual release.

(k) Good time credits forfeited as a result of a penalty imposed by a facility disciplinary hearing officer shall not be restored to an offender.

(l) On and after February 1, 2013, good time credits awarded during the period of service of the incarceration penalty shall not serve to reduce the offender's period of postrelease supervision. (Authorized by and implementing K.S.A. 2011 Supp. 75-5217, as amended by L. 2012, Ch. 16, §36; effective Sept. 6, 2002; amended Feb. 1, 2013.)

44-6-116. Allocation of good time credits for crimes committed prior to July 1, 1982. The amount of statutory good time credit available for each unit team review period, as such period is authorized by the Kansas adult authority regulations, shall be allocated as follows:

**TABLE: DEPARTMENT OF CORRECTIONS
ALLOCATION OF GOOD TIME CREDITS
ESTABLISHED BY KANSAS ADULT AUTHORITY**

# Month Time Served	Monthly Good Time Allocation	Maximum Cumulative Allocations	Length Of Sentence	Time to Be Served If All Good Time Awarded
1st Mo.	6 Days			
2nd Mo.	6 Days			
3rd Mo.	6 Days			
4th Mo.	6 Days			
5th Mo.	6 Days			
6th Mo.	6 Days			
7th Mo.	6 Days			
8th Mo.	6 Days			
9th Mo.	6 Days			
10th Mo.	6 Days	2 Months	1 Year	10 Months
11th Mo.	15 Days			
12th Mo.	15 Days			
13th Mo.	15 Days			
14th Mo.	15 Days			
15th Mo.	15 Days			
16th Mo.	15 Days			
17th Mo.	15 Days			
18th Mo.	15 Days	6 Months	2 Years	1 Year 6 Months
19th Mo.	30 Days			
All thereafter	30 Days			

This allocation shall apply to offenses committed prior to July 1, 1982. (Authorized by K.S.A.

75-5251, K.S.A. 1983 Supp. 75-5210; implementing K.S.A. 22-3427, 75-5251, K.S.A. 1983 Supp. 21-4608, 22-3717, 75-5210; effective, T-84-32, Nov. 23, 1983; effective May 1, 1984.)

44-6-117. (Authorized by K.S.A. 75-5251, K.S.A. 1983 Supp. 75-5210; implementing K.S.A. 22-3427, 75-5251, K.S.A. 1983 Supp. 21-4608, 22-3717, 75-5210; effective, T-84-32, Nov. 23, 1983; effective May 1, 1984; revoked Sept. 6, 2002.)

44-6-120. (Authorized by K.S.A. 1990 Supp. 75-5210, 75-5251; implementing K.S.A. 1990 Supp. 21-4608, K.S.A. 22-3427; K.S.A. 1990 Supp. 22-3717, as amended by L. 1991, ch. 94, § 1; K.S.A. 1990 Supp. 75-5210, 75-5251; effective, T-84-32, Nov. 23, 1983; amended May 1, 1984; amended Nov. 12, 1990; amended Sept. 30, 1991; amended April 6, 1992; revoked Sept. 6, 2002.)

44-6-121. Docketing parole hearings. For the purpose of docketing a parole hearing, it shall be presumed that the inmate will earn and be awarded the full amount of good time credit available for the period between docketing and parole eligibility. If the good time is in fact not earned and awarded, the warden or warden's designee shall notify the Kansas parole board so the name may be removed from the docket, and the release date extended accordingly, or so that other appropriate disposition may be made as deemed appropriate by the Kansas parole board. The records officer shall show the good time credits award for the last review period at 100% of available good time credits, subject to notice by the unit team that it is otherwise. (Authorized by K.S.A. 75-5210, as amended by 1990 S.B. 748, § 48; 75-5251, as amended by 1990 S.B. 748, § 60; implementing K.S.A. 22-3427; K.S.A. 1989 Supp. 21-4608, 22-3717, K.S.A. 75-5210, as amended by 1990 S.B. 748, § 48; 75-5251, as amended by 1990 S.B. 748, § 60; effective, T-84-32, Nov. 23, 1983; amended May 1, 1984; amended Nov. 12, 1990.)

44-6-124. (Authorized by and implementing K.S.A. 1993 Supp. 22-3725; effective, T-84-32, Nov. 23, 1983; amended May 1, 1984; amended Nov. 12, 1990; amended Sept. 30, 1991; amended April 6, 1992; amended Sept. 13, 1993; amended Jan. 3, 1995; revoked Sept. 6, 2002.)

44-6-125. Good time forfeitures not restored; exceptions; limits; parole; guidelines release date; program credits; withholding of good time credits subject to restoration.

(a) On and after May 1, 1981, no good time forfeitures restored. For all inmates, good time credits or program credits that were forfeited on and after May 1, 1981 shall not be restored at a later date. An exception may be requested by the warden in order that standards of basic fairness, equity, and justice may be met. In such a case, good cause for restoration of good time credits shall be shown, in writing, by the warden to the secretary or the secretary's designee. Restoration of good time credits by exception shall be granted only upon written approval by the secretary or the secretary's designee. Good time forfeited before the first effective date of this regulation, May 15, 1980, may be restored in accordance with the secretary of corrections' policies and procedures then in force and effect. Good time credits or program credits that are eligible for award but have not yet actually been awarded due to an administrative error or omission may be forfeited.

(b) Forfeit only on minimum until parole eligibility. Before parole eligibility, forfeited good time credits shall be subtracted from the amount of good time credits earned toward the parole eligibility only, and not from those credits used to create the conditional release date. After parole eligibility is achieved, subsequent forfeited credits shall be subtracted from the credits used to form the conditional release date.

(c) Forfeitures limited to awards; no extension of maximum. Good time credits or program credits shall not be forfeited in an amount in excess of the good time or program credit earned before the disciplinary conviction. If an inmate receives an award of jail credit from the sentencing court after issuance of the original journal entry of sentencing and the sentence computation is revised accordingly, previous forfeitures of good time or program credits shall not be revised or modified. In cases of a new sentence conviction, disciplinary offenses occurring before the effective date of the new sentence that result in the forfeiture of good time or program credits shall not be applied to the computation. In no case shall forfeiture of good time or program credits extend the controlling maximum sentence, nor shall the forfeiture of good time credits interfere with or bypass any statutorily fixed parole eligibility that is not controlled by good time credits.

(d) No parole eligibility if forfeited time remains unserved. If good time credits on the term have been forfeited, an inmate shall not be eligible for parole until the inmate has served the time

that otherwise would have been subtracted from the term by the application of the credits, or has obtained a restoration of those credits.

(e) In the case of an offender serving a guidelines sentence, forfeiture of good time or program credits shall affect the guidelines release date. Good time or program credits shall not be forfeited in an amount in excess of good time or program credits previously earned.

(f) Forfeitures made by disciplinary process. Forfeiture of good time credits or program credits may be ordered by the disciplinary board or hearing officer as a penalty for the inmate's commission of certain offenses as specified in articles 12 and 13.

(g) Good time or program credits withheld during service of a prison term or good time credits withheld during service of the postrelease supervision period, except credits withheld due to violation of supervision conditions resulting in revocation of postrelease supervision, may be restored in accordance with internal management policies and procedures established by the secretary of corrections. (Authorized by K.S.A. 2011 Supp. 21-6821, as amended by L. 2012, Ch. 150, §37, K.S.A. 2011 Supp. 75-5210, K.S.A. 2011 Supp. 75-5251; implementing K.S.A. 2011 Supp. 21-6821, as amended by L. 2012, Ch. 150, §37, K.S.A. 2011 Supp. 22-3717, as amended by L. 2012, Ch. 150, §43, K.S.A. 2011 Supp. 75-5210, K.S.A. 2011 Supp. 75-5251; effective, T-84-32, Nov. 23, 1983; effective May 1, 1984; amended Nov. 12, 1990; amended April 6, 1992; amended Sept. 6, 2002; amended June 1, 2007; amended Aug. 8, 2008; amended Feb. 1, 2013.)

44-6-126. Meritorious good time. (a) For any inmate incarcerated for crimes committed before July 1, 1982, "meritorious" good time credits may be recommended to the Kansas parole board for any meritorious act by an inmate, if deemed appropriate by the unit team and subject to the approval of the program management committee and the warden.

(1) The action taken on this recommendation by the Kansas parole board shall be recorded in the inmate's record by the records officer at the institution.

(2) The application of these "meritorious" good time credits shall be in addition to other authorized good time credits.

(b) For any offenses committed on and after July 1, 1982, but before July 1, 1984, no meritorious good time credits shall be given.

(c) For any offenses committed on and after July 1, 1984, but before July 1, 1993, meritorious good time shall again be available, and an inmate may be awarded not more than 90 days per meritorious act by the secretary of corrections in accordance with the provisions of K.S.A. 22-3717(a) and amendments thereto. (Authorized by K.S.A. 75-5210, as amended by L. 2002, Ch. 154, Sec. 1, K.S.A. 75-5251; implementing K.S.A. 2001 Supp. 22-3717, as amended by L. 2002, Ch. 163, Sec. 5, K.S.A. 75-5210, as amended by L. 2002, Ch. 154, Sec. 1, K.S.A. 75-5251; effective, T-84-32, Nov. 23, 1983; effective May 1, 1984; amended, T-85-37, Dec. 19, 1984; amended May 1, 1985; amended Nov. 12, 1990; amended Sept. 30, 1991; amended Sept. 6, 2002.)

44-6-127. Program credits. (a) Program credits may be earned on the prison portion of a sentence for crimes at non-drug severity levels 4 through 10 or drug grid severity level 3 or 4 committed on or after January 1, 2008, but before July 1, 2012, or for crimes at non-drug severity levels 4 through 10 or drug severity level 4 or 5 committed on or after July 1, 2012, for successful completion of programs designated by the secretary of corrections. These credits shall be in addition to good time credits awarded pursuant to K.A.R. 44-6-115a.

(b)(1) Subject to the exception stated in this subsection, if any portion of an inmate's composite sentence does not qualify for application of program credits, the inmate's entire sentence shall be found to be ineligible.

(2) Notwithstanding paragraph (b)(1), any inmate serving a composite sentence consisting of a sentence for a crime committed before July 1, 1993, with an indeterminate term of years, which shall mean a term other than a sentence of life imprisonment or a sentence with a maximum term of life imprisonment, and a determinate sentence for an offense committed while on release that otherwise meets the criteria specified in this regulation may be eligible to earn program credits on the remaining determinate sentence if the inmate meets any of the following conditions:

- (A) Is paroled to the determinate sentence;
- (B) attains conditional release; or
- (C) reaches the maximum sentence expiration date on the indeterminate sentence.

(c) Program credits shall not be awarded for successful completion of a sex offender treatment program.

(d) Program credits shall not exceed 60 days on any one eligible controlling sentence, regardless of the number of programs completed. For the purposes of awarding and applying program credits, all calculations shall be based upon a year, which shall be considered a 360-day period with each month consisting of 30 days.

(e) Program credits earned and retained on the prison portion of the sentence shall be added to the inmate's postrelease supervision term.

(f) Earned program credits may be forfeited through the disciplinary process in the same manner as that for any other earned good time credits.

(g) Criteria to determine if an inmate's performance and conduct warrant the awarding of some or all of the available program credits shall be established by the secretary through the issuance of an internal management policy and procedure. (Authorized by and implementing K.S.A. 2011 Supp. 21-6821, as amended by L. 2012, Ch. 150, §37; effective Aug. 8, 2008; amended Feb. 1, 2013.)

44-6-128. Adjustments of previous awards of good time credits; scope of review and decision-making procedure; effect of non-compliance with procedure. (a) The procedures specified in K.A.R. 44-6-129 through K.A.R. 44-6-132 shall be used by department of corrections staff to correct an error made in regard to an award of good time credits for a prior classification review or award period that will result in a decrease in the amount of good time credit previously awarded to the inmate or supervised offender.

(b) The scope of the review and decision-making procedures shall be confined to the good time credits associated with the review or award period or periods identified in the notice to the inmate or offender described in K.A.R. 44-6-129.

(c) A failure to follow any part of the procedure outlined in K.A.R. 44-6-129 through K.A.R. 44-6-132, including observance of deadlines, shall not be considered to constitute substantial error indicating that appropriate relief should be granted by the appellate review officer, unless the inmate or offender shows affirmatively that the error in question has actually interfered with the inmate or offender's rights to such a degree that justice has been denied to the inmate or offender. (Authorized by and implementing K.S.A. 21-4722 and K.S.A. 2007 Supp. 75-5210; effective Aug. 8, 2008.)

44-6-129. Same; notice of proposed action; service; election of hearing or waiver; hearing officer designation; issuance and service of notice of hearing; requests for witnesses. (a) The supervising correctional counselor in the case of inmates as well as offenders serving an incarceration penalty period for revocation of postrelease supervision status, or the supervising parole officer in the case of offenders serving postrelease supervision, shall prepare a concise written statement on a form prescribed by the secretary that notifies the inmate or offender of the proposed action and includes the following information:

(1) The amount of good time credit previously awarded that is proposed for removal from the pool of earned and awarded credits and either the revised release date or sentence discharge date, or both, that would result from the proposed adjustment;

(2) review or award periods affected;

(3) reason or reasons for the proposed decrease in credits previously awarded, in sufficient detail to permit the inmate or offender a reasonable opportunity to know and either contest or otherwise reply to the proposed adjustment, including attachment of a copy of each document referenced in the statement of reasons;

(4) a statement advising the inmate or offender of the opportunity for a hearing on the proposed adjustment in which the inmate or offender will have opportunity to present an oral statement, statements by any other witnesses who agree to voluntarily participate in the hearing, and any relevant documentary evidence, including affidavits submitted in lieu of in-person statements at the hearing to an impartial decision-maker;

(5) a provision permitting the inmate or offender to affirmatively elect to have such a hearing, or alternatively to waive the hearing and accept the proposed adjustment;

(6) the signature of the supervising correctional counselor or parole officer; and

(7) an acknowledgment of receipt of the notice by the inmate or offender.

(b) The original and one copy of the notice of proposed adjustment shall be personally presented to the inmate or offender by any suitable staff member, including the proposing correctional counselor or parole officer, who shall obtain the inmate or offender's signature on the acknowledgment of receipt form on the original. If the inmate or offender refuses to sign the receipt form, the

serving staff member shall document the refusal and leave a copy of the notice form with the inmate or offender. The inmate or offender may elect to request a hearing or waive the hearing at time of presentation of the notice form and shall indicate that person's decision in that regard on the original of the notice form, which shall be returned to the proposing correctional counselor or supervising parole officer by the end of the next working day. A waiver of hearing shall be witnessed by a staff member other than the staff member proposing the adjustment.

(c) If the inmate or offender does not make an affirmative election to proceed with or to waive the hearing at time of presentation of the notice, it shall be presumed that the hearing on the proposed adjustment shall proceed. The matter shall be referred to an impartial supervisory-level staff member designated as a hearing officer by the warden of the facility, or the regional parole director, on either a standing or a case-by-case basis. The hearing officer shall not be the immediate supervisor of the correctional counselor or parole officer proposing the action.

(d) The hearing officer shall issue written notice of the date, time, and location of the hearing both to the inmate or offender and to the proposing staff member. The hearing notice shall be personally served upon the inmate or offender by any suitable staff member, including the proposing staff member. The hearing shall not be scheduled to occur any earlier than 24 hours after time of presentation of the notice of proposed adjustment, unless the inmate or offender chooses to waive that time period in writing on a form prescribed by the secretary for that purpose.

(e) If time permits after service of the notice of proposed action, the inmate or offender may submit a written request by interdepartmental correspondence form or ordinary correspondence, as applicable, to the designated hearing officer requesting that the hearing officer summon a witness or witnesses for voluntary appearance at the hearing. The written request shall include a proffer of the substance of the statement expected to be made by the witness. The hearing officer may deny the requested witness appearance if the proffered statement is deemed by the hearing officer to be clearly irrelevant, immaterial, repetitious of other witness statements not including those of the inmate or offender, or unduly risky to personal or facility safety. If so denied, the hearing officer shall record each reason for denial in

the hearing officer's written decision following the hearing. (Authorized by and implementing K.S.A. 21-4722 and K.S.A. 2007 Supp. 75-5210; effective Aug. 8, 2008.)

44-6-130. Same; hearing procedure; written decision; service upon inmate or offender; effect of a denial of proposed action.

(a) Each hearing shall be conducted according to the following:

(1) The proposing staff member shall present a concise explanation, outlining the facts and law applicable to the proposed action that require a decrease in the pool of previously awarded good time credits in the opinion of the staff member. The proposing staff member may choose to stand upon that person's statement of reasons for the proposed adjustment set forth in the notice of proposed action in lieu of an oral statement. A copy of each document relied upon by the proposing staff member shall be submitted to the hearing officer. Cross-examination by the inmate or offender shall not be permitted, but the hearing officer may freely question the proposing staff member throughout the hearing, as deemed necessary, in order to discover the truth as to any disputed facts or to better understand legal propositions submitted by the staff member in support of the proposed action.

(2) The offender or inmate shall then be given an opportunity to present a response to the proposed action, which may consist of an oral statement of facts or applicable legal authorities, or both, statements from other witnesses who voluntarily appear at the hearing, or any documentary evidence, including affidavits from witnesses. The inmate or offender may also initially request that the hearing officer summon a witness or witness if submission of a written request for issuance of summons in advance of the hearing, as permitted by K.A.R. 44-6-129, was not practicable under the circumstances in the hearing officer's judgment. The hearing officer may require a proffer of the expected statement from any witness so requested and may deny the request if the proffered statement is deemed by the hearing officer to be one or more of the following:

(A) Irrelevant, immaterial, or otherwise unnecessary;

(B) repetitious of the statement of another witness or witnesses, not including that of the inmate or offender; or

(C) unduly risky to personal or facility safety.

If a proffered statement is denied, the hearing officer shall record each reason for denial in the hearing officer's written decision following the hearing. Cross-examination shall not be permitted, but the hearing officer may question the inmate or offender, or other witness presented, as deemed necessary by the hearing officer in order to discover the truth of any disputed facts or to better understand legal propositions submitted by the inmate or offender in opposition to the proposed action.

(3) Subject to approval of the hearing officer, the proposing staff member may present a brief rebuttal, which shall be limited to responding to new factual contentions or legal arguments in statements or documents presented by the inmate or offender.

(4) The hearing officer may hear statements by telephone. If statements are received by telephone, each statement shall be taken in such a manner that all individuals present can hear the statement simultaneously. The statement shall be otherwise subject to the same requirements for presentation and reception as those for in-person statements.

(5) The hearing officer may take notes of the statements and other evidence submitted. All statements shall be unsworn. If notes of statements are taken, the notes shall be preserved and attached to the hearing officer's written decision. If documentary evidence is considered, a copy of the evidence shall be attached to the decision, and the original shall be returned to the party offering the evidence.

(6)(A) Before or after the hearing, the hearing officer may freely consult all relevant classification and parole supervision records that pertain to the review or award period or periods specified in the notice of proposed action, including the following:

- (i) Chronological notes;
- (ii) police reports;
- (iii) correspondence;
- (iv) drug testing results;
- (v) program reviews;
- (vi) progress reports from treatment or program providers;
- (vii) discharge notes or reports;
- (viii) certificates of completion; and
- (ix) disciplinary reports and records of convictions.

The hearing officer may consult these records outside the presence of the inmate or offender.

(B) If the hearing officer intends to rely upon any record specified in (a)(6)(A) that has not al-

ready been served upon the inmate or offender in either upholding or modifying a proposed adjustment of an award of good time credits, the hearing officer shall make that intention known to the inmate or offender in writing and shall provide to the inmate or offender a copy of each record, which may be redacted if necessary to protect the safety and identity of a confidential informant or to protect victim information.

(7) The inmate or offender shall have five working days from date of the notification from the hearing officer to submit a written response, which the hearing officer shall receive and duly consider before making a final decision in the matter.

(8) The hearing officer shall not discuss with the counselor or officer the contents of any such records, or any piece of evidence received at the hearing, outside the presence of the inmate or offender.

(9) If the hearing officer during the course of a review of relevant documentation discovers a factual basis for proposing that a greater amount of good time credit should be removed than was originally proposed, the hearing officer shall issue a second notice of proposed action setting forth each reason and attaching any relevant documents relied upon for that proposal, which shall be served upon the inmate or offender by the end of the next working day. If the inmate or offender requests a further hearing on the new notice of proposed action, a new hearing officer shall be designated, and the matter shall be processed as otherwise provided in these regulations.

(b) After the hearing is completed and any post-hearing procedure as stated in paragraph (a)(6), (7) or (9) is also completed, the hearing officer shall proceed within five working days to write and issue a decision that upholds, modifies, or denies the proposed action. The decision shall be concisely written and shall express the hearing officer's findings of fact and reasoning for taking the action decided upon. While the hearing officer may discuss the various theories and contentions of the parties, it shall not be necessary that a comprehensive or exhaustive opinion touching on all points of dispute be produced.

(c) The decision shall be served upon the inmate or offender within two working days after its issuance by the hearing officer. A written, dated receipt shall be obtained from the inmate or offender upon service of the decision.

(d) A decision to deny a proposed action shall not be subject to appeal, and the good time award record and associated release and sentence dis-

charge dates shall be left unchanged. (Authorized by and implementing K.S.A. 21-4722 and K.S.A. 2007 Supp. 75-5210; effective Aug. 8, 2008.)

44-6-131. Same; appeal procedure. (a) If an inmate or offender desires to appeal the decision of a hearing officer that upholds the proposed action or modifies the decision by deciding that a greater or smaller amount of good time credit than originally proposed should be removed from the pool of awarded good time credits, the inmate or offender may submit a written appeal within three working days of the inmate or offender's receipt of the hearing officer's decision. The appeal shall be submitted to the inmate's unit team manager or to the parole supervisor who supervises the offender's parole officer, who shall note filing of the appeal. The modification of the inmate's or offender's good time awards and associated release or sentence discharge date, or both, in the relevant departmental database or databases shall be postponed during the appeal.

(b) The unit team manager or parole supervisor shall then forward the appeal, along with a copy of the hearing officer's decision and the notice of proposed action, which shall be provided free of charge, within two working days to the deputy secretary of facilities management in the case of inmates or to the deputy secretary of community and field services in the case of offenders on postrelease supervision. Those officials or their respective designees shall then proceed to determine the merits of the appeal within 10 working days of receipt and shall issue a brief written decision that upholds or modifies the hearing officer's decision.

(c) The decision on the appeal shall be sent within two working days to the unit team manager or parole supervisor, as applicable, and shall then be personally served upon the inmate or offender by the end of the next working day. A written, dated receipt shall be secured from the inmate or offender upon service and shall be filed with all other papers regarding the matter in the inmate's master file or the postreleasee's supervision file.

(d) If a successful appeal of the hearing officer's decision would cause the inmate to be immediately released or an offender on postrelease supervision to be immediately sentence-discharged, upon submission of the appeal, the appeal shall be handled as the highest priority at each level. (Authorized by and implementing K.S.A. 21-4722 and K.S.A. 2007 Supp. 75-5210; effective Aug. 8, 2008.)

44-6-132. Entry of adjustments of good time awards in relevant departmental database or databases. (a) Unless the inmate or offender files an appeal according to K.A.R. 44-6-131, the decision by the hearing officer either to uphold the proposed action or to modify the action to remove a greater or smaller amount of previously awarded good time credit shall be implemented by entering the adjusted good time award for the review or award periods affected in each relevant departmental database no earlier than four working days after the inmate or offender receives a copy of the decision.

(b) If an appeal is filed, any action to enter the adjusted good time award shall be suspended during the appeal. If the hearing officer's decision is either upheld or modified to order that a smaller amount of awarded good time credit be removed, the unit team manager or parole supervisor shall then make the necessary entries in the relevant departmental database or databases to cause a change in the release or sentence discharge date, or both.

(c) If an appeal is sustained, the good time awards in question shall remain unchanged. The release or sentence discharge date, or both, shall also remain unchanged. (Authorized by and implementing K.S.A. 21-4722 and K.S.A. 2007 Supp. 75-5210; effective Aug. 8, 2008.)

44-6-133. (Authorized by K.S.A. 1990 Supp. 75-5210, 75-5251; implementing K.S.A. 22-3427, K.S.A. 1990 Supp. 21-4608, 22-3717, 75-5210, 75-5251; effective, T-84-32, Nov. 23, 1983; effective May 1, 1984; amended Sept. 30, 1991; revoked Sept. 6, 2002.)

44-6-134. Jail credit time. (a) Jail credit shall not be used in the sentence computation unless an authorization appears in the journal entry of judgment form. If only the number of days of jail credit earned is contained in the journal entry, the records officer shall compute the sentence begins date by subtracting jail credit from the date of sentencing. The amount of jail credit shall not adjust the sentence begins date so that it falls before the date of commission of the offense.

(b) Jail credit shall be awarded for time spent in custody by an offender pending disposition of charges on the earlier sentence if consecutive sentences are imposed on different dates. The credits on the earlier sentence shall be computed so that the credits do not overlap into the latest imposed sentence. The credits for time spent previously in

custody pending disposition of charges shall be recorded as jail credit, but the credit shall not exceed an amount equal to the previous minimum sentence less the maximum number of good time credits that could have been earned on the minimum sentence. The remainder of credits shall be recorded as sentence maximum credits to apply to the maximum date. If prison service credit was included as jail credit by the court, the credit shall be shown as jail credit.

(c) Jail credit shall be awarded for time spent in custody by an offender pending disposition of charges on an earlier sentence if consecutive guidelines sentences are imposed on different dates. The credits on an earlier sentence shall be computed so that the credits do not overlap into any sentence imposed after the earlier sentence was imposed.

(d) Jail credit shall be awarded for time spent in custody by an offender pending disposition of charges if consecutive guidelines sentences are imposed on the same date. However, the credits shall be computed so that they do not overlap from one sentence into any other sentence. (Authorized by K.S.A. 2011 Supp. 75-5251; implementing K.S.A. 2011 Supp. 21-6606, as amended by L. 2012, Ch. 16, §4, K.S.A. 2011 Supp. 21-6615, K.S.A. 2011 Supp. 75-5251; effective, T-84-32, Nov. 23, 1983; effective May 1, 1984; amended Nov. 12, 1990; amended Sept. 30, 1991; amended Sept. 6, 2002; amended Feb. 1, 2013.)

44-6-135. Prison service credit. (a) Prison service credit shall be computed and applied by department of corrections' personnel.

(b) To compute prison service credit for court releases, the effective date of the sentence shall be subtracted from the date of the final disposition of the court by release on probation, appeal bond, or vacating of the sentence. Presentence evaluation time spent at the Topeka correctional facility or any other facility designated by the secretary of corrections shall not be considered as prison service credit, but shall be considered jail credit. If prison service credit was included as jail credit by the court, the credit shall be shown as jail credit. After admission to custody of the secretary of corrections, all time spent incarcerated during release to the custody of a law enforcement agency shall be reflected as prison service credit, unless the time spent incarcerated during release to the custody of a law enforcement agency is included as jail credit by the court.

(c) To compute prison service credit for an aggregate sentence, the sentence begins date of the earlier, controlling minimum sentence date shall be subtracted from the release date and applied as follows:

(1) The actual time incarcerated in the custody of the secretary of corrections or release to custody of a law enforcement agency, not exceeding an amount equal to the previous minimum sentence less the maximum amount of good time credit that could have been earned under the law in effect at the time, shall be the prison service credit available.

(2) The prison service credit for a mandatory minimum sentence imposed before July 1, 1982 shall be restricted to a total credit equal to the actual time served before July 1, 1982, and the remaining minimum time to serve less all good time credits that could have been earned after July 1, 1982.

(3) The prison service credit for a life sentence shall not exceed 15 years or the aggregated 15 years. The remainder of the credit shall be credited as maximum sentence credit.

(4) Accelerated parole eligibility dates under K.S.A. 1988 Supp. 22-3725 shall be credited through May 19, 1988 if the accelerated date was before the effective parole eligibility date under that statute.

(5) Accelerated parole eligibility dates under K.S.A. 1989 Supp. 22-3725 shall be credited through August 1, 1989 if the accelerated parole eligibility date was before the effective date of that statute.

(6) Parole eligibilities computed on or after July 1, 1974 and before January 1, 1979, which were established at the discretion of the secretary of corrections upon attainment of the lowest minimum custody status, shall be credited with the actual time served from the sentence begins date of the earlier controlling minimum sentence. This credit shall not exceed the maximum amount of good time credits provided by K.A.R. 44-6-116 that could have been earned on the minimum sentence.

(7) For aggregated guidelines sentences, the actual time incarcerated in the custody of the secretary of corrections or release to custody of a law enforcement agency, not exceeding an amount equal to the previous prison term less the minimum amount of good time credit that could have been earned under the law in effect at the time, shall be the prison service credit available.

(d) Computations of prison service credit shall be subject to the provisions of K.A.R. 44-6-134, 44-6-136, 44-6-137, and 44-6-138. (Authorized by

K.S.A. 2011 Supp. 75-5210, K.S.A. 2011 Supp. 75-5251; implementing K.S.A. 2011 Supp. 21-6606, as amended by L. 2012, Ch. 16, §4, K.S.A. 2011 Supp. 22-3427, as amended by L. 2012, Ch. 28, §1, K.S.A. 2011 Supp. 22-3717, as amended by L. 2012, Ch. 150, §43, K.S.A. 2011 Supp. 75-5210, K.S.A. 2011 Supp. 75-5251; effective, T-84-32, Nov. 23, 1983; amended May 1, 1984; amended Nov. 12, 1990; amended Sept. 30, 1991; amended April 6, 1992; amended Feb. 1, 2013.)

44-6-135a. Maximum sentence credit.

Maximum sentence credit shall be the remaining amount of time incarcerated that exceeded the prison service credit or jail credit on an earlier sentence. For consecutive sentences aggregated to previously imposed consecutive sentences, the latest sentence shall be credited with the remaining amount of time incarcerated for the latest release that exceeded the prison service credit plus all the prison service credit earned on the earlier consecutive sentences. The maximum sentence date shall be adjusted by that amount. (Authorized by K.S.A. 2011 Supp. 75-5210, K.S.A. 2011 Supp. 75-5251; implementing K.S.A. 2011 Supp. 22-3427, as amended by L. 2012, Ch. 28, §1, K.S.A. 2011 Supp. 21-6606, as amended by L. 2012, Ch. 16, §4, K.S.A. 2011 Supp. 22-3717, as amended by L. 2012, Ch. 150, §43, K.S.A. 2011 Supp. 75-5210, K.S.A. 2011 Supp. 75-5251; effective Nov. 12, 1990; amended Feb. 1, 2013.)

44-6-136. Delinquent time lost on post-incarceration supervision (DTLOPIS).

(a) Delinquent time lost on postincarceration supervision shall be computed from the date on which the secretary's parole violation warrant, the conditional release violation warrant, or parole officer's arrest and detain order was issued to the date of the service of the warrant as shown on the warrant, or as reflected on the transportation memo issued pursuant to applicable internal management policy and procedure. This information shall be entered by the arresting officer on the back of the signed warrant or shall be reflected on the transportation memo. If the warrant is issued after confinement, no DTLOPIS shall be accrued. DTLOPIS shall be added to the controlling maximum date, and the conditional release date shall be adjusted by that same amount.

(b) Except as specified in subsection (c), delinquent time lost on postincarceration supervision shall accumulate only during the period of time in

which the offender is classified as an absconder. Once the initial warrant has been served, delinquent time shall stop accumulating and time after service of the warrant shall not be considered when the sentences are adjusted for delinquent time lost on postincarceration supervision. Credit shall be allowed for any time spent in jail awaiting disposition on revocation hearings.

(c) If the offender is arrested in another state for reasons other than the Kansas parole violation warrant, delinquent time lost on postincarceration supervision shall continue to the date the offender is first available to be returned to Kansas.

(d) Delinquent time may be assessed and applied to the offender's sentence computation by the secretary, in accordance with this regulation, whether the offender's postincarceration supervision status is revoked or continued by the Kansas parole board.

(e) The arresting officer shall endorse, on the back of the condition violation warrant or the arrest and detain order, the date or dates of service, arrest, and incarceration. For offenders apprehended in another state, this endorsement shall not be required, and the transportation memo shall instead reflect the date when the offender is first made available for return to Kansas. (Authorized by K.S.A. 75-5251; implementing K.S.A. 2005 Supp. 75-5217, K.S.A. 75-5251; effective, T-84-32, Nov. 23, 1983; effective May 1, 1984; amended, T-86-5, March 22, 1985; amended May 1, 1986; amended May 1, 1988; amended Sept. 6, 2002; amended June 1, 2007.)

44-6-136a. Forfeited good time on postincarceration supervision release. Forfeited good time on postincarceration supervision release shall be computed from the date of release on supervision to the date on which delinquent time on postincarceration supervision release began or to admission to a Kansas department of corrections facility if DTLOPIS does not apply. Good time forfeited on or after August 1, 1989 shall be at the rate in effect on that date. Good time forfeited before August 1, 1989 shall be at the rate in effect at the time of the forfeiture. (Authorized by K.S.A. 75-5210, as amended by L. 2002, Ch. 154, Sec. 1, K.S.A. 75-5251; implementing K.S.A. 2001 Supp. 22-3717, as amended by L. 2002, Ch. 163, Sec. 5, K.S.A. 2001 Supp. 75-5217, K.S.A. 75-5251; effective Nov. 12, 1990; amended Sept. 6, 2002.)

44-6-137. Time lost on escape. (a)(1) Time lost on escape shall be calculated by subtracting the date of escape from the date of apprehension on the Kansas charge regardless of whether the inmate is in or out of the state. The result of this computation shall be added to the minimum date, the parole eligibility date, maximum date, conditional release date, or guidelines release date, as applicable.

(2) If the time of apprehension in the other state is not able to be determined, the date of delivery into Kansas custody shall be used. A good faith effort shall be made to determine the time of apprehension.

(b) If time held on the Kansas warrant in the other jurisdiction includes time served for a charge or conviction in the other jurisdiction, the time of delivery into Kansas custody shall be used as the point at which the lost escape time stops. (Authorized by K.S.A. 75-5251; implementing K.S.A. 75-5251; effective, T-84-32, Nov. 23, 1983; effective May 1, 1984; amended Sept. 6, 2002.)

44-6-138. Sentence begins date. (a) Jail credit. Each sentence begins date shall reflect all jail credit.

(b) Reimposed sentence, governed by date of reimposition; adjustment alternatives. The sentence begins date for reimposed sentences, including those reimposed for technical probation violators or persons returned by appellate mandates, shall be the date the court reimposed the sentence unless jail credit or prison service credit is due. If the court instructs the inmate to surrender to correctional authorities after the sentence imposition date, that surrender date shall become the sentence begins date. This date may be further adjusted by jail credit.

(c) Vacated sentences in aggregated sentences; recomputation of sentence begins date. If one or more sentences in an aggregated sentence are vacated, the sentence begins date shall be the date of the last sentence imposed that is not vacated. Credit shall be given on the remaining sentence or sentences in an amount equal to the time served on all sentences included in the recomputed aggregate sentence, but no credit shall be allowed for time served that is attributable solely to the vacated sentence or sentences.

(d) Multiple concurrent sentences governed by court order. The court orders in which multiple, nonconsecutive sentences were imposed shall serve as the reference to ascertain the sentence be-

gins date for use in computing the controlling minimum, maximum, and conditional release dates, or guidelines release date, as applicable, subject to the provisions of K.A.R. 44-6-137, K.A.R. 44-6-138, K.A.R. 44-6-140, and K.A.R. 44-6-141.

(e) Multiple consecutive sentences. When multiple sentences are imposed on the same date with the stipulation that one is to be consecutive to another, that date shall be used for the sentence begins date unless adjustments are necessary to allow for jail credit. Jail credits allowed shall reflect the largest amount given on any sentence.

(f) Consecutive before 1979 or after 1982. If a sentence for a crime committed before January 1, 1979 or after July 1, 1982 is to be consecutive with any previously imposed sentence, all dates shall be computed from the earliest sentence imposition date, allowing for jail credit and prison service credit earned on that earliest sentence. If an inmate has been on probation, parole, or conditional release, as a result of a previously imposed sentence, parole eligibility, conditional release, and maximum dates shall also be adjusted to give credit for time served on probation, parole, or conditional release, subject to K.S.A. 2011 Supp. 21-6606 and amendments thereto.

(g) Consecutive sentences between 1979 and 1982. If a sentence for a crime committed on or after January 1, 1979 and through June 30, 1982 is to be consecutive with any previously imposed sentence, the sentence begins date shall be determined by the imposition date of the latest sentence. The sentence begins date shall then be moved to an earlier date by an amount of time equal to jail credit and prison service credit earned on the earlier sentence. Credit shall also be allowed for the time on the minimum term of the earlier sentence, including any time on probation or parole, up to a maximum reduction equal to the minimum term of the earlier sentence.

(h)(1) If a sentence for a crime committed on or after July 1, 1983 is to be consecutive with some previously imposed sentence, the aggregated minimums and maximums shall be computed, and the aggregate sentence shall have the same sentence begins date as the newly imposed sentence. Credit shall be given on the aggregate in an amount equal to the time served on the earlier sentences included in the aggregate. However, for the purpose of computing the sentence begins date, the parole eligibility date, and the conditional release date, this credit shall not exceed the amount of time equal to the period from the sentence be-

gins date, for the previous sentence, to the earliest possible parole eligibility date as if all good time credits had been earned on that previous sentence. An inmate serving a life sentence shall be allowed credit for the total time served, not to exceed 15 years. An inmate serving a mandatory minimum sentence shall be allowed credit for all time served on the sentence before July 1, 1982 plus the remaining minimum time to serve, less all good time credits allowable. When computing the maximum date, the inmate shall receive credit for all time served on the previous sentence.

(2) If the aggregate includes a sentence on which the inmate was serving probation, parole, or conditional release, no credit for time spent on that probation, parole, or conditional release shall be given in computations for the aggregate sentence.

(i) When the aggregate is being computed, the inmate shall be given credit for time spent on probation or parole if both of the following conditions are met:

(1) An inmate is returned to prison as a parole violator with multiple new charges that have identical sentences running concurrent with each other but consecutive to the previous sentence on which parole was being served.

(2) The date of offense on one or more new charges is before July 1, 1983, and another is after July 1, 1983.

(j) If a sentencing guidelines sentence is run consecutively to a sentence for a crime committed before July 1, 1993, regardless of whether the prior sentence is converted to a sentencing guidelines sentence, the sentence begins date shall be the sentence begins date of the newly imposed sentencing guidelines sentence. Credit shall be given on the aggregate in an amount equal to the time served on the earlier sentences included in the aggregate.

(k) If a sentencing guidelines sentence is run consecutively to a prior sentencing guidelines sentence, the sentence begins date shall be the sentence begins date of the newly imposed sentencing guidelines sentence. Credit shall be given on the aggregate in an amount equal to the time served on the earlier sentences included in the aggregate. (Authorized by K.S.A. 2011 Supp. 75-5251; implementing K.S.A. 2011 Supp. 21-6606, as amended by L. 2012, Ch. 16, §4, K.S.A. 2011 Supp. 22-3717, as amended by L. 2012, Ch. 150, §43; effective, T-84-32, Nov. 23, 1983; effective May 1, 1984; amended, T-85-37, Dec. 19, 1984; amended May 1, 1985; amended May 1, 1988; amended Sept. 6, 2002; amended Feb. 1, 2013.)

44-6-140. Controlling minimum date; for concurrent composite sentences—merge and select longest incarceration; controlling guidelines release date. (a) For new admissions with concurrent sentences, the minimum term of each sentence shall be added to its sentence begins date. The sentence with the minimum term requiring the longest time to be served to parole eligibility shall be the sentence controlling the minimum date. Therefore, parole eligibility for each sentence shall be computed before selecting the controlling minimum sentence.

(b) Concurrent minimums applied only to sentences not parole-eligible yet. The controlling minimum date for inmates readmitted with new concurrent sentences shall be computed only for sentences on which parole eligibility has not yet been achieved.

(c) Technical parole violations. The controlling minimum date of technical parole or conditional release violators shall not change from the original computation on which parole eligibility was originally achieved.

(d) For new admissions with multiple concurrent guidelines sentences, the prison portion of each sentence shall be added to its sentence begins date. The sentence with the term requiring the longest time to be served in prison shall be the sentence controlling the guidelines release date. (Authorized by K.S.A. 75-5251; implementing K.S.A. 75-5251, K.S.A. 21-4608; effective, T-84-32, Nov. 23, 1983; effective May 1, 1984; amended Sept. 6, 2002.)

44-6-140a. Controlling minimum date, for consecutive composite sentence add terms; controlling guidelines release date. (a) To obtain the controlling minimum date for consecutive sentences, the minimum terms of those sentences that are consecutive shall be added, and the resulting sum of years shall be added to the sentence begins date. This date shall determine the controlling minimum date for the consecutive sentences but shall not be used to determine parole eligibility. Parole eligibility shall be separately computed according to K.A.R. 44-6-111.

(b) To obtain the controlling guidelines release date for consecutive guidelines sentences, all prison portions of the terms shall be added, and the resulting sum of months shall be added to the sentence begins date. (Authorized by K.S.A. 75-5251; implementing K.S.A. 75-5251, 21-4608; effective, T-84-32, Nov. 23, 1983; effective May 1, 1984; amended Sept. 6, 2002.)

44-6-141. Controlling maximum date; controlling guidelines sentence discharge date. (a) Latest conditional release sentence controls. The sentence with the longest period of incarceration shall be designated as the sentence controlling the maximum date. The maximum term of the sentence controlling the conditional release date shall be added to the sentence begins date to establish the controlling maximum date.

(b) New concurrent—longest incarceration controls. For parole and conditional release violators admitted with new sentences that are to be concurrent to the old sentences, the conditional release date of each new sentence shall be calculated. The conditional release date or dates of the old sentence shall be reviewed to assure that all good time forfeitures have been applied. The sentence that requires the longest period of incarceration to reach conditional release shall be designated as the sentence controlling the maximum term and maximum date. That term shall be added to the sentence begins date to establish the controlling maximum date.

(c) Consecutives. Inmates admitted with consecutive sentences shall have the maximum terms of those sentences added together to determine the controlling maximum sentence. If sentences imposed on different dates are to be served consecutively, the inmate shall receive credit for all time served on the previous sentence when the controlling maximum sentence is computed.

(d) Concurrent—consecutive composites. If an inmate is admitted with a composite sentence that includes both concurrent and consecutive sentences, the conditional release date for the consecutive sentence maximum term, as determined in subsection (c), shall be compared to the conditional release date of any remaining concurrent sentences. The length of the sentence or sentences requiring the longest period of incarceration to reach conditional release shall be designated as the term controlling the maximum date. The length of this term shall be added to the sentence begins date to determine the controlling maximum date.

(e) Violator returned past conditional release from concurrent sentences without new sentence. If a conditional release violator is returned without new sentences and the conditional release date has been reached on all other sentences, the maximum term of each active sentence shall be added to each of the sentence begins dates. The sentence requiring the longest period of in-

carceration to reach the maximum date shall be identified as the controlling maximum date, and its length of sentence shall be the controlling maximum term.

(f) Controlling guidelines sentence discharge date. For each offender with multiple guidelines sentences, the controlling guidelines sentence discharge date shall be calculated by using the principles set forth in subsections (a) through (e) above. (Authorized by K.S.A. 75-5251; implementing K.S.A. 21-4608, 75-5251; effective, T-84-32, Nov. 23, 1983; effective May 1, 1984; amended May 1, 1988; amended Sept. 6, 2002.)

44-6-142. (Authorized by K.S.A. 1993 Supp. 75-5210, 75-5251; implementing K.S.A. 22-3427, K.S.A. 1993 Supp. 21-4608, 22-3717, 75-5210, 75-5251; effective, T-84-32, Nov. 23, 1983; effective May 1, 1984; amended Sept. 30, 1991; amended Jan. 3, 1995; revoked Sept. 6, 2002.)

44-6-143. Computation of consecutive sentences. (a) On and after May 7, 1987, if an individual is sentenced for an offense committed while on probation, parole, conditional release, or postrelease supervision for a felony, and the probation, parole, conditional release, or postrelease supervision is subsequently revoked, the sentences shall be computed as consecutive.

(b) If a previously imposed sentence expires before the imposition of the new sentence, computation shall be made only on the basis of the new sentence. (Authorized by K.S.A. 75-5251; implementing K.S.A. 21-4608, 75-5251; effective Nov. 12, 1990; amended Sept. 6, 2002.)

44-6-144. Minimum sentence expended at parole eligibility—sentence computation. Once the inmate has become eligible for parole, or has been given a parole hearing by the Kansas adult authority, no other parole eligibility shall be established. However, if subsequent sentences are to be served consecutively to the earlier ones, the computation of the new parole eligibility shall utilize the minimum term of the earlier sentence as part of the complete computation. The earlier minimum sentence shall not be considered as eliminated by parole and may be used when required as an element in the computation of a subsequent or composite sentence. (Authorized by K.S.A. 75-5251, K.S.A. 1983 Supp. 75-5210; implementing K.S.A. 22-3427, 75-5251, K.S.A. 1983 Supp. 21-4608, 22-3717, 75-5210; effective, T-84-32, Nov. 23, 1983; effective May 1, 1984.)

44-6-145. Incentive good time credits. Incentive good time credits which were authorized and applied under previous policies and regulations shall continue to be credited to the inmate's sentence and applied to the record. (Authorized by K.S.A. 75-5251, K.S.A. 1983 Supp. 75-5210; implementing K.S.A. 22-3427, 75-5251, K.S.A. 1983 Supp. 21-4608, 22-3717, 75-5210; effective, T-84-32, Nov. 23, 1983; effective May 1, 1984.)

44-6-146. (Authorized by and implementing K.S.A. 1993 Supp. 21-4722; effective Sept. 13, 1993; amended Jan. 3, 1995; revoked Sept. 6, 2002.)

Article 7.—PROGRAMS AND ACTIVITIES

44-7-102. (Authorized by and implementing K.S.A. 75-5201, 75-5251, K.S.A. 1983 Supp. 75-5210, 75-5252; effective May 1, 1980; amended May 1, 1984; revoked March 22, 2002.)

44-7-103. (Authorized by K.S.A. 75-5251, K.S.A. 1979 Supp. 75-5210, 75-5210(f), 75-5252, 75-5267, 75-5267(b)(2); effective May 1, 1980; revoked March 22, 2002.)

44-7-104. Inmate visitation. (a) Orders shall be promulgated by the warden to govern inmate communication with family, friends, relatives, and others through visits to the facility. Further elaboration of this regulation through the internal management policies and procedures shall be made by the secretary, particularly with respect to establishing a system of identifying a primary visitor for each inmate. The following procedures shall be observed by the facility in the administration of visits.

(1) A suitable area and reasonable space within the facility shall be provided for inmate visitation. All visits shall be held in this area, except when authorization is granted by the warden to visit an inmate elsewhere. For the reasons of security and order in the facility, a visit may be directed by the warden to be allowed under circumstances in which physical contact between the inmate and visitor is not permitted. All visits shall be subject to visual and sound monitoring of conversations and actions during the visit, except any visit with an attorney or clergy member, or any other visits with persons having a statutory right of privileged communication as specified in subsection (b).

(2) Any inmate may make a list of not more than 20 friends or relatives for the purpose of visiting the inmate in the facility. All proposed visitors shall be informed of the following requirements:

(A) Persons below the age of 18 shall not be allowed to visit, unless they are members of the inmate's immediate family. For the purpose of this subsection, "immediate family" shall mean siblings, stepsiblings, children, stepchildren, grandchildren, stepgrandchildren, and spouse; and

(B) Persons below the age of 18 who are members of the immediate family, except a spouse, shall not be allowed to visit unless they are accompanied by a parent, legal guardian, or an adult who has been given the power of attorney by the parent or legal guardian vesting the person with authority to transport and supervise the minor child on the premises of the institution or facility for the purpose of visiting an inmate. In those instances in which no one has a power of attorney, an adult who is a temporary caregiver of a minor child may authorize visits by the child after providing an affidavit verifying the adult's status and relationship with the child and inmate. Whether or not the visit will be permitted shall be determined by the warden.

(3) Additional visitation guidelines.

(A) Regardless of any visiting list restrictions, an inmate's attorney or a clergy member shall be permitted to visit the inmate at reasonable times, unless a clear abuse of this privilege has occurred or unless such a visit may prove dangerous or harmful to the security and order of the facility or the rehabilitation of any inmate.

(B) Each individual who is requesting a visit with an inmate but who is not designated on the list or has not yet been approved for visitation shall be interviewed and identified by authorized personnel. If the requested visit conforms to all facility and departmental requirements, one visit may be approved pending further investigation and approval of subsequent visits.

(C) Ex-inmates shall be prohibited from visiting any facility or inmate, unless approval is given by the warden. Parolees and probationers shall first be approved by the warden and have written authorization from their supervisor before visitation. An individual involved in or convicted of any narcotic offense shall not be permitted to visit a facility without the prior approval of the warden.

(D) If an inmate refuses to see a particular visitor, the refusal shall be documented in the records of the facility.

(4) Visitors in the facility shall meet the following requirements:

(A) Wear appropriate attire as described and published by the warden;

(B) not give or receive any written material, article, or merchandise of any sort, except in accordance with the warden's orders or departmental regulations or with the permission of the warden;

(C) be prohibited from placement on more than one inmate's visiting list, unless the visitor is a member of the immediate family, as defined in K.A.R. 44-5-113(a), of more than one inmate confined in a facility or unless the visitor is an approved mentor to an offender, without limit on number, pursuant to a mentoring program approved by the department of corrections;

(D) sign the register of the facility before and after each visitation;

(E) be subject to search, photographing, and fingerprinting;

(F) have visitation restricted or terminated if the facility security needs so warrant; and

(G) not distribute anything inside a correctional facility without written permission from the warden.

(5) Each individual who was an employee of a correctional facility, who regularly worked at a correctional facility as an employee of an entity under contract to provide services to the institution or facility, or who was a volunteer at a correctional facility shall meet the following conditions:

(A) Not be permitted to have visits with an inmate, in other than a professional capacity, for a minimum of two years after the employment or volunteer status is terminated, unless the individual is related by blood or marriage to the inmate. If the individual has a blood or marital relationship with an inmate, the ex-employee, ex-contract employee, or ex-volunteer may nonetheless be subject to the minimum two-year waiting period under the circumstance set forth in paragraph (a) (5)(B). Approval of visits after two years shall be at the discretion of the warden upon application of the inmate or ex-employee, ex-contract employee, or ex-volunteer. If the warden disapproves the visits, the inmate and ex-employee, ex-contract employee, or ex-volunteer shall be notified by the warden of the specific reasons for the denial; or

(B) if barred from a facility because of undue familiarity with an inmate or for trafficking in contraband, whether or not convicted of any criminal offense in connection with the instance of undue familiarity or trafficking, not be permitted to have visits with any inmate for a minimum of two years after the effective date of the order barring the individual from any facility. The approval of visits after two years shall be given at the discretion of the warden and with the approval of the deputy

secretary of facilities management, upon application of an inmate or the ex-employee, ex-contract employee, or ex-volunteer.

(6) An individual who is currently an employee, contract employee, or volunteer and who is related by blood or marriage to an inmate may be permitted to visit the inmate, at the discretion of the warden of the facility where the individual is employed or volunteers and with the approval of the warden of the facility where the inmate is assigned.

(7) Designated personnel shall be present during all visitations and shall supervise visits to the extent appropriate to protect the nature and privacy of the relationship between the inmate and visitor and to maintain security and control.

(8) Any visitor's visiting privileges may be suspended if the visitor violates any visitation policy and procedure or any visitation order while in the facility. An inmate's visiting privileges may likewise be suspended, whether or not the inmate is convicted of violation of any disciplinary regulation in connection with violation of any visitation policy and procedure or any visitation order.

(A) The length of any suspension shall be determined by the warden, subject to the limitations specified in paragraph (a)(8)(B).

(B) The initial length of a suspension imposed for violation of an institutional rule shall not exceed one year. At its termination, the suspension shall be subject to review by the warden and may be extended for successive periods of no more than one year each. Each extension of a suspension shall be reviewed by the warden at its termination.

(9) Any person may be permanently barred from entering on the grounds of any KDOC facility if the permanent suspension of visiting privileges meets all of the following conditions:

(A) Some credible evidence demonstrates that the person has committed, attempted, conspired regarding, or solicited any of the following types of misconduct:

- (i) Facilitation of escape;
- (ii) assault of an employee, contract employee, or volunteer;
- (iii) communication of a threat proscribed by K.S.A. 21-3419, and amendments thereto, to an employee, contract employee, or volunteer;
- (iv) engaging in sexual intercourse, sodomy, or lewd fondling and touching with an inmate while on the grounds of a correctional facility, whether or not the sexual contact at issue was consensual; or
- (v) violation of K.S.A. 21-3826, and amendments thereto.

(B) The permanent suspension of the person's entry and visitation privileges is recommended by the warden of the affected facility.

(C) The permanent suspension of the person's entry and visitation privileges is approved by the deputy secretary of facilities management.

(10) Each person, including any visitor, shall be subject to search, including a strip search upon a determination of reasonable suspicion, before entering on the grounds of a correctional facility. A person's visiting privilege shall be suspended for a period of one year and restricted to noncontact visiting for an additional six months, if the person refuses to be searched before or after gaining access to facility grounds for the purpose of visiting an inmate.

(b) A place shall be provided for private consultation by attorneys, clergy members, and other persons having a statutory right of privileged communication, with the exception of spouses, to permit confidential conversation. Only those measures necessary to preserve security shall be permitted to interfere with the consultation. Sound monitoring shall not be conducted. Visual monitoring shall be permitted only if necessary to maintain security.

(c) This regulation shall apply only to the regular inmate visitation program. All visits to inmates resulting from a program otherwise implemented by the department of corrections shall be governed by policies and procedures established specifically for that program. (Authorized by and implementing K.S.A. 2003 Supp. 75-5210, K.S.A. 75-5251, 75-5252; effective May 1, 1980; amended May 1, 1987; amended May 1, 1988; amended Nov. 12, 1990; amended Jan. 11, 1993; amended July 11, 1994; amended, T-44-3-19-04, March 19, 2004; amended July 2, 2004.)

44-7-105. (Authorized by and implementing K.S.A. 75-5210, 75-5251, 75-5267; effective May 1, 1980; amended May 1, 1987; revoked March 22, 2002.)

44-7-106. (Authorized by and implementing K.S.A. 75-5251, K.S.A. 1983 Supp. 75-5210, 75-5211; effective May 1, 1980; amended May 1, 1984; revoked March 22, 2002.)

44-7-107. (Authorized by and implementing K.S.A. 75-5210, 75-5251; effective May 1, 1980; amended May 1, 1984; amended May 1, 1986; revoked March 22, 2002.)

44-7-108. Private non-prison employment. (a) The principal administrator of any facility designated by the secretary for such a program shall establish a program whereby inmates having a minimum or medium security classification may work at paid employment for a private industry or other business approved by the secretary. The program shall be referred to as private, non-prison employment. The program shall be distinct from any program of employment of inmates by a private business which is leasing space on the premises of the correctional facility. No inmate shall be engaged in the private, non-prison employment program unless minimum wage is paid. Minimum wage shall be state minimum wage unless federal contracts are involved. If federal contracts are involved, minimum wage shall be the higher of the federal or state minimum wage.

(b) All employees of a private, non-prison program business shall be part of and paid by that business. Corrections officers necessary to provide security for inmate workers shall be provided by the correctional facility. (Authorized by and implementing K.S.A. 75-5251, 75-5210, 75-5211; effective May 1, 1980; amended May 1, 1981; amended May 1, 1984; amended May 1, 1987.)

44-7-109. (Authorized by K.S.A. 75-5250, 75-5251, K.S.A. 1979 Supp. 75-5210, 75-5210(a), (b) and (f), 75-5211; effective May 1, 1980; revoked March 22, 2002.)

44-7-110 and 44-7-111. (Authorized by K.S.A. 75-5251, K.S.A. 1980 Supp. 75-5210, 75-5210(a), (b) and (f), 75-5211; effective May 1, 1980; revoked May 1, 1981.)

44-7-112. (Authorized by K.S.A. 75-5251, K.S.A. 1979 Supp. 75-5210, 75-5210(a), (b) and (f), 75-5211, 75-5256; effective May 1, 1980; revoked March 22, 2002.)

44-7-113. Religious activity. (a) Clergy members from recognized religious faiths may hold religious services in the facilities, at their own expense and at the times authorized by and in accordance with the warden's general orders.

(b) A group of two or more inmates of a common religious faith who are without the benefit of a clergy member may request that the chaplain recommend to the warden for consideration for approval a proposal allowing these inmates to meet as a group and hold religious services among themselves.

(c) Upon the request of any inmate, a bible or any other related religious text material that has been previously donated to the secretary shall be made available by the warden of the facility to the inmate. The term "bible" shall mean the main religious text of the inmate's religion. Other related religious text materials may be limited in numbers and amounts according to established correctional practice and management, including the amount of space per inmate in each cell. A religious reading section shall be established by the warden in the inmate library. A donated main text of religious doctrine for each religion may be made available by the warden in the inmate library.

(d) All religious services and meetings shall be conducted in accordance with the orders of the warden. (Authorized by K.S.A. 2003 Supp. 75-5210, K.S.A. 75-5251; implementing K.S.A. 75-5223 and K.S.A. 75-5251; effective May 1, 1981; amended April 20, 1992; amended, T-44-3-19-04, March 19, 2004; amended July 2, 2004.)

44-7-114. (Authorized by and implementing K.S.A. 75-5210(c); effective June 4, 1990; revoked March 22, 2002.)

44-7-115. (Authorized by and implementing K.S.A. 1990 Supp. 75-5210; effective April 20, 1992; revoked March 22, 2002.)

44-7-116. (Authorized by and implementing K.S.A. 1992 Supp. 75-5211, as amended by 1993 H.B. 2129, §1; effective Sept. 13, 1993; revoked March 22, 2002.)

Article 8.—WORK RELEASE

44-8-101. Definitions. (a) "Community facilities and services administrator" means the person employed by the secretary of corrections with the responsibility for the statewide administration of the work release program and jail inspection.

(b) "Employer" means those persons, businesses, private interests, or corporations acting as agents of the secretary of corrections by providing paid employment to work release participants.

(c) "Facility" means the physical structure or location which houses work release participants and provides the operational base for a localized work release program.

(d) "Participant" means inmates in the custody of the secretary of corrections who are classified as being in work release status and placed in a work release program.

(e) "Supervisor" means the person in the employ of, or under contract with the secretary of corrections who is directly responsible for the operation of a facility which provides for, or includes a work release program.

(f) "Staff" means those persons either directly employed by the secretary of corrections, or those persons employed by an agent, who has a contract with the secretary of corrections, who are authorized to directly supervise and exercise legal authority over work release participants placed under their control.

(g) "Work release program" or "program" means the rehabilitation program concept and structure established by the secretary of corrections. The program permits participants to leave actual confinement to work in the community under the general supervision of staff and in conformity to the specifications contained in a written contract, remaining in extended limits of confinement as designated by secretary of corrections or designee.

(h) "Parent institution" means the last major institution to which an inmate was assigned prior to transfer to the Kansas reception and diagnostic center, Kansas correctional-vocational training center, honor camp or work release facility. (Authorized by K.S.A. 75-5251, K.S.A. 1980 Supp. 75-5210, 75-5210(e), (f) and (g), 75-5267, 75-5268; effective May 1, 1980; amended May 1, 1981.)

44-8-102. Work release participation. (a) Regulations on work release may be explained and interpreted in secretary of corrections' internal management policies and procedures (IMPP) and the inmate shall refer to them before reliance upon any specific provision of these work release regulations.

(b) Each participant in the work release program shall:

(1) Actively seek and maintain full time gainful employment;

(2) participate in any counseling, education, or other self-help programs and activities recommended in the inmate's program plan by the secretary of corrections, the Kansas adult authority, or the facility staff;

(3) comply with all program regulations and general orders of the facility to which the inmate is assigned; and

(4) remain within the limits of confinement.

(c) A per diem rate established by the secretary of corrections for each day in the program shall be charged to the participants for food and

lodging. This per diem shall be returned to the funding source, for participants of state operated facilities, or shall be paid to the local governmental correctional centers, private facilities, or half-way houses in which the participant is housed. Transportation costs shall be charged against a participant, at the rate established by the secretary of administration pursuant to K.S.A. 75-3203, after the participant has begun full time employment. (Authorized by and implementing K.S.A. 75-5251, K.S.A. 1983 Supp. 75-5210, 75-5267; effective, E-79-37, Jan. 1, 1979; effective May 1, 1980; amended May 1, 1984.)

44-8-103. Extended limits of confinement. (a) Participant's place of confinement shall be designated to be that facility to which he or she is assigned for work release participation. He or she shall remain in that facility at all times except when going to, returning from, or engaging in approved:

(1) Interviews with prospective employers.

(2) Paid employment or employment related training activities.

(3) Point-to-point passes or furloughs.

(b) Limits of confinement may be extended by the supervisor or his or her staff. Documents and agreements shall be signed by the participant acknowledging the specific period of time, the area, and the time for which the extension is made.

(c) The work release administrator shall formulate, publish, post and make available as a part of general orders the information which will enable the participants to determine:

(1) Their eligibility for point-to-point passes and furloughs. The work release administrator may delegate the writing of general orders to the work release supervisors subject to approval by the work release administrator.

(2) The identity of staff members authorized to grant passes or furloughs.

(3) The procedure used to insure that furloughs or passes are used for the purposes for which they were granted. (Authorized by K.S.A. 75-5251, K.S.A. 1979 Supp. 75-5210, 75-5210(b), (d), (e), (f) and (g), 75-5267; effective May 1, 1980.)

44-8-104. Work release plan agreements. (a) A written agreement shall be executed between the secretary of corrections or designee and the participant which

(1) Prescribes the standards for the participant conduct.

(2) Describes the extended limits of confinement.

(3) Describes who will provide transportation and the mode to be utilized.

(4) Provides for the disbursement of the participant's earnings.

(b) A written agreement shall be executed between the secretary of corrections or designee and the employer which will provide

(1) Information to the employer about the work release program and regulations.

(2) The address and telephone number of the work release facility.

(3) The name, address and telephone number of the employer.

(4) The job or position title in which the participant is employed.

(5) The rate of compensation and pay period interval.

(6) The participant's regular work schedule.

(c) The work release plan agreements shall be maintained as permanent records in the department of corrections' official file on the participant. (Authorized by K.S.A. 75-5251, 75-5268, and K.S.A. 1979 Supp. 75-5210, 75-5210(f) and (g), 75-5267; effective May 1, 1980.)

44-8-105. Removal from work release status. (a) The work release administrator may terminate or suspend an inmate's participation in the work release program if the work release center supervisor finds any of the following:

(1) The participant is released on parole.

(2) The participant exhibits a lack of interest or motivation in securing employment.

(3) The participant refuses to accept offers of gainful employment.

(4) The participant is terminated from employment due to his or her inability to adjust or perform as required.

(5) The participant is the cause of conflict with co-workers or the employer.

(6) The participant is subject to disciplinary action as a result of a serious rule violation or repeated minor conduct rule violations.

(7) The participant becomes involved in criminal activity or is suspected of criminal activity which is reported to the district or county attorney for prosecution.

(8) The administrator has cause to believe the participant is not able to conform to the program structure or facility rules based upon documented situations provided by the supervisor or staff.

(9) The participant's activities may bring discredit to the overall work release program.

(10) The participant requests, in writing, his or her voluntary removal from the program.

(11) The participant violates the extended limits of confinement, or leaves the facility of placement without proper authorization.

(b) Medical treatment. Participants may be transferred to a correctional institution if extended hospitalization or treatment is recommended, or if he or she is financially unable to meet the cost of short term hospitalization. The participant may be removed from the program, or returned after treatment. (Authorized by K.S.A. 75-5251, K.S.A. 1980 Supp. 75-5210, 75-5210(b), (f), (g) and (h), 75-5267, 75-5268; effective May 1, 1980; amended May 1, 1981.)

44-8-106. Authorized visits and use of telephone. (a) Each facility supervisor shall provide an area separated from the dormitory or living units designated for visits between participants and approved visitors. The supervisor shall formulate, and upon approval by the work release administrator, publish as a part of general orders, post and make available to participants and visitors, rules for visiting within the facility.

(b) Each facility supervisor shall make at least one (1) unmonitored coin operated telephone available in a designated area for participant use. The supervisor shall formulate and, upon approval by the administrator, publish as part of general orders, post and make available to participants, rules for the use of telephones within the facility. (Authorized by K.S.A. 75-5251, K.S.A. 1979 Supp. 75-5210, 75-5210(d), (e), (f) and (g), 75-5256, 75-5267; effective May 1, 1980.)

44-8-107. Clothing. Participants shall not be required to wear issued clothing. Clothing may be issued to the inmate if needed and if available. Participants shall be permitted to dress in appropriate street attire.

(a) Participants may use clothing transferred on the inventory maintained at the parent institution.

(b) Subject to limitations established by the facility supervisor, the participant may purchase, or have delivered from his or her family, clothing for personal use. All clothing purchased or delivered shall be accounted for by facility staff and the participant in accordance with facility rules.

(c) The facility supervisor may formulate, and upon approval of the administrator, publish and

make available to participants a rule limiting the amount of clothing permitted in the facility as determined by:

- (1) Available storage space.
- (2) Facility compliance with fire and safety requirements.
- (3) Internal management consideration. (Authorized by K.S.A. 75-5251, 75-5268, K.S.A. 1979 Supp. 75-5210, 75-5210(f) and (g), 75-5267; effective May 1, 1980.)

44-8-108. Religious services. Participants who wish to participate in religious services or activities may be permitted to attend services of recognized religious denominations available within the community in which the facility is located. The facility supervisor shall permit participants to leave the facility for religious practices as an extension of confinement unless chaplain services are available on the premises. (Authorized by K.S.A. 75-5251, K.S.A. 1979 Supp. 75-5210, 75-5210(a), (d), (f) and (g) and 75-5267; effective May 1, 1980.)

44-8-109. Medical care and services. (a) Minor and emergency medical services shall be provided to participants of the work release program.

(1) Each facility shall maintain an adequate first aid kit for minor treatment.

(2) Key staff members shall be trained in basic first aid and life saving techniques within the first year of employment.

(3) The supervisor shall formulate, and upon approval by the administrator, publish and make part of general orders a procedure to be followed by staff members regarding medical emergencies in the facility.

(4) Participants requiring hospitalization of short duration may remain in the program if they are covered by adequate health care insurance or assume responsibility for expenses incurred.

(b) Participants may be required, or may be allowed to participate in counseling or treatment services provided by agencies in the community when the services are not available in the facility, or as part of the program.

(1) Participants shall be responsible for any charges for such services.

(2) The staff shall make initial arrangements for participants to receive medical treatment from public service agencies.

(A) To insure that the public service agency has adequate expertise in its field.

(B) To insure that the participant receives adequate services at the lowest cost.

(3) Participants shall acknowledge his or her responsibility to pay for the services and shall authorize the staff to disburse from his or her earnings the amount needed to pay for the services. (Authorized by K.S.A. 75-5251, 75-5268, and K.S.A. 1979 Supp. 75-5210, 75-5210(c), (f) and (g), 75-5256, 75-5267; effective May 1, 1980.)

44-8-110. (Authorized by K.S.A. 75-5251, 75-5254, 75-5257, K.S.A. 1980 Supp. 75-5210, 75-5210(f), (g) and (h), 75-5256, 75-5267, 75-5268; effective May 1, 1980; amended May 1, 1981; revoked March 22, 2002.)

44-8-111. (Authorized by K.S.A. 75-5251, 75-5268, K.S.A. 1979 Supp. 75-5210, 75-5210(b), (f), (g) and (h), 75-5267; effective May 1, 1980; revoked March 22, 2002.)

44-8-112. (Authorized by K.S.A. 75-5251, 75-5268, K.S.A. 1979 Supp. 75-5210, 75-5210(b), (f), (g) and (h), 75-5267; effective May 1, 1980; revoked March 22, 2002.)

44-8-113. (Authorized by K.S.A. 75-5251, 75-5268, K.S.A. 1979 Supp. 75-5210, 75-5210(b), (c), (f), (g) and (h), 75-5252, 75-5267; effective May 1, 1980; revoked March 22, 2002.)

44-8-114. (Authorized by and implementing K.S.A. 75-5210, 75-5251, 75-5267; effective May 1, 1980; amended May 1, 1984; amended May 1, 1987; revoked March 22, 2002.)

44-8-115. Private non-prison based employment as work release. Private non-prison based employment programs which operate within a community setting utilizing inmates with not more than a minimum security classification shall be work release programs. Criteria for eligibility set forth in K.A.R. 44-8-114 shall be applicable except that inmates meeting all other criteria for selection may be eligible for participation up to 36 months prior to their parole eligibility date. (Authorized by and implementing K.S.A. 75-5210, 75-5251, 75-5267; effective June 4, 1990.)

44-8-116. Private prison based employment as work release. Private enterprises which operate on the grounds of a correctional institution and employ inmates shall be work release programs. Criteria for eligibility set forth in K.A.R. 44-8-114 shall be applicable except that in-

mates with a custody level higher than minimum and meeting all other criteria may be eligible for participation without regard to their parole eligibility date. (Authorized by and implementing K.S.A. 75-5210, 75-5251, 75-5267, 75-5288; effective June 4, 1990.)

Article 9.—PAROLE, POSTRELEASE SUPERVISION, AND HOUSE ARREST

44-9-101. Definitions. (a) “Board” means the prisoner review board established by L. 2011, ch. 130.

(b) “Conditional release,” for offenders serving indeterminate sentences for offenses committed before July 1, 1993, means release subject to supervision under terms and conditions determined by the board after serving the maximum sentence less all projected good time credits, subject to adjustment for any forfeiture of good time credits.

(c) “Correctional facility” means any of the facilities identified in K.S.A. 75-5202, and amendments thereto.

(d) “Docket” means the board’s prearranged schedule of hearings.

(e) “Executive clemency” means the power of the governor to commute or pardon a criminal sentence.

(1) “Commute a criminal sentence” means to reduce the penalty imposed on a convicted person.

(2) “Pardon” means to forgive completely the punishment of a person convicted of a crime.

(f) “Good time credits” means the statutorily authorized reduction in time on an inmate’s sentence as specified by K.S.A. 21-6821 and K.S.A. 22-3717, and amendments thereto, and K.A.R. 44-6-101, K.A.R. 44-6-115a, K.A.R. 44-6-115b, K.A.R. 44-6-115c, K.A.R. 44-6-125, K.A.R. 44-6-126, and K.A.R. 44-6-145.

(g) “House arrest” means the confinement of an inmate or offender under postincarceration supervision in the residence of the inmate or offender pursuant to the release provisions of L. 2010, ch. 136, §249, as amended by L. 2011, ch. 100, §19, and amendments thereto, or as a sanction of an offender under postincarceration supervision for violation of a condition of supervision, subject to conditions imposed by the secretary or designee or by the board, or as otherwise permitted by law.

(h) “In absentia” means a status in which an inmate is committed to the custody of the secretary and is serving the sentence out of state or in another jurisdiction.

(i) “Parole” means, for crimes committed before July 1, 1993 and off-grid offenses designated in K.S.A. 22-3717 and amendments thereto, the release of an inmate to the community by the board before the expiration of the inmate’s sentence, subject to conditions imposed by the board and administered under the secretary’s supervision.

(j) “Postincarceration supervision” means the supervision of any offender released to the community after service of the requisite term of incarceration. This term shall include parole, conditional release, and postrelease supervision.

(k) “Postrelease supervision” means, for crimes committed on or after July 1, 1993, the release of an inmate, subject to conditions imposed by the board, to the secretary’s supervision and to the community after the inmate has served a period of imprisonment or after the inmate has served equivalent time in a facility where credit for time served is awarded as specified by the court.

(l) “Public comment session” means the board’s regular, scheduled meeting with interested parties in the community for the purpose of receiving comments concerning the publicly announced listing of persons to be considered for parole by the board.

(m) “Secretary” means the secretary of corrections.

(n) “Unit team” means the group of correctional facility staff that is responsible for monitoring the overall management, supervision, custody, and rehabilitation plan of an inmate, as initiated by the classification committee, and that recommends custody changes and prepares progress summaries.

(o) “Warden” means the person in charge of the operation and supervision of a correctional facility. (Authorized by K.S.A. 2011 Supp. 21-6609, as amended by L. 2011, ch. 130, §§ 2 and 3, K.S.A. 2011 Supp. 22-3701, as amended by L. 2011, ch. 130, §§ 2 and 3, K.S.A. 2011 Supp. 22-3717, as amended by L. 2011, ch. 130, §§ 2 and 3, K.S.A. 2011 Supp. 75-5251; implementing K.S.A. 21-6609, as amended by L. 2011, ch. 130, §§ 2 and 3, K.S.A. 2011 Supp. 22-3701, as amended by L. 2011, ch. 130, §§ 2 and 3, K.S.A. 2011 Supp. 22-3717, as amended by L. 2011, ch. 130, §§ 2 and 3; effective May 1, 1980; amended May 1, 1985; amended May 1, 1987; amended March 23, 2012.)

44-9-102. (Authorized by K.S.A. 75-5251, K.S.A. 1980 Supp. 21-4603, 21-4604, 75-5210, 75-5210(c); effective May 1, 1980; revoked May 1, 1981.)

44-9-103. (Authorized by and implementing K.S.A. 75-5216, 75-5251, K.S.A. 1988 Supp. 75-5217, effective May 1, 1980; amended May 1, 1984; amended May 1, 1987; amended March 12, 1990, revoked July 11, 1994.)

44-9-104. (Authorized by and implementing K.S.A. 22-3717, 75-5216, 75-5251; and K.S.A. 1988 Supp. 75-5217; effective May 1, 1980; amended May 1, 1984; amended May 1, 1986; amended March 12, 1990; revoked July 11, 1994.)

44-9-105. Preliminary hearing for alleged violators. Alleged parole violators, conditional release violators, postrelease supervision violators, and house arrest condition violators shall be afforded a hearing to determine if there has been any violation of any conditions of supervision, unless the releasee knowingly and voluntarily waives the hearing. The requirements for the hearing shall be as follows: (a) The releasee shall be informed of the charges in writing with sufficient particularity and sufficient time in advance of the hearing to prepare a defense. The hearing shall be held within three to 14 days after service of the notice of charges, subject to authorized continuances. If evidence of any new violation of conditions of supervision is discovered after service of the original notice of charges upon the offender but before the hearing and a determination is then made that the releasee should be so charged, notice of any additional charge of violation shall be given to the releasee in the same manner as that for the original statement of charges. The hearing shall be continued for an appropriate interval if the releasee receives notice of any additional charge of violation less than three days before the original hearing date, unless the releasee waives advance service of the notice of amended charges.

(b) The purpose of the hearing shall be to determine whether probable cause exists to believe that a condition of supervision has been violated. The hearing shall be held before a party not involved in the case. Pending the hearing, the releasee shall remain incarcerated.

(c) If evidence of any new violation of conditions of supervision not yet charged is produced or placed on the record during the hearing, other than a new violation based solely upon a voluntary admission by the offender during the hearing, and it is determined by the hearing officer that the new charge should be added to the statement of

charges for consideration, then a recess shall be declared by the hearing officer and a statement of any additional charge of violation of conditions of supervision shall be served upon the releasee in the same manner as that for the original statement of charges. The recess shall be for an appropriate interval of at least three days to permit the releasee to prepare a defense to any such additional charge, unless the releasee waives the three-day period and agrees to proceed with a hearing of the additional charge or charges within a shorter time period. Pending resumption of the hearing, the releasee shall remain incarcerated.

(d) The hearing shall be held at or reasonably near to the site of the arrest or commission of the alleged violation. The hearing may be held at a correctional facility.

(e) The releasee shall be entitled to call witnesses to appear on the releasee's behalf at the hearing.

(1) The hearing officer may restrict the witnesses to those who can testify to the facts relevant to the occurrence of the alleged violation. Character reference witnesses may be excluded.

(2) Witnesses may testify by telephone if the releasee is able to hear the testimony of the witness contemporaneously with the hearing officer.

(f) The releasee shall have the right to be made aware of adverse evidence. The releasee shall be allowed to cross-examine adverse witnesses unless the hearing officer decides that the witness could be physically harmed if the witness's identity is revealed.

(g) The hearing officer shall issue a written decision indicating whether or not there is probable cause to hold the releasee on each charge of violation of a condition of release and also indicating the evidence relied upon for each finding of probable cause. If a finding of probable cause is made on the basis of a voluntary admission by the releasee of any new violation during the hearing, then the hearing officer shall cause an amended statement of charges of condition violations reflecting the new condition violation or violations to be added to the record. The hearing officer shall then refer the case record to the board for a final revocation hearing, but a charge of violation of a condition of supervision shall not be referred to the board unless a finding of probable cause for that violation is included in the case record. The releasee shall be given a written statement of the basis for the decision and, if applicable, an amended statement of charges of condition violations.

(h) If the releasee had not previously been returned to a correctional facility, upon finding of probable cause, the releasee shall be returned to a correctional facility designated by the secretary of corrections pending a final revocation hearing by the board. (Authorized by K.S.A. 2011 Supp. 21-6609, as amended by L. 2011, ch. 130, §§ 2 and 3, K.S.A. 2011 Supp. 75-5210, K.S.A. 2011 Supp. 75-5217; implementing K.S.A. 2011 Supp. 22-3717, as amended by L. 2011, ch. 130, §§ 2 and 3, K.S.A. 75-5216, K.S.A. 2011 Supp. 75-5217; effective May 1, 1980; amended July 11, 1994; amended March 23, 2012.)

44-9-106. Expungement of record process explained to parolee. All persons who have been convicted and placed on probation or parole, and who are otherwise eligible for expungement of conviction record, shall be informed of the proper procedure to be followed in obtaining consideration from the court for the grant of an order expunging the record. (Authorized by K.S.A. 75-5251, K.S.A. 1979 Supp. 21-4619, 22-3717, 75-5210, 75-5210(b) and (f), 75-5215; effective May 1, 1980.)

44-9-107. House arrest program. All inmates and offenders under postincarceration supervision placed in the house arrest program shall be subject to the sanctions and conditions that are prescribed by the secretary in published internal management policies and procedures for house arrestees, ordered by the board, or otherwise permitted by law. (Authorized by and implementing K.S.A. 2011 Supp. 21-6609, as amended by L. 2011, ch. 130, §§ 2 and 3, and K.S.A. 2011 Supp. 22-3717, as amended by L. 2011, ch. 130, §§ 2 and 3; effective March 23, 2012.)

44-9-501. General provisions. Each offender who is returned on a violator warrant issued by the secretary shall be brought before the board as soon as practical for a final revocation hearing of postincarceration supervision or house arrest status, unless the offender is eligible for and chooses to waive the right to the hearing as provided in K.A.R. 44-9-504. At any time before a final revocation hearing is held under K.A.R. 44-9-502, the warrant may be withdrawn at the request of the secretary, and the offender may be rereleased on parole, conditional release, postrelease supervision, or house arrest. At that time, new conditions may be established, or the conditions of parole, conditional release, postrelease supervision, or

house arrest may be modified by the board. (Authorized by and implementing K.S.A. 2011 Supp. 21-6609, as amended by L. 2011, ch. 130, §§ 2 and 3, K.S.A. 2011 Supp. 22-3717, as amended by L. 2011, ch. 130, §§ 2 and 3, and K.S.A. 2011 Supp. 75-5217; effective March 23, 2012.)

44-9-502. Final revocation hearings. (a) After an offender is returned to a correctional facility under K.A.R. 44-9-501, the offender may request a hearing before the final decision on revocation by the board. Any offender on postrelease supervision or assigned to house arrest may waive the final revocation hearing as provided in K.A.R. 44-9-504. The final revocation hearing shall be held without unnecessary delay and shall be conducted by the board or any member of the board. After the board considers all pertinent evidence, an appropriate order shall be entered by the board. If the violation is established to the satisfaction of the board, the parole, conditional release, postrelease supervision, or assignment to house arrest may be reinstated, modified, or revoked by the board.

(b) Before the final revocation hearing, the following information shall be provided to the offender by the board:

(1) Written notice of the alleged violations of the conditions of release; and

(2) the evidence against the offender. If the board finds that there are additional violations other than those contained in the written notice, the hearing shall be continued so that a written notice of the additional violations and a statement of the evidence against the offender can be prepared.

(c) Each offender shall have the right to confront and cross-examine adverse witnesses, unless the board finds good cause for not allowing confrontation. If the board does not allow the offender to confront a witness, the evidence relied upon and the reasons for this determination shall be specified by the board. If the offender had the opportunity to cross-examine a witness at the probable cause hearing provided in K.A.R. 44-9-105, the record may be relied upon by the board, in lieu of calling that witness.

(d) Each offender shall have an opportunity to be heard in person and to present documentary evidence and witnesses who can provide information relevant to the allegations of the violation of the conditions of release or house arrest. The attendance of witnesses favorable to the offender shall be the responsibility of the offender and shall be at

the offender's expense. The hearing may be continued to allow for the attendance of witnesses.

(e) All relevant evidence, including letters and affidavits, shall be received by the board. If the violation of the conditions of release or house arrest results from a conviction for a new felony or misdemeanor, the only question considered by the board shall be whether or not the new conviction warrants revocation.

(f) Each offender shall be entitled to have legal counsel present at the hearing, at the offender's expense.

(1) Legal counsel may be appointed by the board upon the request of the inmate or on the board's own motion. The appointment of legal counsel shall be based upon either of the following claims by the offender, which shall be timely and on its face plausible:

(A) A claim that the offender has not committed the alleged violation of the conditions of release or house arrest; or

(B) A claim that there are substantial reasons that justify or mitigate the violation and make revocation inappropriate.

(2) The board's decision regarding the appointment of counsel shall take into account whether or not the offender is capable of speaking effectively for that individual and whether or not the circumstances are complex or otherwise difficult to develop or present.

(3) In all cases in which a request for appointed counsel at a preliminary hearing or final revocation hearing is denied, the grounds for denial shall be stated in writing.

(g) If the offender's release or assignment to house arrest is revoked, a written statement as to the evidence relied upon and reasons for revoking the release or assignment to house arrest shall be given to the offender by the board. (Authorized by and implementing K.S.A. 2011 Supp. 21-6609, as amended by L. 2011, ch. 130, §§ 2 and 3, K.S.A. 2011 Supp. 22-3717, as amended by L. 2011, ch. 130, §§ 2 and 3, and K.S.A. 2011 Supp. 75-5217; effective March 23, 2012.)

44-9-503. Sanctions; computation of time. (a)(1) Any offender whose parole has been revoked may be required by the board to serve all or any part of the remaining time on the sentence up to the original conditional release date, plus all good time forfeited by the board.

(2) Any offender whose conditional release has been revoked may be required by the board to

serve all or any part of the remaining time on the sentence.

(3) Each offender whose postrelease supervision has been revoked for reasons other than conviction of a new crime shall serve a six-month period of confinement beginning on the date of the final revocation hearing or the effective date of the waiver of the final revocation hearing under K.A.R. 44-9-504. The six-month period of confinement may be reduced by not more than three months based on the offender's conduct, work, and program participation during this incarceration period, in accordance with regulations adopted by the secretary.

(4) Each parole violator with a new conviction and sentence shall achieve parole eligibility for the new sentence or sentences as determined by K.S.A. 22-3717 and K.S.A. 21-6606, and amendments thereto, and in accordance with regulations adopted by the secretary.

(5) Each postrelease violator whose postrelease supervision has been revoked due to conviction of a new crime shall serve one of the following periods of time:

(A) If the new crime is a felony, a period of confinement equal to the entire remaining balance of postrelease supervision; or

(B) If the new crime is a misdemeanor, a period of confinement to be determined by the board, which shall not exceed the entire remaining balance of the period of postrelease supervision.

(6) Each inmate whose house arrest has been revoked shall serve the remaining balance of that inmate's underlying prison sentence incarcerated.

(b) Good time credits earned while on parole before the parole revocation date may be forfeited upon order of the board. Upon order of the board, the good time credits earned while on postrelease supervision may likewise be forfeited, before the postrelease supervision revocation date or the effective date of the waiver of the final revocation hearing.

(c) All of the available good time credits shall be withheld for the review period in which the revocation for house arrest occurs.

(d) Good time and program credits previously earned on the prison portion of the sentence of house arrestees may be forfeited by the disciplinary administrator in accordance with K.A.R. 44-6-115a(i) and K.A.R. 44-6-125(f).

(e) If the secretary has issued a warrant for the return of a released offender and it is determined that the warrant cannot be served, the released

offender shall be deemed to be a fugitive from justice. If it appears that this fugitive has violated any of the provisions of release, the time from the violation of the provision to the date of arrest, as determined by the department of corrections, shall not be counted as time served under the sentence unless approved by the board. (Authorized by and implementing K.S.A. 2011 Supp. 21-6609, as amended by L. 2011, ch. 130, §§ 2 and 3, K.S.A. 2011 Supp. 22-3717, as amended by L. 2011, ch. 130, §§ 2 and 3, and K.S.A. 2011 Supp. 75-5217; effective March 23, 2012.)

44-9-504. Waiver of final revocation hearing. (a)(1) For purposes of this regulation, “misdemeanor” shall mean a class A, B, or C misdemeanor or a criminal charge of an equivalent class under a city ordinance.

(2) For purposes of this regulation, “detainer” shall mean a warrant, electrical or electronic transmission, or written correspondence from a law enforcement or correctional agency citing a misdemeanor or felony charge or conviction in that jurisdiction that results from criminal activity that occurred during the current period of parole or postrelease supervision.

(b) Each supervised offender who is serving only a determinate sentence and who meets all of the following conditions shall be eligible to waive the final revocation hearing before the board:

(1) The offender is not charged with a condition violation alleging conviction of a new crime.

(2) The offender is not the subject of any pending criminal misdemeanor charge, felony charge, or detainer for a misdemeanor or felony. If an offender is arrested on a new felony charge and formal criminal charges are not filed by the county or district attorney within 10 days of the offender’s arrest, the offender shall be eligible to waive the final revocation hearing.

(3) The offender is detained in a Kansas correctional facility, jail, or detention center. A supervised offender serving an indeterminate sentence, or a sentence with a lifetime period of postrelease supervision, shall not be permitted to waive the final revocation hearing before the board.

(c) Any eligible offender may waive the final revocation hearing when the statement of condition violations is served, if the eligible offender simultaneously waives the preliminary hearing on those violations as provided by K.A.R. 44-9-105. If the offender elects not to waive the preliminary hearing, the revocation proceeding shall advance to a

preliminary hearing. If, after that hearing, probable cause is established in regard to at least one of the alleged condition violations, the offender shall again be afforded the opportunity to waive the final revocation hearing before the board.

(d) If, before the final revocation hearing, the board receives notice that the criminal charges or a pending detainer has been dismissed, the offender shall again be given the opportunity to waive the final revocation hearing.

(e) At the time of presentation of the written waiver form by parole services staff, each offender shall be orally advised of the following:

(1) Execution of the waiver form signifies that the offender admits to guilt on all condition violations charged, unless the hearing officer specifically finds that a condition violation is not supported by probable cause.

(2) The offender waives the right to counsel and the right to present witnesses or the offender’s own testimony to the board because no hearing will be held if the offender executes the waiver form.

(3) Upon receipt of the waiver form, the offender’s postrelease supervision may be continued, modified, or revoked by the board, or other orders may be entered by the board as the board sees fit.

(f) Each offender shall make an election by indicating in writing upon the waiver form whether or not the offender desires to accept the offer of waiver. The waiver shall be executed in the presence of parole services staff, or the offender shall acknowledge to parole services staff the authenticity of the offender’s signature upon the form, which shall then be executed by parole services staff in the capacity of witness. If the offender refuses to accept the waiver form or to execute it, the waiver shall be deemed rejected, and the revocation proceeding shall advance to the final revocation hearing before the board.

(g) Upon execution of the waiver form, the penalty period of incarceration prescribed by K.S.A. 75-5217(b), and amendments thereto, shall begin, unless the board continues the offender’s postrelease supervision. If a waiver is executed under circumstances described in subsection (d) of this regulation, the penalty period of incarceration shall begin on the date the criminal charge or pending detainer was dismissed. If an offender is detained on the basis of a felony arrest for which no formal charges are filed within a 10-day time frame, the penalty period of incarceration shall begin on the date the waiver is signed by the of-

fender or an earlier date determined by the board, which shall not precede the date on which that felony arrest warrant was issued.

(h) Each offender who is serving only a determinate sentence and who either was supervised in a foreign jurisdiction under terms of the interstate compact for adult offender supervision, K.S.A. 22-4110 and amendments thereto, or was apprehended in another state after absconding from Kansas supervision shall be afforded the opportunity to waive the final revocation hearing as provided in subsection (c). This opportunity shall be afforded upon the offender's return to a Kansas correctional facility. Presentation of the waiver form, the formalities of its execution, and the effect of the waiver shall be governed in all respects by the provisions of subsections (e), (f), and (g).

(i) A signed waiver of a final revocation hearing shall be deemed invalid if it is discovered that the offender has been convicted of a new misdemeanor or felony that occurred during a period of postrelease supervision on the current active sentence. Under these circumstances, the offender shall be docketed for a hearing before the board.

(j)(1) An offender shall not rescind a written waiver of final revocation hearing that is before the board unless the offender petitions the board, in writing and in the form directed by the board, and proves any of the following to the satisfaction of the board:

(A) The offender was under duress at the time of execution of the waiver form.

(B) The offender's execution of the waiver form was procured through fraud.

(C) The offender was not advised that execution of the waiver form constitutes admission of guilt of the charged condition violation or violations.

(D) The offender was not advised of the rights that the offender would forego by execution of the waiver form.

The petition for rescission shall be submitted to the board and postmarked on or before the date no later than 14 calendar days after the date of the allegedly defective waiver.

(2) If the board grants the offender's petition, the charge of any condition violation shall be rescheduled for a preliminary hearing or a final revocation hearing, as applicable. If postrelease supervision is revoked by the board at the final hearing and the offender is ordered to serve an incarceration penalty period, this penalty period shall begin on the date of the revocation.

(k) Each inmate assigned to house arrest shall be eligible to waive the final revocation hearing before the board as provided in subsections (c), (e), and (f).

(1) The inmate shall serve the remaining balance of the prison portion of the sentence incarcerated.

(2) The inmate may also be issued a disciplinary report based upon the facts underlying the revocation. (Authorized by and implementing K.S.A. 2011 Supp. 21-6609, as amended by L. 2011, ch. 130, §§ 2 and 3, K.S.A. 2011 Supp. 22-3717, as amended by L. 2011, ch. 130, §§ 2 and 3, and K.S.A. 2011 Supp. 75-5217; effective March 23, 2012.)

Article 11.—COMMUNITY CORRECTIONS

44-11-101 and 44-11-102. (Authorized by K.S.A. 1980 Supp. 75-5294; effective May 1, 1980; revoked May 1, 1981.)

44-11-103. (Authorized by K.S.A. 1980 Supp. 75-5294, 75-5299; effective May 1, 1980; revoked May 1, 1981.)

44-11-104. (Authorized by K.S.A. 1980 Supp. 75-5292(b), 75-5294, 75-5296(c), 75-52,101; effective May 1, 1980; revoked May 1, 1981.)

44-11-105. (Authorized by K.S.A. 1980 Supp. 75-5293, 75-5294, 75-5296; effective May 1, 1980; revoked May 1, 1981.)

44-11-106 and 44-11-107. (Authorized by K.S.A. 1980 Supp. 75-5294; effective May 1, 1980; revoked May 1, 1981.)

44-11-108. (Authorized by K.S.A. 1980 Supp. 75-5294, 75-5296; effective May 1, 1980; revoked May 1, 1981.)

44-11-109. (Authorized by K.S.A. 1980 Supp. 75-5294, 75-52,104; effective May 1, 1980; revoked May 1, 1981.)

44-11-110. (Authorized by K.S.A. 1980 Supp. 75-5294(a); effective May 1, 1980; revoked May 1, 1981.)

44-11-111. Definitions. (a) "Active cases" means those cases that have been supervised in a manner that is consistent with contact standards adopted by the secretary.

(b) "Community corrections agency" means the structure that exists or is proposed to exist within

a planning unit and that delivers the community corrections services outlined in a comprehensive plan.

(c) “Community corrections grant funds” means funds made available to a governing authority by the department of corrections, pursuant to the Kansas community corrections act, K.S.A. 75-5290 et seq. and amendments thereto.

(d) “Comprehensive plan” means the working document developed by a corrections advisory board at a frequency prescribed by the secretary, setting forth the objectives and services planned for a community corrections agency.

(e) “Corrections advisory board” means a board appointed by a governing authority to develop and oversee a comprehensive plan.

(f) “Governing authority” means any county or group of cooperating counties that has established a corrections advisory board for the purpose of establishing a community corrections agency.

(g) “Grant year” means the year covered in a community corrections agency’s comprehensive plan and shall be deemed to begin at the start of a state fiscal year.

(h) “Line items” means specific components comprising a major budget category.

(i) “Offender fees” means charges for drug and alcohol testing, electronic monitoring services, supervision services, housing in a residential center, and other services and assistance provided by community corrections agencies.

(j) “Program” means an adult intensive supervision program (AISP) or adult residential program (ARES) operated by a community corrections agency.

(k) “Reimbursements” means income generated by community corrections agencies and fees assessed and collected by community corrections agencies in prior fiscal years or in the current fiscal year, for expenses incurred.

(l) “Secretary” means the secretary of corrections.

(m) “Service” means a community corrections activity directed by a public or private agency to deliver interventions to offenders and assistance to victims, offenders, or the community.

(n) “Standards” means the minimum requirements of the secretary for the operation and management of community corrections agencies.

(o) “Unexpended funds” means state funds remaining in a program’s accounts at the close of a fiscal year that are not obligated for expenses incurred during that fiscal year or that have not been approved for expenditure by the secretary

beyond the fiscal year. (Authorized by K.S.A. 75-5294, 75-5296; implementing K.S.A. 2010 Supp. 75-5291, as amended by L. 2011, Ch. 30, Sec. 280, K.S.A. 2010 Supp. 75-5292, K.S.A. 75-5295, K.S.A. 75-5296, K.S.A. 2010 Supp. 75-5297, K.S.A. 75-52,102, K.S.A. 75-52,103, K.S.A. 2010 Supp. 75-52,105, K.S.A. 2010 Supp. 75-52,110; effective May 1, 1981; amended May 1, 1984; amended Feb. 6, 1989; amended March 5, 1990; amended July 23, 1990; amended March 29, 2002; amended June 1, 2007; amended Feb. 24, 2012.)

44-11-112. (Authorized by 75-5294; implementing K.S.A. 75-5293, as amended by L. 1989, ch. 92; effective May 1, 1981; amended March 5, 1990; revoked March 29, 2002.)

44-11-113. Comprehensive plan; comprehensive plan review. (a) The comprehensive plan shall be developed by the community corrections agency in collaboration with the corrections advisory board. The comprehensive plan shall minimally include the following:

- (1) An agency profile;
- (2) signatory approval of the community corrections agency’s director, the chairperson of the corrections advisory board, and the governing authority;
- (3) a list of the members of the advisory board, with descriptors that demonstrate compliance with K.S.A. 75-5297, and amendments thereto;
- (4) the name, mailing address, and phone number of the chairperson of the governing authority and, if any, the chairperson’s fax number and email address;
- (5) an agency summary of programmatic changes and significant events;
- (6) an organization chart;
- (7) personnel data;
- (8) new position data;
- (9) a description of collaboration that occurred or will occur to identify and address the community’s correctional needs;
- (10) a program description, including goals and objectives to be achieved, data elements to be collected, and services to be provided;
- (11) a new service description;
- (12) an explanation of the relationship among the governing authority, the corrections advisory board, the director of the community corrections agency, and the program or programs described in the comprehensive plan;

(13) a process for the advisory board to monitor the progress of the program or programs described in the plan;

(14) a timeline for implementation of the plan; and

(15) any other relevant information requested by the secretary in the comprehensive plan form.

(b) A summary budget, addressing awarded community corrections grant funds, and a detailed narrative describing each line item shall also be submitted annually as prescribed by the secretary.

(c) Agency outcomes shall be submitted on or before May 1 of each year in a format prescribed by the secretary.

(d) Each county desiring to establish a community corrections agency shall issue a resolution indicating this intent and include a copy of the resolution in its initial comprehensive plan. A county desiring to enter into an interlocal agreement with another county for the provision of community corrections services, as prescribed in K.S.A. 12-2901 through K.S.A. 12-2907 and amendments thereto, shall include an interlocal agreement, approved by the attorney general, in its initial comprehensive plan.

(e) A program review committee shall be appointed by the secretary to review each comprehensive plan. The committee shall make a recommendation to the secretary. The comprehensive plan shall be accepted, rejected, or accepted subject to specified modifications by the secretary. (Authorized by K.S.A. 75-5294, K.S.A. 75-5296, K.S.A. 75-52,102; implementing K.S.A. 2010 Supp. 75-5292, K.S.A. 75-5296, K.S.A. 75-5299, K.S.A. 75-52,102; effective May 1, 1981; amended Feb. 6, 1989; amended May 15, 1989; amended March 5, 1990; amended March 29, 2002; amended June 1, 2007; amended Feb. 24, 2012.)

44-11-114. (Authorized by and implementing K.S.A. 75-5294, K.S.A. 75-5292, as amended by L. 1989, ch. 92, K.S.A. 75-52,102, as amended by L. 1989, ch. 92; effective May 1, 1981; amended Feb. 6, 1989; amended March 5, 1990; revoked March 29, 2002.)

44-11-115. (Authorized by K.S.A. 1980 Supp. 75-5294; implementing K.S.A. 1980 Supp. 75-5292(b), 75-52,102(a); effective May 1, 1981; revoked March 29, 2002.)

44-11-116. (Authorized by and implementing K.S.A. 75-5292, 75-5294, 75-52,104; effective

May 1, 1981; amended Feb. 6, 1989; revoked March 5, 1990.)

44-11-117 and 44-11-118. (Authorized by K.S.A. 1980 Supp. 75-5294; implementing K.S.A. 1980 Supp. 75-5296(b); effective May 1, 1981; revoked May 1, 1984.)

44-11-119. Local programs. (a) A comprehensive plan may provide for community corrections programs to be administered by public or private agencies. A governing authority may enter into a contractual or other written agreement with a private agency to operate programs identified in the comprehensive plan or to provide specialized services to program participants.

(b) An annual audit of all programs identified in the comprehensive plan shall be conducted as prescribed by the secretary. The audit may consist of a fiscal audit, standard compliance audit, performance audit, data accuracy audit, or any other type of review prescribed by the secretary.

(c) Each community corrections agency shall submit notice of the date, time, and location of each advisory board meeting to the deputy secretary of community and field services at least one working day before the scheduled meeting. Each community corrections agency shall submit a copy of the minutes of each advisory board meeting to the secretary within 30 working days after each meeting. (Authorized by K.S.A. 75-5294, 75-5296; implementing K.S.A. 75-5295, 75-5296, 75-52,103; effective May 1, 1981; amended Feb. 6, 1989; amended March 29, 2002; amended Feb. 24, 2012.)

44-11-120. Cash match for other grant funds. A governing authority, in its comprehensive plan submitted to the secretary, may propose to use a portion of community corrections grant funds as a cash match for a grant from another source and may use these funds in this manner only if proposed in the plan and approved by the secretary. (Authorized by K.S.A. 75-5294, 75-5296; implementing K.S.A. 75-5295, 75-52,103; effective May 1, 1981; amended March 29, 2002.)

44-11-121. Fiscal management; required reporting. (a) Each governing authority shall designate one person to be responsible for all fiscal matters related to the community corrections grant funds received. This person shall comply with generally accepted accounting principles governing the management of county funds and shall provide

information to the corrections advisory board and the secretary on a quarterly basis unless the secretary determines the existence of circumstances that warrant a change in frequency of reporting.

(b) Each county receiving grant funds shall submit, by either original or electronic copy to the secretary, all portions of its annual financial audit pertaining to community corrections grant funds, including the report's cover letter and any exceptions applicable to community corrections grant funds, in the manner provided by K.S.A. 75-1124, and amendments thereto, within 60 calendar days after receipt by the county.

(c) All reimbursements maintained from current and prior fiscal years, collected, and expended by a community corrections agency shall be included in the fiscal workbook and the quarterly reconciliation budget report and certification documents.

(d) Within 60 calendar days after the end of each state fiscal year, each community corrections agency shall submit, by either original or electronic copy to the secretary, a plan approved by the corrections advisory board and governing authority for the use of the reimbursements.

(e) (1) If a community corrections agency complies with the requirements in subsections (c) and (d), the agency shall retain its reimbursements and use them in accordance with its approved plan.

(2) If a community corrections agency chooses not to comply with the requirements in subsections (c) and (d), all current reimbursements and those carried over from previous years may be deducted by the secretary from the agency's current or future allocations. These deductions shall be placed by the secretary in a special fund designated for community corrections.

(3) Agencies, except those that chose not to comply with the requirements in subsections (c) and (d) during the state fiscal year in question, may apply for these special funds to maintain or enhance current funded services or add new services, or support or enhance agency operations, or any combination of these uses. (Authorized by K.S.A. 75-5294, K.S.A. 75-5296; implementing K.S.A. 75-5296, K.S.A. 75-52,103, K.S.A. 2010 Supp. 75-52,105 and 75-52,111; effective May 1, 1981; amended Feb. 6, 1989; amended May 15, 1989; amended March 5, 1990; amended March 29, 2002; amended Feb. 24, 2012.)

44-11-122. (Authorized by and implementing K.S.A. 75-5294, 75-5296, as amended by L. 1989, ch. 92; effective May 1, 1981; amended

Feb. 6, 1989; amended March 5, 1990; revoked March 29, 2002.)

44-11-123. Changes in the comprehensive plan, budget, and agency outcomes. (a) If a community corrections agency wishes to change or deviate from the comprehensive plan or agency outcomes, the agency may do so if approval of the corrections advisory board or governing authority is first obtained. Documentation of approval shall be reflected in the board meeting minutes.

(b) Quarterly grant or carryover reimbursement budget adjustments totaling \$5,000 or one percent of the current grant year award, whichever is higher, shall require signatory approval of the corrections advisory board and the governing authority. The community corrections agency shall submit, by either original or electronic copy to the secretary, documentation of signatory approval along with a description of and justification for the proposed transfer. (Authorized by K.S.A. 75-5294, 75-5296; implementing K.S.A. 2010 Supp. 75-5292, K.S.A. 75-5296, K.S.A. 75-52,102; effective May 1, 1981; amended Feb. 6, 1989; amended May 15, 1989; amended March 5, 1990; amended July 23, 1990; amended March 29, 2002; amended June 1, 2007; amended Feb. 24, 2012.)

44-11-124. (Authorized by K.S.A. 1980 Supp. 75-5294; implementing K.S.A. 1980 Supp. 75-52,103; effective May 1, 1981; revoked March 29, 2002.)

44-11-125. (Authorized by and implementing K.S.A. 75-5294, 75-52,104, 75-52,105; effective May 1, 1981; amended, T-84-6, March 29, 1983; amended May 1, 1984; amended May 1, 1986; revoked Feb. 6, 1989.)

44-11-126. (Authorized by K.S.A. 1980 Supp. 75-5294; implementing K.S.A. 1980 Supp. 75-52,106; effective May 1, 1981; revoked March 5, 1990.)

44-11-127. Prohibition of use of community corrections grant funds; maintenance and documentation of funds. (a) A governing authority shall not use community corrections grant funds to replace available public or private funding of existing programs.

(b) A governing authority may request community corrections grant funds to continue an existing program that would otherwise cease due to the exhaustion of public or private funds that had been

specifically allocated to the program as startup monies with a predetermined termination date.

(c) A governing authority may request community corrections grant funds to supplement existing public or private funding of an existing program if these community corrections grant funds would enhance services.

(d) Community corrections grant funds for adult services shall be maintained in a separate county general ledger account.

(e) Community corrections grant funds shall not be expended for services, supplies, equipment, or the payment of rent beyond the grant year in which the services, supplies, equipment, or payments are received or due. Only expenditures incurred within the grant year shall be charged to the community corrections grant.

(f) All community corrections expenditures shall have supporting documentation.

(g) Community corrections grant funds shall not be used to fund depreciation.

(h) Community corrections grant funds shall be expended and obligated for operation and management of programs for adult offenders only. Nothing in this regulation shall prohibit the use of state community corrections grant funds to purchase equipment, supplies, and services shared by programs for adult and juvenile offenders if the use by the adult program is proportionate to the monetary contribution of that program.

(i) Community corrections grant funds shall not be expended and obligated for association memberships for individuals. Community corrections grant funds may be expended and obligated by community corrections agencies for staff uniforms or clothing and for association memberships for the agency if specifically authorized by the agency's policies and procedures. Nothing in this regulation shall prohibit housing, transportation, clothing, and billing assistance to indigent offenders, or the acquisition of necessary safety equipment for staff, including bulletproof vests and latex gloves. (Authorized by K.S.A. 75-5294; implementing K.S.A. 2010 Supp. 75-5291, K.S.A. 75-5296, K.S.A. 75-52,103, K.S.A. 2010 Supp. 75-52,105; effective, E-82-25, Dec. 16, 1981; effective May 1, 1982; amended March 29, 2002; amended Feb. 24, 2012.)

44-11-128. (Authorized by and implementing K.S.A. 75-5296 and 75-52,105; effective May 1, 1984; amended Feb. 6, 1989; revoked March 5, 1990.)

44-11-129. Unexpended funds. (a) Unexpended funds may be transferred by the secretary to another county or counties. Any county may make application to the secretary for the unexpended funds. The county shall provide the secretary with a statement of why the funds are necessary, documentation of need, a budget summary and narrative describing the proposed services, and, if the funds are for a new program, a listing of measurable goals and objectives. The county shall be notified by the secretary of approval or disapproval of the application within 60 calendar days after the application due date.

(b) Any community corrections agency may use approved unexpended funds to maintain or enhance current funded services or to support or enhance agency operations, or any combination of these uses as specified in the application. (Authorized by K.S.A. 75-5294; implementing K.S.A. 75-52,103; effective Feb. 6, 1989; amended March 5, 1990; amended March 29, 2002; amended Feb. 24, 2012.)

44-11-130. Use of grant funds for real estate acquisition and capital construction; use of grant funds for the purchase of property and supplies. (a) Real estate acquisition and capital construction.

(1) Grant funds may be used for the purchase of real estate, land, or buildings, or for capital construction with the approval of the secretary of corrections. This approval may be granted only upon receipt and concurrence by the secretary of an amortization schedule covering the costs of purchase or construction, or both. The amortization schedule shall be such that the annual payments shall not exceed the cost of rent or lease payments for comparable space in the same market. Notification of completion of the acquisition or capital construction shall be filed by the program director in writing with the secretary. The prior approval of the secretary shall be required to cease use of the property for community corrections purposes. If the property ceases to be used for community corrections purposes during the period of amortization, the secretary shall have the option of either of the following:

(A) Requiring the county to refund the total amount of community corrections funds expended for purchase or construction, or both, to date including previous years; or

(B) assuming any remaining indebtedness and acquiring title to the property.

(2) Once the amortization period is completed, if the secretary has not exercised either option described above, title shall rest with the county, and any claim to the property shall be relinquished by the secretary. At no time shall the department of corrections or the state of Kansas be responsible for indebtedness for these transactions except as provided under paragraph (a)(1)(B).

(3) The governing authority shall not charge rent to a community corrections agency for lease of real estate acquired with state community corrections funds, unless only a portion of the real estate was purchased with state community corrections funds. If only a portion of the real estate was acquired using community corrections funds, any rent charged to a community corrections agency shall be commensurate with space occupied by the community corrections agency and the percentage of real estate not paid by state community corrections. Nothing in these regulations shall prevent a governing authority for charging a community corrections agency for maintenance and utilities for real estate purchased with state community corrections funds.

(b) Purchase of property and supplies.

(1) State community corrections grant funds may be used to purchase property with an expected service life of one year or more. Property and supplies purchased with community corrections grant funds shall remain with the community corrections program for its use. An inventory shall be maintained of all property purchases at a cost of \$1,000.00 or more as prescribed by the secretary, including amortization amounts of real estate purchases, renovations, and capital improvements. If property is acquired using more than one funding source, the amount of each contribution and the source of the contribution shall be recorded on the agency's inventory.

(2) If a community correction program ceases using property or supplies for community corrections purposes and the property and supplies have an aggregate value of over \$75.00, the community corrections agency shall have the option of one of the following:

(A) Transferring the property or supplies to the county and requiring the county to refund to the community corrections agency or state, if the agency has ceased operations, the fair market value of the property;

(B) transferring the property or supplies to the state; or

(C) selling the property or supplies and receiving

compensation, in cash, services, or goods, in the amount of the fair market value of the property.

(3) Transfers of property or aggregate supplies purchased for over \$1,000 shall require prior notice to the secretary. All funds received by a community corrections agency as a result of property disposal shall be used as an offset to the expenses in that line item in the agency's current fiscal year budget.

(4) If a community correction program ceases using for community corrections purposes any property or supplies that have an aggregate value of \$75.00 or less, the property shall be deleted from the agency's inventory as unusable, and the agency shall adhere to local county policy to dispose of the property or supplies. Such property or supplies may be transferred to the inventory of a non-profit agency.

(5) If a community corrections program with property or supplies acquired by using funds from multiple funding sources ceases using the property or supplies or disbands to form more than one program, the value of the property and supplies in proportion to the contribution to its purchase price by community corrections grant funds, minimally, shall be the value retained by the agency, through sale, reimbursement by the other fund, or trade or barter. (Authorized by K.S.A. 75-5294, 75-5296; implementing K.S.A. 2000 Supp. 75-5291, K.S.A. 75-5296; effective March 5, 1990; amended March 29, 2002.)

44-11-131. Use of grant funds for remodeling or renovation. (a) Grant funds may be used to remodel or renovate space for community corrections use. Any remodeling or renovation with an aggregate cost of \$5,000 or more shall require the prior approval of the secretary. This space may be rented, leased, or owned by the county. Plans detailing the nature and cost of the renovation or remodeling shall be provided to the secretary at the time funds are requested for that purpose. Notification of completion of the renovation or remodeling shall be filed by the program director in writing with the secretary within 30 calendar days of completion of the work. Within 30 calendar days, completion of the work shall be verified by the secretary.

(b) If the renovated or remodeled property ceases to be used for community corrections purposes for reasons other than fire, flood, or other such occurrences that render the property unusable or continued use financially impractical,

within five years of the date on which the secretary verified completion of the work, the county or counties shall immediately notify the secretary of the same and shall refund the amount expended for remodeling or renovation, or both.

(c) Leases that include renovation or remodeling costs shall clearly delineate those costs from basic space costs. A copy of the lease shall be provided to the secretary upon execution. Community corrections agencies shall be required to amortize over the period of the lease, not to exceed five years, the value of remodeling and renovations. The amortized value shall be noted in the agency's property inventory. (Authorized by K.S.A. 75-5294, 75-5296; implementing K.S.A. 75-5295, 75-5296; effective March 5, 1990; amended March 29, 2002.)

44-11-132. Use of grant funds to contract for services. (a) Grant funds may be used to contract for services or to provide services directly.

(b) Each community corrections agency shall make all contracts between the agency and other entities and individuals available to the secretary for review. (Authorized by K.S.A. 75-5294, 75-5296; implementing K.S.A. 75-5295, 75-5296; effective March 5, 1990; amended March 29, 2002; amended Feb. 24, 2012.)

44-11-133. Use of grant funds to purchase jail space. Grant funds may be used to purchase jail space for purposes of operating a work release program. Grant funds shall not be used to purchase jail space as part of a sentence or to detain an offender pending revocation proceedings. Each community corrections program shall provide a copy of each contract between the program and any detention facility to the secretary at the time of execution. The contract shall specify the purposes for which the purchased jail space will be used and shall acknowledge the restrictions of use imposed by this regulation. (Authorized by K.S.A. 75-5294, 75-5296; implementing K.S.A. 75-5295; effective March 5, 1990; amended March 29, 2002.)

44-11-134. Urinalysis tests for controlled substances. (a) Community corrections programs operating urinalysis testing equipment may seek exemption from department of health and environment requirements by making application for exemption to the secretary of corrections. Programs shall be required to document all testing procedures, the training of the personnel collecting the test samples, the training of the personnel operating the

equipment, and a summary of their record keeping procedures. If the documentation review is found to be satisfactory, a designee of the secretary may personally inspect the testing site. If approval for exemption is granted, it shall be limited to approval for the test results to be used for management purposes only. Management decisions which can appropriately be based on these test results include:

- (1) Changes in levels of supervision;
- (2) movement from intensive supervised probation to house arrest or residential services;
- (3) imposition of community service sanctions; and
- (4) requirement to participate in treatment.

(b) Test results shall not be considered sufficient for purposes of revocation which result in commitment to the custody of the secretary of corrections. Urinalysis test results used for such purposes must be performed by a laboratory approved by the secretary of health and environment. (Authorized by K.S.A. 75-5294, 75-5296, as amended by L. 1989, ch. 92; implementing K.S.A. 1988 Supp. 65-1,108, as amended by L. 1989, ch. 92; effective March 5, 1990.)

44-11-135. Use of grant funds for copyrights and patents; research projects. (a) An item that is developed, designed, or otherwise created with community corrections funds and that is copyrighted, patented, or placed under similar restrictions shall be made available to state agencies and other community corrections programs. The holder of the copyright, patent, or other restriction may recover justified expenses but shall not profit from the sale of these items to state agencies and other community corrections programs.

(b) Research conducted by a community corrections agency or with use of community corrections resources, including staff, funds, and services, shall become part of the public domain. (Authorized by and implementing K.S.A. 75-5294, 75-5296; effective March 5, 1990; amended March 29, 2002.)

Article 12.—CONDUCT AND PENALTIES

44-12-101. Inmate clothing. (a) Turn-in and issuance. Inmates shall turn in all personal clothing upon admission to a facility. Clothing furnished by the state facility shall be worn by all inmates unless exception is granted by the principal administrator with the approval of the secretary of corrections. Inmates shall not wear or have in their possession any other clothing, or clothing in

excess of the authorized issue, unless specifically authorized by principal administrator's orders.

(b) Principal administrator's order. Inmates shall follow the principal administrator's orders in regard to the clothing, care, and handling procedure.

(c) No inmate clothing will be given special treatment at the laundry, clothing distribution room, or elsewhere. Exchange of clothing shall be made according to established schedules and procedures. Inmates shall keep their clothing as neat and clean as conditions permit. Violation of this rule shall be a class III offense. (Authorized by and implementing K.S.A. 1990 Supp. 75-5210; effective May 1, 1980; amended April 20, 1992.)

44-12-102. Personal cleanliness. Inmates shall shower or bathe a minimum of once a week. Inmates shall brush their teeth a minimum of once a day. Violation of this rule shall be a class III offense. (Authorized by and implementing K.S.A. 1990 Supp. 75-5210; effective May 1, 1980; amended April 20, 1992.)

44-12-103. Tattoos, body piercing, and body markings. (a) Inmates shall not place on or remove from, or allow to be placed on or removed from their body any tattoo or body marking, nor shall they place on or remove from the body of another inmate any tattoo or body marking. Removal or alteration of tattoos or body markings shall be performed by a medical officer after written approval has been given by the warden.

(b) Inmates shall not pierce their own bodies or the body of another inmate. Inmates shall not allow their bodies to be pierced by another inmate. Any cosmetic piercing of an inmate's body shall be performed by a physician, dentist, or other medical personnel exempted from licensure requirements according to K.S.A. 65-1941 and amendments thereto, after written approval has been given by the warden. Cosmetic piercing shall be permitted only upon a showing of medical necessity certified by a physician or dentist.

(c) Inmates shall not maintain an existing body piercing hole or opening.

(d) Violation of this regulation shall be a class II offense. (Authorized by and implementing K.S.A. 2005 Supp. 75-5210; effective May 1, 1980; amended Feb. 15, 2002; amended July 13, 2007.)

44-12-104. Care of living quarters. Every inmate shall keep his or her living quarters in a neat, clean and sanitary condition. Clothing shall be neatly hung or stored in designated places.

Beds shall be made at all times when not in use. Linens shall be exchanged in accordance with the established facility procedures. Wash basins and toilet bowls shall be kept clean. No alteration, painting of, or addition to any assigned quarters or its equipment shall be made without approval according to the orders of the institution or facility. Violation of this rule shall be a class III offense. (Authorized by and implementing K.S.A. 1990 Supp. 75-5210; effective May 1, 1980; amended April 20, 1992.)

44-12-105. Unsanitary practices. (a) No inmate shall throw trash of any kind upon the floors, sidewalks, or grounds of any facility. All rubbish shall be placed in the containers provided for that purpose. No inmate shall spit upon the floors, sidewalks, and grounds or within any facility building. Violation of this subsection shall be a class III offense.

(b) No inmate shall collect, smear, or throw body wastes. No inmate shall urinate or defecate upon the floors, sidewalks, or grounds of any facility. Violation of this subsection shall be a class I offense.

(c) Alternatively, violation of this regulation may be handled according to the summary disposition procedure set forth in K.A.R. 44-13-201b. (Authorized by and implementing K.S.A. 2006 Supp. 75-5210; effective May 1, 1980; amended April 20, 1992; amended Feb. 15, 2002; amended July 13, 2007.)

44-12-106. Hair standards and appearance. (a) Each inmate shall keep the inmate's hair neat and clean and follow reasonable health and safety standards. When working in food services, each inmate shall wear a cook's hat, or net, or both for sanitary purposes. Inmates working in food services shall not have facial hair in excess of one inch in length or shall wear beard nets, and shall keep this hair neat and clean.

(b) Violation of this regulation shall be a class III offense. (Authorized by and implementing K.S.A. 2006 Supp. 75-5210; effective May 1, 1980; amended May 1, 1987; amended Feb. 15, 2002; amended July 13, 2007.)

44-12-107. Use of safety devices. Each inmate shall use safety devices provided in accordance with the orders of the warden. Violation of this regulation shall be a class II offense. Alternatively, violation of this regulation may be handled according to the summary disposition procedure

set forth in K.A.R. 44-13-201b. (Authorized by and implementing K.S.A. 2006 Supp. 75-5210; effective May 1, 1980; amended Feb. 15, 2002; amended July 13, 2007.)

44-12-201. Registration and use of personal property. (a) It shall be the responsibility of each inmate to make certain that any items of personal property in the inmate's possession as designated by department of corrections internal management policy and procedure or orders of the warden are properly registered. Each inmate shall be required, upon demand, to produce any personal property registered in the inmate's name or issued to the inmate, unless previously reported lost according to proper procedure.

(b) Violation of this regulation shall be a class II offense.

This amendment shall be effective on and after February 15, 2002. (Authorized by and implementing K.S.A. 75-5210; effective May 1, 1980; amended May 1, 1981; amended April 20, 1992; amended Feb. 15, 2002.)

44-12-202. Radios, televisions, musical instruments, and other sound equipment. (a) All personal radios, televisions, and other electronic sound equipment shall be played only in accordance with the orders of the warden. The size, type, and capacity of this equipment shall be limited by internal management policies and procedures issued by the secretary of corrections. All such equipment, including all musical instruments, shall be possessed and used in accordance with the orders of the warden.

(b) Violation of this regulation shall be a class III offense.

This amendment shall be effective on and after February 15, 2002. (Authorized by and implementing K.S.A. 75-5210; effective May 1, 1980; amended May 1, 1981; amended May 1, 1985; amended April 20, 1992; amended Feb. 15, 2002.)

44-12-203. Theft. (a) Theft shall include any of the following acts done with intent to deprive the owner permanently of the possession, use, or benefit of the owner's property or services:

(1) Obtaining or exerting unauthorized control over property or services;

(2) obtaining, by deception, control over property or services;

(3) obtaining, by threat, control over property or services; or

(4) obtaining control over stolen property or services and knowing the property or services to have been stolen by another.

(b) Violation of this regulation shall be a class I offense.

This amendment shall be effective on and after February 15, 2002. (Authorized by and implementing K.S.A. 75-5210; effective May 1, 1980; amended Feb. 15, 2002.)

44-12-204. Taking without permission. (a) No inmate shall take without permission, regardless of the intent, articles of any kind from any other person or place, nor shall the inmate obtain these articles by fraud or dishonesty.

(b) Violation of this regulation shall be a class II offense. Alternatively, violation of this regulation may be handled according to the summary disposition procedure set forth in K.A.R. 44-13-201b.

This amendment shall be effective on and after February 15, 2002. (Authorized by and implementing K.S.A. 75-5210; effective May 1, 1980; amended April 20, 1992; amended Feb. 15, 2002.)

44-12-205. Unauthorized dealing and trading. (a) Trading, borrowing, loaning, giving, receiving, selling, and buying goods, services, or any item with economic value between or among inmates without written permission of the warden or designee shall be prohibited.

(b) Violation of this regulation shall be a class II offense. Alternatively, violation of this regulation may be handled according to the summary disposition procedure set forth in K.A.R. 44-13-201b.

This amendment shall be effective on and after February 15, 2002. (Authorized by and implementing K.S.A. 75-5210; effective May 1, 1980; amended May 1, 1988; amended April 20, 1992; amended Feb. 15, 2002.)

44-12-206. Debt adjustment or collection prohibited. All debt adjustment or collection among inmates is strictly prohibited. Violation of this rule shall be a class II offense. (Authorized by K.S.A. 1979 Supp. 75-5210, 75-5210(f); effective May 1, 1980.)

44-12-207. Gambling and bookmaking. An inmate shall not make any bet, operate or bank any gambling pool or game, keep book, or engage in any form of gambling. An inmate shall not possess, transfer, sell, distribute, nor obtain dice or other gambling paraphernalia. An inmate shall not receive, possess, distribute, sell, nor transfer lot-

tery tickets. Violation of this rule shall be a class II offense. (Authorized by and implementing K.S.A. 75-5210; effective May 1, 1980; amended May 1, 1988.)

44-12-208. Misuse of state property. No inmate shall destroy, damage, deface, alter, misuse, or fail to return when due any article of property owned by the state, whether issued by the department of corrections or another state agency, including clothing and shoes. Normal wear and tear to clothing and shoes shall be excepted from this regulation. Violation of this regulation shall be a class II offense. (Authorized by and implementing K.S.A. 2005 Supp. 75-5210; effective May 1, 1980; amended April 20, 1992; amended July 13, 2007.)

44-12-209. Entering into contracts, incurring financial obligations. No inmate shall enter into a contract, or incur any financial obligation, including orders by mail, without the principal administrator's approval. Violation of this rule shall be a class III offense. (Authorized by and implementing K.S.A. 1990 Supp. 75-5210; effective May 1, 1980; amended May 1, 1981; amended April 20, 1992.)

44-12-210. Accounts. No inmate shall establish or have access to any checking or savings account outside the trust fund while confined in a correctional facility. Violation of this regulation shall be a class II offense. (Authorized by K.S.A. 2006 Supp. 75-5210; implementing K.S.A. 2006 Supp. 75-5210, K.S.A. 75-5251; effective May 1, 1980; amended May 1, 1981; amended Feb. 15, 2002; amended July 13, 2007.)

44-12-211. Telephones or other communication devices. (a) When using any authorized inmate telephone, no inmate shall perform or engage in any of the following:

(1) Use another inmate's personalized identification number (PIN) or permit another inmate to use the inmate's PIN;

(2) be a party to call forwarding;

(3) call any telephone number not listed on the inmate's authorized calling list;

(4) participate in any call involving a party at a phone number other than that originally called, including receiving information relayed by an intermediary, and either relaying or receiving information over any telephone service other than that authorized by the secretary of corrections for inmate usage;

(5) initiate any call to a party on the inmate's authorized calling list and then permit the telephone to be used by another inmate, whether in speaking to the authorized party or to another party;

(6) use the telephone in furtherance of any illegal activity; or

(7) use the telephone to communicate or attempt to communicate with a minor, unless correspondence with the minor is authorized by K.A.R. 44-12-601.

(b) Except as specified in subsection (a), the use or possession of any telephone or any communication device by an inmate without the permission of the warden or warden's designee shall be prohibited.

(c) For purposes of this regulation, "minor" shall mean a person under the age of 18.

(d) Violation of this regulation shall be a class I offense. (Authorized by and implementing K.S.A. 2013 Supp. 75-5210; effective July 13, 2007; amended June 20, 2014.)

44-12-212. Accessing unauthorized computer-based information; unauthorized computer communications. (a) No inmate shall perform any of the following:

(1) Access, or attempt to access, any information, data, images, or other material residing on or stored in any computer or available through any computer network, unless the information, data, images, or other material has been authorized for inmate access by the secretary of corrections and established and maintained by the information technology division of the department of corrections for that purpose;

(2) communicate or attempt to communicate with a minor through any computer or computer network, unless correspondence with the minor is authorized by K.A.R. 44-12-601; or

(3) communicate or attempt to communicate with any person through use of another inmate's authorized electronic mail account.

(b) For purposes of this regulation, "minor" shall mean a person under the age of 18.

(c) Violation of this regulation shall be a class I offense. (Authorized by and implementing K.S.A. 2013 Supp. 75-5210; effective July 13, 2007; amended June 20, 2014.)

44-12-301. Fighting. (a) Fighting or any other activity that constitutes violence or is likely to lead to violence shall be prohibited.

(b) It shall be an affirmative defense, for which

the offender shall bear the sole burden of proof, if the offender is engaged in self-defense.

(c) Violation of this regulation shall be a class I offense. (Authorized by and implementing K.S.A. 2015 Supp. 75-5210; effective May 1, 1980; amended April 20, 1992; amended, T-44-8-16-16, Aug. 16, 2016; amended Nov. 4, 2016.)

44-12-302. Noise. Inappropriate booing, whistling, shouting, or other loud and disturbing noises are not permitted. Violation of this rule shall be a class III offense. (Authorized by K.S.A. 1979 Supp. 75-5210, 75-5210(f); effective May 1, 1980.)

44-12-303. Lying. (a) Every inmate shall speak the truth. No inmate shall lie, misrepresent the facts, mislead, or give false or misleading information to an officer, employee, or any other person assigned to supervise inmates or others having a right to know. No inmate shall make any false allegations against any officer, employee, inmate, or other person.

(b) Violation of this regulation shall be a class II offense. Alternatively, violation of this regulation may be handled according to the summary disposition procedure set forth in K.A.R. 44-13-201b.

This amendment shall be effective on and after February 15, 2002. (Authorized by and implementing K.S.A. 75-5210; effective May 1, 1980; amended Feb. 15, 2002.)

44-12-304. Disobeying orders. (a) Each inmate shall promptly and respectfully obey any order, directive, or instruction given to the inmate by any employee of the facility, or by an employee of any other agency or of an organization or firm in charge of the inmate. In case of conflicting orders, the last order shall be obeyed.

(b) If an order is violated, the specific circumstances surrounding the violation charge shall be included in the following:

- (1) The disciplinary report bringing the charge;
- (2) the investigation report, if any; and
- (3) if used, the report writer's written statement in lieu of testimony.

(c) Violation of this regulation shall be a class I offense. (Authorized by and implementing K.S.A. 2005 Supp. 75-5210; effective May 1, 1980; amended, T-83-23, Aug. 11, 1982; amended, T-84-1, Jan. 5, 1983; amended May 1, 1984; amended May 1, 1987; amended July 13, 2007.)

44-12-305. Insubordination or disrespect to officers or other employees. (a) Each

inmate shall be attentive and respectful towards employees, visitors, and officials. The showing of disrespect, directly or indirectly, or being argumentative in any manner shall be considered insubordination. This regulation shall exclude an initial exchange or discussion in a civilized tone for the purpose of clarification of the order if the exchange or discussion is not disrespectful or argumentative.

(b) Violation of this regulation shall be a class II offense. Alternatively, violation of this regulation may be handled according to the summary disposition procedure set forth in K.A.R. 44-13-201b.

This amendment shall be effective on and after February 15, 2002. (Authorized by and implementing K.S.A. 75-5210; effective May 1, 1980; amended Feb. 15, 2002.)

44-12-306. Threatening or intimidating any person. (a) An inmate shall not threaten or intimidate, either directly or indirectly, any person or organization.

This regulation shall specifically prohibit conditional threats or intimidation. Violation of this subsection shall be a class I offense.

(b) A civilized warning by the inmate that the inmate may properly use legal process to enforce rights or redress wrongs, including use of the inmate grievance procedure, shall not be considered a violation of this regulation.

(c) The subjective impression of the target of the alleged threat or intimidation shall not be a factor in proving a violation of subsection (a). (Authorized by and implementing K.S.A. 2006 Supp. 75-5210; effective May 1, 1980; amended May 1, 1984; amended May 1, 1986; amended Feb. 15, 2002; amended July 13, 2007.)

44-12-307. Avoiding an officer. No inmate shall run from or deliberately avoid any officer, supervisor, or employee if required, ordered, or requested to be present to talk with, be accounted for, be searched, or be questioned by the officer, supervisor, or employee. Violation of this regulation shall be a class I offense.

This amendment shall be effective on and after February 15, 2002. (Authorized by and implementing K.S.A. 75-5210; effective May 1, 1980; amended April 20, 1992; amended Feb. 15, 2002.)

44-12-308. Improper use of prepared or served food. No inmate shall accept more prepared or served food or drink than the inmate will consume. No inmate shall wastefully and delib-

erately destroy prepared or served food. Inmates shall not carry any prepared or served food or drink from the dining area, except as allowed under the facility orders. Violation of this regulation shall be a class III offense. (Authorized by and implementing K.S.A. 2006 Supp. 75-5210; effective May 1, 1980; amended April 20, 1992; amended July 13, 2007.)

44-12-309. Kitchen utensils and shop tools. (a) No inmate shall remove or have in possession any eating or cooking utensils or tools without proper authorization.

(b) Violation of this regulation shall be a class II offense. However, possession of utensils or tools may be considered possession of dangerous contraband and punishable as a class I offense. Alternatively, violation of this regulation may be handled according to the summary disposition procedure set forth in K.A.R. 44-13-201b.

This amendment shall be effective on and after February 15, 2002. (Authorized by and implementing K.S.A. 75-5210; effective May 1, 1980; amended April 20, 1992; amended Feb. 15, 2002.)

44-12-310. Misconduct in dining room.

(a) All inmates shall enter and leave the dining room in accordance with the established procedure at each facility, and shall conduct themselves in an orderly manner while in the dining room.

(b) Violation of this regulation shall be a class II offense. Alternatively, violation of this regulation may be handled according to the summary disposition procedure set forth in K.A.R. 44-13-201b.

This amendment shall be effective on and after February 15, 2002. (Authorized by K.S.A. 75-5210; implementing K.S.A. 75-5210, 75-5251; effective May 1, 1980; amended Feb. 15, 2002.)

44-12-311. Being in a condition of drunkenness, intoxication, state of altered consciousness. No inmate shall at any time be drunk, intoxicated, or be in a chemically induced state of altered consciousness. Violation of this rule shall be a class I offense. (Authorized by K.S.A. 1979 Supp. 75-5210, 75-5210(f); effective May 1, 1980.)

44-12-312. Use of stimulants, sedatives, unauthorized drugs, or narcotics, or the misuse or hoarding of authorized or prescribed medication. (a) No inmate shall take into the bodily system any kind of substance that is capable of producing intoxication, hallucination, stim-

ulation, depression, dizziness, or other alteration of the inmate's state of consciousness or feeling, except approved foods, including coffee and tea, and legal drugs, including medication properly and legally prescribed or authorized for a specific inmate by an authorized licensed physician. Alcohol in any form shall be specifically declared not to be an approved food or drink unless it is a component of authorized or prescribed medication.

(b) Misusing, hoarding, tampering with, or defacing any authorized or prescribed medication shall be prohibited.

(1) "Misusing" medication shall mean using any medication for a purpose other than that for which the medication was specifically authorized or prescribed. This shall include either of the following:

(A) Keeping the medication beyond the stop date, as designated by the health care provider; or

(B) Dealing and trading prescribed medications within the meaning of K.A.R. 44-12-205.

(2) "Hoarding" medication shall mean having possession or control of or holding any quantity of authorized or prescribed medication greater than an amount or dosage that has been issued to the inmate by medical staff, or greater than the amount that should be remaining if the inmate has taken the medication in accordance with the prescription and instructions from medical staff. Approved over-the-counter medications shall be purchased and possessed only in reasonably consumable quantities.

(3) "Tampering with or defacing" shall mean altering or disfiguring the original packaging of a medication or removing the medication from the original packaging and placing the medication in any other bottle or container.

(c) No inmate shall leave the infirmary or any area where medication is issued while in possession or control of any medication unless removal of the medication from this area has been authorized by medical staff.

(d) Each of the following by an inmate shall create a presumption that the inmate has used a substance prohibited for consumption by this regulation and shall constitute a violation of this regulation:

(1) Refusal to provide a urine sample or other sample of bodily fluid or tissue pursuant to an authorized alternate substance abuse testing method;

(2) failure to provide a urine sample or other sample of bodily fluid or tissue of sufficient quantity; or

(3) failure to provide any sample of urine, bodily fluid, or tissue within two and one-half hours. A bona fide medical or psychological condition verified by a duly licensed practitioner that prevents or hampers the provision of any sample within a period of two and one-half hours shall constitute a defense to this charge.

(e) Violation of this regulation shall be a class I offense. (Authorized by and implementing K.S.A. 2006 Supp. 75-5210; effective May 1, 1980; amended April 20, 1992; amended Feb. 15, 2002; amended July 13, 2007.)

44-12-313. Sexually explicit materials. (a) No inmate shall have in possession or under control any sexually explicit materials, including drawings, paintings, writing, pictures, items, and devices.

(b) The material shall be considered sexually explicit if the purpose of the material is sexual arousal or gratification and the material meets either of the following conditions:

(1) Contains nudity, which shall be defined as the depiction or display of any state of undress in which the human genitals, pubic region, buttock, or female breast at a point below the top of the areola is less than completely and opaquely covered; or

(2) contains any display, actual or simulated, or description of any of the following:

(A) Sexual intercourse or sodomy, including genital-genital, oral-genital, anal-genital, and anal-oral contact, whether between persons of the same or differing gender;

(B) masturbation;

(C) bestiality; or

(D) sadomasochistic abuse.

(c) Each violation of this regulation by inmates classified as sex offenders shall be a class I violation.

(d) Each violation of this regulation by inmates not classified as sex offenders shall be a class II violation.

(e) Each violation of this regulation by any inmate if the sexually explicit material depicts, describes, or exploits any child under the age of 18 years shall be a class I offense. (Authorized by and implementing K.S.A. 2003 Supp. 75-5210; effective May 1, 1980; amended April 20, 1992; amended Feb. 15, 2002; amended, T-44-3-19-04, March 19, 2004; amended July 2, 2004.)

44-12-314. Sexual activity; aggravated sexual activity; sodomy; aggravated sodomy.

(a) No inmate shall commit or induce others to

commit an act of sexual intercourse or sodomy, even with the consent of both parties. Participation in such an act shall be prohibited.

(b) No inmate shall force or intimidate another person to engage in sexual intercourse or sodomy. No inmate shall solicit or arrange for the application of force or intimidation by another person in order to engage in sexual intercourse or sodomy with another person. No inmate shall participate in any scheme or arrangement to force or intimidate another person to engage in sexual intercourse or sodomy.

(c) (1) Sexual intercourse shall mean any penetration of the female sex organ by a finger, the male sex organ, or any object. Any penetration, however slight, shall be deemed sufficient to constitute sexual intercourse.

(2) Sodomy shall be defined as any of the following:

(A) Oral contact with or oral penetration of the female genitalia or oral contact with the male genitalia;

(B) anal penetration, however slight, of a male or female by any body part or object; or

(C) oral or anal copulation or sexual intercourse between a person and an animal.

(d) Violation of this regulation shall be a class I offense.

This amendment shall be effective on and after February 15, 2002. (Authorized by and implementing K.S.A. 75-5210, 75-5251; effective May 1, 1980; amended May 1, 1984; amended April 20, 1992; amended Feb. 15, 2002.)

44-12-315. Lewd acts. (a) No inmate shall engage in a lewd or lascivious manner in any act of kissing, fondling, touching, or embracing, whether with a person of the same or opposite sex.

(b) An inmate shall not intentionally expose or manipulate a sex organ with the knowledge or reasonable anticipation that the inmate will be viewed by others or with the intent to arouse or gratify the sexual desires of the inmate or another. A violation of this regulation shall be a class I offense. (Authorized by and implementing K.S.A. 2006 Supp. 75-5210; effective May 1, 1980; amended May 1, 1981; amended April 20, 1992; amended July 13, 2007.)

44-12-316. (Authorized by and implementing K.S.A. 1982 Supp. 75-5210; effective May 1, 1980; amended May 1, 1984; revoked April 20, 1992.)

44-12-317. Falsifying documents. No inmate shall falsify any document. Violation of this rule shall be a class II offense. (Authorized by and

implementing K.S.A. 1990 Supp. 75-5210; effective May 1, 1980; amended April 20, 1992.)

44-12-318. Disruptive behavior. (a) No inmate shall start or get others to start, or perform or participate in, or help others to perform or participate in any disruptive behavior.

(b) Violation of this regulation shall be a class II offense. Alternatively, violation of this regulation may be handled according to the summary disposition procedure set forth in K.A.R. 44-13-201b.

This amendment shall be effective on and after February 15, 2002. (Authorized by K.S.A. 75-5210; implementing K.S.A. 75-5210, 75-5251; effective May 1, 1980; amended Feb. 15, 2002.)

44-12-319. Riot or incitement to riot.

(a) Riot is any use of force or violence by three or more persons acting together and without the authority of law which produces a breach of the peace on the premises of a correctional facility whether within or without the security perimeter itself, or any threat to use such force or violence against any person or property, if accompanied by power or apparent power of immediate execution.

(b) Incitement to riot is urging others by words or conduct to engage in riot under circumstances which produce a clear and present danger of injury to persons or property, or a breach of the peace. Violation of this rule shall be a class I offense. (Authorized by and implementing K.S.A. 1990 Supp. 75-5210; effective May 1, 1980; amended April 20, 1992.)

44-12-320. This revocation shall be effective on and after February 15, 2002. (Authorized by K.S.A. 1979 Supp. 75-5210, 75-5210(f); effective May 1, 1980; revoked Feb. 15, 2002.)

44-12-320a. Interfering with official duties. No inmate shall intentionally disrupt, sabotage, impede, or interfere with the performance of official duties by any officer, employee, or contract employee. Violation of this regulation shall be a class I offense. (Authorized by and implementing K.S.A. 2006 Supp. 75-5210; effective July 13, 2007.)

44-12-321. Conduct regarding visitors or the public. (a) Each inmate shall treat visitors and members of the public in a respectful and helpful manner. Each inmate shall comply with the orders of the warden regarding contact with visitors and the public and shall maintain a dignified and respectful demeanor while in the presence of these individuals.

(b) Violation of this regulation shall be a class II offense.

This amendment shall be effective on and after February 15, 2002. (Authorized by and implementing K.S.A. 75-5210; effective May 1, 1980; amended April 20, 1992; amended Feb. 15, 2002.)

44-12-322. Arson. Arson is knowingly, by means of fire or explosive, damaging any property. Violation of this rule shall be a class I offense. (Authorized by K.S.A. 1979 Supp. 75-5210, 75-5210(f); effective May 1, 1980.)

44-12-323. Assault. An assault is an intentional threat or attempt to do bodily harm to another, coupled with apparent or recognizable ability to carry out the threat or attempt, and resulting in immediate apprehension or fear of bodily harm. No bodily contact is necessary. Violation shall be a class I offense. (Authorized by and implementing K.S.A. 1990 Supp. 75-5210; effective May 1, 1980; amended April 20, 1992.)

44-12-324. Battery. Battery is the unlawful or unauthorized, intentional touching or application of force to the person of another, when done in a rude, insolent, or angry manner. Violation of this rule shall be a class I offense. (Authorized by and implementing K.S.A. 1990 Supp. 75-5210; effective May 1, 1980; amended April 20, 1992.)

44-12-325. Security threat groups; inmate activity; limitations. (a) No proselytizing of religious faiths or beliefs shall be allowed in the facilities. "Proselytizing" shall be defined as an active effort to persuade a person to convert to a religious belief without the person's prior consent. However, nothing in this regulation shall prohibit one-to-one conversation about religious matters. Violation of this subsection shall be a class III offense.

(b) Inmates shall not serve in the capacity of clergy or religious instructors at any time except for purposes of K.A.R. 44-7-113, on recommendation of chaplain and the approval of the warden. Violation of this subsection shall be a class III offense.

(c) Inmates shall not develop, organize, promote, or assist any security threat group and shall not engage in any activity calculated to incite a demonstration by any security threat group. Inmates shall not possess any item, whether in its original condition or in an altered state, associated or identified with any security threat group. "Se-

curity threat group” shall mean any ongoing formal or informal organization, association, or group of three or more persons with a common name or identifying sign or symbol, but without specific approval by the warden. Violation of this subsection shall be a class I offense. (Authorized by and implementing K.S.A. 2005 Supp. 75-5210; effective May 1, 1980; amended May 1, 1981; amended April 20, 1992; amended Feb. 15, 2002; amended July 13, 2007.)

44-12-326. This revocation shall be effective on and after February 15, 2002. (Authorized by and implementing K.S.A. 1990 Supp. 75-5210; effective, T-84-32, Nov. 23, 1983; effective May 1, 1984; amended April 20, 1992; revoked Feb. 15, 2002.)

44-12-327. Interference with restraints. (a) No inmate shall interfere with or assist other inmates in interfering in any way with handcuffs or other restraints that have been, or are being, applied to the inmate by an officer or employee. An inmate shall not remove or attempt to remove that inmate or another inmate from handcuffs or other restraints without approval of an officer or employee.

(b) Violation of this regulation shall be a class I offense.

This amendment shall be effective on and after February 15, 2002. (Authorized by and implementing K.S.A. 75-5210; effective May 1, 1988; amended Feb. 15, 2002.)

44-12-328. Undue familiarity. (a) No inmate shall solicit, encourage, establish, or participate in any type of personal relationship with any staff member, contract personnel, volunteer, or employee of any other organization in charge of the inmate. A personal relationship shall be defined as any relationship involving unnecessary familiarity by the inmate toward any such individual. Any contact between an inmate and staff member other than a polite exchange of remarks or casual conversation shall be limited to that contact necessary to allow any such individual to carry out official duties and provide authorized assistance to the inmate in a professional manner.

(b) Violation of this regulation shall be a class I offense.

This amendment shall be effective on and after February 15, 2002. (Authorized by and implementing K.S.A. 75-5210; effective April 20, 1992; amended Feb. 15, 2002.)

44-12-401. Work performance. (a) No inmate shall intentionally interfere with, delay, or disrupt work in progress, or sabotage the work, machinery, systems, or products, nor shall any inmate assist or participate in these actions. Violation of this subsection shall be a class I offense.

(b) Each inmate shall perform work assigned in the manner prescribed and according to the directives of the inmate’s supervisor or other authorized official. Intentional failure to report to or depart from work at the prescribed time and without unnecessary delay en route shall be prohibited. Violation of this subsection shall be a class II offense. Alternatively, violation of this subsection may be handled according to the summary disposition procedure set forth in K.A.R. 44-13-201b.

(c) No inmate shall slow the work progress through carelessness or neglect. Violation of this subsection shall be a class II offense. Alternatively, violation of this subsection may be handled according to the summary disposition procedure set forth in K.A.R. 44-13-201b.

(d) No inmate shall be tardy for work. Violation of this subsection shall be a class III offense.

(e) “Work,” as used in this regulation, shall include any work assignment, educational, vocational, treatment, or training program to which an inmate has been assigned.

This amendment shall be effective on and after February 15, 2002. (Authorized by and implementing K.S.A. 75-5210; effective May 1, 1980; amended May 1, 1988; amended April 20, 1992; amended Feb. 15, 2002.)

44-12-501. Answering calls or passes. (a) Each inmate shall respond promptly to all calls made for the inmate and shall move from place to place as required by the orders of the facility. No inmate shall destroy a pass issued to that inmate. Each inmate shall present a pass to the proper person at the time and place indicated on the pass.

(b) Violation of this regulation shall be a class III offense.

This amendment shall be effective on and after February 15, 2002. (Authorized by and implementing K.S.A. 75-5210; effective May 1, 1980; amended April 20, 1992; amended Feb. 15, 2002.)

44-12-502. Responsibility for counts. Every inmate shall be present at the proper time and place of counts, in accordance with the orders of the principal administrator. Causing a

delay that renders the count inaccurate or more difficult, or failure to be present during the count process shall be considered as fouling count. Violation of this rule shall be a class I offense. (Authorized by and implementing K.S.A. 1990 Supp. 75-5210; effective May 1, 1980; amended April 20, 1992.)

44-12-503. Restricted area and unauthorized presence or out-of-place in assigned domicile. (a) Restricted area. Each inmate shall be aware of all restricted areas. No inmate shall enter a restricted area without a direct order by a correctional employee authorized to render this order or unless expressly permitted in writing by the warden. Violation of this subsection shall be a class II offense. Alternatively, violation of this subsection may be handled according to the summary disposition procedure set forth in K.A.R. 44-13-201b.

(b) Unauthorized presence. No inmate shall be present in any area without authorization. If a pass is required, the inmate shall show the pass when required to do so. Specific permission or authorization, whether verbal or written, shall be required for an inmate to be present at any location at any time. Violation of this subsection shall be a class III offense.

(c) Out-of-place in assigned domicile. An inmate shall not roam about in the housing unit and shall not be any place in the housing unit without permission of the unit team. This subsection shall apply to conditions where the inmate's presence generally in the living unit itself is otherwise authorized. Violation of this subsection shall be a class III offense.

This amendment shall be effective on and after February 15, 2002. (Authorized by and implementing K.S.A. 75-5210; effective May 1, 1980; amended April 20, 1992; amended Feb. 15, 2002.)

44-12-504. Interference with cell operation and visibility. (a) No inmate shall block or otherwise interfere with the operation of the cell opening and closing mechanism in any way, including food passage ports or slots. No inmate shall cover the inmate's cell, including food passage ports or slots, so as to block visibility into the cell, except as allowed by the warden's orders.

(b) Violation of this regulation shall be a class I offense.

This amendment shall be effective on and after February 15, 2002. (Authorized by and imple-

menting K.S.A. 75-5210; effective May 1, 1980; amended May 1, 1987; amended Feb. 15, 2002.)

44-12-505. Restriction. No inmate shall avoid, break, or violate the terms of a restriction which has been imposed upon him or her. Violation of this rule shall be a class II offense. (Authorized by K.S.A. 1979 Supp. 75-5210, 75-5210(f); effective May 1, 1980.)

44-12-505b. Medical restriction. In order not to aggravate any injury, illness, or other medical condition, no inmate shall participate in any work or recreational activities, or partake of food items, in violation of a documented medical restriction that the inmate has received. Violation of this regulation shall be a class III offense.

This amendment shall be effective on and after February 15, 2002. (Authorized by and implementing K.S.A. 75-5210; effective April 20, 1992; amended Feb. 15, 2002.)

44-12-506. Change of name as it appears on journal entry of sentence, convictions. In all matters an inmate shall respond to officials when addressed by the name under which he was committed to the custody of the secretary of corrections until discharged from sentence. An inmate shall be referred to in all official transactions, and all correspondence to and from the inmate, under the name used in the journal entry of convictions and commitment throughout his or her period of incarceration. In the event of a legal name change, the records may reflect the new name as an alias and the inmate may use the alias name in parentheses after the conviction name. All directives to, references to, or orders to an inmate by his convicted name shall be complied with regardless of the fact that he or she may have changed his or her name. No charge shall be made against any inmate under this rule because the inmate is the addressee of any mail, phone call, document or other communication under the non-conviction name unless it is alleged and proven that the inmate was knowing and willing conspirator or instigator of such use of non-conviction name. Violation of this rule shall be a class II offense. (Authorized by K.S.A. 1979 Supp. 75-5210, 75-5210(f); effective May 1, 1980.)

44-12-601. Mail. (a) Definitions.

(1)(A) "Legal mail" means mail affecting the inmate's right of access to the courts or legal coun-

sel. This term shall be limited to letters between the inmate and any lawyer, a judge, a clerk of a court, or any intern or employee of a lawyer or law firm, legal clinic, or legal services organization, including legal services for prisoners.

(B) "Official mail" means any mail between an inmate and an official of the state or federal government who has authority to control, or to obtain or conduct an investigation of, the custody or conditions of confinement of the inmate.

(C) "Privileged mail" means any mail between the inmate and the inmate's physician, psychiatrist, psychologist, or other licensed mental health therapist.

(2)(A) "Censor" means to remove or change any part or all of the correspondence or literature.

(B) "Inspect" means to open, shake out, look through, feel, or otherwise check for contraband without reading or censoring. This term shall include any cursory reading necessary to verify that mail is legal or official in nature as permitted by paragraph (f)(3).

(C) "Read" means to read the contents of correspondence or literature to ascertain the content.

(3) "Minor" means a person under the age of 18.

(4) "Bodily substance" means blood, fecal matter, nasal or sinus mucous or secretions, perspiration, saliva, semen, skin or other tissue, sputum, tears, urine, or vaginal secretions.

(b) General provisions.

(1) Each inmate shall comply with the mail procedures and restrictions established by the order of the warden of the facility. Failure to comply with mail procedures or restrictions, or circumventing or attempting to circumvent mail procedures or restrictions by any means, shall be prohibited. The delivery of mail through an employee, volunteer, teacher, or any other person who is not authorized to perform functions related to the established mail-handling system shall be prohibited.

(2) Contraband. Items identified as contraband shall be dealt with as provided in subsection (d) and then either returned to the sender at the inmate's expense or destroyed, at the inmate's option. Items illegal under Kansas or U.S. federal law shall be seized and held as evidence for other law enforcement officers.

(3) All incoming mail shall identify the inmate recipient by name and inmate identification number.

(4) Violation of mail regulations of the department of corrections, orders of the warden, or the laws of Kansas or the United States may result in

additional mail restrictions upon the offender that are sufficient to prevent the continuation or recurrence of the violation.

(5) All funds sent for deposit to an inmate's trust account shall be in the form of an electronic funds transfer sent through an entity under contract with the department of corrections to conduct those transactions. These funds shall be sent to the centralized banking location or individual work release location designated by the secretary. All other funds sent for deposit to an inmate's trust account, other than governmental checks, warrants, and worker's compensation benefit checks, shall be returned immediately to the sender, and the intended inmate recipient shall be so notified in writing, without need of formal censorship. Except for correspondence qualifying as legal mail in which funds are enclosed in an envelope clearly marked as such, correspondence or other material sent with funds shall not be forwarded and shall be discarded.

(6) Any incoming or outgoing mail other than legal, official, or privileged mail may be inspected or read at any time.

(7) Incoming mail addressed solely to a specific inmate and not otherwise subject to censorship shall be delivered regardless of whether the mail is sent free of charge or at a reduced rate. All incoming mail shall nonetheless bear the sender's name and address on the envelope, or this mail shall not be delivered and shall be immediately destroyed.

(8) Any outgoing first-class letters may be sent to as many people and to whomever the inmate chooses, subject to the restrictions in this regulation.

(9) Outgoing inmate mail shall bear the full conviction name, inmate number, and address of the sender, and the name and address of the intended recipient. No other words, drawings, or messages shall be placed on the outside of the envelope or package by an inmate except words describing the mail as being legal, official, privileged, or intended to aid postal officials in delivery of the item. Outgoing inmate mail shall be stamped by the facility to indicate that it was mailed from a facility operated by the department of corrections and that it has not been censored.

(10) Inmates shall not correspond with any person, either directly or through third parties, who has filed a written objection to the correspondence with the director of victim services in the department of corrections central office. The director of victim services in the department of corrections central office shall notify the warden of the facility

where the offender is incarcerated of any written objections to correspondence sent by the offender within three business days of its receipt.

(A) The inmate shall be notified of the objection in writing when it is received, but shall not be required to be informed of the exact contents of the objection.

(B) Orders shall be developed by the warden of each facility to prevent further correspondence from being sent to those who have filed an objection.

(C) This regulation shall not prevent an inmate from writing to the inmate's natural or adoptive child, unless the child was the victim of the crime for which the inmate is incarcerated, the person having legal custody of the child files a written objection with the director of victim services in the department of corrections central office, and the inmate has not obtained a court order permitting this written communication with the child. The director of victim services in the department of corrections shall inform the warden of the facility where the inmate is assigned of any objection from the person having legal custody of the child within three business days of its receipt.

(11)(A) No inmate shall correspond with a minor, either directly or through any third party, unless one of the following conditions is met:

(i) A parent or legal guardian of the minor has filed written authorization for the correspondence between the inmate and the minor with the director of victim services in the department of corrections central office.

(ii) If the minor is the inmate's natural or adoptive child, the correspondence is authorized pursuant to paragraph (b)(10)(C), and the inmate has registered the child by providing the name, date of birth, and address of the natural or adoptive child to the director of victim services.

(B) The director of victim services shall notify the warden of the facility where the inmate is incarcerated of any written authorization for correspondence with a minor who is not the natural or adoptive child of the inmate, as well as the registration information of the inmate's natural or adoptive child.

(12) An inmate shall not mail or attempt to mail any of the following:

- (A) Any bodily substance;
- (B) a substance represented by the inmate as being a bodily substance; or
- (C) a substance that a reasonable person would conclude is a bodily substance.

(c) Legal, official, and privileged mail.

(1) Subject to the provisions of paragraph (f)(3), outgoing privileged, official, or legal mail sent by any inmate shall be opened and read only upon authorization of the warden for good cause shown. However, if any inmate threatens or terrorizes any person through this mail, any subsequent mail, including official or legal mail, from the inmate to the person threatened or terrorized may, at the request of that person, be read and censored for a time period and to the extent necessary to remedy the abuse.

(2) Incoming mail clearly identified as legal, official, or privileged mail shall be opened only in the inmate's presence. This mail shall be inspected for contraband but shall not be read or censored, unless authorized by the warden based upon a documented previous abuse of the right or other good cause.

(3) All legal mail and official mail shall be indefinitely forwarded to the inmate's last known address. If any mail is returned to a facility as undeliverable when sent to the inmate's last known address, the mail shall be returned to the sender with a notice that the mail was forwarded unsuccessfully and is now returned to the sender for further disposition.

(d) Censorship grounds and procedures.

(1) Incoming or outgoing mail, other than legal, official, or privileged mail, may be censored only when there is reasonable belief in any of the following:

(A) There is a threat to institutional safety, order, or security.

(B) There is a threat to the safety and security of public officials or the general public.

(C) The mail is being used in furtherance of illegal activities.

(D) The mail is correspondence between offenders, including any former inmate regardless of current custodial status, that has not been authorized according to subsection (e). Correspondence between offenders may be inspected or read at any time.

(E) The mail contains sexually explicit material, as defined and proscribed by K.A.R. 44-12-313.

(2) If any communication to or from an inmate is censored, all of the following requirements shall be met:

(A) Each inmate shall be given a written notice of the censorship and the reason for the censorship, without disclosing the censored material.

(B) Each inmate shall be given the name and

address of the sender of incoming mail, if known, or the addressee of outgoing mail and the date the item was received in the mail room. Notice of the censorship of correspondence by the facility shall be provided to the sender, if known, by staff in the facility's mail room within three business days of the decision to censor.

(C) The author or addressee of the censored correspondence shall have 15 business days from the date of the notice of censorship to protest that decision.

(D) All protests shall be forwarded to the secretary of corrections or the secretary's designee for final review and disposition.

(E) Each inmate shall have the option of having censored correspondence or other materials in their entirety either mailed out at the expense of the inmate or discarded.

(e) Offender correspondence with other offenders.

Offenders sentenced to the custody of the Kansas department of corrections shall not correspond with any person who is in the custody of or under the supervision of any state, federal, county, community corrections, or municipal law enforcement agency, or with any former inmate regardless of current custodial status, unless either of the following conditions is met:

(1) The proposed correspondents are members of the same immediate family or are parties in the same legal action, or one of the persons is a party and the other person is a witness in the same legal action.

(2) Permission for correspondence is granted due to exceptional circumstances. Verification and approval of offender correspondence shall be conducted pursuant to the internal policies and procedures of the department of corrections.

(f) Writing supplies and postage.

(1) Stationery and stamps shall be available for purchase from the inmate canteen.

(2) Indigent inmates, as defined by the internal management policies and procedures of the department of corrections, shall receive reasonable amounts of free writing paper, envelopes, and postage for first-class domestic mail weighing one ounce or less, not to exceed four letters per month.

(3) All postage for legal and official mail shall be paid by the inmate, unless the inmate is indigent, as defined by the internal management policies and procedures of the department of corrections. The cost of postage for legal or official mail paid by the facility on behalf of an indigent inmate shall

be deducted from the inmate's funds, if available. Credit for postage for legal and official mail shall be extended to indigent inmates under the terms and conditions of the internal management policies and procedures of the department of corrections. Outgoing legal or official mail sent with postage provided on credit shall be subject to inspection and a cursory reading in the presence of the inmate for the purpose of ascertaining that the mail is indeed legal or official mail, and the inmate shall then be permitted to seal the envelope containing the mail.

(4) The facility shall not pay postage for inmate groups or organizations.

(5) The mailing of postage stamps by an offender shall be prohibited.

(g) Publications.

(1) Inmates may receive books, newspapers, and periodicals as permitted by the internal management policies and procedures of the department of corrections. All books, newspapers, and periodicals shall be purchased through account withdrawal requests. Only books, newspapers, and periodicals received directly from a publisher or a vendor shall be accepted. However, an inmate shall be permitted to receive printed material, including newspaper and magazine clippings, if the material is included as part of a first-class letter that does not exceed one ounce in total weight.

(2) The procedures for censorship of mail listed in subsection (d) shall be used for censorship of publications.

(3) No publication that meets either of the following conditions shall be allowed into the facility:

(A) Contains sexually explicit material, as described in K.A.R. 44-12-313, or is otherwise illegal, in whole or in part; or

(B) meets, in whole or in part, the test for censorship of mail in subsection (d).

(4) Inmates shall have the option of having censored publications in their entirety either mailed out of the facility at their own expense or discarded.

(5) Before transferring between facilities, the inmate shall arrange for a change of address for the inmate's mail, including newspapers and periodicals. Mail, with the exception of legal mail or official mail, shall not be forwarded for more than 30 days after the date of transfer.

(h) Regulation violation. Each violation of this regulation shall be a class I offense. (Authorized by K.S.A. 2013 Supp. 75-5210, K.S.A. 2013 Supp. 75-5251; implementing K.S.A. 2013 Supp. 75-5210, K.S.A. 2013 Supp. 75-5251, and K.S.A. 75-5256; effective May 1, 1980; amended May

1, 1981; amended May 1, 1984; amended May 1, 1986; amended May 1, 1988; amended April 20, 1992; amended Jan. 3, 1995; amended April 17, 1998; amended Feb. 15, 2002; amended, T-44-3-19-04, March 19, 2004; amended July 2, 2004; amended July 13, 2007; amended June 20, 2014.)

44-12-602. Posting notices. No inmate may post or distribute any written communications without the written approval of the warden or designee. Violation of this regulation shall be a class II offense.

This amendment shall be effective on and after February 15, 2002. (Authorized by and implementing K.S.A. 75-5210; effective May 1, 1980; amended April 20, 1992; amended Feb. 15, 2002.)

44-12-701. (Authorized by K.S.A. 1979 Supp. 75-5210, 75-5210(f); effective May 1, 1980; revoked April 20, 1992.)

44-12-702. Legal assistance by inmates. In accordance with applicable rules of the facility, an inmate may give, but shall not charge for, assistance in legal matters to another inmate if the assistance is requested by the other inmate. Violation of this regulation shall be a class II offense.

This amendment shall be effective on and after February 15, 2002. (Authorized by K.S.A. 75-5210; implementing K.S.A. 75-5210, 75-5251; effective May 1, 1980; amended Feb. 15, 2002.)

44-12-801. Bulletin boards. (a) No inmate shall remove any item from any bulletin board. Each inmate shall be held responsible for compliance with orders published by posting on the bulletin boards. Bulletin boards shall be used by and shall be under the exclusive control of the warden or designee.

(b) Violation of this regulation shall be a class II offense.

This amendment shall be effective on and after February 15, 2002. (Authorized by K.S.A. 75-5210; implementing K.S.A. 75-5210, 75-5251; effective May 1, 1980; amended Feb. 15, 2002.)

44-12-901. Dangerous contraband. (a) Dangerous contraband shall be defined as any of the following:

(1) Any item, or any ingredient or part of or instructions on the creation of an item, that is inherently capable of causing damage or injury to persons or property, or is capable or likely to produce or precipitate dangerous situations or conflict, and that is not issued by the department

of corrections or the facilities, sold through the canteen, or specifically authorized or permitted by order of the secretary of corrections or warden for use or possession in designated areas of the facility;

(2) any item that can be the basis for a charge of felony for its possession under the laws of Kansas or the United States; or

(3) any item that, although authorized, is misused if the item in its misused form has the characteristics of being able to cause damage or injury to persons or property or being likely to precipitate dangerous situations or conflicts.

(b) All contraband shall be confiscated and shall be ordered forfeited by the inmate.

(c) No inmate shall possess, hold, sell, transfer, receive, control, or distribute any dangerous contraband.

Violation of this regulation shall be a class I offense. (Authorized by and implementing K.S.A. 2006 Supp. 75-5210; effective May 1, 1980; amended May 1, 1981; amended April 20, 1992; amended July 13, 2007.)

44-12-902. Contraband. (a) Contraband shall be defined as either of the following:

(1) Any item, or any ingredient or part of or instructions for the creation of the item, that is not issued by the department of corrections, sold through the facility canteen, or specifically authorized or permitted by order of the secretary of corrections or warden for use or possession in designated areas of the facility; or

(2) any item that, although authorized, is misused in a way that causes some danger or injury to persons or property.

(b) All contraband shall be confiscated and shall be ordered forfeited by the inmate.

(c) No inmate shall possess, hold, sell, transfer, receive, control, or distribute any type of contraband. Violation of this subsection shall be a class II offense.

(d) No inmate shall possess papers, bottles, containers, trash, or any other items in excess of those limits established by regulation, internal management policies and procedures, and facility general orders. The possession of excess items described in this subsection shall be considered nuisance contraband and shall be a class III offense.

(e) Alternatively, violation of this regulation may be handled according to the summary disposition procedure set forth in K.A.R. 44-13-201b. (Authorized by and implementing K.S.A. 2006 Supp.

75-5210, K.S.A. 75-5251; effective May 1, 1980; amended April 20, 1992; amended Feb. 15, 2002; amended July 13, 2007.)

44-12-903. Tobacco contraband. (a) For the purposes of this regulation, each of the following terms shall have the meaning specified in this subsection:

(1) "Tobacco products" means cigarettes, cigars, pipe tobacco, loose-leaf tobacco, chewing tobacco, and smokeless tobacco. This term shall not include pharmacological aids for smoking cessation approved by the food and drug administration.

(2) "Tobacco substitutes" means any substance ingested by smoking, and any herbal or leaf-based replacements for chewing tobacco. This term shall not include any controlled substance, as defined by K.S.A. 65-4101(e) and amendments thereto.

(3) "Smoking paraphernalia" means pipes, lighters, matches, altered batteries, cigarette papers, rolling machines, and all other items fabricated, developed, or processed for the primary purpose of facilitating the use or possession of tobacco products or tobacco substitutes.

(b) No inmate shall possess, hold, sell, transfer, receive, control, or distribute tobacco products, tobacco substitutes, or smoking paraphernalia, except as specified in subsection (d).

(c) No inmate shall possess, hold, sell, transfer, receive, or control tobacco products, tobacco substitutes, or smoking paraphernalia that is intended to be introduced or distributed upon the grounds of a correctional facility.

(d) Inmates may engage in bona fide religious activities sanctioned by the warden of the facility involving the use and possession of tobacco products, tobacco substitutes, and smoking paraphernalia as permitted by and in accordance with the terms of internal management policies and procedures of the secretary.

(e) Violation of this regulation shall be a class I offense. (Authorized by and implementing K.S.A. 2006 Supp. 75-5210; effective July 13, 2007.)

44-12-1001. Violation of statutes, other regulations, or orders. (a) Unless otherwise designated in this rule book, violation of state or federal statutes shall be a class I offense if the statute is a felony crime. A violation shall be a class II offense if the statute designates a misdemeanor criminal offense.

(b) Unless otherwise designated in this rule

book, violation of any civil penalty statute or any regulation shall be a class III offense. (Authorized by and implementing K.S.A. 1990 Supp. 75-5210; effective May 1, 1981; amended April 20, 1992.)

44-12-1002. Violation of published internal management policies and procedures or of published orders. Each violation of any published internal management policies and procedures of the secretary of corrections or any published orders of the warden of the facility shall be an offense of the class stated in the internal management policy and procedure or in the order itself. If no class is stated, the violation shall be a class III offense. Each violation of any internal management policy and procedure shall be subject to the penalties that are prescribed in the internal management policy and procedure. If no penalty is prescribed, then the violation shall be subject to the penalties provided in this article of regulations. (Authorized by and implementing K.S.A. 2002 Supp. 75-5210, K.S.A. 75-5251; effective May 1, 1980; amended May 1, 1981; amended April 20, 1992; amended Feb. 15, 2002; amended, T-44-3-11-03, March 11, 2003; amended July 25, 2003.)

44-12-1101. Attempt, conspiracy, accessory, solicitation; liability for offenses of another. Each attempt or conspiracy to violate any regulation, or acting as an accessory for any offense, or soliciting another or other persons to commit any offense, shall carry the same penalty as that for the offense itself. The specific regulation that is the basis of the attempt, conspiracy, accessory, or solicitation shall be stated and described in the disciplinary report.

(a) Attempt.

(1) An attempt shall mean any overt, or clearly evident, act toward the perpetration of an offense by an inmate who intends to commit the offense but fails in the perpetration of the offense or is prevented from or intercepted in executing that offense.

(2) It shall not be a defense to a charge of attempt that the circumstances under which the act was performed, the means employed, or the act itself was such that the commission of the offense was not possible.

(b) Conspiracy.

(1) A conspiracy shall mean an agreement with another person to commit an offense or to assist in committing an offense. No inmate may be con-

victed of a conspiracy unless an overt act furthering that conspiracy is alleged and proved to have been committed by the inmate or by a coconspirator.

(2) It shall be a defense to a charge of conspiracy that the accused voluntarily and in good faith withdrew from the conspiracy and communicated the fact of this withdrawal to one or more of the accused conspirators, before any overt act furthering the conspiracy was committed by the accused or by a coconspirator.

(c) Accessory to an offense. Aiding an offender or one charged with an offense shall mean knowingly harboring, concealing, or aiding any inmate who has committed an offense, or one who has been charged with an offense, with intent that the inmate will avoid or escape from apprehension, disciplinary hearing conviction, or punishment for the offense.

(d) Solicitation. Solicitation shall mean commanding, encouraging, or requesting another person to commit an offense, attempt to commit an offense, or aid and abet in the commission or attempted commission of an offense for the purpose of promoting or facilitating the offense. It shall not be a defense to a charge of solicitation that the inmate failed to communicate with the person solicited to commit the offense if the inmate's conduct was designed to effect a communication. It shall be a defense to a charge of solicitation that the inmate, after soliciting another person to commit an offense, persuaded that person not to do so or otherwise prevented the commission of the offense, under circumstances manifesting a complete and voluntary renunciation of the inmate's prohibited purposes.

(e) Liability for the offenses of another. An inmate shall be responsible for an offense committed by another if the inmate intentionally aids, abets, advises, hires, counsels, or procures the other to commit the offense. The specific underlying regulation violation committed by the other inmate that is the subject of the activity of aiding, abetting, advising, hiring, counseling, or procuring shall be stated and described in the disciplinary report. (Authorized by and implementing K.S.A. 2006 Supp. 75-5210; effective, E-79-37, Jan. 1, 1979; effective May 1, 1980; amended, T-83-23, Aug. 11, 1982; amended, T-84-6, May 1, 1983; amended May 1, 1984; amended April 20, 1992; amended July 13, 2007.)

44-12-1201. Increased penalty for involving or victimizing an inmate under 18.

(a) If any inmate who is 18 years of age or older involves, induces, or solicits an inmate who is less than 18 to commit an offense, or if the victim of an offense committed by the older inmate is an inmate who is less than 18, the older inmate may be subject to a penalty that is double the penalty established for the offense under these regulations. One of the following findings shall be necessary to invoke this increased penalty:

(1) The older inmate is guilty of the same offense as that committed by the younger inmate.

(2) The older inmate is guilty of a violation of K.A.R. 44-12-1101 with respect to that offense.

(3) The older inmate is guilty of an offense involving the victimization of the younger inmate.

(b) The limitations of K.A.R. 44-12-1308 regarding sentences of disciplinary segregation shall be construed, within the context of K.A.R. 44-12-1201, to mean that the total length of a sentence of disciplinary segregation for all charges arising from a single incident shall not exceed 120 days. (Authorized by and implementing K.S.A. 2005 Supp. 75-5210; effective May 1, 1980; amended May 1, 1981; amended May 1, 1984; amended April 20, 1992; amended July 13, 2007.)

44-12-1202. Conviction of four offenses in six months. Upon conviction of the fourth offense of the same class within the immediate prior six month period, the hearing officer may impose a sentence for such fourth offense not greater than twice the maximum that can be imposed for an offense of that class. (Authorized by and implementing K.S.A. 1993 Supp. 75-5210; effective May 1, 1980; amended May 1, 1981; amended April 20, 1992; amended Jan. 3, 1995.)

44-12-1301. Class I offenses. (a) Class I offenses shall be any of the following:

(1) Those violations of a very serious nature that are designated in this article as class I offenses, whether or not the offense is also a violation of law;

(2) those violations of law designated by the laws of the state of Kansas as felonies; or

(3) those violations of law designated by the laws of the United States as felonies.

(b) The penalty for a class I offense may be any one or all, or any combination of the following, unless prohibited in this subsection:

(1) Disciplinary segregation, not to exceed 45 days;

(2) loss of "good time credits," not to exceed six months;

(3) extra work without incentive pay for not more than two hours each day, not to exceed 30 days;

(4) work without incentive pay, not to exceed five days. This penalty shall not include a fine and shall apply only to ordinary inmate work assignments;

(5) restriction to inmate's own cell, not to exceed 10 days;

(6) restriction from privileges, not to exceed 60 days;

(7) a fine of not more than \$20.00, unless prohibited by paragraph (b)(4);

(8) restitution of at least \$3.00; or

(9) an oral or written reprimand. (Authorized by and implementing K.S.A. 2006 Supp. 75-5210; effective May 1, 1980; amended May 1, 1981; amended, T-83-23, Aug. 11, 1982; amended, T-84-6, May 1, 1983; amended May 1, 1984; amended May 1, 1985; amended April 20, 1992; amended July 13, 2007.)

44-12-1302. Class II offenses. (a) Class II offenses shall be any of the following:

(1) Those offenses of moderate seriousness that are designated in this article as class II offenses, whether or not the offenses are also violations of the law;

(2) those violations of law designated by the laws of the state of Kansas as misdemeanors; or

(3) those violations of law designated by the laws of the United States as misdemeanors.

(b) The penalty for a class II offense may be any one or any combination of the following, unless prohibited in this subsection:

(1) Disciplinary segregation, not to exceed 15 days;

(2) loss of good time credits, not to exceed three months;

(3) extra work without incentive pay for not more than two hours each day, not to exceed 20 days;

(4) work without incentive pay, not to exceed five days. This penalty shall not include a fine and shall apply only to ordinary inmate work assignments;

(5) restriction to inmate's own cell for a period, not to exceed seven days;

(6) restriction from privileges, not to exceed 30 days;

(7) a fine of not more than \$15.00, unless prohibited by paragraph (b)(4);

(8) restitution of at least \$3.00; or

(9) an oral or written reprimand. (Authorized by and implementing K.S.A. 2006 Supp. 75-5210; effective May 1, 1980; amended May 1, 1981; amended, T-83-23, Aug. 11, 1982; amended, T-84-

6, May 1, 1983; amended May 1, 1984; amended April 20, 1992; amended July 13, 2007.)

44-12-1303. Class III offenses. (a) Class III offenses shall be those offenses of a less serious nature that are designated in this article as class III offenses, whether or not the offense is also a violation of law. Each violation of any published secretary of corrections' regulation or order of the warden that is not otherwise designated in these regulations or warden's orders as a class I or class II offense shall be a class III offense.

(b) The penalty for a class III offense may be any one or any combination of the following, unless prohibited in this subsection:

(1) Restriction to inmate's own cell for not more than three days;

(2) restriction from privileges for not more than 20 days;

(3) extra work without incentive pay for not more than two hours each day for a period not to exceed 10 days;

(4) work without incentive pay, not to exceed five days. This penalty shall not include a fine and shall apply only to ordinary inmate work assignments;

(5) a fine of not more than \$10.00, unless prohibited by paragraph (b)(4);

(6) restitution of at least \$3.00; or

(7) an oral or written reprimand. (Authorized by and implementing K.S.A. 2006 Supp. 75-5210; effective May 1, 1980; amended May 1, 1981; amended, T-83-23, Aug. 11, 1982; amended, T-84-6, May 1, 1983; amended May 1, 1984; amended May 1, 1985; amended April 20, 1992; amended July 13, 2007.)

44-12-1304. (Authorized by and implementing K.S.A. 1983 Supp. 75-5210; effective May 1, 1980; amended May 1, 1981; amended, T-83-23, Aug. 11, 1982; amended, T-84-6, May 1, 1983; amended May 1, 1984; revoked April 20, 1992.)

44-12-1305. Use of fines. Fines shall be deposited in the inmate benefit fund. (Authorized by K.S.A. 1979 Supp. 75-5210, 75-5210(f); effective May 1, 1980.)

44-12-1306. Use of restitution. (a) When restitution is used in the disciplinary process, the following requirements and limitations shall apply:

(1) The amount of and manner of payment of restitution imposed may be appealed in the same manner and to the same extent as those for any other appeal of sentence in the disciplinary process.

(2) The appropriateness and amount of restitu-

tion ordered shall be determined by consideration of the factors set forth in K.A.R. 44-12-1307.

(3) No inmate shall be required to continue payment on any restitution imposed under these regulations while released from incarceration. Upon any subsequent readmission of the inmate to a facility, any restitution owed may be collected. No portion of the inmate's gate money gratuity as authorized by K.S.A. 75-5211, and amendments thereto, shall be used toward the payment of this restitution.

(4) Restitution shall continue to be paid out of money earned by the inmate in the work release program, the private nonprison employment program, or any other gainful employment industries program. Restitution payment shall be limited to a reasonable amount and, if appropriate, shall be made in installments.

(5) The inmate shall be given notice in the disciplinary report or, if necessary, in an amended disciplinary report served upon the inmate no later than 24 hours before the hearing of the amount and basis for seeking restitution. The inmate shall be given an opportunity at the sentencing phase of the hearing to present evidence regarding the appropriate amount of restitution. The hearing officer shall limit the evidence to a reasonable amount and extent that is appropriate to the nature of the administrative hearing, the level of the offense, and the extent of possible impact on the inmate's resources.

(b) If restitution is to be made to an entity, whether or not the entity is a governmental agency or unit, then the money satisfying the order of restitution shall be delivered to that entity. If restitution is paid to an inmate, the money shall be transferred by the clerk from the account of the inmate payer to the account of the inmate payee after the conclusion of the entire disciplinary process, including any appeal. If restitution is paid to any other person, the hearing officer shall determine how payment is to be made, and the warden or designee shall review the payment arrangements for approval, conferring with the facility business manager if appropriate. (Authorized by and implementing K.S.A. 2005 Supp. 75-5210, K.S.A. 75-5251; effective May 1, 1981; amended May 1, 1987; amended April 20, 1992; amended Feb. 15, 2002; amended July 13, 2007.)

44-12-1307. Fines and restitution, imposition and collection; limits. Fines shall be fairly and appropriately used. Fines shall not be used

in a way that disrupts family support payments, tax payments, or court-ordered restitution payments.

This amendment shall be effective on and after February 15, 2002. (Authorized by and implementing K.S.A. 75-5210, 75-5251; effective May 1, 1984; amended May 1, 1985; amended April 20, 1992; amended Feb. 15, 2002.)

44-12-1308. Disciplinary segregation; limits. (a) The maximum sentence of disciplinary segregation for all violations arising out of one incident shall not exceed 60 days.

(b) Continuous confinement in disciplinary segregation for more than 30 days shall require the review and approval of the warden. (Authorized by and implementing K.S.A. 2006 Supp. 75-5210; effective May 1, 1985; amended Jan. 3, 1995; amended July 13, 2007.)

Article 13.—DISCIPLINARY PROCEDURE

44-13-101. Disciplinary procedure established, general description of system. (a) A disciplinary procedure in accordance with these regulations shall be implemented by the warden of each facility. The term "warden," as used throughout this article, shall include the warden's designee.

(b) Prosecution by criminal justice agencies in the community shall be deemed a separate process from this disciplinary procedure, and both prosecution and disciplinary procedures may be conducted on matters relating to the same factual situations.

(c) Subject to the limitations and guidelines set out in these regulations and subject to the control of the hearing officer exercised within the parameters of the law and these regulations, the inmate shall be entitled to the following:

(1) To receive advance written notice of the charge and a fair hearing by an impartial hearing officer;

(2) to be present at the hearing;

(3) to present documentary evidence;

(4) to testify on the inmate's own behalf;

(5) to have witnesses called to testify on the inmate's behalf;

(6) to confront and cross-examine witnesses against the inmate; and

(7) to be furnished with staff assistance according to K.A.R. 44-13-408.

(d) The charge may be amended according to the provisions of these regulations.

(e) If an inmate allegedly commits an act covered by criminal law, the case shall be referred to

the appropriate law enforcement or prosecutorial agency as provided in K.A.R. 44-13-103.

(f) There shall be three classes of offenses, which shall be processed according to the provisions of these regulations.

(g) The disciplinary hearing process shall be structured as specified in K.A.R. 44-13-403, 44-13-404, and 44-13-405a.

(h) All stages of the disciplinary hearing shall be conducted by a hearing officer appointed by the warden according to K.A.R. 44-13-105.

(i) A complete log of the disciplinary process shall be maintained as specified in K.A.R. 44-13-509.

(j) The disciplinary hearing shall be conducted within a certain time following notice of the charge as established by these regulations. Continuances and recesses of the hearing may be granted. Generally, the inmate shall be permitted to be present at all stages of the hearing, except as provided by these regulations.

(k) Staff assistance shall be permitted only under limited conditions established in K.A.R. 44-13-408.

(l) A summary record shall be made of all stages of the hearing.

(m) In class I and II offense cases, following an administrative review of the record and any needed adjustments of the disposition by the warden, the inmate may appeal the case to the secretary of corrections on the record. In class III offense cases, an appeal may be made to the warden on the record following an initial review of the record by some person within the facility other than the warden. No appeal to the secretary of corrections shall be permitted.

(n) Nothing in these regulations shall prohibit the assignment or delegation of the disciplinary hearing and review process or any portion of it to the warden of another Kansas state correctional facility if good cause is shown and if justice and fairness will not thereby be infringed. An assignment or delegation shall not be made except by the secretary of corrections or designee, or by the warden with the secretary of corrections' written approval. This restriction shall not prohibit the holding of hearings at a receiving facility following a transfer based on a classification decision in the sending facility where the offense occurred in the sending facility.

(o) This regulation shall summarize the disciplinary procedure and shall not be construed or interpreted as establishing any rights or procedures that are not specifically set forth in article 13.

This amendment shall be effective on and after February 15, 2002. (Authorized by and implementing K.S.A. 75-5210, 75-5251; effective May 1, 1980; amended, T-83-23, Aug. 11, 1982; amended, T-84-6, May 1, 1983; amended May 1, 1984; amended, T-85-37, Dec. 19, 1984; amended May 1, 1985; amended May 1, 1987; amended April 20, 1992; amended Feb. 15, 2002.)

44-13-101a. Waiver of rights. (a) Each inmate shall be permitted to voluntarily waive the right to any time limit or process afforded by the disciplinary procedure regulations in this article. The waiver shall be in writing and shall state with specificity the particular time limit or process being waived. The waiver shall be made in the form and manner approved or prescribed by the secretary of corrections. The waiver shall be signed by the inmate and the hearing officer unless the inmate is waiving the right to the disciplinary hearing process by accepting a summary judgment citation as defined in K.A.R. 44-13-201b.

(b) The inmate shall be informed of the nature of the time limit or process being waived and of the impact and consequence of the waiver.

(c) Unless the inmate is waiving the right to the disciplinary hearing process by accepting a summary judgment citation as defined in K.A.R. 44-13-201b, the inmate shall be questioned by the hearing officer before accepting the waiver to determine if it is knowingly and voluntarily made. (Authorized by and implementing K.S.A. 2006 Supp. 75-5210; effective May 1, 1984; amended May 1, 1985; amended April 20, 1992; amended July 13, 2007.)

44-13-102. (Authorized by K.S.A. 1980 Supp. 75-5210; effective May 1, 1980; amended May 1, 1981; revoked, T-83-23, Aug. 11, 1982; revoked, T-84-6, May 1, 1983; revoked May 1, 1984.)

44-13-103. Prosecution by outside agency. (a) When an inmate allegedly commits an act covered by criminal law, the case shall be referred to the appropriate law enforcement or prosecutorial agency for consideration for prosecution unless the prosecutor provides a written statement requesting that certain types or classes of crimes not be reported, or requesting that no report be made.

(b) Notification for prosecution by outside agency shall not preclude a disciplinary charge and proceeding by the correctional facility for the rule infraction arising from the same facts. The hearing officer may proceed or continue the case to await the outcome of the prosecution by

the law enforcement agency. (Authorized by and implementing K.S.A. 1990 Supp. 75-5210; effective May 1, 1980; amended May 1, 1984; amended April 20, 1992.)

44-13-104. This revocation shall be effective on and after February 15, 2002. (Authorized by and implementing K.S.A. 1990 Supp. 75-5210; effective May 1, 1980; amended May 1, 1981; amended May 1, 1984; amended April 20, 1992; revoked Feb. 15, 2002.)

44-13-105. The disciplinary administrator and hearing officers. (a) A disciplinary administrator shall be appointed by the warden of each facility to manage the disciplinary process for the entire facility. Any suitable employee may be designated by the warden to carry out this task on a continuing basis.

(b) One or more impartial hearing officers shall be appointed by the warden to conduct disciplinary hearings at each department-operated facility.

(1) The minimum qualification for hearing officers shall be satisfactory completion of required training.

(2) A person who is the reporting officer, investigator, or a witness in a case shall not be the hearing officer in that case.

This amendment shall be effective on and after February 15, 2002. (Authorized by and implementing K.S.A. 75-5210, 75-5251; effective, T-83-23, Aug. 11, 1982; effective, T-84-6, May 1, 1983; effective May 1, 1984; amended Feb. 15, 2002.)

44-13-106. Administration of oaths; designation of persons authorized. (a) The warden, a deputy warden, the disciplinary administrator appointed pursuant to K.A.R. 44-13-105, and those persons serving as hearing officers at the facility disciplinary hearings shall be authorized to administer oaths to witnesses in those proceedings.

(b) Oaths shall be administered in a form and a manner that are in accordance with K.S.A. 54-101 et seq., and amendments thereto. (Authorized by and implementing K.S.A. 2006 Supp. 75-5210, K.S.A. 75-5251; effective, T-85-37, Dec. 19, 1984; effective May 1, 1985; amended April 20, 1992; amended Feb. 15, 2002; amended July 13, 2007.)

44-13-115. (Authorized by and implementing K.S.A. 75-5210; effective May 1, 1984; amended May 1, 1987; revoked April 20, 1992.)

44-13-201. Disciplinary report and written notice. (a) A disciplinary proceeding shall be commenced upon the making of a charge by a disciplinary report.

(1) The inmate shall be notified in writing by personal service of a copy of the report upon the inmate within 48 hours after the issuance of the disciplinary report, excluding Saturdays, Sundays, and holidays.

(2) The report shall be served upon the inmate by an officer or unit team manager. The report shall not be served upon the inmate by the same person who brought the charge against the inmate.

(3) The officer serving the report shall inform the inmate that the inmate may enter a plea of guilty or no contest to the charge at the time of service of the report.

(A) If the officer serving the report has been appointed as a hearing officer by the warden according to K.A.R. 44-13-105, that officer may immediately, or as soon as possible, accept the inmate's plea of guilty or no contest, conduct a sentencing hearing, and impose sentence by following the procedures established in K.A.R. 44-13-403.

(B) If the officer serving the report has not been appointed as a hearing officer by the warden according to K.A.R. 44-13-105 or wishes to refer the case to another hearing officer, then the inmate desiring to plead guilty or no contest to the charge at the time of service of the report shall be brought immediately, or as soon as possible, before a hearing officer, who shall accept the inmate's plea of guilty or no contest, conduct a sentencing hearing, and impose sentence by following the procedures established in K.A.R. 44-13-403.

(4) If necessary, the hearing officer may accept the inmate's plea of guilty or no contest immediately, or as soon as possible, after service of the report, but may delay the sentencing hearing and imposition of sentence for not more than six working days.

(5) When the unit team manager serves the report, or at any time before the scheduled hearing, the unit team manager may implement one of the following options:

(A) Offer the inmate diversion of the charge or charges in accordance with K.A.R. 44-13-201a;

(B) offer the inmate summary judgment in accordance with K.A.R. 44-13-201b; or

(C) inform the inmate that the inmate may enter a plea of guilty or no contest to the charge at the time of service of the report and, acting as a

hearing officer, accept the inmate's plea of guilty or no contest, conduct a sentencing hearing, and impose sentence by following the procedures established in K.A.R. 44-13-403. If the inmate accepts this option, the unit team manager shall forward to the disciplinary administrator the guilty or no contest plea waiver form and disposition and hearing record.

(b) If the inmate is transferred to another facility before the arrival of the disciplinary report at the receiving facility, service of the report upon the inmate shall be made within 48 hours after arrival of the report, excluding Saturdays, Sundays, and holidays, in the same manner as that specified in subsection (a).

(c) The disciplinary report shall be written within 48 hours of the offense, the discovery of the offense, or the determination following an investigation that the inmate is the suspect in the case and is to be named as defendant.

(1) If an alleged violation is based upon uncertain facts, an appropriate investigation shall be initiated within 24 hours of the time the allegation is made and shall be completed without unreasonable delay. The investigation shall determine if a disciplinary action should be initiated or continued by determining whether the allegation is soundly based on reasonably reliable facts. The investigator shall be a staff member, and, if practical, shall be a staff member other than the person making the allegation. If an inmate is making the allegation, the officer who is receiving the allegation and is in a position to write the report may also be the investigator.

(2) The investigation report may be adopted by the charging officer both as the charge itself, and as the officer's sworn statement in lieu of testimony in any case, in accordance with the regulations. If necessary, pending completion of the investigation, the inmate may be held in administrative segregation for a certain period according to K.A.R. 44-14-302(b).

(3) The report shall be reviewed and either approved or disapproved by the shift supervisor or unit team manager based on whether or not the report is sound and adequate, and is made in proper manner and form.

(4) The shift supervisor or unit team manager shall assure that all necessary elements of the alleged violation are contained in the written report of the facts of the incident and that the report does not represent an abuse of the disciplinary process. The shift supervisor or unit team

manager shall also make or direct appropriate amendments to the report, including use of the summary judgment procedure under K.A.R. 44-13-201b.

(5) If the charge is dismissed or the report is otherwise rejected by the shift supervisor or unit team manager, a written explanation shall be made in the record and filed with the report, with a copy given to the officer. The report shall not be destroyed.

(d) The disciplinary report shall constitute a formal statement of the charge, shall be in a form prescribed by the secretary, and shall include the following:

- (1) The name and number of the inmate;
 - (2) the institution;
 - (3) the signature and title of the writing officer;
 - (4) the date and time of the alleged offense;
 - (5) the date and time the report is written;
 - (6) the nature of the alleged offense;
 - (7) the class, title, and number of the rule or regulation violated, including citation to any underlying statute, regulation, internal management policy and procedure, or published order allegedly violated;
 - (8) the specific regulation that is the basis of an attempt, conspiracy, accessory, solicitation, or liability for the offenses of another under K.A.R. 44-12-1101;
 - (9) the names of known staff witnesses;
 - (10) a brief description of the circumstances and facts of the violation if, in cases in which the violation is based upon information supplied by a confidential witness or informant, the identity of the witness or informant is not disclosed, nor is any reference or factual detail likely to reveal the identity of the witness or informant;
 - (11) any unusual inmate behavior;
 - (12) the disposition of any physical evidence;
 - (13) any immediate action taken, including the use of force; and
 - (14) the factual basis for and the amount of any restitution sought for any injury, damage, or other loss caused by or resulting from the violation charged.
- (e) An inmate shall not be charged unless the regulation or law has been made in writing and published.
- (f) The officer may orally warn or reprimand the inmate instead of writing a report or otherwise documenting the incident. (Authorized by and implementing K.S.A. 2006 Supp. 75-5210, K.S.A. 75-5251; effective May 1, 1980; amended, T-83-23, Aug. 11, 1982; amended, T-84-6, May 1, 1983;

amended May 1, 1984; amended May 1, 1987; amended April 20, 1992; amended July 11, 1994; amended Feb. 15, 2002; amended July 13, 2007.)

44-13-201a. Diversion procedure. (a) In any case involving one or more alleged class I or class II offenses, the charged inmate's unit team manager may initiate, or a member of the inmate's unit team in the inmate's assigned housing unit may request, consideration of diversion of the pending charges from prosecution, in connection with the formation and implementation of an intervention plan intended to address each behavioral issue presented in the incident in question. If a request is made by a unit team member other than the unit team manager, the request shall be submitted in writing and addressed to the unit team manager, who may decline further action or who may proceed further with the request. The unit team manager's decision about the request shall be final and shall not be subject to hearing or appeal under these regulations or to review pursuant to the inmate grievance procedure or any other administrative remedial procedure.

(b) The unit team manager may formulate the intervention plan or may assign the diversion request to the inmate's assigned correctional counselor for review and recommendation as to the nature and components of the intervention plan. The unit team manager shall apply for a continuance of the case pursuant to K.A.R. 44-13-402 if necessary in order to complete consideration and formulation of the intervention plan.

(c) Upon formulation of the intervention plan, the unit team manager shall confer with the reporting officer or supervisor and the inmate. If both parties consent to the diversion, the unit team manager shall present to the inmate for the inmate's execution a written request for continuance of the disciplinary case for the length of time required to carry out the plan, which shall not exceed 180 days, and shall also present the written intervention plan to the inmate and the reporting officer or supervisor. This plan shall be in the form of an agreement to be signed by both parties and the unit team manager. If either party fails to consent, then the case shall proceed for prosecution. If a continuance has been secured by the unit team manager, then the unit team manager shall notify the disciplinary administrator in writing of the failure to agree to diversion.

(d) As a condition of the agreement specified in subsection (c), the inmate shall waive any right

or claim to have the disciplinary case heard and determined within ordinary time limits. The inmate shall also agree and acknowledge that the determination as to whether the inmate has successfully completed the plan is that of the unit team manager, whose decision in that regard shall not be subject to hearing or appeal under these regulations or to review under the inmate grievance procedure or any other administrative remedial procedure.

(e) The request for continuance specified in subsection (c) shall then be forwarded to the facility disciplinary administrator, who shall proceed to grant the continuance, duly note the length of the continuance specified in the request on the case continuance log, and further note the diversion of prosecution of the charge or charges under the assigned case number.

(f) If the inmate fails to successfully complete the intervention plan or receives another disciplinary report for any class of offense during the term of the plan, the diversion of the charge or charges from prosecution shall immediately terminate. Upon receipt of written notification of the termination from the inmate's unit team manager, the disciplinary administrator shall proceed to docket the case for hearing, notify the parties, and process the case according to the ordinary procedures set forth in these regulations.

(g) If the inmate successfully completes the intervention plan, the reporting officer or supervisor or, in that person's absence, the unit team manager shall submit a written request for dismissal of the case to the disciplinary administrator, who shall cause the case to be shown as dismissed in the records of the administrator's office. The existence of the case and its charge or charges shall not be part of the inmate's master file or any other file subject to review by the Kansas parole board or to disclosure to the public. (Authorized by and implementing K.S.A. 2006 Supp. 75-5210; effective July 13, 2007.)

44-13-201b. Summary judgment procedure. (a) In any case involving one or more alleged class II or class III offenses, the reporting officer may offer the inmate the option of resolving the matter through the summary judgment procedure as an alternative to writing a disciplinary report that leads to initiation of the formal disciplinary hearing process.

(b) Officers shall carry with them or have immediate access to summary judgment citation forms.

(c) If an officer observes an inmate in the act of committing one or more offenses designated as eligible for summary judgment procedures that the officer believes require more than an undocumented, on-the-spot verbal reprimand, the officer may file a formal disciplinary report against the inmate or offer the inmate summary judgment by issuing a summary judgment citation. If summary judgment is offered to the inmate by the officer, the offer shall not be withdrawn without the commission of additional alleged disciplinary offenses by the inmate.

(1) The summary judgment citation shall be written, verified pursuant to K.S.A. 53-601 and amendments thereto, and served on the inmate by the reporting officer within 24 hours of the alleged incident, or within 48 hours if directed by the shift supervisor or unit team manager under paragraph (c)(3)(B), and shall include the following:

- (A) The date and time of each alleged offense;
- (B) the date and time the citation is written;
- (C) The name and rule number of each alleged offense;
- (D) a statement of the facts of the alleged incident, including names of witnesses;
- (E) the date and time that the citation is served on the inmate;
- (F) the summary judgment sanction; and
- (G) the signature of the inmate indicating acceptance or refusal of the summary judgment.

(2) The officer may impose only one of the following summary judgment sanctions regardless of the number of offenses cited:

- (A) Restriction from privileges for not more than 10 days;
- (B) a fine not to exceed \$10.00;
- (C) extra work without incentive pay for not more than two hours each day, not to exceed five days;
- (D) work without incentive pay not to exceed five days, which shall apply only to ordinary inmate work assignments; or
- (E) restitution of not less than \$3.00 and not more than \$10.00.

(3) The inmate may choose whether to accept the summary judgment or to reject it in favor of the formal disciplinary hearing process. This decision shall be made within one hour of the inmate's receipt of the citation, or it shall be assumed that the inmate refused the summary judgment. The officer may choose to impose a different summary judgment sanction after discussion of the incident with the inmate, and this fact shall be documented on the summary judgment citation if the inmate then accepts the summary judgment.

(A) If the inmate accepts the summary judgment offered, this acceptance shall constitute a waiver of the inmate's right to the benefits of the formal disciplinary hearing process. The waiver of rights established according to K.A.R. 44-13-101a shall be executed by the inmate. Upon the inmate's acceptance of the summary judgment, the sanction shall be immediately imposed, and the shift supervisor or unit team manager shall be notified.

(B) If the inmate refuses the summary judgment offered, the inmate shall receive the applicable hearing process. The summary judgment citation shall be marked and signed by the officer and the inmate to indicate the inmate's refusal. The citation may then be used in lieu of the more formal disciplinary report to initiate the formal disciplinary hearing process. The citation shall then be submitted to the shift supervisor or unit team manager for review and appropriate disposition, including any amendments that the reviewer may direct, pursuant to K.A.R. 44-13-201(c)(3) and (4). The citation shall subsequently be served upon the inmate in the manner and using procedures that apply to ordinary disciplinary reports.

(C) If an inmate refuses the summary judgment offered, the inmate shall not be charged with a more serious offense or combination of offenses than was alleged in the summary judgment citation.

(D) All evidence shall be confiscated or seized in connection with the issuance of a summary judgment citation, and shall be disposed of in accordance with K.A.R. 44-5-111.

(4) All summary judgment citations accepted by the inmate shall be documented in the inmate's file. (Authorized by and implementing K.S.A. 2006 Supp. 75-5210, K.S.A. 75-5251; effective April 20, 1992; amended July 11, 1994; amended Feb. 15, 2002; amended, T-44-3-11-03, March 11, 2003; amended July 25, 2003; amended July 13, 2007.)

44-13-202. Amendment of the charge.

(a) If, in the judgment of the disciplinary administrator, hearing officer, or warden during administrative review, the charge is incorrect or a language change would change the substance of the charge or adversely affect the defense, the charge shall be amended and notice given to the inmate. After this notice is given, the inmate shall have the same period of time between notice and hearing to prepare a defense as would have been permitted when the charge was originally made.

(b) The same charge shall not be brought twice on the same facts under any circumstance if a factual finding of guilt or innocence has been made. If a case has been dismissed without a factual finding of guilt or innocence, upon administrative review pursuant to K.A.R. 44-13-701 the reviewing authority may either reinstate the charge or amend the charge as deemed appropriate, and remand the case for hearing.

(c) After the hearing officer has begun to hear evidence in the case, the hearing officer may permit amendment at any time before a factual finding of guilt or innocence has been made if no additional or different offense is charged and if substantial rights of the defendant are not prejudiced.

(d) The hearing officer shall ask the inmate which option the inmate chooses:

(1) Continue the case for hearing on a different date to prepare a defense to the additional or different offense resulting from amendment of the original charge or charges; or

(2) waive any time period allowed to prepare to defend against any additional or different offense resulting from amendment of the original charge or charges and hold the hearing on the charges at the time of amendment of the disciplinary charge. (Authorized by and implementing K.S.A. 2006 Supp. 75-5210, K.S.A. 75-5251; effective May 1, 1980; amended April 20, 1992; amended July 11, 1994; amended Feb. 15, 2002; amended July 13, 2007.)

44-13-203. State prosecution and disciplinary hearing. (a) If the inmate has been charged, convicted, or acquitted in a criminal court of a charge or for a crime arising from the same facts, the disciplinary hearing may be conducted or continued at the hearing officer's discretion.

(b) Where the inmate has been convicted or acquitted in criminal court for a crime arising from the same facts, the hearing officer may rely on the finding made by the jury or judge in conducting or dismissing the disciplinary hearing.

(c) If the disciplinary hearing is conducted while the criminal court case is pending, and the court later renders a decision different from the decision of the hearing officer, the decision of the hearing officer shall remain unaffected unless upon motion to the hearing officer there is a showing that the hearing officer's decision is based on an obviously erroneous fact which affects the substantial rights of the inmate, in which case the

hearing officer shall correct its decision on the record. The hearing officer may not change his or her decision in order to convict an inmate following a conviction by the court if the hearing officer acquitted the inmate before the court made its finding, or otherwise change his or her decision to adversely affect the inmate. (Authorized by and implementing K.S.A. 1990 Supp. 75-5210; effective May 1, 1980; amended April 20, 1992.)

44-13-301. (Authorized by and implementing K.S.A. 1983 Supp. 75-5210; effective May 1, 1980; amended May 1, 1981; amended, T-83-23, Aug. 11, 1982; amended, T-84-6, May 1, 1983; amended May 1, 1984; amended May 1, 1985; revoked April 20, 1992.)

44-13-302. (Authorized by and implementing K.S.A. 1983 Supp. 75-5210; effective May 1, 1980; amended, T-83-23, Aug. 11, 1982; amended, T-84-6, May 1, 1983; amended May 1, 1984; amended May 1, 1985; revoked April 20, 1992.)

44-13-302a. This revocation shall be effective on and after February 15, 2002. (Authorized by and implementing K.S.A. 1990 Supp. 75-5210; effective April 20, 1992; revoked Feb. 15, 2002.)

44-13-303. (Authorized by and implementing K.S.A. 75-5210; effective May 1, 1980; amended May 1, 1981; amended, T-83-23, Aug. 11, 1982; amended, T-84-6, May 1, 1983; amended May 1, 1984; amended May 1, 1986; revoked April 20, 1992.)

44-13-304. This revocation shall be effective on and after February 15, 2002. (Authorized by and implementing K.S.A. 1990 Supp. 75-5210; effective May 1, 1980; amended, T-83-23, Aug. 11, 1982; amended, T-84-6, May 1, 1983; amended May 1, 1984; amended April 20, 1992; revoked Feb. 15, 2002.)

44-13-305. (Authorized by K.S.A. 1979 Supp. 75-5210; effective May 1, 1980; revoked May 1, 1984.)

44-13-306. Inmate responsibilities. It shall be the responsibility of each inmate being served to read the disciplinary report and any associated documentation, or to notify the serving staff that the inmate is illiterate or otherwise unable to read and understand the documents presented and request that the notice and associated

documents be read to the inmate. Within 48 hours of service of the report, the inmate shall complete and submit the authorized form for witnesses to the disciplinary administrator. If one or more witnesses are requested, the inmate shall indicate on the form the testimony expected from each witness. The inmate may use the form to waive the inmate's right to call witnesses. An illiterate inmate shall receive assistance from the inmate's unit team correctional counselor for the purpose of completing the witness form, including any waiver of the right to call witnesses.

This regulation shall be effective on and after February 15, 2002. (Authorized by and implementing K.S.A. 75-5210 and 75-5251; effective Feb. 15, 2002.)

44-13-307. Administrative review of requests for witnesses; denial of requests; issuance of summons; voluntary nature of witness appearance. (a) The disciplinary administrator or hearing officer assigned to hear the charges shall review any written requests for witnesses submitted by the accused inmate according to K.A.R. 44-13-306.

(b) The disciplinary administrator or hearing officer performing a review of a written request for witnesses may deny the request if, in the judgment of the reviewer, the testimonies proffered on the request form meet any of the following criteria:

- (1) Are clearly irrelevant or immaterial;
- (2) are repetitious of other proffered testimony; or
- (3) are properly excluded for reasons specified in K.A.R. 44-13-405a. The truth of the proffered testimony shall be presumed in making this decision.

(c) Each denial of a request for witnesses shall be documented, including the reason or reasons for the denial, either on the request form or in the disciplinary case record.

(d) If practicable in the judgment of the reviewer, the inmate shall be informed, in writing and in advance of the hearing, of any denials of requested witnesses and of the reason or reasons for the denials. If informing the inmate is determined not to be practicable, the inmate shall be informed of any denials and reasons for any denials by the hearing officer at the beginning of the hearing.

(e) If no reason appears from a review of the written proffer of testimony for denial of the request for witnesses, then the disciplinary administrator shall issue a written summons for the appearance of the witness. The appearance of a witness requested by either the reporting offi-

cer or the accused inmate shall be voluntary, and neither the request nor the issuance of summons according to this regulation shall compel an appearance. However, issuance of summons by a hearing officer to an inmate or staff member pursuant to K.A.R. 44-13-403 shall compel an appearance. (Authorized by and implementing K.S.A. 2006 Supp. 75-5210 and K.S.A. 75-5251; effective Feb. 15, 2002; amended July 13, 2007.)

44-13-401. Hearing within certain time; notice to inmate; time and place of hearing.

(a) Except as otherwise provided in these regulations, the administrative hearing by a hearing officer of the facility to determine the inmate's guilt or innocence and impose a penalty in the event of a finding of guilt shall be held not less than 24 hours or more than seven working days after the service of notice of charge on the inmate, subject to authorized continuances.

(b) Each inmate charged with an offense shall be given advance written notice of the time and place of the disciplinary hearing. This notice shall be given not less than 24 hours before the hearing. Notice shall be given by the disciplinary administrator or other responsible person designated by the warden.

This amendment shall be effective on and after February 15, 2002. (Authorized by and implementing K.S.A. 75-5210, K.S.A. 75-5251; effective May 1, 1980; amended May 1, 1981; amended May 1, 1984; amended May 1, 1985; amended May 1, 1986; amended April 20, 1992; amended Feb. 15, 2002.)

44-13-401a. This revocation shall be effective on and after February 15, 2002. (Authorized by and implementing K.S.A. 1990 Supp. 75-5210; effective May 1, 1984; amended April 20, 1992; revoked Feb. 15, 2002.)

44-13-402. Continuing the hearing; recesses; time limits; extensions. (a) The disciplinary administrator or hearing officer may grant one or more continuances or recesses of appropriate and reasonable length upon application of the inmate, reporting officer, the hearing officer, a unit team manager pursuant to K.A.R. 44-13-201a, or department of corrections for cause shown.

(b) The hearing officer may also continue the case for a reasonable period, as necessary, subject to the review of the status of the case every 30 days, if any of the following conditions is met:

- (1) The inmate or the employee is unable to appear for medical or psychiatric reasons as cer-

tified by the facility or other licensed physician or psychiatrist.

(2) There is a delay to await determination of whether the case will go to trial in a court of law or to await the outcome of a trial.

(3) There is an unavoidable delay to await the return of evidence from an analysis laboratory.

(4) The inmate is transferred to or from a facility for diagnostic evaluation, out to court, or to a mental hospital before hearing.

(5) The inmate is on "escape" status. At the hearing officer's discretion, the case may be dismissed or heard in absentia on the record, unless the inmate has been apprehended and is available at a known location for return to department of corrections custody for the hearing within six months.

(6) The case has been placed upon diversion status pursuant to K.A.R. 44-13-201a.

(c) To obtain a continuance in advance of the hearing, the requesting party shall make the request to the hearing officer or to the disciplinary administrator. If there is a hearing officer appointed for the case, the request shall be forwarded to that officer.

(1) Reasonable extensions may be obtained with the prior approval of the secretary of corrections or the secretary's designee, in the case of a substantial disruption of order in the facility.

(2) If an inmate has been transferred to another facility, it shall be the responsibility of the warden of the sending facility to grant an extension of the disciplinary case, which shall not exceed 10 working days.

(3) At the discretion of the hearing officer, recesses of appropriate and reasonable length may be declared. (Authorized by and implementing K.S.A. 2006 Supp. 75-5210, K.S.A. 75-5251; effective May 1, 1980; amended, T-83-23, Aug. 11, 1982; amended, T-84-6, May 1, 1983; amended May 1, 1984; amended May 1, 1988; amended April 20, 1992; amended July 11, 1994; amended Feb. 15, 2002; amended July 13, 2007.)

44-13-403. Conducting the disciplinary hearing. (a) The disciplinary hearing shall consist of the following procedures:

(1) The hearing officer shall initially inform the inmate of the charges and take the inmate's plea.

(2) Secondly, the hearing officer shall determine guilt or innocence.

(3) Finally, if guilt has been established, the hearing officer shall make a disposition, including the determination and imposition of sentence.

(b) Initially, the hearing officer shall read the disciplinary report to the inmate, including the date, nature of the offense, the reporting officer's name, and a synopsis of the observation. The officer shall ensure that the inmate understands the charges and that a copy of the disciplinary report was received by the inmate. The officer shall also explain the possible penalties. If the hearing officer finds that the inmate is incapable of self-representation, the hearing officer shall continue the hearing as provided in K.A.R. 44-13-402(b) (1), until the inmate regains the ability for self-representation. For purposes of this subsection, "incapable of self-representation" shall mean that the inmate, due to physical or mental disability, whether temporary or permanent, lacks the present ability to assist in the inmate's representation in the case. This term shall not include mere illiteracy.

(c) A staff assistant shall be permitted to be with the inmate at all stages of the disciplinary hearing only as provided in K.A.R. 44-13-408. The hearing officer shall ensure that the inmate has staff assistance when required by K.A.R. 44-13-408.

(d) If the inmate is disruptive or refuses to be present, the hearing may proceed in absentia, and the record shall indicate the reason or reasons for the inmate's absence. A staff assistant shall then be assigned and may ask questions of witnesses, present the argument, or otherwise aid the defendant inmate, at the discretion of the staff assistant and subject to rulings of the hearing officer as otherwise provided in this regulation.

(e) The hearing officer shall entertain and determine any motion for dismissal or objections to holding the hearing, as well as any motions for additional witnesses beyond those identified already in the witness list previously submitted. Additionally, the hearing officer shall advise the inmate of the inmate's rights to proceed to a determination of guilt or innocence, and if necessary, the application of penalties, and to receive staff assistance in certain cases, according to K.A.R. 44-13-408, and of other procedural due process rights.

(f) The hearing officer shall then ask the inmate to plead guilty, not guilty, or no contest. The plea shall be entered if the presiding officer is assured that the plea is made knowledgeably and without threat or promise of reward to the inmate. If the inmate refuses to plead, the hearing officer shall enter a plea of not guilty. A plea of no contest shall be treated in the same manner as that for a plea of guilty. If the inmate pleads guilty or no contest, the inmate shall waive the right to a determination

of guilt or innocence, but shall reserve the right to participate in the penalty phase of the hearing to the extent of offering a brief argument in mitigation of the penalty to be imposed. If the inmate pleads guilty or no contest, the inmate shall not be allowed to introduce evidence regarding the inmate's guilt or innocence of the charge or charges.

(g) The hearing officer shall, upon a plea of guilty or no contest, make a finding of guilt and conduct a sentencing hearing, and may impose a sentence.

(h) If the hearing officer finds that the case shall be dismissed, the officer may dismiss the charge on the officer's own motion or on motion of either party. The hearing officer shall give a brief explanation on the record and provide a copy of the explanation to the reporting officer.

(i) Only the relevant facts shall be employed in any determination of guilt or innocence. In the penalty phase, the inmate's entire facility record and other relevant facts, observations, and opinions may be considered.

(j) The hearing officer shall rule on all matters of evidence. Strict rules of evidence, as used in a court of law, shall not be required, but the hearing officer shall exercise diligence to admit reliable and relevant evidence and to refuse to admit irrelevant or unreliable evidence.

(k) The hearing officer shall rule on all matters of assistance for the accused inmate in accordance with these regulations. If the accused inmate is furnished with staff assistance according to K.A.R. 44-13-408, the staff assistant shall be permitted to fully assist the accused and shall be permitted to question witnesses and present arguments on behalf of the accused inmate, except as otherwise provided by these regulations.

(l)(1) The disciplinary process shall, to the extent possible, discover the truth regarding charges against the inmate. For this purpose, the hearing officer shall be authorized to call and to interrogate any witness, and each inmate, staff member, volunteer, or contract employee called as a witness by the hearing officer shall be compelled to appear. The hearing officer may bring out the facts by direct or cross-examination but shall not act as prosecutor on behalf of the facility or charging officer against the accused inmate, or on behalf of the inmate. Testimony and evidence shall not be received by the hearing officer or introduced outside the presence of the accused inmate, except that the accused inmate shall not be present when the hearing officer reviews any facility security videotape evidence. An inmate shall not be

required to be present at the disciplinary hearing as provided in subsections (d), (e), and (m) and K.A.R. 44-13-402(b)(5), and as otherwise provided in these regulations.

(2) The hearing shall proceed as follows:

(A) The prosecution shall present its evidence, and the defense shall be permitted to cross-examine, except as otherwise provided by these regulations.

(B) The defense shall present its evidence, and the prosecution shall be permitted to cross-examine.

(C) The prosecution may make a closing argument. The defense may make a closing argument, and then the prosecution may make a short rebuttal.

(m)(1) If the hearing officer determines that the testimony of any inmate will subject that inmate to possible retaliation for having testified, the hearing officer may perform either of the following:

(A) Receive the testimony in confidence without confrontation or cross-examination by the accused inmate, and the witness may be sequestered; or

(B) receive testimony from an investigator who interviewed an inmate informant and relied on the confidential information provided.

(2) The testimony of the inmate witness given under oath shall be examined and tested by the hearing officer. The hearing officer shall closely question the testifying inmate to determine the veracity and weight of the testimony offered. The hearing officer shall complete a credibility assessment form, which shall be available for confidential review by the warden and secretary of corrections.

(3) If the informant inmate does not testify, the hearing officer may establish the reliability of the information provided to the testifying investigators by any of the following:

(A) The testimony of the investigator regarding the reliability of the informant in the past, which shall include specific examples of past instances of reliability;

(B) the testimony of the investigator regarding the truthfulness of details that the investigator has been able to verify through investigation;

(C) corroborating testimony;

(D) a statement on the record by the hearing officer that the hearing officer has firsthand knowledge of the informant and considers the informant to be reliable due to the informant's past record of reliability, which shall include specific examples of past instances of reliability; or

(E) in camera review of material documenting the investigator's assessment of the credibility of the informant.

(4) The accused shall be apprised of the general nature of the confidential testimony, omitting those details that would tend to identify the inmate who gave the confidential testimony or provided confidential information to the testifying investigator. The identity of any confidential witness or of any inmate informant shall not be disclosed to the accused, to any other inmate, or to any staff not required to complete the process. The staff assistant shall be permitted to be present when the board receives testimony from the confidential witness, or investigator, and the staff assistant may ask questions. The inmate's staff assistant shall not disclose the identity of the confidential witness or inmate informant to the accused, to any other inmate, or to any staff not required to complete the hearing process. The testimony shall be recorded for confidential review by the warden and, on appeal, by the secretary of corrections.

(n) The hearing officer may require the accused to explain briefly what the purpose and nature of the testimony of a witness will be. The request to call the witness may be denied or the testimony reasonably and fairly restricted if the testimony meets any of the following criteria:

- (1) Relates to something already disposed of;
- (2) is clearly irrelevant or immaterial;
- (3) is repetitious of other testimony; or
- (4) is properly excluded for reasons specified in K.A.R. 44-13-405a.

The truth of the testimony shall be presumed in making this decision.

(o) A witness request made at the hearing and not previously submitted shall not be permitted unless exceptional circumstances outside the control of the inmate exist and the testimony would most likely affect the outcome of the hearing. The hearing officer shall inform the inmate of any witness deemed waived by the failure to make a timely request.

(p) The hearing officer, in deciding whether or not the inmate is guilty, shall consider only the relevant testimony and report. The accused inmate's correctional and supervision record shall not be considered in determining guilt or innocence. The decision in the hearing shall be based solely on evidence presented as part of the hearing.

(q) Confrontation and cross-examination may be denied by the hearing officer if deemed necessary in any case except class I cases. In class I cases, confrontation and cross-examination may be limited or denied if necessary to protect the safety of an accuser, informant, or witness or if necessary

to maintain facility safety, security, and control. Unless there is a security risk endangering some person, the explanation shall be in the record. If there is such a security risk, a written explanation of the reason shall be sent to the warden with a copy to the secretary for confidential review. However, an inmate held in administrative or disciplinary segregation whose hearing is conducted by telephone, as provided by K.A.R. 44-13-404(e), shall not be permitted to confront any witnesses against the inmate, including the reporting officer.

(r) After the conclusion of the presentation of evidence regarding guilt or innocence or disposition, if the hearing officer needs the charging officer, the accused inmate, or both present to provide further information to clarify facts, both parties shall be present to hear what the other is saying unless exempt under subsection (m) or (p) above. (Authorized by and implementing K.S.A. 2006 Supp. 75-5210, K.S.A. 75-5251; effective May 1, 1980; amended May 1, 1981; amended, T-83-23, Aug. 11, 1982; amended, T-84-6, May 1, 1983; amended May 1, 1984; amended May 1, 1986; amended April 20, 1992; amended July 11, 1994; amended Feb. 15, 2002; amended July 13, 2007.)

44-13-404. Presence of inmate and presence of charging officer at disciplinary hearings; officer statements in lieu of testimony.

(a) The inmate shall be present at all stages of the disciplinary hearing and disposition except as otherwise provided by these regulations or by law. Subject to the provisions of subsection (e), if the inmate is not present, then a staff assistant shall be assigned in accordance with K.A.R. 44-13-403 and 44-13-408.

(b)(1) In class I cases, the charging officer shall be present in person or by telephone, as determined by the hearing officer, for direct examination and cross-examination, unless excused by the hearing officer or unless the inmate has been transferred to another facility. The hearing officer may excuse the charging officer only if any of the following is determined:

(A) Facility safety or correctional goals would be jeopardized.

(B) The charging officer is absent from duty due to activation for military service.

(C) The charging officer has been separated from employment with the facility for reasons unconnected to investigation of the charges or issuance of the disciplinary report.

(D) The charging officer is otherwise unlikely to be available for testimony within a reasonable time period as determined by the hearing officer, and a continuance pursuant to K.A.R. 44-13-402 either is not applicable or is not appropriate in the judgment of the hearing officer.

Facility safety or correctional goals shall not include considerations of mere convenience. If the officer is not present, the officer's report and statement shall be made to the hearing officer in writing under oath. Copies of the report shall be provided to the inmate, and it shall be read aloud at the hearing unless confidentiality is required to protect an inmate accuser, informant, or witness. If the charging officer is excused from appearance, the hearing officer shall document the ground for the excuse and shall likewise document the facts underlying the ground relied upon in the case record.

(2) If an inmate has been transferred to another facility after a disciplinary report was written in a class I case, the testimony of the charging officer and other witnesses regarding that report may be taken by telephone at the discretion of the hearing officer. Except as provided in K.A.R. 44-13-403(m) and (q), any testimony taken by telephone shall be taken in a manner that can be heard by all those present at the hearing, and shall be subject to the same procedures as though the witness were personally present at the hearing.

(c)(1) In class II and III cases, the officer's attendance shall not be required unless deemed necessary by the hearing officer. The officer's report and statement shall be submitted to the hearing officer in writing under oath. It shall be read aloud at the hearing, and a copy shall be given to the inmate unless confidentiality is required to protect an inmate accuser, informant, or witness according to K.A.R. 44-13-403(m). If such confidentiality is required, but it is possible to protect the inmate accuser, informant, or witness by editing out certain portions of the report and statement, then those portions shall be edited and the inmate provided with a copy. The hearing officer may contact the officer, by telephone or radio, to ask questions or clarify the facts while the hearing is being conducted or while the matter is being considered for decision.

(2) In all class II and III cases, if the charging officer requests, the hearing officer shall allow the charging officer to be present. In such a case, the officer shall be present throughout and shall be subject to direct examination, confrontation, and

cross-examination unless restricted by the hearing officer according to these regulations.

(d) (1) The officer's statement under oath shall consist of the officer's rendition of all the facts of the case resulting from the charging officer's complete fact investigation. To the best of the officer's ability, it shall show all relevant and material facts that might be used to support both the facility's case against the inmate and the inmate's defense. If the officer is uncertain of a fact, the officer shall state that with respect to the fact. The charging officer may either adopt or defer under oath to any official neutral fact investigation report that might be conducted by another person or may submit the charging officer's own statement in addition to the investigation report.

(2) Confidential inmate testimony may be deleted from the statement in lieu of testimony and reported separately. The hearing officer shall receive any confidential inmate testimony in accordance with K.A.R. 44-13-403.

(e) Hearings for inmates detained or held in administrative or disciplinary segregation status may be conducted by telephone, with the inmate remaining in the inmate's cell and outside the immediate physical presence of the hearing officer and any witnesses, including the reporting officer, at the discretion of the hearing officer. Except as provided in K.A.R. 44-13-403(m) and (q), any testimony taken by telephone shall be taken in a manner that allows the testimony to be heard by all those present at the hearing. The testimony taken by telephone shall be subject to the procedures governing the testimony of any witness personally present at a hearing. A staff assistant shall not be required to be appointed to render assistance to the inmate unless at least one of the circumstances set forth in K.A.R. 44-13-403 or 44-13-408 is present. The inmate shall be permitted to submit written motions, exhibits, or affidavits on the inmate's behalf to the hearing officer to the extent and under the circumstances applicable to documentary presentations under these regulations. (Authorized by and implementing K.S.A. 2006 Supp. 75-5210, K.S.A. 75-5251; effective May 1, 1980; amended, T-83-23, Aug. 11, 1982; amended, T-84-1, Jan. 5, 1983; amended May 1, 1984; amended April 20, 1992; amended Feb. 15, 2002; amended July 13, 2007.)

44-13-405. (Authorized by and implementing K.S.A. 1982 Supp. 75-5210; effective May 1, 1980; amended May 1, 1981; amended, T-83-23,

Aug. 11, 1982; amended, T-84-6, May 1, 1983; amended May 1, 1984; revoked April 20, 1992.)

44-13-405a. Calling witnesses. (a) In determining whether to allow the inmate to call a witness from the facility population or from among facility employees, the hearing officer shall balance the inmate's interest in avoiding loss of good time and assessment of a fine or placement in disciplinary segregation against the needs of the facility. These needs of the facility shall include the following:

- (1) The need to keep the hearing within reasonable time limits;
- (2) the need to prevent the creation of a risk of retaliation and reprisal;
- (3) the need to prevent the undermining of authority;
- (4) the need to limit, to a reasonable level, access to other inmates for the purpose of collecting statements or compiling documentary evidence;
- (5) the need to prevent disruption;
- (6) the need to administer swift punishment;
- (7) the need to avoid irrelevant, immaterial, or unnecessary testimony and evidence;
- (8) the need to reduce or prevent security hazards that could be presented in individual cases;
- (9) the need to use the disciplinary process as a rehabilitative tool to modify inmate behavior;
- (10) the need to prevent the creation of undue risk to personal or facility safety;
- (11) the need to reduce the chances of seriously inflaming tension, frustration, resentment, and antagonism in the relationship between inmates and facility personnel;
- (12) the need to correct the behavior of inmates and develop in them a value system in order to foster their eventual return to the community; and
- (13) the need for the prompt, efficient, and effective resolution of the disciplinary case with accurate and complete fact-finding consistent with the level of process required by law for facility disciplinary cases.

(b) The hearing officer shall have broad discretion in permitting or denying the witness request. In exercising the discretion, the hearing officer shall balance the inmate's request and wishes against the needs of the facility. The goal of the hearing officer shall be to conduct the fact-finding process in a manner leading to the discovery of the truth.

(c) The hearing officer shall neither abuse the discretion entrusted to that officer nor interfere

with the level of process that is reasonably necessary to find the truth.

(d) With the charged inmate's consent, the hearing officer may admit the affidavit of a non-party witness in lieu of an appearance by the witness. If a witness is denied or cannot attend in a timely manner, the hearing officer may also admit the affidavit of this witness.

(e) If a request to call a witness is denied, a written explanation shall be made on the record unless it would endanger any person. In this case, a written explanation shall be made to the warden with a copy, on appeal, to the secretary of corrections for confidential review. (Authorized by and implementing K.S.A. 2006 Supp. 75-5210, K.S.A. 75-5251; effective May 1, 1984; amended May 1, 1987; amended April 20, 1992; amended Feb. 15, 2002; amended July 13, 2007.)

44-13-406. Disposition. (a) The disposition shall be rendered by the hearing officer in an official session with the inmate present unless otherwise provided by law or regulation. The disposition shall be made without unreasonable delay following the hearing, preferably at the conclusion of the hearing.

(b) The disciplinary hearing officer shall sentence the inmate by selecting an appropriate disposition, or appropriate combination of dispositions, from the following options:

- (1) Impose a penalty or penalties in accordance with the applicable penalty regulation for that class of offense;
- (2) In the instance of two or more offenses, including imposition of previously suspended sentences, in which the penalty has a time component, order whether the sentences are to be served concurrently or consecutively. If the hearing officer makes no specific order in this regard, the sentences shall be computed on a concurrent basis;
- (3) impose previously suspended sentences; or
- (4) suspend all or part of the sentence imposed for a period of not less than 90 and not more than 180 days.

(c) The hearing officer shall make a recommendation regarding disposition of evidence. The warden shall determine final disposition of the evidence, in accordance with K.A.R. 44-5-111, in the warden's administrative review of the disciplinary report pursuant to K.A.R. 44-13-701.

(d) Upon request, the reporting staff person may be notified of the disposition. (Authorized by and implementing K.S.A. 2006 Supp. 75-5210; ef-

fective May 1, 1980; amended, T-83-23, Aug. 11, 1982; amended, T-84-6, May 1, 1983; amended May 1, 1984; amended, T-86-4, March 22, 1985; amended May 1, 1986; amended May 1, 1987; amended April 20, 1992; amended Feb. 15, 2002; amended July 13, 2007.)

44-13-407. (Authorized by and implementing K.S.A. 75-5210; effective May 1, 1980; amended, T-83-23, Aug. 11, 1982; amended, T-84-6, May 1, 1983; amended May 1, 1984; amended May 1, 1985; amended May 1, 1986; revoked April 20, 1992.)

44-13-408. Assistance from staff. (a) If the hearing officer finds that at least one of the following conditions is met, the hearing officer shall appoint a staff member from an approved list to act as staff assistant to aid the inmate at the disciplinary hearing and to question relevant witnesses:

(1) The inmate is incapable of self-representation due to physical or mental disability, whether temporary or permanent.

(2) The inmate is illiterate in the English language.

(3) The charge is too complex for the inmate to readily comprehend or defend against.

(4) Testimony or other evidence will be given, either directly or indirectly, by a confidential inmate informant or witness.

(5) The inmate either refuses to attend or has been removed from the hearing.

(6) Any other circumstance exists that, in the judgment of the hearing officer, substantially impairs the inmate's ability to participate meaningfully in the inmate's defense.

(b) A list of staff members to aid the inmate as staff assistants shall be made available to the hearing officer by the warden. (Authorized by and implementing K.S.A. 2006 Supp. 75-5210; effective May 1, 1980; amended, T-83-23, Aug. 11, 1982; amended, T-84-6, May 1, 1983; amended May 1, 1984; amended May 1, 1986; amended April 20, 1992; amended Jan. 3, 1995; amended Feb. 15, 2002; amended July 13, 2007.)

44-13-409. Standard of proof. No finding of guilty shall be made in a disciplinary proceeding unless the institution or facility has produced evidence and testimony sufficient to show guilt of the inmate by a preponderance of the evidence. "Preponderance of the evidence" shall be that standard of proof by which a factual proposition is shown to be more likely true than not.

This amendment shall be effective on and after February 15, 2002. (Authorized by and imple-

menting K.S.A. 75-5210; effective May 1, 1980; amended Feb. 15, 2002.)

44-13-501. Preservation of all reports. No disciplinary reports or summary judgment citations shall be destroyed for any reason. If written in error or incorrectly written, the report or citation with the case number shall be marked "void" and placed in the disciplinary chronological file at the facility. If the charge was dismissed or a finding of not guilty was made by the disciplinary hearing officer, then the report shall be marked accordingly and placed in the disciplinary chronological file at the facility.

This amendment shall be effective on and after February 15, 2002. (Authorized by and implementing K.S.A. 75-5210; effective May 1, 1980; amended May 1, 1984; amended April 20, 1992; amended Feb. 15, 2002.)

44-13-502. (Authorized by K.S.A. 1979 Supp. 75-5210, 75-5210(f); effective May 1, 1980; revoked April 20, 1992.)

44-13-502a. Hearing record. A complete written record shall be made of the disciplinary hearing by the hearing officer who conducted the hearing. The written record shall include the following information:

(a) A summary of the disciplinary hearing showing compliance with the provisions of K.A.R. 44-13-403, K.A.R. 44-13-404, and K.A.R. 44-13-405a;

(b) a summary of compliance with the provisions of K.A.R. 44-13-101a and K.A.R. 44-13-403 if the inmate pleads guilty or no contest, including attachment of the required waiver form and acceptance of the plea by the hearing officer;

(c) a complete summary of all the evidence and arguments relied on to find the inmate guilty of the charge at the conclusion of the hearing, including the following:

(1) A summary of the testimony or sworn statement of the reporting officer, subject to applicable provisions of K.A.R. 44-13-403;

(2) a summary of the testimony or sworn statements of all other witnesses;

(3) any investigative reports;

(4) a list of all physical evidence;

(5) a list of any witnesses whose testimony was requested and denied and the reasons for that denial;

(6) the reasons for the denial of confrontation and cross-examination of any witness by the inmate; and

(7) the reasons for the denial of any request for assistance by the inmate at any stage of the hearing; and

(d) the disposition of the case provided for in K.A.R. 44-13-406, including a summary of the evidence and arguments heard and the reasons for the penalties imposed during the penalty phase of the hearing.

This amendment shall be effective on and after February 15, 2002. (Authorized by and implementing K.S.A. 75-5210, 75-5251; effective April 20, 1992; amended Feb. 15, 2002.)

44-13-503. (Authorized by and implementing K.S.A. 75-5210; effective May 1, 1980; amended May 1, 1984; amended May 1, 1986; amended May 1, 1987; revoked April 20, 1992.)

44-13-504. (Authorized by K.S.A. 75-5210; effective May 1, 1980; amended May 1, 1984; amended May 1, 1986; revoked April 20, 1992.)

44-13-505. Copy to the inmate. No charge shall be made for the first single copy of the disciplinary case record provided to an inmate. (Authorized by K.S.A. 1979 Supp. 75-5210, 75-5210(f); effective May 1, 1980.)

44-13-506. Preparation of the record in 10 working days. The record of the disciplinary hearing shall be caused by the warden or designee to be prepared within 10 working days after the rendering of the disposition by the hearing officer, unless extenuating circumstances arise. If such circumstances arise, the record shall be prepared as soon as possible, and the reason for the delay shall be attached in writing and delivered to the inmate upon completion of administrative review by the warden.

This amendment shall be effective on and after February 15, 2002. (Authorized by and implementing K.S.A. 75-5210, 75-5251; effective May 1, 1980; amended April 20, 1992; amended Feb. 15, 2002.)

44-13-507. Docket. (a) A docket of disciplinary cases shall be maintained, showing the following:

- (1) The case number;
- (2) the inmate's name;
- (3) the inmate's number;
- (4) the cell house;
- (5) the offense and its classification; and
- (6) the name and title of the reporting officer.

Space shall be left on each line on the docket to

enter the plea of the inmate, the findings of the hearing officer, and the sentence imposed.

(b) A copy of this docket shall be maintained in the facility.

This amendment shall be effective on and after February 15, 2002. (Authorized by and implementing K.S.A. 75-5210, 75-5251; effective May 1, 1980; amended April 20, 1992; amended Feb. 15, 2002.)

44-13-508. Disciplinary reports in file. The case disposition report and disciplinary report shall be placed in the inmate's file if there is a finding of guilty. No reference to the case shall be made in the inmate's file if the inmate is not found to be guilty or if the case is dismissed.

This amendment shall be effective on and after February 15, 2002. (Authorized by and implementing K.S.A. 75-5210, 75-5251; effective May 1, 1980; amended May 1, 1984; amended Feb. 15, 2002.)

44-13-509. Disciplinary case log. The disciplinary administrator shall keep a continuous log of all disciplinary reports. The reports shall be numbered and recorded. If any disciplinary report is voided, dismissed, or otherwise terminated, the log and the report shall reflect that fact. No numbers or entries shall be altered, nor any report destroyed.

This amendment shall be effective on and after February 15, 2002. (Authorized by and implementing K.S.A. 75-5210; effective May 1, 1984; amended Feb. 15, 2002.)

44-13-601. Serving sentence. Each inmate shall begin serving the sentence immediately upon imposition of sentence by the hearing officer, unless the warden or designee determines that space in the disciplinary segregation area is not immediately available or that immediate placement of the inmate in segregation is not otherwise feasible. If either determination is made, the sentence shall be served when the space is available or when placement of the inmate in segregation becomes feasible.

This amendment shall be effective on and after February 15, 2002. (Authorized by and implementing K.S.A. 75-5210, 75-5251; effective May 1, 1980; amended, T-83-23, Aug. 11, 1982; amended, T-84-6, May 1, 1983; amended May 1, 1984; amended May 1, 1985; amended May 1, 1987; amended April 20, 1992; amended Feb. 15, 2002.)

44-13-602. Time not credited for administrative segregation. If the inmate is held in administrative segregation before the disciplinary hearing for some administrative reason, other than merely to await the disciplinary hearing or for investigation of the offense, then that time spent in administrative segregation shall not be credited against the service of sentence in disciplinary segregation. However, any time during which the inmate is held pending the hearing, which is solely for the purpose of awaiting the disciplinary hearing or awaiting completion of the investigation, shall be credited and subtracted from the inmate's disciplinary segregation sentence, if such a sentence is rendered on the charge. (Authorized by and implementing K.S.A. 1983 Supp. 75-5210; effective May 1, 1980; amended, T-83-23, Aug. 11, 1982; amended, T-84-6, May 1, 1983; amended May 1, 1984.)

44-13-603. Absence from facility. (a) If the inmate is sentenced to disciplinary segregation, restriction to cell, or restriction from privileges and if the inmate is then transferred out to court or to a mental hospital before commencing or completing the sentence, that time spent outside the facility shall not be credited against the service of the sentence. Upon return to the facility, the inmate shall serve the remainder of the sentence, unless the warden determines that the best interests of the inmate or facility warrant that the sentence be suspended.

(b) If the inmate is paroled, conditionally released, or released on postrelease supervision before completion of serving the sentence, the inmate may be required to complete serving the sentence upon the inmate's subsequent return to a facility. (Authorized by and implementing K.S.A. 2006 Supp. 75-5210, K.S.A. 75-5251; effective May 1, 1986; amended April 20, 1992; amended July 11, 1994; amended Feb. 15, 2002; amended July 13, 2007.)

44-13-610. Collection of fines. (a) Upon disposition of the case, a fine may be collected immediately, without further hearing process, from the inmate's trust account. The fine shall be collected only on written order of the disciplinary administrator.

(b) The fine shall be taken from any money that the inmate has credited to the trust account administered by the department of corrections or the contract facility. The fine shall not be deduct-

ed or taken from the gratuity, travel, or clothing allowance provided to the inmate upon release.

(c) No inmate, while released from incarceration, shall be required to continue payment on any fine imposed under these regulations. Upon any subsequent admission, the fine may be collected.

(d) If the inmate is transferred to another department of corrections or contract facility before collection, collection may be made by the receiving facility on order of the warden of the sending facility, as approved and confirmed by the warden of the receiving facility. The proceeds of the fine shall be deposited to the inmate benefit fund at the facility where the collection is made. (Authorized by and implementing K.S.A. 2006 Supp. 75-5210, K.S.A. 75-5251; effective May 1, 1984; amended May 1, 1985; amended April 20, 1992; amended Feb. 15, 2002; amended July 13, 2007.)

44-13-701. Administrative review. (a) In class I and II offense cases, within seven working days after preparation of the record, there shall be a review of the case, without the presentation of further arguments from either side, regarding compliance with the disciplinary procedure. One or more of the following actions may be performed by the warden:

- (1) Approve the decision;
- (2) reinstate a charge that has been dismissed without a factual finding of guilt or innocence and remand the disciplinary case to the disciplinary administrator;
- (3) amend the charge in accordance with the provisions of K.A.R. 44-13-202 and remand to the disciplinary administrator;
- (4) disapprove the decision and dismiss the case;
- (5) reduce the penalty;
- (6) suspend all or part of a sentence for a period of at least 90 but not more than 180 days;
- (7) remand the case to the disciplinary administrator and order a new hearing;
- (8) remand the case to the disciplinary administrator for clarification of the record, and return the case to the warden for further consideration; or
- (9) reduce the disciplinary report to a summary judgment and impose one of the following:
 - (A) Restriction from privileges for not more than 10 days;
 - (B) a fine not to exceed \$10.00;
 - (C) extra work without incentive pay for not more than two hours each day, not to exceed five days;
 - (D) work without incentive pay, not to exceed five days. This penalty shall not include a fine and

shall apply only to ordinary inmate work assignments; or

(E) restitution of not less than \$3.00 and not more than \$20.00.

(b) Disposition of personal property that has been found to be the subject of a violation of one or more disciplinary regulations shall be provided for by the warden in accordance with K.A.R. 44-5-111 if the property is the subject matter of the offense.

(c) The inmate shall be notified by the warden of the results of the review by way of service of a copy of the disciplinary case record, without unnecessary delay, but in no case later than seven working days after review of the record. The date of review shall not be counted.

(d) Any mistake of law or other clear error may be corrected by the warden, at any time before a decision is made by the secretary in any ensuing appeal by the inmate, with the appeal permitted to continue as to any other point still unresolved by the warden's action as required by K.A.R. 44-13-703.

(e) In class III offense cases that do not include class I or class II offenses, if possible, the reviewer shall not be the warden. An impartial employee of suitable rank and experience shall be designated by the warden to perform the review. A person who was the hearing officer shall not act as reviewing authority, nor shall the reviewer be any person involved in the offense as witness or reporting officer. (Authorized by and implementing K.S.A. 2006 Supp. 75-5210; effective May 1, 1980; amended May 1, 1981; amended, T-84-6, May 1, 1983; amended May 1, 1984; amended May 1, 1987; amended April 20, 1992; amended Feb. 15, 2002; amended July 13, 2007.)

44-13-702. Appeal on the record to the warden of the facility in class III offense cases. (a) In class III offense cases, the inmate shall have a right of appeal to the warden of the facility, and shall not have a right of appeal to the secretary of corrections.

(b) The procedure for appeal to the warden of the facility shall be the same as that for appeal to the secretary of corrections in class I and II offense cases.

(c) The same time to answer the appeal shall be provided to the warden as that provided for the secretary of corrections in class I and II offense cases.

This amendment shall be effective on and after February 15, 2002. (Authorized by and im-

plementing K.S.A. 75-5210; effective May 1, 1980; amended, T-83-23, Aug. 11, 1982; amended, T-84-6, May 1, 1983; amended May 1, 1984; amended April 20, 1992; amended Feb. 15, 2002.)

44-13-703. Appeal on the record to secretary of corrections in class I and II offense cases only. (a) In class I and II offense cases, the inmate shall have the right to appeal on the record to the secretary of corrections from a final decision made by the disciplinary hearing officer, after review of the decision by the warden. If a class III offense is included among class I or II offenses, the class III offense shall be subject to review by the secretary of corrections. The inmate shall be notified of the right of appeal before or immediately following the warden's review.

(b) The inmate may, on forms provided by the unit team, prepare the inmate's own appeal. The unit team shall ensure that all data necessary to identify and properly log the appeal is provided and forwarded to the disciplinary administrator.

(c) The inmate shall submit the appeal within 15 days of the date of receiving the inmate's copy of the final action.

(d) If the inmate pleads guilty or no contest at the hearing, an appeal of the penalty imposed may be brought, but no appeal of the finding of guilt shall be permitted unless the inmate alleges and shows any of the following:

(1) The inmate was under duress at the time of the plea.

(2) Fraud or substantial error was involved in the inmate's plea of guilty or no contest.

(3) The inmate was not advised of the nature of the hearing and the rights that the inmate would waive by that plea.

(e) The facility's legal counsel may be asked by the secretary to prepare and submit a responsive argument. The responsive argument shall be submitted to the secretary within five calendar days of receipt of the request. The secretary's request for a responsive argument shall not extend the time limits for the secretary's review of the inmate's disciplinary appeal as established in K.A.R. 44-13-704.

(f) Any mistake of law or other clear error may be corrected by the warden at any time before a decision is made by the secretary in any ensuing appeal by the inmate, with the appeal permitted to continue as to any other point still unresolved by the warden's action, as required by K.A.R. 44-13-701. (Authorized by and implementing K.S.A.

2005 Supp. 75-5210; effective May 1, 1980; amended May 1, 1985; amended May 1, 1987; amended April 20, 1992; amended Feb. 15, 2002; amended July 13, 2007.)

44-13-704. Secretary of corrections' final review on appeal. (a) Within 15 working days after an appeal is received, all cases appealed to the secretary shall be reviewed by the secretary or designee. Any of the following actions may be taken by the secretary or designee:

- (1) Approve the decision;
- (2) reinstate a charge that has been dismissed without a factual finding of guilt or innocence and remand the disciplinary case to the disciplinary administrator for a new hearing;
- (3) amend the charge in accordance with K.A.R. 44-13-202 and remand the disciplinary case to the disciplinary administrator for a new hearing;
- (4) disapprove the decision and dismiss the case;
- (5) reduce the penalty;
- (6) suspend all or part of a sentence for at least 90 and not more than 180 days;
- (7) remand the case to the disciplinary administrator and order a new hearing;
- (8) remand the case to the disciplinary administrator for clarification of the record and return the case to the secretary for further consideration;
- (9) reduce the disciplinary report to a summary judgment and impose one of the following:
 - (A) Restriction from privileges for not more than 10 days;
 - (B) a fine not to exceed \$10.00;
 - (C) extra work without incentive pay for not more than two hours each day, not to exceed five days;
 - (D) work without incentive pay, not to exceed five days. This penalty shall not include a fine and shall apply only to ordinary inmate work assignments; or
 - (E) restitution of at least \$3.00 and not more than \$20.00; or
- (10) remand the case to the disciplinary administrator with any instructions necessary to ensure compliance with the disciplinary procedure and rules of conduct.

The date of receipt shall not be counted. The secretary's decision shall be final. A copy of the written appeal decision shall be given to the inmate within 15 working days following the secretary's decision. If the appeal is denied, the reason for that decision shall be included in the written appeal decision.

(b) The secretary's review shall determine the following:

- (1) Whether there was substantial compliance with departmental and facility standards and procedures;
- (2) whether the hearing officer's decision was based on some evidence; and
- (3) whether, under the circumstances, the penalty imposed was appropriate and proportionate to the offense. (Authorized by and implementing K.S.A. 2006 Supp. 75-5210; effective May 1, 1980; amended May 1, 1981; amended, T-83-23, Aug. 11, 1982; amended, T-84-6, May 1, 1983; amended May 1, 1984; amended May 1, 1985; amended May 1, 1988; amended April 20, 1992; amended Jan. 3, 1995; amended Feb. 15, 2002; amended July 13, 2007.)

44-13-705. This revocation shall be effective on and after February 15, 2002. (Authorized by and implementing K.S.A. 1990 Supp. 75-5210; effective May 1, 1980; amended April 20, 1992; revoked Feb. 15, 2002.)

44-13-706. Administrative review board to review and make recommendations. The administrative segregation review board established under the applicable internal management policy and procedure of the secretary may review the inmates held in disciplinary segregation. This board may, at any time, recommend to the warden or designee that the disciplinary segregation sentence of an inmate be modified to suspend the remaining segregation time based on a finding of the administrative disciplinary segregation review board that the inmate has maintained exceptionally good behavior while in segregation. The remaining segregation time of the inmate's sentence may be suspended by the warden or designee, acting on the recommendation of the administrative segregation review board.

This amendment shall be effective on and after February 15, 2002. (Authorized by and implementing K.S.A. 75-5210, 75-5251; effective May 1, 1980; amended April 20, 1992; amended Feb. 15, 2002.)

44-13-707. Harmless error; plain error. None of the following types of errors shall be grounds for granting a new hearing, for setting aside a finding, or for vacating, modifying or otherwise disturbing a disposition or order, unless refusal to take that action appears to the hearing officer or the reviewing authority inconsistent

with substantial justice: (a) An error in either the admission or exclusion of evidence;

(b) an error or defect in any ruling or order;

(c) an error in anything done or omitted by the hearing officer or by any of the facility officials in processing the disciplinary case; or

(d) an error by the inmate in processing the inmate's defense of the case.

Throughout the disciplinary process, the hearing officer or the reviewing authority shall disregard any error or defect in the proceeding that does not affect the substantial rights of the inmate or the facility.

This amendment shall be effective on and after February 15, 2002. (Authorized by and implementing K.S.A. 75-5210, 75-5251; effective, T-83-23, Aug. 11, 1982; effective, T-84-6, May 1, 1983; effective May 1, 1984; amended April 20, 1992; amended Feb. 15, 2002.)

Article 14.—ADMINISTRATIVE AND DISCIPLINARY SEGREGATION

44-14-101. This revocation shall be effective on and after February 15, 2002. (Authorized by and implementing K.S.A. 1992 Supp. 75-5210, 75-5251, 75-7552; effective May 1, 1980; amended May 1, 1984; amended Dec. 6, 1993; revoked Feb. 15, 2002.)

44-14-102. This revocation shall be effective on and after February 15, 2002. (Authorized by and implementing K.S.A. 1992 Supp. 75-5210, 75-5251, 75-7552; effective May 1, 1980; amended May 1, 1984; amended Dec. 6, 1993; revoked Feb. 15, 2002.)

44-14-201. This revocation shall be effective on and after February 15, 2002. (Authorized by and implementing K.S.A. 1992 Supp. 75-5251, 75-5252; effective May 1, 1980; amended May 1, 1981; amended Dec. 6, 1993; revoked Feb. 15, 2002.)

44-14-202. This revocation shall be effective on and after February 15, 2002. (Authorized by K.S.A. 75-5251, K.S.A. 1979 Supp. 75-5252, 75-5252(c); effective May 1, 1980; revoked Feb. 15, 2002.)

44-14-301. This revocation shall be effective on and after February 15, 2002. (Authorized by and implementing K.S.A. 1992 Supp. 75-5210, 75-5251, 75-5252; effective May 1, 1980; amended May 1, 1981; amended Dec. 6, 1993; revoked Feb. 15, 2002.)

44-14-302. This revocation shall be effective on and after February 15, 2002. (Authorized by and implementing K.S.A. 1993 Supp. 75-5210, 75-5251, 75-5252; effective May 1, 1980; amended May 1, 1981; amended, T-83-23, Aug. 11, 1982; amended, T-84-6, May 1, 1983; amended May 1, 1984; amended Dec. 6, 1993; amended July 11, 1994; revoked Feb. 15, 2002.)

44-14-303. This revocation shall be effective on and after February 15, 2002. (Authorized by and implementing K.S.A. 1992 Supp. 75-5210, 75-5251, 75-5252; effective May 1, 1980; amended May 1, 1984; amended May 1, 1985; amended Dec. 6, 1993; revoked Feb. 15, 2002.)

44-14-304. This revocation shall be effective on and after February 15, 2002. (Authorized by and implementing K.S.A. 75-5251, K.S.A. 1983 Supp. 75-5210, 75-5252; effective May 1, 1980; amended May 1, 1984; revoked Feb. 15, 2002.)

44-14-305. This revocation shall be effective on and after February 15, 2002. (Authorized by and implementing K.S.A. 1992 Supp. 75-5210, 75-5251, and 75-5252; effective May 1, 1980; amended May 1, 1984; amended Dec. 6, 1993; revoked Feb. 15, 2002.)

44-14-305a. (Authorized by and implementing K.S.A. 75-5210, 75-5251, 75-5252; effective May 1, 1984; amended May 1, 1986; revoked Dec. 6, 1993.)

44-14-306. This revocation shall be effective on and after February 15, 2002. (Authorized by and implementing K.S.A. 1992 Supp. 75-5251, 75-5252; effective May 1, 1980; amended Dec. 6, 1993; revoked Feb. 15, 2002.)

44-14-307. This revocation shall be effective on and after February 15, 2002. (Authorized by and implementing K.S.A. 1992 Supp. 75-5251, 75-5252; effective May 1, 1980; amended May 1, 1987; amended Dec. 6, 1993; revoked Feb. 15, 2002.)

44-14-308. This revocation shall be effective on and after February 15, 2002. (Authorized by K.S.A. 75-5251, 75-5252; effective May 1, 1980; amended May 1, 1986; revoked Feb. 15, 2002.)

44-14-309. This revocation shall be effective on and after February 15, 2002. (Authorized by and implementing K.S.A. 1992 Supp. 75-5251, 75-5252; effective May 1, 1980; amended Dec. 6, 1993; revoked Feb. 15, 2002.)

44-14-310. This revocation shall be effective on and after February 15, 2002. (Authorized by and implementing K.S.A. 1992 Supp. 75-5210, 75-5251, 75-5252; effective May 1, 1980; amended, T-83-23, Aug. 11, 1982; amended, T-84-6, May 1, 1983; amended May 1, 1984; amended Dec. 6, 1993; revoked Feb. 15, 2002.)

44-14-311. This revocation shall be effective on and after February 15, 2002. (Authorized by and implementing K.S.A. 1992 Supp. 75-5210, 75-5251, 75-5252; effective May 1, 1980; amended May 1, 1984; amended Dec. 6, 1993; revoked Feb. 15, 2002.)

44-14-312. This revocation shall be effective on and after February 15, 2002. (Authorized by and implementing K.S.A. 75-5251, K.S.A. 1983 Supp. 75-5210, 75-5252; effective May 1, 1980; amended May 1, 1984; revoked Feb. 15, 2002.)

44-14-313. This revocation shall be effective on and after February 15, 2002. (Authorized by and implementing K.S.A. 75-5251, K.S.A. 1983 Supp. 75-5210, 75-5252; effective May 1, 1984; revoked Feb. 15, 2002.)

44-14-314. This revocation shall be effective on and after February 15, 2002. (Authorized by and implementing K.S.A. 1992 Supp. 75-5210, 75-5251, and 75-5252; effective May 1, 1984; amended Dec. 6, 1993; revoked Feb. 15, 2002.)

44-14-315. This revocation shall be effective on and after February 15, 2002. (Authorized by and implementing K.S.A. 75-5251, K.S.A. 1983 Supp. 75-5210, 75-5252; effective May 1, 1984; revoked Feb. 15, 2002.)

44-14-316. This revocation shall be effective on and after February 15, 2002. (Authorized by and implementing K.S.A. 1992 Supp. 75-5210, 75-5251, 75-5252; effective May 1, 1984; amended Dec. 6, 1993; revoked Feb. 15, 2002.)

44-14-317. This revocation shall be effective on and after February 15, 2002. (Authorized by and implementing K.S.A. 75-5210, 75-5251, 75-5252; effective May 1, 1987; revoked Feb. 15, 2002.)

44-14-318. This revocation shall be effective on and after February 15, 2002. (Authorized by and implementing K.S.A. 1992 Supp. 75-5210,

75-5251, 75-5252; effective Dec. 6, 1993; revoked Feb. 15, 2002.)

Article 15.—GRIEVANCE PROCEDURE FOR INMATES

44-15-101. Inmate or parolee grievance procedure; informal resolution; formal levels. (a) Throughout this article comprising the grievance procedure, all references to inmates shall include parolees, offenders, or both, supervised on either conditional release or postrelease supervision unless the meaning is clearly to the contrary. References to parolees shall include offenders supervised on either conditional or post-release supervision. References to the warden shall include the parole director. The unit team equivalent shall be the parole officer.

(b) Before utilizing the grievance procedure, the inmate shall be responsible for attempting to reach an informal resolution of the matter with the personnel who work with the inmate on a direct or daily basis. An inmate in a facility or parole setting shall contact the unit team members for the attempt at informal resolution. That attempt shall be documented. The facility's inmate request forms may be used to document this process. If this informal resolution attempt fails, the grievance system may then be used. If an emergency exists and a resolution could not be obtained by going to the unit team, the inmate may go directly into the grievance process.

(c) At each stage, all grievances shall be answered in as short a time as possible to insure that delay will not impose additional hardship upon the inmate or unnecessarily prolong a misunderstanding. Grievances of inmates who have since been transferred, paroled, or discharged shall be answered to the extent possible.

(d) The grievance procedure shall incorporate several levels of problem solving to assure solution at the lowest administrative level possible.

(1) Level 1. The inmate shall first submit the grievance report form to an appropriate unit team member of the facility. The parolee shall first submit the form to the parole officer.

(2) Level 2. The inmate shall then submit the grievance report form to the warden of the facility. The parolee shall then submit the form to the regional parole director.

(3) Level 3. If not resolved, the grievance may be next submitted to the office of the secretary of corrections. Either a response to the grievance

or referral of the matter to a deputy secretary of corrections for additional investigation, if necessary, shall be made by the warden. Grievances of inmates may be referred by the secretary to the deputy secretary of corrections for facility management. Grievances of parolees may be referred by the secretary to the deputy secretary of corrections for community and field services management.

(e) Inmate grievance report forms and appeal forms shall be made available to all inmates. Grievance forms and appeal forms shall be provided in containers in each inmate living unit and on each segregation wing or tier. The unit team shall assist the inmate in obtaining copies of supporting material necessary to complete the grievance if the number of photocopies requested by the inmate is reasonable.

(f) No staff member shall refuse to sign, date, and return an inmate request form, an inmate grievance form, or a grievance receipt slip showing that the inmate came to that person for assistance.

(g) Each inmate shall be entitled to invoke the grievance procedure. The procedure shall be made accessible to mentally impaired and physically handicapped inmates by the warden.

This amendment shall be effective on and after February 15, 2002. (Authorized by and implementing K.S.A. 75-5210, K.S.A. 75-5251; effective May 1, 1980; amended May 1, 1984; amended May 1, 1987; amended April 20, 1992; amended Feb. 15, 2002.)

44-15-101a. Grievance procedure distribution; orientation; applicability; remedies; advisory committee; investigation. (a) Grievance procedure regulations shall be distributed or made readily available to all employees and inmates in each correctional facility.

(b) Each inmate and employee, upon admittance to or employment by the facility, shall receive an oral explanation of the grievance procedure, including an opportunity to have questions regarding the procedure answered orally. Explanatory materials and the oral presentation shall be available in any language spoken by a significant portion of the facility's population. To the extent feasible, inmates who do not understand English shall receive an explanation of the grievance procedure in a language in which the inmate is fluent. Mentally impaired and physically handicapped inmates shall receive explanations in a manner comprehensible to them. Parole officers

shall provide each parolee with a brief grievance procedure orientation that explains the manner in which the system functions for parolees. Following the explanation, each inmate and each parolee shall sign a statement indicating that the required explanation has been given.

(c) All employees of the facility who are directly involved in the operation of the grievance procedure shall receive training in the skills necessary to operate, or participate in, the grievance procedure.

(d) (1) The grievance procedure shall be applicable to a broad range of matters that directly affect the inmate, including the following:

(A) Complaints by inmates regarding policies and conditions within the jurisdiction of the facility or the department of corrections; and

(B) actions by employees and inmates, and incidents occurring within the facility.

(2) The grievance procedure shall not be used in any way as a substitute for, or as part of, the inmate disciplinary procedure, the classification decision-making process, the property loss or personal injury claims procedure, or the procedure for censorship of publications specified in the secretary's internal management policy and procedure.

(e) The remedies available to the inmate may include action by the warden of the facility to correct the problem or action by the secretary of corrections to cause the problem to be corrected. Relief may include an agreement by facility officials to remedy an objectionable condition within a reasonable, specified time, or to change a facility policy or practice.

(f) A procedure shall be established by the warden for investigating the allegations and establishing the facts of each grievance. An inmate or employee who appears to be involved in the matter shall not participate in any capacity in the resolution of the grievance.

(g) A copy of the grievance response at each level shall be delivered to the unit team, to the inmate, and to the warden last responding. (Authorized by and implementing K.S.A. 2005 Supp. 75-5210, K.S.A. 75-5251; effective May 1, 1984; amended May 1, 1985; amended Feb. 15, 2002; amended June 1, 2007.)

44-15-101b. Time limit for filing grievance. Grievances shall be filed within 15 days from the date of the discovery of the event giving rise to the grievance, excluding Saturdays, Sundays and holidays. No grievance, regardless of time of discovery, shall be filed later than one

year after the event. Any grievance filed later than these deadlines may be returned to the inmate without investigation. The name of the individual returning the grievance, the date of the return, and the reasons for the return shall be noted on the grievance. An inmate may move to the next stage of the grievance procedure if a timely response is not received at any step in the grievance process, unless an extension of time for the response is agreed to in writing by the inmate and staff person answering the grievance. (Authorized by and implementing K.S.A. 75-5210, 75-5251; effective May 1, 1984; amended May 1, 1988.)

44-15-102. Procedure. (a) Grievance step one: preliminary requirement; informal resolution and problem solving at unit team level.

(1) Each inmate shall first seek information, advice, or help on any matter from the inmate's unit team, or from a member of the team. If unable to solve the problem, the unit team shall refer the inmate to the proper office or department. The unit team shall assist those inmates who are unable to complete the form themselves.

(2) If an inmate does not receive a response from the unit team within 10 calendar days, a grievance report may be sent to the warden without the unit team signature or signatures. Each grievance report form shall include an explanation of the absence of the signature or signatures.

(b) Grievance step two: complaint to the warden. If any inmate receives a response but does not obtain a satisfactory solution to the problem through the informal resolution process within 10 calendar days, the inmate may fill out an inmate grievance report form and submit it, within three calendar days after the deadline for informal resolution, to a staff member for transmittal to the warden.

(1) The inmate shall attach a copy of each inmate request form used to attempt to solve the problem and shall indicate on the inmate grievance report the following information:

(A) A specific complaint that states what or who is the subject of the complaint, related dates and places, and what effect the situation, problem, or person is having on the inmate that makes the complaint necessary;

(B) the title and number, if possible, of any order or regulation that could be the subject of the complaint;

(C) the action that the inmate wants the warden to take to solve the problem;

(D) the name and signature of the responsible institution employee or employees or of the parole officer from whom the inmate sought assistance. This signature shall be on either an inmate request form or the grievance report form. The date on which the help was sought shall be entered by the employee on the form; and

(E) the date on which the completed grievance report was delivered to the staff member for transmittal to the office of the warden.

(2) The staff member shall forward the report to the warden before the end of the next working day and shall give a receipt to the inmate.

(3) Warden's response.

(A) (i) Upon receipt of each grievance report form, a serial number shall be assigned by the warden or designee, and the date of receipt shall be indicated on the form by the warden or designee. The nature of the grievance shall be ascertained by the warden or designee.

(ii) Each inmate grievance shall be returned to the inmate, with an answer, within 10 working days from the date of receipt.

(B) Each answer shall contain findings of fact, conclusions drawn, the reasons for those conclusions, and the action taken by the warden. Each answer shall inform the inmate that the inmate may appeal by submitting the appropriate form to the secretary of corrections.

(C) In all cases, the original and one copy of the grievance report shall be returned by the warden to the inmate. The copy shall be retained by the inmate for the inmate's files. The original may be used for appeal to the secretary if the inmate desires. The necessary copies shall be provided by the warden.

(D) A second copy shall be retained by the warden.

(E) Each facility shall maintain a file on grievance reports indexed by inmate name and subject matter. Grievance report forms shall not be placed in the inmate's institution file.

(F) Any grievance report form may be rejected by the warden if the form does not document any unit team action as required for the preliminary informal resolution process. The grievance report form shall then be sent back to the unit team for an immediate answer to the inmate.

(G) If no response is received from the warden in the time allowed, any grievance may be sent by an inmate to the secretary of corrections with an explanation of the reason for the delay.

(c) Grievance step three: appeal to the secretary of corrections.

(1) If the warden's answer is not satisfactory, the inmate may appeal to the secretary's office by indicating on the grievance appeal form exactly what the inmate is displeased with and what action the inmate believes the secretary should take. The inmate's appeal shall be made within three calendar days of receipt of the warden's decision, or within three calendar days of the deadline for that decision, whichever is earlier.

(2) The appeal shall then be sent directly and promptly by U.S. mail to the department of corrections central office in Topeka.

(3) When an appeal of the warden's decision is made to the secretary, the secretary shall then have 20 working days from receipt to return the grievance report form to the inmate with an answer. The answer shall include findings of fact, conclusions made, and actions taken.

(4) If a grievance report form is submitted to the secretary without prior action by the warden, the form may be returned to the warden. If the warden did not respond in a timely manner, the form shall be accepted by the secretary.

(5) An appropriate official may be designated by the secretary to prepare the answer.

(d) General provisions: page limits; partial responses; repetitive filings.

(1) At each step of the grievance procedure, the total number of pages of inmate grievance text shall not exceed 10 pages. Text appearing on the front and back of a page shall count as two pages. Any page of text beyond 10 pages shall not be considered when determining the merits of the grievance.

(2) Responding to parts of grievances that are procedurally or substantively appropriate shall not constitute a waiver of defects with the remaining parts of the grievance that are not procedurally or substantively appropriate.

(3) No offender shall abuse the grievance system by repeatedly filing the same complaint.

(A) Each offender who has been identified as being abusive of the grievance system by filing the same complaint on more than one occasion shall be notified in writing of this finding by the warden or secretary's designee responsible for responding to inmate grievance appeals who receives the repeated filing.

(i) The notification shall be given at the time of the repeated filing.

(ii) The repeated filing shall be returned to the offender with the notification but without further substantive response.

(iii) The notification shall contain reference to the matter of which the grievance is repetitive.

(B) If, following this notification, an offender continues to file the same complaint, the warden or secretary's designee may make application to the secretary to impose sanctions to remedy the abuse.

(C) Upon the finding by the secretary of an abusive filing, a fee of not more than five dollars may be imposed on the offender.

(D) Any application for sanctions submitted to the secretary by a warden or secretary's designee for consideration may be referred by the secretary to a designee other than a person responsible for responding to grievance or grievance appeals. (Authorized by and implementing K.S.A. 75-5210, K.S.A. 75-5251; effective May 1, 1980; amended May 1, 1984; amended May 1, 1985; amended May 1, 1988; amended April 20, 1992; amended Feb. 15, 2002; amended June 1, 2007.)

44-15-104. Reprisals prohibited. (a) Inmates. No adverse action shall be taken against any inmate for use of the grievance procedure unless the inmate uses the grievance procedure for any of the following purposes:

(1) To communicate a threat to another person or to the security of the facility;

(2) to make a complaint knowing that it is false, malicious, or made in bad faith; or

(3) to commit any unlawful act.

(b) Employees. No adverse action shall be taken against any employee for good faith participation in the grievance procedure. Employees shall be entitled to grieve reprisals for participation in inmate grievance systems by use of the department of corrections' employee grievance system. (Authorized by and implementing K.S.A. 2005 Supp. 75-5210, K.S.A. 75-5251; effective May 1, 1984; amended June 1, 2007.)

44-15-105. Records. (a) Nature. Records regarding the filing and disposition of grievances shall be collected and maintained systematically by the correctional facility. These records shall be preserved for at least three years following final disposition of the grievance. These records shall include aggregate information regarding the numbers, types and dispositions of grievances, as well as individual records of the date of and the reasons for each disposition at each stage of the procedure. The logs and records shall be in a form and manner prescribed by secretary of corrections policy and procedure.

(b) Confidentiality. Records regarding the participation of an individual in grievance proceedings shall be considered confidential and shall be handled under the same procedures used to protect other confidential case records. Consistent with ensuring confidentiality, members of the staff who are participating in the disposition of a grievance shall have access to records essential to the resolution of the grievance. This, however, shall not permit review of inmate files by other inmates. Grievance report forms shall not be placed in the inmate's departmental file. (Authorized by and implementing K.S.A. 75-5251, K.S.A. 1983 Supp. 75-5210, 75-5210(f); effective May 1, 1984.)

44-15-105a. Annual review. The records regarding the filing and disposition of grievances shall be reviewed annually by the secretary of corrections to determine the effectiveness and credibility of the grievance process. The review shall include an analysis of the types of grievances received, the types and levels of disposition, and any complaints that have been received about the grievance procedure itself. The review shall also include solicitation and consideration of employee and inmate comments on the effectiveness and credibility of the grievance procedure. The secretary of corrections may designate an appropriate deputy secretary of corrections to conduct the review. (Authorized by and implementing K.S.A. 1991 Supp. 75-5210, 75-5251; effective April 20, 1992.)

44-15-106. Emergency procedure. "Emergency grievances" shall mean those grievances for which disposition according to the regular time limits would subject the inmate to a substantial risk of personal injury, or cause other serious and irreparable harm to the inmate. In emergency situations the inmate may bypass the prerequisite of informal resolution if going to the unit team would not obtain a solution to the problem. The inmate shall indicate on the face of the grievance form the nature of the emergency and shall write the word "emergency" at the top of the grievance report form. Emergency grievances shall be forwarded immediately, without substantive review, to the level at which corrective action can be taken. Emergency grievances shall be expedited at every level. The same external review provisions that apply to regular grievances shall apply to emergency grievances.

If the person at the corrective action level determines that the grievance is not an emergency,

that fact shall be included on the grievance form and the form shall be signed by the person who made that determination. The grievance may then be processed from that point on as a regular grievance. If necessary for a proper response the grievance may be sent for processing at a lower level. (Authorized by and implementing K.S.A. 75-5251, K.S.A. 1983 Supp. 75-5210, 75-5210(f); effective May 1, 1984.)

44-15-201. Special kinds of problems. (a) If an inmate wants to bring a problem to the attention of a higher authority without going through the grievance procedure, the inmate may address as official mail a sealed letter or grievance report form to the warden of the facility, the secretary of corrections, or the state pardon attorney. However, these letters or grievance report forms should be reserved for the most difficult and complex problems. Generally, any matter that can be internally handled under the inmate grievance procedure shall not be considered as appropriate for the use of the official mail correspondence privilege.

(b) Any department of corrections or facility official who receives a complaint letter may return it to the inmate with instructions to the inmate to make use of and follow the proper grievance procedure if, in the opinion of the official, the matter is appropriate for handling through the grievance procedure.

This amendment shall be effective on and after February 15, 2002. (Authorized by and implementing K.S.A. 75-5251, K.S.A. 75-5210; effective May 1, 1980; amended Feb. 15, 2002.)

44-15-202. (Authorized by K.S.A. 75-5251, K.S.A. 1979 Supp. 75-5210, 75-5210(f); effective May 1, 1980; revoked May 1, 1984.)

44-15-203. Ombudsman. The department of corrections grievance procedure is provided for its inmates and parolees, and shall not in any way replace any other complaint system provided by the state ombudsman for corrections. The functions of the ombudsman for corrections are described in writing and made available to inmates. (Authorized by and implementing K.S.A. 75-5210, 75-5251; effective May 1, 1980; amended May 1, 1987.)

44-15-204. Special procedures for sexual abuse grievances; sexual harassment grievances and grievances alleging retaliation for filing same; reports of sexual abuse or sexual harassment submitted by third parties. (a)

Definitions. For the purpose of this regulation, each of the following terms shall have the meaning specified in this subsection:

(1) "Sexual abuse of an inmate by another inmate" means any of the following acts if the victim does not consent, is coerced into the act by overt or implied threats of violence, or is unable to consent or refuse:

(A) Contact between the penis and the vulva or the penis and the anus, including penetration, however slight;

(B) contact between the mouth and the penis, vulva, or anus;

(C) penetration of the anal or genital opening of another person, however slight, by a hand, finger, or object; or

(D) any other intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or the buttocks of another person, excluding contact incidental to a physical altercation.

(2) "Sexual abuse of an inmate by a staff member, contractor, or volunteer" means any of the following acts, with or without the consent of the inmate:

(A) Contact between the penis and the vulva or the penis and the anus, including penetration, however slight;

(B) contact between the mouth and the penis, vulva, or anus;

(C) contact between the mouth and any body part if the staff member, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire;

(D) penetration of the anal or genital opening, however slight, by a hand, finger, or object, that is unrelated to official duties or if the staff member, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire;

(E) any other intentional contact, either directly or through the clothing, of or with the genitalia, anus, groin, breast, inner thigh, or the buttocks, that is unrelated to official duties or if the staff member, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire;

(F) any attempt, threat, or request by a staff member, contractor, or volunteer to engage in the acts described in paragraphs (a)(2)(A)-(E);

(G) any display by a staff member, contractor, or volunteer of that individual's uncovered genitalia, buttocks, or breast in the presence of an inmate; or

(H) voyeurism by a staff member, contractor, or volunteer.

(3) "Voyeurism by a staff member, contractor, or volunteer" means an invasion of privacy of an inmate by staff for reasons unrelated to official duties, including peering at an inmate who is using a toilet in the inmate's cell to perform bodily functions; requiring an inmate to expose the inmate's buttocks, genitals, or breasts; or taking images of all or part of an inmate's naked body or of an inmate performing bodily functions.

(4) "Sexual harassment" means either of the following:

(A) Repeated and unwelcome sexual advances, requests for sexual favors, or verbal comments, gestures, or actions of a derogatory or offensive sexual nature by one inmate directed to another; or

(B) repeated verbal comments or gestures of a sexual nature to an inmate by a staff member, contractor, or volunteer, including demeaning references to gender, sexually suggestive or derogatory comments about body or clothing, or obscene language or gestures.

(b) Submission of grievances concerning sexual abuse.

(1) Each inmate submitting a grievance concerning sexual abuse alleged to have already occurred shall state that inmate's intentions by writing "Sexual Abuse Grievance" clearly on the grievance form.

(2) Inmates shall not be required to use any informal grievance process, or to otherwise attempt to resolve with staff, an alleged incident of sexual abuse by a staff member, contractor, or volunteer, or a grievance in which it is alleged that sexual abuse by another inmate or by a staff member, contractor, or volunteer was the result of staff neglect or violation of responsibilities.

(3) Any inmate may submit a grievance to security staff, a unit team member, or administrative personnel in person or by utilizing the inmate internal mail system.

(4) Any inmate who alleges sexual abuse may submit a grievance without submitting it to a staff member who is the subject of the complaint. The grievance shall not be referred to a staff member who is the subject of the complaint.

(c) Warden's response.

(1) Upon receipt of each grievance report form alleging sexual abuse, a serial number shall be assigned by the warden or designee, and the date of receipt shall be indicated on the form by the warden or designee.

(2) Each grievance alleging sexual abuse shall be returned to the inmate, with an answer, within

10 working days from the date of receipt.

(3) Each answer shall contain findings of fact, conclusions drawn, the reasons for those conclusions, and the action taken by the warden. Each answer shall inform the inmate that the inmate may appeal by submitting the appropriate form to the secretary of corrections.

(4) In all cases, the original and one copy of the grievance report shall be returned by the warden to the inmate. The copy shall be retained by the inmate for the inmate's files. The original may be used for appeal to the secretary if the inmate desires. The necessary copies shall be provided by the warden.

(5) A second copy shall be retained by the warden.

(6) Each facility shall maintain a file for grievance reports alleging sexual abuse, with each grievance report indexed by inmate name and coded as a sexual abuse complaint. Grievance report forms shall not be placed in the inmate's institution file.

(7) If no response is received from the warden in the time allowed, any grievance may be sent by an inmate to the secretary of corrections with an explanation of the reason for the delay, if known, with a notation that no response from the warden was received.

(d) Appeal to the secretary of corrections.

(1) If the warden's answer is not satisfactory to the inmate, the inmate may appeal to the secretary's office by indicating on the grievance appeal form exactly what the inmate is displeased with and what action the inmate believes the secretary should take.

(2) The inmate shall send the appeal directly and promptly by U.S. mail to the department of corrections' central office in Topeka.

(3) If an appeal of the warden's decision is made to the secretary, the secretary shall have 20 working days from receipt to return the grievance report form to the inmate with an answer. The answer shall include findings of fact, conclusions made, and actions taken.

(4) If a grievance report form is submitted to the secretary without prior action by the warden, the form may be returned to the warden for further action, at the option of the secretary's designee.

(5) In all cases, a final decision on the merits of any portion of a grievance alleging sexual abuse, or an appeal thereof, shall be issued by the secretary within 90 days of the initial filing of the grievance.

(6) Computation of the 90-day time period shall not include time taken by inmates in preparing and submitting any administrative appeal.

(7) At any level of the administrative process, including the final level, if the inmate does not receive a response within the time allotted for reply, including any properly noticed extension, the inmate may consider the absence of a response to be a denial at that level and may proceed to the next level of appeal.

(8) An appropriate official may be designated by the secretary to prepare the answer.

(e) Imminent sexual abuse.

(1) Each inmate submitting a grievance concerning imminent sexual abuse shall state that inmate's intentions by writing "Emergency Sexual Abuse Grievance" clearly on the grievance form.

(2) Each grievance alleging that an inmate is subject to a substantial risk of imminent sexual abuse shall be treated as an emergency grievance under K.A.R. 44-15-106.

(3) After receiving an emergency grievance alleging imminent sexual abuse, the warden or designee shall provide an initial response within 48 hours and shall issue a final decision within five calendar days. The initial response and final decision shall document the determination whether the inmate is in substantial risk of imminent sexual abuse and the action taken in response to the emergency grievance.

(f) Submission of grievances concerning sexual harassment or concerning retaliation for submission of a report or grievance concerning sexual abuse or harassment.

(1) Each inmate shall be required to use the informal grievance process specified in K.A.R. 44-15-101 and 44-15-102 for grievances concerning sexual harassment or concerning retaliation for submission of a report or grievance concerning sexual abuse or harassment. These grievances shall otherwise be treated and processed according to the ordinary grievance procedure specified in K.A.R. 44-15-101 and 44-15-102.

(2) Any inmate who alleges sexual harassment or retaliation may submit a grievance without submitting it to a staff member who is the subject of the complaint. The grievance shall not be referred to a staff member who is the subject of the complaint.

(3) Each facility shall maintain a file for grievance reports alleging sexual harassment or retaliation for submission of a report or grievance alleging sexual abuse or harassment, with each grievance report indexed by inmate name and

coded accordingly. No grievance report form shall be placed in the inmate's institution file.

(g) Time limits.

(1) There shall be no time limit for submission of a grievance regarding an allegation of sexual abuse.

(2) The time limits for any grievance or portion thereof that does not allege an incident of sexual abuse or imminent sexual abuse shall be the limits specified in K.A.R. 44-15-101b.

(h) Third-party submissions.

(1) Third parties, including fellow inmates, staff members, family members, attorneys, and outside advocates, shall be permitted to assist any inmate in filing requests for administrative remedies relating to allegations of sexual abuse and shall also be permitted to file these requests on behalf of any inmate.

(2) If a third party files such a request on behalf of an inmate, the alleged victim shall agree to have the request filed on behalf of the alleged victim. The alleged victim shall personally pursue any subsequent steps in the administrative remedy process.

(3) If the inmate declines to have the request processed on that individual's behalf, the facility shall document the inmate's decision.

(i) Grievances in bad faith. Any inmate may be disciplined for filing a grievance related to alleged sexual abuse only if it can be demonstrated that the inmate filed the grievance in bad faith. In this instance, a disciplinary report alleging violation of K.A.R. 44-12-303 or 44-12-317, as appropriate, may be issued. (Authorized by and implementing K.S.A. 2012 Supp. 75-5210 and 75-5251; effective, T-44-6-28-13, June 28, 2013; effective Sept. 27, 2013.)

Article 16.—REPORTING AND CLAIMS; LOST OR DAMAGED PROPERTY OR PERSONAL INJURY

44-16-102. Reporting loss or damage to property. (a) Each inmate shall report every loss of or damage to the inmate's own property immediately. In reporting property damage or loss, inmates shall use applicable avenues of redress as established by internal management policies and procedures. These procedures shall be strictly followed.

(b) The facility warden shall not be required to accept any property loss or damage claim unless it is made within 15 working days of the discovery of the loss. The warden shall not be required to accept any claim at all if both of the following conditions are met:

(1) The claim is submitted later than one year

and one day after the date of the loss, regardless of when the loss was discovered.

(2) The inmate could have discovered the loss by exercising reasonable effort to know the status of the inmate's property and money.

This amendment shall be effective on and after February 15, 2002. (Authorized by K.S.A. 75-5251; implementing K.S.A. 46-920, 75-5254, 75-5255, 75-5257, 75-5210; effective May 1, 1980; amended May 1, 1984; amended Feb. 15, 2002.)

44-16-103. This revocation shall be effective on and after February 15, 2002. (Authorized by and implementing K.S.A. 46-920, as amended by L. 1988, Ch. 183, Sec. 1, K.S.A. 75-5210, 75-5251, 75-5254, 75-5257; effective May 1, 1980; amended May 1, 1984; amended Jan. 2, 1989; revoked Feb. 15, 2002.)

44-16-104. This revocation shall be effective on and after February 15, 2002. (Authorized by K.S.A. 1990 Supp. 75-5210, K.S.A. 75-5251; implementing K.S.A. 1990 Supp. 46-920, 75-5254, 75-5257; effective May 1, 1980; amended May 1, 1984; amended Jan. 2, 1989; amended April 20, 1992; revoked Feb. 15, 2002.)

44-16-104a. Inmate claims for personal injury. (a) Each inmate claim for personal injury shall be submitted to the facility and secretary of corrections within 10 calendar days of the claimed personal injury.

(b) Each claim described in subsection (a) shall be submitted and processed in accord with the department of corrections' internal management policies and procedures.

(c) The requirement that the inmate submit the claim as described in subsection (a) shall apply whether or not the inmate pursues a grievance pursuant to article 15 and whether or not the inmate files a claim with the legislative joint committee on special claims against the state. (Authorized by K.S.A. 75-5251; implementing K.S.A. 75-52,138; effective June 1, 2007.)

44-16-105. Property at own risk. An inmate shall be deemed to own personal property at the inmate's own risk. Loss or damage of personal property shall not provide a basis for recovery on a claim unless the loss or damage directly resulted from the intentional or negligent act or omission of a correctional employee and was reported according to applicable internal management policies and procedures.

This amendment shall be effective on and after February 15, 2002. (Authorized by and implementing K.S.A. 75-5210; effective May 1, 1980; amended May 1, 1984; amended Feb. 15, 2002.)

44-16-106. This revocation shall be effective on and after February 15, 2002. (Authorized by K.S.A. 75-5251, K.S.A. 1979 Supp. 75-5252; effective May 1, 1980; revoked Feb. 15, 2002.)

44-16-107. This revocation shall be effective on and after February 15, 2002. (Authorized by

K.S.A. 1983 Supp. 75-5210, K.S.A. 75-5251; implementing K.S.A. 1983 Supp. 75-5210, K.S.A. 46-920, 75-5251, 75-5254, 75-5257; effective May 1, 1984; revoked Feb. 15, 2002.)

44-16-108. This revocation shall be effective on and after February 15, 2002. (Authorized by and implementing K.S.A. 46-920, as amended by L. 1988, Ch. 183, Sec. 1, K.S.A. 75-5210, 75-5251, 75-5254, 75-5257; effective May 1, 1980; amended May 1, 1984; amended Jan. 2, 1989; revoked Feb. 15, 2002.)

Agency 45

Kansas Prisoner Review Board

Editor's Note:

Pursuant to 2011 Executive Reorganization Order (ERO) No. 34, the Kansas Parole Board was abolished and the Prisoner Review Board was established within the Department of Corrections. See L. 2011, Ch. 130.

Articles

- 45-1. *MEANING OF TERMS. (Not in active use.)*
- 45-2. *GOOD TIME CREDITS. (Not in active use.)*
- 45-3. *PAROLE ELIGIBILITY. (Not in active use.)*
- 45-4. *PAROLE HEARINGS. (Not in active use.)*
- 45-5. *INITIAL HEARINGS. (Not in active use.)*
- 45-6. *DOCKETS. (Not in active use.)*
- 45-7. *PAROLE RELEASE. (Not in active use.)*
- 45-8. *PAROLE ELIGIBILITY; IN ABSENTIA. (Not in active use.)*
- 45-9. *PAROLE VIOLATORS. (Not in active use.)*
- 45-10. *CONDITIONAL RELEASE. (Not in active use.)*
- 45-11. *DISCHARGE. (Not in active use.)*
- 45-12. *EXPUNGEMENT. (Not in active use.)*
- 45-13. *GOOD TIME CREDITS; COMPUTATION TABLE. (Not in active use.)*
- 45-14. *EXECUTIVE CLEMENCY. (Not in active use.)*
- 45-15. *APPLICATION. (Not in active use.)*
- 45-16. *ORDERS OF RESTITUTION. (Not in active use.)*
- 45-100. *MEANING OF TERMS. (Not in active use.)*
- 45-200. *PAROLE HEARING PROCEEDINGS.*
- 45-300. *DOCKETS.*
- 45-400. *RELEASE TO SUPERVISION.*
- 45-500. *PAROLE VIOLATORS. (Not in active use.)*
- 45-600. *CONDITIONAL RELEASE.*
- 45-700. *RELEASE OF FUNCTIONALLY INCAPACITATED INMATES.*
- 45-800. *DISCHARGE.*
- 45-900. *EXECUTIVE CLEMENCY.*
- 45-1000. *ORDERS OF RESTITUTION AND EXPENSES.*

Article 1.—MEANING OF TERMS

45-1-1. (Authorized by K.S.A. 1985 Supp. 22-3717; effective, E-79-36, Jan. 1, 1979; effective, E-80-5, April 17, 1979; effective May 1, 1980; amended May 1, 1982; amended May 1, 1986; amended May 1, 1987; revoked Nov. 22, 2002.)

Article 2.—GOOD TIME CREDITS

45-2-1 to 45-2-6. (Authorized by K.S.A. 1984 Supp. 22-3717; effective, E-79-36, Jan. 1, 1979; effective, E-80-5, April 17, 1979; effective

May 1, 1980; amended May 1, 1982; revoked May 1, 1986.)

Article 3.—PAROLE ELIGIBILITY

45-3-1 and 45-3-2. (Authorized by K.S.A. 22-3717; effective, E-79-36, Jan. 1, 1979; effective, E-80-5, April 17, 1979; effective May 1, 1980; revoked May 1, 1982.)

Article 4.—PAROLE HEARINGS

45-4-1 to 45-4-3. (Authorized by K.S.A.

22-3717; effective, E-79-36, Jan. 1, 1979; effective, E-80-5, April 17, 1979; effective May 1, 1980; revoked May 1, 1982.)

45-4-4. (Authorized by and implementing K.S.A. 1985 Supp. 22-3717; effective, E-79-36, Jan. 1, 1979; effective, E-80-5, April 17, 1979; effective May 1, 1980; amended May 1, 1982; amended May 1, 1986; amended May 1, 1987; revoked Nov. 22, 2002.)

45-4-5 and 45-4-6. (Authorized by and implementing K.S.A. 1984 Supp. 22-3717; effective, E-79-36, Jan. 1, 1979; effective, E-80-5, April 17, 1979; effective May 1, 1980; amended May 1, 1986; revoked Nov. 22, 2002.)

45-4-7. (Authorized by and implementing K.S.A. 1986 Supp. 22-3717; effective, E-79-36, Jan. 1, 1979; effective, E-80-5, April 17, 1979; effective May 1, 1980; amended May 1, 1986; amended May 1, 1988; revoked Nov. 22, 2002.)

45-4-8. (Authorized by K.S.A. 22-3717; effective, E-79-36, Jan. 1, 1979; effective, E-80-5, April 17, 1979; effective May 1, 1980; revoked May 1, 1982.)

45-4-9. (Authorized by and implementing K.S.A. 1984 Supp. 22-3717; effective, E-79-36, Jan. 1, 1979; effective, E-80-5, April 17, 1979; effective May 1, 1980; amended May 1, 1986; revoked Nov. 22, 2002.)

45-4-10. (Authorized by K.S.A. 22-3717; implementing K.S.A. 22-3706; effective, E-79-36, Jan. 1, 1979; effective, E-80-5, April 17, 1979; effective May 1, 1980; revoked May 1, 1982.)

45-4-11. (Authorized by K.S.A. 1984 Supp. 22-3717; effective, E-79-36, Jan. 1, 1979; effective, E-80-5, April 17, 1979; effective May 1, 1980; amended May 1, 1982; revoked May 1, 1986.)

45-4-12. (Authorized by K.S.A. 1984 Supp. 22-3717; implementing K.S.A. 22-3719; effective, E-79-36, Jan. 1, 1979; effective, E-80-5, April 17, 1979; effective May 1, 1980; amended May 1, 1982; revoked May 1, 1986.)

Article 5.—INITIAL HEARINGS

45-5-1. (Authorized by K.S.A. 1984 Supp. 22-3717; effective, E-79-36, Jan. 1, 1979; effective, E-80-5, April 17, 1979; effective May 1, 1980; amended May 1, 1982; revoked May 1, 1986.)

Article 6.—DOCKETS

45-6-1. (Authorized by and implementing K.S.A. 1984 Supp. 22-3717; effective, E-79-36, Jan. 1, 1979; effective, E-80-5, April 17, 1979; effective May 1, 1980; amended May 1, 1982; amended May 1, 1986; revoked Nov. 22, 2002.)

45-6-2 and 45-6-3. (Authorized by and implementing K.S.A. 1984 Supp. 22-3717; effective May 1, 1982; amended May 1, 1986; revoked Nov. 22, 2002.)

45-6-4. (Authorized by K.S.A. 1984 Supp. 22-3717; effective May 1, 1982; revoked May 1, 1986.)

45-6-5. (Authorized by and implementing K.S.A. 1984 Supp. 22-3717; effective May 1, 1982; amended May 1, 1986; revoked Nov. 22, 2002.)

45-6-6. (Authorized by and implementing K.S.A. 1984 Supp. 22-3717; effective May 1, 1982; revoked May 1, 1986.)

Article 7.—PAROLE RELEASE

45-7-1. (Authorized by and implementing K.S.A. 1986 Supp. 22-3717; effective, E-79-36, Jan. 1, 1979; effective, E-80-5, April 17, 1979; effective May 1, 1980; amended May 1, 1982; amended May 1, 1986; amended May 1, 1987; amended May 1, 1988; revoked Nov. 22, 2002.)

45-7-2. (Authorized by and implementing K.S.A. 1984 Supp. 22-3717; effective, E-79-36, Jan. 1, 1979; effective, E-80-5, April 17, 1979; effective May 1, 1980; amended May 1, 1986; revoked Nov. 22, 2002.)

45-7-3. (Authorized by and implementing K.S.A. 1985 Supp. 22-3717; effective, E-79-36, Jan. 1, 1979; effective, E-80-5, April 17, 1979; effective May 1, 1980; amended May 1, 1982; amended May 1, 1986; amended May 1, 1987; revoked Nov. 22, 2002.)

45-7-4 and 45-7-5. (Authorized by and implementing K.S.A. 1984 Supp. 22-3717; effective May 1, 1982; effective May 1, 1986; revoked Nov. 22, 2002.)

Article 8.—PAROLE ELIGIBILITY; IN ABSENTIA

45-8-1. (Authorized by K.S.A. 1984 Supp. 22-3717; effective, E-79-36, Jan. 1, 1979; effective,

E-80-5, April 17, 1979; effective May 1, 1980; revoked May 1, 1986.)

Article 9.—PAROLE VIOLATORS

45-9-1. (Authorized by K.S.A. 1998 Supp. 22-3717, as amended by L. 1999, Ch. 164, Sec. 20; implementing K.S.A. 1998 Supp. 75-5217, as amended by L. 1999, Ch. 54, Sec. 1, as further amended by L. 1999, Ch. 164, Sec. 35; effective, E-79-36, Jan. 1, 1979; effective, E-80-5, April 17, 1979; effective May 1, 1980; amended May 1, 1982; amended May 1, 1986; amended May 1, 1988; amended Nov. 5, 1999; revoked Nov. 22, 2002.)

45-9-2. (Authorized by K.S.A. 1998 Supp. 22-3717, as amended by L. 1999, Ch. 164, Sec. 20; implementing K.S.A. 1998 Supp. 75-5217, as amended by L. 1999, Ch. 54, Sec. 1, as further amended by L. 1999, Ch. 164, Sec. 35; effective May 1, 1986; amended May 1, 1987; amended, T-45-8-29-97, Aug. 29, 1997; amended Feb. 20, 1998; amended Nov. 5, 1999; revoked Nov. 22, 2002.)

45-9-3. (Authorized by K.S.A. 1998 Supp. 22-3717, as amended by L. 1999, Ch. 164, Sec. 20; implementing K.S.A. 1998 Supp. 75-5217, as amended by L. 1999, Ch. 54, Sec. 1, as further amended by L. 1999, Ch. 164, Sec. 35; effective May 1, 1986; amended May 1, 1987; amended Nov. 5, 1999; revoked Nov. 22, 2002.)

45-9-4. (Authorized by K.S.A. 1998 Supp. 22-3717, as amended by L. 1999, Ch. 164, Sec. 20 and K.S.A. 1998 Supp. 75-5217, as amended by L. 1999, Ch. 54, Sec. 1, as further amended by L. 1999, Ch. 164, Sec. 35; implementing K.S.A. 1998 Supp. 75-5217, as amended by L. 1999, Ch. 54, Sec. 1, as further amended by L. 1999, Ch. 164, Sec. 35; effective, T-45-7-8-99, July 8, 1999; effective Nov. 5, 1999; revoked Nov. 22, 2002.)

Article 10.—CONDITIONAL RELEASE

45-10-1. (Authorized by and implementing K.S.A. 1985 Supp. 22-3717; effective, E-79-36, Jan. 1, 1979; effective, E-80-5, April 17, 1979; effective May 1, 1980; amended May 1, 1982; amended May 1, 1986; amended May 1, 1987; revoked Nov. 22, 2002.)

Article 11.—DISCHARGE

45-11-1. (Authorized by and implementing K.S.A. 1984 Supp. 22-3717; effective, E-79-36,

Jan. 1, 1979; effective, E-80-5, April 17, 1979; effective May 1, 1980; amended May 1, 1982; amended May 1, 1986; revoked Nov. 22, 2002.)

Article 12.—EXPUNGEMENT

45-12-1. (Authorized by K.S.A. 22-3717; effective, E-79-36, Jan. 1, 1979; effective, E-80-5, April 17, 1979; effective May 1, 1980; revoked May 1, 1982.)

Article 13.—GOOD TIME CREDITS; COMPUTATION TABLE

45-13-1. (Authorized by K.S.A. 22-3717; effective, E-79-36, Jan. 1, 1979; effective, E-80-5, April 17, 1979; effective May 1, 1980; revoked May 1, 1982.)

Article 14.—EXECUTIVE CLEMENCY

45-14-1. (Authorized by K.S.A. 22-3701; and implementing K.S.A. 1984 Supp. 22-3717; effective, E-79-36, Jan. 1, 1979; effective, E-80-5, April 17, 1979; effective May 1, 1980; amended May 1, 1982; amended May 1, 1986; revoked Nov. 22, 2002.)

Article 15.—APPLICATION

45-15-1. (Authorized by K.S.A. 22-3717; effective, E-79-36, Jan. 1, 1979; effective, E-80-5, April 17, 1979; effective May 1, 1980; revoked May 1, 1982.)

Article 16.—ORDERS OF RESTITUTION

45-16-1. (Authorized by and implementing K.S.A. 1984 Supp. 22-3717; effective May 1, 1982; amended May 1, 1986; revoked May 1, 1987.)

45-16-2. (Authorized by and implementing K.S.A. 1985 Supp. 22-3717; effective May 1, 1982; amended May 1, 1986; amended May 1, 1987; revoked Nov. 22, 2002.)

45-16-3. (Authorized by and implementing K.S.A. 1984 Supp. 22-3717; effective May 1, 1986; revoked Nov. 22, 2002.)

45-16-4. (Authorized by and implementing K.S.A. 1984 Supp. 22-3717; effective May 1, 1986; revoked Nov. 22, 2002.)

Article 100.—MEANING OF TERMS

45-100-1. (Authorized by and implement-

ing K.S.A. 2001 Supp. 22-3701 and 22-3717, as amended by L. 2002, ch. 163, Sec. 5; effective Nov. 22, 2002; revoked March 23, 2012.)

Article 200.—PAROLE HEARING PROCEEDINGS

45-200-1. Attendance at hearings. (a) Except as provided in subsection (b), attendance at any parole hearing held at a correctional institution shall be limited to the following:

- (1) Any individual who is on the board's staff;
- (2) the inmate;
- (3) the person responsible for coordination of the parole plan for that inmate;
- (4) a representative of the inmate's unit team or another designated institution staff member;
- (5) any additional employee of the department of corrections who wishes to attend the hearing and who receives prior approval from the board; and
- (6) if the parole applicant does not offer an objection, a limited number of persons who have a professional interest in parole procedures and who have received prior approval from the board.

(b) Any individual who is authorized to attend a parole hearing under subsection (a) may be denied access to the meeting if the board determines that attendance by that individual is not in the interest of the state. (Authorized by and implementing K.S.A. 2001 Supp. 22-3717, as amended by L. 2002, Ch. 163, Sec. 5; effective Nov. 22, 2002.)

45-200-2. Single board member hearings; review and appeals. (a) If a single board member conducts a parole hearing, the findings of that member shall be reviewed and approved in accordance with K.S.A. 22-3709, and amendments thereto, before the findings and decision become final. If there is a disagreement between the member who conducted the hearing and the member who reviewed the findings, the decision shall be submitted for review by another board member. The presence of the inmate shall not be required at either of these reviews.

(b) A request to reconsider a board decision shall be granted only on the basis that the inmate has new information that was unavailable at the prior hearing. Each request for reconsideration shall be made to the board in writing and shall detail the new evidence that was unavailable at the prior hearing. The presence of the inmate shall not be required when the matter is reconsidered.

(c) An inmate who is appealing a sentence or conviction shall not be adversely affected in the parole process or deliberations. However, the parole hearing may be continued by the board for a reasonable time for the purpose of clarifying the status of the appeal to make certain that the board is considering the applicant's parole suitability with respect to the proper sentence. (Authorized by K.S.A. 2001 Supp. 22-3717, as amended by L. 2002, Ch. 163, Sec. 5; implementing K.S.A. 2001 Supp. 22-3709 and 22-3717, as amended by L. 2002, Ch. 163, Sec. 5; effective Nov. 22, 2002.)

Article 300.—DOCKETS

45-300-1. Docketing regular parole hearings. (a) Each case shall be docketed by the board for a regular parole hearing when all of the following prerequisites have been met:

(1) The inmate has achieved parole eligibility status under the requirements of K.S.A. 21-4608 and K.S.A. 22-3717, and amendments thereto, and department of corrections regulations.

(2) The preparole investigation has been completed.

(3) During the month preceding the proposed docketing of the parole hearing, a public comment session has been conducted by the board.

(b) If an offender has achieved parole eligibility status but has not been placed on the docket for a public comment session, the parole hearing may be conducted by the board if the decision is deferred until the public comment session has been held. (Authorized by and implementing K.S.A. 2001 Supp. 22-3717, as amended by L. 2002, Ch. 163, Sec. 5; effective Nov. 22, 2002.)

45-300-2. Absence of inmate at docketed hearing. If an inmate is unable to appear for a scheduled hearing due to a physical or mental condition, absence from the facility, in absentia status, or other reasons, the inmate's hearing shall be rescheduled for the next regularly scheduled hearing date at that facility after the inmate becomes available, unless otherwise ordered by the board. (Authorized by and implementing K.S.A. 2001 Supp. 22-3717, as amended by L. 2002, Ch. 163, Sec. 5; effective Nov. 22, 2002.)

Article 400.—RELEASE TO SUPERVISION

45-400-1. General provisions. (a) Following each parole hearing, the parole board's findings and recommendations shall be prepared in writ-

ing. These findings and recommendations shall be used to prepare a final action notice. Appropriate department of corrections personnel shall be provided with copies of the final action notice. The final action notice shall not be divulged to any other party until notice of the board's action has been sent to the inmate.

(b) The release condition or conditions established by the board, if any, shall not be modified or waived except by order of the board.

(c) If the board needs additional information after the parole hearing concerning the inmate or the inmate's parole plan, the decision on the inmate's parole hearing may be delayed for a reasonable length of time so the necessary information can be obtained.

(d) Each inmate who is on postrelease supervision or parole shall remain in the legal custody of the secretary of corrections and subject to orders of the secretary. (Authorized by and implementing K.S.A. 2001 Supp. 22-3717, as amended by L. 2002, Ch. 163, Sec. 5; effective Nov. 22, 2002.)

45-400-2. Parole plan. Each inmate who has been granted parole subject to an approved parole plan shall remain in confinement until the board or its designee approves a satisfactory parole plan. (Authorized by and implementing K.S.A. 2001 Supp. 22-3717, as amended by L. 2002, Ch. 163, Sec. 5; effective Nov. 22, 2002.)

45-400-3. Release. (a) Release dates.

(1) Any inmate who has been granted parole and has been assigned to a specific parole office may receive a release date when placement arrangements are completed and approved.

(2) A specific release date may be designated by the board in order to comply with statutory parole eligibility or for any other special cause as determined on a case-by-case basis. Requests for advance release may be considered by the board for valid reasons, subject to investigation and confirmation by proper authorities.

(3) If an inmate's release date falls on a Saturday or Sunday, or on a holiday observed by the department of corrections, the inmate may be released on the last workday before the computed release date.

(b) Interstate compact release. Each inmate who has been granted parole for out-of-state supervision under an interstate compact agreement shall remain in confinement until the receiving state has entered its report with the compact administrator of the secretary, who shall refer it to

the board for final determination and authorization of release. If the interstate compact agreement is disapproved, the decision to parole the inmate under the compact agreement shall be deemed void. A notice shall then be issued by the board advising the inmate that the interstate compact agreement has been disapproved and the inmate's parole suitability will be reconsidered at a scheduled parole hearing.

(c) Changes in parole plan. Each inmate who is on continued status and who elects to change the parole plan shall present this information to the unit team, which shall forward it to the board for its approval and advice.

(d) Release to detainer.

(1) Each inmate who has been granted parole to a detainer only shall remain in confinement until sufficient arrangements have been made to determine when the detaining authority will assume custody.

(2) Unless otherwise ordered by the board, a decision to parole an inmate to a detainer only shall be deemed void if the detainer is thereafter cancelled. A notice to the inmate shall be issued by the board stating that the detainer has been cancelled and the inmate's parole suitability will be reconsidered at a scheduled parole hearing. (Authorized by and implementing K.S.A. 2001 Supp. 22-3717, as amended by L. 2002, Ch. 163, Sec. 5; effective Nov. 22, 2002.)

45-400-4. Deferred release. (a) The release of any inmate who has been granted parole may be deferred or the parole may be rescinded on the basis of any one or more of the following factors:

(1) Department of corrections staff finds that there is probable cause to believe that the inmate committed a facility infraction before being released.

(2) The parole plan does not provide for sufficient supervision or does not adequately provide for public safety or for the successful integration of the inmate.

(3) Information that was not available at the hearing indicates that the inmate cannot reasonably lead a law-abiding life.

(b) If the board so orders, the inmate shall not be released until the facility's fact-finding or disciplinary process is completed and the board is provided copies of the findings and recommendations. The report may contain a recommendation to the board concerning the inmate's parole status.

(c) If probable cause is found to believe that an inmate committed a facility infraction before being released, the board's decision to reconsider the inmate's parole suitability may also take into account the following factors:

- (1) The date of the alleged infraction;
- (2) the nature of the alleged violation charged and its penalty classification; and
- (3) the facility's report containing recommendations concerning the inmate's parole status.

(d) If the board is considering whether or not to rescind a decision to grant an inmate's parole, defer the inmate's established release date, or both, the inmate shall be provided with the following by the board:

- (1) A special hearing before the board or one or more of its members;
- (2) written notice, at least 24 hours before the hearing, of the purpose of the hearing and the grounds upon which the board is considering the proposed action;
- (3) an opportunity for each of the following:
 - (A) To appear;
 - (B) to respond to the allegations which are the basis for the board's proposed action.

(e) Following the special hearing, a written statement of the board's order, including the reasons for its determination, shall be issued by the board. (Authorized by and implementing K.S.A. 2001 Supp. 22-3717, as amended by L. 2002, Ch. 163, Sec. 5; effective Nov. 22, 2002.)

Article 500.—PAROLE VIOLATORS

45-500-1. (Authorized by and implementing K.S.A. 2001 Supp. 22-3717, as amended by L. 2002, ch. 163, Sec. 5, and K.S.A. 2001 Supp. 75-5217; effective Nov. 22, 2002; revoked March 23, 2012.)

45-500-2. (Authorized by and implementing K.S.A. 2001 Supp. 22-3717, as amended by L. 2002, ch. 163, Sec. 5, and K.S.A. 2001 Supp. 75-5217; effective Nov. 22, 2002; revoked March 23, 2012.)

45-500-3. (Authorized by and implementing K.S.A. 2001 Supp. 22-3717, as amended by L. 2002, ch. 163, Sec. 5, and K.S.A. 2001 Supp. 75-5217; effective Nov. 22, 2002; revoked March 23, 2012.)

45-500-4. (Authorized by and implementing K.S.A. 2001 Supp. 22-3717, as amended by L. 2002, ch. 163, Sec. 5, and K.S.A. 2001 Supp. 75-5217; effective Nov. 22, 2002; revoked March 23, 2012.)

Article 600.—CONDITIONAL RELEASE

45-600-1. General provisions. (a) Each inmate who has served the maximum sentence, less all projected good time credits and subject to adjustment for any forfeiture of good time credits, shall be placed on conditional release.

(b) Each offender on conditional release status shall be placed under parole supervision in the same manner as that for other parolees and shall be subject to the same terms and conditions as those for other parolees. If the parole officer establishes probable cause that an offender has violated the conditions of conditional release, the offender may be returned to confinement, subject to the opportunity for a final revocation hearing and to an order of the board, which shall be considered in the same manner as that for a parole violator. The offender shall have the same rights at the final revocation hearing as those of a parolee under K.A.R. 45-500-2.

(c) Each parolee who achieves conditional release status while on parole shall continue under supervision of the parolee's parole officer. The conditions of parole shall not be changed by the fact that the parolee reached conditional release status. (Authorized by K.S.A. 2001 Supp. 22-3717, as amended by L. 2002, Ch. 163, Sec. 5, and K.S.A. 2001 Supp. 75-5217; implementing K.S.A. 2001 Supp. 22-3717, as amended by L. 2002, Ch. 163, Sec. 5, K.S.A. 2001 Supp. 22-3718, and 75-5217; effective Nov. 22, 2002.)

Article 700.—RELEASE OF FUNCTIONALLY INCAPACITATED INMATES

45-700-1. Application for release. (a) If the secretary believes that an inmate is functionally incapacitated, an application for release may be submitted to the board by the secretary. The application shall be accompanied by documentation attesting to and describing the inmate's functional incapacity. This documentation shall be prepared by a medical doctor and, as needed, by a mental health professional. The documentation shall include a comprehensive description of the inmate's condition and prognosis.

(b) For the purposes of this article, "functional incapacitation" means that an inmate has a condition caused by injury, disease, or illness, including dementia, that is determined, to a reasonable degree of medical certainty, to permanently render

the inmate physically or mentally incapacitated to the extent that the inmate lacks effective capacity to cause physical harm.

(c) The application shall include a release plan, which shall provide details about where the inmate will reside and shall identify all treatment providers and facilities to be used by the inmate. Before the inmate's release, this release plan shall be subject to review and approval by department of corrections (DOC) staff in the same manner as any other release plan.

(d) All medical and treatment records pertaining to the inmate shall be available for review by the board, upon its request. If deemed necessary by the board, a second medical opinion may be requested. (Authorized by and implementing L. 2002, Ch. 57, Sec. 1; effective, T-45-7-26-02, July 26, 2002; effective Nov. 22, 2002.)

45-700-2. Review and consideration of application for release. (a) On receipt of the secretary's application for release of a functionally incapacitated inmate, a member of the board shall review the application and, with assistance from DOC staff, shall ensure that the following steps are taken:

(1) The written notification of the application provided by the secretary to each prosecuting attorney and the judge of each court in which the inmate was convicted shall include confidential copies of each medical or mental health report documenting the incapacitating condition. The confidentiality of these reports shall be maintained.

(2) The written notification of the application provided by the secretary to each victim or, if any victim is deceased, to one or more members of the victim's family with known addresses shall not include any of the confidential medical or mental health reports documenting the incapacitating condition. However, a general description of the inmate's incapacity shall be included in the written notification.

(b)(1) At the discretion of the board member reviewing the application, the final decision on the application may be entered with or without a formal hearing after considering all available information, including the following:

(A) The documentation required by subsection (a) of K.A.R. 45-700-1;

(B) any comments received from any prosecuting attorney, judge, crime victim, or member of the victim's family; and

(C) the factors identified in paragraph (a)(8) of

L. 2002, Ch. 57, Sec. 1, and amendments thereto, and the following additional factors:

(i) The inmate's age and medical condition;

(ii) the health care needs of the inmate;

(iii) the inmate's custody classification and level of risk of violence; and

(iv) the inmate's effective capacity to cause physical harm.

An inmate's need for long-term care may be considered in reaching a determination that an inmate has a functional incapacitation, but shall not be determinative in itself.

(2) If a hearing is scheduled, additional information or evidence may be requested from any of the medical or mental health providers who prepared reports for the application, or from any other person or persons having relevant information or knowledge.

(c) If the board finds that the inmate is functionally incapacitated and does not represent a risk to public safety, the release of the inmate may be ordered by the board under the terms of the approved release plan and any additional terms and conditions of release deemed necessary by the board, subject to the following voting requirements:

(1) The statutory requirements for voting to parole inmates sentenced for a class A or class B felony or for off-grid crimes committed on or after July 1, 1993; and

(2) a vote to release the inmate by a majority of the members of the board under either of the following circumstances:

(A) The inmate is serving a sentence for a severity level 1, 2, or 3 felony on the sentencing guidelines grid for non-drug crimes.

(B) A formal hearing regarding the application for release, with the inmate present, has not been held. (Authorized by and implementing L. 2002, Ch. 57, Sec. 1; effective, T-45-7-26-02, July 26, 2002; effective Nov. 22, 2002.)

Article 800.—DISCHARGE

45-800-1. General provisions. (a) Each offender on release status who meets at least one of the following conditions shall be discharged from supervision:

(1) The offender has served the maximum term or sentence as determined by K.S.A. 22-3722 and amendments thereto.

(2) Discharge is recommended by the parole officer and approved by the board as provided in K.S.A. 22-3722 and amendments thereto.

(b) A final order of discharge also may be generated by the board on its own initiative, as provided in K.S.A. 22-3722 and amendments thereto, if the board is satisfied that final release is not incompatible with the best interests of society and the welfare of the offender. (Authorized by K.S.A. 2001 Supp. 22-3717, as amended by L. 2002, Ch. 163, Sec. 5; implementing K.S.A. 22-3722; effective Nov. 22, 2002.)

Article 900.—EXECUTIVE CLEMENCY

45-900-1. Procedures. (a) Each inmate who desires to apply to the governor for executive clemency shall make that request to a facility representative designated by the warden.

(b) The applicant shall prepare, on forms furnished by the board, a written statement of the reasons for requesting clemency and shall complete all additional information requested on the forms. The applicant shall return the completed application to the facility representative. If the applicant prefers not to disclose the reasons for the request to facility officials, the forms may be sent, in a sealed envelope, directly to the board.

(c) The review by the board shall include an examination of pertinent records, reports, and other information that may be available, and a personal interview with the applicant, if requested by the board.

(d) Any person who has been convicted of a crime in any court of this state, but who is not in confinement, may apply for executive clemency by making application to the board. On request, the instructions and the form needed to initiate the application shall be provided to that person by the board. (Authorized by and implementing K.S.A. 2001 Supp. 22-3701; effective Nov. 22, 2002.)

Article 1000.—ORDERS OF RESTITUTION AND EXPENSES

45-1000-1. Restitution. As a condition of parole or postrelease supervision, any inmate may be ordered by the board to pay restitution in the amount and manner provided in the journal entry of the sentencing court.

If at any time before issuing a certificate of discharge under K.S.A. 22-3722 and amendments thereto the board finds any compelling circumstance that would render a plan of restitution unworkable as provided in K.S.A. 22-3717(n) and amendments thereto, notice of the board's finding shall be given to the court that sentenced the inmate. (Authorized by and implementing K.S.A. 2001 Supp. 22-3717, as amended by L. 2002, Ch. 163, Sec. 5; effective Nov. 22, 2002.)

45-1000-2. Transportation expenses. If transportation expenses are incurred as a result of returning any parolee or offender on postrelease supervision to this state to answer criminal charges, or a probation, parole, or conditional release violation warrant, the agency or department that has incurred these expenses may submit a statement of the expenses to the board before the final revocation hearing or before the initial parole hearing. If the board finds that the statement of expenses is reasonable and necessary, the parolee or offender may be ordered by the board to pay that amount as a condition of parole or postrelease supervision. (Authorized by and implementing K.S.A. 2001 Supp. 22-3717, as amended by L. 2002, Ch. 163, Sec. 5; effective Nov. 22, 2002.)

45-1000-3. Manner of payments. If payments have been ordered as a condition of parole, the parole officer may monitor the payments in the same manner as that for any other condition of parole. If a change of circumstances makes payments according to the established schedule unworkable, the parole officer may change the schedule as long as the adjusted schedule still makes it possible for the offender to make all payments before the inmate's discharge. If compelling circumstances develop that render the plan of reparation and the schedule of payment unworkable, the parolee may apply to the board to be released from the payment order. (Authorized by and implementing K.S.A. 2001 Supp. 22-3717, as amended by L. 2002, Ch. 163, Sec. 5; effective Nov. 22, 2002.)

Agency 46

Executive Council

Editor's Note:

The statute establishing the Executive Council was repealed in 1973, see L. 1973, Ch. 342, Sec. 1. For regulations relating to voting machines, see Agency 7.

Articles

46-3. *USE OF VOTING MACHINES. (Not in active use.)*

Article 3.—USE OF VOTING MACHINES

46-3-1. (Authorized by K.S.A. 25-1301 et seq.; effective Jan. 1, 1966; revoked, L. 1979, ch. 263, May 1, 1979.)

46-3-2. (Authorized by K.S.A. 25-1343; effective Jan. 1, 1966; revoked, L. 1979, ch. 263, May 1, 1979.)

46-3-3. (Authorized by K.S.A. 25-1312 and 25-1313; effective Jan. 1, 1966; revoked, L. 1979, ch. 263, May 1, 1979.)

46-3-4. (Authorized by K.S.A. 25-1312; effective Jan. 1, 1966; revoked, L. 1979, ch. 263, May 1, 1979.)

46-3-5. (Authorized by K.S.A. 25-1318; effective Jan. 1, 1966; revoked, L. 1979, ch. 263, May 1, 1979.)

46-3-6. (Authorized by K.S.A. 25-1341; effective Jan. 1, 1966; revoked, L. 1979, ch. 263, May 1, 1979.)

46-3-7. (Authorized by K.S.A. 25-1329; effective Jan. 1, 1966; revoked, L. 1979, ch. 263, May 1, 1979.)

46-3-8. (Authorized by K.S.A. 25-1335; effective Jan. 1, 1966; revoked, L. 1979, ch. 263, May 1, 1979.)

46-3-9. (Authorized by K.S.A. 25-1312; effective Jan. 1, 1966; revoked, L. 1979, ch. 263, May 1, 1979.)

46-3-10. (Authorized by K.S.A. 25-1312; effective Aug. 1, 1962; revoked, L. 1979, ch. 263, May 1, 1979.)

Agency 47

Mined-Land Conservation and Reclamation (KDHE)

Editor's Note:

The Mined-Land Conservation and Reclamation Board was abolished on July 1, 1988. Powers, duties and functions under the Kansas Corporation Commission were transferred to the Department of Health and Environment. See L. 1988, Ch. 192, Sec. 1.

Articles

- 47-1. GENERAL.
- 47-2. MEANING OF TERMS.
- 47-3. APPLICATION FOR MINING PERMIT.
- 47-4. PUBLIC HEARINGS.
- 47-5. CIVIL PENALTIES.
- 47-6. PERMIT REVIEW.
- 47-7. COAL EXPLORATION.
- 47-8. BONDING PROCEDURES.
- 47-9. PERFORMANCE STANDARDS.
- 47-10. UNDERGROUND MINING.
- 47-11. SMALL OPERATOR ASSISTANCE PROGRAM.
- 47-12. LANDS UNSUITABLE FOR SURFACE MINING.
- 47-13. TRAINING, CERTIFICATION, AND RESPONSIBILITIES OF BLASTERS AND OPERATORS.
- 47-14. EMPLOYEE FINANCIAL INTERESTS.
- 47-15. INSPECTIONS AND ENFORCEMENT.
- 47-16. RECLAMATION.

Article 1.—GENERAL

47-1-1. (Authorized by and implementing K.S.A. 1989 Supp. 49-405; effective, E-71-4, Nov. 20, 1970; effective Jan. 1, 1972; amended Feb. 11, 1991; revoked May 2, 1997.)

47-1-2. (Authorized by K.S.A. 1980 Supp. 49-405, 49-406; effective, E-71-4, Nov. 20, 1970; effective Jan. 1, 1972; amended May 1, 1980; revoked, E-81-30, Oct. 8, 1980; revoked May 1, 1981.)

47-1-3. Communication. Each application for a surface mining permit required to be filed with the secretary shall be filed in the office of the surface mining section within the time limits for such filing. Each document so addressed or filed shall be deemed to be officially received by the secretary when actually delivered at the office of the surface mining section. Each application shall be accompanied by appropriate fees. (Authorized

by K.S.A. 49-405; implementing K.S.A. 49-406; effective, E-71-4, Nov. 20, 1970; effective Jan. 1, 1972; amended May 1, 1980; amended, E-81-30, Oct. 8, 1980; amended May 1, 1981; amended Feb. 11, 1991; amended May 2, 1997.)

47-1-4. (Authorized by and implementing K.S.A. 1989 Supp. 49-405; effective, E-71-4, Nov. 20, 1970; effective Jan. 1, 1972; amended May 1, 1980; amended May 1, 1986; amended Feb. 11, 1991; revoked May 2, 1997.)

47-1-5 and 47-1-6. (Authorized by K.S.A. 1980 Supp. 49-405, 49-406; effective May 1, 1980; revoked, E-81-30, Oct. 8, 1980; revoked May 1, 1981.)

47-1-7. (Authorized by K.S.A. 1980 Supp. 49-405, 49-407, 49-416a; effective May 1, 1980; revoked, E-81-30, Oct. 8, 1980; revoked May 1, 1981.)

47-1-8. Petitions to initiate rulemaking.

(a) Any person may petition the secretary to initiate a proceeding for the issuance, amendment, or repeal of any regulation under the state act. Each petition shall be submitted to the chief of the surface mining section.

(b) Each petition shall contain a concise statement of the facts, technical justification, and law that requires issuance, amendment, or repeal of a regulation and shall indicate whether or not the petitioner desires a public hearing.

(c) The secretary or the secretary's designee shall determine whether or not the petition sets forth facts, technical justification, and law that provides a reasonable basis for conducting a hearing to consider issuance, amendment, or repeal of a regulation. Facts, technical justification, or law previously considered in a petition or in rulemaking on the same issue shall not provide a reasonable basis.

(d) If the secretary or secretary's designee determines that the petition has a reasonable basis, a notice shall be published seeking comments from the public on the proposed change. A public hearing, an investigation, or other necessary action may be taken by the secretary or secretary's designee to determine whether or not the petition should be granted.

(e) A written decision either granting or denying the petition shall be issued by the secretary or secretary's designee within 90 days after its receipt by the surface mining section.

(1) If the petition is granted, the rulemaking process shall be initiated by the secretary.

(2) If the petition is denied, the petitioner shall be notified in writing by the secretary, setting forth the reasons for denial. (Authorized by and implementing K.S.A. 49-405; effective, E-81-30, Oct. 8, 1980; effective May 1, 1981; amended Feb. 11, 1991; amended May 2, 1997.)

47-1-9. Notice of citizen suits. (a) Each person who intends to initiate a civil action on the person's own behalf under K.S.A. 49-426(a)(2) shall give notice of this intent as follows:

(1) a copy of the notice shall be sent by certified mail to the chief of the surface mining section and the secretary;

(2) a copy of the notice shall be sent by first-class mail to the field office director of the office of surface mining, United States department of the interior; and

(3) a copy of the notice shall be sent by certified mail to the alleged violator if the complaint alleges

a violation of the state act or any regulation, order, or permit issued under the state act.

(b) Service of the notice shall be complete upon receipt by the person being notified.

(c) Each person giving notice regarding an alleged violation shall state the following to the extent known:

(1) Sufficient information to identify the provision of the state act, rule or regulation, order, or permit allegedly violated;

(2) the act or omission constituting the alleged violation;

(3) the name, address, and telephone numbers of the person or persons responsible for the alleged violation;

(4) the date, time, and location of the alleged violation;

(5) the name, address, and telephone number of the person giving notice; and

(6) the name, address, and telephone number of legal counsel, if any, of the person giving notice.

(d) Each person giving notice of an alleged failure by the secretary to perform a mandatory act or duty under the state act shall state the following to the extent known:

(1) the provision of the state act containing the mandatory act or duty allegedly not performed;

(2) sufficient information to identify the omission constituting the alleged failure to perform a mandatory act or duty;

(3) the name, address, and telephone number of the person giving notice; and

(4) the name, address, and telephone number of legal counsel, if any, of the person giving notice. (Authorized by K.S.A. 49-405; implementing K.S.A. 49-426; effective, E-81-30, Oct. 8, 1980; effective May 1, 1981; amended Feb. 11, 1991; amended May 2, 1997.)

47-1-10. (Authorized by and implementing K.S.A. 49-405; effective May 1, 1984; amended Feb. 11, 1991; revoked May 2, 1997.)

47-1-11. Permittee; preparation and submission of reports. The secretary or secretary's designee may require a permittee to do the following: (a) establish and maintain appropriate records;

(b) make appropriate monthly reports;

(c) install, use, and maintain any necessary monitoring equipment or methods and evaluate the results in accordance with those methods, at the locations, intervals, and in the manner prescribed; and

(d) provide any other information relative to surface coal mining and reclamation operations that the secretary or secretary's designee deems reasonable and necessary. (Authorized by and implementing K.S.A. 49-405; effective May 1, 1985; amended Feb. 11, 1991; amended May 2, 1997.)

Article 2.—MEANING OF TERMS

47-2-1. (Authorized by K.S.A. 1980 Supp. 49-405, 49-406; effective, E-71-4, Nov. 20, 1970; effective Jan. 1, 1972; amended May 1, 1980; revoked, E-81-30, Oct. 8, 1980; revoked May 1, 1981.)

47-2-2 to 47-2-6. (Authorized by K.S.A. 1980 Supp. 49-405, 49-406; effective May 1, 1980; revoked, E-81-30, Oct. 8, 1980; revoked May 1, 1981.)

47-2-7. (Authorized by K.S.A. 1979 Supp. 49-405, 49-406; effective May 1, 1980; revoked May 1, 1986.)

47-2-8 to 47-2-13. (Authorized by K.S.A. 1980 Supp. 49-405, 49-406; effective May 1, 1980; revoked, E-81-30, Oct. 8, 1980; revoked May 1, 1981.)

47-2-14. (Authorized by K.S.A. 1989 Supp. 49-405, and K.S.A. 1989 Supp. 49-406; as amended by L. 1990, Ch. 194, sec. 1; implementing K.S.A. 1989 Supp. 49-405; effective May 1, 1980; amended Feb. 11, 1991; revoked May 2, 1997.)

47-2-15 and 47-2-16. (Authorized by K.S.A. 1980 Supp. 49-405, 49-406; effective May 1, 1980; revoked, E-81-30, Oct. 8, 1980; revoked May 1, 1981.)

47-2-17. (Authorized by K.S.A. 1979 Supp. 49-405, 49-406; effective May 1, 1980; revoked May 1, 1986.)

47-2-18 to 47-2-20. (Authorized by K.S.A. 1980 Supp. 49-405, 49-406; effective May 1, 1980; revoked, E-81-30, Oct. 8, 1980; revoked May 1, 1981.)

47-2-21. Employee defined. "Employee" means a person employed by the department who performs any function or duty under the state act, or a consultant who performs decision-making functions under the authority of state law or these regulations. (Authorized by K.S.A. 49-405; implementing K.S.A. 49-404; effective May 1, 1980;

amended May 1, 1983; amended Feb. 11, 1991; amended May 2, 1997.)

47-2-22 to 47-2-43. (Authorized by K.S.A. 1980 Supp. 49-405, 49-406; effective May 1, 1980; revoked, E-81-30, Oct. 8, 1980; revoked May 1, 1981.)

47-2-44. (Authorized by K.S.A. 1979 Supp. 49-405, 49-406; effective May 1, 1980; revoked May 1, 1986.)

47-2-45 to 47-2-52. (Authorized by K.S.A. 1980 Supp. 49-405, 49-406; effective May 1, 1980; revoked, E-81-30, Oct. 8, 1980; revoked May 1, 1981.)

47-2-53. "Regulatory authority" or "state regulatory authority" defined. "Regulatory authority" or "state regulatory authority" means the department of health and environment, or the secretary's designee. (Authorized by K.S.A. 49-405; implementing K.S.A. 49-405 and K.S.A. 49-406; effective May 1, 1980; amended, E-81-30, Oct. 8, 1980; amended May 1, 1981; amended May 1, 1986; amended Feb. 11, 1991; amended May 2, 1997; amended July 31, 1998.)

47-2-53a. "Regulatory program" defined. "Regulatory program" means the state act and regulations adopted by the department and approved by the United States department of interior, office of surface mining reclamation and enforcement. (Authorized by and implementing K.S.A. 49-405; effective May 1, 1986; amended Feb. 11, 1991; amended May 2, 1997.)

47-2-54 to 47-2-57. (Authorized by K.S.A. 1980 Supp. 49-405, 49-406; effective May 1, 1980; revoked, E-81-30, Oct. 8, 1980; revoked May 1, 1981.)

47-2-58. "Significant, imminent environmental harm to land, air or water resources" defined. A "significant, imminent environmental harm to land, air or water resources" shall include the following elements. (a) An environmental harm is an adverse impact on land, air or water resources, including plant and animal life.

(b) An environmental harm is imminent if a condition, practice, or violation exists that is causing harm or may reasonably be expected to cause such harm at any time before the end of the reasonable abatement time that would be set under these regulations and the state law.

(c) An environmental harm is significant if that harm is appreciable and not immediately repairable. (Authorized by and implementing K.S.A. 49-405; effective May 1, 1980; amended May 2, 1997.)

47-2-59 to 47-2-63. (Authorized by K.S.A. 1980 Supp. 49-405, 49-406; effective May 1, 1980; revoked, E-81-30, Oct. 8, 1980; revoked May 1, 1981.)

47-2-64. “State act” defined. “State act” means the Kansas mined-land conservation and reclamation act and amendments thereto. (Authorized by and implementing K.S.A. 49-405, 49-406; effective May 1, 1980; amended May 2, 1997.)

47-2-65 and 47-2-66. (Authorized by K.S.A. 1980 Supp. 49-405, 49-406; effective May 1, 1980; revoked, E-81-30, Oct. 8, 1980; revoked May 1, 1981.)

47-2-67. “Surety bond” defined. “Surety bond” means an indemnity agreement, in a specific sum payable to the Kansas department of health and environment and executed by the permittee, which is supported by the performance guarantee of a corporation licensed to do business as a surety in the state of Kansas. (Authorized by and implementing K.S.A. 49-405, and K.S.A. 49-406; effective May 1, 1980; amended Feb. 11, 1991; amended May 2, 1997.)

47-2-68 to 47-2-73. (Authorized by K.S.A. 1980 Supp. 49-405, 49-406; effective May 1, 1980; revoked, E-81-30, Oct. 8, 1980; revoked May 1, 1981.)

47-2-74. “Public road” defined. “Public road” means a thoroughfare open to the public that has been and is being used by the public for vehicular travel. (Authorized by K.S.A. 49-405, and implementing K.S.A. 49-405b; effective, E-81-30, Oct. 8, 1980; effective May 1, 1981; amended May 2, 1997.)

47-2-75. Definitions; adoption by reference. The following federal regulations, as in effect on July 1, 2012, are adopted by reference, except as otherwise specified in this regulation: (a) The section titled definitions, 30 C.F.R. 700.5, shall be altered as follows:

(1) The following text shall be deleted from the definition of “anthracite”: “Notices of changes made to this publication will be periodically pub-

lished by the Office of Surface Mining in the Federal Register. This ASTM standard is on file and available for inspection at the OSM Office, U.S. Department of the Interior, South Interior Building, Washington, D.C. 20240, at each OSM Regional Office, District Office and Field Office, and at the central office of the applicable State Regulatory Authority, if any. Copies of this publication may also be obtained by writing to the above locations. A copy of this publication will also be on file for public inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html. Incorporation by reference provisions approved by the Director of the Federal Register February 7, 1979. The Director’s approval of this incorporation by reference expires on July 1, 1981.”

(2) “Department” means Kansas department of health and environment.

(3) “Director” means director, office of surface mining reclamation and enforcement, in the following instances:

(A) K.A.R. 47-3-42(a)(60), adopting by reference 30 C.F.R. 785.13;

(B) K.A.R. 47-14-7(a)(1), adopting by reference 30 C.F.R. 705.4(a);

(C) K.A.R. 47-14-7(a)(3), adopting by reference 30 C.F.R. 705.11(c) and (d);

(D) K.A.R. 47-14-7(a)(4), adopting by reference 30 C.F.R. 705.13;

(E) K.A.R. 47-14-7(a)(5), adopting by reference 30 C.F.R. 705.15;

(F) K.A.R. 47-14-7(a)(8), adopting by reference 30 C.F.R. 705.19(a); and

(G) K.A.R. 47-14-7(a)(9), adopting by reference 30 C.F.R. 705.21.

(H) K.A.R. 47-15-1a(a)(2), adopting by reference 30 C.F.R. 840.14(a). All other references to “the director” shall be replaced by “the secretary of the Kansas department of health and environment.”

(4) “Person” shall have the meaning specified in K.S.A. 49-403, and amendments thereto.

(5) “Regulatory authority” and “state regulatory authority” shall have the meaning specified in K.A.R. 47-2-53.

(6) “Regulatory program” shall have the meaning specified in K.A.R. 47-2-53a.

(7) “Secretary” means secretary of the Kansas department of health and environment.

(8) "Surface coal mining and reclamation operations" shall have the meaning specified in K.S.A. 49-403, and amendments thereto.

(9) "Surface coal mining operations" shall have the meaning specified in K.S.A. 49-403, and amendments thereto.

(b) The section titled "definitions," 30 C.F.R. 701.5, shall be altered as specified in this subsection.

(1)(A) "Act" shall be replaced by "state act."

(B) In the definitions of "Applicant/Violator System or AVS," "Federal Program," "State Program," and the portion of the definition for "Permittee" that states "section 523 of the Act," the word "Act" shall mean the Surface Mining Control and Reclamation Act of 1977, Pub. L. 95-87. All other references to "Act" shall mean the "state act."

(C) In the definition of "cumulative impact area," the following text shall be deleted: "and (d) all operations required to meet diligent development requirements for leased Federal coal for which there is actual mine development information available." The word "and" shall be placed immediately before subsection (c).

(D) In the definitions of "federal program" and "state program" in this subsection, "Secretary" shall mean the director, office of surface mining reclamation and enforcement. In the definition of "prime farmland" in this subsection, the term "Secretary" shall mean the secretary of agriculture. All other references to "Secretary" shall mean the secretary of the Kansas department of health and environment. In the definition of "federal program," "Director" shall mean the director, office of surface mining reclamation and enforcement.

(E) "Imminent danger to the health and safety of the public" shall have the meaning specified in K.S.A. 49-403, and amendments thereto.

(F) "Operator" shall have the meaning specified in K.S.A. 49-403, and amendments thereto.

(G) The definition of "performance bond" shall be replaced with the following:

"Performance bond" means a surety bond, collateral bond or a combination thereof, by which a permittee assures faithful performance of all the requirements of the state act, these regulations, a state program, and the requirements of the permit and reclamation plan."

(H) "Permit" shall have the meaning specified in K.S.A. 49-403, and amendments thereto.

(I) "Permit area" shall have the meaning specified in K.S.A. 49-403, and amendments thereto.

(J) In the definition of "permittee," the phrase

"by the Director pursuant to a Federal program, by the Director pursuant to a Federal lands program" shall be deleted. In the definition of "permittee," "Director" shall mean the director, office of surface mining reclamation and enforcement.

(K) "Significant, imminent environmental harm to land, air or water resources" shall have the meaning specified in K.A.R. 47-2-58.

(L) "Subchapter J of this chapter" shall be replaced by "article 8 of these regulations."

(M) "This chapter" shall be replaced by "these regulations."

(N) In the definition of "Violation, failure, or refusal," the text "(1) A failure to comply with a condition of a Federally-issued permit or of any other permit that OSM is directly enforcing under section 502 or 521 of the Act or the regulations implementing those sections" shall be replaced with the following text: "(1) A failure to comply with a condition of a permit issued by the Kansas department of health and environment under K.S.A. 49-405 and K.S.A. 49-406, and amendments thereto, or the regulations implementing those sections."

(2) The following federal definitions shall be deleted:

(A) "Agricultural activities";

(B) "alluvial valley floors";

(C) "arid and semiarid area";

(D) "essential hydrologic functions";

(E) "farming";

(F) "flood irrigation";

(G) "materially damage the quality and quantity of water";

(H) "special bituminous coal mines";

(I) "subirrigation";

(J) "undeveloped rangeland"; and

(K) "upland areas."

(3)(A) "Part 845 or 846 of this chapter" and "parts 724 and 846 of this chapter" shall be replaced by "K.A.R. 47-5-5a."

(B) "Parts 773, 774, and 778 of this chapter" shall be replaced by "articles 3 and 6 of these regulations and K.A.R. 47-3-42(a)(2) through (31)."

(C) "Section 404 or under section 402(g)(4) of the Act" shall be replaced by "K.S.A. 49-428, and amendments thereto."

(D) "Section 502" shall be replaced by "K.S.A. 49-406, and amendments thereto."

(E) "Section 518(b) or section 703 of the Act" shall be replaced by "K.S.A. 49-405c or K.S.A. 75-2973, and amendments thereto."

(F) "Section 521 of the Act" shall be replaced by "K.S.A. 49-405, and amendments thereto."

(G) “Sections 507 and 510(c) of the Act” shall be replaced by “K.S.A. 49-406 and K.S.A. 49-407(b), and amendments thereto.”

(4)(A) “30 CFR chapter VII” shall be replaced by “article 1 of these regulations.”

(B) “30 CFR parts 816 and 817” shall be replaced by “K.A.R. 47-9-1(c) and (d).”

(C) “30 CFR 785.17(c)(1)” shall be replaced by “K.A.R. 47-3-42(a)(61).”

(D) “30 CFR 816.49 and 816.56, 816.133 or 817.49, 817.56, and 817.133” shall be replaced by “K.A.R. 47-9-1(c)(12), (13), and (45) or K.A.R. 47-9-1(d)(12), (13), and (43).”

(5)(A) “§761.5 of this chapter” shall be replaced by “K.A.R. 47-12-4(a)(1).”

(B) “§773.13 of this chapter” shall be replaced by “K.A.R. 47-3-42(a)(9).”

(C) “§800.11(e) of this chapter” shall be replaced by “K.A.R. 47-8-9(a)(3).”

(D) “§800.50 of this chapter” and “§800.50(d)(1) of this chapter” shall be replaced by “K.A.R. 47-8-9(a)(14).”

(E) “§843.11 of this chapter” shall be replaced by “K.A.R. 47-15-1a(a)(8).”

(F) “§843.12 of this chapter” shall be replaced by “K.A.R. 47-15-1a(a)(9).”

(G) “§§784.20 and 817.121 of this chapter” and “§§784.20 and 817.121” shall be replaced by “K.A.R. 47-10-1(a)(2)(K) and K.A.R. 47-9-1(d)(39).”

(H) “§§816.102(d) and 817.102(d) of this chapter” shall be replaced by “K.A.R. 47-9-1(c)(35) and (d)(33).”

(c) The section titled “definitions,” 30 C.F.R. 705.5, shall be altered as follows:

(1) “Act” shall be replaced by “state act.”

(2) “Employee” shall have the meaning specified in K.A.R. 47-2-21.

(3) “State regulatory authority” shall have the meaning specified in K.A.R. 47-2-53. (Authorized by K.S.A. 49-404, K.S.A. 49-405, and K.S.A. 2018 Supp. 49-408; implementing K.S.A. 49-405 and K.S.A. 2018 Supp. 49-408; effective, E-81-30, Oct. 8, 1980; effective May 1, 1981; amended May 1, 1985; amended May 1, 1986; amended May 1, 1988; amended Feb. 11, 1991; amended May 2, 1997; amended July 31, 1998; amended Dec. 1, 2006; amended Feb. 15, 2019.)

Article 3.—APPLICATION FOR MINING PERMIT

47-3-1. Application for mining permit. Each person who conducts or expects to conduct

surface or underground coal mining and reclamation operations shall file an original and three copies of a complete and accurate application for a permit for those operations with the secretary. (Authorized by K.S.A. 49-405 and K.S.A. 2018 Supp. 49-406; implementing K.S.A. 2018 Supp. 49-406; effective, E-71-4, Nov. 20, 1970; effective Jan. 1, 1972; amended May 1, 1975; amended May 1, 1980; amended Feb. 11, 1991; amended May 2, 1997; amended Feb. 15, 2019.)

47-3-2. Application for mining permit; adoption by reference. (a) Each permit application submitted with a request for variances from the applicable regulations shall contain an outline of the proposed variances. The outline shall be indexed to the regulations and be placed at the beginning of the application documents.

(b) The following federal regulations as in effect on July 1, 2012 are adopted by reference, except as otherwise specified in this regulation:

(1) Format and contents, 30 C.F.R. 777.11;

(2) reporting of technical data, 30 C.F.R. 777.13;

(3) maps and plans: general requirements, 30 C.F.R. 777.14. The phrase “in accordance with §710.12 of this chapter” shall be deleted; and

(4) completeness, 30 C.F.R. 777.15.

(c) The following phrases shall be replaced with the phrases specified in this subsection wherever the phrases appear in the text of the federal regulations adopted by reference in this regulation:

(1) “This chapter” and “this subchapter” shall be replaced by “these regulations.”

(2)(A) “Part 785 of this chapter” shall be replaced by “K.A.R. 47-3-42(a)(60) through (66).”

(B) “Parts 778, 779, and 780 of this chapter” shall be replaced by “K.A.R. 47-3-42(a)(21) through (59).”

(C) “Parts 778, 783, and 784 of this chapter” shall be replaced by “K.A.R. 47-3-42(a)(21) through (31) and K.A.R. 47-10-1.” (Authorized by K.S.A. 49-405; implementing K.S.A. 2018 Supp. 49-406; effective May 1, 1980; amended May 1, 1986; amended Feb. 11, 1991; amended May 2, 1997; amended Dec. 1, 2006; amended Feb. 15, 2019.)

47-3-3. (Authorized by K.S.A. 1980 Supp. 49-405, 49-406; effective May 1, 1980; amended, E-81-30, Oct. 8, 1980; amended May 1, 1981; revoked May 1, 1986.)

47-3-3a. Application for mining permit; maps. (a) Each map, plan, and cross section required for a permit application shall be certified by

a qualified, licensed engineer and shall be updated as required by the secretary or secretary's designee.

(b) Each change in a facility or feature that would be caused by the proposed mining operations shall be shown in the maps and plans accompanying the permit application.

(1) A color code, or other method approved in writing by the secretary or secretary's designee, shall be used to indicate critical features of the permit area as follows:

(A) green for areas of coal removal;

(B) red for the boundary of the land affected, including access roads and haulageways;

(C) brown for access roads and haulageways; and

(D) blue for watercourses, impoundments, drainageways, and other water areas.

(2) A color code, or other method approved, in writing, by the secretary or secretary's designee, shall be used to indicate critical features of any reclamation plan as follows:

(A) green for areas of proposed grassland;

(B) red for the permit boundaries;

(C) brown for any roads to be left through the disturbed area;

(D) blue for proposed water impoundment and drainage;

(E) yellow for proposed cropland; and

(F) orange for proposed woodland. (Authorized by K.S.A. 49-405; implementing K.S.A. 49-406; effective May 1, 1986; amended Feb. 11, 1991; amended May 2, 1997.)

47-3-4. (Authorized by K.S.A. 1980 Supp. 49-405, 49-406; effective May 1, 1980; amended, E-81-30, Oct. 8, 1980; amended May 1, 1981; revoked May 1, 1986.)

47-3-5 to 47-3-20. (Authorized by K.S.A. 1980 Supp. 49-405, 49-406; effective May 1, 1980; revoked, E-81-30, Oct. 8, 1980; revoked May 1, 1981.)

47-3-21. (Authorized by K.S.A. 1979 Supp. 49-405, 49-406; effective May 1, 1980; revoked May 1, 1986.)

47-3-22 to 47-3-39. (Authorized by K.S.A. 1980 Supp. 49-405, 49-406; effective May 1, 1980; revoked, E-81-30, Oct. 8, 1980; revoked May 1, 1981.)

47-3-40. (Authorized by K.S.A. 1980 Supp. 49-405, 49-406; effective May 1, 1980; amended, E-81-80, Oct. 8, 1980; amended May 1, 1981; revoked May 1, 1986.)

47-3-41. (Authorized by K.S.A. 1980 Supp. 49-405, 49-406; effective May 1, 1980; revoked, E-81-30, Oct. 8, 1980; revoked May 1, 1981.)

47-3-42. Application for mining permit; adoption by reference. (a) The following federal regulations, as in effect on July 1, 2012, are adopted by reference, except for the additions and deletions specified:

(1) Applicability, 30 C.F.R. 701.11 subsections (d) and (e) only. Subsections (a), (b), (c), and (f) shall be deleted, and the word "Act" shall be replaced by "state act";

(2) public participation in permit processing, 30 C.F.R. 773.6. The phrase "developed in accordance with section 503(a)(6) or section 504(h) of the Act, or §773.5" in 30 C.F.R. 773.6(a)(3)(ii) and the sentence "The requirements of section 5 of the administrative procedure act, as amended (5 U.S.C. 554), shall not apply to the conduct of the informal conference." in 30 C.F.R. 773.6(c)(2)(iv) shall be deleted;

(3) review of permit applications, 30 C.F.R. 773.7, except that the 60-day period for decision shall be replaced by a 30-day period;

(4) general provisions for review of permit application information and entry of information into AVS, 30 C.F.R. 773.8;

(5) review of applicant and operator information, 30 C.F.R. 773.9;

(6) review of permit history, 30 C.F.R. 773.10;

(7) review of compliance history, 30 C.F.R. 773.11, except that the word "Act" shall be replaced by "state act";

(8) permit eligibility determination, 30 C.F.R. 773.12;

(9) unanticipated events or conditions at remining sites, 30 C.F.R. 773.13;

(10) eligibility for provisionally issued permits, 30 C.F.R. 773.14;

(11) written findings for permit application approval, 30 C.F.R. 773.15. In subsections (a) and (b), the word "Act" shall be replaced by "state act." The phrases "parts 764 and 769 of this chapter" and "parts 762 and 764 or 769 of this chapter" shall be replaced by "K.A.R. 47-12-4";

(12) performance bond submittal, 30 C.F.R. 773.16;

(13) permit issuance and right of renewal, 30 C.F.R. 773.19. The clause "unless the requirements of 778.17 of this chapter are met" shall be deleted;

(14) initial review and finding requirements for improvidently issued permits, 30 C.F.R. 773.21;

- (15) notice requirements for improvidently issued permits, 30 C.F.R. 773.22;
- (16) suspension or rescission requirements for improvidently issued permits, 30 C.F.R. 773.23;
- (17) who may challenge ownership or control listings and findings, 30 C.F.R. 773.25;
- (18) how to challenge an ownership or control listing or finding, 30 C.F.R. 773.26, except that in subsection (a), the phrase “as identified in the following table” and the table shall be deleted. The word “Act” shall be replaced by “state act”;
- (19) burden of proof for ownership or control challenges, 30 C.F.R. 773.27;
- (20) written agency decision on challenges to ownership or control listings or findings, 30 C.F.R. 773.28;
- (21) Certifying and updating existing permit application information, 30 C.F.R. 778.9;
- (22) providing applicant and operator information, 30 C.F.R. 778.11;
- (23) providing permit history information, 30 C.F.R. 778.12;
- (24) providing property interest information, 30 C.F.R. 778.13;
- (25) providing violation information, 30 C.F.R. 778.14;
- (26) right-of-entry information, 30 C.F.R. 778.15;
- (27) status of unsuitability claims, 30 C.F.R. 778.16, except that the phrase “parts 762, 764, and 769 of this chapter” shall be replaced by “K.A.R. 47-12-4”;
- (28) permit term, 30 C.F.R. 778.17;
- (29) insurance, 30 C.F.R. 778.18;
- (30) proof of publication, 30 C.F.R. 778.21;
- (31) facilities or structures used in common, 30 C.F.R. 778.22;
- (32) responsibilities, 30 C.F.R. 779.4. The phrase “this part” shall be replaced by “K.A.R. 47-3-42(a)(32) through (39)”;
- (33) general requirements, 30 C.F.R. 779.11;
- (34) general environmental resources information, 30 C.F.R. 779.12;
- (35) climatological information, 30 C.F.R. 779.18;
- (36) vegetation information, 30 C.F.R. 779.19, except that the phrase “if required by the regulatory authority” shall be deleted;
- (37) soil resources information, 30 C.F.R. 779.21;
- (38) maps: general requirements, 30 C.F.R. 779.24;
- (39) cross sections, maps, and plans, 30 C.F.R. 779.25;
- (40) responsibilities, 30 C.F.R. 780.4. The phrase “this part” shall be replaced by “K.A.R. 47-3-42(a)(40) through (59)”;
- (41) operation plan: general requirements, 30 C.F.R. 780.11;
- (42) operation plan: existing structures, 30 C.F.R. 780.12;
- (43) operation plan: blasting, 30 C.F.R. 780.13;
- (44) operation plan: maps and plans, 30 C.F.R. 780.14;
- (45) air pollution control plan, 30 C.F.R. 780.15, except that the phrase “if required by the regulatory authority” shall be deleted;
- (46) fish and wildlife information, 30 C.F.R. 780.16;
- (47) reclamation plan: general requirements, 30 C.F.R. 780.18;
- (48) hydrologic information, 30 C.F.R. 780.21;
- (49) geologic information, 30 C.F.R. 780.22;
- (50) reclamation plan: land use information, 30 C.F.R. 780.23;
- (51) reclamation plan: siltation structures, impoundments, and refuse piles, 30 C.F.R. 780.25;
- (52) reclamation plan: surface mining near underground mining, 30 C.F.R. 780.27;
- (53) activities in or adjacent to perennial or intermittent streams, 30 C.F.R. 780.28;
- (54) diversions, 30 C.F.R. 780.29;
- (55) protection of publicly owned parks and historic places, 30 C.F.R. 780.31, except that the word “may” shall be changed to “shall”;
- (56) relocation or use of public roads, 30 C.F.R. 780.33;
- (57) disposal of excess spoil, 30 C.F.R. 780.35;
- (58) road systems, 30 C.F.R. 780.37;
- (59) support facilities, 30 C.F.R. 780.38;
- (60) experimental practices mining, 30 C.F.R. 785.13, except that the word “Act” shall be replaced by “state act”;
- (61) prime farmland, 30 C.F.R. 785.17. The last sentence in 30 C.F.R. 785.17(c)(1)(i) shall be deleted;
- (62) variances for delay in contemporaneous reclamation requirement in combined surface and underground mining activities, 30 C.F.R. 785.18, except that in subsections (b)(3) and (7), the word “Act” shall be replaced by “state act”;
- (63) augering, 30 C.F.R. 785.20;
- (64) coal preparation plants not located within the permit area of a mine, 30 C.F.R. 785.21, except that subsections (d) and (e) shall be deleted;
- (65) in situ processing activities, 30 C.F.R. 785.22; and

(66) lands eligible for re-mining, 30 C.F.R. 785.25.

(b) The following phrases and citations shall be replaced with the phrases and citations specified in this subsection wherever the phrases and citations appear in the text of the federal regulations adopted by reference in this regulation.

(1)(A) "Act" shall be replaced by "state act."

(B) "By a reviewing administrative or judicial tribunal" shall be replaced by "by an administrative or a judicial review of an agency action concerning the aforementioned Kansas department of health and environment determination."

(C) "Central office of the applicable state regulatory authority, if any" shall be replaced by "the Kansas department of health and environment, surface mining section."

(D) "Office of hearings and appeals or its state counterpart" shall be replaced by "office of administrative hearings."

(E) "Rule 4 of the federal rules of civil procedure, or its state regulatory program counterparts" shall be replaced by "K.A.R. 47-4-14a."

(F) "Subchapter B (Interim Program Standards) of this chapter" and "subchapter B of this chapter" shall be replaced by "K.A.R. 47-9-4."

(G) "Subchapter B or K of this chapter" shall be replaced by "K.A.R. 47-9-4 or K.A.R. 47-9-1."

(H) "Subchapter J of this chapter," "subchapter J," and "part 800 of this chapter" shall be replaced by "article 8 of these regulations."

(I) "Subchapter K (Permanent Program Standards) of this chapter," "subchapter K," and "subchapter K of this chapter" shall be replaced by "K.A.R. 47-9-1."

(J) "Subchapter R of this chapter" shall be replaced by "the office."

(K) "The procedures at 43 CFR 4.1370 through 4.1377 (when OSM is the regulatory authority) or under the State regulatory program equivalent (when a State is the regulatory authority)" shall be replaced by "K.A.R. 47-4-14a."

(L) "This chapter," "this subchapter," "this part," and "subchapter G of this chapter" shall be replaced by "these regulations."

(2)(A) "Part 775 of this chapter" and "part 775 of this subchapter" shall be replaced by "K.S.A. 49-407(d), 49-416a, and 49-422a, and amendments thereto, and article 4 of these regulations."

(B) "Part 785 of this chapter" shall be replaced by "K.A.R. 47-3-42(a)(60) through (66)."

(C) "Part 816" and "part 816 of this chapter" shall be replaced by "K.A.R. 47-9-1(c)."

(D) "Part 823 of this chapter" and "30 CFR part 823" shall be replaced by "K.A.R. 47-9-1(f)."

(E) "Part 827 of this chapter" shall be replaced by "K.A.R. 47-9-1(g)."

(F) "Section 508 of the Act" shall be replaced by "K.S.A. 49-406, and amendments thereto."

(G) "Section 510(c) of the Act" shall be replaced by "K.S.A. 49-407(b), and amendments thereto."

(H) "Section 515 of the Act," "section 515(b) of the Act," "section 515 (b)(22) of the Act," and "sections 515 and 516 of the Act" shall be replaced by "K.S.A. 49-405a, 49-408 through 49-413, and 49-429, and amendments thereto."

(I) "Section 515(b)(16) of the Act" shall be replaced by "K.S.A. 49-429, and amendments thereto."

(3)(A) "30 CFR 773.15" and "§773.15 of this part" shall be replaced by "K.A.R. 47-3-42 (a)(11)."

(B) "30 CFR 779.24 through 779.25" shall be replaced by "K.A.R. 47-3-42(a)(38) through (39)."

(C) "30 CFR 780.12 or 784.12" shall be replaced by "K.A.R. 47-3-42(a)(42) or K.A.R. 47-10-1(a)(2)(C)."

(D) "30 CFR 780.16" shall be replaced by "K.A.R. 47-3-42(a)(46)."

(E) "30 CFR 780.18 through 780.37" shall be replaced by "K.A.R. 47-3-42(a)(47) through (58)."

(F) "30 CFR 816.13 through 816.15" shall be replaced by "K.A.R. 47-9-1(c)(2) through (4)."

(G) "30 CFR 816.22," "§816.22 of this chapter," and "§816.22(b) of this chapter" shall be replaced by "K.A.R. 47-9-1(c)(5)."

(H) "30 CFR 816.43 of this chapter" shall be replaced by "K.A.R. 47-9-1(c)(8)."

(I) "30 CFR 816.59" and "§816.59 of this chapter" shall be replaced by "K.A.R. 47-9-1(c)(15)."

(J) "30 CFR 816.71-816.74" and "§§816.71 through 816.74 of this chapter" shall be replaced by "K.A.R. 47-9-1(c)(22) through (23)."

(K) "30 CFR 816.79" and "§816.79 of this chapter" shall be replaced by "K.A.R. 47-9-1(c)(24)."

(L) "30 CFR 816.89 through 816.102" shall be replaced by "K.A.R. 47-9-1(c)(29) through (35)."

(M) "30 CFR 816.95" shall be replaced by "K.A.R. 47-9-1(c)(30)."

(N) "30 CFR 816.102 through 816.107" shall be replaced by "K.A.R. 47-9-1(c)(35) through (38)."

(O) "30 CFR 816.111 through 816.116" shall be replaced by "K.A.R. 47-9-1(c)(39) through (42)."

(P) "30 CFR 816.116" shall be replaced by "K.A.R. 47-9-1(c)(42)."

(Q) "30 CFR part 819" shall be replaced by "K.A.R. 47-9-1(e)."

- (R) “30 CFR part 828” shall be replaced by “K.A.R. 47-9-1(h).”
- (S) “30 CFR parts 817 and 828” shall be replaced by “K.A.R. 47-9-1(d) and (h).”
- (T) “43 CFR 4.1360 through 4.1369” shall be replaced by “K.A.R. 47-4-14a.”
- (U) “43 CFR 4.1376 or the State regulatory program equivalent” shall be replaced by “K.A.R. 47-4-14a.”
- (V) “43 CFR 4.1380 through 4.1387 or, when a state is the regulatory authority, the state regulatory program counterparts” shall be replaced by “K.A.R. 47-4-14a and K.S.A. 49-416a, and amendments thereto.”
- (4)(A) “§701.5 of this chapter” shall be replaced by “K.A.R. 47-2-75(b).”
- (B) “§701.11(d)” shall be replaced by “K.A.R. 47-3-42(a)(1).”
- (C) “§761.11 of this chapter” shall be replaced by “K.A.R. 47-12-4(a)(2).”
- (D) “§761.12(d) of this chapter” shall be replaced by “K.A.R. 47-12-4(a)(3).”
- (E) “§761.14(c) of this chapter” shall be replaced by “K.A.R. 47-12-4(a)(4).”
- (F) “§761.14 or §761.15 of this chapter” shall be replaced by “K.A.R. 47-12-4(a)(4) or (5).”
- (G) “§761.16 of this chapter” shall be replaced by “K.A.R. 47-12-4(a)(6).”
- (H) “§761.17(d) of this chapter” shall be replaced by “K.A.R. 47-12-4(a)(7).”
- (I) “§762.13(c) of this chapter” shall be replaced by “K.A.R. 47-12-4(a)(12).”
- (J) “§773.6(d)(3)(ii) of this chapter,” “§773.6(a)(1) of this chapter,” and “§773.6 of this chapter” shall be replaced by “K.A.R. 47-3-42(a)(2).”
- (K) “§773.12 of this part” and “§773.12” shall be replaced by “K.A.R. 47-3-42(a)(8).”
- (L) “§773.13” and “§773.13(c)” shall be replaced by “K.A.R. 47-3-42(a)(9).”
- (M) “§773.14(b) of this part” and “§§773.14(c)(1) through (4)” shall be replaced by “K.A.R. 47-3-42(a)(10).”
- (N) “§773.19 of this part” shall be replaced by “K.A.R. 47-3-42(a)(13).”
- (O) “§773.21(d) of this part” and “paragraphs (a) and (b) §773.21 of this part” shall be replaced by “K.A.R. 47-3-42(a)(14).”
- (P) “§773.22(b) or (c) of this part” and “§773.22(e) of this part” shall be replaced by “K.A.R. 47-3-42(a)(15).”
- (Q) “§773.23 of this part” shall be replaced by “K.A.R. 47-3-42(a)(16).”
- (R) “§773.26(a) of this part” shall be replaced by “K.A.R. 47-3-42(a)(18).”
- (S) “§773.27(b) of this part” shall be replaced by “K.A.R. 47-3-42(a)(19).”
- (T) “§774.11(c) of this subchapter,” “§774.11(f) of this subchapter,” and “§774.11(g) of this subchapter” shall be replaced by “K.A.R. 47-6-11(a)(1).”
- (U) “§774.13 of this chapter” and “§774.13” shall be replaced by “K.A.R. 47-6-2.”
- (V) “§774.15” shall be replaced by “K.A.R. 47-6-3.”
- (W) “§778.9(d) of this subchapter” shall be replaced by “K.A.R. 47-3-42(a)(21).”
- (X) “§778.11 of this subchapter,” “§§778.11(c)(5) and 778.11(d) of this subchapter,” and “§778.11(c)(5) of this subchapter” shall be replaced by “K.A.R. 47-3-42(a)(22).”
- (Y) “§778.12 of this subchapter” shall be replaced by “K.A.R. 47-3-42(a)(23).”
- (Z) “§778.14 of this subchapter” shall be replaced by “K.A.R. 47-3-42(a)(25).”
- (AA) “§778.15(b) of this chapter” shall be replaced by “K.A.R. 47-3-42(a)(26).”
- (BB) “§779.25 of this chapter” shall be replaced by “K.A.R. 47-3-42(a)(39).”
- (CC) “§780.16(b) and 816.97(a) of this chapter” shall be replaced by “K.A.R. 47-3-42(a)(46) and K.A.R. 47-9-1(c)(31).”
- (DD) “§780.21(h) and 816.41(d)(1) of this chapter” shall be replaced by “K.A.R. 47-3-42(a)(48) and K.A.R. 47-9-1(c)(6).”
- (EE) “§780.25 of this part” shall be replaced by “K.A.R. 47-3-42(a)(51).”
- (FF) “§780.29 of this part and §816.43” shall be replaced by “K.A.R. 47-3-42(a)(54) and K.A.R. 47-9-1(c)(8).”
- (GG) “§780.35 of this part” shall be replaced by “K.A.R. 47-3-42(a)(57).”
- (HH) “§785.13” shall be replaced by “K.A.R. 47-3-42(a)(60).”
- (II) “§785.21 of this chapter” shall be replaced by “K.A.R. 47-3-42(a)(64).”
- (JJ) “§785.25 of this subchapter” and “§785.25 of this chapter” shall be replaced by “K.A.R. 47-3-42(a)(66).”
- (KK) “§800.60 of this chapter” shall be replaced by “K.A.R. 47-8-9(a)(15).”
- (LL) “§816.46 of this chapter” shall be replaced by “K.A.R. 47-9-1(c)(10).”
- (MM) “§816.49 of this chapter” and “§816.49(a)(4)(ii) of this chapter” shall be replaced by “K.A.R. 47-9-1(c)(12).”
- (NN) “§816.57(a)(1) of this chapter,” “paragraphs (b) and (c) of §816.57 of this chapter,”

“paragraphs (b)(2) through (b)(4) of §816.57 of this chapter,” and “§816.57(a)(2) of this chapter,” shall be replaced by “K.A.R. 47-9-1(c)(14).”

(OO) “§816.67” shall be replaced by “K.A.R. 47-9-1(c)(20).”

(PP) “§816.71(d) of this chapter” shall be replaced by “K.A.R. 47-9-1(c)(22).”

(QQ) “§816.74 of this chapter” shall be replaced by “K.A.R. 47-9-1(c)(23).”

(RR) “§816.97 of this chapter” shall be replaced by “K.A.R. 47-9-1(c)(31).”

(SS) “§816.100 of this chapter” shall be replaced by “K.A.R. 47-9-1(c)(33).”

(TT) “§816.106 or §817.106 of this chapter” shall be replaced by “K.A.R. 47-9-1(c)(38) or (d)(34).”

(UU) “§816.111(d) or §817.111(d)” shall be replaced by “K.A.R. 47-9-1(c)(39) or (d)(35).”

(VV) “§816.133 and “30 CFR 816.133” shall be replaced by “K.A.R. 47-9-1(c)(45).”

(WW) “§816.150(d)(1) of this chapter” shall be replaced by “K.A.R. 47-9-1(c)(46).”

(XX) “§816.151(b) of this chapter,” “§816.151(c)(2) of this chapter,” “§816.151(d)(5) of this chapter,” and “§816.151(d)(6) of this chapter” shall be replaced by “K.A.R. 47-9-1(c)(47).”

(YY) “§816.181 of this chapter” shall be replaced by “K.A.R. 47-9-1(c)(49).”

(ZZ) “§827.13 of this chapter” shall be replaced by “K.A.R. 47-9-1(g)(3).”

(AAA) “§842.16 of this chapter (when osm is the regulatory authority) or under §840.14 of this chapter (when a state is the regulatory authority)” shall be replaced by “K.A.R. 47-15-1a(a)(2).”

(BBB) “§843.12 of this chapter or the state regulatory equivalent” shall be replaced by “K.A.R. 47-15-1a(a)(9).”

(CCC) “§843.14 of this chapter, or the state regulatory program equivalent” shall be replaced by “K.A.R. 47-15-1a(a)(11).”

(DDD) “§§773.7 through 773.14 of this part” shall be replaced by “K.A.R. 47-3-42(a)(3) through (10).”

(EEE) “§§773.9 through 773.11 of this part” shall be replaced by “K.A.R. 47-3-42(a)(5) through (7).”

(FFF) “§§773.13 and 773.14 of this part” shall be replaced by “K.A.R. 47-3-42(a)(9) and (10).”

(GGG) “§§773.21 or 774.11(f) of this subchapter” shall be replaced by “K.A.R. 47-3-42(a)(14) and K.A.R. 47-6-11(a)(1).”

(HHH) “§§773.22 and 773.23 of this part” shall be replaced by “K.A.R. 47-3-42(a)(15) and (16).”

(III) “§§773.25 through 773.27 of this part” shall be replaced by “K.A.R. 47-3-42(a)(17) through (19).”

(JJJ) “§§773.26 and 773.27 of this part” shall be replaced by “K.A.R. 47-3-42(a)(18) and (19).”

(KKK) “§§773.27 and 773.28 of this part” shall be replaced by “K.A.R. 47-3-42(a)(19) and (20).”

(LLL) “§§778.11 and 778.12(c) of this subchapter” shall be replaced by “K.A.R. 47-3-42(a)(22) and (23).”

(MMM) “§§778.11 through 778.14 of this part” shall be replaced by “K.A.R. 47-3-42(a)(22) through (25).”

(NNN) “§§780.25(a)(2), 780.25(a)(3), 780.35, 816.73(c), 816.74(c), and 816.81(c) of this chapter” shall be replaced by “K.A.R. 47-3-42(a)(51) and (57) and K.A.R. 47-9-1(c)(23) and (25).”

(OOO) “§§816.41 through 816.43” shall be replaced by “K.A.R. 47-9-1(c)(6) through (8).”

(PPP) “§§816.61 through 816.68 of this chapter” shall be replaced by “K.A.R. 47-9-1 (c)(16) through (21).”

(QQQ) “§§816.81 and 816.83 of this chapter” shall be replaced by “K.A.R. 47-9-1(c)(25) and (26).”

(RRR) “§§816.81 and 816.84 of this chapter” shall be replaced by “K.A.R. 47-9-1(c)(25) and (27).” (Authorized by K.S.A. 49-405 and 49-427; implementing K.S.A. 49-405, K.S.A. 2018 Supp. 49-406, K.S.A. 49-407 and 49-427; effective, E-81-30, Oct. 8, 1980; effective May 1, 1981; amended May 1, 1985; amended May 1, 1986; amended May 1, 1988; amended Feb. 11, 1991; amended May 2, 1997; amended July 31, 1998; amended Dec. 1, 2006; amended Feb. 15, 2019.)

Article 4.—PUBLIC HEARINGS

47-4-1 to 47-4-8. (Authorized by K.S.A. 1980 Supp. 49-405; effective, E-81-3, Jan. 10, 1980; effective May 1, 1980; revoked, E-81-30, Oct. 8, 1980; revoked May 1, 1981.)

47-4-9. (Authorized by K.S.A. 1980 Supp. 49-404, 49-407; effective, E-81-3, Jan. 10, 1980; effective May 1, 1980; revoked, E-81-30, Oct. 8, 1980; revoked May 1, 1981.)

47-4-10 to 47-4-13. (Authorized by K.S.A. 1980 Supp. 49-405; effective, E-81-3, Jan. 10, 1980; effective May 1, 1980; revoked, E-81-30, Oct. 8, 1980; revoked May 1, 1981.)

47-4-14. (Authorized by K.S.A. 49-404, 49-405; implementing K.S.A. 49-404, 49-405, 49-407, 49-416a; effective, E-81-30, Oct. 8, 1980; effective May 1, 1981; amended May 1, 1986, revoked Feb. 11, 1991.)

47-4-14a. Administrative hearing procedure. (a) Appeals and applications. This article and articles 5, 6, and 15 shall govern the procedure used in all administrative hearings resulting from the following actions:

(1) Petitions for review of proposed civil penalty assessments issued by the secretary;

(2) applications for review of notices of violation and orders of cessation or modification, vacation or termination of notices of violation, and orders of cessation;

(3) applications for review of the secretary's decision to disapprove, suspend, or revoke a permit;

(4) applications for temporary relief;

(5) applications for review of alleged discriminatory acts;

(6) petitions for award of costs and expenses;

(7) appeals from initial orders or decisions of presiding officers; and

(8) all other appeals and review procedures authorized by the act.

(b) Definition. As used in these regulations, the following definition shall apply: "Party" means either of the following:

(1) The person to whom an order, notice of violation, civil penalty assessment, suspension of permit, revocation of permit, or petition for award of costs and expenses is specifically directed; or

(2) a person named or allowed to intervene as a party to a state agency proceeding or allowed to intervene as a party in a proceeding.

(c) Rules of procedure.

(1) Hearing location. Hearings shall be held in the location designated by the presiding officer, giving due consideration to the convenience of the parties and their representatives and witnesses, except as otherwise provided by the state act.

(2) Document filing. All documents that are to be filed in a proceeding governed by this article shall be filed with the office of administrative hearings, a division of the Kansas department of administration, in Topeka, Kansas.

(3) Proof of service. A person who has initiated a proceeding under this regulation shall file a proof of service in the form of a registered receipt if by certified or registered mail, or acknowledgement by the party served or verified return when service is made personally. A certificate of service shall be contained in all other documents filed by a party.

(4) Filing date. The effective filing date of a notice of appeal or petition for review shall be the date of receipt by the administrative appeals section if filed personally, or the postmark date if filed

by mail. The burden of establishing the date of mailing shall be on the person filing the document.

(5) Document information. All documents shall be captioned with the following information:

(A) The name of the party;

(B) the name of the facility, mine, or site to which the document pertains; and

(C) if appropriate, the following information:

(i) The number of the notice, order, or other agency decision or action to which the appeal pertains;

(ii) the case number assigned to the original agency action; and

(iii) any other identifying information, including permit number.

(6) Service.

(A) Copies of documents that initiate a proceeding shall be served upon all parties by registered or certified mail, return receipt requested.

(B) Copies of all subsequent documents shall be served personally or by first-class mail.

(C) Service of all documents shall be complete at the time of personal service, or, if by mail, upon receipt.

(D) If an attorney has entered an appearance on behalf of a party, thereafter service shall be made upon the attorney.

(7) Intervention. Any person may petition for leave to intervene in a proceeding. Each petition shall set out the interest of the petitioner and the manner in which the petitioner's interest is or could be affected.

(A) The presiding officer shall grant intervention if the petitioner fulfills these requirements:

(i) Had a statutory right to initiate the proceeding into which the petitioner seeks intervention; or

(ii) has an interest that is or could be adversely affected by the outcome of the proceeding.

(B) If paragraphs (c)(7)(A)(i) and (c)(7)(A)(ii) of this regulation are not applicable, the presiding officer shall consider the following to determine if intervention is appropriate:

(i) The nature of the issues;

(ii) the adequacy of the representation of petitioner's interest provided by the existing parties;

(iii) the ability of the petitioner to present relevant evidence and argument; and

(iv) the effect of intervention on the agency's implementation of its statutory duties.

(C) Each person granted leave to intervene shall participate as a party.

(D) The presiding officer shall determine the extent and terms of limited participation by an intervenor.

(8) Voluntary dismissal. Any party who initiated a proceeding may withdraw it by moving to dismiss. The presiding officer may grant such a motion.

(9) Pleadings, motions, briefs; service. At appropriate stages of the proceeding, each party shall be given full opportunity to file pleadings, motions, and objections.

(A) Each pleading and motion shall be submitted in writing and shall state concisely the supporting grounds.

(B) Each party shall have 15 days from the date of service of the pleading in which to file a response, unless otherwise ordered by the presiding officer.

(C) Failure to make a timely motion or response shall be construed as a waiver of objection.

(D) Each motion shall be ruled upon expeditiously.

(E) At appropriate stages, each party shall be given full opportunity to file briefs, proposed findings of fact and conclusions of law, and proposed initial and final orders.

(F) Each document filed pursuant to this subsection shall be served on all parties by mail or any other means prescribed in this regulation.

(10) Consolidation. When pending proceedings involve a common question of fact or law, the proceedings shall be consolidated pursuant to a motion by a party or the presiding officer.

(11) Waiver of hearing. Any person entitled to a hearing may waive this right in writing. Any person required to file a responsive pleading who fails to do so by the required time may be deemed to have waived the person's right to a hearing. Unless all parties who are entitled to a hearing waive these rights or are deemed to have waived these rights, a hearing shall be held.

(d) Formal hearings. If a statute provides for a hearing in accordance with these regulations, the hearing shall be governed by this subsection.

(1) Participation and representation.

(A) Each party shall participate in the hearing in person or, if the party is a corporation or other artificial person, by a duly authorized representative.

(B) Whether or not participating in person, any party may be represented at the party's own expense by counsel or, if permitted by law, other representative.

(C) Each corporation or other artificial person shall participate by counsel.

(2) Presiding officer.

(A) An administrative hearing officer from the office of administrative hearings shall be the presiding officer.

(B) Each person serving or designated to serve alone or with others as presiding officer shall be subject to disqualification for administrative bias, prejudice, or interest.

(C) Any party may petition for the disqualification of a presiding officer promptly after receipt of notice indicating that the person will preside or promptly upon discovering facts establishing grounds for disqualification, whichever is later.

(D) Each presiding officer whose disqualification is requested shall determine whether or not to grant the petition, stating facts and reasons for the determination. If the presiding officer fails to grant a petition for disqualification, the petitioning party may file an affidavit of personal bias or disqualification with substantiating facts, and the matter of disqualification shall be determined by the secretary.

(E) If a substitute is required for a presiding officer who is disqualified or becomes unavailable for any reason, each action taken by a duly appointed substitute for a disqualified or unavailable presiding officer shall be as effective as if taken by the disqualified or unavailable presiding officer.

(3) Prehearing conference; notice. The presiding officer designated to conduct the hearing may conduct a prehearing conference. If the conference is conducted, the presiding officer for the prehearing conference shall set the time and place of the conference and give reasonable notice to all parties and to all persons who have filed written petitions to intervene in the matter.

(4) Prehearing conference. The prehearing conference notice shall include the following:

(A) The names and mailing addresses of all parties and other persons to whom notice is being given by the presiding officer;

(B) the name, official title, mailing address, and telephone number of any counsel or employee who has been designated to appear for the state agency;

(C) the official file or other reference number, the name of the proceeding, and a general description of the subject matter;

(D) a statement of the time, place, and nature of the prehearing conference;

(E) a statement of the legal authority and jurisdiction under which the prehearing conference and hearing are to be held;

(F) the name, official title, mailing address, and telephone number of the presiding officer for the prehearing conference;

(G) a statement that any party who fails to attend or participate in a prehearing conference,

hearing, or other stage of an adjudicative proceeding shall be held in default; and

(H) a notice that may include any other matters that the presiding officer considers desirable to expedite the proceedings.

(5) Prehearing conference procedure; prehearing order.

(A) The presiding officer may conduct all or part of the prehearing conference by telephone or other electronic means if each participant in the conference has an opportunity to participate in the entire proceeding while it is taking place.

(B) The presiding officer shall conduct the prehearing conference, as shall be appropriate, to deal with matters including the following:

- (i) Exploration of settlement possibilities;
- (ii) preparation of stipulations;
- (iii) clarification of issues;
- (iv) rulings on identity and limitation of the number of witnesses;
- (v) objections to proffers of evidence;
- (vi) determination of the extent to which direct evidence, rebuttal evidence, or cross-examination will be presented in written form and the extent to which telephone or other electronic means will be used as a substitute for proceedings in person;
- (vii) order of presentation of evidence and cross-examination;
- (viii) rulings regarding issuance of subpoenas;
- (ix) discovery orders and protective orders; and
- (x) any other matters that will promote the orderly and prompt conduct of the hearing.

(C) The presiding officer shall issue a prehearing order incorporating the matters determined at the prehearing conference.

(D) If a prehearing conference is not held, the presiding officer for the hearing shall issue a prehearing order, based on the pleadings, to regulate the conduct of the proceedings.

(6) Notice of administrative hearing.

(A) The time and place of the hearing shall be set by the presiding officer. Reasonable written notice at least 10 days before the hearing shall be given to all parties and to all persons who have filed written petitions to intervene in the matter. Service of notices shall be made in accordance with paragraph (d)(18) of this regulation.

(B) The notice shall include a copy of any prehearing order rendered in the matter.

(C) To the extent not included in the prehearing order accompanying it, the notice shall include the following:

(i) The names and mailing addresses of all par-

ties and other persons to whom notice is being given by the presiding officer;

(ii) the name, official title, mailing address, and telephone number of any counsel or employee who has been designated to appear for the state agency;

(iii) the official file or other reference number, the name of the proceeding, and a general description of the subject matter;

(iv) the time, place, and nature of the hearing;

(v) the legal authority and jurisdiction under which the hearing is to be held;

(vi) the name, official title, mailing address, and telephone number of the presiding officer;

(vii) the issues involved and, to the extent known to the presiding officer, the matters asserted by the parties; and

(viii) a statement that any party who fails to attend or participate in a prehearing conference, hearing, or other stage of an adjudicative proceeding shall be held in default.

(D) The notice may include any other matters that the presiding officer considers desirable to expedite the proceedings.

(E) The presiding officer shall cause notice to be given to any other person entitled to notice under any other provisions of law who has not been given notice under paragraph (d)(6)(A) of this regulation, as follows:

(i) Notice under this subsection shall be given in the manner specified by these regulations or, if no such manner is specified, in a manner determined by the office of administrative hearings, a division of the Kansas department of administration.

(ii) If any person other than the agency is directed to give notice under this subsection, the agency shall require that the person furnish proof of service.

(iii) Notice under this subsection may include all types of information provided in paragraphs (d)(6)(A) through (D) of this regulation or may consist of a brief statement indicating the subject matter, parties, time, place where the hearing will be held, locations where the general public may meet for hearings that are conducted electronically, nature of the hearing, manner in which copies of the notice to the parties may be inspected and copied, and the name and telephone number of the presiding officer.

(iv) Notice of the hearing shall be posted by the department at the surface mining section office and, where practicable, shall be published in a newspaper of general circulation in the area of the mine at least seven days before the hearing.

(7) Default.

(A) If a party fails to attend or participate in a prehearing conference, hearing, or other adjudicative proceeding, the presiding officer may serve all parties with written notice of the proposed default order, including the grounds for default.

(B) Within seven days after service of a proposed default order, the party against whom the order was issued may file a written motion requesting that the proposed default order be vacated and stating the grounds relied upon. During this period, the presiding officer may adjourn the proceedings or conduct them without the participation of the defaulting party, having due regard for the interests of justice and the orderly and prompt conduct of the proceedings.

(C) The proposed default order shall become effective seven days after service, unless vacated by the presiding officer.

(D) Once a default order becomes effective, the presiding officer may conduct any proceedings necessary to complete the adjudication and determine all issues in the adjudication, including those affecting the defaulting party without the defaulting party's participation. In lieu of determining the issues affecting the defaulting party, the presiding officer may dismiss the party's application for an adjudicative proceeding, unless otherwise prohibited by law.

(8) Certification of interlocutory ruling. On the presiding officer's or a party's motion, a ruling may be certified to the secretary if that ruling presents a controlling question of law and if immediate appeal would materially advance the ultimate disposition of the case.

(9) Summary judgment. Any party may move for summary decision, in whole or in part, after a proceeding has begun.

(A) The moving party shall verify each allegation of fact with at least one supporting affidavit, unless reliance is upon depositions, answers to interrogatories, admissions, or documents produced upon request to verify each allegation.

(B) The presiding officer shall grant such a motion for summary judgment if the record, including pleadings, depositions, answers to interrogatories, admissions, and affidavits, shows both of the following:

(i) There is no disputed issue as to any material fact.

(ii) The moving party is entitled to a summary decision as a matter of law.

(C) If a complete summary decision is not granted and an evidentiary hearing is necessary,

the presiding officer shall, if practicable, perform the following:

(i) Examine all relevant evidence and documents in the record;

(ii) ascertain what material facts are controverted in good faith;

(iii) issue an order specifying those facts that are not substantially controverted; and

(iv) direct any further proceedings that the presiding officer determines are necessary.

(10) Proceedings. The presiding officer shall meet the following requirements:

(A) Shall regulate the proceedings;

(B) shall afford to each party the opportunity to respond, present evidence and argument, conduct cross-examination, and submit rebuttal evidence, to the extent necessary for full disclosure of all relevant facts and issues, except as restricted by a limited grant of intervention or by the prehearing order;

(C) may, and when required by statute shall, give nonparties an opportunity to present oral or written statements. When the presiding officer proposes to consider a statement by a nonparty, the following shall apply:

(i) Each party shall have an opportunity to challenge or rebut the statement; and

(ii) any party may, by motion, require the statement to be given under oath or confirmation;

(D) may conduct all or part of the hearing by telephone or other electronic means, if each participant in the hearing has an opportunity to participate in the entire proceeding;

(E) shall cause the hearing to be recorded at the state agency's expense. The state agency shall not be required, at its expense, to prepare a transcript, unless required to do so by any other provision of law. Any party, at the party's expense and subject to any reasonable conditions that the state agency may establish, may cause a person other than the state agency to prepare a transcript from the state agency's record, or cause additional recordings to be made during the hearing; and

(F) may close parts of the hearing from public observation only when a provision of the law expressly authorizes closure.

(11) Proposed findings of fact and conclusions of law. The presiding officer shall allow the parties to submit proposed findings of fact and conclusions of law with a supporting brief at a time set forth by the presiding officer.

(12) Evidence; official notice.

(A) A presiding officer shall not be bound by the statutory rules of evidence, but shall give the

parties reasonable opportunity to be heard and to present evidence, and the presiding officer shall act reasonably without partiality. The presiding officer shall give effect to the rules of privilege recognized by law. Evidence shall not be excluded solely because it is hearsay.

(B) All testimony of parties and witnesses shall be made under oath or affirmation, and the presiding officer shall have the power to administer an oath or affirmation for that purpose.

(C) Statements presented by nonparties in accordance with paragraph (d)(10)(C) of this regulation shall be received as evidence.

(D) Any part of the evidence may be received in written form if doing so will expedite the hearing without substantial prejudice to the interests of any party.

(E) Documentary evidence shall be received in the form of a copy or excerpt. Upon request, parties shall be given an opportunity to compare the copy with the original, if available.

(F) Official notice shall be taken of the following:

(i) Any matter that could be judicially noticed in the courts of this state;

(ii) the record of other proceedings before the state agency;

(iii) technical or scientific matters within the state agency's specialized knowledge; and

(iv) codes of standards that have been adopted by an agency of the United States, of this state or of another state, or by a nationally recognized organization or association. Each party shall be notified before or during the hearing, or before the issuance of any initial or final order that is based in whole or in part on matters or material noticed, of the specific matters or material noticed and the source, including any staff memoranda and data. Each party shall be afforded an opportunity to contest and rebut the matters or material so noticed.

(13) Orders, initial and final.

(A) If the presiding officer is the agency head, the presiding officer shall render a final order.

(B) If the presiding officer is not the agency head, the presiding officer shall render an initial order, which shall become a final order unless reviewed in accordance with paragraph (d)(14) of this regulation.

(C) Each final order or initial order shall include, separately stated, findings of fact, conclusions of law, and policy reasons for the decision if the order is an exercise of the state agency's discretion, for all aspects of the order, including the remedy prescribed and, if applicable, the action

taken on a petition for stay of effectiveness. Findings of fact, if set forth in language that is no more than mere repetition or paraphrase of the relevant provision of law, shall be accompanied by a concise and explicit statement of the underlying facts of record to support the findings. The order shall also include a statement of the available procedures and time limits for seeking reconsideration, administrative review, or other administrative relief. Each initial order shall include a statement of any circumstances under which the initial order, without further notice, may become a final order.

(D) Findings of fact shall be based exclusively upon the evidence of record in the adjudicative proceeding and on matters officially noticed in that proceeding.

(E) If a substitute presiding officer is appointed, the substitute presiding officer shall use any existing record and may conduct any further proceedings appropriate in the interests of justice.

(F) The presiding officer shall allow the parties to a proceeding to have an opportunity to submit proposed findings of fact and conclusions of law together with a supporting brief at a time designated by the presiding officer.

(G) A final order or initial order pursuant to this regulation shall be rendered in writing and served within 30 days after conclusion of the hearing or after submission of proposed findings in accordance with paragraph (d)(13)(F) of this regulation, unless this period is waived or extended with the written consent of all parties or for good cause shown.

(H) The presiding officer shall cause copies of the order to be served on each party and, if the order is an initial order, the agency head in the manner prescribed by paragraph (d)(18) of this regulation.

(14) Review of initial order; exceptions to reviewability.

(A) Upon the secretary's or secretary's designee's own motion, any initial order may be reviewed by the secretary or secretary's designee, unless paragraph (d)(14)(A)(i) or (ii) applies. If any party petitions for review of an initial order or if the law requires the review of an initial order by the secretary or secretary's designee, unless either of the following paragraphs applies:

(i) A provision of law precludes or limits review of the initial order; or

(ii) the secretary or secretary's designee determines to review some but not all issues, or not to exercise any review, or delegates the authority to

review the initial order to one or more persons, unless this delegation is expressly prohibited by law, or authorizes one or more persons to review the initial order, subject to further review by the secretary or secretary's designee.

(B) A petition for review of an initial order shall be filed with the secretary or secretary's designee, or with any person designated for this purpose by regulation of the department, within 15 days after service of the initial order. If the secretary or secretary's designee on that individual's own motion decides to review an initial order, written notice of that individual's intention to review the initial order shall be given by the secretary or designee within 15 days after the initial order is issued. If the secretary or secretary's designee determines not to review an initial order in response to a petition for review, within 20 days after the filing of the petition for review, an order stating that review will not be exercised shall be served on each party by the secretary or designee.

(C) The petition for review shall state its basis. If the secretary or secretary's designee on that individual's own motion gives notice of its intent to review an initial order, the issues intended for review shall be specified by that individual.

(D) In reviewing an initial order, all the decision-making power that the secretary or secretary's designee would have had to render a final order had the secretary presided over the hearing shall be exercised by the secretary or designee, except to the extent that the issues subject to review are limited by a provision of law or by the secretary or secretary's designee upon notice to all parties.

(E) Each party shall be afforded an opportunity to present briefs and an opportunity to present oral argument by the secretary or designee.

(F) A final order disposing of the proceeding shall be rendered by the secretary or designee, or the matter shall be remanded by the secretary or designee for further proceedings with instructions to the presiding officer who rendered the initial order. When a matter is remanded, any temporary relief that is authorized and appropriate shall be ordered by the secretary or designee.

(G) A final order or an order remanding the matter for further proceedings shall be rendered in writing and served within 30 days after receipt of briefs and oral argument, unless that period is waived or extended with written consent of all parties or for good cause shown.

(H) A final order or an order remanding the matter for further proceedings under this article

shall identify any difference between this order and the initial order and shall include, or incorporate by express reference to the initial order, all the matters required by paragraph (d)(13)(C) of this regulation.

(I) Copies of the final order or order remanding the matter for further proceedings shall be caused to be served on each party by the secretary or designee in the manner prescribed by paragraph (d)(18) of this regulation.

(15) Stay. A party may submit to the presiding officer or secretary or secretary's designee a petition for stay of effectiveness of an initial or final order until the time at which a petition for judicial review would no longer be timely, unless otherwise provided by statute or stated in the initial or final order. Action may be taken on the petition for stay by the presiding officer or by the secretary or designee, either before or after the effective date of the initial or final order.

(16) Reconsideration.

(A) Each party, within 15 days after service of a final order, may file a petition for reconsideration with the secretary or secretary's designee, stating the specific grounds upon which relief is requested. The filing of the petition shall not be a prerequisite for seeking administrative or judicial review.

(B) A written order denying the petition, granting the petition and dissolving or modifying the final order, or granting the petition and setting the matter for further proceedings shall be rendered by the secretary. The petition may be granted, in whole or in part, only if the secretary states, in the written order, findings of fact, conclusions of law, and policy reasons for the decision if it is an exercise of the secretary's discretion, to justify the order. The petition shall be deemed to have been denied if the secretary does not dispose of the petition within 20 days after the filing of the petition.

(C) Each order under these regulations shall be served on the parties in the manner prescribed by paragraph (d)(18) of this regulation.

(17) Orders, when effective.

(A) Unless a later date is stated in a final order or a stay is granted, each final order shall be effective upon service.

(B) Unless a later date in an initial order or a stay is granted, an initial order shall become effective and shall become the final order under these circumstances:

(i) When the initial order is served, if administrative review is unavailable;

(ii) when the secretary serves an order stating, after a petition for review has been filed, that review will not be exercised; or

(iii) when, 30 days after service of the initial order, no party has filed a petition for review by the secretary, the secretary has not given written notice of its intent to exercise review, and review by the secretary is not otherwise required by law.

(18) Service of order. Service of an order or notice shall be made upon the party and the party's attorney of record, if any, by delivering a copy of the order or notice to the person to be served or by mailing a copy of the order or notice to the person at the person's last known address. Delivering a copy of the order or notice shall mean handing the order or notice to the person or leaving the order or notice at the person's principal place of business or residence and with a person of suitable age and discretion who works or resides there. Service shall be presumed if the presiding officer, or a person directed to make service by the presiding officer, makes a written certificate of service. Service by mail shall be complete upon mailing. Whenever a party has the right or is required to perform some act or file a petition within a prescribed period after service of a notice or order and the notice or order is served by mail, three days shall be added to the prescribed period.

(19) Record.

(A) An official record of each formal hearing shall be maintained by the department.

(B) The record shall consist of only these items:

- (i) The notices of all proceedings;
- (ii) any prehearing order;
- (iii) any motions, pleadings, briefs, petitions, requests, and intermediate rulings;
- (iv) all evidence received or considered;
- (v) a statement of matters officially noticed;
- (vi) proffers of proof and objections and rulings on the proffers;
- (vii) proposed findings, requested orders, and exceptions;
- (viii) the record prepared for the presiding officer at the hearing, together with any transcript of all or part of the hearing considered before final disposition of the proceeding;
- (ix) any final order, initial order, or order on reconsideration; and
- (x) staff memoranda or data submitted to the presiding officer.

(C) Except to the extent that these regulations or another statute provides otherwise, the department's record, excluding matters under paragraph

(d)(19)(B)(x) of this regulation, shall constitute the exclusive basis for the department's action in formal hearings and for judicial review of the department's action. (Authorized by K.S.A. 49-405; implementing K.S.A. 49-405, 49-407, and 49-416a; effective Feb. 11, 1991; amended May 2, 1997; amended Dec. 1, 2006.)

47-4-15. Administrative hearings; discovery. Discovery shall be permitted to the extent allowed by the presiding officer or as agreed to by the parties. (a) Requests for discovery shall be made in writing to the presiding officer, and a copy of each request for discovery shall be served on the party or person against whom discovery is sought. The presiding officer may specify the times during which the parties may pursue discovery and respond to discovery requests. The presiding officer may issue subpoenas, discovery orders, and protective orders in accordance with the rules of civil procedure.

(b) Subpoenas issued by the presiding officer shall be served by a person designated by the presiding officer or any other person who is not a party and is not less than 18 years of age. Service shall be in person and at the expense of the requesting party. Proof of service shall be shown by affidavit.

(c) Subpoenas and orders issued by the presiding officer shall be enforced pursuant to the provisions of the act for judicial review and civil enforcement of agency actions pursuant to K.S.A. 77-601 *et seq.*, as amended.

(d) Discovery methods. Parties may obtain discovery by one or more of the following methods:

- (1) depositions upon oral examination or upon written interrogatories;
- (2) written interrogatories;
- (3) production of documents or items, or permission to enter upon land or other property for inspection and other purposes; and
- (4) requests for admission.

(e) Time for discovery. Following the initiation of a proceeding, the parties may initiate discovery at any time so long as it does not interfere with the conduct of the hearing.

(f) Scope of discovery.

(1) Unless otherwise limited by order of the presiding officer in accordance with these regulations, the parties may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the proceeding, including the existence, description, nature, custody,

condition, and location of any books, documents, or other tangible items, and the identity and location of persons having knowledge of any discoverable matter.

(2) It shall not be grounds for objection that information sought will not be admissible at the hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

(3) A party may obtain discovery of documents and tangible items otherwise discoverable under subsection (f)(1) of this regulation and prepared in anticipation of or for the hearing by or for another party's representative, including a party's attorney, consultant, surety, indemnitor, insurer, or agent. This discovery shall occur only upon a showing that the party seeking discovery has substantial need of the materials for the preparation of a party's case and that the party is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the presiding officer shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the proceeding.

(g) Protective order. Upon motion by a party or the person from whom discovery is sought, and for good cause shown, the presiding officer may make any order that justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

- (1) the discovery not be had;
- (2) the discovery may be had only on specified terms and conditions, including a designation of the time or place;
- (3) the discovery may be had only by a method of discovery other than the method selected by the party seeking discovery;
- (4) certain matters not relevant may not be inquired into, or the scope of discovery be limited to certain matters;
- (5) discovery be conducted with no one present except persons designated by the presiding officer; or
- (6) a trade secret or other confidential research, development, or commercial information may not be disclosed or may be disclosed only in a designated way.

(h) Sequence and timing of discovery. Unless the presiding officer upon motion, for the con-

venience of parties and witnesses and in the interests of justice, orders otherwise, methods of discovery may be used in any sequence. The fact that a party is conducting discovery, whether by deposition or otherwise, shall not operate to delay any other party's discovery.

(i) Supplementation of responses. A party who has responded to a request for discovery with a response that was complete when made is under no duty to supplement the party's response to include information thereafter acquired, except as follows.

(1) A party shall be under a duty to timely supplement the party's response with respect to any question directly addressed to the following:

(A) the identity and location of persons having knowledge of discoverable matters; or

(B) the identity of each person expected to be called as an expert witness at the hearing, the subject matter on which the expert witness is expected to testify, and the substance of the expert's testimony.

(2) A party shall timely amend a prior response if the party later obtains information upon the basis of which either condition applies:

(A) the party knows the response was incorrect when made; or

(B) the party knows that the response, though correct when made, is no longer true, and the circumstances are such that a failure to amend the response is in substance a knowing concealment.

(3) A duty to supplement responses may be imposed by order of the presiding officer or agreement of the parties.

(j) Motion to compel discovery.

(1) If a deponent fails to answer a question propounded, or if a party upon whom a request is made pursuant to subsection (d)(3) of this regulation or a party upon whom answers to interrogatories are served fails to adequately respond or objects to the request, or any part thereof, or fails to permit inspection as requested, the discovering party may move the presiding officer for an order compelling a response or inspection in accordance with the request.

(2) The motion shall set forth the following:

(A) the nature of the questions or request;

(B) the response or objection of the party upon whom the request was served; and

(C) arguments in support of the motion.

(3) For purposes of this section, an evasive answer or an incomplete answer or response shall be treated as a failure to answer or respond.

(4) In ruling on a motion made pursuant to this section, the presiding officer may make such

protective orders as the presiding officer is authorized to make on a motion made pursuant to K.A.R. 47-4-15(g).

(k) Failure to comply with orders compelling discovery. If a party or an officer, director, or other agent of a party fails to obey an order to provide or permit discovery, the presiding officer before whom the action is pending may make such orders in regard to the failure as are just, including the following:

(1) an order that the matters sought to be discovered or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;

(2) an order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting the party from introducing designated matters into evidence; or

(3) an order striking out pleadings or parts of pleadings, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part of the action or proceeding, or rendering a judgment by default against the disobedient party.

(l) Depositions upon oral examination or upon written questions.

(1) Any party desiring to take the testimony of any other party or other person by deposition upon oral examination or written questions shall, without leave of the presiding officer, give reasonable notice in writing to every other party, to the person to be examined and to the presiding officer, of the following:

(A) the proposed time and place of taking the deposition;

(B) the name and address of each person to be examined, if known, or if the name is not known, a general description sufficient to identify the person or the particular group or class to which the person belongs;

(C) the matter upon which each person will be examined; and

(D) the name or descriptive title and address of the officer before whom the deposition is to be taken.

(2) A deposition may be taken before any officer authorized to administer oaths by the laws of the United States or by those of the place where the examination is held.

(3) The actual taking of the deposition shall proceed as follows.

(A) The deposition shall be on the record.

(B) The officer before whom the deposition is to be taken shall put the witness under oath or affirmation.

(C) Examination and cross-examination shall proceed as at a hearing.

(D) Each objection made at the time of the examination shall be noted by the officer.

(E) The officer shall not rule on objections to the evidence, but evidence objected to shall be taken subject to the objections.

(4) When the testimony is fully transcribed, the deposition shall be submitted to the deponent for examination and signature, unless examination and signature are waived by the deponent. The officer shall certify the deposition or, if the deposition is not signed by the deponent, shall certify the reasons for the failure to sign.

(5) When the deposition is to be taken on written questions, the party taking the deposition shall serve a copy of the questions, showing each question separately and consecutively numbered, on every other party with a notice stating the name and address of the person who is to answer the questions, and the name, description, title, and address of the officer before whom the questions are to be taken. Within 30 days after service, any other party may serve cross-questions. The questions, cross-questions, and answers shall be recorded and signed, and the deposition certified, as in the case of a deposition on oral examination.

(6) A deposition shall not become a part of the record in the hearing unless received in evidence. If only part of a deposition is offered in evidence by a party, any other party may introduce any other parts.

(7) A deponent whose deposition is taken and the officer taking a deposition shall be entitled to the same fees as are paid for like services in the district courts of the United States, to be paid by the party at whose request the deposition is taken.

(8) The deponent may be accompanied, represented, and advised by legal counsel.

(m) Use of depositions. At the hearing, any part or all of a deposition, so far as admissible, may be used against any party who was present or represented at the taking of the deposition, or who had reasonable notice of the deposition, in accordance with any of the following provisions.

(1) Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of a deponent as a witness.

(2) The deposition of a party or of anyone who at the time of taking the deposition was an offi-

cer, director, or managing agent or a person designated to testify on behalf of a public or private corporation, partnership, or association or governmental agency that is a party may be used by an adverse party for any purpose.

(3) The deposition of a witness, whether or not a party, may be used by a party for any purpose if the presiding officer finds that any of these conditions occur:

(A) the witness is dead;

(B) the witness is at a distance greater than 100 miles from the place of hearing, or is outside the United States, unless it appears that the absence of the witness was procured by the party offering the deposition;

(C) the witness is unable to attend or testify because of age, illness, infirmity, or imprisonment;

(D) the party offering the deposition has been unable to procure the attendance of the witness by subpoena; or

(E) such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally at the hearing, to allow the deposition to be used.

(n) Written interrogatories to parties.

(1) Any party may serve upon any other party written interrogatories to be answered in writing by the party served, or if the party served is a public or private corporation or a partnership or association or governmental agency, by any officer or agent, who shall furnish the requested information that is available to the party. A copy of the interrogatories, answers, and all related pleadings shall be served on the presiding officer and upon all parties to the proceeding.

(2) Each interrogatory shall be answered separately and fully in writing under oath or affirmation, unless it is objected to, in which event the reasons for objection shall be stated in lieu of an answer. The answer and objections shall be signed by the person making them. The party upon whom the interrogatories were served shall serve a copy of the answers and objections upon all parties to the proceeding within 30 days after service of the interrogatories, or within a shorter or longer period that the presiding officer may allow.

(3) Interrogatories may relate to any matters that can be inquired into under subsection (f) of this regulation. An interrogatory otherwise proper is not necessarily objectionable merely because an answer to the interrogatory involves an opinion or contention that relates to fact or the applica-

tion of law to fact. However, the presiding officer may order that such an interrogatory need not be answered until after the completion of designated discovery or until a prehearing conference or other later time.

(o) Production of documents and items, and entry upon land for inspection and other purposes.

(1) Any party may serve on any other party a request to perform the following:

(A) produce and permit the party making the request, or a person acting on the party's behalf, to inspect and copy any designated document, or to inspect and copy, test, or sample any tangible items within the scope of subsection (f) above of this regulation, that are in the possession, custody, or control of the party upon whom the request is served; or

(B) permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property, including the air, water, and soil, or any designated object or operation on the land, within the scope of subsection (f) of this regulation.

(2) The request may be served on any party without leave of the presiding officer.

(3) The request shall fulfill these requirements:

(A) set forth the items to be inspected either by individual item or by category;

(B) describe each item or category with reasonable particularity; and

(C) specify a reasonable time, place, and manner of making the inspection and performing the related acts.

(4) The party upon whom the request is served shall serve a written response on the party submitting the request within 30 days after service of the request.

(5) The response shall state the following, with respect to each item or category:

(A) that inspection and related activities will be permitted as requested; or

(B) that objection is made in whole or in part, in which case the reasons for objection shall be stated.

(p) Request for admissions.

(1) A party may serve upon any other party a written request for the admission, for purposes of the pending action only, of the genuineness and authenticity of any relevant document described in or attached to the request, or for the admission of the truth of any specified relevant matter of fact.

(2) Each matter of which an admission is requested shall be admitted unless, within 30 days after service of the request or shorter or longer time that the presiding officer may allow, the party to whom the request is directed serves on the requesting party the following:

(A) a sworn statement denying specifically the relevant matters of which an admission is requested;

(B) a sworn statement setting forth in detail the reasons why the party can neither truthfully admit nor deny the matters; or

(C) written objections on the grounds that some or all of the matters involved are privileged or irrelevant or that the request is otherwise improper in whole or in part.

(3) An answering party shall not give lack of information or knowledge as a reason for failure to admit or deny unless the party states that the party has made reasonable inquiry and that the information known or readily obtainable by the party is insufficient to enable the party to admit or deny.

(4) The party who has requested the admissions may move to determine the sufficiency of the answers or objections. Unless the presiding officer determines that an objection is justified, the presiding officer shall order that an answer be served. If the presiding officer determines that an answer does not comply with the requirements of this section, the presiding officer may order either that the matter is admitted or that an amended answer be served. The presiding officer may, in lieu of these orders, determine that final disposition of the request be made at a prehearing conference or at a designated time before hearing.

(5) Any matter admitted under this section shall be conclusively established unless the presiding officer on motion permits withdrawal or amendment of the admission.

(6) Any admission made by a party under this section shall be for the purpose of the pending action only and shall not be an admission by the party for any other purpose. The admission shall not be used against the party in any other proceeding. (Authorized by K.S.A. 49-405; and implementing K.S.A. 49-405, 49-407, and 49-416a; effective, E-81-30, Oct. 8, 1980; effective May 1, 1981; amended May 1, 1986; amended Feb. 11, 1991; amended May 2, 1997.)

47-4-16. Interim orders for temporary relief. (a) An interim order for temporary relief may be issued by the department or a presiding

officer, on its own initiative or on written request, when there has been a showing of good cause. An interim order shall not be granted in permit application cases in which the relief sought is issuance of a permit that has been denied in whole or in part by the department.

(b) Unless otherwise specified by statute, an interim order for temporary relief shall be effective for 30 days at most if a hearing is not held on the merits of the issues. (Authorized by K.S.A. 49-405; implementing K.S.A. 49-405, 49-407, and 49-416a; effective, E-81-30, Oct. 8, 1980; effective May 1, 1981; amended Feb. 11, 1991; amended May 2, 1997.)

47-4-17. Administrative hearings; award of costs and expenses. (a) Any person may file a petition for award of costs and expenses, including attorney fees, reasonably incurred as a result of that person's participation in any administrative proceeding under the state act which results in a final order being issued by the department or its presiding officer. The petition shall be filed within 45 days of receipt of the order. Failure to make a timely filing of the petition may constitute a waiver of the right to an award.

(b) A petition filed under this section shall include the name of the person from whom costs and expenses are sought, and the following shall be submitted in support of the petition:

(1) an affidavit detailing all costs and expenses, including attorney fees, incurred as a result of participation in the proceeding;

(2) receipts or other evidence of the costs and expenses; and

(3) where attorney fees are claimed, the hours expended on the case, the customary commercial rate of payment for services in the locality, and evidence of the experience, reputation, and ability of the attorney or attorneys.

(c) Any person served with the petition shall have 30 days after the date of service to file an answer.

(d) Appropriate costs and expenses, including attorney fees, may be awarded as follows:

(1) from the permittee, if the person initiates any administrative proceedings, or participates in the proceedings, upon a finding that a violation of the state act, of these regulations, or of the permit has occurred, or that an imminent hazard existed, or to any person who participates in an enforcement proceeding in which such a finding is made if the department or its presiding officer determines

that the person made a substantial contribution to the full and fair determination of the issues;

(2) from the department to anyone other than the permittee or permittee's representative, if the person initiates or participates in any proceeding under the act upon a finding that the person made a substantial contribution to a full and fair determination of the issues;

(3) from the department to the permittee when the permittee demonstrates that the department issued an order of cessation, a notice of violation, or an order to show cause why a permit should not be suspended or revoked, in bad faith and for the purpose of harassing or embarrassing the permittee;

(4) to a permittee from any person when the permittee demonstrates that the person initiated a proceeding or participated in such a proceeding in bad faith for the purpose of harassing or embarrassing the permittee; or

(5) to the department when it demonstrates that any person applied for review or participated in an administrative proceeding in bad faith and for the purpose of harassing or embarrassing the department or any person employed by the department.

(e) An award may include all costs and expenses, including attorney fees and expert witness fees, reasonably incurred as a result of initiation of or participation in a proceeding under the state act. (Authorized by K.S.A. 49-405; implementing K.S.A. 49-405, 49-407 and 49-416a; effective, E-81-30, Oct. 8, 1980; effective May 1, 1981; amended Feb. 11, 1991; amended May 2, 1997.)

Article 5.—CIVIL PENALTIES

47-5-1 to 47-5-4. (Authorized by K.S.A. 1979 Supp. 49-405, 49-405c; effective, E-81-3, Jan. 10, 1980; effective May 1, 1980; revoked, E-81-30, Oct. 8, 1980; revoked May 1, 1981.)

47-5-5. (Authorized by K.S.A. 1980 Supp. 49-405, 49-405c; effective, E-81-30, Oct. 8, 1980; effective May 1, 1981; revoked May 1, 1984.)

47-5-5a. Civil penalties; adoption by reference. (a) Subject to the provisions of subsection (c), the following federal regulations, as in effect on July 1, 2012, are adopted by reference, except as otherwise specified:

- (1) How assessments are made, 30 C.F.R. 845.11;
- (2) when penalty will be assessed, 30 C.F.R. 845.12;
- (3) point system for penalties, 30 C.F.R. 845.13;

(4) determination of amount of penalty, 30 C.F.R. 845.14, except that the table shall be replaced by the following table:

“Points	Dollars
1	20
2	40
3	60
4	80
5	100
6	120
7	140
8	160
9	180
10	200
11	220
12	240
13	260
14	280
15	300
16	320
17	340
18	360
19	380
20	400
21	420
22	440
23	460
24	480
25	500
26	600
27	700
28	800
29	900
30	1,000
31	1,100
32	1,200
33	1,300
34	1,400
35	1,500
36	1,600
37	1,700
38	1,800
39	1,900
40	2,000
41	2,100
42	2,200
43	2,300
44	2,400
45	2,500
46	2,600

“Points	Dollars
47	2,700
48	2,800
49	2,900
50	3,000
51	3,100
52	3,200
53	3,300
54	3,400
55	3,500
56	3,600
57	3,700
58	3,800
59	3,900
60	4,000
61	4,100
62	4,200
63	4,300
64	4,400
65	4,500
66	4,600
67	4,700
68	4,800
69	4,900
70 and above	5,000”

(5) assessment of separate violations for each day, 30 C.F.R. 845.15, except that the statement “a civil penalty of not less than \$1,025 shall be assessed for each day during which such failure to abate continues” shall be replaced by “a civil penalty of not less than \$750 shall be assessed for each day during which such failure to abate continues”;

(6) waiver of use of formula to determine civil penalty, 30 C.F.R. 845.16;

(7) procedures for assessment of civil penalties, 30 C.F.R. 845.17;

(8) procedures for assessment conference, 30 C.F.R. 845.18. However, the following sentence shall be deleted: “The assessment conference shall not be governed by section 554 of title 5 of the United States Code, regarding requirements for formal adjudicatory hearings.” The following sentence shall be added: “The conference officer shall be selected by the department”;

(9) request for hearing, 30 C.F.R. 845.19. However, subsection (b) shall be replaced by the following text: “(b) The department shall hold all funds submitted under paragraph (a) of this section in escrow pending completion of the administrative and judicial review process, at which time it shall disburse them as provided in K.A.R. 47-5-16”;

(10) when an individual civil penalty may be assessed, 30 C.F.R. 846.12;

(11) amount of individual civil penalty, 30 C.F.R. 846.14;

(12) procedure for assessment of individual civil penalty, 30 C.F.R. 846.17;

(13) payment of penalty, 30 C.F.R. 846.18. However, subsection (d) shall be replaced by the following text:

“(d)(1) Delinquent payment. Following the expiration of 30 days after the issuance of a final order assessing an individual civil penalty, any delinquent civil penalty shall be subject to interest at the rate established quarterly by the U.S. department of the treasury for use in applying late charges on later payments to the federal government, pursuant to the treasury financial manual 6-8020.20. The treasury current value of funds rate is published by the fiscal service in the notices section of the federal register. Interest on unpaid civil penalties will run from the date payment first was due until the date of payment. Failure to pay overdue civil penalties may result in one or more of the following actions, which are not exclusive:

“(i) Initiation of litigation;

“(ii) reporting to the internal revenue service;

“(iii) reporting to state agencies responsible for taxation;

“(iv) reporting to credit bureaus; or

“(v) referral to collection agencies.

“(2) If a civil penalty debt is greater than 91 days overdue, a six percent per annum penalty shall begin to accrue on the amount owed for fees and shall run until the date of payment. This penalty is in addition to the interest described in this regulation.

“(3) For all delinquent penalties and interest, the debtor shall be required to pay a processing and handling charge that shall be based on the following components:

“(i) For debts referred to a collection agency, the amount charged to the department by the collection agency;

“(ii) for debts processed and handled by the surface mining section, a standard amount set annually by the department based upon similar charges by collection agencies for debt collection;

“(iii) for debts referred to the office of legal services, Kansas department of health and environment, but paid before litigation, the estimated average cost to prepare the case for litigation at the time of payment;

“(iv) for debts referred to the office of legal services, Kansas department of health and environ-

ment, and litigated, the estimated cost to prepare and litigate a debt case at the time of payment;

“(v) if not otherwise provided for, all other administrative expenses associated with collection, including billing, recording payments, and follow-up actions; and

“(vi) no prejudice interest accrues on any processing and handling charges.”;

(14) general provisions, 30 C.F.R. 847.2;

(15) criminal penalties, 30 C.F.R. 847.11. However, the term “Attorney General” shall be replaced with “Kansas attorney general”; and

(16) civil actions for relief, 30 C.F.R. 847.16.

(b) The following phrases and citations shall be replaced with the phrases and citations specified in this subsection wherever the phrases and citations appear in the text of the federal regulations adopted by reference in this regulation:

(1)(A) “Act” shall be replaced by “state act.”

(B) “Director” and “director or his designee” shall be replaced by “secretary of health and environment or secretary’s designee.” However, in 30 C.F.R. 846.12, the word “director” shall remain unchanged.

(C) “Hearings Division, Office of Hearings and Appeals, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203 (Phone: 703-235-3800)” shall be replaced by “Office of administrative hearings.”

(D) “Office,” “State or field office,” and “office of hearings and appeals” shall be replaced by “department.”

(E) “Rule 65 of the Federal Rules of Civil Procedure” shall be replaced by “K.S.A. 60-901 et seq., and amendments thereto.”

(F) “Secretary” shall be replaced by “secretary of the Kansas department of health and environment.”

(2)(A) “Section 518(a) of the act” shall be replaced by “K.S.A. 49-405c(a).”

(B) “Section 518(e), 518(f), 521(a)(4), or 521(c) of the act” shall be replaced by “K.S.A. 49-405c(e), 49-405c(f), 49-405(m)(3), or 49-405(m)(4), and amendments thereto.”

(C) “Section 518(e) and (g) of the act” and “section 518(e) of the Act” shall be replaced by “K.S.A. 49-405c(e) and (g), and amendments thereto.”

(D) “Section 521 or 526 of the act” shall be replaced by “K.S.A. 49-405c, 49-405(m), 49-416a, and 49-422a, and amendments thereto.”

(E) “Section 521(a) of the act” shall be replaced by “K.S.A. 49-405(m)(2), and amendments thereto.”

(F) “Section 521(c) of the act” shall be replaced by “K.S.A. 49-405(m), and amendments thereto.”

(G) “Section 525(c) of the act” shall be replaced by “K.S.A. 49-416a(c), and amendments thereto.”

(H) “Section 526 of the act” and “section 526(c) of the act” shall be replaced by “K.S.A. 49-422a, and amendments thereto.”

(I) “Sections 518, 521(a)(4), and 525 of the act” shall be replaced by “K.S.A. 49-405c, 49-405(m)(3), and 49-416a, and amendments thereto.”

(3)(A) “30 CFR 816.11” shall be replaced by “K.A.R. 47-9-1(c)(1).”

(B) “30 CFR 843.16” shall be replaced by “K.A.R. 47-4-14a.”

(C) “30 CFR 845.12, 845.13, 845.14, 845.15 and 845.16” shall be replaced by “K.A.R. 47-5-5a(a)(2), (3), (4), (5), and (6).”

(D) “30 CFR 845.12(b)” shall be replaced by “K.A.R. 47-5-5a(a)(2).”

(E) “30 CFR 845.13,” “30 CFR 845.13(b),” and “§845.13(b)” shall be replaced by “K.A.R. 47-5-5a(a)(3).”

(F) “30 CFR 845.17(b)” shall be replaced by “K.A.R. 47-5-5a(a)(7).”

(G) “43 CFR 4.1300 *et seq.*” and “rule 4 of the Federal Rules of Civil Procedure” shall be replaced by “K.A.R. 47-4-14a.”

(4) “§846.12” shall be replaced by “K.A.R. 47-5-5a(a)(10).”

(c) Review of proposed assessments of civil penalties. If a request for hearing is made pursuant to paragraph (a)(9), the procedures in K.A.R. 47-4-14a and the following shall apply:

(1) Time for filing petition for a hearing.

(A)(i) If a timely request for an assessment conference has been made pursuant to paragraph (a)(8), a request for a hearing shall be made to the department within 30 days of service of notice, by the conference officer, that the conference is completed; or

(ii) a request for a hearing of a proposed assessment of a civil penalty shall be made to the department within 30 days of service of the proposed assessment.

(B) No extension of time shall be granted for filing a petition for review of a proposed assessment of a civil penalty as required by paragraph (c)(1)(A)(i) or (A)(ii). If a petition for review is not filed within the time period provided in paragraph (c)(1)(A)(i) or (A)(ii), all of the following shall apply:

(i) The appropriateness of the amount of the penalty and the fact of the violation if there is no proceeding pending under K.S.A. 49-416a, and amendments thereto, to review the notice of violation or cessation order involved shall be admitted.

(ii) The petition shall be dismissed.
 (iii) The civil penalty assessed shall become a final order of the secretary.

(2) Contents of petition; payment required.

(A) The petition shall include the following:

(i) A short and plain statement indicating the reasons why either the amount of the penalty or the fact of the violation is being contested;

(ii) if the amount of penalty is being contested based upon a misapplication of the civil penalty formula, a statement indicating how the civil penalty formula in subsection (a), adopting by reference 30 C.F.R. Parts 845 and 846, was misapplied and a proposed civil penalty utilizing the civil penalty formula;

(iii) the identification by number of each violation being contested;

(iv) the identifying number of the cashier's check, certified check, bank draft, personal check, or bank money order accompanying the petition; and

(v) a request for a hearing.

(B) The petition for a hearing shall be accompanied by the following:

(i) Full payment of the proposed civil penalty in the form of a cashier's check, certified check, bank draft, personal check, or bank money order made payable to the Kansas department of health and environment, to be placed in an escrow account by the department pending final determination of the civil penalty; and

(ii) on the face of the payment, an identification by number of the violations for which payment is being tendered.

(C) As required by K.S.A. 49-405c and amendments thereto, failure to make timely payment of the proposed civil penalty in full shall result in a waiver of all legal rights to contest the violation or the amount of the penalty.

(D) No extension of time shall be granted for full payment of the proposed civil penalty. If payment is not made within the time period provided in paragraph (c)(1)(A)(i) or (A)(ii), all of the following shall apply:

(i) The appropriateness of the amount of the civil penalty, the fact of the violation, and, if there is no review proceeding, the notice of violation or cessation order involved shall be deemed admitted.

(ii) The petition shall be dismissed.

(iii) The civil penalty assessed shall become a final order of the secretary.

(3) Answer. An answer may be filed by the secretary within 30 days of service of the petition.

(4) Review of waiver determination.

(A) Within 10 days of the filing of a petition, the petitioner may move the presiding officer to review the granting or denial of a waiver of the civil penalty formula pursuant to paragraph (a)(6).

(B) The motion shall contain a statement indicating all alleged facts relevant to the granting or denial of a waiver.

(C) Review shall be limited to the written determination of the presiding officer granting or denying the waiver, the motion, and responses to the motion. The standard of review shall be abuse of discretion.

(D) If the presiding officer finds that the secretary abused the secretary's discretion in granting or denying the waiver, the presiding officer shall hold a hearing on the petition for review of the proposed assessment and make a determination pursuant to paragraph (c)(7).

(5) Burden of proof in civil penalty proceedings. In civil penalty proceedings, the following shall apply:

(A) The department shall have the burden of establishing a prima facie case regarding the fact of the violation, the amount of the civil penalty, and the ultimate burden of persuasion regarding the amount of the civil penalty.

(B) The person who petitioned for review shall have the ultimate burden of persuasion regarding the fact of the violation.

(6) Summary disposition.

(A) In a civil penalty proceeding in which the person against whom the proposed civil penalty is assessed fails to comply on time with any pre-hearing order of a presiding officer, the presiding officer shall issue an order to show cause for the following conditions:

(i) That person should not be deemed to have waived the person's right to a hearing.

(ii) The proceedings should not be dismissed and the assessment should become final.

(B) If the order to show cause is not satisfied as required, the presiding officer shall order the proceedings dismissed and issue a final order.

(C) If the person against whom the proposed civil penalty is assessed fails to appear at a hearing, that person shall be deemed to have waived the person's right to a hearing, and the presiding officer may assume, for purposes of the assessment, the following:

(i) The occurrence of each violation listed in the notice of violation or order; and

(ii) the truth of any facts alleged in the notice or order.

(D) In order to issue an initial order assessing the appropriate civil penalty when the person against whom the proposed civil penalty is assessed fails to appear at the hearing, a presiding officer shall either conduct an ex parte hearing or require the department to furnish proposed findings of fact and conclusions of law.

(E) Nothing in this article shall be construed to deprive the person against whom the penalty is assessed of the person's opportunity to have the department prove the violations charged in open hearing with confrontation and cross-examination of witnesses, unless that person fails to comply with a prehearing order or fails to appear at the scheduled hearing.

(7) Initial order of the presiding officer.

(A) The presiding officer shall incorporate, in the presiding officer's decision concerning the civil penalty, findings of fact on each of the four criteria in paragraph (a)(3) and conclusions of law.

(B)(i) If the presiding officer finds that a violation occurred or that the fact of violation is uncontested, the presiding officer shall establish the amount of the penalty according to the point system and conversion table specified in paragraphs (a)(3) and (4).

(ii) The presiding officer may waive the use of the point system if the presiding officer determines that a waiver would further abatement of violations of the state act, except that the point system shall not be waived for abatement of other violations of the state act.

(iii) If the presiding officer finds that no violation occurred, the presiding officer shall issue an order that the proposed assessment be returned to the petitioner.

(C) If the presiding officer finds that no violation occurred or reduces the amount of the civil penalty, the presiding officer shall order the department to remit the appropriate amount to the petitioner who made the payment within 30 days of the department's receipt of the order. If a timely petition for review of the presiding officer's decision is filed with the secretary, no amount shall be remitted to the petitioner until a final determination has been made.

(D) If the presiding officer increases the amount of the civil penalty above that of the proposed assessment, the presiding officer shall order payment of the appropriate amount within 15 days after the order increasing the civil penalty is mailed.

(8) Appeals.

(A) Any party may petition the secretary to review and reconsider the initial order of a presiding officer concerning an assessment pursuant to K.A.R. 47-4-14a.

(B) Any party may appeal the final order of the secretary pursuant to the Kansas judicial review act, K.S.A. 77-601 et seq., and amendments thereto. (Authorized by K.S.A. 49-405; implementing K.S.A. 49-405, 49-405c, and 49-416a; effective May 1, 1985; amended Feb. 11, 1991; amended May 2, 1997; amended July 31, 1998; amended Dec. 1, 2006; amended Feb. 15, 2019.)

47-5-6. (Authorized by K.S.A. 1980 Supp. 49-405, 49-405c; effective, E-81-30, Oct. 8, 1980; effective May 1, 1981; revoked May 1, 1985.)

47-5-7 to 47-5-13. (Authorized by K.S.A. 1982 Supp. 49-405; implementing K.S.A. 1982 Supp. 49-405c; effective May 1, 1984; revoked May 1, 1985.)

47-5-14. (Authorized by K.S.A. 1982 Supp. 49-405; implementing K.S.A. 1982 Supp. 49-405, 49-405c, and 49-416a; effective May 1, 1984; revoked May 1, 1985.)

47-5-15. (Authorized by K.S.A. 1982 Supp. 49-405; implementing K.S.A. 1982 Supp. 49-405c; effective May 1, 1984; revoked May 1, 1985.)

47-5-16. Civil penalties; final assessment and payment of civil penalty. (a) If any person to whom a notice of violation or cessation order is issued fails to request a hearing, the proposed assessment shall become a final order of the secretary. The assessment contained in the final order shall be due and payable upon expiration of the time allowed to request a hearing.

(b) If any party requests judicial review of a final order of the secretary, the proposed civil penalty assessment shall be held in escrow until completion of the review. Otherwise, subject to subsection (c) of this regulation, the escrowed funds shall be transferred to the department in payment of the civil penalty, and the escrow shall end.

(c) If the final decision in the administrative and judicial review results in an order reducing or eliminating the proposed civil penalty under these regulations, all or part of the escrowed amount shall be refunded to the person assessed within 30 days of receipt of the order and shall include any interest that has accrued from the date of payment into escrow to the date of the refund.

(d) If the review results in an order increasing the penalty, the person to whom the notice or order was issued shall pay the difference to the department within 15 days after the order is mailed to that person. (Authorized by K.S.A. 49-405; implementing K.S.A. 49-405c; effective May 1, 1984; amended May 1, 1985; amended Feb. 11, 1991; amended May 2, 1997.)

Article 6.—PERMIT REVIEW

47-6-1. Permit review. (a) Each permit issued and outstanding during the term of the permit shall be reviewed by the secretary or secretary's designee not later than the middle of that term. Reasonable revision or modification of the permit provisions may be ordered at any time to ensure compliance with the laws and regulations. A copy of the order and the written findings shall be sent to the operator. The order shall be subject to K.S.A. 49-407 and K.S.A. 49-422a, and amendments thereto.

(b) Each permit authorizing one or more variances that is issued in accordance with K.A.R. 47-3-42(a)(62) shall be reviewed not later than three years from the date of issuance.

(c) Each permit authorizing one or more experimental practices that is issued in accordance with K.A.R. 47-3-42(a)(60) shall be reviewed as specified in the permit or at least every two and a half years from the date of issuance as required by the department, in accordance with K.A.R. 47-3-42(a)(60).

(d) After the review required by this regulation or at any time, the reasonable revision of any permit may be required by the secretary, by order, in accordance with K.A.R. 47-6-2 to ensure compliance with the state act and the regulatory program.

(e) Each order of the secretary requiring revision of a permit shall be based upon written findings and shall be subject to the provisions of administrative and judicial review in K.S.A. 49-407(d), K.S.A. 49-416a, and K.S.A. 49-422a, and amendments thereto, and article 4 of these regulations. A copy of each order shall be sent to the permittee.

(f) Any permit may be suspended or revoked in accordance with articles 5 and 15 of these regulations. (Authorized by K.S.A. 49-405 and 49-410; implementing K.S.A. 2018 Supp. 49-406 and K.S.A. 49-410; effective May 1, 1980; amended Feb. 11, 1991; amended May 2, 1997; amended Dec. 1, 2006; amended Feb. 15, 2019.)

47-6-2. Permit revision. (a) Each application to revise an existing permit shall be submitted by the operator at least 60 days before the date on which the operator wants to have the approval of the secretary.

(b) Each application for a permit revision shall include the following:

(1) A map that meets the general map requirements of these regulations;

(2) a description of the permit revision with the technical data necessary to establish the impact and consequences of the proposed revision on the surface coal mining and reclamation operation, the environment, and public health and safety; and

(3) any additional information requested by the department.

(c) If the application for permit revision contains significant alterations or departures from the method of mining or reclamation operations covered by the original permit, the operator shall meet all the application requirements, which shall include all requests from the department for relevant information.

Whether a significant alteration or departure is involved shall be determined by the chief of the surface mining section on a case-by-case basis upon review, unless a determination is requested in writing by the operator upon or before filing the application. On receiving this request, the operator shall be advised by the chief of the surface mining section if a significant alteration or departure is involved for the purpose of submitting an application.

If the application for permit revision contains significant alterations or departures, the operator shall meet all of the requirements of K.A.R. 47-3-1 through 47-3-42, including all requests from the department for relevant information.

(d) No application for a permit revision shall be approved unless the applicant demonstrates and the regulatory authority finds that all of the following conditions are met:

(1) The reclamation required by the state act and the regulatory program can be accomplished.

(2) The applicable requirements of K.A.R. 47-3-42(a)(11) pertinent to the revision are met.

(3) The application for revision meets all requirements of the state act and the regulatory program.

(e) Each extension to the area covered by the permit, except incidental boundary revisions, shall be made through an application for a new permit.

(Authorized by K.S.A. 49-405 and 49-410; implementing K.S.A. 2018 Supp. 49-406 and K.S.A. 49-410; effective May 1, 1980; amended Feb. 11, 1991; amended May 2, 1997; amended Dec. 1, 2006; amended Feb. 15, 2019.)

47-6-3. Permit renewals; adoption by reference. (a) The section titled “permit renewals,” 30 C.F.R. 774.15, as in effect on July 1, 2012, is hereby adopted by reference, except as otherwise specified in this regulation. Subsection (c)(3) of 30 C.F.R. 774.15 shall be deleted.

(b) The following phrases and citations shall be replaced with the phrases and citations specified in this subsection wherever the phrases and citations appear in the text of the federal regulations adopted by reference in this regulation:

(1)(A) “Act” shall be replaced by “state act.”

(B) “Subchapter J of this chapter” shall be replaced by “article 8 of these regulations.”

(2) “Part 775 of this chapter” shall be replaced by “K.S.A. 49-407(d), K.S.A. 49-416a, K.S.A. 49-422a, and amendments thereto, and article 4 of these regulations.”

(3)(A) “§773.19” shall be replaced by “K.A.R. 47-3-42(a)(13).”

(B) “§774.13” shall be replaced by “K.A.R. 47-6-2.”

(C) “§778.21 of this chapter” shall be replaced by “K.A.R. 47-3-42(a)(30).”

(D) “§800.60 of this chapter” shall be replaced by “K.A.R. 47-8-9(a)(15).”

(E) “§§773.6 and 773.19(b) of this chapter” shall be replaced by “K.A.R. 47-3-42(a)(2) and (13).” (Authorized by K.S.A. 49-405; implementing K.S.A. 2018 Supp. 49-406; effective May 1, 1980; amended, E-81-30, Oct. 8, 1980; amended May 1, 1981; amended May 1, 1986; amended Feb. 11, 1991; amended May 2, 1997; amended Dec. 1, 2006; amended Feb. 15, 2019.)

47-6-4. Permit transfers, assignments, and sales; adoption by reference. (a) Each application for a new permit required for a person succeeding by transfer, sale, or assignment of rights granted under a permit shall be filed with the secretary not later than 30 days after that succession is approved by the secretary.

(b) Transfer, assignment, or sale of permit rights, 30 C.F.R. 774.17, as in effect on July 1, 2012, is adopted by reference, except as otherwise indicated in this regulation.

(c) The following phrases shall be replaced with the phrases specified in this subsection wherever

the phrases appear in the federal regulations adopted by reference in this regulation:

(1)(A) “Act” shall be replaced by “state act.”

(B) “Subchapter J of this chapter” shall be replaced by “article 8 of these regulations.”

(C) “This subchapter” shall be replaced by “these regulations.”

(2) “Part 778 of this chapter” shall be replaced by “K.A.R. 47-3-42(a)(21) through (31).”

(3) “§773.12 and 773.14 of this chapter” shall be replaced by “K.A.R. 47-3-42(a)(8) and (10).” (Authorized by K.S.A. 49-405; implementing K.S.A. 49-410; effective May 1, 1980; amended, E-81-30, Oct. 8, 1980; amended May 1, 1981; amended May 1, 1986; amended Feb. 11, 1991; amended May 2, 1997; amended July 31, 1998; amended Dec. 1, 2006; amended Feb. 15, 2019.)

47-6-5. (Authorized by K.S.A. 1980 Supp. 49-405; effective, E-81-30, Oct. 8, 1980; effective May 1, 1981; revoked May 1, 1986.)

47-6-6. Permit conditions; adoption by reference. (a) The section titled “permit conditions,” 30 C.F.R. 773.17, as in effect on July 1, 2012, is adopted by reference, except as otherwise specified in this regulation.

(b) The following phrases shall be replaced with the phrases specified in this subsection wherever the phrases appear in the federal regulation adopted by reference in this regulation:

(1)(A) “Act” shall be replaced by “state act.”

(B) “Subchapter J of this chapter” shall be replaced by “article 8 of these regulations.”

(C) “Subchapter R of this chapter” and “that subchapter” shall be replaced by “the office of surface mining reclamation and enforcement.”

(2) “Parts 840 and 842” shall be replaced by “K.A.R. 47-15-1a.”

(3)(A) “§701.11(d) and subchapter B or K of this chapter” shall be replaced by “K.A.R. 47-3-42(a)(1) and either K.A.R. 47-9-4 or K.A.R. 47-9-1.”

(B) “§§842.13 and 840.12 of this chapter” shall be replaced by “K.A.R. 47-15-1a(a)(4).” (Authorized by K.S.A. 49-405; implementing K.S.A. 2018 Supp. 49-406; effective, E-81-30, Oct. 8, 1980; effective May 1, 1981; amended May 1, 1986; amended Feb. 11, 1991; amended May 2, 1997; amended July 31, 1998; amended Dec. 1, 2006; amended Feb. 15, 2019.)

47-6-7. Permit suspension or revocation.

(a) A proceeding to suspend or revoke a permit shall begin with a show cause order issued by the

secretary to the permittee. The show cause order shall set forth the following:

(1) a list of the unwarranted or willful violations that contribute to a pattern of violations;

(2) a copy of each order or notice containing one or more of the violations listed;

(3) the basis for determining the existence of a pattern of violations; and

(4) the recommendation that the permit be suspended or revoked and the length and terms of the recommended suspension.

(b) Answer. The permittee shall have 30 days after receipt of the order within which to file an answer.

(c) Contents of answer. The permittee's answer to a show cause order shall set forth the following:

(1) the reasons, in detail, why a pattern of violations does not exist or has not existed, including each reason for contesting the following:

(A) the fact of any violation alleged by the department;

(B) the willfulness of any violation; or

(C) whether or not any violation was caused by the unwarranted failure of the permittee.

(2) each mitigating factor the permittee believes exists in determining the terms of the revocation or the length and terms of the suspension;

(3) any other alleged relevant facts; and

(4) whether or not a hearing on the show cause order is desired.

(d) Burden of proof in suspension or revocation proceedings. In proceedings to suspend or revoke a permit, the department shall have the burden of going forward to establish a prima facie case for suspension or revocation of the permit. The permittee shall have the ultimate burden of persuasion that the permit should not be suspended or revoked.

(e) Procedure. Except as provided for in this regulation, the procedure set forth in K.A.R. 47-4-14a(d) shall be followed.

(f) Decision by the presiding officer.

(1) After determining that a pattern of violations exists or has existed, the presiding officer shall order the permit either suspended or revoked. It shall not be required that the presiding officer find that all the violations listed in the show cause order occurred in order to establish a pattern. However, the presiding officer shall find that sufficient violations occurred in order to establish a pattern.

(2) The minimum suspension period imposed shall be three working days, except when the presiding officer finds that this would result in mani-

fest injustice and would not further the purposes of the act. The presiding officer may impose preconditions to lifting the suspension.

(3) The decision of the presiding officer shall be issued within 20 days of the following:

(A) after the closing date of the hearing record; or

(B) after receipt of the answer, if no hearing is requested by any party and the presiding officer determines that no hearing is necessary.

(4) At any stage of a suspension or revocation proceeding, the parties may enter into a settlement, subject to the approval of the presiding officer.

(g) Summary judgment. When the permittee fails to appear at a hearing, these conditions apply:

(1) the permittee shall be deemed to have waived his right to a hearing;

(2) the presiding officer may make these assumptions for purposes of the proceeding:

(A) each violation listed in the order occurred;

(B) each violation was willfully or negligently caused by the permittee; and

(C) a pattern of violations exists.

(3) the presiding officer shall either conduct an ex-parte hearing or require the department to furnish proposed findings of fact and conclusions of law in order to issue an initial decision.

(h) Appeals.

(1) Any party may appeal the initial order by filing a notice of appeal with the secretary within 15 days after receipt of the order.

(2) Except as provided for in this regulation, this appeal shall follow the procedure in K.A.R. 47-4-14a(d)(14). The secretary shall act immediately to issue an expedited briefing schedule. The decision of the secretary shall be issued within 60 days after the date the record is closed by the secretary or the date the answer is filed.

(3) Any further appeal from the secretary's final order shall be taken pursuant to the Kansas judicial review act, K.S.A. 77-601 *et seq.* (Authorized by K.S.A. 49-405; implementing K.S.A. 49-406; effective Feb. 11, 1991; amended May 2, 1997.)

47-6-8. Termination of jurisdiction; adoption by reference. (a) The section titled "applicability," 30 C.F.R. 700.11, as in effect on July 1, 2012, is adopted by reference, except as otherwise specified in this regulation, and subsections (a)(1), (a)(5), and (b) of 30 C.F.R. 700.11 shall be deleted.

(b) The following phrases shall be replaced with the phrases specified in this subsection wherever

the phrases appear in the federal regulation adopted by reference in this regulation:

(1)(A) “Subchapter B of this chapter” shall be replaced by “K.A.R. 47-9-4.”

(B) “The State or Federal program counterpart to part 800 of this chapter” shall be replaced by “article 8 of these regulations.”

(C) “This chapter” shall be replaced by “these regulations.”

(2)(A) “Part 702 of this chapter” shall be replaced by “K.A.R. 47-6-10.”

(B) “Part 707 of this chapter” shall be replaced by “K.A.R. 47-6-9.” (Authorized by and implementing K.S.A. 49-405; effective Feb. 11, 1991; amended May 2, 1997; amended July 31, 1998; amended Dec. 1, 2006; amended Feb. 15, 2019.)

47-6-9. Exemption for coal extraction incidental to government-financed highway or other construction; adoption by reference.

(a) The following federal regulations, as in effect on July 1, 2012, are adopted by reference, except as otherwise specified in this regulation:

(1) Responsibility, 30 C.F.R. 707.4;

(2) definitions, 30 C.F.R. 707.5;

(3) applicability, 30 C.F.R. 707.11, except that the phrase “Federal or Federal lands” shall be deleted; and

(4) information to be maintained on site, 30 C.F.R. 707.12.

(b) The following phrases and citations shall be replaced with the phrases and citations specified in this subsection wherever the phrases and citations appear in the text of the federal regulations adopted by reference in this regulation:

(1)(A) “Act” shall be replaced by “state act.”

(B) “This chapter” shall be replaced by “these regulations.”

(C) “Title IV” shall be replaced by “K.S.A. 49-428 and amendments thereto.”

(2) “30 CFR 707.12” shall be replaced by “K.A.R. 47-6-9(a)(4).” (Authorized by and implementing K.S.A. 49-405; effective Feb. 11, 1991; amended May 2, 1997; amended Dec. 1, 2006; amended Feb. 15, 2019.)

47-6-10. Exemption for coal extraction incidental to the extraction of other minerals; adoption by reference. (a) The following federal regulations, as in effect on July 1, 2012, are adopted by reference, except as otherwise specified in this regulation:

(1) Definitions, 30 C.F.R. 702.5;

(2) application requirements and procedures, 30 C.F.R. 702.11, except that subsection (b) shall be deleted. The text “after April 1, 1990, under a Federal program or on Indian lands, or after the effective date of counterpart provisions in a State program” shall be replaced by “under the state act”;

(3) contents of application for exemption, 30 C.F.R. 702.12;

(4) public availability of information, 30 C.F.R. 702.13;

(5) requirements for exemption, 30 C.F.R. 702.14;

(6) conditions of exemption and right of inspection and entry, 30 C.F.R. 702.15. However, “§702.11(b) or” and “for Federal programs and on Indian lands or in accordance with counterpart provisions when included in State programs” shall be deleted;

(7) stockpiling of minerals, 30 C.F.R. 702.16;

(8) revocation and enforcement, 30 C.F.R. 702.17; and

(9) reporting requirements, 30 C.F.R. 702.18.

(b) The following phrases and citations shall be replaced with the phrases and citations specified in this subsection wherever the phrases and citations appear in the text of the federal regulations adopted by reference in this regulation:

(1)(A) “Act” shall be replaced by “state act.”

(B) “Secretary” shall be replaced by “secretary of the Kansas department of health and environment.”

(C) The following text shall be replaced by “K.A.R. 47-4-14a”: “43 CFR 4.1280 when OSM is the regulatory authority or under corresponding State procedures when a State is the regulatory authority” and “43 CFR 4.1280 or under corresponding State procedures.”

(D) “The standards of this part for Federal programs and on Indian lands or in accordance with counterpart provisions when included in State programs” shall be replaced by “these regulations.”

(2)(A) “§702.5 of this part” shall be replaced by “K.A.R. 47-6-10(a)(2).”

(B) “§702.11(e)(3)” shall be replaced by “K.A.R. 47-6-10(a)(3).”

(C) “§702.12(g)” shall be replaced by “K.A.R. 47-6-10(a)(4).”

(D) “§702.16” shall be replaced by “K.A.R. 47-6-10(a)(8).”

(E) “§702.18 of this part” and “§702.18” shall be replaced by “K.A.R. 47-6-10(a)(10).” (Authorized by and implementing K.S.A. 49-405; effective Feb. 11, 1991; amended May 2, 1997; amended Dec. 1, 2006; amended Feb. 15, 2019.)

47-6-11. Post-permit issuance requirements; adoption by reference. (a) The following federal regulations, as in effect on July 1, 2012, are adopted by reference, except as otherwise specified in this regulation:

(1) Post-permit issuance requirements for regulatory authorities and other actions based on ownership, control, and violation information, 30 C.F.R. 774.11; and

(2) post-permit issuance information requirements for permittees, 30 C.F.R. 774.12.

(b) The following phrases and citations shall be replaced with the phrases and citations specified in this subsection wherever the phrases and citations appear in the text of the federal regulations adopted in this regulation:

(1) "Regulatory authority" shall be replaced by "Kansas department of health and environment."

(2)(A) "Part 843, 846, or 847 of this chapter" shall be replaced by "K.A.R. 47-15-1a, K.A.R. 47-5-5a(a)(10) through (13), and K.A.R. 47-5-17."

(B) "Section 510(c) of the Act" shall be replaced by "K.S.A. 49-407(b), and amendments thereto."

(3) "43 CFR 4.1350 through 4.1356" shall be replaced by "article 4 of these regulations."

(4)(A) "§778.11(c) of this subchapter," "§778.11(d) of this subchapter," and "§778.11 of this subchapter" shall be replaced by "K.A.R. 47-3-42(a)(22)."

(B) "§843.11" shall be replaced by "K.A.R. 47-15-1a(a)(8)."

(C) "§§773.12(a) and (b) of this subchapter" shall be replaced by "K.A.R. 47-3-42(a)(8)."

(D) "§§773.25, 773.26 and 773.27 of this subchapter" shall be replaced by "K.A.R. 47-3-42(a) (17), (18), and (19)." (Authorized by and implementing K.S.A. 49-405; effective Dec. 1, 2006; amended Feb. 15, 2019.)

Article 7.—COAL EXPLORATION

47-7-1. (Authorized by K.S.A. 1980 Supp. 49-405, 49-427; effective May 1, 1980; revoked, E-81-30, Oct. 8, 1980; revoked May 1, 1981.)

47-7-2. Coal exploration; adoption by reference. (a) The following federal regulations, as in effect on July 1, 2012, are adopted by reference, except as otherwise specified in this regulation:

(1) Notice requirements for exploration removing 250 tons of coal or less, 30 C.F.R. 772.11;

(2) permit requirements for exploration that will remove more than 250 tons of coal or that

will occur on lands designated as unsuitable for surface coal mining operations, 30 C.F.R. 772.12;

(3) coal exploration compliance duties, 30 C.F.R. 772.13;

(4) commercial use or sale, 30 C.F.R. 772.14; and

(5) public availability of information, 30 C.F.R. 772.15.

(b) The following phrases and citations shall be replaced with the phrases and citations specified in this subsection wherever the phrases and citations appear in the text of the federal regulations adopted by reference in this regulation.

(1)(A) "Subchapter F of this chapter" shall be replaced by "article 12 of these regulations."

(B) The phrase "section 518 of the Act, subchapter L of this chapter, and the applicable inspection and enforcement provisions of the regulatory program" shall be replaced by "K.S.A. 49-405c, and amendments thereto, and articles 5 and 15 of these regulations."

(C) "This part," "this part, part 815 of this chapter, and the applicable provisions of the regulatory program," and "this part, part 815 of this chapter, the regulatory program" shall be replaced by "K.A.R. 47-7-2" and "K.A.R. 47-9-1(b)."

(2)(A) "Part 775 of this chapter" shall be replaced by "K.S.A. 49-407(d), K.S.A. 49-416a, K.S.A. 49-422a, and amendments thereto, and article 4 of these regulations."

(B) "Part 815 of this chapter" shall be replaced by "K.A.R. 47-9-1(b)."

(C) "Parts 773 through 785 of this chapter" shall be replaced by "articles 3, 4, 6, and 10 of these regulations, K.S.A. 49-407(d), K.S.A. 49-416a, and K.S.A. 49-422a, and amendments thereto."

(3)(A) "§761.11 of this chapter" shall be replaced by "K.A.R. 47-12-4(a)(2)."

(B) "§772.12" shall be replaced by "K.A.R. 47-7-2(a)(2)."

(C) "§772.13" shall be replaced by "K.A.R. 47-7-2(a)(3)."

(D) "§§772.13 and 772.14" shall be replaced by "K.A.R. 47-7-2(a)(3) and (4)."

(E) "§§772.14(b) and 700.11(a)(5)" shall be replaced by "K.A.R. 47-7-2(a)(4) and K.A.R. 47-6-8." (Authorized by K.S.A. 49-405; implementing K.S.A. 49-427; effective, E-81-30, Oct. 8, 1980; effective May 1, 1981; amended May 1, 1986; amended May 1, 1988; amended Feb. 11, 1991; amended May 2, 1997; amended July 31, 1998; amended Dec. 1, 2006; amended Feb. 15, 2019.)

Article 8.—BONDING PROCEDURES

47-8-1. (Authorized by K.S.A. 1980 Supp. 49-405, 49-406; effective May 1, 1980; revoked, E-81-30, Oct. 8, 1980; revoked May 1, 1981.)

47-8-2. (Authorized by K.S.A. 1979 Supp. 49-405, 49-406; effective May 1, 1980; revoked May 1, 1986.)

47-8-3 to 47-8-5. (Authorized by K.S.A. 1980 Supp. 49-405, 49-415; effective May 1, 1980; revoked, E-81-30, Oct. 8, 1980; revoked May 1, 1981.)

47-8-6 to 47-8-8. (Authorized by K.S.A. 1980 Supp. 49-405, 49-416; effective May 1, 1980; revoked, E-81-30, Oct. 8, 1980; revoked May 1, 1981.)

47-8-9. Bonding procedures; adoption by reference. (a) The following federal regulations, as in effect on July 1, 2012, are adopted by reference, except as otherwise specified in this regulation:

(1) Regulatory authority responsibilities, 30 C.F.R. 800.4, deleting subsection (d);

(2) definitions, 30 C.F.R. 800.5, deleting subsection (c);

(3) requirement to file a bond, 30 C.F.R. 800.11, deleting subsection (e);

(4) form of the performance bond, 30 C.F.R. 800.12, deleting subsection (c);

(5) period of liability, 30 C.F.R. 800.13;

(6) determination of bond amount, 30 C.F.R. 800.14;

(7) adjustment of amount, 30 C.F.R. 800.15;

(8) general terms and conditions of bond, 30 C.F.R. 800.16;

(9) bonding requirements for underground coal mines and long-term coal-related surface facilities and structures, 30 C.F.R. 800.17;

(10) surety bonds, 30 C.F.R. 800.20;

(11) collateral bonds, 30 C.F.R. 800.21;

(12) replacement of bonds, 30 C.F.R. 800.30;

(13) requirement to release performance bonds, 30 C.F.R. 800.40;

(14) forfeiture of bonds, 30 C.F.R. 800.50; and

(15) terms and conditions for liability insurance, 30 C.F.R. 800.60, deleting subsection (d).

(b) The following phrases and citations shall be replaced with the phrases and citations specified in this subsection wherever the phrases and citations appear in the text of the federal regulations adopted by reference in this regulation:

(1)(A) “Act” shall be replaced by “state act.”

(B) “Application” shall be replaced by “complete and accurate application.”

(C) “Subchapter K of this chapter” shall be replaced by “article 9 of these regulations.”

(D) “This chapter” and “subchapter G of this chapter” shall be replaced by “these regulations.”

(E) “This subchapter” shall be replaced by “article 8 of these regulations.”

(F) “(Under parts 780 and 784 of this chapter)” shall be replaced by “[under K.A.R. 47-3-42(a) (40) through (59), and K.A.R. 47-10-1].”

(2)(A) “Part 823 of this chapter” shall be replaced by “K.A.R. 47-9-1(f).”

(B) “Section 507(b)(16) of the act” shall be replaced by “K.S.A. 49-407(c), and amendments thereto.”

(C) “Section 513(b) of the act” shall be replaced by “K.S.A. 49-407(d), and amendments thereto, and the regulations promulgated thereunder.”

(D) “Section 515 of the act” and “section 515(b) (10) of the act” shall be replaced by “K.S.A. 49-405a, K.S.A. 49-408 through K.S.A. 49-413, K.S.A. 49-429, and amendments thereto, and the regulations promulgated thereunder.”

(3)(A) “§800.11(b)” shall be replaced by “K.A.R. 47-8-9(a)(3).”

(B) “§800.13” shall be replaced by “K.A.R. 47-8-9(a)(5).”

(C) “§800.14” shall be replaced by “K.A.R. 47-8-9(a)(6).”

(D) “§800.15” shall be replaced by “K.A.R. 47-8-9(a)(7).”

(E) “§800.16(e)(2)” shall be replaced by “K.A.R. 47-8-9(a)(8).”

(F) “§800.17(b)(3)” shall be replaced by “K.A.R. 47-8-9(a)(9).”

(G) “§800.21(f)” shall be replaced by “K.A.R. 47-8-9(a)(11).”

(H) “§800.40,” “§800.40(c)(2),” “§800.40(f) and (h),” and “§800.40(a)(2)” shall be replaced by “K.A.R. 47-8-9(a)(13).”

(I) “§800.50” shall be replaced by “K.A.R. 47-8-9(a)(14).”

(J) “§800.60” shall be replaced by “K.A.R. 47-8-9(a)(15).”

(K) “§816.116 or §817.116 of this chapter” shall be replaced by “K.A.R. 47-9-1(c)(42) or K.A.R. 47-9-1(d)(38).”

(L) “§816.132 or §817.132 of this chapter” shall be replaced by “K.A.R. 47-9-1(c)(44) or K.A.R. 47-9-1(d)(42).”

(M) “§816.133 or §817.133 of this chapter” and

“§§816.133(c) and 817.133(c)” shall be replaced by “K.A.R. 47-9-1(c)(45) or K.A.R. 47-9-1(d)(43).”

(N) “§817.121(c) of this chapter” shall be replaced by “K.A.R. 47-9-1(d)(39).”

(O) “§§800.14 and 800.15” shall be replaced by “K.A.R. 47-8-9(a)(6) and (7).” (Authorized by K.S.A. 49-405; implementing K.S.A. 2018 Supp. 49-406, K.S.A. 49-407, and K.S.A. 49-429; effective May 1, 1980; effective May 1, 1981; amended May 1, 1985; amended May 1, 1986; amended Feb. 11, 1991; amended May 2, 1997; amended July 31, 1998; amended Dec. 1, 2006; amended Feb. 15, 2019.)

47-8-9a. (Authorized by K.S.A. 49-405; implementing K.S.A. 1984 Supp. 49-406, K.S.A. 49-415, 49-416a; effective May 1, 1985; revoked May 1, 1986.)

47-8-10. (Authorized by K.S.A. 1982 Supp. 49-405; implementing K.S.A. 1982 Supp. 49-406; effective May 1, 1983; revoked May 1, 1986.)

47-8-11. Use of forfeited bond funds. Funds collected from any bond forfeiture may only be used to perform the following: (a) complete the reclamation plan on the permit area on which bond was made for the surface mining operation for coal; and

(b) cover associated administrative expenses. (Authorized by K.S.A. 49-405; implementing K.S.A. 49-420; effective May 1, 1983; amended Feb. 11, 1991; amended May 2, 1997.)

Article 9.—PERFORMANCE STANDARDS

47-9-1. Adoption by reference. (a) The following portions of the “permanent program performance standards—general provisions,” 30 C.F.R. Part 810, as in effect on July 1, 2012, are hereby adopted by reference, except as specified in this subsection:

(1) Responsibility, 30 C.F.R. 810.4, except that subsection (a) shall be deleted; and

(2) applicability, 30 C.F.R. 810.11.

(b) The following portions of the “permanent program performance standards—coal exploration,” 30 C.F.R. Part 815, as in effect on July 1, 2012, are hereby adopted by reference:

(1) Required documents, 30 C.F.R. 815.13; and

(2) performance standards for coal exploration, 30 C.F.R. 815.15.

(c) The following portions of the “permanent program standards—surface mining activities,” 30

C.F.R. Part 816, as in effect on July 1, 2012, are hereby adopted by reference, except as specified in this subsection:

(1) Signs and markers, 30 C.F.R. 816.11. A subsection (g) shall be added to 30 C.F.R. 816.11 that reads as follows: “Increment boundary markers. As deemed necessary by the secretary or secretary’s designee to ensure the public health and safety, protect the environment, and ascertain increment boundaries, increment boundary markers shall be placed on each portion of a permit area on which a performance bond or other equivalent guarantee was or will be posted as provided by K.S.A. 49-406, and amendments thereto”;

(2) casing and sealing of drilled holes: general requirements, 30 C.F.R. 816.13;

(3) casing and sealing of drilled holes: temporary, 30 C.F.R. 816.14;

(4) casing and sealing of drilled holes: permanent, 30 C.F.R. 816.15;

(5) topsoil and subsoil, 30 C.F.R. 816.22. The first paragraph of subsection (d)(1) of 30 C.F.R. 816.22 shall be replaced by the following:

“Absent an approved schedule, topsoil and subsoil materials removed under paragraph (a) of this section shall be redistributed within 120 days following rough backfilling and grading in a manner that complies with the following:”;

(6) hydrologic-balance protection, 30 C.F.R. 816.41;

(7) hydrologic balance: water quality standards and effluent limitations, 30 C.F.R. 816.42;

(8) diversions, 30 C.F.R. 816.43;

(9) hydrologic balance: sediment control measures, 30 C.F.R. 816.45;

(10) hydrologic balance: siltation structures, 30 C.F.R. 816.46;

(11) hydrologic balance: discharge structures, 30 C.F.R. 816.47;

(12) impoundments, 30 C.F.R. 816.49;

(13) postmining rehabilitation of sedimentation ponds, diversions, impoundments, and treatment facilities, 30 C.F.R. 816.56;

(14) hydrologic balance: activities in or adjacent to perennial or intermittent streams, 30 C.F.R. 816.57, except that in the first sentence of subsection (c), the text “comply with paragraphs (b) (10)(B)(i) and (b)(24) of section 515 of the act and the regulations implementing those provisions of the act, including” shall be replaced by the following: “conduct surface coal mining operations so as to prevent, to the extent possible using the best technology currently available, additional contri-

butions of suspended solids to streamflow, or run-off outside the permit area, but in no event shall contributions be in excess of requirements set by applicable state or federal law, minimize disturbances and adverse impacts of the operation on fish, wildlife, and related environmental values, achieve enhancement of such resources where practicable, and comply with the following:";

(15) coal recovery, 30 C.F.R. 816.59;

(16) use of explosives: general requirements, 30 C.F.R. 816.61, except that subsection (c)(1) shall be replaced by the following:

"All blasting operations within the state shall be conducted under the direction of a Kansas-certified blaster";

(17) use of explosives: preblasting survey, 30 C.F.R. 816.62;

(18) use of explosives: blasting schedule, 30 C.F.R. 816.64;

(19) use of explosives: blasting signs, warnings, and access control, 30 C.F.R. 816.66;

(20) use of explosives: control of adverse effects, 30 C.F.R. 816.67;

(21) use of explosives: records of blasting operations, 30 C.F.R. 816.68;

(22) disposal of excess spoil: general requirements, 30 C.F.R. 816.71, in (h)(3)(ii) deleting the phrase "in accordance with §816.73";

(23) disposal of excess spoil: preexisting benches, 30 C.F.R. 816.74;

(24) protection of underground mining, 30 C.F.R. 816.79;

(25) coal mine waste: general requirements, 30 C.F.R. 816.81;

(26) coal mine waste: refuse piles, 30 C.F.R. 816.83;

(27) coal mine waste: impounding structures, 30 C.F.R. 816.84;

(28) coal mine waste: burning and burned waste utilization, 30 C.F.R. 816.87;

(29) disposal of noncoal mine wastes, 30 C.F.R. 816.89;

(30) stabilization of surface areas, 30 C.F.R. 816.95;

(31) protection of fish, wildlife, and related environmental values, 30 C.F.R. 816.97;

(32) slides and other damage, 30 C.F.R. 816.99;

(33) contemporaneous reclamation, 30 C.F.R. 816.100;

(34) backfilling and grading: time and distance requirements, 30 C.F.R. 816.101. This section shall be replaced by the following text:

"(a) Except as provided in paragraph (b) of this

section, rough backfilling and grading for surface mining activities shall be completed according to one of the following schedules:

"(1) Contour mining. Within 60 days or 1,500 linear feet following coal removal;

"(2) area mining. Within 180 days following coal removal, and not more than four spoil ridges behind the active pit being worked, the spoil from the active pit constituting the first ridge; or

"(3) other surface mining methods. In accordance with the schedule established by the department.

"(b) The time allowed for rough backfilling and grading for the entire permit area or for a specific portion of the permit area may be extended by the department if the permittee demonstrates, in accordance with K.A.R. 47-3-42(a)(47), adopting by reference 30 CFR 780.18(b)(3), that additional time is necessary";

(35) backfilling and grading: general requirements, 30 C.F.R. 816.102, deleting subsections (k)(3)(i) and (ii);

(36) backfilling and grading: thin overburden, 30 C.F.R. 816.104;

(37) backfilling and grading: thick overburden, 30 C.F.R. 816.105;

(38) backfilling and grading: previously mined areas, 30 C.F.R. 816.106;

(39) revegetation: general requirements, 30 C.F.R. 816.111;

(40) revegetation: timing, 30 C.F.R. 816.113;

(41) revegetation: mulching and other soil stabilizing practices, 30 C.F.R. 816.114;

(42) revegetation: standards for success, 30 C.F.R. 816.116. A subsection (i) shall be added to 816.116(c)(4), and a subsection (3) shall be added to 816.116(a):

(A) Subsection (c)(4)(i) shall read as follows:

"(i) The regulatory authority may allow 90 days after the issuance of a notice of violation for the repair of any rills or gullies, or both, that may occur. If the rills or gullies, or both, are repaired using normal husbandry practices, approved by the department in consultation with the state conservationist or the state conservationist's designated representative and the repairs are approved by the department, the period of responsibility shall not be restarted. The normal husbandry practices used to repair gullies shall be approved in advance by the United States department of interior, office of surface mining reclamation and enforcement. If the rills or gullies, or both, are not repaired and approved within 90 days or if augmented seeding, fertilization, or irrigation was utilized to do the re-

pairs, the regulatory authority will restart the period of liability, effective from the date the repair was completed and approved by the department.”

(B) Subsection (a)(3) shall read as follows: “(3) Data being used for bond release shall be submitted to the department annually. This shall include data for the last augmented seeding, which shall start the extended liability period. The following timetable for submissions shall be followed:

“(i) The planting reports, including soil tests, shall be submitted by March 31 of the year following the year in which the soil tests were performed;

“(ii) the production and ground cover data shall be submitted within 30 days of the date that the production and ground cover were sampled. Ground cover shall include species identification. Raw field data may be submitted at this time to fulfill this requirement. The tabulated results shall then be submitted by March 31 of the following year; and

“(iii) all data shall be clearly identified as to the bond release management area that it represents.”;

(43) cessation of operations: temporary, 30 C.F.R. 816.131;

(44) cessation of operations: permanent, 30 C.F.R. 816.132;

(45) postmining land use, 30 C.F.R. 816.133, deleting subsection (d)(1) and replacing the term “Act” with “state act”;

(46) roads: general, 30 C.F.R. 816.150;

(47) primary roads, 30 C.F.R. 816.151;

(48) utility installations, 30 C.F.R. 816.180;

(49) support facilities, 30 C.F.R. 816.181; and

(50) interpretative rules related to general performance standards, 30 C.F.R. 816.200.

(d) The following portions of the “permanent program performance standards—underground mining activities,” 30 C.F.R. Part 817, as in effect on July 1, 2012, are hereby adopted by reference, except as specified in this subsection:

(1) Signs and markers, 30 C.F.R. 817.11. A subsection (g) shall be added: “(g) Increment boundary markers. Increment boundary markers shall be placed on each portion of a permit area on which a performance bond or other equivalent guarantee was or will be posted as provided by K.S.A. 49-406(h), and amendments thereto”;

(2) casing and sealing of exposed underground openings: general requirements, 30 C.F.R. 817.13;

(3) casing and sealing of underground openings: temporary, 30 C.F.R. 817.14;

(4) casing and sealing of underground openings: permanent, 30 C.F.R. 817.15;

(5) topsoil and subsoil, 30 C.F.R. 817.22;

(6) hydrologic-balance protection, 30 C.F.R. 817.41;

(7) hydrologic balance: water quality standards and effluent limitations, 30 C.F.R. 817.42;

(8) diversions, 30 C.F.R. 817.43;

(9) hydrologic balance: sediment control measures, 30 C.F.R. 817.45;

(10) hydrologic balance: siltation structures, 30 C.F.R. 817.46;

(11) hydrologic balance: discharge structures, 30 C.F.R. 817.47;

(12) impoundments, 30 C.F.R. 817.49;

(13) postmining rehabilitation of sedimentation ponds, diversions, impoundments, and treatment facilities, 30 C.F.R. 817.56;

(14) hydrologic balance: surface activities in or adjacent to perennial or intermittent streams, 30 C.F.R. 817.57, except that in the first sentence of subsection (c), the text “comply with paragraphs (b)(9)(B) and (b)(11) of section 516 of the act and the regulations implementing those provisions of the act, including” shall be replaced by the following: “conduct surface coal mining operations so as to prevent, to the extent possible using the best technology currently available, additional contributions of suspended solids to streamflow, or runoff outside the permit area, but in no event shall contributions be in excess of requirements set by applicable state or federal law, minimize disturbances and adverse impacts of the operation on fish, wildlife, and related environmental values, achieve enhancement of such resources where practicable, and comply with the following:”;

(15) coal recovery, 30 C.F.R. 817.59;

(16) use of explosives: general requirements, 30 C.F.R. 817.61, except that subsection (c)(1) of 30 C.F.R. 817.61 shall be replaced by the following:

“All blasting operations within the state shall be conducted under the direction of a Kansas-certified blaster”;

(17) use of explosives: preblasting survey, 30 C.F.R. 817.62;

(18) use of explosives: general performance standards, 30 C.F.R. 817.64;

(19) use of explosives: blasting signs, warnings, and access control, 30 C.F.R. 817.66;

(20) use of explosives: control of adverse effects, 30 C.F.R. 817.67;

(21) use of explosives: records of blasting operations, 30 C.F.R. 817.68;

(22) disposal of excess spoil: general requirements, 30 C.F.R. 817.71, deleting the phrase “in accordance with §817.73”;

- (23) disposal of excess spoil: preexisting benches, 30 C.F.R. 817.74;
- (24) coal mine waste: general requirements, 30 C.F.R. 817.81;
- (25) coal mine waste: refuse piles, 30 C.F.R. 817.83;
- (26) coal mine waste: impounding structures, 30 C.F.R. 817.84;
- (27) coal mine waste: burning and burned waste utilization, 30 C.F.R. 817.87;
- (28) disposal of noncoal mine wastes, 30 C.F.R. 817.89;
- (29) stabilization of surface areas, 30 C.F.R. 817.95;
- (30) protection of fish, wildlife, and related environmental values, 30 C.F.R. 817.97;
- (31) slides and other damage, 30 C.F.R. 817.99;
- (32) contemporaneous reclamation, 30 C.F.R. 817.100;
- (33) backfilling and grading: general requirements, 30 C.F.R. 817.102, deleting subsection (k)(1);
- (34) backfilling and grading: previously mined areas, 30 C.F.R. 817.106;
- (35) revegetation: general requirements, 30 C.F.R. 817.111;
- (36) revegetation: timing, 30 C.F.R. 817.113;
- (37) revegetation: mulching and other soil stabilizing practices, 30 C.F.R. 817.114;
- (38) revegetation: standards for success, 30 C.F.R. 817.116. A subsection (3) shall be added to 817.116(a). Subsection (a)(3) shall read as follows: “(3) Data being used for bond release shall be submitted to the department annually. This shall include data for the last augmented seeding, which shall start the extended liability period. The following timetable for submissions shall be followed:
- “(i) The planting reports, including soil tests, shall be submitted by March 31 of the year following the year in which the soil tests were performed;
- “(ii) The production and ground cover data shall be submitted within 30 days of the date that the production and ground cover were sampled. Ground cover shall include species identification. Raw field data may be submitted at this time to fulfill this requirement. The tabulated results shall then be submitted by March 31 of the following year; and
- “(iii) All data shall be clearly identified as to the bond release management area that it represents.”;
- (39) subsidence control, 30 C.F.R. 817.121, except that 30 C.F.R. 817.121(c)(4)(i)-(iv) shall be deleted;
- (40) subsidence control: public notice, 30 C.F.R. 817.122;
- (41) cessation of operations: temporary, 30 C.F.R. 817.131;
- (42) cessation of operations: permanent, 30 C.F.R. 817.132;
- (43) postmining land use, 30 C.F.R. 817.133, deleting subsection (d)(1) and replacing the term “Act” with “state act”;
- (44) roads: general, 30 C.F.R. 817.150;
- (45) primary roads, 30 C.F.R. 817.151;
- (46) utility installations, 30 C.F.R. 817.180;
- (47) support facilities, 30 C.F.R. 817.181; and
- (48) interpretative rules related to general performance standards, 30 C.F.R. 817.200. The phrase “Office of Surface Mining Reclamation and Enforcement” shall be replaced by “Kansas department of health and environment.”
- (e) The following portions of the “special permanent program performance standards—auger mining,” 30 C.F.R. Part 819, as in effect on July 1, 2012, are hereby adopted by reference:
- (1) Auger mining: general, 30 C.F.R. 819.11;
- (2) auger mining: coal recovery, 30 C.F.R. 819.13;
- (3) auger mining: hydrologic balance, 30 C.F.R. 819.15;
- (4) auger mining: subsidence protection, 30 C.F.R. 819.17;
- (5) auger mining: backfilling and grading, 30 C.F.R. 819.19; and
- (6) auger mining: protection of underground mining, 30 C.F.R. 819.21.
- (f) The following portions of the “special permanent program performance standards—operations on prime farmland,” 30 C.F.R. Part 823, as in effect on July 1, 2012, are hereby adopted by reference, except as specified in this subsection:
- (1) Responsibilities, 30 C.F.R. 823.4;
- (2) applicability, 30 C.F.R. 823.11, deleting subsection (a);
- (3) soil removal and stockpiling, 30 C.F.R. 823.12;
- (4) soil replacement, 30 C.F.R. 823.14; and
- (5) revegetation and restoration of soil productivity, 30 C.F.R. 823.15.
- (g) The following portions of the “permanent program performance standards—coal preparation plants not located within the permit area of a mine,” 30 C.F.R. Part 827, as in effect on July 1, 2012, are hereby adopted by reference:
- (1) General requirements, 30 C.F.R. 827.11;
- (2) coal preparation plants: performance standards, 30 C.F.R. 827.12; and

(3) coal preparation plants: interim performance standards, 30 C.F.R. 827.13.

(h) The following portions of the “special permanent program performance standards—in situ processing,” 30 C.F.R. Part 828, as in effect on July 1, 2012, are hereby adopted by reference:

(1) In situ processing: performance standards, 30 C.F.R. 828.11; and

(2) in situ processing: monitoring, 30 C.F.R. 828.12.

(i) The following phrases and citations shall be replaced with the phrases and citations specified in this subsection wherever the phrases and citations appear in the text of the federal regulations adopted by reference in this regulation:

(1)(A) “Director” shall be replaced by “secretary.”

(B) “Every state program,” “every regulatory program,” and “the applicable regulatory program” shall be replaced by “the regulatory program.”

(C) “Subchapter B of this chapter” shall be replaced by “K.A.R. 47-9-4.”

(D) “Subchapter J of this chapter” shall be replaced by “article 8 of these regulations.”

(E) “This chapter,” “subchapter,” and “this section” shall be replaced by “these regulations.”

(F) “This part” shall be replaced by “K.A.R. 47-9-1.”

(G) “This title” shall be replaced by “the 30 CFR.”

(2)(A) “Part 815” shall be replaced by “K.A.R. 47-9-1(b).”

(B) “Part 816 of this chapter” shall be replaced by “K.A.R. 47-9-1(c).”

(C) “Part 816 or part 817” shall be replaced by “K.A.R. 47-9-1(c) or (d).”

(D) “Part 817,” “part 817 of this chapter,” and “30 CFR 817” shall be replaced by “K.A.R. 47-9-1(d).”

(E) “Part 823 of this chapter” shall be replaced by “K.A.R. 47-9-1(f).”

(F) “Parts 816 and 817” shall be replaced by “K.A.R. 47-9-1(c) and (d).”

(G) “Parts 818 through 828” shall be replaced by “K.A.R. 47-9-1(e) through (h).”

(H) “Section 816.150” shall be replaced by “K.A.R. 47-9-1(c)(46).”

(I) “Sections 817.61-817.68” shall be replaced by “K.A.R. 47-9-1(d)(16)-(21).”

(3)(A) “30 CFR part 773 and 775” shall be replaced by “K.A.R. 47-3-42(a)(2) through (20), and K.S.A. 49-407(d), 49-416a, 49-422a, and amendments thereto, and article 4 of these regulations.”

(B) “30 CFR 784.15(a)(2)” shall be replaced by “K.A.R. 47-10-1(a)(2)(F).”

(C) “30 CFR 785.22” shall be replaced by “K.A.R. 47-3-42(a)(65).”

(D) “30 CFR 817.133,” “§817.133,” and “30 CFR 817.133(a)” shall be replaced by “K.A.R. 47-9-1(d)(43).”

(4)(A) “§701.5 of this chapter” shall be replaced by “K.A.R. 47-2-75(b).”

(B) “§732.17 of this chapter” shall be replaced by “30 C.F.R. 732.17.”

(C) “§773.6(d) of this chapter” shall be replaced by “K.A.R. 47-3-42(a)(2).”

(D) “§773.15(m) of this chapter” shall be replaced by “K.A.R. 47-3-42(a)(11).”

(E) “§774.13 of this chapter” and “30 CFR 774.13” shall be replaced by “K.A.R. 47-6-2.”

(F) “§780.13 of this chapter” shall be replaced by “K.A.R. 47-3-42(a)(43).”

(G) “§780.21(h) of this chapter,” “§780.21(i) of this chapter,” and “§780.21(j) of this chapter” shall be replaced by “K.A.R. 47-3-42(a)(48).”

(H) “§780.25 of this chapter,” “§780.25(a) of this chapter,” and “§780.25(c)(3)” shall be replaced by “K.A.R. 47-3-42(a)(51).”

(I) “§780.28(d) of this chapter or §816.43(b)(1) of this part” shall be replaced by “K.A.R. 47-3-42(a)(53) or K.A.R. 47-9-1(c)(8).”

(J) “§780.28(e) of this chapter” shall be replaced by “K.A.R. 47-3-42(a)(53).”

(K) “§780.35(c) of this chapter” shall be replaced by “K.A.R. 47-3-42(c)(57).”

(L) “§780.37(c) of this chapter” shall be replaced by “K.A.R. 47-3-42(a)(58).”

(M) “§784.14(g) of this chapter,” “§784.14(h) of this chapter,” and “§784.14(i) of this chapter” shall be replaced by “K.A.R. 47-10-1(a)(2)(E).”

(N) “§784.16(a) of this chapter” and “§784.16(c)(3)” shall be replaced by “K.A.R. 47-10-1(a)(2)(G).”

(O) “§784.19 of this chapter” shall be replaced by “K.A.R. 47-10-1(a)(2)(J).”

(P) “§784.20 of this chapter” and “§784.20(a) of this chapter” shall be replaced by “K.A.R. 47-10-1(a)(2)(K).”

(Q) “§784.24(c)” shall be replaced by “K.A.R. 47-10-1(a)(2)(O).”

(R) “§784.25 of this chapter” shall be replaced by “K.A.R. 47-10-1(a)(2)(P).”

(S) “§784.28(d) of this chapter and §817.43(b)(1) of this part” shall be replaced by “K.A.R. 47-10-1(a)(2)(R) and K.A.R. 47-9-1(d)(8).”

(T) “§784.28(e) of this chapter” shall be replaced by “K.A.R. 47-10-1(a)(2)(R).”

(U) “§785.17 and subchapter J of this chapter” shall be replaced by “K.A.R. 47-3-42(a)(61) and article 8 of these regulations.”

(V) “§785.17(a) of this chapter” shall be replaced by “K.A.R. 47-3-42(a)(61).”

(W) “§785.18 of this chapter” shall be replaced by “K.A.R. 47-3-42(a)(62).”

(X) “§785.21 of this chapter” shall be replaced by “K.A.R. 47-3-42(a)(64).”

(Y) “§800.40(c)(2) of this chapter” shall be replaced by “K.A.R. 47-8-9(a)(13).”

(Z) “§816.11” and “§816.11 of this chapter” shall be replaced by “K.A.R. 47-9-1(c)(1).”

(AA) “§816.13” shall be replaced by “K.A.R. 47-9-1(c)(2).”

(BB) “§816.22,” “§816.22 of this chapter,” “§816.22 of this part,” “§816.22(b) of this part,” “§816.22(e),” “30 CFR 816.22(e)(1)(i),” and “30 CFR 816.22(e)(1)(ii)” shall be replaced by “K.A.R. 47-9-1(c)(5).”

(CC) “§816.22 or §817.22 of this chapter” shall be replaced by “K.A.R. 47-9-1(c)(5) or K.A.R. 47-9-1(d)(5).”

(DD) “§816.41 of this part,” “§816.41,” “§§816.41(d)(1) of this part,” and “§816.41(i)” shall be replaced by “K.A.R. 47-9-1(c)(6).”

(EE) “§§816.41(b), 816.41(f), and 816.102(e) of this chapter” shall be replaced by “K.A.R. 47-9-1(c)(6) and (35).”

(FF) “§816.42” shall be replaced by “K.A.R. 47-9-1(c)(7).”

(GG) “§816.43 of this chapter,” “§816.43(b) of this part,” and “816.43” shall be replaced by “K.A.R. 47-9-1(c)(8).”

(HH) “§816.45 through 816.47 of this chapter” shall be replaced by “K.A.R. 47-9-1(c)(9) through (11).”

(II) “§816.45(a) of this part” and “§816.45(a)” shall be replaced by “K.A.R. 47-9-1(c)(9).”

(JJ) “§816.46” shall be replaced by “K.A.R. 47-9-1(c)(10).”

(KK) “§816.49 of this chapter,” “§816.49(b) of this part,” and “§816.49(a)(9)” shall be replaced by “K.A.R. 47-9-1(c)(12).”

(LL) “§816.56 of this part” shall be replaced by “K.A.R. 47-9-1(c)(13).”

(MM) “§816.59 of this chapter” shall be replaced by “K.A.R. 47-9-1(c)(15).”

(NN) “§816.64” shall be replaced by “K.A.R. 47-9-1(c)(18).”

(OO) “§816.66(c)” shall be replaced by “K.A.R. 47-9-1(c)(19).”

(PP) “§816.67” and “§816.67(e)” shall be re-

placed by “K.A.R. 47-9-1(c)(20).”

(QQ) “§816.68(p)” shall be replaced by “K.A.R. 47-9-1(c)(21).”

(RR) “§816.71,” “§816.71 of this part,” and “§816.71(f)(3)” shall be replaced by “K.A.R. 47-9-1(c)(22).”

(SS) “§816.79 of this chapter” shall be replaced by “K.A.R. 47-9-1(c)(24).”

(TT) “§816.81” shall be replaced by “K.A.R. 47-9-1(c)(25).”

(UU) “§816.83” shall be replaced by “K.A.R. 47-9-1(c)(26).”

(VV) “§816.84 of this chapter” and “§816.84” shall be replaced by “K.A.R. 47-9-1(c)(27).”

(WW) “§816.95 of this chapter” shall be replaced by “K.A.R. 47-9-1(c)(30).”

(XX) “§816.97 of this chapter,” “§816.97(a) of this part,” and “§816.97(f) of this part” shall be replaced by “K.A.R. 47-9-1(c)(31).”

(YY) “§816.102,” “§816.102(c), (e) through (h), and (j),” “§§816.102(a)(2) through (j) of this part,” and “§816.102(a)(1) and (2)” shall be replaced by “K.A.R. 47-9-1(c)(35).”

(ZZ) “§816.104” shall be replaced by “K.A.R. 47-9-1(c)(36).”

(AAA) “§816.105” shall be replaced by “K.A.R. 47-9-1(c)(37).”

(BBB) “§816.106” shall be replaced by “K.A.R. 47-9-1(c)(38).”

(CCC) “§816.111” and “§816.111(b)” shall be replaced by “K.A.R. 47-9-1(c)(39).”

(DDD) “§816.181 of this chapter” shall be replaced by “K.A.R. 47-9-1(c)(49).”

(EEE) “§817.11” shall be replaced by “K.A.R. 47-9-1(d)(1).”

(FFF) “§817.13” shall be replaced by “K.A.R. 47-9-1(d)(2).”

(GGG) “§817.22,” “§817.22 of this chapter,” “§817.22 of this part,” and “§817.22(b) of this part” shall be replaced by “K.A.R. 47-9-1(d)(5).”

(HHH) “§817.41 of this part,” “§817.41,” “§817.41(d)(1) of this part,” “§817.41(h),” and “§817.41(j)” shall be replaced by “K.A.R. 47-9-1(d)(6).”

(III) “§817.42” shall be replaced by “K.A.R. 47-9-1(d)(7).”

(JJJ) “§817.43” and “§817.43(b) of this part” shall be replaced by “K.A.R. 47-9-1(d)(8).”

(KKK) “§817.45(a) of this part” shall be replaced by “K.A.R. 47-9-1(d)(9).”

(LLL) “§817.46” shall be replaced by “K.A.R. 47-9-1(d)(10).”

(MMM) “§817.49 of this chapter,” “§817.49(a)

(9),” “§817.49(b) of this part,” and “§817.49(a) and (c)” shall be replaced by “K.A.R. 47-9-1(d)(12).”

(NNN) “§817.56 of this part” shall be replaced by “K.A.R. 47-9-1(d)(13).”

(OOO) “§817.64(a)” shall be replaced by “K.A.R. 47-9-1(d)(18).”

(PPP) “§817.66(c)” shall be replaced by “K.A.R. 47-9-1(d)(19).”

(QQQ) “§817.67” and “§817.67(e)” shall be replaced by “K.A.R. 47-9-1(d)(20).”

(RRR) “§817.68(p)” shall be replaced by “K.A.R. 47-9-1(d)(21).”

(SSS) “§817.71,” “paragraphs (a) and (f) of §817.71 of this part,” and “§817.71(f)(3)” shall be replaced by “K.A.R. 47-9-1(d)(22).”

(TTT) “§817.81” shall be replaced by “K.A.R. 47-9-1(d)(24).”

(UUU) “§817.83” shall be replaced by “K.A.R. 47-9-1(d)(25).”

(VVV) “§817.84 of this chapter” shall be replaced by “K.A.R. 47-9-1(d)(26).”

(WWW) “§817.97(a) of this part” and “§817.97(f) of this part” shall be replaced by “K.A.R. 47-9-1(d)(30).”

(XXX) “§817.102,” “§817.102(c), (e) through (h), and (j),” and “§817.102(a)(1) and (2)” shall be replaced by “K.A.R. 47-9-1(d)(33).”

(YYY) “§817.106” shall be replaced by “K.A.R. 47-9-1(d)(34).”

(ZZZ) “§817.111” and “§817.111(b)” shall be replaced by “K.A.R. 47-9-1(d)(35).”

(AAA) “§817.116” shall be replaced by “K.A.R. 47-9-1(d)(38).”

(BBB) “§817.121(a) and (c) of this chapter” shall be replaced by “K.A.R. 47-9-1(d)(39).”

(CCC) “§817.150” shall be replaced by “K.A.R. 47-9-1(d)(44).”

(DDD) “§823.12(c)(2)” and “§823.12(c)(1)” shall be replaced by “K.A.R. 47-9-1(f)(3).”

(EEE) “§823.14(b)” shall be replaced by “K.A.R. 47-9-1(f)(4).”

(FFF) “§827.12” shall be replaced by “K.A.R. 47-9-1(g)(2).”

(GGG) “§827.13 of this part” shall be replaced by “K.A.R. 47-9-1(g)(3).”

(HHH) “§§773.17(e) and 784.14(g) of this chapter” shall be replaced by “K.A.R. 47-6-6(a) and K.A.R. 47-10-1(a)(2)(E).”

(III) “§§773.17(e) and 780.21(h) of this chapter” shall be replaced by “K.A.R. 47-6-6(a) and K.A.R. 47-3-42(a)(48).”

(JJJ) “§§780.21 and 780.22 of this chapter” shall be replaced by “K.A.R. 47-3-42(a)(48) and (49).”

(KKK) “§§780.21 and 784.14 of this chapter” shall be replaced by “K.A.R. 47-3-42(a)(48) and K.A.R. 47-10-1(a)(2)(E).”

(LLL) “§§780.21 and 784.22 of this chapter” shall be replaced by “K.A.R. 47-3-42(a)(48) and K.A.R. 47-10-1(a)(2)(M).”

(MMM) “§§780.28 and 816.57 of this chapter” shall be replaced by “K.A.R. 47-3-42(a)(53) and K.A.R. 47-9-1(c)(14).”

(NNN) “§§784.28 and 817.57 of this chapter” shall be replaced by “K.A.R. 47-10-1 (a)(2)(R) and K.A.R. 47-9-1(d)(14).”

(OOO) “§§816.13 through 816.15 of this chapter” and “§§816.13 to 816.15” shall be replaced by “K.A.R. 47-9-1(c)(2) through (4).”

(PPP) “§§816.22, 816.100, 816.102, 816.104, 816.106, 816.111, 816.113, 816.114, 816.116, and 816.133 of this chapter” shall be replaced by “K.A.R. 47-9-1(c)(5), (33), (35), (36), (38), (39), (40), (41), (42), and (45).”

(QQQ) “§§816.22 and 816.111 through 816.116 of this chapter” shall be replaced by “K.A.R. 47-9-1(c)(5) and (39) through (42).”

(RRR) “§§816.41 and 816.42 of this chapter” shall be replaced by “K.A.R. 47-9-1(c)(6) and (7).”

(SSS) “§§816.41 through 816.43 and 816.57 of this chapter” and “§816.41 through 816.43 and 816.57 of this chapter” shall be replaced by “K.A.R. 47-9-1(c)(6) through (8) and (14).”

(TTT) “§§816.41 through 816.49 of this chapter” shall be replaced by “K.A.R. 47-9-1(c)(6) through (12).”

(UUU) “§§816.49 and 816.56” and “§§816.49 and 816.56 of this chapter” shall be replaced by “K.A.R. 47-9-1(c)(12) and (13).”

(VVV) “§§816.71 through 816.74,” “§§816.71 through 816.74 of this part,” and “§§816.71-816.74 of this chapter” shall be replaced by “K.A.R. 47-9-1(c)(22) through (23).”

(WWW) “§§816.81 and 816.83” shall be replaced by “K.A.R. 47-9-1(c)(25) and (26).”

(XXX) “§§816.81, 816.83, 816.84, 816.87, 816.89, and 816.71 through 816.74 of this chapter” shall be replaced by “K.A.R. 47-9-1(c)(22), (23), (25), (26), (27), (28), and (29).”

(YYY) “§§816.81(a), 816.83(a), and 816.84 of this part” shall be replaced by “K.A.R. 47-9-1(c)(25), (26), and (27).”

(ZZZ) “§§816.102 and 816.104 through 816.106 of this chapter” shall be replaced by “K.A.R. 47-9-1(c)(35) and (36) through (38).”

(AAA) “§§816.102 through 816.107 of this chapter” shall be replaced by “K.A.R. 47-9-1(c)

(35) through (38).”

(BBBBB) “§§816.111, 816.113, 816.114, and 816.116 of this chapter” shall be replaced by “K.A.R. 47-9-1(c)(39), (40), (41), and (42).”

(CCCCC) “§§816.111 through 816.116 of this chapter” and “§§816.111 through 816.116” shall be replaced by “K.A.R. 47-9-1(c)(39) through (42).”

(DDDDD) “§§816.131 and 816.132 of this chapter” shall be replaced by “K.A.R. 47-9-1(c)(43) and (44).”

(EEEE) “§§816.150 and 816.151 of this chapter” shall be replaced by “K.A.R. 47-9-1(c)(46) and (47).”

(FFFFF) “§§816.150, 816.151, and 816.181 of this part” shall be replaced by “K.A.R. 47-9-1(c)(46), (47), and (49).”

(GGGGG) “§§816.150(b) through (f), 816.180, and 816.181 of this chapter” shall be replaced by “K.A.R. 47-9-1(c)(46), (48), and (49).”

(HHHHH) “§§817.13 and 817.15” shall be replaced by “K.A.R. 47-9-1(d)(2) and (4).”

(IIIII) “§§817.13 to 817.15” shall be replaced by “K.A.R. 47-9-1(d)(2) to (4).”

(JJJJJ) “§§817.22 and 817.111 through 817.116 of this chapter” shall be replaced by “K.A.R. 47-9-1(d)(5) and (35) through (38).”

(KKKKK) “§§817.41 through 817.43 and 817.57 of this chapter” shall be replaced by “K.A.R. 47-9-1(d)(6) through (8) and (14).”

(LLLLL) “§§817.49 and 817.56” shall be replaced by “K.A.R. 47-9-1(d)(12) and (13).”

(MMMMM) “§§817.71 through 817.74” and “§§817.71 through 817.74 of this chapter” shall be replaced by “K.A.R. 47-9-1(d)(22) and (23).”

(NNNNN) “§§817.81 and 817.83” shall be replaced by “K.A.R. 47-9-1(d)(24) and (25).”

(OOOOO) “§§817.81(a), 817.83(a), and 817.84 of this part” shall be replaced by “K.A.R. 47-9-1(d)(24), (25), and (26).”

(PPPPP) “§§817.102 through 817.107 of this chapter” shall be replaced by “K.A.R. 47-9-1(d)(33) and (34).”

(QQQQQ) “§§817.111, 817.113, 817.114, and 817.116 of this chapter” shall be replaced by “K.A.R. 47-9-1(d)(35), (36), (37), and (38).”

(RRRRR) “§§817.111 through 817.116 of this chapter” and “§§817.111 through 817.116” shall be replaced by “K.A.R. 47-9-1(d)(35) through (38).”

(SSSSS) “§§817.150, 817.151, and 817.181 of this part” shall be replaced by “K.A.R. 47-9-1(d)(44), (45), and (47).” (Authorized by K.S.A. 49-405; implementing K.S.A. 49-405, K.S.A. 2018 Supp. 49-408, and K.S.A. 49-409, 49-411, 49-

413, 49-415, and 49-429; effective May 1, 1980; amended, E-81-30, Oct. 8, 1980; amended May 1, 1981; amended May 1, 1985; amended May 1, 1986; amended May 1, 1988; amended Feb. 11, 1991; amended May 2, 1997; amended July 31, 1998; amended Dec. 1, 2006; amended Feb. 15, 2019.)

47-9-2. Revegetation. The permittee may be requested by the secretary or secretary’s designee to cut the vegetative cover, remove rocks that are nine inches or larger, or carry out any other measures that promote the control and revegetation of the permit area, consistent with the approved postmining land use. (Authorized by K.S.A. 49-405; implementing K.S.A. 49-409; effective May 1, 1985; amended Feb. 11, 1991; amended May 2, 1997.)

47-9-3. (Authorized by K.S.A. 49-405; implementing K.S.A. 49-408, 49-409, 49-411, 49-413, 49-415, 49-429; effective May 1, 1985; revoked May 1, 1986.)

47-9-4. Interim performance standards; adoption by reference. (a) The following regulations as in effect on July 1, 2012 are adopted by reference, except as specified in this regulation:

- (1) Definitions, 30 C.F.R. 710.5;
- (2) applicability, 30 C.F.R. 710.11(a), deleting subsection (a)(1) and the phrase “except as provided in §710.12 of this part”;
- (3) signs and markers, 30 C.F.R. 715.12;
- (4) postmining use of land, 30 C.F.R. 715.13, deleting the second sentence in (d);
- (5) backfilling and grading, 30 C.F.R. 715.14, deleting subsections (b)(3) and (c);
- (6) disposal of excess spoil, 30 C.F.R. 715.15, deleting subsection (c);
- (7) topsoil handling, 30 C.F.R. 715.16;
- (8) protection of the hydrologic system, 30 C.F.R. 715.17, deleting subsection (j);
- (9) dams constructed of or impounding waste material, 30 C.F.R. 715.18;
- (10) revegetation, 30 C.F.R. 715.20;
- (11) interpretative rules related to general performance standards, 30 C.F.R. 715.200; and
- (12) prime farmland, 30 C.F.R. 716.7.

(b) The following phrases and citations shall be replaced with the phrases and citations specified in this subsection wherever the phrases and citations appear in the federal regulations adopted by reference in this regulation:

- (1)(A) “Act” shall be replaced by “state act.”

(B) “Subchapter B of this chapter” shall be replaced by “K.A.R. 47-9-4.”

(C) “Subchapter K of this chapter” shall be replaced by “K.A.R. 47-9-1.”

(D) “This part,” “§716.2 of this chapter,” “part 715 of this chapter,” “this section,” and “this chapter” shall be replaced by “these regulations.”

(2)(A) “§715.12” shall be replaced by “K.A.R. 47-9-4(a)(3).”

(B) “§715.13” shall be replaced by “K.A.R. 47-9-4(a)(4).”

(C) “§715.14,” “§715.14(b)(2),” and “§715.14(j)” shall be replaced by “K.A.R. 47-9-4(a)(5).”

(D) “§715.15 of this part” shall be replaced by “K.A.R. 47-9-4(a)(6).”

(E) “§715.16,” “§715.16(c),” “§715.16(a)(4),” and “30 CFR 715.16(a)(4)(i)” shall be replaced by “K.A.R. 47-9-4(a)(7).”

(F) “§715.17,” “§715.17 of this part,” “§715.17(a),” and “§715.17(c)” shall be replaced by “K.A.R. 47-9-4(a)(8).”

(G) “§715.18” shall be replaced by “K.A.R. 47-9-4(a)(9).”

(H) “§715.20” and “§715.20(g)” shall be replaced by “K.A.R. 47-9-4(a)(10).”

(I) “§716.7” shall be replaced by “K.A.R. 47-9-4(a)(12).”

(J) “§§715.13 and 715.14” shall be replaced by “K.A.R. 47-9-4(a)(4) and (5).”

(K) “§§715.14 and 715.20” shall be replaced by “K.A.R. 47-9-4(a)(5) and (10).”

(L) “§§715.14, 715.16, and 715.20” shall be replaced by “K.A.R. 47-9-4(a)(5), (7), and (10).”

(c) Each operator shall comply with the interim performance standards in an interim permit area, unless the secretary has approved, in writing, that operator’s request to adhere to an applicable permanent program performance standard or other applicable substantive regulation. (Authorized by and implementing K.S.A. 49-405; effective May 1, 1986; amended Feb. 11, 1991; amended May 2, 1997; amended Dec. 1, 2006; amended Feb. 15, 2019.)

Article 10.—UNDERGROUND MINING

47-10-1. Adoption by reference; underground mining. (a) The following federal regulations, as in effect on July 1, 2012, are adopted by reference, except as otherwise specified in this regulation:

(1) Underground mining permit applications—minimum requirements for information on environmental resources, 30 C.F.R. Part 783:

(A) Responsibilities, 30 C.F.R. 783.4;

(B) general requirements, 30 C.F.R. 783.11;

(C) general environmental resources information, 30 C.F.R. 783.12;

(D) climatological information, 30 C.F.R. 783.18;

(E) vegetation information, 30 C.F.R. 783.19;

(F) soil resources information, 30 C.F.R. 783.21;

(G) maps: general requirements, 30 C.F.R. 783.24; and

(H) cross sections, maps, and plans, 30 C.F.R. 783.25;

(2) underground mining permit applications—minimum requirements for reclamation and operation plan, 30 C.F.R. Part 784:

(A) Responsibilities, 30 C.F.R. 784.4;

(B) operation plan: general requirements, 30 C.F.R. 784.11;

(C) operation plan: existing structures, 30 C.F.R. 784.12;

(D) reclamation plan: general requirements, 30 C.F.R. 784.13;

(E) hydrologic information, 30 C.F.R. 784.14;

(F) reclamation plan: land use information, 30 C.F.R. 784.15;

(G) reclamation plan: siltation structures, impoundments, and refuse piles, 30 C.F.R. 784.16;

(H) protection of publicly owned parks and historic places, 30 C.F.R. 784.17;

(I) relocation or use of public roads, 30 C.F.R. 784.18;

(J) disposal of excess spoil, 30 C.F.R. 784.19;

(K) subsidence control plan, 30 C.F.R. 784.20, deleting the phrase “as described in §817.121(c) (4) of this chapter”;

(L) fish and wildlife information, 30 C.F.R. 784.21;

(M) geologic information, 30 C.F.R. 784.22;

(N) operation plan: maps and plans, 30 C.F.R. 784.23;

(O) road systems, 30 C.F.R. 784.24;

(P) return of coal processing waste to abandoned underground workings, 30 C.F.R. 784.25;

(Q) air pollution control plan, 30 C.F.R. 784.26;

(R) surface activities in or adjacent to perennial or intermittent streams, 30 C.F.R. 784.28;

(S) diversions, 30 C.F.R. 784.29;

(T) support facilities, 30 C.F.R. 784.30; and

(U) interpretive rules related to general performance standards, 30 C.F.R. 784.200, except that “office of surface mining reclamation and enforcement” shall be replaced by “Kansas department of health and environment.”

(b) The following phrases and citations shall be replaced with the phrases and citations specified in this subsection wherever the phrases and citations appear in the text of the federal regulations adopted by reference in this regulation:

(1)(A) “Paragraphs (b)(2) through (b)(4) of §817.57 of this chapter,” “paragraphs (b) and (c) of §817.57 of this chapter,” “§817.57(a)(1) of this chapter,” “§817.57(a)(2) of this chapter,” and “§817.57(a)(2) of this chapter” shall be replaced by “K.A.R. 47-9-1(d)(14).”

(B) “Subchapter B (Interim Program Standards) of this chapter” shall be replaced by “K.A.R. 47-9-4.”

(C) “Subchapter J of this chapter” shall be replaced by “article 8 of these regulations.”

(D) “Subchapter K of this chapter” and “subchapter K (Permanent Program Standards) of this chapter” shall be replaced by “K.A.R. 47-9-1.”

(E) “This chapter,” “this section,” “subchapter,” “subchapter G of this chapter,” and “this part” shall be replaced by “these regulations.”

(F) “This title” shall be replaced by “the 30 CFR.”

(2)(A) “Part 784 of this chapter” shall be replaced by “K.A.R. 47-10-1(a)(2).”

(B) “Part 817 of this chapter” shall be replaced by “K.A.R. 47-9-1(d).”

(C) “Sections 515 and 516 of the Act” shall be replaced by “K.S.A. 49-405a, 49-408 through 49-413, and 49-429.”

(3)(A) “30 CFR Parts 773 and 775” shall be replaced by “K.A.R. 47-3-42(a)(2) through (20), K.A.R. 47-6-6, K.S.A. 49-407(d), K.S.A. 49-416a, and K.S.A. 49-422a, and amendments thereto, and article 4 of these regulations.”

(B) “30 CFR 783.24 and 783.25” shall be replaced by “K.A.R. 47-10-1(a)(1)(G) and (H).”

(C) “30 CFR 784.13 through 784.26” shall be replaced by “K.A.R. 47-10-1(a)(2)(D) through (Q).”

(D) “30 CFR 784.16 of this part” shall be replaced by “K.A.R. 47-10-1(a)(2)(G).”

(E) “30 CFR 784.19 of this part” shall be replaced by “K.A.R. 47-10-1(a)(2)(J).”

(F) “30 CFR 784.21” shall be replaced by “K.A.R. 47-10-1(a)(2)(L).”

(G) “30 CFR 817.13-817.15” shall be replaced by “K.A.R. 47-9-1(d)(2) and (4).”

(H) “30 CFR 817.22,” “§817.22 of the chapter,” and “§817.22(b) of this chapter” shall be replaced by “K.A.R. 47-9-1(d)(5).”

(I) “30 CFR 817.59” and “§817.59 of this chapter” shall be replaced by “K.A.R. 47-9-1(d)(15).”

(J) “30 CFR 817.81(f)” shall be replaced by “K.A.R. 47-9-1(d)(24).”

(K) “30 CFR 817.89 and 817.102” shall be replaced by “K.A.R. 47-9-1(d)(28) and (33).”

(L) “30 CFR 817.95” shall be replaced by “K.A.R. 47-9-1(d)(29).”

(M) “30 CFR 817.102 through 817.107” shall be replaced by “K.A.R. 47-9-1(d)(33) and (34).”

(N) “30 CFR 817.111 through 817.116” shall be replaced by “K.A.R. 47-9-1(d)(35) through (38).”

(O) “30 CFR 817.116” shall be replaced by “K.A.R. 47-9-1(d)(38).”

(4)(A) “§701.5 of this chapter” shall be replaced by “K.A.R. 47-2-75(b).”

(B) “§761.14 of this chapter” shall be replaced by “K.A.R. 47-12-4(a)(4).”

(C) “§761.16 of this chapter” shall be replaced by “K.A.R. 47-12-4(a)(6).”

(D) “§761.17(d) of this chapter” shall be replaced by “K.A.R. 47-12-4(a)(7).”

(E) “§774.13” shall be replaced by “K.A.R. 47-6-2.”

(F) “§783.25 of this chapter” shall be replaced by “K.A.R. 47-10-1(a)(1)(H).”

(G) “§784.15” and “§784.15(a)(2)” shall be replaced by “K.A.R. 47-10-1(a)(2)(F).”

(H) “§784.20” shall be replaced by “K.A.R. 47-10-1(a)(2)(K).”

(I) “§784.29 of this part and §817.43 of this chapter” shall be replaced by “K.A.R. 47-10-1(a)(2)(S) and K.A.R. 47-9-1(d)(8).”

(J) “§785.21 of this chapter” shall be replaced by “K.A.R. 47-3-42(a)(64).”

(K) “§817.43 of this chapter” shall be replaced by “K.A.R. 47-9-1(d)(8).”

(L) “§817.46 of this chapter” shall be replaced by “K.A.R. 47-9-1(d)(10).”

(M) “§817.49 of this chapter,” “paragraphs (a) and (c) of §817.49 of this chapter,” and “§817.49(a)(4)(ii) of this chapter” shall be replaced by “K.A.R. 47-9-1(d)(12).”

(N) “§817.71(d) of this chapter” shall be replaced by “K.A.R. 47-9-1(d)(22).”

(O) “§817.74 of this chapter” shall be replaced by “K.A.R. 47-9-1(d)(23).”

(P) “§817.97 of this chapter” shall be replaced by “K.A.R. 47-9-1(d)(30).”

(Q) “§817.121(c) of this chapter” and “§817.121 of this chapter” shall be replaced by “K.A.R. 47-9-1(d)(39).”

(R) “§817.133,” “30 CFR 817.133,” and “§817.133(a)” shall be replaced by “K.A.R. 47-9-1(d)(43).”

(S) “§817.150(d)(1) of this chapter” shall be replaced by “K.A.R. 47-9-1(d)(44).”

(T) “§817.151(c)(2) of this chapter,” “§817.151(d)(5) of this chapter,” “§817.151(d)(6) of this chapter,” and “§817.151(b) of this chapter” shall be replaced by “K.A.R. 47-9-1(d)(45).”

(U) “§817.181 of this chapter” shall be replaced by “K.A.R. 47-9-1(d)(47).”

(V) “§§784.14(g) and 817.41(d)(1) of this chapter” shall be replaced by “K.A.R. 47-10-1(a)(2)(E) and K.A.R. 47-9-1(d)(6).”

(W) “§§784.16(a)(2), 784.16(a)(3), 784.19, 817.73(c), 817.74(c), and 817.81(c) of this chapter” shall be replaced by “K.A.R. 47-10-1(a)(2)(G) and (J), and K.A.R. 47-9-1(d)(22), (23), and (24).”

(X) “§§784.21(b) and 817.97(a) of this chapter” shall be replaced by “K.A.R. 47-10-1(a)(2)(L) and K.A.R. 47-9-1(d)(30).”

(Y) “§§817.41 to 817.43” shall be replaced by “K.A.R. 47-9-1(d)(6) through (8).”

(Z) “§§817.41(j) and 817.121(c) of this chapter” shall be replaced by “K.A.R. 47-9-1(d)(6) and (39).”

(AA) “§§817.71 through 817.74” shall be replaced by “K.A.R. 47-9-1(d)(22) and (23).”

(BB) “§§817.81 and 817.83 of this chapter” shall be replaced by “K.A.R. 47-9-1(d)(24) and (25).”

(CC) “§§817.81 and 817.84 of this chapter” shall be replaced by “K.A.R. 47-9-1(d)(24) and (26).”

(DD) “§§817.81 through 817.84 of this chapter” and “30 CFR 817.81 through 817.84” shall be replaced by “K.A.R. 47-9-1(d)(24) through (26).” (Authorized by K.S.A. 49-405; implementing K.S.A. 49-429; effective May 1, 1980; amended, E-81-30, Oct. 8, 1980; amended May 1, 1981; amended May 1, 1986; amended May 1, 1988; amended Feb. 11, 1991; amended May 2, 1997; amended Dec. 1, 2006; amended Feb. 15, 2019.)

Article 11.—SMALL OPERATOR ASSISTANCE PROGRAM

47-11-1 to 47-11-7. (Authorized by K.S.A. 1980 Supp. 49-405, 49-406; effective May 1, 1980; revoked, E-81-30, Oct. 8, 1980; revoked May 1, 1981.)

47-11-8. Small operator assistance program; adoption by reference. (a) The following federal regulations, as in effect on July 1, 2012, are adopted by reference, except as otherwise specified in this regulation:

(1) Definitions, 30 C.F.R. 795.3;

(2) eligibility for assistance, 30 C.F.R. 795.6, deleting subsection (b);

(3) filing for assistance, 30 C.F.R. 795.7;

(4) application approval and notice, 30 C.F.R. 795.8;

(5) program services and data requirements, 30 C.F.R. 795.9;

(6) qualified laboratories, 30 C.F.R. 795.10;

(7) assistance funding, 30 C.F.R. 795.11; and

(8) applicant liability, 30 C.F.R. 795.12.

(b) The following phrases and citations shall be replaced with the phrases and citations specified in this subsection wherever the phrases and citations appear in the text of the federal regulations adopted by reference in this regulation:

(1)(A) “Act” shall be replaced by “state act.”

(B) “This chapter” and “this section” shall be replaced by “these regulations.”

(C) “This part” shall be replaced by “K.A.R. 47-11-8.”

(2)(A) “§773.6(d) of this chapter” shall be replaced by “K.A.R. 47-3-42(a)(2).”

(B) “§780.13” shall be replaced by “K.A.R. 47-3-42(a)(43).”

(C) “§795.6” shall be replaced by “K.A.R. 47-11-8(a)(2).”

(D) “§795.9” and “§795.9(b)” shall be replaced by “K.A.R. 47-11-8(a)(5).”

(E) “§795.10” shall be replaced by “K.A.R. 47-11-8(a)(6).”

(F) “§§779.12(b) and 783.12(b) and §§780.31 and 784.17” shall be replaced by “K.A.R. 47-3-42(a)(34) and K.A.R. 47-10-1(a)(1)(C) and K.A.R. 47-3-42(a)(55) and K.A.R. 47-10-1(a)(2)(H).”

(G) “§§779.25 and 783.25” shall be replaced by “K.A.R. 47-3-42(a)(39) and K.A.R. 47-10-1(a)(1)(H).”

(H) “§§780.16 and 784.21” shall be replaced by “K.A.R. 47-3-42(a)(46) and K.A.R. 47-10-1(a)(2)(L).”

(I) “§§780.21, 780.22, 784.14, and 784.22” shall be replaced by “K.A.R. 47-3-42(a)(48) and (49), and K.A.R. 47-10-1(a)(2)(E) and (M).”

(J) “§§780.21(f), 784.14(e)” shall be replaced by “K.A.R. 47-3-42(a)(48) and K.A.R. 47-10-1(a)(2)(E).”

(K) “§§780.22(b) and 784.22(b)” shall be replaced by “K.A.R. 47-3-42(a)(49) and K.A.R. 47-10-1(a)(2)(M).” (Authorized by K.S.A. 49-405; implementing K.S.A. 2018 Supp. 49-406; effective, E-81-30, Oct. 8, 1980; effective May 1, 1981; amended May 1, 1986; amended Feb. 11, 1991;

amended May 2, 1997; amended Dec. 1, 2006; amended Feb. 15, 2019.)

Article 12.—LANDS UNSUITABLE FOR SURFACE MINING

47-12-1 to 47-12-3. (Authorized by K.S.A. 1980 Supp. 49-405, 49-405b; effective May 1, 1980; revoked, E-81-30, Oct. 8, 1980; revoked May 1, 1981.)

47-12-4. Lands unsuitable for surface mining; adoption by reference. (a) The following federal regulations, as in effect on July 1, 2012, are adopted by reference, except as otherwise specified in this regulation:

(1) Definitions, 30 C.F.R. 761.5, except that the statement “*we, us, and our* refer to the office of surface mining reclamation and enforcement” shall be replaced by “*we, us, and our* refer to the Kansas department of health and environment” and the phrase “or its State program counterpart” shall be deleted;

(2) areas where surface coal mining operations are prohibited or limited, 30 C.F.R. 761.11, deleting subsection (b);

(3) exception for existing operations, 30 C.F.R. 761.12, deleting subsection (b);

(4) procedures for relocating or closing a public road or waiving the prohibition on surface coal mining operations within the buffer zone of a public road, 30 C.F.R. 761.14;

(5) procedures for waiving the prohibition on surface coal mining operations within the buffer zone of an occupied dwelling, 30 C.F.R. 761.15;

(6) submission and processing of requests for valid existing rights determinations, 30 C.F.R. 761.16;

(7) regulatory authority obligations at time of permit application review, 30 C.F.R. 761.17;

(8) interpretive rule related to subsidence due to underground coal mining in areas designated by act of congress, 30 C.F.R. 761.200;

(9) definitions, 30 C.F.R. 762.5;

(10) criteria for designating lands as unsuitable, 30 C.F.R. 762.11;

(11) additional criteria, 30 C.F.R. 762.12. “Secretary” shall mean the “secretary of the United States department of interior” and “subchapter C of this chapter” shall mean “30 C.F.R. Parts 730, 731, 732, 733, 735, and 736”;

(12) land exempt from designation as unsuitable for surface coal mining operations, 30 C.F.R. 762.13;

(13) applicability to lands designated as unsuitable by congress, 30 C.F.R. 762.14;

(14) exploration on land designated as unsuitable for surface coal mining operations, 30 C.F.R. 762.15;

(15) petitions, 30 C.F.R. 764.13;

(16) initial processing, recordkeeping, and notification requirements, 30 C.F.R. 764.15;

(17) hearing requirements, 30 C.F.R. 764.17;

(18) decision, 30 C.F.R. 764.19;

(19) data base and inventory system requirements, 30 C.F.R. 764.21;

(20) public information, 30 C.F.R. 764.23; and

(21) regulatory authority responsibility for implementation, 30 C.F.R. 764.25.

(b) The following phrases and citations shall be replaced with the phrases and citations specified in this subsection wherever the phrases and citations appear in the text of the federal regulations adopted by reference in this regulation:

(1)(A) “Act” shall be replaced by “state act.”

(B) “Federal Register” shall be replaced by “Kansas Register.”

(C) “Subchapter B of this chapter” shall be replaced by “K.A.R. 47-9-4.”

(D) “Subchapter G of this chapter” shall be replaced by “K.A.R. 47-3-42, K.A.R. 47-6-2, K.A.R. 47-6-3, K.A.R. 47-6-4, and K.A.R. 47-7-2.”

(E) “This chapter” shall be replaced by “these regulations.”

(F) “This part” and “this subchapter” shall be replaced by “K.A.R. 47-12-4.”

(2)(A) “Part 761, 762, or 764 of this chapter” shall be replaced by “K.A.R. 47-12-4.”

(B) “Part 772 of this chapter” shall be replaced by “K.A.R. 47-7-2.”

(C) “Section 522 of the Act” and “section 522(e) of the Act” shall be replaced by “K.S.A. 49-405b, and amendments thereto.”

(D) “Section 526(e) of the Act and §775.13 of this chapter” shall be replaced by “K.S.A. 49-422a and K.S.A. 49-426, and amendments thereto.”

(E) “Section 701(28) of the act” shall be replaced by “K.S.A. 49-403(r), and amendments thereto.”

(F) “Section 701(28) of the Act and §700.5 of this chapter” shall be replaced by “K.S.A. 49-403(r), and amendments thereto, and K.A.R. 47-2-75(a).”

(G) “Parts 764 and 769 of this chapter” shall be replaced by “K.A.R. 47-12-4(a)(15) through (21).”

(H) “Sections 522(a)(2) and (3) of the Act” shall be replaced by “K.S.A. 49-405b(a)(1) and (2), and amendments thereto.”

(3)(A) “30 U.S.C. 1272(e) and §761.11” shall be replaced by “K.S.A. 49-405b and 49-406(f), and amendments thereto, and K.A.R. 47-12-4(a)(2).”

(B) “30 U.S.C. 1272(e) or §761.11” shall be replaced by “K.S.A. 49-405b and 49-406(f), and amendments thereto, or K.A.R. 47-12-4(a)(2).”

(4)(A) “§700.5 of this chapter” shall be replaced by “K.A.R. 47-2-75(a).”

(B) “§761.5,” “paragraph (a) of the definition of valid existing rights in §761.5,” “paragraph (b) of the definition of valid existing rights in §761.5,” “paragraph (b)(1) of the definition of valid existing rights in §761.5,” “paragraph (c)(2) of the definition of valid existing rights in §761.5,” “paragraphs (a), (c)(1) and (c)(2) of the definition of valid existing rights in §761.5,” “paragraphs (b), (c)(1) and (c)(2) of the definition of valid existing rights in §761.5,” and “paragraphs (c)(1) through (c)(3) of the definition of valid existing rights in §761.5” shall be replaced by “the definition of valid existing rights in K.A.R. 47-12-4(a)(1).”

(C) “§761.11,” “§761.11 of this chapter,” “§761.11(d)(1),” “§761.11(e)(2),” “§761.11(a) or (b),” “§761.11(c),” “§761.11(a),” and “§761.11(f) or (g)” shall be replaced by “K.A.R. 47-12-4(a)(2).”

(D) “§761.11 and 30 U.S.C. 1272(e)” shall be replaced by “K.A.R. 47-12-4(a)(2) and K.S.A. 49-405b and 49-406(f), and amendments thereto.”

(E) “§761.12” shall be replaced by “K.A.R. 47-12-4(a)(3).”

(F) “§761.14” shall be replaced by “K.A.R. 47-12-4(a)(4).”

(G) “§761.15” shall be replaced by “K.A.R. 47-12-4(a)(5).”

(H) “§761.16” shall be replaced by “K.A.R. 47-12-4(a)(6).”

(I) “§761.17(d)” shall be replaced by “K.A.R. 47-12-4(a)(7).”

(J) “§762.11(b) of this chapter,” “§762.11(a) of this chapter,” and “§762.11 of this chapter” shall be replaced by “K.A.R. 47-12-4(a)(10).”

(K) “§764.13(b) or (c)” and “§764.13(a)” shall be replaced by “K.A.R. 47-12-4(a)(15).”

(L) “§764.17” and “§764.17(e)” shall be replaced by “K.A.R. 47-12-4(a)(17).”

(M) “§764.21” shall be replaced by “K.A.R. 47-12-4(a)(19).”

(N) “§773.13(d) of this chapter” shall be replaced by “K.A.R. 47-3-42(a)(9).”

(O) “§779.24(c) or §783.24(c) of this chapter” shall be replaced by “K.A.R. 47-3-42(a)(38) or K.A.R. 47-10-1(a)(1)(G).”

(P) “§840.14 or §842.16 of this chapter” shall be replaced by “K.A.R. 47-15-1a(a)(2).”

(Q) “§§761.13 through 761.15” shall be replaced by “K.A.R. 47-12-4(a)(4) and (5).”

(R) “§§775.11 and 775.13 of this chapter” shall be replaced by “K.S.A. 49-407(d), K.S.A. 49-416a, K.S.A. 49-422a, and amendments thereto, and article 4 of these regulations.” (Authorized by K.S.A. 49-405; implementing K.S.A. 49-405b, K.S.A. 2018 Supp. 49-422a, and K.S.A. 49-426; effective, E-81-30, Oct. 8, 1980; effective May 1, 1981; amended May 1, 1986; amended May 1, 1988; amended Feb. 11, 1991; amended May 2, 1997; amended Dec. 1, 2006; amended Feb. 15, 2019.)

Article 13.—TRAINING, CERTIFICATION, AND RESPONSIBILITIES OF BLASTERS AND OPERATORS

47-13-1 to 47-13-3. (Authorized by K.S.A. 1980 Supp. 49-405, 49-405a; effective May 1, 1980; revoked, E-81-30, Oct. 8, 1980; revoked May 1, 1981.)

47-13-4. Training and certification of blasters; adoption by reference. (a) The following portions of the “permanent regulatory program requirements—standards for certification of blasters,” 30 C.F.R. part 850, as in effect on July 1, 2012, are hereby adopted by reference, except as specified in this regulation:

(1) Definition, 30 C.F.R. 850.5;

(2) training, 30 C.F.R. 850.13;

(3) examination, 30 C.F.R. 850.14, except that for the purposes of this section only, the term “regulatory authority” shall be replaced by “secretary-approved blaster training program director”; and

(4) certification, 30 C.F.R. 850.15, except that for the purposes of 30 C.F.R. 850.15(a) only, “regulatory authority” shall be replaced by “state fire marshal.”

(b) The following phrase and citation shall be replaced with the phrase and citation specified in this subsection wherever the phrase and citation appear in the text of the federal regulations adopted by reference in this regulation:

(1) “This part” shall be replaced by “these regulations.”

(2) “§850.13(b)” shall be replaced by “K.A.R. 47-13-4(a)(2).”

(c) The term “secretary-approved blaster training program director” shall mean the person who

is in charge of a given blaster training program that has been specifically approved by the secretary as being in accordance with the state act, these regulations, and the state program. (Authorized by and implementing K.S.A. 49-405 and 49-405a; effective May 1, 1985; amended Feb. 11, 1991; amended May 2, 1997; amended Dec. 1, 2006; amended Feb. 15, 2019.)

47-13-5. Responsibilities of operators and blasters-in-charge. (a) Each operator shall perform the following:

(1) designate a blaster-in-charge for each blast to be detonated in surface coal mining and reclamation operations;

(2) ensure that the designated blaster-in-charge is properly certified;

(3) ensure that each employee who performs blasting tasks under the supervision of a blaster-in-charge has adequate training;

(4) limit the size of a blasting crew to 12 persons, supervised by a blaster-in-charge who is continuously and readily accessible to crew members in preparing and executing a blast. A larger blasting crew may be approved by the secretary if these conditions exist:

(A) unusual circumstances or mining methods are involved; and

(B) the operator ensures that the blaster-in-charge can perform the following:

(i) provide adequate, direct supervision to crew members;

(ii) remain in control of blast design, preparation, and execution; and

(iii) assure that blasting complies with the applicable regulations; and

(5) ensure that each blaster-in-charge shall supervise no more than one crew at any given time.

(b) Each blaster-in-charge shall fulfill these requirements:

(1) be certified by the state fire marshal for each blasting operation conducted in the state of Kansas;

(2) ensure that blast design and execution meet the applicable standards;

(3) directly supervise blast preparation and execution at the blast site to ensure that such standards are met;

(4) be present at the site when the blast is detonated;

(5) ensure that each member of each blasting crew has adequate training to perform assigned tasks in compliance with the applicable standards; and

(6) limit to 12 the number of persons being supervised at any given time in preparing and executing a blast at one operational pit at the site.

(c) After instructions from the blaster-in-charge and under the direct supervision of the blaster-in-charge, members of the blasting crew may engage in these activities:

(1) perform general blasting operations;

(2) load and unload explosives for use in blasting;

(3) transport explosives at or near the job site;

(4) load explosives into drill holes; and

(5) stem or otherwise prepare explosives for detonation.

(d) The blaster-in-charge shall retain full responsibility for all blasting and for the use of explosives. These responsibilities shall include the following:

(1) keeping blasting logs and records;

(2) supervising the blasting-related activities of the workers over which the supervisor is in charge; and

(3) ensuring that each person under the supervisor's charge has the training necessary to perform the person's assigned tasks safely and in accordance with the applicable regulations. (Authorized by K.S.A. 49-405 and 49-405a; implementing K.S.A. 49-405; effective May 1, 1985; amended Feb. 11, 1991; amended May 2, 1997.)

47-13-6. Training. (a) Each person seeking a blaster certification pursuant to K.A.R. 47-13-4 shall document successful completion of a department-approved blaster training program.

(b) Proof of completion of an approved blaster training program shall be filed with an applicant's application for certification by the state fire marshal. (Authorized by and implementing K.S.A. 49-405 and 49-405a; effective May 1, 1985; amended Feb. 11, 1991; amended May 2, 1997.)

Article 14.—EMPLOYEE FINANCIAL INTERESTS

47-14-1 to 47-14-6. (Authorized by K.S.A. 1980 Supp. 49-404; effective May 1, 1980; revoked, E-81-30, Oct. 8, 1980; revoked May 1, 1981.)

47-14-7. Employee financial interest; adoption by reference. (a) The following federal regulations, as in effect on July 1, 2012, are adopted by reference, except as otherwise specified in this regulation:

(1) Responsibility, 30 C.F.R. 705.4(a) and (c), deleting subsection (b);

(2) penalties, 30 C.F.R. 705.6(b), deleting subsection (a);

(3) who shall file, 30 C.F.R. 705.11(a), (b), (c), and (d), deleting subsection (e);

(4) when to file, 30 C.F.R. 705.13;

(5) where to file, 30 C.F.R. 705.15;

(6) what to report, 30 C.F.R. 705.17;

(7) gifts and gratuities, 30 C.F.R. 705.18;

(8) resolving prohibited interests, 30 C.F.R. 705.19(a), deleting subsection (b); and

(9) appeals procedures, 30 C.F.R. 705.21.

(b) The following phrases and citations shall be replaced with the phrases and citations specified in this subsection wherever the phrases and citations appear in the text of the federal regulations adopted by reference in this regulation:

(1)(A) “Act” shall be replaced by the term “state act,” except in 30 C.F.R. 705.6(b), where the term “Act” shall mean “the surface mining control and reclamation act of 1977, Pub. L. 95-87.”

(B) “Head of each State Regulatory Authority” and “Head of the State Regulatory Authority” shall be replaced by the term “secretary of the Kansas department of health and environment.”

(C) “This section” and “this part” shall be replaced by “these regulations.”

(2) “Section 517(g) of the Act” and “section 517(g)” shall be replaced by “K.S.A. 49-404, and amendments thereto.”

(3)(A) “§705.6(a)” shall be replaced by “K.S.A. 49-404.”

(B) “§705.11” and “§705.11(b), (c), and (d)” shall be replaced by “K.A.R. 47-14-7(a)(3).”

(C) “§705.13(a)” shall be replaced by “K.A.R. 47-14-7(a)(4).”

(D) “§705.19” shall be replaced by “K.A.R. 47-14-7(a)(8).” (Authorized by K.S.A. 49-404; implementing K.S.A. 49-405; effective, E-81-30, Oct. 8, 1980; effective May 1, 1981; amended Feb. 11, 1991; amended May 2, 1997; amended Dec. 1, 2006; amended Feb. 15, 2019.)

Article 15.—INSPECTIONS AND ENFORCEMENT

47-15-1. (Authorized by K.S.A. 1980 Supp. 49-405, 49-405d; effective, E-81-30, Oct. 8, 1980; effective May 1, 1981; revoked May 1, 1984.)

47-15-1a. Inspection and enforcement; adoption by reference. (a) The following regulations as in effect on July 1, 2012 are adopted

by reference, except as otherwise specified in this regulation:

(1) Inspections by state regulatory authority, 30 C.F.R. 840.11;

(2) availability of records, 30 C.F.R. 840.14;

(3) definitions, 30 C.F.R. 843.5;

(4) right of entry, 30 C.F.R. 840.12;

(5) compliance conference, 30 C.F.R. 840.16;

(6) review of adequacy and completeness of inspections, 30 C.F.R. 842.14, except that “director or his or her designee” shall be replaced by “secretary or secretary’s designee”;

(7) review of decision not to inspect or enforce, 30 C.F.R. 842.15, except that “OSM” shall be replaced with “Kansas department of health and environment”;

(8) cessation orders, 30 C.F.R. 843.11;

(9) notices of violations, 30 C.F.R. 843.12, except for the following:

(A) In subsection (a) of 30 C.F.R. 843.12, the following phrase shall be deleted: “carried out during the enforcement of a federal program or federal lands program or during federal enforcement of a state program under sections 504(b) or 521(b) of the act and part 733 of this chapter”; and

(B) paragraph (a)(2) of 30 C.F.R. 843.12 shall be deleted;

(10) suspension or revocation of permits: pattern of violations, 30 C.F.R. 843.13, except that the phrase “or a federal lands program” in paragraph (a)(4)(i)(A) of 30 C.F.R. 843.13 shall be deleted, and paragraphs (a)(4)(i)(B) and (C) of 30 C.F.R. 843.13 shall be deleted;

(11) service of notices of violation, cessation orders, and show cause orders, 30 C.F.R. 843.14, except that the first sentence in subsection (c) shall be deleted and, in the second sentence, the word “office” shall be replaced with “Kansas department of health and environment”;

(12) informal public hearing, 30 C.F.R. 843.15. However, the following sentence in subsection (e) shall be deleted: “Section 554 of title 5 of the United States code, regarding requirements for formal adjudicatory hearings, shall not govern public hearings”;

(13) formal review of citations, 30 C.F.R. 843.16;

(14) inability to comply, 30 C.F.R. 843.18; and

(15) compliance conference, 30 C.F.R. 843.20.

(b) The following phrases and citations shall be replaced with the phrases and citations specified in this subsection wherever the phrases and citations appear in the text of the federal regulations adopted by reference in this regulation:

- (1)(A) “Act” shall be replaced by “state act.”
- (B) “Director” shall be replaced by “director of OSM.”
- (C) “Federal” shall be replaced by “state.”
- (D) “Freedom of Information Act or other Federal law” shall be replaced by “Kansas Open Records Act or other State law.”
- (E) “Office” shall be replaced by “secretary or secretary’s designee.”
- (F) “Office of hearings and appeals” shall be replaced by “department.”
- (G) “Office of Surface Mining” shall be replaced by “Kansas department of health and environment.”
- (H) “Rule 4 of the Federal Rules of Civil Procedure” shall be replaced by “K.A.R. 47-4-14a.”
- (I) “Secretary” shall be replaced by “secretary of KDHE.”
- (J) “This chapter,” “this part,” and “this section” shall be replaced by “these regulations.”
- (2)(A) “Section 517 of the Act and §840.11” shall be replaced by “K.S.A. 49-404, K.S.A. 49-405, and K.S.A. 49-405d, and amendments thereto, and K.A.R. 47-15-1a(a)(1).”
- (B) “Section 517 of the Act and §842.11” shall be replaced by “K.S.A. 49-404, K.S.A. 49-405, and K.S.A. 49-405d, and amendments thereto.”
- (C) “Section 518(b), 521(a)(4), or 525 of the Act” shall be replaced by “K.S.A. 49-405c(b), K.S.A. 49-405(m)(3), or K.S.A. 49-416a and amendments thereto.”
- (D) “Section 518(e), 518(f), 521(a)(4), or 521(c) of the Act or their regulatory program counterparts” shall be replaced by “K.S.A. 49-405c(e) and (f) and K.S.A. 49-405(m), and amendments thereto.”
- (E) “Section 520 of the Act” shall be replaced by “K.S.A. 49-426, and amendments thereto.”
- (F) “Section 521(a)(2) of the Act” shall be replaced by “K.S.A. 49-405(m)(1), and amendments thereto.”
- (G) “Section 521(a)(5) of the Act and §843.15” shall be replaced by “K.S.A. 49-405(m)(4), and amendments thereto, and K.A.R. 47-15-1a(a)(12).”
- (H) “Section 525 of the Act” shall be replaced by “K.S.A. 49-416a, and amendments thereto.”
- (3)(A) “30 CFR Part 845” and “part 845 of this chapter” shall be replaced by “article 5 of these regulations.”
- (B) “43 CFR part 4” shall be replaced by “K.A.R. 47-4-14a.”
- (C) “43 CFR 4.1281” shall be replaced by “K.A.R. 47-4-14a(a)(1)-(8).”
- (4)(A) “§701.5 of this chapter” shall be replaced by “K.A.R. 47-2-75(b).”
- (B) “§772.15 and 773.6(d) of this chapter” shall be replaced by “K.A.R. 47-7-2(a)(5) and K.A.R. 47-3-42(a)(2).”
- (C) “§800.40 of this chapter” shall be replaced by “K.A.R. 47-8-9(a)(13).”
- (D) “§816.131(b) or §817.131(b) of this chapter” shall be replaced by “K.A.R. 47-9-1(c)(43) or (d)(41).”
- (E) “§842.12” shall be replaced by “K.A.R. 47-15-7 and K.A.R. 47-15-8.”
- (F) “§843.11” and “§843.11(b)” shall be replaced by “K.A.R. 47-15-1a(a)(8).”
- (G) “§843.11 or §843.12” shall be replaced by “K.A.R. 47-15-1a(a)(8) and (9).”
- (H) “§843.12(a)” and “§843.12(c) and (f)” shall be replaced by “K.A.R. 47-15-1a(a)(9).”
- (I) “§843.13(c)” shall be replaced by “K.A.R. 47-15-1a(a)(10).”
- (J) “§845.15(b)(2) of this chapter” shall be replaced by “K.A.R. 47-5-5a(a)(5).” (Authorized by K.S.A. 49-405; implementing K.S.A. 49-404, 49-405, 49-405c, and 49-405d, K.S.A. 2018 Supp. 49-406, K.S.A. 49-416, 49-416a, and 49-427; effective May 1, 1985; amended May 1, 1986; amended Feb. 11, 1991; amended May 2, 1997; amended Dec. 1, 2006; amended Feb. 15, 2019.)
- 47-15-2.** (Authorized by K.S.A. 1980 Supp. 49-405; effective, E-81-30, Oct. 8, 1980; effective May 1, 1981; revoked May 1, 1985.)
- 47-15-3. Lack of information; inability to comply.** (a) A notice of violation, cessation order, show cause order, or order revoking or suspending a permit shall not be vacated because it is subsequently determined that the secretary did not have information sufficient to justify an inspection.
- (b) A notice of violation or cessation order shall not be vacated because of inability to comply.
- (c) Inability to comply shall not be considered in determining whether or not a pattern of violation exists.
- (d) Unless caused by lack of diligence, inability to comply may be considered only in mitigation of the amount of the civil penalty and the duration of the suspension of a permit. (Authorized by K.S.A. 49-405, 49-405c; implementing K.S.A. 49-405 and 49-405c; effective, E-81-30, Oct. 8, 1980; effective May 1, 1981; amended Feb. 11, 1991; amended May 2, 1997.)

47-15-4. Injunctive relief. The attorney general may be requested by the secretary to institute any civil action for relief, including a permanent or temporary injunction, and a restraining order or any other order, whenever, in violation of the state act, these regulations, or any condition of an exploration approval or permit, anyone does the following: (a) violates, fails to comply with, or refuses to comply with any order or decision of the secretary or secretary's designee;

(b) interferes with, hinders, or delays the secretary or secretary's designee in carrying out provisions of the state act or these regulations; or

(c) refuses to perform the following:

(1) admit the secretary or secretary's designee to a mine;

(2) permit inspection of a mine by the secretary or secretary's designee;

(3) furnish any required information or report;

(4) permit access to or copying of any required records; or

(5) permit inspection of monitoring equipment. (Authorized by and implementing K.S.A. 49-405; effective, E-81-30, Oct. 8, 1980; effective May 1, 1981; amended Feb. 11, 1991; amended May 2, 1997.)

47-15-5 and 47-15-6. (Authorized by K.S.A. 1982 Supp. 49-405, implementing K.S.A. 1982 Supp. 49-405, 49-405d; effective May 1, 1984; revoked May 1, 1985.)

47-15-7. State inspections. (a) Inspection of surface coal mining and reclamation operations shall be conducted by the secretary or secretary's designee as necessary to determine whether or not the permittee has complied with any notice of violation or cessation order issued during an inspection authorized under this regulation.

(b) A state inspection shall be conducted immediately by the secretary or secretary's designee to enforce any requirement of the state act, these regulations, the regulatory program, or any condition of a permit or an exploration approval.

(c) Appropriate action to have the violation abated shall be taken by the secretary or secretary's designee when, on the basis of information available to the department other than information resulting from a previous state inspection, the secretary or secretary's designee has reason to believe that either of the following has occurred:

(1) the permittee has violated the state act, these regulations, the regulatory program, or any condition of a permit or an exploration approval; or

(2) any condition, practice, or violation creates an imminent danger to the health or safety of the public or is causing or can reasonably be expected to cause a significant, imminent environmental harm to land, air, or water resources. (Authorized by K.S.A. 49-405; implementing K.S.A. 49-405, 49-405d; effective May 1, 1984; amended Feb. 11, 1991; amended May 2, 1997.)

47-15-8. Citizen's requests for state inspections. (a) Any person may request a state inspection under K.A.R. 47-15-7(b) by furnishing the secretary or secretary's designee with a signed, written statement or an oral report followed by a signed, written statement. The statement shall include the following:

(1) the reasons that the person believes a violation, condition, or practice referred to in K.A.R. 47-15-7(b) exists; and

(2) a phone number and address at which the person can be contacted.

(b) Upon request by the person, the identity of any person supplying information to the secretary or secretary's designee relating to a possible violation or imminent danger or harm shall remain confidential, unless that person accompanies the inspector on the inspection.

(c) If a state inspection is conducted as a result of information provided to the secretary or secretary's designee as described in subsection (a) of this regulation, the person requesting the inspection shall be notified as far in advance as practicable as to when the inspection will occur. The person may accompany the secretary or secretary's designee. During the inspection, the person shall have a right of entry to, upon, and through the coal exploration or surface coal mining and reclamation operation about which that person supplied information. However, the person shall be in the presence of and under the control, direction, and supervision of the secretary or secretary's designee while on the mine property. This right of entry shall not include a right to enter buildings without consent of the person in control of the building or without a search warrant.

(d) Within 10 days after the state inspection or, if there is no inspection, within 15 days after receipt of the person's written statement, the secretary or secretary's designee shall send the person the following:

(1)(A) If an inspection was conducted, a description of the enforcement action taken. This description may consist of copies of the state in-

spection report and of all notices of violation and cessation orders issued as a result of the inspection or an explanation as to why no enforcement action was taken; or

(B) if no state inspection was conducted, an explanation of the reason why an inspection was not considered to be necessary; and

(2) an explanation of the person's right, if any, to informal review of the action or inaction of the secretary or secretary's designee under K.A.R. 47-15-1a(a)(6).

(e) Copies of all materials in paragraphs (d)(1) and (d)(2) of this regulation shall be given by the secretary or secretary's designee to the person alleged to be in violation within the time limits specified in those paragraphs. However, the name of the person requesting the inspection shall be removed unless disclosure of the person's identity is permitted under subsection (b) of this regulation. (Authorized by K.S.A. 49-405; implementing K.S.A. 49-405, 49-405d; effective May 1, 1984; amended May 1, 1985; amended Feb. 11, 1991; amended May 2, 1997.)

47-15-9 to 47-15-14. (Authorized by K.S.A. 1982 Supp. 49-405; implementing K.S.A. 1982 Supp. 49-405, 49-405d; effective May 1, 1984; revoked May 1, 1985.)

47-15-15. Service of notices of violations and cessation orders. (a) Promptly after issuance, each notice of violation or cessation order shall be served on the person to whom it is directed or to that person's designated agent, as follows:

(1)(A) A copy of each notice of violation or cessation order may be tendered, at the coal exploration or surface coal mining and reclamation operation, to the designated agent or to the individual who, based upon reasonable inquiry by the authorized representative, appears to be in charge of the coal exploration or surface coal mining and reclamation operation referred to in the notice or order.

(B) If no one in charge can be found, the copy may be tendered to any individual at the site who appears to be an employee or agent of the person to whom the notice or order is issued.

(C) Service shall be complete upon tender of the notice or order and shall not be deemed incomplete because of refusal to accept.

(2)(A) In the alternative, service may be made by sending a copy of the notice or order by certified mail or by delivering the copy by hand to the person to whom it is issued or to the person's designated agent.

(B) Service shall be complete upon tender of the notice or order or upon certified mailing of the notice or order, and service shall not be deemed incomplete because of refusal to accept.

(b) A show cause order may be served on the person to whom it is issued in either manner provided in subsection (a) of this regulation.

(c) A person shall make any designation of an agent for service of notices and orders in writing and to the secretary or secretary's designee.

(d) The secretary or secretary's designee may furnish copies to any person having an interest in the coal exploration, surface coal mining and reclamation operation, or the permit area, including the owner of the fee, a corporate officer of the permittee or entity conducting coal exploration, or the bonding company. (Authorized by K.S.A. 49-405; implementing K.S.A. 49-405, 49-405d; effective May 1, 1984; amended Feb. 11, 1991; amended May 2, 1997.)

47-15-16. (Authorized by K.S.A. 1982 Supp. 49-405; implementing K.S.A. 1982 Supp. 49-405, 49-405d, 49-416a; effective May 1, 1984; revoked May 1, 1985.)

47-15-17. Maintenance of permit areas. The permittee shall be required by the secretary or the secretary's designee to cut vegetative growth, if necessary to facilitate inspection of each permit area in order to insure compliance with the state act and regulations. (Authorized by K.S.A. 49-405; implementing K.S.A. 49-405, 49-405d; effective May 1, 1985; amended Feb. 11, 1991; amended May 2, 1997.)

Article 16.—RECLAMATION

47-16-1. Eligible lands and water. (a) Coal mined lands and associated waters shall be eligible for reclamation activities if these conditions are met:

(1) they were mined or affected by mining processes;

(2) they were mined before August 3, 1977, and were left or abandoned in an unreclaimed or inadequately reclaimed condition; and

(3) there is no continuing responsibility for reclamation by the operator, permittee, or agent of the permittee under statutes of the state or federal government or a result of bond forfeiture. Bond forfeiture shall render lands or water ineligible only if the amount forfeited is sufficient to pay the total cost of the necessary reclamation.

(b) Lands and water that were mined or affected by mining for minerals and materials other than coal shall be eligible for reclamation activities if all reclamation with respect to abandoned coal mine land and water has been accomplished within the state.

(c) "Left or abandoned in an unreclaimed or inadequately reclaimed condition" means land and water that meet the following conditions:

(1) were mined or affected by such mining, wastebanks, processing, or other mining processes before August 3, 1977, and on which all mining has ceased;

(2) continue, in their present condition, to substantially degrade the quality of the environment, prevent or damage the beneficial use of land or water resources, or endanger the health and safety of the public; and

(3) are not subject to any continuing reclamation responsibility under state or federal laws. (Authorized by K.S.A. 49-405; implementing K.S.A. 49-428; effective May 1, 1983; amended Feb. 11, 1991; amended May 2, 1997.)

47-16-2. Reclamation project evaluation.

Proposed reclamation projects and completed reclamation work shall be evaluated using the factors stated in this section to determine whether or not proposed reclamation will be undertaken and to assign priorities to proposals intended to meet the objectives of K.S.A. 49-428. Completed reclamation shall be evaluated using the following factors to identify conditions that should be avoided, corrected, or improved in plans for future reclamation work: (a) the need for reclamation work to accomplish one or more specific objectives stated in K.S.A. 49-428;

(b) the availability of technology to accomplish the reclamation work with reasonable assurance of success. In the case of research and demonstration projects, the research capability and plans shall provide reasonable assurance of beneficial results without residual adverse impacts;

(c) the specific benefits of the reclamation work for the area including the following:

(1) protection of human life, health, or safety;

(2) protection of the environment, including air and water quality, fish and wildlife, plant habitat, visual beauty, historic, cultural or recreation resources, and abatement of erosion sedimentation;

(3) protection of public or private property;

(4) improvement of environmental conditions that may be considered to generally enhance the quality of human life;

(5) improvement of natural resource use, including:

(A) increasing productivity capability of the land;

(B) enhancing the use of surrounding lands consistent with existing land use plans;

(C) providing for construction or enhancement of public facilities; and

(D) providing for residential, commercial, or industrial developments consistent with the needs and plans of the community in which the site is located; and

(6) technologies that can be used to reclaim areas disturbed by mining;

(d) any additional adverse impacts to people or the environment during or after reclamation and of uncorrected conditions, if any, that will continue to exist after reclamation;

(e) the costs of reclamation. Consideration shall be given to both the economy and efficiency of the reclamation work and to the results obtained or expected as a result of reclamation;

(f) any additional coal or other mineral or material resources within the project area when either of the following conditions exists:

(1) a reasonable probability that the desired reclamation could be accomplished in conjunction with future mining; or

(2) a need to assure that the resource is not lost as a result of reclamation and the benefits of reclamation are not negated by subsequent, essential resource recovery operations;

(g) compatibility of post-reclamation land uses with the following:

(1) land uses in the surrounding area;

(2) applicable state, regional, and local land use plans and laws; and

(3) the needs and desires of the community where the project is located; and

(h) the probability that post-reclamation management, maintenance and control of the area will be consistent with the reclamation completed. (Authorized by K.S.A. 49-405; implementing K.S.A. 49-428; effective May 1, 1983; amended Feb. 11, 1991; amended May 2, 1997.)

47-16-3. Consent to entry. (a) All reasonable actions that are necessary to obtain prior written consent from the owner of record of the land or property to be entered shall be taken by the secretary or secretary's designee.

(b) The consent shall consist of a signed statement by the owner or the owner's authorized agent that shall include the following:

(1) a legal description of the land to be entered;
 (2) the nature of work to be performed on the lands; and

(3) any special conditions for entry.

(c) This statement shall not include any commitment by the secretary to perform reclamation work or compensate the owner for entry. (Authorized by K.S.A. 49-405; implementing K.S.A. 49-432; effective May 1, 1983; amended Feb. 11, 1991; amended May 2, 1997.)

47-16-4. Entry for study or exploration.

(a) Any property may be entered by the secretary or secretary's designee for the purpose of conducting studies or exploratory work to determine the following:

(1) the existence of adverse effects of past coal mining practices; and

(2) the feasibility of restoration, reclamation, abatement, control, or prevention of adverse effects.

(b) If the owner will not give consent to entry, notice shall be given to the owner in writing of the secretary's intent to enter for purposes of study and exploration to determine the existence of adverse effects of past coal mining practices that may be harmful to the public health, safety, or general welfare. The notice shall be provided by mail, return receipt requested, to the owner, if known, and shall include a statement of the reasons why entry is believed necessary. If the owner is not known, or the current mailing address of the owner is not known, or if the owner is not readily available, the notice shall be posted in one or more places on the property to be entered where it is readily visible to the public. In addition, the notice shall be published once in a newspaper of general circulation in the locality in which the land is located. Notice shall be given at least 30 days before entry. (Authorized by K.S.A. 49-405; implementing K.S.A. 49-432; effective May 1, 1983; amended Feb. 11, 1991; amended May 2, 1997.)

47-16-5. Entry and consent to reclaim.

(a) Notice shall be given of the secretary's intent to enter for purposes of conducting reclamation at least 30 days before entry upon the property. The notice shall be in writing and shall be mailed, return receipt requested, to the owner, if known, with a copy of the findings required by K.S.A. 49-432. If the owner is not known, or if the current mailing address of the owner is not known, notice shall be posted in one or more places on the property to be entered where it

is readily visible to the public. In addition, the notice shall be published once in a newspaper of general circulation in the locality in which the land is located. The notice shall include a statement of where the findings required by K.S.A. 49-432 may be inspected or obtained.

(b) Any land where an emergency exists and on any other land necessary to gain access to the land where an emergency exists may be entered by the secretary to restore, reclaim, abate, control, or prevent the adverse effects of past coal mining practices and to do all things necessary to protect the public health, safety, or general welfare.

(1) Before entry a written finding shall be made by the secretary with reasons supporting the following conclusions:

(A) an emergency exists constituting a danger to the public health, safety, or general welfare; and

(B) no other person or agency will act expeditiously to restore, reclaim, abate, control, or prevent the adverse effects of coal mining practices.

(2) Notice to the owner shall not be required before entry for emergency reclamation. Reasonable efforts to notify the owner and obtain prior consent shall be made by the secretary. These efforts shall be consistent with the existing emergency conditions. Proper written notice shall be given to the owner as soon after entry as practical. (Authorized by K.S.A. 49-405; implementing K.S.A. 49-432; effective May 1, 1983; amended Feb. 11, 1991; amended May 2, 1997.)

47-16-6. Liens. (a) A lien may be placed by the secretary on land reclaimed if the reclamation results in a significant increase in the fair market value based on the pre- and post-reclamation appraisals, except that the lien may be waived by the secretary or the secretary's designee if at least one of the following conditions is met:

(1) The lien amount would be less than the cost of filing the lien.

(2) The reclamation work primarily improves the health, safety, or condition of the environment of the community or area affected.

(3) The reclamation is necessitated by an unforeseen occurrence, and the work performed to restore the land will not significantly increase the market value of the land as it existed immediately before the occurrence.

(b) A lien shall not be placed against land reclaimed if the current owner of the property acquired title before May 2, 1977 and did not consent to, participate in, or exercise control over

the mining operation that caused or contributed to the unreclaimed conditions.

(c) If a lien is to be filed, within six months after completion of the reclamation work, a statement shall be filed by the secretary in the office having responsibility under applicable law for recording judgments and placing liens against land. The statement shall include the following:

(1) An account of monies expended for the reclamation work; and

(2) a notarized summary of the appraisal report.

(d) The increase in the appraised value of the property shall constitute the amount of the lien recorded and shall have priority second only to a real estate tax lien. The landowner shall be afforded the following:

(1) Notified before the time of filing the lien of the amount of the proposed lien; and

(2) allowed a reasonable time to pay that amount in lieu of filing the lien. (Authorized by K.S.A. 49-405; implementing K.S.A. 49-428; effective May 1, 1983; amended Feb. 11, 1991; amended May 2, 1997; amended July 31, 1998; amended Feb. 15, 2019.)

47-16-7. Appraisals. (a) In order for a lien to be filed under K.A.R. 47-16-6, the following procedures shall be followed. (a) A notarized appraisal of the fair market value of the land shall be obtained from an independent, professional appraiser before any reclamation activities are started.

(b) A second, notarized appraisal of the fair market value of the land shall be obtained after all reclamation activities have been completed.

(c) The landowner shall receive a statement of any increase in market value, an itemized statement of reclamation expenses, and a notice that a lien will be filed against the property. (Authorized by K.S.A. 49-405; implementing K.S.A. 49-428; effective May 1, 1983; amended Feb. 11, 1991; amended May 2, 1997.)

47-16-8. Satisfaction of liens. (a) A lien shall be satisfied to the extent of the value of the consideration received, at the time of transfer of ownership. Any unsatisfied portion shall remain as a lien on the property and shall be satisfied in accordance with this subsection.

(b) Liens shall be maintained or renewed by the secretary from time to time as may be required.

(c) Monies derived from the satisfaction of liens established under this subsection shall be deposit-

ed in the state abandoned mined-land fund. (Authorized by K.S.A. 49-405; implementing K.S.A. 49-428; effective May 1, 1983; amended Feb. 11, 1991; amended May 2, 1997.)

47-16-9. Contractor responsibility. (a) Each successful bidder for an abandoned mined-land reclamation project contract shall be eligible under 30 C.F.R. 773.12(a), as adopted by reference in K.A.R. 47-3-42(a)(8), at the time of contract award to receive a permit or conditional permit to conduct surface coal mining operations.

(b) Before any contract may be awarded to a bidder, that bidder's eligibility shall be confirmed by the office of surface mining's automated applicant violator system. (Authorized by K.S.A. 49-405; implementing K.S.A. 49-428; effective May 2, 1997; amended July 31, 1998; amended Dec. 1, 2006; amended Feb. 15, 2019.)

47-16-10. Exclusion of certain noncoal reclamation sites. (a) Money from the abandoned mined-land fund shall not be used for either of the following:

(1) The reclamation of sites and areas designated for remedial action pursuant to the uranium mill tailings radiation control act of 1978, 42 U.S.C. 7901 et seq. as amended; or

(2) sites listed for remedial action pursuant to the comprehensive environmental response compensation and liability act of 1980, 42 U.S.C. 9601 et seq. as amended.

(b)(1) Each successful bidder for an abandoned mined-land contract for noncoal reclamation shall be eligible under 30 C.F.R. 773.12(a), as adopted by reference in K.A.R. 47-3-42(a)(8), at the time of contract award to receive a permit or conditional permit to conduct surface coal mining operations.

(2) Bidder eligibility shall be confirmed by the office of surface mining's automated applicant violator system for each contract to be awarded. (Authorized by K.S.A. 49-405; implementing K.S.A. 49-428; effective May 2, 1997; amended July 31, 1998; amended Dec. 1, 2006; amended Feb. 15, 2019.)

47-16-11. Reports. For each grant, cooperative agreement, or both, any reports required by the office of surface mining reclamation and enforcement shall be submitted by the department either semiannually or annually, according to OSM requirements, to the office of surface mining reclamation and enforcement. (Authorized by

K.S.A. 49-405; implementing K.S.A. 49-428; effective May 2, 1997; amended July 31, 1998.)

47-16-12. Surface mining section's procedures for reclamation projects receiving less than 50 percent government funding.

30 C.F.R. 874.17, as in effect on July 1, 2012, is adopted by reference, except that the following terms shall be replaced with the terms specified:

(a) "Title V" and "Title V of SMCRA" shall be replaced by "K.S.A. 49-401 et seq."

(b) "Part 707 of this chapter" and "the part 707 exemption or counterpart State/Indian Tribe laws and regulations" shall be replaced by "K.A.R. 47-6-9."

(c) "30 CFR subchapter R" shall be replaced by "Article 12 of these regulations." (Authorized by K.S.A. 49-405; implementing K.S.A. 49-428; amended Dec. 1, 2006; amended Feb. 15, 2019.)

47-16-13. Reclamation of non-coal-mined lands and associated waters. (a) Non-coal-mined lands and associated waters shall be eligible for reclamation if all of the following conditions are met:

(1) The lands and waters were mined or affected by mining processes.

(2) The lands and waters were left or abandoned

in an unreclaimed or inadequately reclaimed condition before August 3, 1977.

(3) There is no ongoing responsibility for reclamation by the operator, permittee, or agent of the permittee under state or federal statutes or by the state as a result of bond forfeiture. Bond forfeiture shall render the lands and waters ineligible if the amount forfeited is sufficient to pay the total cost of necessary reclamation. If the forfeited bond is insufficient to pay the total cost of reclamation, moneys sufficient to complete the reclamation may be used from the abandoned mined-land fund.

(4) The reclamation has been requested by the governor.

(5) The reclamation is necessary to protect public health, safety, general welfare, and property from extreme danger of adverse effects of non-coal-mining practices.

(b) Each successful bidder for a contract for a non-coal-reclamation project under this regulation shall be eligible under 30 C.F.R. 773.12, as adopted by reference in K.A.R. 47-3-42, at the time of contract award to receive a permit or conditional permit to conduct surface coal mining operations. (Authorized by K.S.A. 49-405; implementing K.S.A. 49-428; effective Feb. 15, 2019.)

Agency 48
Department of Labor—
Employment Security Board of Review

Editor's Note:

The Department of Human Resources was renamed the Department of Labor by Executive Reorganization Order No. 31. See L. 2004, Ch. 191.

Editor's Note:

Formerly referred to as Board of Review—Labor.

Articles

- 48-1. APPELLATE PROCEDURE.
- 48-2. BOARD: ORGANIZATION AND PROCEDURE.
- 48-3. APPEALS.
- 48-4. FILING APPEALS.

Article 1.—APPELLATE PROCEDURE

48-1-1. Filing of appeal. Each party appealing from a decision of an examiner or referee shall file with any representative of the division of employment a written notice of appeal stating the reasons for the appeal. (Authorized by K.S.A. 2008 Supp. 44-709(g); implementing K.S.A. 2008 Supp. 44-709(b) and (c); effective Jan. 1, 1966; amended Jan. 1, 1971; amended May 1, 1980; amended Jan. 22, 2010.)

48-1-2. Notice of hearing. Upon the scheduling of a hearing on an appeal, notice of hearing on a form approved by the board of review and titled notice of hearing shall be mailed by the office of appeals to the last known address of the claimant, employer, and other interested parties, at least five days before the date of hearing. The notice shall specify the time and place of the hearing, issues to be decided, and an indication of whether the hearing will be by telephone or in person. (Authorized by K.S.A. 2008 Supp. 44-709(g); implementing K.S.A. 2008 Supp. 44-709(c) and (k); effective Jan. 1, 1966; amended Jan. 1, 1971; amended Jan. 22, 2010.)

48-1-3. Disqualification of referees. No referee shall participate in the hearing of an appeal in which the referee has an interest. All challenges to the interest of any referee shall be made to the referee on or before the date set for the hearing unless good cause is shown for later chal-

lenges. Each challenge to the interest of a referee shall be heard and decided immediately by the referee or, at the referee's discretion, referred to the board of review. If the challenge is not heard immediately or is referred to the board of review, the hearing of the appeal shall be continued until the disposition of the challenge. The referee shall cause all parties to be notified of the new date set for the hearing by mailing a notice to the last known address of all parties to the appeal at least five days before the date set for the hearing. (Authorized by K.S.A. 2008 Supp. 44-709(g); implementing K.S.A. 2008 Supp. 44-709(d); effective Jan. 1, 1966; amended May 1, 1980; amended Jan. 22, 2010.)

48-1-4. Conduct of hearing. (a) (1) Each hearing shall be conducted informally and in such a manner as to ascertain all of the facts and the full rights of the parties.

(2) The referee shall receive evidence logically tending to prove or disprove a given fact in issue, including hearsay evidence and irrespective of common law rules of evidence. Hearsay evidence shall be admissible but carries less weight than direct evidence and shall not be persuasive if the other party contests its admissibility. Each party submitting its evidence shall explain its relevance to the issue in question before the referee admits the evidence into the record. The claimant and any other party to an appeal before a referee shall present pertinent evidence regarding the issues involved.

(3) Uncorroborated hearsay evidence shall not solely support a finding of fact or decision.

(4) If any evidence is unnecessarily cumulative in effect or evidence neither proves nor disproves relevant facts in issue, the referee shall, on objection of appellant, claimant, or interested party or on that individual's own motion, exclude or prohibit any of this evidence from being received.

(b) When a party appears in person or by telephone, the referee shall examine the party and the party's witnesses, if any, to the extent necessary to ascertain all of the facts. During the hearing of any appeal, the referee shall, with or without notice to either of the parties, take any additional evidence deemed necessary to determine the issues identified in the notice of hearing. If during the hearing a party raises an issue not identified in the notice of hearing, the referee shall not determine that issue or consider any evidence in support of that issue unless the other party consents to the referee's deciding that issue.

(c) The parties to an appeal, with the consent of the referee, may stipulate in writing or under oath at the hearing as to the facts involved.

(d) The referee shall record the hearing by use of a recording device or a court reporter. The recording shall constitute the official record. Other recording devices or methods shall not be allowed in the hearing.

(e) (1) Hearings may be conducted in person or by telephone, subject to the following requirements:

(A) The hearing shall be conducted by telephone if none of the parties requests an in-person hearing.

(B) If only one party requests an in-person hearing, the referee shall have the discretion of requiring all parties to appear in person or allow the party not requesting an in-person hearing to appear by telephone.

(C) If all the parties involved request an in-person hearing before the date of a scheduled telephone hearing, the matter shall be continued and set for an in-person hearing.

(D) The party requesting the in-person hearing shall be deemed to have agreed that the hearing will be scheduled at a time and geographic location to be determined by the office of appeals and shall be deemed to have agreed to a delay of the hearing to accommodate scheduling of the hearing.

(E) An in-person hearing shall be held if deemed necessary by the secretary of labor or the

secretary's designee for the fair disposition of the appeal.

(2) Each hearing scheduled in person or by telephone shall meet these requirements:

(A) Permit confrontation and cross-examination of the parties and witnesses; and

(B) permit the simultaneous participation of all parties.

(3) An authorized representative or an attorney representing a party may appear by telephone at a geographic location different from that of the party represented.

(4) Documentary evidence shall be submitted no later than 1:00 p.m. on the business day before the hearing by mail or fax to the referee and opposing party. However, the referee shall allow the submission of documentary evidence at the hearing or after the hearing, if to do so is necessary for the fair disposition of the appeal and the party attempting to introduce the evidence shows to the referee's satisfaction there was good cause for not submitting the evidence in advance of the hearing.

(f) If a party appears by telephone, the party shall call as instructed by the notice of hearing no later than 1:00 p.m. on the business day before the scheduled hearing to give the telephone number at which the party and any witness can be contacted by the referee at the time of the hearing. If the hearing is continued, the referee shall contact the parties and any witnesses at the telephone numbers provided for the original hearing. If a party or witness cannot be contacted at the telephone number originally given, the party shall call the office of appeals no later than 1:00 p.m. on the regular business day before the date on which the hearing is to be continued and shall give the telephone number at which the party and any witness can be contacted. Unless good cause is shown to the referee, failure to provide the telephone numbers as required by this subsection shall constitute a nonappearance, and the hearing shall proceed as scheduled without the participation of the party or witness.

(g) The appearance of a party or witness by cellular or mobile telephone shall be permitted. However, the referee shall allow the appearance of a party or witness by cellular or mobile telephone only if the use is under safe conditions. If the referee determines that the party or witness is not using the cellular or mobile telephone under safe conditions, the referee may stop the hearing and continue the hearing until the party or witness can participate safely. The unsafe use of a cel-

lular or mobile telephone shall include driving a vehicle or operating any sort of mechanical device while participating in the hearing.

If the transmission of the cellular or mobile telephone is disrupted, causing the call to be dropped or making it difficult for the referee to hear the party's or witness's testimony or speak to the party or witness, the hearing shall proceed without the participation of the party or witness. If the hearing proceeds, the inability of the party or witness to participate shall be considered a nonappearance for the purpose of rendering a decision based on the merits of the case.

(h) If the ability of a party or witness to participate in a hearing before a referee or the board of review is impaired because of a disability or difficulty with the English language, the party shall contact the office of appeals for assistance and information about a qualified interpreter. The use of a personal interpreter for the purposes of presenting the party's argument and evidence and examining witnesses shall not be allowed. The only interpreter permitted to give assistance to a party or a witness in the hearing shall be an interpreter approved by the office of appeals.

(i) All parties and witnesses shall testify under oath and be subject to the provisions of K.S.A. 44-719, and amendments thereto.

(j) (1) After making reasonable attempts allowable by the circumstances to secure the presence of a witness or to obtain copies of documents in the possession of the other party or third parties, a party may request the issuance of a subpoena for a witness or documents by submitting a written request to the office of appeals. The request shall contain the correct name and address of each witness to be subpoenaed. If the subpoena is for documents, the documents shall be described to make them reasonably identifiable, and the request shall include the name of the party in possession of those documents.

(2) The referee shall exercise discretion in determining whether the party requesting the subpoena has made reasonable attempts as allowed by the circumstances to secure the presence of a witness or obtain the documents sought without the use of a subpoena. If, in the opinion of the referee, the requesting party has not made reasonable efforts, the request shall be denied and the matter shall be set for a hearing.

(3) The referee shall reschedule a hearing if a subpoena cannot be effectively served in accordance with the service requirements of K.S.A.

44-714(h) and amendments thereto. (Authorized by K.S.A. 2008 Supp. 44-709(g) and K.S.A. 2008 Supp. 44-714(g); implementing K.S.A. 2008 Supp. 44-709(c) and (k), K.S.A. 2008 Supp. 44-714(h), and K.S.A. 2008 Supp. 44-719; effective Jan. 1, 1966; amended Jan. 1, 1971; amended May 1, 1980; amended May 1, 1987; amended May 22, 1998; amended Jan. 22, 2010.)

48-1-5. Continuance of hearings; withdrawal of appeal. The referee may continue any hearing upon the referee's own motion or upon written application of any party to the appeal submitted to the referee no later than 1:00 p.m. on the business day before the hearing. If a party believes that the party needs additional time beyond what is scheduled for the hearing, the party shall notify the referee of the need for allocating additional time for the hearing no later than 1:00 p.m. on the business day before the hearing. The referee shall exercise discretion whether to grant a party's request for a longer hearing than originally scheduled. (a) Failure to appear. If the appellant or any other party fails to appear at any hearing, the referee shall make a decision based on the record at hand. If the nonappearing party within 10 days following the mailing of the decision petitions the referee for a hearing and shows good cause for the nonappearance, the referee shall set aside the decision and reschedule the matter for hearing.

(b) Notice of continuance. The referee shall cause notices to be mailed to the last known address of all interested parties to the appeal wherever there is a continuance.

(c) Withdrawal of appeal. An appellant, with the consent of the referee, may withdraw an appeal in writing or under oath at the hearing. (Authorized by K.S.A. 2008 Supp. 44-709(g); implementing K.S.A. 2008 Supp. 44-709(c) and (g); effective Jan. 1, 1966; amended Jan. 1, 1971; amended May 1, 1980; amended Jan. 22, 2010.)

48-1-6. Determination of appeal. After the hearing of an appeal, the referee shall, within a reasonable time, announce findings of fact and the decision with respect to the appeal. The decision shall be in writing and shall be signed by the referee. The referee shall set forth findings of fact with respect to the matters of appeal, the decision, and the reasons for the decision. (a) Copies of all decisions shall be mailed by the referee to the last known address of the claimant, employer, and all other interested parties to the appeal.

(b) All decisions shall contain the appeal rights of the parties. (Authorized by K.S.A. 2008 Supp. 44-709(g); implementing K.S.A. 2008 Supp. 44-709(c); effective Jan. 1, 1966; amended Jan. 1, 1971; amended May 1, 1980; amended Jan. 22, 2010.)

Article 2.—BOARD: ORGANIZATION AND PROCEDURE

48-2-1. Creation and organization. Election of officers. The board of review shall annually in July elect one of its members chairperson. A vice chairperson and the officers shall serve for one year and until a successor is elected. (Authorized by K.S.A. 2008 Supp. 44-709(g); implementing K.S.A. 2008 Supp. 44-709(f); effective Jan. 1, 1966; amended Jan. 1, 1971; amended May 1, 1980; amended Jan. 22, 2010.)

48-2-2. Filing of appeal to the board of review. Each party appealing from a decision of a referee shall file with any representative of the division of employment a written notice of appeal within the period the law allows, stating the reasons for the appeal. Copies of the notice of appeal shall be mailed by the division of employment to the last known address of all parties interested in the decision of the referee that is being appealed. (Authorized by K.S.A. 2008 Supp. 44-709(g); implementing K.S.A. 2008 Supp. 44-709(c) and (f); effective Jan. 1, 1966; amended Jan. 1, 1971; amended May 1, 1980; amended Jan. 22, 2010.)

48-2-3. Hearing of appeals. The board of review shall accept appeals that have an appealable issue from any referee decision that has been timely filed. The board's decision on the merits shall be based upon the evidence and the record made before the referee and any additional evidence that the board directs to be taken. (Authorized by K.S.A. 2008 Supp. 44-709(g); implementing K.S.A. 2008 Supp. 44-709(c) and (f); effective Jan. 1, 1966; amended Jan. 1, 1971; amended May 1, 1980; amended Jan. 22, 2010.)

48-2-4. Additional evidence. The board of review shall, at its discretion, remand any claim or any issue involved in a claim to a referee or special hearing officer for the taking of any additional evidence that the board of review deems necessary. The evidence shall be taken before the referee or special hearing officer in the manner prescribed for hearings before the referee. (Authorized by K.S.A. 2008 Supp. 44-709(g); imple-

menting K.S.A. 2008 Supp. 44-709(f); effective Jan. 1, 1966; amended May 1, 1980; amended Jan. 22, 2010.)

48-2-5. Decision of the board of review. The board of review shall within a reasonable time announce its findings of fact and decision with respect to each appeal. The decision shall be in writing and signed by those members who concur with the decision. If the decision is not unanimous, the decision of the majority shall control. The minority opinion, including any written dissent, shall be made a part of the record. Copies of all decisions of the board of review shall be mailed to the last known address of the parties to the appeal. All decisions shall inform the parties of their appeal rights. (Authorized by K.S.A. 2008 Supp. 44-709(g); implementing K.S.A. 2008 Supp. 44-709(f) and (i); effective Jan. 1, 1966; amended Jan. 1, 1971; amended May 1, 1980; amended Jan. 22, 2010.)

48-2-6 and 48-2-7. (Authorized by K.S.A. 1979 Supp. 44-709(g); effective Jan. 1, 1966; revoked May 1, 1980.)

Article 3.—APPEALS

48-3-1. Witnesses. Each witness subpoenaed for any hearing before a referee or special hearing officer shall be paid pursuant to K.S.A. 28-125 and K.S.A. 75-3203 and amendments thereto. (Authorized by K.S.A. 2008 Supp. 44-709(g); implementing K.S.A. 2008 Supp. 44-709(h); effective Jan. 1, 1966; amended Jan. 1, 1971; amended May 1, 1980; amended Jan. 22, 2010.)

48-3-2. Representation before referee and board of review. (a) Appearance in person. The parties may appear in person and by an attorney or by an authorized representative.

(b) Representation by attorney. A party to the proceeding may be represented by an attorney who is regularly admitted to practice before the supreme court of Kansas, or by any attorney from without the state who complies with the provisions of Kansas Supreme Court rule 116. Each attorney representing a party before a referee shall file an entry of appearance with the referee before the hearing begins. Each attorney who did not represent a party before the referee but is representing a party before the board of review shall file an entry of appearance with the board of review.

(c) Representation by an authorized representative.

(1) Any party may be represented by an authorized representative. For the purpose of this article, an authorized representative shall mean any of the following:

- (A) A union representative;
- (B) an employee of an unemployment compensation cost-control management firm;
- (C) an employee of a corporate party; or
- (D) a legal intern authorized to represent clients pursuant to the provisions of Kansas Supreme Court rule 719.

(2) A referee or the board of review may limit or disallow participation in a hearing by an authorized representative under either of the following circumstances:

(A) The representative does not effectively aid in the presentation of the represented party's case.

(B) The representative delays the orderly progression of the hearing.

(d) Standards of conduct. A referee or the board of review may exclude a party, witness, or a party's representative from participation in the hearing or may terminate the hearing and issue a decision based upon the available evidence if a party or a party's representative intentionally and repeatedly fails to observe the provisions of the Kansas employment security law, the regulations of the secretary of labor or the board of review, or the instructions of a referee or the board of review.

(e) Fees. No fees shall be charged or received for the representation of an individual claiming unemployment benefits until the fees have been approved in accordance with K.S.A. 44-718(b) and amendments thereto. (Authorized by K.S.A. 2008 Supp. 44-709(g); implementing K.S.A. 2008 Supp. 44-709(c) and (k); effective Jan. 1, 1966; amended Jan. 1, 1971; amended May 1, 1980; amended May 1, 1987; amended Jan. 22, 2010.)

48-3-3. (Authorized by K.S.A. 1979 Supp. 44-709(f); effective Jan. 1, 1966; revoked May 1, 1980.)

48-3-4. Service of notice. Notice of all hearings or proceedings required by this article shall,

unless otherwise provided, be given by mail to the last known address of the parties and other interested parties. (Authorized by and implementing K.S.A. 2008 Supp. 44-709(g); effective Jan. 1, 1966; amended Jan. 22, 2010.)

48-3-5. Disqualification of board members. No member of the board of review shall participate in the consideration of any case in which the member has an interest. (Authorized by and implementing K.S.A. 2008 Supp. 44-709(g); effective Jan. 1, 1966; amended May 1, 1980; amended Jan. 22, 2010.)

Article 4.—FILING APPEALS

48-4-1. Notice of appeal; when filed. Each notice of appeal filed in person shall be considered filed on the date delivered to any employee or representative of the division of employment. Each notice of appeal filed by mail shall be considered filed on the date postmarked. If the postmark on the envelope is illegible or is missing, the appeal filed by mail shall be considered filed on the date received by the agency less a calculated time reasonably expected to elapse enroute between the place of mailing and the place of delivery, but in no case less than three days. (Authorized by K.S.A. 2008 Supp. 44-709(g); implementing K.S.A. 2008 Supp. 44-709(b) and (c); effective Jan. 1, 1967; amended, E-70-32, July 1, 1970; amended Jan. 1, 1971; amended May 1, 1980; amended Jan. 22, 2010.)

48-4-2. Constructive filing. A notice of appeal not filed on time as prescribed by K.S.A. 44-709, and amendments thereto, and these regulations may be considered timely filed if the referee or the board of review finds that the party appealing failed to file a timely appeal because of excusable neglect. (Authorized by and implementing K.S.A. 2008 Supp. 44-709(g); effective, E-70-32, July 1, 1970; effective Jan. 1, 1971; amended Jan. 1, 1974; amended May 1, 1980; amended Jan. 22, 2010.)

Agency 49

Department of Labor

Editor's Note:

The Department of Human Resources was renamed the Department of Labor by Executive Reorganization Order No. 31. See L. 2004, Ch. 191.

Editor's Note:

This agency was formerly entitled "Labor Department." The Labor Department was reorganized into the Department of Human Resources by Executive Reorganization Order No. 14, see L. 1976, Ch. 354.

Articles

- 49-1. HOURS AND WORKING CONDITIONS; WOMEN AND MINORS.
- 49-2. *MEANING OF TERMS (BOILER INSPECTION). (Not in active use.)*
- 49-3. *ADMINISTRATION (BOILER INSPECTION). (Not in active use.)*
- 49-4. *CONSTRUCTION AND USE (BOILER INSPECTION). (Not in active use.)*
- 49-6. COLLECTIVE BARGAINING UNIT; SELECTION.
- 49-7. SECRET BALLOT ELECTION; ALL-UNION AGREEMENT.
- 49-8. SECRET BALLOT ELECTION; STRIKE, WALKOUT AND CESSATION OF WORK.
- 49-9. ALL TYPES OF ELECTIONS.
- 49-10. HOLDING A MANUAL BALLOT.
- 49-11. CONDUCT OF MAIL REFERENDUM BALLOT.
- 49-12. JOINTLY CONDUCTED UNION-MANAGEMENT ELECTION.
- 49-13. *MEANING OF TERMS. (Not in active use.)*
- 49-14. *PROCEDURE. (Not in active use.)*
- 49-15. ENFORCEMENT.
- 49-16. RECORDS AND RETENTION.
- 49-17. *CONSTRUCTION OF RULES AND REGULATIONS. (Not in active use.)*
- 49-18. *AVAILABILITY OF RULES AND REGULATIONS. (Not in active use.)*
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- 49-50. GENERAL REQUIREMENTS FOR ALL BOILERS.
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**Article 1.—HOURS AND WORKING
 CONDITIONS; WOMEN AND MINORS**

49-1-1 to 49-1-5. (Authorized by K.S.A. 44-601(a), 44-608, 44-645, 75-3402; effective Jan. 1, 1966; revoked May 1, 1979.)

49-1-50. Designation of rules constituting prohibited employment for minors. These rules shall be known as the hazardous work, trade, or occupations which constitute prohibited employment for minors under eighteen (18) years of age. (Authorized by K.S.A. 38-602; effective May 1, 1975.)

49-1-51. Occupations declared hazardous; prohibitions. No child under eighteen (18) years of age shall be at any time employed in any of the occupations declared hazardous in Kansas administrative regulations 49-1-52 through 49-1-68. (Authorized by K.S.A. 38-602; effective May 1, 1975.)

49-1-52. Occupations in or about plants or establishments manufacturing or storing explosives or articles containing explosive components. (1) *Occupations.*

(a) All occupations in or about any plant or establishment (other than retail establishments or plants or establishments of the type described in subparagraph (2) (a) of this paragraph) manufacturing or storing of explosives or articles containing explosive components except where the occupation is performed in a “nonexplosives area” as defined in subparagraph (2)(c) of this section.

(b) The following occupations in or about any plant or establishment manufacturing or storing small-arms ammunition not exceeding .60 caliber in size, shotgun shells, or blasting caps when manufactured or stored in conjunction with the manufacture of small-arms ammunition:

(1) All occupations involved in the manufacturing, mixing, transporting, or handling of explosive compounds in the manufacture of small-arms ammunition and all other occupations requiring the performance of any duties in the explosives area

in which explosive compounds are manufactured or mixed.

(2) All occupations involved in the manufacturing, transporting, or handling of primers and all other occupations requiring the performance of any duties in the same building in which primers are manufactured.

(3) All occupations involved in the priming of cartridges and all other occupations requiring the performance of any duties in the same workroom in which rim-fire cartridges are primed.

(4) All occupations involved in the plate loading of cartridges and in the operation of automatic loading machines.

(5) All occupations involved in the loading, inspecting, packing, shipping and storage of blasting caps.

(2) *Definitions.*

(a) The term “plant or establishment manufacturing or storing explosive or articles containing explosive components” means the land with all the buildings and other structures thereon used in connection with the manufacturing or processing or storing of explosives or articles containing explosive components.

(b) The terms “explosives” and “articles containing explosive components” mean and include ammunition, black powder, blasting caps, fireworks, high explosives, primers, smokeless powder, and all goods classified and defined as explosives by the interstate commerce commission in regulations for the transportation of explosives and other dangerous substances by common carriers.

(c) An area meeting all of the following criteria shall be deemed a “nonexplosives area”:

(1) None of the work performed in the area involves the handling or use of explosives;

(2) The area is separated from the explosives area by a distance not less than that prescribed in the American table of distances for the protection of inhabited buildings;

(3) The area is separated from the explosives area by a fence or is otherwise located so that it constitutes a definite designated area; and

(4) Satisfactory controls have been established to prevent employees under 18 years of age within the area from entering any area in or about the plant which does not meet criteria (1) through (3). (Authorized by K.S.A. 38-602; effective May 1, 1975.)

49-1-53. Occupations of motor-vehicle driver and outside helper. (1) *Occupations.* Except as provided in paragraph (2). The occupations of motor-vehicle driver and outside helper on any public road, highway, in or about any mine (including open-pit mine or quarry), place where logging or sawmill operations are in progress, or in any excavation of the type identified in 49-1-68.

(2) *Exemptions.* Incidental and occasional driving. The finding and declaration in paragraph (1) shall not apply to the operation of automobiles or trucks not exceeding 6,000 pounds gross vehicle weight if such driving is restricted to daylight hours; *Provided*, such operation is only occasional and incidental to the child's employment; that the child holds a state license valid for the type of driving involved in the job which he performs and has completed a state-approved driver education course; *And provided further*, that the vehicle is equipped with a seat belt or similar device for the driver and for each helper, and the employer has instructed each child that such belts or other devices must be used. This subparagraph shall not be applicable to any occupation of motor-vehicle driver which involves the towing of vehicles.

(3) *Definitions.*

(a) The term "motor vehicle" shall mean any automobile, truck, truck-tractor, trailer, semitrailer, motorcycle, or similar vehicle propelled or drawn by mechanical power and designed for use as a means of transportation but shall not include any vehicle operated exclusively on rails.

(b) The term "driver" shall mean any individual who, in the course of his employment, drives a motor vehicle at any time.

(c) The term "outside helper" shall mean any individual, other than a driver, whose work includes riding on a motor vehicle outside the cab for the purpose of assisting in transporting or delivering goods.

(d) The term "gross vehicle weight" includes the truck chassis with lubricants, water and full tank or tanks of fuel, plus the weight of the cab or driver's compartment, body, and special chassis and body equipment, and payload. (Authorized by K.S.A. 38-602; effective May 1, 1975.)

49-1-54. Coal mine occupations. (1) *Occupations.* All occupations in or about any coal mine, except the occupation of slate or other refuse picking at a picking table or picking chute in a tippie or breaker and occupations requiring the performance of duties solely in offices or in repair or maintenance shops located in the surface part of any coal-mining plant.

(2) *Definitions.*

(a) The term "coal" shall mean any rank of coal, including lignite, bituminous, and anthracite coals.

(b) The term "all occupations in or about any coal mine" shall mean all types of work performed in any underground working, open pit, or surface part of any coal-mining plant that contributes to the extraction, grading, cleaning, or other handling of coal. (Authorized by K.S.A. 38-602; effective May 1, 1975.)

49-1-55. Logging occupations and occupations in the operation of any sawmill, lath mill, shingle mill, or cooperage-stock mill. (1) Exceptions applying to logging.

(a) Work in offices or in repair or maintenance shops.

(b) Work in the construction, operation, repair, or maintenance of living and administrative quarters of logging camps.

(c) Work in timber cruising, surveying, or logging-engineering parties; work in the repair or maintenance of roads, railroads, or flumes; work in forest protection, such as clearing fire trails or roads, piling and burning slash, maintaining fire-fighting equipment, constructing and maintaining telephone lines, or acting as fire lookout or fire patrolman away from the actual logging operations; *Provided*, that the provisions of this paragraph shall not apply to the felling or bucking of timber, the collecting or transporting of logs, the operation of power-driven machinery, the handling or use of explosives, and work on trestles.

(d) Peeling of fence posts, pulpwood, chemical wood, excelsior wood, cordwood, or similar products, when not done in conjunction with and at the same time and place as other logging occupations declared hazardous by this section.

(e) Work in the feeding or care of animals.

(2) Exceptions applying to the operation of any permanent sawmill or the operation of any lath mill, shingle mill, or cooperage-stock mill: *Provided*, that these exceptions do not apply to a portable sawmill the lumber yard of which is

used only for the temporary storage of green lumber and in connection with which no office or repair or maintenance shop is ordinarily maintained: *And further provided*, that these exceptions do not apply to work which entails entering the sawmill building.

(a) Work in offices or in repair or maintenance shops.

(b) Straightening, marking, or tallying lumber on the dry chain or the dry drop sorter.

(c) Pulling lumber from the dry chain.

(d) Clean-up in the lumber yard.

(e) Piling, handling, or shipping of cooperage stock in yards or storage sheds, other than operating or assisting in the operation of power-driven equipment.

(f) Clerical work in yards or shipping sheds, such as done by ordermen, tallymen, and shipping clerks.

(g) Clean-up work outside shake and shingle mills, except when the mill is in operation.

(h) Splitting shakes manually from precut and split blocks with a froe and mallet, except inside the mill building or cover.

(i) Packing shakes into bundles when done in conjunction with splitting shakes manually with a froe and mallet, except inside the mill building or cover.

(j) Manual loading of bundles of shingles or shakes into trucks or railroad cars, provided that the employer has on file a statement from a licensed doctor of medicine or osteopathy certifying the minor capable of performing this work without injury to himself.

(3) *Definitions.*

(a) The term "all occupations in logging" shall mean all work performed in connection with the felling of timber; the bucking or converting of timber into logs, poles, piles, ties, bolts, pulpwood, chemical wood, excelsior wood, cordwood, fence posts, or similar products; the collecting, skidding, yarding, loading, transporting, and unloading of such products in connection with logging; the constructing, repairing, and maintaining of roads, railroads, flumes, or camps used in connection with logging; the moving, installing, rigging, and maintenance of machinery or equipment used in logging; and other work performed in connection with logging. The term shall not apply to work performed in timber culture, timberstand improvement, or in emergency firefighting.

(b) The term "all occupations in the operation of any sawmill, lath mill, shingle mill, or cooperage-

stock mill" shall mean all work performed in or about any such mill in connection with storing of logs and bolts; converting logs or bolts into sawn lumber, laths, shingles, or cooperage stock; storing, drying, and shipping lumber, laths, shingles, cooperage stock, or other products of such mills; and other work performed in connection with the operation of any sawmill, lath mill, shingle mill, or cooperage-stock mill. The term shall not include work performed in the planing-mill department or other remanufacturing departments of any sawmill, or in any planing mill or remanufacturing plant not a part of a sawmill. (Authorized by K.S.A. 38-602; effective May 1, 1975.)

49-1-56. Occupations involved in the operation of power-driven woodworking machines. (1) *Occupations.*

(a) The occupation of operating power-driven woodworking machines including supervising or controlling the operation of such machines, feeding material into such machines, and helping the operator to feed material into such machines, but not including the placing of material on a moving chain or in a hopper or slide for automatic feeding.

(b) The occupations of setting up, adjusting, repairing, oiling, or cleaning power-driven woodworking machines.

(c) The operations of off-bearing from circular saws and from guillotine-action veneer clippers.

(2) *Definitions.*

(a) The term "power-driven woodworking machines" shall mean all fixed or portable machines or tools driven by power and used or designed for cutting, shaping, forming, surfacing, nailing, stapling, wire stitching, fastening, or otherwise assembling, pressing, or printing wood or veneer.

(b) The term "off-bearing" shall mean the removal of material or refuse directly from a saw table or from the point of operation. Operations not considered as off-bearing within the intent of this section include:

(1) The removal of material or refuse from a circular saw or guillotine-action veneer clipper where the material or refuse has been conveyed away from the saw table or point of operation by a gravity chute or by some mechanical means such as a moving belt or expulsion roller, and

(2) The following operations when they do not involve the removal of material or refuse directly from a saw table or from a point of operation: the carrying, moving, or transporting of materials from one machine to another or from one part of a

plant to another; the piling, stacking, or arranging of materials for feeding into a machine by another person; and the sorting, tying, bundling, or loading of materials. (Authorized by K.S.A. 38-602; effective May 1, 1975.)

49-1-57. Occupations involving exposure to radioactive substances and to ionizing radiations. (1) *Occupations.*

(a) Any work in any workroom in which:

(1) Radium is stored or used in the manufacture of self-luminous compound;

(2) Self-luminous compound is made, processed, or packaged;

(3) Self-luminous compound is stored, used, or worked upon;

(4) Incandescent mantles are made from fabric and solutions containing thorium salts, or are processed or packaged;

(5) Other radioactive substances are present in the air in average concentrations exceeding 10 percent of the maximum permissible concentrations in the air recommended for occupational exposure by the national committee on radiation protection, as set forth in the 40-hour week column of table one of the national bureau of standards handbook No. 69 entitled "maximum permissible body burdens and maximum permissible concentrations of radionuclides in air and in water for occupational exposure," issued June 5, 1959.

(b) Any other work which involves exposure to ionizing radiations in excess of 0.5 rem per year.

(2) *Definitions.* As used in this section:

(a) The term "self-luminous compound" shall mean any mixture of phosphorescent material and radium, mesothorium, or other radioactive element.

(b) The term "workroom" shall include the entire area bounded by walls of solid material and extending from floor to ceiling.

(c) The term "ionizing radiations" shall mean alpha and beta particles, electrons, protons, neutrons, gamma, and x-ray and all other radiations which produce ionizations directly or indirectly, but does not include electromagnetic radiations other than gamma and x-ray. (Authorized by K.S.A. 38-602; effective May 1, 1975.)

49-1-58. Occupations involved in the operation of elevators and other power-driven hoisting apparatus. (1) *Occupations.*

(a) Work of operating an elevator, crane, derrick, hoist, or high-lift truck, except operating an

unattended automatic-operation passenger elevator or an electric or air-operated hoist not exceeding 1-ton capacity.

(b) Work which involves riding on a manlift or on a freight elevator, except a freight elevator operated by an assigned operator.

(c) Work on assisting in the operation of a crane, derrick, or hoist performed by crane hookers, crane chasers, hookers-on, riggers, rigger helpers, and like occupations.

(2) *Definitions.*

(a) The term "elevator" shall mean any power-driven hoisting or lowering mechanism equipped with a car or platform which moves in guides in a substantially vertical direction. The term shall include both passenger and freight elevators, (including portable elevators or tiering machines) but shall not include dumbwaiters.

(b) The term "crane" shall mean a power-driven machine for lifting and lowering a load and moving it horizontally, in which the hoisting mechanism is an integral part of the machine. The term shall include all types of cranes, such as cantilever gantry, crawler, gantry, hammerhead, ingot-pouring, jib, locomotive, motor truck, overhead traveling, pillar jib, pintle, portal, semigantry, semiportal, storage bridge, tower, walking jib, and wall cranes.

(c) The term "derrick" shall mean a power-driven apparatus consisting of a mast or equivalent members held at the top by guys or braces, with or without a boom, for use with a hoisting mechanism and operating ropes. The term shall include all types of derricks, such as A-frame, breast, Chicago boom, gin-pole, guy, and stiff-leg derricks.

(d) The term "hoist" shall mean a power-driven apparatus for raising or lowering a load by the application of a pulling force that does not include a car or platform running in guides. The term shall include all types of hoists, such as base-mounted electric, clevis suspension, hook suspension, monorail, overhead electric, simple drum, and trolley suspension hoists.

(e) The term "high-lift truck" shall mean a power-driven industrial type of truck used for lateral transportation that is equipped with a power-operated lifting device usually in the form of a fork or platform capable of tiering loaded pallets or skids one above the other. Instead of a fork, or platform, the lifting device may consist of a ram, scoop, shovel, crane, revolving fork, or other attachments for handling specific loads. The term shall mean and include high-lift trucks known under such names as forklifts, fork trucks,

forklift trucks, tiering trucks, or stacking trucks, but shall not mean low-lift trucks or low-lift platform trucks, that are designed for the transportation of, but not the tiering of, material.

(f) The term "manlift" shall mean a device intended for the conveyance of persons which consists of platforms or brackets mounted on, or attached to, an endless belt, cable, chain or similar method of suspension; such belt, cable, or chain operating in a substantially vertical direction and being supported by and driven through pulleys, sheaves or sprockets at the top or bottom.

(3) *Exception.* This section shall not prohibit the operation of an automatic elevator and an automatic signal-operation elevator provided that the exposed portion of the car interior (exclusive of vents and other necessary small openings), the car door, and the hoistway doors are constructed of solid surfaces without any opening through which a part of the body may extend; all hoistway openings at floor level have doors which are interlocked with the car door so as to prevent the car from starting until all such doors are closed and locked; the elevator (other than hydraulic elevators) is equipped with a device which will stop and hold the car in case of overspeed or if the cable slackens or breaks; and the elevator is equipped with upper and lower travel limit devices which will normally bring the car to rest at either terminal and a final limit switch which will prevent the movement in either direction and will open in case of excessive over-travel by the car.

Definitions as used in this exception:

(a) For the purpose of this exception the term "automatic elevator" shall mean a passenger elevator, a freight elevator, or a combination passenger-freight elevator, the operation of which is controlled by pushbuttons in such a manner that the starting, going to the landing selected, leveling and holding, and the opening and closing of the car and hoistway doors are entirely automatic.

(b) For the purpose of this exception, the term "automatic signal-operation elevator" shall mean an elevator which is started in response to the operation of a switch (such as a lever or pushbutton) in the car which when operated by the operator actuates a starting device that automatically closes the car and hoistway doors—from this point on, the movement of the car to the landing selected, leveling and holding when it gets there, and the opening of the car and hoistway doors are entirely automatic. (Authorized by K.S.A. 38-602; effective May 1, 1975.)

49-1-59. Occupations involved in the operation of power-driven metal forming, punching, and shearing machines. (1) *Occupations.*

(a) All rolling machines, such as beading, straightening, corrugating, flanging, or bending rolls; and hot or cold rolling mills.

(b) All pressing or punching machines, such as punch presses, except those provided with full automatic feed and ejection and with a fixed barrier guard to prevent the hands or fingers of the operator from entering the area between the dies; power presses; and plate punches.

(c) All bending machines, such as apron brakes and press brakes.

(d) All hammering machines, such as drop hammers and power hammers.

(e) All shearing machines, such as guillotine or squaring shears; alligator shears; and rotary shears.

(f) The occupations of setting up, adjusting, repairing, oiling, or cleaning these machines including those with automatic feed and ejection.

(2) *Definitions.*

(a) The term "operator" shall mean a person who operates a machine covered by this order by performing such functions as starting or stopping the machine, placing materials into or removing them from the machine, or any other functions directly involved in the operation of the machine.

(b) The term "helper" shall mean a person who assists in the operation of a machine covered by this order by helping place materials into or remove them from the machine.

(c) The term "forming, punching, and shearing machines" shall mean power-driven metal-working machines, other than machine tools, which change the shape of or cut metal by means of tools, such as dies, rolls, or knives which are mounted on rams, plungers, or other moving parts. Types of forming, punching, and shearing machines enumerated in this section are the machines to which the designation is by custom applied.

(3) *Exemptions.*

This order does not apply to a very large group of metal-working machines known as machine tools. Machine tools are defined as "power-driven complete metal-working machines having one or more tool- or work-holding devices, and used for progressively removing metal in the form of chips." Since the order does not apply to machine tools, the 18-year age minimum does not apply. They are classified below so that they can be readily identified.

Milling function machines

Horizontal milling machines
 Vertical milling machines
 Universal milling machines
 Planer-type milling machines
 Gear hobbing machines
 Profilers
 Routers
 Circular saws

Turning function machines

Engine lathes
 Turret lathes
 Hollow spindle lathes
 Automatic lathes
 Automatic screw machines

Planing function machines

Planers
 Shapers
 Slotters
 Broaches
 Keycasters
 Hack saws
 Band saws

Grinding function machines

Grinders
 Abrasive wheels
 Abrasive belts
 Abrasive disks
 Abrasive points
 Polishing wheels
 Buffing wheels
 Stoppers
 Lapping machines

Boring function machines

Vertical boring mills
 Horizontal boring mills
 Jig borers
 Pedestal drills
 Radial drills
 Gang drills
 Upright drills
 Drill press, etc.
 Centering machines
 Reamers
 Honers

(Authorized by K.S.A. 38-602; effective May 1, 1975.)

49-1-60. Occupations in connection with mining, other than coal. (1) *Occupations.*

(a) Work in offices, in the warehouse or supply house, in the change house, in the laboratory, and in repair or maintenance shops not located underground.

(b) Work in the operation and maintenance of living quarters.

(c) Work outside the mine in surveying, in the repair and maintenance of roads, and in general clean-up about the mine property such as clearing brush and digging drainage ditches.

(d) Work of track crews in the building and maintaining of sections of railroad track located in these areas of open-cut metal mines where mining and haulage activities are not being conducted at the time and place that such building and maintenance work is being done.

(e) Work in or about surface placer mining operations other than placer dredging operations and hydraulic placer mining operations.

(f) The following work in metal mills other than in mercury-recovery mills or mills using the cyanide process:

(1) Work involving the operation of jigs, sludge tables, flotation cells, or drier-filters.

(2) Work of hand sorting at picking table or picking belt.

(3) General clean-up work. *Provided, however,* That nothing in this section shall be construed as permitting employment of minors in any occupation prohibited by any other hazardous occupation order.

(2) *Definitions.* As used in this section: The term "all occupations in connection with mining, other than coal" shall mean all work performed underground in mines and quarries; on the surface at underground mines and underground quarries; in or about open-cut mines, open quarries, clay pits, and sand and gravel operations; at or about placer mining operations; at or about dredging operations for clay, sand or gravel; at or about bore-hole mining operations; in or about all metal mills, washer plants, or grinding mills reducing the bulk of the extracted minerals; and at or about any other crushing, grinding, screening, sizing, washing or cleaning operations performed upon the extracted minerals except where such operations are performed as a part of a manufacturing process. The term shall not include work performed in subsequent manufacturing or processing operations, such as work performed in smelters, electro-metallurgical plants, refineries, reduction plants, cement mills, plants where quarried stone is cut, sanded and

further processed, or plants manufacturing clay, glass, or ceramic products. Neither shall the term include work performed in connection with coal mining, in petroleum production, in natural-gas production, nor in dredging operations which are not a part of mining operations, such as dredging for construction or navigation purposes. (Authorized by K.S.A. 38-602; effective May 1, 1975.)

49-1-61. Occupations involving slaughtering, meat packing or processing, or rendering. (1) *Occupations.*

(a) All occupations on the killing floor, in curing cellars, and in hide cellars, except the work of messengers, runners, hand-truckers, and similar occupations which require entering such workrooms or workplaces infrequently and for short periods of time.

(b) All occupations involved in the recovery of lard and oils, except packaging and shipping of such products and the operations of lard-roll machines.

(c) All occupations involved in tankage or rendering of dead animals, animal offal, animal fats, scrap meats, blood, and bones into stock feeds, tallow, inedible greases, fertilizer ingredients, and similar products.

(d) All occupations involved in the operation or feeding of the following power-driven meat-processing machines, including the occupation of setting up, adjusting, repairing, oiling, or cleaning such machines: Meat-patty-forming machines, meat- and bone-cutting saws, knives (except bacon-slicing machines,) head splitters, and guillotine cutters; snout pullers and jaw pullers; skinning machines; horizontal rotary washing machines; casing-cleaning machines such as crushing, stripping, and finishing machines; grinding, mixing, chopping, and hashing machines; and presses (except belly-rolling machines).

(e) All boning occupations.

(f) All occupations that involve the pushing or dropping of any suspended carcass, half carcass, or quarter carcass.

(g) All occupations involving hand-lifting or hand-carrying any carcass or half carcass of beef, pork, or horse, or any quarter carcass of beef or horse.

(2) *Definitions.*

(a) The term "slaughtering and meat-packing establishments" shall mean places in or about which cattle, calves, hogs, sheep, lambs, goats,

or horses are killed, butchered, or processed. The term shall also include establishments which manufacture or process meat products or sausage casings from such animals.

(b) The term "rendering plants" shall mean establishments engaged in the conversion of dead animals, animal offal, animal fats, scrap meats, blood, and bones into stock feeds, tallow, inedible greases, fertilizer ingredients, and similar products.

(c) The term "killing floor" shall include that workroom or workplace where cattle, calves, hogs, sheep, lambs, goats, or horses are immobilized, shackled, or killed, and the carcasses are dressed prior to chilling.

(d) The term "curing cellar" shall include that workroom or workplace which is primarily devoted to the preservation and flavoring of meat by curing materials. It does not include that workroom or workplace where meats are smoked.

(e) The term "hide cellar" shall include that workroom or workplace where hides are graded, trimmed, salted, and otherwise cured.

(f) The term "boning occupations" shall mean the removal of bones from meat cuts. It shall not include work that involves cutting, scraping, or trimming meat from cuts containing bones.

(3) *Exemptions.* This order shall not apply to the killing and processing of poultry, rabbits, or small game in areas physically separated from the killing floor. (Authorized by K.S.A. 38-602; effective May 1, 1975.)

49-1-62. Occupations involved in the operation of certain power-driven bakery machines. (1) *Occupations.*

(a) The occupations of operating, assisting to operate, or setting up, adjusting, repairing, oiling, or cleaning any horizontal or vertical dough mixer; batter mixer; bread dividing, rounding, or molding machine; dough brake; dough sheeter; combination bread-slicing and -wrapping machine; or cake-cutting band saw.

(b) The occupation of setting up or adjusting a cooky or cracker machine.

(2) *Exemptions.*

This order does not apply to the following list of bakery machines which may be operated by 16- and 17-year-old minors:

Ingredient preparation and mixing

Flour-sifting machine operator

Flour-blending machine operator

Sack-cleaning machine operator

Product forming and shaping

Roll-dividing machine operator
 Roll-making machine operator
 Batter-sealing machine operator
 Depositing machine operator
 Cooky or cracker machine operator
 Wafer machine operator
 Pretzel-stick machine operator
 Pie-dough sealing machine operator
 Pie-dough rolling machine operator
 Pie-crimping machine operator

Finishing and icing

Depositing machine operator
 Enrobing machine operator
 Spray machine operator
 Icing-mixing machine operator

Slicing and wrapping

Roll-slicing and -wrapping machine operator
 Cake-wrapping machine operator
 Carton-packing and -sealing machine operator

Pan washing

Spray-type pan-washing machine operator
 Tumbler-type pan-washing machine operator

(Authorized by K.S.A. 38-602; effective May 1, 1975.)

49-1-63. Occupations involved in the operation of certain power-driven paper-products machines. (1) *Occupations.*

(a) Arm-type wire stitcher or stapler, circular or band saw, corner cutter, or mitering machine, corrugating and single- or double-facing machine, envelope die-cutting press, guillotine paper cutter or shear, horizontal bar scorer, laminating or combining machine, sheeting machine, scrap-paper baler, or vertical slotter.

(b) Platen die-cutting press, platen printing press, or punch press which involves hand feeding of the machine.

(c) The occupations of setting up, adjusting, repairing, oiling, or cleaning these machines including those which do not involve hand feeding.

(2) *Definitions.*

(a) The term "operating or assisting to operate" shall mean all work which involves starting or stopping a machine covered by this order, placing materials into or removing them from the machine, or any other work directly involved in operating the machine.

(b) The term "paper-products machine" shall mean power-driven machines used in the reman-

ufacture or conversion of paper or pulp into a finished product. The term is understood to apply to such machines whether they are used in establishments that manufacture converted paper or pulp products, or in any other type of manufacturing or nonmanufacturing establishment.

(3) *Exemptions.* There are many machines not covered by this order and they may therefore be operated by minors 16 and 17. The most important of these machines are the following:

Bag machine, bag-making machine
 Bottoming machine (bags)
 Box-making machine (collapsible boxes)
 Bundling machine
 Calendar roll and plating machines
 Cigarette carton-opener and tax-stamping machine
 Clasp machine
 Counting, stacking, and ejecting machine
 Corner stayer
 Covering, lining or wrapping machines (set-up boxes)
 Creping machine
 Dornbusch machine (wall paper)
 Ending machine (set-up boxes)
 Envelope machine
 Folding machine
 Gluing, scaling, or gumming machine
 Interfolding machine
 Jogging machine
 Lacer machine
 Parchmentizing, waxing, or coating machines
 Partition-assembling machine
 Paper cup machine
 Quadruple stayer
 Rewinder
 Rotary printing press
 Ruling machine
 Slitting machine
 Straw winder
 Stripping machine
 Taping machine
 Tube-cutting machine
 Tube winder
 Tube machine (paper bags)
 Window-patch machine
 Wire or tag-stringing machine

(Authorized by K.S.A. 38-602; effective May 1, 1975.)

49-1-64. Occupations involved in the manufacture of brick, tile, and kindred products. (1) *Occupations.*

(a) All work in or about establishments in which clay construction products are manufactured, except:

(1) Work in storage and shipping;

(2) Work in offices, laboratories, and store-rooms; and

(3) Work in the drying departments of plants manufacturing sewer pipe.

(b) All work in or about establishments in which silica brick or other silica refractories are manufactured, except work in offices.

(c) Nothing in this section shall be construed as permitting employment of minors in any occupation prohibited by any other hazardous occupation order.

(2) *Definitions.*

(a) The term "clay construction products" shall mean the following clay products: Brick, hollow structural tile, sewer pipe and kindred products, refractories, and other clay products such as architectural terra cotta, glazed structural tile, roofing tile, stove lining, chimney pipes and tops, wall coping, and drain tile. The term shall not include the following nonstructural-bearing clay products: Ceramic floor and wall tile, mosaic tile, glazed and enameled tile, faience, and similar tile, nor shall the term include nonclay construction products such as sand-lime brick, glass brick, or nonclay refractories.

(b) The term "silica brick or other silica refractories" shall mean refractory products produced from raw materials containing free silica as their main constituent. (Authorized by K.S.A. 38-602; effective May 1, 1975.)

49-1-65. Occupations involved in the operation of circular saws, band saws, and guillotine shears. (1) *Occupations.*

(a) The occupations of operator or of helper on the following power-driven fixed or portable machines except machines equipped with full automatic feed and ejection:

- (1) Circular saws.
- (2) Band saws.
- (3) Guillotine shears.

(b) The occupations of setting up, adjusting, repairing, oiling, or cleaning circular saws, band saws, and guillotine shears.

(2) *Definitions.*

(a) The term "operator" shall mean a person who operates a machine covered by this order by performing such functions as starting or stopping the machine, placing materials into or removing them from the machine, or any other functions directly involved in the operation of the machine.

(b) The term "helper" shall mean a person who assists in the operation of a machine covered by

this order by helping place materials into or remove them from the machine.

(c) The term "machines equipped with full automatic feed and ejection" shall mean machines covered by this order which are equipped with devices for full automatic feeding and ejection and with a fixed barrier guard to prevent completely the operator or helper from placing any part of his body in the point-of-operation area.

(d) The term "circular saw" shall mean a machine equipped with a thin steel disc having a continuous series of notches or teeth on the periphery, mounted on shafting, and used for sawing materials.

(e) The term "bandsaw" shall mean a machine equipped with an endless steel band having a continuous series of notches or teeth, running over wheels or pulleys, and used for sawing materials.

(f) The term "guillotine shear" shall mean a machine equipped with a moveable blade operated vertically and used to shear materials. The term shall not include other types of shearing machines, using a different form of shearing action, such as alligator shears or circular shears. (Authorized by K.S.A. 38-602; effective May 1, 1975.)

49-1-66. Occupations involved in wrecking, demolition, and shipbreaking operations. *Definitions.* The term "wrecking, demolition, and shipbreaking operations" shall mean all work, including clean-up and salvage work, performed at the site of the total or partial razing, demolishing, or dismantling of a building, bridge, steeple, tower, chimney, other structure, ship or other vessel. (Authorized by K.S.A. 38-602; effective May 1, 1975.)

49-1-67. Occupations involved in roofing operations. *Definitions.* The term "roofing operations" shall mean all work performed in connection with the application of weatherproofing materials and substances (such as tar or pitch, asphalt-prepared paper, tile, slate, metal, translucent materials, and shingles of asbestos, asphalt or wood) to roofs of buildings or other structures. The term shall also include all work performed in connection with: (1) The installation of roofs, including related metal work such as flashing, and

(2) Alterations, additions, maintenance and repair, including painting and coating, of existing roofs.

The term shall not include gutter and downspout work; the construction of the sheathing or base of roofs, or the installation of television

antennas, air conditioners, exhaust and ventilating equipment, or similar appliances attached to roofs. (Authorized by K.S.A. 38-602; effective May 1, 1975.)

49-1-68. Occupations in excavation operations. *Occupations.* (1) Excavating, working in, or backfilling (refilling) trenches, except:

(a) Manually excavating or manually backfilling trenches that do not exceed four feet in depth at any point, or

(b) Working in trenches that do not exceed four feet in depth at any point.

(2) Excavating for buildings or other structures or working in such excavations, except:

(a) Manually excavating to a depth not exceeding four feet below any ground surface adjoining the excavation, or

(b) Working in an excavation not exceeding such depth, or

(c) Working in an excavation where the side walls are shored or sloped to the angle of repose.

(3) Working within tunnels prior to the completion of all driving and shoring operations.

(4) Working within shafts prior to the completion of all sinking and shoring operations. (Authorized by K.S.A. 38-602; effective May 1, 1975.)

49-1-69. Permitted occupations for 14- and 15-year-old minors in retail, food service, and gasoline service establishments. (1) Office and clerical work (including operation of office machines).

(2) Cashiering, selling, modeling, art work, work in advertising departments, window trimming and comparative shopping.

(3) Price marking and tagging by hand or by machine, assembling orders, packing and shelving.

(4) Bagging and carrying out customers' orders.

(5) Errand and delivery work by foot, bicycle, and public transportation.

(6) Clean-up work, including the use of vacuum cleaners and floor waxers, and maintenance of grounds, but not including the use of power-driven mowers or cutters.

(7) Kitchen work and other work involved in preparing and serving food and beverages, including the operation of machines and devices used in the performance of such work, such as, but not limited to, dishwashers, toasters, dumbwaiters, popcorn poppers, milk shake blenders, and coffee grinders.

(8) Work in connection with cars and trucks if confined to the following:

(a) Dispensing gasoline and oil.

(b) Courtesy service.

(c) Car cleaning, washing and polishing.

(d) Other occupations permitted by this section. But not including work involving the use of pits, racks or lifting apparatus or involving the inflation of any tire mounted on a rim equipped with a removable retaining ring.

(9) Cleaning vegetables and fruits, and wrapping, sealing, labeling, weighing, pricing and stocking goods when performed in areas physically separate from areas where meat is prepared for sale and outside freezers or meat coolers. (Authorized by K.S.A. 38-602; effective May 1, 1975.)

49-1-70. Prohibited occupations for 14- and 15-year-old minors in any other place of employment. (1) Any manufacturing occupation.

(2) Any mining occupation.

(3) Processing occupations such as filleting of fish, dressing poultry, cracking nuts, or laundering as performed by commercial laundries, and dry cleaning (except in a retail, food service, or gasoline service establishment in those specific occupations expressly permitted there in accordance with the foregoing list).

(4) Occupations requiring the performance of any duties in workrooms or workplaces where goods are manufactured, mined, or otherwise processed (except to the extent expressly permitted in retail, food service, or gasoline service establishments in accordance with the foregoing list).

(5) Operation or tending of hoisting apparatus or of any power-driven machinery (other than office machines and machines in retail, food service, and gasoline service establishments which are specified in the foregoing list as machines which such minors may operate in such establishments).

(6) Occupations in connection with:

(a) Transportation of persons or property by rail, highway, air, on water, pipeline, or other means.

(b) Warehousing and storage.

(c) Communications and public utilities.

(d) Construction (including repair). Except of- fice or sales work in connection with these occupations (not performed on transportation media or at the actual construction site).

(7) Any of the following occupations in a retail, food service, or gasoline service establishment:

(a) Work performed in or about boiler or engine rooms.

(b) Work in connection with maintenance or repair of the establishment, machines or equipment.

(c) Outside window washing that involves working from window sills, and all work requiring the use of ladders, scaffolds or their substitutes.

(d) Cooking (except at soda fountains, lunch counters, snack bars, or cafeteria serving counters) and baking.

(e) Occupations which involve operating, setting up, adjusting, cleaning, oiling, or repairing power-driven food slicers and grinders, food choppers and cutters, and bakery-type mixers.

(f) Work in freezers and meat coolers and all work in preparation of meats for sale (except wrapping, sealing, labeling, weighing, pricing and stocking when performed in other areas).

(g) Loading and unloading goods to and from trucks, railroad cars or conveyors.

(h) All occupations in warehouses except office and clerical work. (Authorized by K.S.A. 38-602; effective May 1, 1975.)

Article 2.—MEANING OF TERMS (BOILER INSPECTION)

49-2-1. (Authorized by K.S.A. 44-902, 44-904; effective Jan. 1, 1966; amended, E-67-20, Sept. 28, 1967; amended Jan. 1, 1968; revoked May 1, 1979.)

Article 3.—ADMINISTRATION (BOILER INSPECTION)

49-3-1. (Authorized by K. S.A. 44-902, 44-904; effective Jan. 1, 1966; amended, E-67-20, Sept. 28, 1967; amended Jan. 1, 1968; revoked May 1, 1979.)

49-3-2 to 49-3-17. (Authorized by K.S.A. 44-901, 44-902, 44-904, 44-906; effective Jan. 1, 1966; revoked May 1, 1979.)

Article 4.—CONSTRUCTION AND USE (BOILER INSPECTION)

49-4-1 to 49-4-3. (Authorized by K.S.A. 44-904; effective Jan. 1, 1968; revoked May 1, 1979.)

49-4-3a. (Authorized by K.S.A. 44-902, 44-904; effective, E-67-20, Sept. 28, 1967; effective Jan. 1, 1968; revoked May 1, 1979.)

49-4-4. (Authorized by K.S.A. 44-904; effective Jan. 1, 1966; revoked May 1, 1979.)

49-4-4a. (Authorized by K.S.A. 44-902, 44-

904; effective, E-67-20, Sept. 28, 1967; effective Jan. 1, 1968; revoked May 1, 1979.)

49-4-5 to 49-4-7. (Authorized by K.S.A. 44-904; effective Jan. 1, 1966; revoked May 1, 1979.)

Article 6.—COLLECTIVE BARGAINING UNIT; SELECTION

49-6-1. Collective bargaining units in existence. If there has been a collective bargaining unit established and recognized by its employer prior to the taking effect of this act, an employee or labor organization may, upon filing with the office of the commissioner a short resume of its existence or contractual life with its employer, be certified by the commissioner as being an appropriate collective bargaining unit as defined in the Kansas labor relations act.

The commissioner will make whatever additional investigation he cares to make and feels is necessary to ascertain the correctness of the petitioning organization's assertion. The commissioner will make available a petition form for such organization or representatives of the same. (Authorized by K.S.A. 44-816; effective Jan. 1, 1966.)

49-6-2. Petition for collective bargaining unit. Any employee, labor organization, or the agent of either of them may petition the commissioner to determine a collective bargaining unit for all employees in a unit appropriate for such purpose, and for a determination of said unit whenever such a question arises. The petition shall be prepared on a form furnished by the commissioner and the original and three (3) copies shall be signed and filed with the commissioner. The petition shall include:

(a) A full name and address of a petitioner.

(b) The name and address of the employer, the general nature of his business, and the approximate number of his employees.

(c) A description of the bargaining unit claimed to be appropriate, the approximate number of the employees constituting such unit, and the approximate number of employees on whose behalf the petition is filed.

(d) The names of any known persons or organizations of employees who claim to represent any of the employees in the alleged bargaining unit other than the petitioner.

(e) A brief statement setting forth the desire of the employees to organize themselves into a collective bargaining unit.

(f) A description of the employer's business with particular questions and answers relative to interstate commerce which shall show in each case that the employer is within the jurisdiction of the commissioner.

(g) Evidence of interest of at least thirty percent (30%) of the employees in the proposed appropriate collective bargaining unit or units which may be evidenced to the commissioner by the use of signed authorization cards, membership cards, or in petition form.

(h) Any other relevant facts.

If it appears to the commissioner that the petition presents a question relative to the selection of a collective bargaining unit, the commissioner shall thereupon hold and conduct an election by secret ballot in accordance with rules and regulations hereinafter set out. (Authorized by K.S.A. 44-816; effective Jan. 1, 1966.)

49-6-3. Referendum for decertification election. If a collective bargaining unit has been established by election procedure or has been established prior to the effective date of this act and it is the desire of said unit to change its designation of a union representative for such collective bargaining unit or to disband the collective bargaining unit, any employee, labor organization, or the agent of either of them may petition the commissioner to hold such an election. The petition shall be similar in form to the petition for determination of a collective bargaining unit and shall be prepared on a form furnished by the commissioner and submitted in quintuplicate (5) and filed with the commissioner. Said petition must show a thirty percent (30%) interest in the members of the collective bargaining unit and may be evidenced by authorization cards, membership cards, or by petition form. It is suggested by the commissioner that these petitions should be presented within thirty (30) days prior to the expiration period or renegotiation date of the existing contract between the present union representative of the collective bargaining unit and the employer.

If it appears to the commissioner that the petition presents a question relative to the designation of a new representative of the collective bargaining unit or the disbandment of the collective bargaining unit, the commissioner will thereupon hold and conduct an election by secret ballot in accordance with rules and regulations hereinafter set out. (Authorized by K.S.A. 44-816; effective Jan. 1, 1966.)

49-6-4. Type of election determined by commissioner. The commissioner will determine whether or not a manual ballot, mail ballot, or jointly conducted union-management election will be held pursuant to rules and regulations for each of such elections as hereinafter set out. (Authorized by K.S.A. 44-816; effective Jan. 1, 1966.)

49-6-5. Commissioner to certify election results; bar to subsequent election. If a majority of the employees in the proposed collective bargaining unit have voted in such election to organize themselves into a collective bargaining unit and designate a union representative of such unit, the same shall thereafter be considered as a collective bargaining unit by the employer and the department of labor, and another such election shall not be held for one year except under the most unusual circumstances. In the event the employees in the proposed collective bargaining unit do not vote to organize themselves into a collective bargaining unit, no subsequent petition will be entertained by the commissioner before the expiration of at least one year from the date of the prior election if presented by the same proposed collective bargaining unit's union representative. The commissioner will certify in writing to the employer and union representative of the collective bargaining unit the results of the said election, in form to be determined by the commissioner. (Authorized by K.S.A. 44-802(3), 44-816; effective Jan. 1, 1966.)

49-6-6. Majority of votes necessary; run-off election at discretion of commissioner. If two or more labor unions have competed in the representation election so that none of the labor organizations received a majority of the votes necessary to carry such an election, and if in the commissioner's determination the situation warrants it, he may hold a run-off election to be held in similar form to the first election and use the eligible voter list of the first election in the run-off election. (Authorized by K.S.A. 44-802(3), 44-816; effective Jan. 1, 1966.)

Article 7.—SECRET BALLOT ELECTION; ALL-UNION AGREEMENT

49-7-1. Petition; who may file. A petition for authority to enter into an all-union agreement may be filed by representatives of a labor organization when employees have organized themselves into a collective bargaining unit. The labor organization

may file the petition at any time. The commissioner suggests that the petition be filed at least thirty (30) days before negotiations are to start (except in cases of new bargaining units) so that the petition may be processed before the beginning of negotiations. (Authorized by K.S.A. 44-802(5), 44-809(4) and (5), 44-816; effective Jan. 1, 1966.)

49-7-2. Petition; contents. The collective bargaining unit shall file its petition in quadruplicate (4) in form as prescribed by the commissioner. Said petition shall contain:

(a) Evidence of all-union agreement authorization by at least thirty percent (30%) of the employees in the appropriate collective bargaining unit.

(b) An alphabetical listing of the names and addresses of the employees in the appropriate collective bargaining unit.

(c) Three (3) copies of the current or most recently expired contract between the employer and the collective bargaining unit. (Authorized by K.S.A. 44-802(5), 44-809(4) and (5), 44-816; effective Jan. 1, 1966.)

49-7-3. Prerequisites to election. The commissioner will order that an all-union agreement authorization election be held if his investigation has revealed that:

(a) No question concerning representation is pending.

(b) The petitioning labor union is the presently designated representative of the collective bargaining unit.

(c) The petition filed shows interest by thirty percent (30%) of the employees in the appropriate collective bargaining unit.

(d) No valid secret ballot election authorizing an all-union agreement has been conducted in the past twelve (12) months among the employees in the unit covered by the petition. (Authorized by K.S.A. 44-802(5), 44-809(4) and (5), 44-816; effective Jan. 1, 1966.)

49-7-4. Employer notified by mail. Upon the commissioner determining to order an all-union agreement secret ballot election, he will forward a letter to the employer informing him of his decision. (Authorized by K.S.A. 44-802(5), 44-809(4) and (5), 44-816; effective Jan. 1, 1966.)

49-7-5. Commissioner elects type of vote. The commissioner will determine whether or not to hold a manual ballot, mail ballot, or jointly conducted union-management election pursuant

to rules and regulations for each of such types of elections as hereinafter set out. (Authorized by K.S.A. 44-802(5), 44-809(4) and (5), 44-816; effective Jan. 1, 1966.)

49-7-6. Election results reported. On the election being completed, the results shall be announced and a report of the election will be made in writing by the commissioner's office to the interested parties. (Authorized by K.S.A. 44-802(5), 44-809(4) and (5), 44-816; effective Jan. 1, 1966.)

Article 8.—SECRET BALLOT ELECTION; STRIKE, WALKOUT AND CESSATION OF WORK

49-8-1. Prepetition duties of parties. In the event an existing contract between an employer of the collective bargaining unit is due to expire of its own terms or in the event the contract is subject to renegotiation or revision pursuant to its terms and the collective bargaining unit does desire the commissioner to hold a secret strike ballot, it shall be the duty of the officers of the collective bargaining unit to transmit to the commissioner a report of the negotiations had to that time. The report shall outline the offers and counter offers made by both parties to the other, the dates of such offers, and other pertinent information and shall request the commissioner to hold and conduct a secret strike ballot of the collective bargaining unit. The commissioner's office will then notify the employer on receipt of this report and request and upon such notification the employer shall, within 72 hours, transmit to the commissioner a report of negotiations to date including the offers and counter offers made by both parties to the other, the dates of such offers and other pertinent information. (Authorized by K.S.A. 44-816; effective Jan. 1, 1966.)

49-8-2. Contractual relations. In the event a labor organization contends that there has been a major breach of its contract with its employer or in the event a collective bargaining unit properly certified by the commissioner's office has no contract with its employer and, in either case, said certified collective bargaining unit desires to have a secret strike ballot taken by the commissioner, it shall be the duty of the officers of the collective bargaining unit to transmit to the commissioner a request to hold an election. Said request shall also include an alleged breach of contract or the fact that no contract exists with the employer at that

time. Upon receipt of such request, the commissioner's office will notify the employer and request from the employer a transmittal report giving the employer's version of the dispute. (Authorized by K.S.A. 44-816; effective Jan. 1, 1966.)

49-8-3. Settlement negotiations. In the event a new contract is signed or negotiated by the parties prior to the conducting of the secret strike ballot by the commissioner, it shall be the duty of the officers of the collective bargaining unit and the employer to notify the commissioner by telegram of the settlement of the labor dispute. (Authorized by K.S.A. 44-816; effective Jan. 1, 1966.)

49-8-4. Employer notified. Upon the commissioner determining to order a secret strike ballot he will write a letter to the employer informing him of his decision. (Authorized by K.S.A. 44-816; effective Jan. 1, 1966.)

49-8-5. Commissioner elects type of vote. The commissioner will determine whether or not to hold a manual ballot, mail ballot, or jointly conducted union-management election pursuant to rules and regulations for each of such types of elections as hereinafter set out. (Authorized by K.S.A. 44-816; effective Jan. 1, 1966.)

49-8-6. Election results reported. After the election is completed the results shall be announced and a report of the election will be made in writing by the commissioner's office to the interested parties. (Authorized by K.S.A. 44-816; effective Jan. 1, 1966.)

49-8-7. Election results; period of validity. If a majority of the employees in the collective bargaining unit do not vote in favor of a strike, any strike called in that unit will be considered an unlawful strike. Strike election results shall be valid for a period of sixty (60) days after receipt of the notice of certification of said results. This time may be extended by order of the commissioner. (Authorized by K.S.A. 44-809(3) and (5), 44-816; effective Jan. 1, 1966.)

Article 9.—ALL TYPES OF ELECTIONS

49-9-1. Voters eligibility cutoff date. In every case, upon decision of the commissioner to hold an election of any type he will request from the collective bargaining unit and/or the employer that they each submit a list of eligible voters of

the collective bargaining unit, which list shall be certified under oath by proper officials or officers. The commissioner, in each case, shall inform the parties in his request for such list of the cut-off date or payroll period necessary for eligibility of the voters. If there is any dispute or question as to who is an eligible voter, the commissioner or his representative shall determine the eligibility of that voter. (Authorized by K.S.A. 44-816; effective Jan. 1, 1966.)

49-9-2. Eligibility in general. Generally, the commissioner will determine that eligible voters shall be those employees included within the collective bargaining unit who were employed during the payroll period on the cut-off date established by the commissioner, including employees who did not work during said payroll period because they were ill or temporarily laid off or employees in the military service who appear in person at the polls, but will exclude any employees who have quit or been discharged for good cause and have not been reinstated prior to the date of the election. If necessary, the commissioner shall determine the sufficiency of the good cause alleged for discharge. If the merits of the employee's discharge have not been determined by the time of the election, he shall be allowed to vote a challenged ballot. Supervisors, foremen, and guards, or other personnel in an administrative or supervisory capacity that are part of the collective bargaining unit will be construed as eligible voters by the commissioner. (Authorized by K.S.A. 44-816; effective Jan. 1, 1966.)

49-9-3. Posting of election notice. In all types of elections there shall be posted in prominent places about the employer's establishment, notice of the election prior to the time and date of the election, and such notice shall include among other necessary and pertinent information the purpose of the election. (Authorized by K.S.A. 44-816; effective Jan. 1, 1966.)

49-9-4. Secret ballot; general. In every case, the commissioner's office shall prepare ballots for the holding of the election. The voter must make a cross in the block designating his choice in the election. The intent of the voter will be followed as closely as possible in the marking of the ballot. If the ballot is defaced, torn, or marked in such a manner that it is impossible to determine the voter's intent the ballot will be construed to be spoiled. If any ballot is signed or identifying

marks appear on the ballot, that ballot shall not be counted. (Authorized by K.S.A. 44-816; effective Jan. 1, 1966.)

49-9-5. Contested elections; grounds for voiding election. In case of a contested election, the contestants shall notify the commissioner within ten (10) calendar days after the close of the election that they do contest the election, setting forth by petition their reasons for contesting the same, which petition shall be duly verified. Immediately upon receipt of that notice the commissioner or his representative shall investigate the charges made by the party contesting the election and shall determine the merits of the charges and make findings therein, which findings shall be binding on all of the parties. At the commissioner's option, in the event he deems necessary, he may conduct a hearing upon the contestant's petition and take evidence and consider the same to aid him in making his decision. Generally, the commissioner will consider only those petitions which the charges therein, if proved true, could upset the results of the election. The commissioner may consider coercion, undue influence, compulsion, and threats among other practices as good and sufficient reason for voiding the results of an election. (Authorized by K.S.A. 44-802(3) and (5), 44-809(3), (4) and (5), 44-816; effective Jan. 1, 1966.)

Article 10.—HOLDING A MANUAL BALLOT

49-10-1. Commissioner or representative to conduct election; supervisors. If a voter inadvertently spoils the ballot, he shall return the ballot to the supervisor of his polling place who shall deliver to him another ballot, preserving the spoiled ballot for the time of counting. The counting of the ballots shall take place as soon as the polls have been closed or as soon as it is practical to count the same, provided, however, that the commissioner may on his own motion through his representative, keep the polls open as long as he deems necessary. The commissioner or his representative may announce the results of the election as soon as the complete results have been tabulated. At each voting station, the commissioner shall furnish a supervisor to supervise the election. The voter shall fold his ballot so that no part of the face thereof shall be exposed and, upon leaving the polling booth, return his ballot to the supervisor at the polling station who shall then deposit the ballot in the ballot boxes. All ballot boxes shall

be examined and locked before the opening of the polls, not to be opened until the time of counting. If the election is to take several days, the ballot boxes shall be locked and remain so until the time of counting of said ballots. (Authorized by K.S.A. 44-816; effective Jan. 1, 1966.)

49-10-2. Observers; other election participation. The collective bargaining unit and the employer may each designate a person to observe that the ballots are properly cast and voting properly conducted at each voting station. There shall be not more than one observer for each party. These observers are subject to such limitations as the commissioner or his supervisor may prescribe. Employer observers are limited to people in a non-supervisory capacity. Collective bargaining unit observers shall not be union officials or business agents. Any authorized observer or the commissioner or his representative may challenge for good cause the eligibility of any person to participate in the election. There shall be no campaigning within fifty (50) feet of any voting station while the election is being conducted. (Authorized by K.S.A. 44-816; effective Jan. 1, 1966.)

49-10-3. Absentees voting; limitations. A ballot will be mailed to an individual eligible to vote upon notification to the commissioner in writing of his inability because of sickness, physical disability, geographical location due to his employment, leave of absence granted by the employer, or vacation granted by the employer, the same making it impossible for him to be physically present at the time of the election. This ballot shall be mailed by the voter to the address of the labor commissioner and the envelope containing the ballot will be opened at the time of the counting of the ballots and placed in the ballot box. Such ballots must be in the commissioner's office at least twenty-four (24) hours prior to the election or delivered to the election supervisor before the closing of the polls at the place of balloting in order to be counted. Whenever a voter at an election states under oath that he is physically unable or because of his inability to read or write that he cannot mark his ballot, the supervisor shall assist him in the marking of the ballot. (Authorized by K.S.A. 44-816; effective Jan. 1, 1966.)

49-10-4. Challenged voters; determination of qualifications binding. In an election, if any person has been challenged as an unqualified

voter, he shall be permitted to vote and the supervisor of that election shall set aside the ballot with appropriate markings. At the close of the election the commissioner shall determine the merits of the challenged ballots and decide whether or not that person is a qualified voter. The results of this finding shall be binding upon all parties. The supervisor shall deliver or mail all challenged ballots to the commissioner's office immediately. (Authorized by K.S.A. 44-802(3) and (5), 44-809(3), (4) and (5), 44-816; effective Jan. 1, 1966.)

Article 11.—CONDUCT OF MAIL REFERENDUM BALLOT

49-11-1. Commissioner elects mode of balloting. In most cases, the commissioner will not order a mail ballot election taken unless approval is given by the interested parties. If in the commissioner's determination a mail ballot is proper, he will so advise interested parties. (Authorized by K.S.A. 44-816; effective Jan. 1, 1966.)

49-11-2. Return of ballot; date. The commissioner will attempt to secure the unanimous agreement of interested parties as to the date by which mail ballots must be received by the commissioner, his representative, or a local postmaster. (Authorized by K.S.A. 44-816; effective Jan. 1, 1966.)

49-11-3. Commissioner to provide ballots by mail. The commissioner will mail to each eligible voter at his own voting address:

- (a) Ballot.
- (b) An unmarked envelope.
- (c) An unstamped addressed envelope, larger than the plain envelope with a space for the voter's signature.
- (d) A notice of the election and instructions to the voter. (Authorized by K.S.A. 44-816; effective Jan. 1, 1966.)

49-11-4. Canvassing of ballots. The return envelope will be checked against the eligible voters list. The large envelopes which are found to have been signed by an eligible voter will be opened and destroyed and the unsigned envelope extracted. Before counting, the unmailed envelopes shall be shuffled and their ballots then extracted. These ballots will be counted and, as in manual elections, observers will participate in checking the eligibility of the voters and the accuracy of the counting. (Authorized by K.S.A.

44-802(3) and (5), 44-809(3), (4) and (5), 44-816; effective Jan. 1, 1966.)

Article 12.—JOINTLY CONDUCTED UNION-MANAGEMENT ELECTION

49-12-1. Degree of commissioner's authority at stipulated elections. If a voter inadvertently spoils his ballot, he shall return the ballot to the observers of his polling place who shall deliver to him another ballot, preserving the spoiled ballot for the time of counting. The counting of the ballots shall take place as soon as the polls have been closed or as soon as it is practical to count the same, provided, however, that the commissioner may on his own motion through his representative, keep the polls open as long as he deems necessary. The commissioner or his representative may announce the results of the election as soon as the complete results have been tabulated. The voter shall fold his ballot so that no part of the face thereof shall be exposed and, upon leaving the polling booth, return his ballot to the supervisor at the polling station who shall then deposit the ballot in the ballot boxes. All ballot boxes shall be examined and locked before the opening of the polls, not to be opened until the time of counting. If the election is to take several days, the ballot boxes shall be locked and remain so until the time of counting of said ballots. The commissioner reserves the privilege to have an observer or supervisor at each election to generally observe the manner the election is conducted and to insure the intent of the legislature in providing for secret elections. (Authorized by K.S.A. 44-816; effective Jan. 1, 1966.)

49-12-2. Observers qualifications; waiver. The collective bargaining unit and the employer may each designate a person to observe that the ballots are properly cast and voting properly conducted at each voting station. There shall be not more than one observer for each party. These observers are subject to such limitations as the commissioner or his supervisor may prescribe. Employer observers are limited to people in a nonsupervisory capacity. Collective bargaining unit observers shall not be union officials or business agents. However, either interested party may waive these restrictions and limitations as to the other. Any authorized observer or the commissioner or his representative may challenge for good cause the eligibility of any person to partic-

ipate in the election. (Authorized by K.S.A. 44-816; effective Jan. 1, 1966.)

49-12-3. Absentee balloting; assistance for disabled voter. A ballot will be mailed to an individual eligible to vote upon notification to the commissioner in writing of his inability because of sickness, physical disability, geographical location due to his employment, leave of absence granted by the employer, or vacation granted by the employer, the same making it impossible for him to be physically present at the time of the election. This ballot shall be mailed by the voter to the address of the labor commissioner and the envelope containing the ballot will be opened at the time of the counting of the ballots and placed in the ballot box. Such ballots must be in the commissioner's office at least twenty-four (24) hours prior to the election or delivered to the election supervisor before the closing of the polls at the place of balloting in order to be counted. Whenever a voter at an election states under oath that he is physically unable or because of his inability to read or write that he cannot mark his ballot, the observers may assist him in the marking of the ballot. (Authorized by K.S.A. 44-816; effective Jan. 1, 1966.)

49-12-4. Challenged voter. In an election, if any person has been challenged as an unqualified voter, he shall be permitted to vote and the observers of that election shall set aside the ballot with appropriate markings. (Authorized by K.S.A. 44-816; effective Jan. 1, 1966.)

49-12-5. Affidavit of compliance. Immediately following the conclusion of balloting and prior to tabulating and counting of the ballots both interested parties, by responsible officers or officials of each, shall file an affidavit of compliance which affidavit shall be prepared and furnished by the commissioner's office and shall generally state that the election was conducted jointly pursuant to the rules of the commissioner and that in their opinion, the election was fairly conducted and held, but providing in said affidavit a listing for any specific complaints either party might have. Upon the affidavit being signed and sworn to before a notary public or official authorized to administer oaths, the affidavit of compliance shall be directed to the commissioner's representative or observer present at the election, if any. If not, a representative of each interested party shall jointly mail said affidavit in a sealed envelope addressed first class mail to the

commissioner at Topeka, Kansas. (Authorized by K.S.A. 44-816; effective Jan. 1, 1966.)

49-12-6. Results forwarded to commissioner; contested ballot procedure. After said affidavit of compliance has been mailed or delivered the parties shall then jointly count and tabulate the ballots. The results of said counting of ballots shall be certified to by both parties with any differences to be noted by special affidavit by either party that feels aggrieved, and a joint tally sheet shall be signed by both parties. The results of the election shall be placed in a sealed envelope and mailed first class mail to the commissioner at Topeka. All contested ballots or challenged ballots shall be mailed to the commissioner by separate parcel or delivered to his supervisor or observer present at the election without being ruled upon by the interested parties' observers present at the election. The ballots shall be sealed and mailed to the commissioner's office under procedure to be given by the commissioner to the interested parties.

The commissioner shall certify the results of the election upon receipt of the various affidavits of compliance, tally sheets, ballots, and challenged ballots. (Authorized by K.S.A. 44-816; effective Jan. 1, 1966.)

49-12-7. Savings clause. Should any section, subsection, sentence, clause, phrase, provision, or exemption of these rules and regulations be declared invalid for any reason, such invalidity shall not affect the remaining portions or provisions hereof. (Authorized by K.S.A. 44-802(3) and (5), 44-809(3), (4) and (5), 44-816; effective Jan. 1, 1966.)

Article 13.—MEANING OF TERMS

49-13-1. (Authorized by K.S.A. 1970 Supp. 44-1102, 44-1104; effective, E-70-43, Sept. 23, 1970; effective Jan. 1, 1971; revoked May 1, 1979.)

Article 14.—PROCEDURE

49-14-1 to 49-14-4. (Authorized by K.S.A. 1970 Supp. 44-1104; effective, E-70-43, Sept. 23, 1970; effective Jan. 1, 1971; revoked May 1, 1979.)

Article 15.—ENFORCEMENT

49-15-1. Investigation. The commissioner will not investigate charges when the parties are bound to the terms of a written agreement for the

term of the agreement or July 1, 1973; whichever first occurs; or unless the legislature amends section 5(c) [44-1105 (c)]. (Authorized by K.S.A. 1970 Supp. 44-1104; effective, E-70-43, Sept. 23, 1970; effective Jan. 1, 1971.)

49-15-2. Suit by commissioner, when. Suits for restraint of violations of section 3 [K.S.A. 1970 Supp. 44-1103] of the act will not be maintained by the labor commissioner unless the commissioner has determined that a practice exists in an establishment of discrimination affecting a group of employees as a class. The commissioner will not bring an action in behalf of an individual, unless he has reason to believe a previous settlement agreement is being violated. In this event the commissioner may petition as provided in section 5 [K.S.A. 1970 Supp. 44-1105]. Therefore, individual complainants will be advised that after conciliation efforts by the commissioner have failed, the party should consult private counsel to initiate private litigation. (Authorized by K.S.A. 1970 Supp. 44-1104; effective, E-70-43, Sept. 23, 1970; effective Jan. 1, 1971.)

Article 16.—RECORDS AND RETENTION

49-16-1. Wages and wage rates. Retain all records including personal identifying information including name, age, address and gender. Record regular rate of pay and hourly rate when overtime hours are worked. Record total overtime excess compensation. Record total wages paid. Date of payment and pay period covered. (Authorized by K.S.A. 1970 Supp. 44-1104; effective, E-70-43, Sept. 23, 1970; effective Jan. 1, 1971.)

49-16-2. Posting of notice. Every employer shall post the notice prescribed by the commissioner in a conspicuous place in every establishment where such employees are employed so they may readily observe the copy on the way to or from place of employment. (Authorized by K.S.A. 1970 Supp. 44-1104; effective, E-70-43, Sept. 23, 1970; effective Jan. 1, 1971.)

49-16-3. Preserve for two years. From last date of entry, all those payroll or other records containing the payroll information and data concerning wages and wage rates, payment in kind and any other benefits and copies of collective bargaining agreements, plans, trusts, employment contracts, that provide pay benefits that are in addition to the regular rate of pay. (Authorized by

K.S.A. 1970 Supp. 44-1104; effective, E-70-43, Sept. 23, 1970; effective Jan. 1, 1971.)

49-16-4. (Authorized by K.S.A. 1970 Supp. 44-1104; effective, E-70-43, Sept. 23, 1970; effective Jan. 1, 1971; revoked May 1, 1979.)

Article 17.—CONSTRUCTION OF RULES AND REGULATIONS

49-17-1. (Authorized by K.S.A. 1970 Supp. 44-1104; effective, E-70-43, Sept. 23, 1970; effective Jan. 1, 1971; revoked May 1, 1979.)

Article 18.—AVAILABILITY OF RULES AND REGULATIONS

49-18-1. (Authorized by K.S.A. 1970 Supp. 44-1104; effective, E-70-43, Sept. 23, 1970; effective Jan. 1, 1971; revoked May 1, 1979.)

Article 19.—ADOPTION, AMENDMENT AND RESCISSION

49-19-1. (Authorized by K.S.A. 44-1104; effective, E-70-43, Sept. 23, 1970; effective Jan. 1, 1971; revoked May 1, 1979.)

Article 20.—WAGE PAYMENTS AND PROCEDURES FOR ENFORCEMENT

49-20-1. Definitions. (a) Authorized deductions, "accruing to the benefit of the employee", as used in K.S.A. 44-319(a)(3), shall mean deductions from an employee's pay for which the employer has received a signed authorization from the employee for lawful deductions that do not in any way waive, set aside or contravene any rights created in K.S.A. 44-313 *et seq.*, as amended.

(1) Authorized deductions shall include:

(A) Contributions to and recovery of overpayments under employee welfare and pension plans;

(B) contributions made under a collective bargaining agreement to employee welfare and pension plans that are not subject to the federal welfare and pension plans disclosure act. Such plans include, but are not limited to, group insurance plans, hospitalization insurance, life insurance plans approved by the Kansas commissioner of insurance, group hospitalization and medical service programs offered by nonprofit hospitalization and medical service organizations, and group medical insurance plans;

(C) deductions authorized in writing by employees or deduction by employers under a collective bargaining agreement for payments into:

- (i) Company-operated thrift plans; or
- (ii) stock option or stock purchase plans to buy securities of the employing or an affiliated corporation at market price or less, provided such securities are listed on a stock exchange or are marketable over the counter;

(D) deductions by employers for payment into employee personal savings accounts. Such payments include, but are not limited to, payments into credit unions, savings fund societies, savings and loan associations, building and loan associations, savings departments of banks for Christmas, vacations or other purposes, and payments for United States government bonds;

(E) contributions by the employee for charitable purposes;

(F) contributions to labor organizations for purposes of dues, assessments, initiation fees and other charges; and

(G) the actual cost to the employer of meals and lodging obtained from the employer, if the cost is not wages earned.

(2) The following deductions shall not be considered authorized deductions "accruing to the benefit of the employee" within the meaning of K.S.A. 44-319(a)(3):

(A) Deductions made for cash and inventory shortages; breakage; returned checks or bad credit card sales; losses to employers resulting from burglaries, robberies, or alleged negligent acts.

(B) deductions made for uniforms, special tools or special equipment which are not necessary to the performance of the assigned duties and are customarily supplied by the employer;

(C) any other deduction not set out by K.S.A. 44-313 *et seq.* or permitted by these rules and regulations.

(3) The following deductions shall not require written authorization by the employee as provided by K.S.A. 44-319(a)(3):

(A) Deductions which the employer is required or empowered to make:

- (i) By state or federal law; or
- (ii) by court order lawfully issued, to the extent permitted by that law (K.S.A. 44-319(a)(1));

(B) deductions for medical, surgical, or hospital care and services paid for by the employer which are without any financial benefit to the employer and which are duly recorded in accounts maintained by the employer (K.S.A. 44-319(a)(2));

(C) deductions made to correct wage overpayments resulting from employer error when the error alone has resulted in the overpayment. However, if the deduction rate is to exceed the overpayment rate, the employer shall be required to obtain signed authorization of the employee before making any such deduction;

(D) deduction for cash advances made upon the written request or by signed agreement of the employee and made as part payment of future wages to be earned;

(E) deduction for excess cash expense allowances or advances made to the employee which are not justified by expense receipts returned to the employer, to the extent of any unexpended cash expense advances not returned to the employer.

(b) "Plan of payment," as used in K.S.A. 44-314, shall mean a method agreed to in advance by an employee in which the employer makes bank deposits for the employee on or before the regular payday in an amount equal to the payroll amount, plus any additional amount required by the depository as a service charge, upon which the employee may draw an amount equivalent to the employee's wages less authorized deductions. Under such a plan of payment, the employer shall give a statement of earnings to the employee and the bank shall provide one free check to the employee.

(c) "Binding settlement agreement," as contemplated by K.S.A. 44-316(b), shall mean an agreement approved by the secretary of human resources or the secretary's authorized representative either prior to or subsequent to an administrative hearing conducted pursuant to K.S.A. 44-322a. Once an appeal from an administrative order has been filed with the district court pursuant to K.S.A. 60-2101, and prior to court decision, any binding settlement agreement between the parties, as defined herein shall be valid only if approved by the hearing officer or that officer's authorized representative.

(d) "Or other basis," within the meaning of K.S.A. 44-313(c), shall include all agreed compensation for services for which the conditions required for entitlement, eligibility, accrual or earning have been met by the employee. Such compensation may include, but is not limited to, profit sharing, fringe benefits, or compensation due as a result of services performed under an employment contract that has a wage rate required or implied by state or federal law. Conditions subsequent to such entitlement, eligibility, accrual or earning resulting in a

forfeiture or loss of such earned wage shall be ineffective and unenforceable.

(e) "Allowed or permitted to work", within the meaning of K.S.A. 44-313(b), shall not include an independent contractor, as defined by rules, regulations, and interpretations of the United States secretary of labor for the purposes of the fair labor standards act. (Authorized by K.S.A. 44-325; implementing K.S.A. 44-313 to 44-315, 44-316 to 44-321, 44-322, 44-322a, 44-323, 44-324, 44-325, 44-326; effective, E-73-23, July 7, 1973; amended, E-73-29, Sept. 28, 1973; effective Jan. 1, 1974; amended, E-78-38, Dec. 29, 1977; amended May 1, 1978; amended May 1, 1983.)

49-20-2. (Authorized by K.S.A. 44-319, 44-321, K.S.A. 1977 Supp. 44-313, 44-325; effective, E-73-23, July 7, 1973; effective Jan. 1, 1974; revoked, E-78-38, Dec. 29, 1977; revoked May 1, 1978.)

Article 21.—PROCEDURES

49-21-1. Filing of complaints. (a) Any complainant may file a claim, stating the details of the alleged nonpayment of earned wages, on official forms of the division of labor-management relations and employment standards. Any claim or claims filed by an attorney on behalf of the employee or employees shall constitute a proper filing.

(b) An assignment of the complainant's claim and an agreement to settle the claim with the employer shall be accepted from the complainant. That assignment shall take effect only after the claim is determined to be valid and after an amount owed, including damages if applicable, has been determined.

(c) There shall be no limit on the amount of claim in trust that may be accepted by the secretary of human resources.

(d) A fee for each claim in trust assigned to the Kansas department of human resources shall be collected by the secretary or the secretary's designee for enforcement of the claim. The fee shall be charged on the basis of the amount of wages found due and owing the employee, exclusive of penalties and interest, as follows:

Amount of claims for wages	Fee
\$200.00 or less	\$1.00
More than \$200.00, but less than or equal to \$500.00.....	\$2.00
More than \$500.00, but less than or equal to \$1,000.00.....	\$5.00
More than \$1,000.00	\$10.00

(Authorized by K.S.A. 44-325; implementing K.S.A. 44-324; effective, E-73-23, July 7, 1973; effective Jan. 1, 1974; amended, E-78-38, Dec. 29, 1977; amended May 1, 1978; amended May 1, 1983; amended May 1, 1987.)

49-21-2. Processing claims. (a) Service of claim. A copy of the claim shall be mailed to the employer by United States mail.

(b) Investigation.

(1) The investigator shall determine that each claim is within jurisdiction of the Kansas wage payment statutes to the best extent possible prior to service of the claim upon the employer.

(2) The notice of claim shall contain citation of the statute alleged to have been violated with a brief description of the nature of the violation.

(3) The employer shall be notified of a specified date on which a response is required, not to exceed 20 days. Extensions of the response period may be extended for good and sufficient reasons at the discretion of the secretary or the secretary's authorized representative.

(4) The employer shall respond on forms provided by the division of labor-management relations and employment standards within the time specified in the notice of claim or within 10 days of receipt of the claim, whichever is longer. Any response which is incomplete and that does not answer the allegations of the claim shall not be considered to have satisfied the response requirement.

(5) Failure on the part of the employer to respond to a claim shall be considered as establishing a dispute and a hearing may be set without further investigation. The investigator in all claims shall have the full authority and power of the secretary as provided in K.S.A. 44-322.

(6) When the evidence shows there is probable cause to believe that a violation has occurred, the investigator shall attempt to obtain payment or settlement through conciliation of the parties to the dispute.

Determination of an alleged violation shall be based upon:

(A) The lawful provisions of the employment agreement or contract between the employer and employee;

(B) evidence of work performed; and

(C) proof of payment for work performed under the agreement or contract.

Any agreement by the parties or any requirement by the employer to contravene, set aside or

waive any provision or any right created under the act shall be in violation of the act and equivalent to nonpayment of earned wages. Any provision contained in the employment agreement or contract that violates any provision or right created by this act shall not be enforceable, regardless of whether the parties have mutually assented to the provision.

Any conditional wage payment requiring a release from further claim for balances alleged to be owed by the employer shall be a violation of K.S.A. 44-321 and therefore null and void unless that release is part of a binding settlement agreement as described in the act and defined herein.

(7) When evidence fails to support the alleged claim, the investigator, after giving 30 days notice to the claimant of the need for further evidence, may dismiss such claim as unmeritorious if such evidence is not submitted.

(8) In claims where a dispute has been determined to exist and payment or settlement is not obtained, the investigator shall prepare the case for hearing. (Authorized by K.S.A. 44-325; implementing K.S.A. 44-321, 44-322, 44-322a, 44-324; effective, E-73-23, July 7, 1973; effective Jan. 1, 1974; amended, E-78-38, Dec. 29, 1977; amended May 1, 1978; amended May 1, 1983.)

49-21-3. Hearings. (a) Authority of the hearing officer.

(1) The hearing officer shall be appointed by the secretary and shall have the power and authority, in conducting hearings in the name of the secretary, as provided in K.S.A. 44-322:

(A) To administer oaths and examine witnesses under oath;

(B) to issue compulsory process to compel the attendance of witnesses or the production of papers, books, accounts, records, payrolls, documents, or other exhibits relating to claims for unpaid wages; and

(C) to receive depositions and affidavits in the process of the hearing.

(2) The hearing officer shall conduct the hearing, rule on the admissibility of evidence and the examination of witnesses, and determine the extent to which the rules of evidence will apply.

(3) The hearing officer shall weigh the evidence presented, make findings of fact and conclusions of law, and issue orders based on those findings and conclusions. The hearing officer shall explain the decision in memorandum form and the memorandum shall accompany the order.

(4) The hearing officer may require good and sufficient reason before granting any continuance or postponement of any hearing for which proper service has been made. The hearing officer may refuse any such request when, in the hearing officer's judgment, the request:

(A) Would cause hardship or undue delay on the adverse party; or

(B) would not allow time for reasonable notice to each party and witness.

(b) Notice of hearing.

(1) Each party to the dispute shall be given not less than 10 days written notice of the time and place of the hearing by personal service or by first class mail. The notice shall contain a brief description of the alleged violations to be determined and shall state that each party may be represented by counsel, may call witnesses on its behalf, may cross-examine adverse witnesses, and may introduce evidence in support of its position.

(2) Subpoenas issued to require the attendance of witnesses or the production of evidence shall be served personally. Either party may request the use of a subpoena to require the production of evidence or the appearance of a witness by making the request no later than five days before the hearing date. Each request shall be specific so as to properly identify the evidence or person to be subpoenaed. Failure to obtain service of any such subpoena shall not be cause for a continuance or postponement of any hearing if improper service is made by the parties to the dispute, or if the requesting party has failed to provide accurate or complete information so as to allow such service or if the request does not allow sufficient time to obtain proper service. Final determination of the merits of any such request shall rest with the hearing officer.

(c) Hearing procedures.

(1) The burden of proof that services were performed within an established employment agreement for which payment has not been made shall rest with the claimant. The burden shall be satisfied by testimony or other evidence. Once the claimant has established that an employment agreement existed and that services were performed, the burden of proof to establish payment for those services shall rest with the respondent.

(2) Strict rules of evidence shall not apply and the hearing officer may rule on questions of evidence. All evidence shall be relevant and material to the dispute, and the hearing officer shall determine when a party exceeds the bounds of relevan-

cy. In such a case, the hearing officer may request that the evidence be made relevant to the dispute.

(3) A transcript of the hearing shall be made and maintained by a certified shorthand reporter, or the hearing officer shall make a record by means of a tape recording, until the record is duly transcribed and certified to the court as required. Any party desiring a copy of the transcript may make a request to the agency, and upon payment of a reasonable fee as established by the secretary, a transcript shall be furnished to the party by the department of human resources. Any party to the hearing wishing to make a separate record may do so at the party's own expense, if the party furnishes a copy to the secretary of human resources and to the adverse party as soon as it is available from the person making such a record.

(4) Either party to the dispute may be represented by counsel and may call any witnesses or cross-examine any witness.

(5) The record on appeal shall consist of the complaint, any response thereto by the employer, any reply by the claimant to the employer's response, the transcript of the proceedings before the administrative tribunal, any exhibits introduced at the hearing, and the order entered by the hearing officer.

That portion of the entire record which is to be filed with the clerk of the district court shall be determined and prepared for filing in accordance with these regulations, but the district court may order any or all additional parts of the entire record to be filed.

(6) The cost of reproducing the record for filing with the district court shall be borne by the appellant. Upon ascertaining the cost of the duplication and the payment thereof in advance by the party making the request, the agency shall effect such duplication and transmit the record to the clerk of the district court for filing.

(d) Findings of fact, conclusions of law, and order.

(1) The findings of fact shall set forth all facts:

(A) That are supported by the evidence;

(B) which are relevant to the issues of the claim; and

(C) that are necessary to support conclusions of law.

(2) The order shall be issued by the hearing officer within 45 days of the hearing and shall include, if required by the facts, any damages assessed because of respondent's willful violation. The order shall contain a certificate of service and shall be served upon each party to the dispute

either personally or by first class mail. The order shall contain a statement that, unless the order is satisfied, or an appeal is taken to the district court in accordance with K.S.A. 60-2101 within 30 days after entry of the decision, the case will be:

(A) Referred to the secretary of human resources or the secretary's authorized representative for enforcement; or

(B) reassigned to the claimant for enforcement through judicial proceedings. (Authorized by K.S.A. 44-325; implementing K.S.A. 1983 Supp. 44-322a, K.S.A. 44-324, 44-327; effective, E-73-23, July 7, 1973; effective Jan. 1, 1974; amended, E-78-38, Dec. 29, 1977; amended May 1, 1978; amended May 1, 1983; amended May 1, 1984.)

49-21-4. Reciprocal enforcement agreement with other states. The secretary of human resources may enter into agreement with other states to collect wages from out-of-state employers, and to perform reciprocal services in the state of Kansas for those other states, as follows:

(a) To the extent allowed in K.S.A. 44-322, the secretary may agree to assist other states in the investigation of claims filed in the foreign state claiming unpaid wages from a Kansas employer.

(b) The secretary may request other states that are party to the reciprocal agreement to assist in the investigation of Kansas claims filed by employees performing services in Kansas when the employer is located in a foreign state.

(c) The secretary may agree:

(1) to enforce judgments for wage payment in Kansas for other states when the employer is a Kansas employer; and

(2) to request other states who are party to the agreement to execute Kansas judgments for wages in those foreign states when the services were performed in Kansas and the employer is located in a foreign state.

(d) The secretary may agree to enforce claims of an employee in a foreign state:

(1) when the employee is represented by a private attorney; and

(2) when the attorney has made application through the office having jurisdiction in that state over the wage payment laws to certify the claim to the secretary of human resources for enforcement.

(e) Determination of claims shall be made by the state having jurisdiction according to the lawful requirements of that state. (Authorized by K.S.A. 44-325; implementing K.S.A. 44-327; effective May 1, 1984.)

Article 22.—GENERAL PROVISIONS

49-22-1. Definitions. (a) “Act” means the professional negotiations act, as defined in K.S.A. 72-5413 *et seq.* and amendments thereto.

(b) Computation of time. Whenever the time limit in these rules, for any act, is seven days or more, Saturdays, Sundays and legal holidays shall be included in making the computation. Whenever the time limit is less than seven days, Saturdays, Sundays and legal holidays shall be excluded. Whenever the last day of any time period falls on a Saturday, Sunday or legal holiday, that day shall be omitted from the computation. The secretary, for good cause shown, may extend any time limitation prescribed in these rules other than those time limitations fixed by statute. Computation of time shall commence when service to a party is made by the secretary, except as otherwise provided by these rules and regulations.

(c) “Party” means any professional employee, professional employee organization, or board of education named as a party in a petition filed under the act or these rules, or any professional employee, professional employee organization or board of education whose timely motion to intervene in a proceeding has been granted.

(d) “Memorandum of agreement” means an agreement entered into, pursuant to the provisions of K.S.A. 72-5421(a), between a board of education and a professional employee organization.

(e) “Proof or showing of interest” means, in the case of a representation election pursuant to K.S.A. 72-5418, a signed card or petition form indicating an employee’s interest in questions raised in a petition form filed with the secretary. In the case of a professional employee organization filing a petition with the secretary for a representation election pursuant to K.S.A. 72-5416, proof or showing of interest means a membership list.

(f) “Hearing examiner” means the secretary or the person designated by the secretary to conduct a hearing. (Authorized by K.S.A. 72-5432; implementing K.S.A. 72-5413, 72-5416, 72-5418, 72-5421, 72-5426, 72-5427, 72-5428, 72-5430a; effective, E-78-37, Dec. 29, 1977; effective May 1, 1978; amended, E-81-38, Dec. 10, 1980; amended May 1, 1981; amended May 1, 1984.)

Article 23.—PROCEDURE

49-23-1. (Authorized by K.S.A. 72-5413 *et seq.*; effective, E-78-37, Dec. 29, 1977; effective

May 1, 1978; revoked, E-81-38, Dec. 10, 1980; revoked May 1, 1981.)

49-23-2 and 49-23-3. (Authorized by K.S.A. 72-5416 to 72-5418; effective, E-78-37, Dec. 29, 1977; effective May 1, 1978; revoked, E-81-38, Dec. 10, 1980; revoked May 1, 1981.)

49-23-4. Notification of recognition. (a) All boards of education shall be required to file with the secretary, on a form to be provided by the secretary, annual notification of the status of recognition of any recognized employee organization, a description of the appropriate unit and the current memorandum of agreement status. The annual notification shall be filed no later than July 1 of each calendar year. A copy of the notification shall be filed by the secretary with the appropriate professional organization. No employee organization recognized as a bargaining representative of the unit shall lose its recognition and status by failure of a board of education to file.

(b) In the event a board of education fails to file as required by this section, the previously recognized bargaining representative may file with the secretary, on a form to be provided by the secretary, notification of the recognition and a description of the unit for whom the organization is or has been the recognized representative.

(c) Once a board of education has granted recognition to a professional employee organization the recognition shall remain in force and effect until changed by procedures specified by K.S.A. 72-5413 *et seq.* (Authorized by K.S.A. 72-5432; implementing K.S.A. 72-5417; effective, E-81-38, Dec. 10, 1980; effective May 1, 1981.)

49-23-5. Service of papers. (a) Petitions, complaints and other papers filed with the secretary shall be served by personal service, by certified mail, by telegraph or by leaving a copy thereof in the office or place of business of the person to be served.

(1) If service is by personal service or by leaving a copy of the paper in the office or place of business of the person to be served, a written return shall be made by the person serving the paper. The return shall state the time, place and manner of service, and shall be signed by the person serving the paper.

(2) If service is by certified mail or by telegraph, the signed post office receipt or telegraph receipt shall constitute proof of service.

(b) Any person, association or entity wishing to file a petition, complaint or other paper with the secretary shall submit the original petition, complaint or other paper and two copies to the secretary.

(c) Service upon attorney. If a party is represented by an attorney, all papers other than the complaint, notice of original hearings, decisions and orders may be served as herein provided upon the attorney and the service shall have the same force and effect as though served upon the party.

(d) Notice by the secretary. The secretary shall provide to all parties to an action copies of pleadings duly filed with the secretary.

(e) Intervention. Any third party having a legitimate interest in any proceeding before the secretary may file a motion to intervene setting forth facts sufficient to establish such interest and requesting the secretary to allow it to intervene in the matter. The secretary shall serve a copy of the motion to intervene on all parties, granting the parties five (5) days in which to respond, then issue an order either allowing or disallowing the motion to intervene. Any organization which is recognized as the representative of a unit shall be considered to have a legitimate interest in any proceeding involving said unit or any portion thereof. (Authorized by K.S.A. 72-5432; implementing K.S.A. 72-5417, 72-5418, 72-5419, 72-5420, 72-5427, 72-5430; effective, E-81-38, Dec. 10, 1980; effective May 1, 1981.)

49-23-6. Petition filing. (a) A petition form to be provided by the secretary, may be filed with the secretary by a professional employee organization, board of education, or a professional employee for the following purposes:

- (1) Unit determination;
- (2) Representation election;
- (3) Impasse declaration; and
- (4) Prohibited practice.

The original of the petition shall be signed by the petitioner or his or her authorized representative and the original and two (2) copies shall be filed with the secretary.

(b) Amendment or withdrawal of petitions. A petition may be amended, in whole or in part, or withdrawn by the petitioner at any time prior to the filing of an answer by an interested party. A petition may be amended or withdrawn by the petitioner after the filing of an answer only with the approval of the secretary.

(c) Answers to unit determination and prohibited practice petitions. All parties shall file

an answer to a petition within twenty (20) days after receipt of the petition from the secretary. The secretary may extend the time for filing an answer upon written motion showing good cause for the extension. Failure to answer or deny within twenty (20) days shall be deemed an admission by the party to any allegation in the petition not answered or denied. Answers may be amended only with the approval of the secretary. (Authorized by K.S.A. 72-5432; implementing K.S.A. 72-5417, 72-5418, 72-5419, 72-5420, 72-5427, 72-5430; effective, E-81-38, Dec. 10, 1980; effective May 1, 1981.)

49-23-7. Hearings, procedures. (a) Notice of hearing.

(1) Following the filing of a petition, complaint or other paper with the secretary, if it appears to the secretary that a hearing is authorized and warranted, the secretary shall fix a time and place for a hearing and shall notify each of the parties and all individuals or employee organizations known by the secretary to represent employees directly affected in the matter, of the time and place of the hearing. The hearing shall not be held less than seven (7) days after issuance of the notice by the secretary, except by agreement of the parties or in unusual circumstances.

(2) The time and place of the hearing may be changed by the secretary prior to the beginning of the hearing. Reasonable notice of the alternate time and place of the hearing shall be given to all interested parties.

(b) Objections to appointment. Upon notification of appointment by the secretary of an agent to perform any function, the parties shall file, within three (3) days of notification, any objection they might have to the agent appointed. The objection shall contain a specific statement of the reasons for the objection.

(c) Conduct of the hearings.

(1) All hearings shall be conducted by a hearing examiner. In the event the hearing examiner is unable to continue a hearing, the hearing may be reconvened at a later date, when the examiner is available, or, with the consent of all parties, another hearing examiner may be substituted.

(2) It shall be the duty of the hearing examiner to inquire fully into all matters at issue and to obtain a full and complete record.

(3) The hearing examiner may, at his or her discretion, continue the hearing from day to day or adjourn it to a later date or another place, by

announcement at the hearing or by other appropriate notice.

(d) Motions.

(1) All motions made during a hearing shall be made part of the record of the proceedings and shall be ruled upon by the examiner.

(2) All motions and answers, other than those made during a hearing, shall be made in writing to the secretary, shall briefly state the relief sought, and may be accompanied by affidavits setting forth the grounds upon which they are based. Any response to the motion shall be filed with the secretary within five (5) days after service of the moving papers, unless the secretary directs otherwise. The secretary shall rule upon all motions. The secretary may decide to hear oral arguments or to accept written testimony on any motion and the secretary shall notify the parties of the fact and of the time and place of the arguments or the methods of submission of written testimony. The secretary shall issue rulings and orders to decide all matters and all motions and rulings shall be part of the record of the proceedings.

(e) Objections. An objection not made before the hearing examiner or the secretary shall be deemed waived unless the failure to make the objection shall be excused by the secretary because of extraordinary circumstances.

(f) Introduction of evidence; the rights of parties at hearings. Any party shall have the right to appear at a hearing in person or by counsel, and any party and the hearing examiner shall have the power to call and examine witnesses, and to introduce into the record documentary and other evidence. A party shall, upon offering an exhibit into evidence at a hearing, simultaneously furnish copies to all other parties, unless excused by the hearing examiner. Witnesses shall be examined orally under oath. Compliance with the technical rules of evidence shall not be required. Stipulations of fact may be introduced as evidence with respect to any issue.

(g) The refusal of a witness at a hearing to answer a question which has been ruled proper by the hearing examiner shall be noted in the record. Such refusal shall go to the weight of the witness' previous testimony, but shall not be grounds for striking all previous testimony of the witness.

(h) Findings of fact; conclusion of law; orders or recommendations.

(1) Upon conclusion of a hearing any party to the hearing may, within a time period specified

by the hearing examiner file suggested findings of fact, conclusion of law, and order.

(2) In the event the secretary appoints a hearing examiner to conduct a hearing the hearing examiner shall as expeditiously as possible after the conclusion of the hearings, issue his or her findings of fact, conclusions of law and recommendations. The findings, conclusions, and recommendations shall be in writing and in a form as the secretary may direct.

(A) The hearing examiner's findings, conclusions and recommendations shall be served upon the parties, by the secretary, granting all parties ten (10) days from receipt in which to file written exceptions.

(B) The secretary shall, based upon the evidence produced at the hearing, and after reviewing the findings of fact, conclusions, recommendations of the hearing examiner, and any written exceptions, issue a final order.

(3) In the event the secretary serves as hearing examiner, the secretary shall, as expeditiously as possible after the close of the hearing, issue findings of fact, conclusions of law and a final order. (Authorized by K.S.A. 72-5432; implementing K.S.A. 72-5417, 72-5418, 72-5419, 72-5420, 72-5427, 72-5430; effective, E-81-38, Dec. 10, 1980; effective May 1, 1981.)

Article 24.—UNITS

49-24-1 and 49-24-2. (Authorized by K.S.A. 72-5413 et seq.; effective, E-78-37, Dec. 29, 1977; effective May 1, 1978; revoked, E-81-38, Dec. 10, 1980; revoked May 1, 1981.)

49-24-3. (Authorized by K.S.A. 72-5417 to 72-5420; effective, E-78-37, Dec. 29, 1977; effective May 1, 1978; revoked, E-81-38, Dec. 10, 1980; revoked May 1, 1981.)

49-24-4. Determining appropriate units. Petitions for unit determination may be filed by a board of education, professional employee organization, or a professional employee(s). In the event a board of education has recognized a professional employee organization, unit determination or clarification questions shall be governed by the memorandum of agreement unless the secretary determines that the agreement is unclear or that the agreement is silent with regard to the positions in question. (Authorized by K.S.A. 72-5432; implementing K.S.A. 72-5420; effective, E-81-38, Dec. 10, 1980; effective May 1, 1981.)

Article 25.—ELECTIONS

49-25-1 and 49-25-2. (Authorized by K.S.A. 72-5413 *et seq.*; effective, E-78-37, Dec. 29, 1977; effective May 1, 1978; revoked, E-81-38, Dec. 10, 1980; revoked May 1, 1981.)

49-25-3. (Authorized by K.S.A. 72-5417 to 72-5419; effective, E-78-37, Dec. 29, 1977; effective May 1, 1978; revoked, E-81-38, Dec. 10, 1980; revoked May 1, 1981.)

49-25-4. Eligibility and conditions. A petition may be filed by a professional employees' organization, board of education, or professional employees requesting the secretary to investigate and rule on the question(s) raised by a petition.

(a) The secretary shall investigate all the questions but may postpone a representation election if a unit determination question is in issue.

(b) A petition calling for a certification or decertification election shall be dismissed by the secretary if there is an existing memorandum of agreement, and the expiration date of the agreement is more than twelve (12) months subsequent to the date upon which the petition was filed with the secretary.

(c) Elections called pursuant to sufficient petitions filed after December 1 in any calendar year will be conducted as expeditiously as possible subsequent to July 1 of the next ensuing calendar year. (Authorized by K.S.A. 72-5432; implementing K.S.A. 72-5417, 72-5418, 72-5419; effective, E-81-38, Dec. 10, 1980; effective May 1, 1981.)

49-25-5. Membership lists, petition. (a) Evidence of membership shall be by verified membership list. Showing of interest may be by petition or authorization cards. A petition shall name the board of education, shall show the employee's address, and shall be signed and dated by the professional employee specifying that the employee supports the questions raised by the petition. A card or petition signed and dated by a professional employee less than one hundred and eighty (180) days prior to the date on which the petition was filed shall constitute prima facie evidence of continuation of the authorization. Membership lists shall contain each member's name alphabetically and show the member's address. The list shall be verified on each page by an officer or representative of the organization.

(b) The proof of interest submitted shall not be furnished to any of the parties.

(c) The professional employees eligible to vote on the question(s) raised by the petition shall be those in the appropriate unit on the payroll on the date of validation and who remain on the payroll on the date of the election. (Authorized by K.S.A. 72-5432; implementing K.S.A. 72-5418, 72-5419; effective, E-81-38, Dec. 10, 1980; effective May 1, 1981.)

49-25-6. Listing of employees. (a) Upon the filing of a petition with the secretary requesting a certification or decertification election, the secretary shall request, in writing, the appropriate board of education to furnish the secretary an alphabetical listing of all employees within the affected unit. The board of education shall furnish the listing to the secretary as expeditiously as possible not to exceed twenty (20) days following the date of the request by the secretary, unless otherwise directed by the secretary.

(b) Upon a determination by the secretary that an election shall be conducted, the secretary shall furnish a list of the names and addresses of all eligible professional employees in the appropriate unit to any professional employee organization currently recognized to represent the employees, and to all professional employee organizations or groups of professional employees who have submitted sufficient proof of interest to the secretary. (Authorized by K.S.A. 72-5432; implementing K.S.A. 72-5419; effective, E-81-38, Dec. 10, 1980; effective May 1, 1981.)

49-25-7. Notice of election. (a) At least fifteen (15) days prior to an election, the secretary shall cause a notice of election and sample ballot to be posted in conspicuous areas where professional employees in the affected unit assemble.

(b) A motion for intervention for representation on an election ballot shall not be entertained during the ten (10) day period immediately preceding an election. (Authorized by K.S.A. 72-5432; implementing K.S.A. 72-5419; effective, E-81-38, Dec. 10, 1980; effective May 1, 1981.)

49-25-8. Procedure. (a) All elections shall be by secret ballot and shall be conducted at times and places and in a manner prescribed by the secretary. All elections shall be conducted by the secretary or a designated agent of the secretary. Determinations by the secretary on any question regarding an election shall be final. Determinations by the secretary's agent on any question regarding an election shall be subject to review by the secretary.

(b) Ballots shall be prepared and issued by the secretary.

(c) The place of priority on the ballot shall be determined by the chronological filing or appearance on the dockets of the secretary but with the petitioner taking first priority, except that a currently recognized organization shall always take priority.

(d) In a runoff election, the place of priority shall be determined by the sequence of the ballot at the prior inclusive election. All runoff elections shall be conducted as expeditiously as possible not to exceed thirty (30) days following the first election unless otherwise ordered by the secretary. (Authorized by K.S.A. 72-5432; implementing K.S.A. 72-5419; effective, E-81-38, Dec. 10, 1980; effective May 1, 1981.)

49-25-9. Observers, eligibility, challenged ballots. (a) Each organization named on a ballot and the board of education shall be entitled to be represented by an observer at each polling place. Observers for each organization shall be a professional employee eligible to vote, and the board of education's observer shall be a non-supervisory person unless otherwise agreed to by all parties.

(b) Prior to the commencement of the election, the agent of the secretary shall designate the polling area and no advocating, soliciting, promoting, or otherwise supporting, in any manner, the election or defeat of a professional employees' organization or the choice of "no representation" shall be permitted within this area. A violation of this rule by any party or its representative or agent may be grounds for setting aside the election.

(c) Any prospective voter may be challenged for cause.

(d) All professional employees whose names do not appear on the list certified by the secretary as being a complete list of professional employees within the defined appropriate unit, shall be challenged by the agent of the secretary.

(e) A challenged voter shall be permitted to vote but the voter's ballot shall not be cast; instead it shall be sealed in a separate, unmarked envelope under the supervision of an agent of the secretary and inserted in a special, identifiable form envelope provided by the secretary for the purpose and returned to the election agent.

(f) Prior to counting the ballots, questions regarding challenged voters shall be resolved by the election agent, if the agent is able to do so. If the election agent cannot resolve all questions regarding challenged voters, the agent shall seal

the ballot box, and all questions shall be resolved by the secretary. The results of the election will be certified by the secretary in accordance with K.A.R. 49-25-9a. (Authorized by K.S.A. 72-5432; implementing K.S.A. 72-5418, 72-5419; effective, E-81-38, Dec. 10, 1980; effective May 1, 1981.)

49-25-10. Absentee ballots. Absentee ballots shall be available from the secretary upon written request by an eligible voter showing good and proper cause for obtaining the ballot. The secretary shall rule on the sufficiency of the cause and shall prescribe the method and timeliness of application for absentee ballots on the notice of election as required by K.A.R. 49-25-4a. Ballots shall be mailed to voters by the secretary and shall be returned to the secretary's office within the time limits specified on the election notice. (Authorized by K.S.A. 72-5432; implementing K.S.A. 72-5418, 72-5419; effective, E-81-38, Dec. 10, 1980; effective May 1, 1981.)

49-25-11. Tally of balloting, objections.

(a) A tally of ballots shall be made by the election agent immediately following the closing of the polls except in the case of unresolved challenged ballots. A tally sheet shall be furnished to all parties to the election.

(b) Each party to the election shall be permitted to observe the count of the ballots.

(c) All objections to a party's conduct or third person's conduct to the election shall be filed with the secretary within five (5) days of the election and the secretary shall immediately conduct an investigation of the objection and shall determine the sufficiency of the election. (Authorized by K.S.A. 72-5432; implementing K.S.A. 72-5418, 72-5419; effective, E-81-38, Dec. 10, 1980; effective May 1, 1981.)

49-25-12. Certification of election results.

(a) Certification. The secretary shall issue to the parties a certification of the results of the elections, including certification of the representative, if appropriate. All professional employee organizations shall be certified as of the next February 1 following the election in which they were selected, except where a postponement has occurred in accordance with Article 25 of these rules and regulations causing the election to be conducted after February 1. In that event, certification shall be effective as of the next February 1 following the filing of the petition for the representation election.

(b) Upon receipt of the certification of election results, the board of education shall grant official recognition to the professional employee organization selected by the professional employees if the employees in fact have selected an exclusive representative. The recognition shall become effective on the date of certification by the secretary. (Authorized by K.S.A. 72-5432; implementing K.S.A. 72-5419, 72-5423; effective, E-81-38, Dec. 10, 1980; effective May 1, 1981.)

Article 26.—IMPASSE DECLARATION AND NOTIFICATION

49-26-1. (Authorized by K.S.A. 72-5413 *et seq.*; effective, E-78-37, Dec. 29, 1977; effective May 1, 1978; revoked, E-81-38, Dec. 10, 1980; revoked May 1, 1981.)

49-26-2. Petition; contents. (a) A petition for impasse declaration shall state:

- (1) Name, address, telephone number, and representative to contact for both the recognized employee organization and the board of education;
- (2) Approximate number of employees in unit;
- (3) Number of negotiation sessions;
- (4) Number of issues in dispute; and
- (5) Description of issues in dispute. (Authorized by K.S.A. 72-5432; implementing K.S.A. 72-5426; effective, E-81-38, Dec. 10, 1980; effective May 1, 1981.)

49-26-3. Determination of impasse; duties of secretary. (a) If the secretary determines that an impasse exists, the secretary shall:

- (1) If a federal mediator is available, appoint a mediator from the federal mediation and conciliation service; or
- (2) If a federal mediator is not available within fourteen (14) days after the secretary's request the secretary shall appoint a mediator from a list of qualified persons maintained by the secretary. All mediators shall receive an amount of compensation determined to be appropriate by the secretary.

(b) A mediator appointed pursuant to these rules shall be required to notify the secretary as to the date, time and location of his or her first meeting with the parties.

(c) The effective date of appointment for a mediator shall be the date of the first meeting with the parties. (Authorized by K.S.A. 72-5432; implementing K.S.A. 72-5427; effective, E-81-38, Dec. 10, 1980; effective May 1, 1981.)

49-26-4. Mediator authority. The mediator may hold separate or joint meetings with the parties or their representatives, but any meeting shall be private and non-public. The meetings shall be conducted at the time and place determined by the mediator. (Authorized by K.S.A. 72-5432; implementing K.S.A. 72-5427; effective, E-81-38, Dec. 10, 1980; effective May 1, 1981.)

49-26-5. Costs incurred in mediation. When the impasse is resolved or when a fact-finding board is appointed, the secretary shall submit a statement to the parties for the costs incurred by the appointment and service of a mediator. (Authorized by K.S.A. 72-5432; implementing K.S.A. 72-5427, 72-5429; effective, E-81-38, Dec. 10, 1980; effective May 1, 1981.)

Article 27.—FACT-FINDING

49-27-1. (Authorized by K.S.A. 72-5413 *et seq.*; effective, E-78-37, Dec. 29, 1977; effective May 1, 1978; revoked, E-81-38, Dec. 10, 1980; revoked May 1, 1981.)

49-27-2. Failure to resolve impasse; appointment of fact-finding board. (a) If a board of education or a recognized employee organization determines, after the seven (7) day period following the appointment of the mediator, that mediation has failed to resolve an impasse, the board of education or recognized employee organization shall file with the secretary notice of the failure. The secretary shall furnish a copy of the notification to the remaining party to the impasse.

(b) The party filing notice of the failure of mediation may, within ten (10) days of the filing date, request the secretary to appoint a fact-finding board.

(c) The party receiving the notice from the secretary stating the failure of mediation may, within ten (10) days from receipt of the notice, state their concurrence that mediation has failed and request the secretary to appoint a fact-finding board.

(d) Requests for appointment of fact-finding boards shall be considered timely if the request is postmarked by the U.S. Postal Service no later than the tenth day. (Authorized by K.S.A. 72-5432; implementing K.S.A. 72-5428; effective, E-81-38, Dec. 10, 1980; effective May 1, 1981.)

49-27-3. Request for fact-finding. (a) A request for the appointment of a fact-finding board shall be in writing and may be filed with the secretary by either party. Both parties to the impasse

shall be granted three (3) days from receipt of a written notification from the secretary to respond to the secretary, setting out:

- (1) All issues at impasse;
- (2) The party's final position on each issue at impasse; and
- (3) The party's desire for the appointment of an individual fact-finder or for the appointment of a panel of three (3) fact-finders or certification by the secretary of a roster of five (5) fact-finders from which the parties may recommend a fact-finding board.

(b) In the event the parties agree upon the number of fact-finders to be appointed, the secretary shall appoint the number of persons agreed upon.

(c) In the event the parties cannot agree upon the number of fact-finders, the secretary shall determine the number of members to serve on the fact-finding board.

(d) Prior to commencing the fact-finding hearings, the secretary shall furnish the fact-finder(s) and both parties at impasse the respective positions of the parties on each issue at impasse. However, in no event shall the secretary provide position papers of one party to the other party prior to receipt of position papers from both parties. (Authorized by K.S.A. 72-5432; implementing K.S.A. 72-5428; effective, E-81-38, Dec. 10, 1980; effective May 1, 1981.)

49-27-4. Fact-finder requirements. (a) The person or persons appointed by the secretary to serve as a fact-finding board shall notify the secretary of the date, time and location of the first meeting with the parties at impasse.

(b) The person or persons appointed by the secretary to serve as a fact-finding board shall be compensated at a rate determined by the secretary.

(c) The effective date of the appointment of a person to serve on a fact-finding board shall be the date on which the fact-finding board first meets with the parties.

(d) The secretary shall submit a statement to the parties for all costs incurred by the fact-finding board. (Authorized by K.S.A. 72-5432; implementing K.S.A. 72-5428, 72-5429; effective, E-81-38, Dec. 10, 1980; effective May 1, 1981.)

Article 28.—PROHIBITED PRACTICES

49-28-1. Who may file. An allegation of a violation of K.S.A. 72-5430 may be filed with the secretary by a board of education, professional employee organization, or a professional employee. (Authorized by K.S.A. 72-5432; implementing

K.S.A. 72-5430; effective, E-81-38, Dec. 10, 1980; effective May 1, 1981.)

49-28-2. Form and filing, content. (a) Complaint forms shall be provided by the secretary.

(b) An answer filed by a party accused of a prohibited practice shall contain the following:

(1) A specific admission, denial, or explanation of each allegation of the complaint, or if the answering party is without knowledge thereof, he or she shall so state and the statement shall serve as a denial. Admissions or denials may be to all or part of an allegation but shall fairly meet the substance of the allegation.

(2) A clear and concise statement of the facts and matters of law relied upon. Any allegation in the complaint not specifically denied in the answer shall be deemed to be true and may be so found by the secretary, unless the respondent shall state in the answer that the respondent is without knowledge and the reasons he or she is without knowledge. (Authorized by K.S.A. 72-5432; implementing K.S.A. 72-5430; effective, E-81-38, Dec. 10, 1980; effective May 1, 1981.)

Article 30.—MINIMUM WAGE AND MAXIMUM HOURS

49-30-1. Definitions. The definitions herein contained are in addition to those expressed in K.S.A. 1977 Supp. 44-1201 through 44-1213:

(a) "Wage" means money due an employee from an employer whether determined on a time, task, piece rate, commission, bonus, or other basis.

(b) "Allowances" mean items that by these regulations may be credited in whole or in part to "wages" due an employee.

(c) "Workweek" means any period of time consisting of seven (7) consecutive days or one hundred sixty-eight (168) hours. The beginning of such period shall be at the discretion of the employer. In the case of employees who work in fire protection agencies or law enforcement agencies, a work period of not less than seven (7) days or more than twenty-eight (28) days may be established at the discretion of the employer.

(d) "Designated time" means the actual time the employee is required to report at a designated location regardless of whether a job assignment is made after the employee has reported.

(e) "Employer" means the state of Kansas and any county, city, improvement district, township, school district, or other forms of public administration.

(f) "Employee" means an individual employee who performs work not covered under the fair labor standards act of 1938 (29 U.S.C.A. § 201 *et seq.*, as amended) regardless of whether or not other employees of the same employer perform work covered under the fair labor standards act of 1938.

(g) "Agriculture" means an operation cultivating the soil, or the harvesting of crops, or the raising and feeding of livestock, bees, fur-bearing animals, fish, poultry, or the preparation, packing, packaging or transporting to market of crops or products when such is an integral part of the ordinary agricultural operations.

(h) "Domestic service" means an individual employed by an owner or tenant in a private home to clean, repair or maintain the private home or the property on which the private home is located, but does not include an individual employed by a person contracting to perform the service.

(i) "Executive" means:

(1) any individual who owns at least twenty (20) percent interest in the enterprise and is in sole charge of an independent establishment or a physically separated branch establishment; or

(2) an individual employed in the capacity of an executive paid in excess of one hundred fifty-five dollars (\$155) per week and who does not devote more than twenty (20) percent, (forty (40) percent in the case of employees in a retail or service establishment) of his or her hours of work in a workweek to employment activities which are included in the coverage of these regulations.

(j) "Administrative capacity" means an individual employed in an administrative position, public or otherwise, when performance is of office or nonmanual work directly related to office management policies, or general business operations when:

(1) such individual supervises at least two (2) other employees; and

(2) does not devote more than twenty (20) percent (forty (40) percent in case of employees in retail or service establishments), of his or her hours of work in a workweek to employment activities which are included in the coverage of these regulations;

(3) performs functions in the administration of a school system, educational establishment or institution, where the work is directly related to academic instruction or training;

(4) an individual who exercises discretion and independent judgment regularly and directly to

assist a bona fide executive or administrative person as herein defined, and is subject to the same qualifying requirements.

(k) "Professional capacity" means an individual so employed which:

(1) Requires advanced scientific knowledge and learning, customarily acquired by a prolonged course of specialized intellectual instruction and study, as distinguished from a general academic education.

(2) Requires work of an original, creative nature, using invention, imagination, and talent of the employee.

(3) Requires the individual to teach, tutor, instruct or lecture.

(4) Requires consistent exercise of discretion and judgment and is of such character that the work product cannot be standardized in relation to a given period of time.

(5) Does not devote more than twenty (20) percent of hours worked in a workweek to activities which are not an essential and necessary incident to the work and who is paid at least one hundred seventy dollars (\$170) per week.

(l) "Outside commission paid salesman" means a salesperson who is customarily and regularly engaged away from his or her employer's place(s) of business while making sales, obtaining orders, or contracts for services, merchandise, or facilities for which a consideration is paid by the customer, and who does not devote more than twenty (20) percent of his or her work hours in a workweek to employment activities covered by these regulations.

(m) "Service gratuitously for a nonprofit organization" means performing services gratuitously on a voluntary basis which is not directly related to the primary job functions within his or her own employing agency and such is performed for:

(1) A nonprofit organization that is subject to the approval of the federal internal revenue service or the secretary of state.

(2) A public employer, including fire protection or law enforcement employee, when such individual employee responds to the call of need of a mutual neighboring jurisdiction.

(3) A public employer who pays an employee a reasonable expense allowance for such services and the amount of expense payment does not exceed seven dollars and fifty cents (\$7.50) per call.

(n) "Occasional or part-time basis" means hours worked shall not be forty hours or more per week. Students eighteen (18) years of age and under working between academic terms when school is

not in session shall not be considered to be covered by the act regardless of the number of hours worked. Individuals nineteen (19) years of age through fifty-nine (59) years of age shall be covered by the provisions of the minimum wage and maximum hours law regardless of the number of hours worked.

(o) "Handicapped workers" means a person disadvantaged by reason of age, physical or mental disability.

(p) "Patient laborers" means a person confined to a state institution or hospital who, under the orders of a doctor, has been assigned to perform services within such state institution or hospital which are considered rehabilitative or therapeutic in nature.

(q) "Learners and apprentices" means an employee who is employed in a progressively more difficult, learning or working process, on the job, which is not part of a formal program recognized under the Kansas apprenticeship council or bureau of apprenticeship and training.

(r) "Tips and gratuities customarily constitute part of the remuneration," means an employee has received tips and gratuities in a calendar month which exceed twenty dollars (\$20). (Authorized by K.S.A. 1978 Supp. 44-1202, 44-1203, 44-1207; effective, E-79-26, Oct. 19, 1978; effective May 1, 1979.)

49-30-2. Wages; commissions or bonuses; average hourly rate. (a) "Wage" shall include the following:

(1) The reasonable cost to the employer for meals or lodging when customarily furnished the employee or paid for by the employer for the employee. Should a dispute develop, the secretary of human resources shall determine such reasonable cost based upon the average employer cost for meals and lodging in the area where incurred.

(2) Commissions or bonuses earned and due to employees shall be calculated as a percentage of the dollar amount of his or her transactions. To determine the average hourly wage paid to such employees, the total amount of commission or bonus earned by an employee during a designated work period shall be added to other wages earned during same period and divided by number of hours worked by the employee in such period:

$$\text{Average hourly wage for a period} = \frac{\text{Commission or bonus plus wages earned}}{\text{Number of hours worked}}$$

(3) The total salary for a specified work period whether earned on the basis of time, task, piece rate, or salary shall be divided by the hours worked in such period to determine the average hourly rate:

$$\text{Average hourly rate} = \frac{\text{Total salary}}{\text{Hours worked}}$$

(4) The average hourly rate of an employee employed in more than one position with the same employer shall be the total earnings for the period divided by the total hours worked:

$$\text{Average hourly rate for a period} = \frac{\text{Total earnings}}{\text{Total hours}}$$

(Authorized by K.S.A. 1978 Supp. 44-1202, 44-1207; effective, E-79-26, Oct. 19, 1978; effective May 1, 1979.)

49-30-3. Hours worked; on call time; period of paid employment. (a) "Hours worked" means any period of time during which the employee is performing services for an employer or is required to wait or remain on call by an employer when:

(1) The employee is required to report at a specified time for duty or at a specified work place, even if he or she does nothing but wait for a work assignment.

(2) The time is spent in a sleeping period, of not more than eight (8) hours, which has been agreed to by the employee and the employer, occurring during a work period of twenty-four (24) hours or more when the employee is not permitted at least five (5) continuous hours of sleep.

(3) The period of time is less than thirty (30) minutes occurring between the required report time and the end of the required hours of work.

(4) The employer or anyone having management responsibilities of the employer has made any actual inferred or implied requirement that work be performed, shall cause any designated period of nonpaid employment to be considered as a paid period of employment.

(5) The time is spent in walking, riding, or traveling to and from the actual place the employee is required to report when the period of time is compensable by express contract, custom or practice.

(6) The time is spent by an employee who is on call and required to remain at a specified place to await possible call to perform a work assignment for the employer and is prevented from using the time for his or her own personal benefit by such employer requirement.

(7) The period of employment is used for training, lectures or meetings that occur either during the employee's regular working hours, or outside regular working hours when the subject matter is directly related to the employee's job and attendance is required; or when nonattendance would have an adverse effect on the employment relationship.

(b) Periods of nonpaid employment.

(1) Periods of time when the employer has required the employee to leave work at his or her home or with company officials where he or she may be reached.

(2) Any period of thirty (30) minutes or more when the employee has been previously advised that such is a nonpaid period and no services are required to be performed, such as:

(A) Lunch periods of thirty (30) minutes or more.

(B) Time between split shifts if the employee is free to use the period of time for his or her own benefit.

(C) Periods of time when the employee is waiting to be engaged due to delay, loading, unloading, during which no services are expected from the employee and the employee is free to use the time to his or her own use.

(3) The time is for lectures, training, or meetings outside required working hours, is voluntary and to the benefit of the employee not directly related to the employee's assigned job and no productive work is performed.

(4) Time spent by an employee (outside his or her required working hours) at an employer's work site pursuing his or her own private interests. (Authorized by K.S.A. 1978 Supp. 44-1202, 44-1207; effective, E-79-26, Oct. 19, 1978; effective May 1, 1979.)

49-30-4. Fire protection; law enforcement activities; rescue and ambulance services; exceptions. (a) Fire protection activities shall include all activities, and those related thereto, in the prevention, control or extinguishment of any fire which is performed by an organized fire department or fire protection district within the authority and responsibility of state statutes or local ordinances including: housekeeping, equipment maintenance, lecturing, community fire drills, fire inspections or other essential functions.

(b) Law enforcement activities shall include governmental agencies which are empowered to:

(1) Enforce laws designed to maintain public peace and order;

(2) to protect life and property from willful injury; or

(3) to prevent or detect crimes.

Employees who shall be considered as being employed in law enforcement activities are persons employed as:

(A) City police, district or local police, sheriffs, undersheriffs, deputy sheriffs regularly employed, court marshals and deputy marshals, constables, deputy constables, state troopers, and highway patrol officers.

(B) Other law enforcement employees such as: fish and game wardens, criminal investigative agents of the district attorney, attorney general's office, or other law enforcement agencies concerned with keeping public peace and order.

(C) Employees who are employed as security personnel at correctional institutions and who control and maintain custody of inmates at a facility maintained as part of a penal system. These facilities include: Penitentiaries, prisons, prison farms, county, city and village jails, precinct house lockups and reformatories.

(c) Fire protection activities shall include rescue and ambulance service functions which are part of the public agency's fire protection activities.

(d) Employees who shall not conduct law enforcement activities are:

(1) Private ambulance employees and rescue service employees shall not come within the special exemption for fire protection and law enforcement activities of public agencies.

(2) Services performed by: building and equipment maintenance persons, janitors, clerks, stenographers, instructors, and culinary service personnel in correctional institutions.

(e) When an employee who is entitled to the fire protection or law enforcement exemption is also normally assigned non-exempt duties, the total number of hours worked at both exempt and non-exempt activities shall be considered in determining the overtime rate to be paid. When an exempt employee voluntarily agrees to accept non-exempt duties during his or her off duty hours, the time spent in each activity shall be considered separately in determining eligibility for overtime. If the employee's non-exempt duties exceed thirty (30) percent of total hours worked the employee shall be disqualified for the fire prevention or law enforcement exemption and overtime shall be paid for hours worked in excess of forty-six (46) hours. (Authorized by K.S.A. 1978 Supp. 44-1202, 44-1207; effective, E-79-26, Oct. 19, 1978; effective May 1, 1979.)

Article 31.—MINIMUM WAGE AND MAXIMUM HOURS

49-31-5. Minimum wage; tips and gratuities; permits; handicapped workers; learners and apprentices; revocation. (a) Tips and gratuities received by an employee shall amount to twenty (\$20) dollars or more per month before such tips and gratuities customarily constitute part of the remuneration of such employee. The employer shall have the burden of proof, through substantial evidence, that the allowances taken for tips and gratuities are factual. The employer shall have the right to require the employee to certify a factual accounting of all tips and gratuities received by the employee.

(b) Employers may make written application to the secretary of human resources for permits to employ handicapped workers, patient laborers at state institutions or hospitals, at a wage rate not lower than eighty-five (85) percent of the minimum wage rate herein required. No reduced wage shall be paid unless and until the employer has such permit from the secretary. Each permit shall expire one (1) year after it is issued. The following organizations may apply to the secretary of human resources for a blanket permit which allows the employment of handicapped persons at a reduced rate: state vocational rehabilitation agencies, state institutions and hospitals, and county or city hospitals. Any such application shall certify that no person will be so employed, unless it is approved and ordered by a staff doctor of the institution or hospital. A handicapped person may be employed beyond one (1) year at the reduced rate when a reevaluation by such agency, institution or hospital, determines that continued reduced wage rate is warranted.

(c) Employers may make written application to the secretary of human resources for permits to employ learners and apprentices at wages lower than the minimum wage. These learners and apprentices shall not be a part of a formalized apprenticeship program approved by the Kansas apprenticeship council or the bureau of apprenticeship and training. Permits may be obtained as follows:

(1) The secretary shall furnish for such applications forms which shall require:

(A) A description of the type and kind of training to be given each apprentice or learner.

(B) The employer agrees that he or she shall endeavor to continue each apprentice or learner in employment following completion of the training.

(C) The employer agrees to keep a copy of the permit in the employee's pay records.

(2) Rates and the duration thereof shall be as follows:

Upon hiring—80% of minimum wage
after 2 months—90% of minimum wage
after 3 months—minimum wage

(3) The number of learners or apprentices hired at any one time may not exceed one (1) apprentice or learner for each five (5) regular employees, except that each employer may employ at least one (1) learner or apprentice.

(4) No apprentice or learner may be hired on a part-time or occasional basis for less than forty (40) hours per week.

(d) The secretary may revoke or refuse to issue a permit for employment at reduced rates if he or she finds permits are being abused or the employer has no intention to employ the learner or apprentice beyond three (3) months without unjustifiable reasons. (Authorized by K.S.A. 1978 Supp. 44-1203, 44-1204, 44-1207; effective, E-79-26, Oct. 19, 1978; effective May 1, 1979.)

49-31-6. Maximum hours before overtime; computations; schedule consecutive working days with corresponding maximum hours at regular rates; trading time. (a) Employees who are covered by the maximum hours provision of the law and who are engaged in fire protection or law enforcement activities shall be paid overtime compensation at a rate of not less than 1½ times the regular rate at which the employee is employed. Overtime compensation shall be paid for all hours worked which exceed the hours worked shown opposite the number of consecutive days in the pay period, as follows:

Consecutive work period (days)	Maximum hours at regular rates
28	258.00
27	248.75
26	239.50
25	230.50
24	221.25
23	212.00
22	202.75
21	193.50
20	184.25
19	175.00
18	165.75
17	156.75

Consecutive work period (days)	Maximum hours at regular rates
16	147.50
15	138.25
14	129.00
13	119.75
12	110.50
11	101.25
10	92.25
9	83.00
8	73.75
7	64.50

(b) Calculations of pay rates for the overtime requirements of the act shall be based on an hourly rate regardless of the form of the wage payment. Use of the label "salary" to describe wage payments shall not determine coverage under or exemption from the act. All forms of wage payments shall be converted to an average hourly wage and may be computed as follows:

$$\text{Monthly pay} = \frac{\text{Monthly rate} \times 12}{52 \text{ weeks} \times \text{hours worked during the week}}$$

$$\text{Weekly pay, piece rate, unit bonus, commission or other} = \frac{\text{Total amount paid during work period}}{\text{Total hours worked during period}}$$

(c) Fire protection or law enforcement activities employees may trade time, with the employer's permission, by one employee substituting for another on a regularly scheduled tour of duty, or for some part thereof, to permit an employee to absent himself or herself from work to attend to purely personal pursuits, if:

(1) The trading of time is done voluntarily by the employees participating in the program and not at the behest of the employer;

(2) The reason for trading time is due, not to the employer's business operations, but to the employee's desire or need to attend to personal matters;

(3) A record is maintained by the employer of all time traded by employees; and

(4) The period during which time is traded and paid back does not exceed 12 months. The employer shall assure that traded time is paid back or that proper wage payments are made as required. (Authorized by K.S.A. 44-1207; implementing K.S.A. 44-1203, 44-1204; effective, E-79-26, Oct. 19, 1978; effective May 1, 1979; amended May 1, 1984.)

49-31-7. Employment records. In addition to the records specifically required by the mini-

mum wage and maximum hours law, employers shall maintain records which reflect the following:

(1) The beginning dates and hours of the work-week or work period of each employee.

(2) The date of paydays and all wage payments made during each pay period including all deductions or credits made in computing the wage.

(3) Tips or gratuities received by employees which are claimed as credit within the provisions of K.S.A. 44-1203.

(4) Policy setting out any seniority system, merit system, system to measure earnings by quantity or quality of production or other differential basis on which differing wage payments are computed for employees assigned to perform like or similar work functions. (Authorized by K.S.A. 1978 Supp. 44-1207, 44-1209; effective, E-79-26, Oct. 19, 1978; effective May 1, 1979.)

49-31-8. Joint employment by public employers in fire prevention and law enforcement activities; overtime. (a) A joint employment relationship exists between two (2) or more public employers when they agree to share the services of an employee when one employer shall act directly or indirectly in the interest of the other employer in relations with the employee when:

(1) The employers each have the right to control the job activities of the employee.

(2) The second employer is required by local ordinance or otherwise to hire the employee and such employment benefits both employers.

(b) The employees not otherwise exempt from K.S.A. 1977 Supp. 44-1201 through 44-1213 shall be paid overtime compensation by the primary employer for combined hours of work performed under joint employment relationships, except that employment with private employers shall not constitute a joint employment relationship under K.S.A. 1977 Supp. 44-1201 through 44-1213. (Authorized by K.S.A. 1978 Supp. 44-1204, 44-1207; effective, E-79-26, Oct. 19, 1978; effective May 1, 1979.)

49-31-9. Employee complaints under the minimum wage and maximum hours law.

Employee complaints under the minimum wage and maximum hours law may be in the form of a letter addressed to the secretary of human resources. (Authorized by K.S.A. 44-1207; implementing K.S.A. 44-1206; effective, E-79-26, Oct. 19, 1978; effective May 1, 1979; amended May 1, 1984.)

**Article 45.—BOILER SPECIFICATIONS
AND INSPECTIONS**

49-45-1. Rules for construction of power boilers. Section I of the American society of mechanical engineers (ASME) boiler and pressure vessel code, including the appendices, an international code and American national standard, 2007 edition, published July 1, 2007, is hereby adopted by reference. (Authorized by and implementing K.S.A. 44-916; effective, E-79-27, Oct. 19, 1978; effective May 1, 1979; amended May 1, 1984; amended May 1, 1987; amended April 28, 2000; amended Nov. 3, 2006; amended Oct. 10, 2008.)

49-45-2. Part A: ferrous material specifications. Section II, part A of the American society of mechanical engineers (ASME) boiler and pressure vessel code, including the appendices, an international code and American national standard, 2007 edition, published July 1, 2007, is hereby adopted by reference. (Authorized by and implementing K.S.A. 44-916; effective, E-79-27, Oct. 19, 1978; effective May 1, 1979; amended May 1, 1984; amended May 1, 1987; amended April 28, 2000; amended Nov. 3, 2006; amended Oct. 10, 2008.)

49-45-3. Part B: nonferrous material specifications. Section II, part B of the American society of mechanical engineers (ASME) boiler and pressure vessel code, including the appendices, an international code and American national standard, 2007 edition, published July 1, 2007, is hereby adopted by reference. (Authorized by and implementing K.S.A. 44-916; effective, E-79-27, Oct. 19, 1978; effective May 1, 1979; amended May 1, 1984; amended May 1, 1987; amended April 28, 2000; amended Nov. 3, 2006; amended Oct. 10, 2008.)

49-45-4. Part C: specifications for welding rods, electrodes, and filler metals. Section II, part C of the American society of mechanical engineers (ASME) boiler and pressure vessel code, including the appendix, an international code and American national standard, 2007 edition, published July 1, 2007, is hereby adopted by reference. (Authorized by and implementing K.S.A. 44-916; effective, E-79-27, Oct. 19, 1978; effective May 1, 1979; amended May 1, 1984; amended May 1, 1987; amended April 28, 2000; amended Nov. 3, 2006; amended Oct. 10, 2008.)

49-45-4a. Part D: properties (customary). Section II, part D, “properties (customary)” of the American society of mechanical engineers (ASME) boiler and pressure vessel code, including the appendices, an international code and American national standard, 2007 edition, published July 1, 2007, is hereby adopted by reference. (Authorized by and implementing K.S.A. 44-916; effective April 28, 2000; amended Nov. 3, 2006; amended Oct. 10, 2008.)

49-45-4b. Part D—properties (metric). Section II, part D, “properties (metric)” of the American society of mechanical engineers (ASME) boiler and pressure vessel code, including the appendices, an international code and American national standard, 2004 edition, published July 1, 2004, is hereby adopted by reference. (Authorized by and implementing K.S.A. 44-916; effective Nov. 3, 2006.)

49-45-5. Rules for construction of heating boilers. Section IV of the American society of mechanical engineers (ASME) boiler and pressure vessel code, including the appendices, an international code and American national standard, 2007 edition, published July 1, 2007, is hereby adopted by reference. (Authorized by and implementing K.S.A. 44-916; effective, E-79-27, Oct. 19, 1978; effective May 1, 1979; amended May 1, 1984; amended May 1, 1987; amended April 28, 2000; amended Nov. 3, 2006; amended Oct. 10, 2008.)

49-45-6. Nondestructive examination. Section V of the American society of mechanical engineers (ASME) boiler and pressure vessel code, including the appendices, an international code and American national standard, 2007 edition, published July 1, 2007, is hereby adopted by reference. (Authorized by and implementing K.S.A. 44-916; effective, E-79-27, Oct. 19, 1978; effective May 1, 1979; amended May 1, 1984; amended May 1, 1987; amended April 28, 2000; amended Nov. 3, 2006; amended Oct. 10, 2008.)

49-45-7. Recommended rules for the care and operation of heating boilers. Section VI of the American society of mechanical engineers (ASME) boiler and pressure vessel code, including the appendices, an international code and American national standard, 2007 edition, published July 1, 2007, is hereby adopted by reference. (Authorized by and implementing K.S.A.

44-916; effective, E-79-27, Oct. 19, 1978; effective May 1, 1979; amended May 1, 1984; amended May 1, 1987; amended April 28, 2000; amended Nov. 3, 2006; amended Oct. 10, 2008.)

49-45-8. Recommended guidelines for the care of power boilers. Section VII of the American society of mechanical engineers (ASME) boiler and pressure vessel code, including the appendices, an international code and American national standard, 2007 edition, published July 1, 2007, is hereby adopted by reference. (Authorized by and implementing K.S.A. 44-916; effective, E-79-27, Oct. 19, 1978; effective May 1, 1979; amended May 1, 1984; amended May 1, 1987; amended April 28, 2000; amended Nov. 3, 2006; amended Oct. 10, 2008.)

49-45-9. Qualification standard for welding and brazing procedures, welders, brazers, and welding and brazing operators. Section IX of the American society of mechanical engineers (ASME) boiler and pressure vessel code, including the appendices, an international code and American national standard, 2007 edition, published July 1, 2007, is hereby adopted by reference. (Authorized by and implementing K.S.A. 44-916; effective, E-79-27, Oct. 19, 1978; effective May 1, 1979; amended May 1, 1984; amended May 1, 1987; amended April 28, 2000; amended Nov. 3, 2006; amended Oct. 10, 2008.)

49-45-10 to 49-45-19. (Authorized by and implementing K.S.A. 1985 Supp. 44-916; effective, E-79-27, Oct. 19, 1978; effective May 1, 1979; amended May 1, 1984; amended May 1, 1987; revoked Nov. 22, 1996.)

49-45-20. National board inspection code (ANSI/nb23). The national board inspection code (NBIC), which consists of parts 1, 2, and 3, 2007 edition, an American national standard, published by the national board of boiler and pressure vessel inspectors, is hereby adopted by reference. (Authorized by and implementing K.S.A. 44-916; effective, E-79-27, Oct. 19, 1978; effective May 1, 1979; amended May 1, 1984; amended May 1, 1987; amended April 28, 2000; amended Nov. 3, 2006; amended Oct. 10, 2008.)

49-45-21 through 49-45-26. (Authorized by and implementing K.S.A. 1998 Supp. 44-916; effective May 1, 1984; amended May 1, 1987; amended April 28, 2000; revoked Nov. 3, 2006.)

49-45-27. Controls and safety devices for automatically fired boilers. ASME CSD-1, controls and safety devices for automatically fired boilers, 1998 edition, published July 1998 and effective January 1, 1999, is adopted by reference. (Authorized by and implementing K.S.A. 1998 Supp. 44-916; effective May 1, 1987; amended April 28, 2000.)

49-45-28. Power piping. ASME B31.1-2007, "power piping," the American society of mechanical engineers (ASME) code for pressure piping, including the appendices, 2007 edition, is adopted by reference. (Authorized by and implementing K.S.A. 44-916; effective May 1, 1987; amended April 28, 2000; amended Nov. 3, 2006; amended Oct. 10, 2008.)

49-45-29. Rules for construction of pressure vessels; division 1. Section VIII, division 1 of the American society of mechanical engineers (ASME) boiler and pressure vessel code, including the appendices, an international code and American national standard, 2007 edition, published July 1, 2007, is hereby adopted by reference. (Authorized by and implementing K.S.A. 44-916; effective April 28, 2000; amended Nov. 3, 2006; amended Oct. 10, 2008.)

49-45-29b. Rules for construction of pressure vessels; division 2, alternative rules. Section VIII, division 2 of the American society of mechanical engineers (ASME) boiler and pressure vessel code, including the annexes, an international code and American national standard, 2007 edition, published July 1, 2007, is hereby adopted by reference. (Authorized by and implementing K.S.A. 44-916; effective Oct. 10, 2008.)

49-45-30. (Authorized by and implementing K.S.A. 1998 Supp. 44-916; effective April 28, 2000; revoked Nov. 3, 2006.)

49-45-31. Rules for construction of pressure vessels; division 3, alternative rules for construction of high pressure vessels. Section VIII, division 3 of the American society of mechanical engineers (ASME) boiler and pressure vessel code, including the appendices, an international code and American national standard, 2007 edition, published July 1, 2007, is hereby adopted by reference. (Authorized by and implementing K.S.A. 44-916; effective April 28, 2000; amended Nov. 3, 2006; amended Oct. 10, 2008.)

49-45-32. Uniform mechanical code. The uniform mechanical code, including the appendices, an international code and American national standard, 2000 edition, published November 1999 by the international association of plumbing and mechanical officials, is hereby adopted by reference. (Authorized by and implementing K.S.A. 44-916; effective April 28, 2000; amended Nov. 3, 2006.)

49-45-33. International plumbing code. The international plumbing code, an American national standard, 1997 edition, published February 1997 by the international conference of building officials, is hereby adopted by reference. (Authorized by and implementing K.S.A. 1998 Supp. 44-916; effective April 28, 2000.)

49-45-34. Fiber-reinforced plastic pressure vessels. Section X of the American society of mechanical engineers (ASME) boiler and pressure vessel code, including the appendices, an international code and American national standard, 2007 edition, published July 1, 2007, is hereby adopted by reference. (Authorized by and implementing K.S.A. 44-916; effective April 28, 2000; amended Nov. 3, 2006; amended Oct. 10, 2008.)

49-45-35. Rules for construction and continued service of transport tanks. Section XII of the American society of mechanical engineers (ASME) boiler and pressure vessel code, including the appendices, an international code and American national standard, 2007 edition, published July 1, 2007, is hereby adopted by reference. (Authorized by and implementing K.S.A. 44-916; effective Nov. 3, 2006; amended Oct. 10, 2008.)

49-45-36. Uniform plumbing code. The following portions of the uniform plumbing code, an American national standard, 2000 edition, published by the international association of plumbing and mechanical officials, are hereby adopted by reference:

- (a) Chapter 5;
- (b) chapter 6, except parts 603.4.6, 603.4.8, 603.4.10, 603.4.17, 603.4.18, 603.4.19, and 603.20;
- (c) chapter 7;
- (d) chapter 12; and
- (e) appendices A and C and the applicable portions of appendix I. (Authorized by and implementing K.S.A. 44-916; effective Nov. 2, 2007.)

49-45-37. Boiler and combustion systems hazards code. NFPA 85, "boiler and combustion

systems hazards code," including the annexes, 2007 edition, published by the national fire protection association (NFPA), is hereby adopted by reference. However, the following paragraphs are not adopted:

- (a) 2.3.1;
- (b) 2.3.3;
- (c) 2.3.5;
- (d) 2.3.6;
- (e) 2.3.7; and
- (f) 2.4. (Authorized by and implementing K.S.A. 44-916; effective Nov. 3, 2006; amended Oct. 10, 2008.)

49-45-38. Standard for the prevention of furnace explosions in fuel oil- and natural gas-fired single burner boiler-furnaces. NFPA 85A, "standard for the prevention of furnace explosions in fuel oil- and natural gas-fired single burner-furnaces," including the appendices, 1987 edition, published by the national fire protection association (NFPA), is hereby adopted by reference. (Authorized by and implementing K.S.A. 44-916; effective Nov. 3, 2006.)

Article 45a.—DEFINITIONS

49-45a-1. Definitions. (a) "The act" means the Kansas boiler safety act and regulations pertaining to the laws of boiler and pressure vessel safety.

(b) "Alteration" means any change in the item described on the original manufacturer's data report that affects the pressure-containing capability of the boiler or pressure vessel. Each nonphysical change, including an increase in the maximum allowable internal or external working pressure or the design temperature of a boiler or pressure vessel, shall be considered an alteration. Any reduction in minimum temperature so that additional mechanical tests are required shall also be considered an alteration.

(c) "ANSI" means the American national standards institute.

(d) "ASME" means the American society of mechanical engineers.

(e) "Authorized inspection agency" means either of the following:

(1) A department or division established by a government jurisdiction that has adopted one or more sections of the ASME code and whose chief inspector holds a valid commission issued by the national board of boiler and pressure vessel inspectors; or

(2) an inspection agency of an insurance company that is authorized to insure and is insuring boilers and pressure vessels in those jurisdictions that have examined the agency inspectors' qualifications to represent that jurisdiction, resulting in the issuance of a valid certificate of competency to the inspector by the national board of boiler and pressure vessel inspectors.

(f) "BTUH" means British thermal units of heat per hour.

(g) "Chief inspector" means the chief boiler inspector of the Kansas department of labor.

(h) "Column, fluid relief" means piping that is connected from the top of a hot water heating boiler to either an open or a closed expansion tank, providing for the thermal expansion of water.

(i) "High pressure, high temperature water boiler" means a water boiler operating at pressures exceeding 160 pounds per square inch gauge or at a temperature exceeding 250°F.

(j) "High pressure power boiler" means a boiler in which steam or other vapor is generated at a pressure of more than 15 pounds per square inch gauge.

(k) "Hot water heating boiler" means a boiler in which no steam is generated, from which hot water is circulated for heating purposes and then returned to the boiler, and which operates at a pressure not exceeding 160 psig or a temperature of 250°F at or near the boiler outlet.

(l) "Hot water supply boiler" means a boiler completely filled with water that furnishes hot water, to be used externally, at pressures not exceeding 160 psig or at temperatures not exceeding 210°F at or near the boiler outlet.

(m) "Lapseam crack" means a crack found in lapseams extending parallel to the longitudinal joint and located either between or adjacent to rivet holes.

(n) "Low pressure heating boiler" means a steam or vapor boiler operating at pressures not exceeding 15 pounds per square inch gauge or a hot water boiler operating at pressures not exceeding 160 pounds per square inch gauge or at temperatures not exceeding 250°F.

(o) "Makeup water" means water introduced into the boiler to replace the water lost or removed from the system.

(p) "National board" means the national board of boiler and pressure vessel inspectors, whose membership is composed of the chief inspectors of each jurisdiction charged with the administration and enforcement of the provisions of the ASME code.

(q) "Nonstandard boiler" means a boiler that does not bear the ASME stamp or the stamp of any jurisdiction that has adopted a standard of construction equivalent to that required by these regulations.

(r) "Owner or user" means any person, firm, or corporation subject to the provisions of the Kansas boiler safety act and responsible for the safe operation of any boiler within this state.

(s) "PSIG" means pounds per square inch gauge.

(t) "Reinstalled boiler" means a boiler removed from its original setting and reinstalled at the same location or at a new location without change of ownership.

(u) "Repair" means any work necessary to restore a boiler or pressure vessel to a safe and satisfactory operating condition without changing the original design, as defined in part RC of the national board inspection code, which is adopted by reference in K.A.R. 49-45-20.

(v) "Secondhand boiler" means a boiler that has changed both location and ownership since its initial use.

(w) "Secretary" means the secretary of the Kansas department of labor.

(x) "Standard boiler" means a boiler that bears the ASME code symbol stamp or a stamp of another approved and recognized code of construction and that is registered with the national board of boiler and pressure vessel inspectors.

(y) "T & P safety relief valve" means the temperature and pressure safety relief valve designed for use on storage water heaters and hot water storage tanks. The temperature and pressure safety relief valve shall actuate upon pressure and in all instances at temperatures not exceeding 210°F.

(z) "Traction boiler" means a steam-powered traction engine mounted on wheels and capable of being self-propelled.

(aa) "Water gauge glass" means a glass-enclosed, visible indicator of the water level in a boiler. (Authorized by and implementing K.S.A. 44-916; effective May 1, 1987; amended April 28, 2000; amended Nov. 3, 2006.)

49-45a-2 to 49-45a-27. (Authorized by and implementing K.S.A. 1985 Supp. 44-916; effective May 1, 1987; revoked April 28, 2000.)

Article 46.—BOILER INSURANCE AND ADMINISTRATION

49-46-1. Insurance company requirements. (a) Each company insuring one or more

boilers or pressure vessels located in this state shall perform an inspection, as prescribed in K.S.A. 44-923, and amendments thereto, or K.A.R. 49-48-1, of each boiler or pressure vessel insured by the company.

(b) If an insurance company fails or refuses to inspect a boiler or pressure vessel insured by that company, as required by K.S.A. 44-923(c), and amendments thereto, and subsection (a) of this regulation, the boiler or pressure vessel shall be required by the secretary to be inspected by the chief inspector or a deputy inspector. The appropriate fee specified in K.S.A. 44-926, and amendments thereto, shall be charged for any inspection conducted under this subsection and shall be paid by the owner or user of the boiler or pressure vessel, or the insurance company that insures the boiler or pressure vessel.

(c) All insurance companies shall notify the chief inspector immediately if insurance is suspended because of unsafe conditions.

(d) In the event that a boiler or pressure vessel water or fireside explosion or severe overheating occurs, the owner, user, insurance inspector, or emergency personnel shall promptly notify the chief inspector. Neither the boiler nor pressure vessel, or any parts of either, shall be removed or disturbed before permission has been given by the chief inspector, except for the purpose of saving human life, limiting consequential damage, or arson investigation.

(e) For all accidents or incidents involving boilers or pressure vessels that cause property damage in excess of 10 percent of the boiler or pressure vessel's worth, serious injury, or death, the owner, user, insurance inspector, or emergency personnel shall promptly notify the chief inspector. Neither the boiler nor pressure vessel, or any parts of either, shall be removed or disturbed before permission has been given by the chief inspector, except for the purpose of saving human life, limiting consequential damages, or conducting an arson investigation.

(f) Upon request by the chief inspector, the insurance company shall submit within five days an accident or incident report to the chief inspector. (Authorized by K.S.A. 1999 Supp. 44-916; implementing K.S.A. 1999 Supp. 44-920, 44-923; effective, E-81-38, Dec. 10, 1980; effective May 1, 1981; amended, T-83-41, Nov. 23, 1982; amended May 1, 1983; amended April 28, 2000.)

Article 47.—INSPECTORS

49-47-1. Requirements of special inspectors. (a) All special inspectors commissioned by the secretary pursuant to K.S.A. 44-920, and amendments thereto, shall serve upon the owner or user, operator, or any other person or persons having charge or care of a boiler or pressure vessel, a billing for the certificate required by K.S.A. 44-926(b), and amendments thereto. Billing forms shall be provided by the secretary and shall provide a space for the signature of the person receiving the billing form. The special inspector shall notify the secretary in the event that the inspector is unable to serve the billing.

(b) Each special inspector shall conduct a thorough inspection of the boilers and pressure vessels and all of the components in the system. The safety or safety relief valves shall be set no higher than the lowest maximum allowable working pressure (MAWP) of components in the system.

(c) Each special inspector shall note the house-keeping conditions in the boiler room. Equipment and flammable materials not related to the operation of the boilers or pressure vessels shall not be stored in the boiler or mechanical room.

(d) Each special inspector shall report any scrapped or out-of-service boilers or pressure vessels. Failure to report these units shall result in a charge back to the insurance company equal to an inspection fee, if the state boiler inspectors have to follow up on discontinued insurance or canceled policies. (Authorized by K.S.A. 1998 Supp. 44-916; implementing K.S.A. 1998 Supp. 44-920, 44-921; effective, E-81-38, Dec. 10, 1980; effective May 1, 1981; amended April 28, 2000.)

49-47-1a. Special inspector. Each special inspector shall be registered with the state of Kansas and shall have a valid Kansas commission before performing any inspection, including in-service, repair or alteration, or work, in any ASME code shop in the state. (Authorized by and implementing K.S.A. 1998 Supp. 44-916; effective April 28, 2000.)

49-47-1b. Organizations with special inspectors of antique and exhibition boilers. (a) Any organization of antique engines, scale models, locomotives, and other boilers used for exhibition purposes shall register annually its inspection procedures with the department for approval by the chief inspector.

(b)(1) The organization shall register each special inspector with the Kansas department of

human resources, office of the chief inspector, and each special inspector shall be subject to periodic monitoring of procedures and inspection by the chief inspector or deputy inspectors. In order for the organization to register its special inspectors, the organization shall establish the following procedures:

(A) A qualifying exam on the type of equipment that will be inspected;

(B) establishment of different levels of competency among the special inspectors;

(C) periodic training and exams to ensure each special inspector's level of competency; and

(D) monitoring by other special inspectors within the organization to ensure competency.

(2) The organization shall provide documentation that each special inspector meets the following criteria:

(A) Is experienced and receives periodic training on the type of equipment inspected;

(B) inspects only vessels for which the inspector is qualified; and

(C) attains a score of at least 70% on the qualifying exam.

(3) The chief inspector shall make the final decision on who will receive special inspector cards from the state.

(c) The organization inspection procedures shall be subject to periodic monitoring by the chief boiler inspector or deputy inspectors. (Authorized by and implementing K.S.A. 1998 Supp. 44-915, 44-916, and 44-920; effective April 28, 2000.)

49-47-2. Application of state serial numbers. (a) Upon completion of the installation of a new boiler or pressure vessel or at the time of the initial certificate inspection of an existing installation, each boiler or pressure vessel shall be stamped by the inspector with a serial number of the state or affixed with a one-inch by four-inch, corrosion-resistant metal tag with the serial number of the state, consisting of letters and figures to be not less than 5/16 inch in height and arranged as follows:

- High Pressure KS 1,000
- Low Pressure KS 1,000 H
- Pressure Vessels KS 1,000 U
- Antique Hobby KS 1,000 A

(b) All cast iron and low pressure heating boilers or pressure vessels shall have securely attached to the casing, water column, or gauge or other appliance of the boiler or pressure vessel, a corrosion-

resistant metal tag on which is stamped the serial number of the state. The tag shall be not less than one inch by four inches in size. (Authorized by K.S.A. 44-916; implementing K.S.A. 44-924; effective May 1, 1987; amended April 28, 2000; amended Nov. 3, 2006.)

Article 48.—FREQUENCY OF INSPECTION

49-48-1. Certificate inspections; type and frequency. Certificate inspections shall be made pursuant to the following schedule: (a) Power boilers and high pressure, high temperature water boilers shall receive an annual certificate inspection that shall be an internal inspection where construction permits, or as complete an inspection as possible where construction does not permit internal inspection. However, an external inspection may, at the discretion of the inspector, serve as a certificate inspection during the initial year of operation for any new boiler. These boilers shall also be externally inspected while under pressure, if possible, once a year. Upon written request by the owner or user of a power boiler or high pressure, high temperature water boiler, an extension may be granted by the secretary between internal inspections, not to exceed 24 months, with the external inspection on alternate years to be accepted as a certificate inspection, if all of the following conditions are met:

(1) Agreement is reached between the secretary and the insurance company responsible for the inspection that an extension be granted.

(2) A continuous boiler water treatment program under competent supervision is in effect for the purpose of controlling and limiting corrosion and deposits on the waterside surfaces.

(3) Complete records are available showing the dates the boilers have been out of service, and the reason for this, since the last internal inspection. The records shall show the nature of any repair or repairs and the reasons for the repairs.

(4) The report of the last certificate inspection shows no reason why the boiler cannot be operated safely.

(b) Any indication of problems noted during the certificate inspection shall void any extension or written request for an extension and the boiler or pressure vessel shall be shut down and an internal inspection performed.

(c) Low pressure steam and steel hot water heating boilers, as defined by K.S.A. 44-914, and

amendments thereto, shall receive an annual external certificate inspection, except that low pressure steam heating boilers, the construction of which allows internal inspection, shall receive an internal certificate inspection every three years.

(d) Low pressure hot water supply boilers of 85 gallons and over shall receive an external certificate inspection every three years. Boilers over 400,000 BTUH shall receive an external certificate inspection annually.

(e) Upon written request of an insurance company and with the agreement of the owner or user of a boiler, the period of validity of a certificate may be extended by the secretary for a period not to exceed two months.

(f) Each pressure vessel measuring 15 or more cubic feet shall receive a certificate inspection upon installation or replacement of each vessel in new and existing installations.

(g) All sizes of swimming pool heaters shall be subject to an external certificate inspection every three years. However, pool heaters of 400,000 BTUH and over shall be inspected annually.

(h) Each steam kettle and steam chef shall receive an annual certificate inspection.

(i) Each autoclave shall receive an annual certificate inspection, if it has a steam generator attached to the system or if the autoclave is a part of the system.

(j) Each waste heat boiler constructed to the requirements of section I of the ASME code shall receive an annual internal certificate inspection.

(k) Each waste heat boiler constructed to the requirements of section VIII of the ASME code shall receive an external certificate inspection every year, and, if construction permits, this boiler shall receive an internal inspection every three years, unless operating conditions warrant a more frequent inspection.

(l) Each steam generator that meets any of the following conditions shall receive an annual inspection:

- (1) Produces steam for any process;
- (2) is fitted with safety valves installed at the factory; or
- (3) is modified in the field to require safety valves. (Authorized by and implementing K.S.A. 1998 Supp. 44-916; implementing K.S.A. 1998 Supp. 44-923; effective, E-81-38, Dec. 10, 1980; effective May 1, 1981; amended, T-83-41, Nov. 23, 1982; amended May 1, 1983; amended April 28, 2000.)

Article 49.—FEE SCHEDULE FOR BOILER INSPECTIONS

49-49-1. Boiler inspection and certificate fees. (a) Inspection fees.

(1) Internal inspections of power boilers and high-pressure, high-temperature water boilers:

Mini-boilers	\$50.00
Boilers with 50 sq. ft. of heating surface or less	\$115.00
Boilers with more than 50 sq. ft. of heating surface, but less than 500 sq. ft. of heating surface.....	\$140.00
Boilers with 500 sq. ft. of heating surface or more, but less than 4,000 sq. ft. of heating surface.....	\$150.00
Boilers with 4,000 sq. ft. of heating surface or more, but less than 8,000 sq. ft. of heating surface.....	\$175.00
Boilers with 8,000 sq. ft. of heating surface or more, but less than 10,000 sq. ft. of heating surface.....	\$200.00
Boilers with 10,000 sq. ft. of heating surface or more	\$400.00

(2) Internal inspections of heating boilers:

Heating boilers without a manhole	\$85.00
Heating boilers with a manhole.....	\$100.00

(3) External inspections of heating boilers:

Heating boilers without a manhole	\$60.00
Heating boilers with a manhole.....	\$75.00
Hot water supply boilers	\$50.00

(4) External inspections of power boilers:

Boilers with 50 sq. ft. of heating surface or less	\$55.00
Boilers with more than 50 sq. ft. of heating surface, but less than 500 sq. ft. of heating surface.....	\$65.00
Boilers with 500 sq. ft. of heating surface or more, but less than 1,000 sq. ft. of heating surface.....	\$90.00
Boilers with 1,000 sq. ft. of heating surface or more, but less than 4,000 sq. ft. of heating surface.....	\$175.00
Boilers with 4,000 sq. ft. of heating surface or more, but less than 8,000 sq. ft. of heating surface.....	\$225.00
Boilers with 8,000 sq. ft. of heating surface or more, but less than 10,000 sq. ft. of heating surface.....	\$300.00
Boilers with 10,000 sq. ft. of heating surface or more	\$400.00

(5) Hydrostatic tests. If it is necessary for an inspector to make a trip in addition to the inspec-

tor's routine, regularly scheduled trips in order to witness the application of a hydrostatic test, a fee shall be charged based on the scale of fees applicable to the issuance of a certificate of inspection of the boiler, as set out in paragraphs (a)(1) through (a)(4) of this regulation.

(6) The fee for all inspections performed by the chief or deputy inspector, including shop inspections, shop reviews, inspections performed at the request of the boiler operator, inspections conducted due to a determination that a boiler operator is not operating a boiler in compliance with boiler operation regulations, and inspections of secondhand or used boilers, shall be \$500.00 per day. If a state boiler inspector participates in a national board "R" stamp review conducted by the national board of boiler and vessel inspectors or if a state boiler inspector inspects welded repairs to a boiler, the fee shall be \$500.00 per day.

(b) Certificate fee.

(1) The certificate of inspection fee shall be \$30.00.

(2) Replacement of lost or misplaced certificates shall be \$10.00. (Authorized by and implementing K.S.A. 2004 Supp. 44-926; effective, T-83-41, Nov. 23, 1982; effective May 1, 1983; amended May 1, 1984; amended May 1, 1987; amended, T-88-41, Oct. 24, 1987; amended May 1, 1988; amended June 25, 1990; amended July 18, 1997; amended Jan. 27, 2006.)

49-49-1a. Pressure vessel inspection fees.

(a) External inspections of pressure vessels:

	Per day:
Pressure vessels with a capacity of less than 500 gallons.....	\$55.00
Pressure vessels with a capacity of 500 gallons or more, but less than 2,000 gallons.....	\$65.00
Pressure vessels with a capacity of 2,000 gallons or more, but less than 5,000 gallons.....	\$75.00
Pressure vessels with a capacity of 5,000 gallons or more, but less than 10,000 gallons.....	\$90.00
Pressure vessels with a capacity of 10,000 gallons or more, but less than 20,000 gallons.....	\$125.00
Pressure vessels with a capacity of 20,000 gallons or more, but less than 30,000 gallons.....	\$175.00
Pressure vessels with a capacity of 30,000 gallons or more, but less than 50,000 gallons.....	\$225.00

Pressure vessels with a capacity of 50,000 gallons or more..... \$275.00

(b) Internal inspections of pressure vessels:

Per day:

Pressure vessels with a capacity of less than 500 gallons.....	\$75.00
Pressure vessels with a capacity of 500 gallons or more, but less than 2,000 gallons.....	\$90.00
Pressure vessels with a capacity of 2,000 gallons or more, but less than 5,000 gallons.....	\$125.00
Pressure vessels with a capacity of 5,000 gallons or more, but less than 10,000 gallons.....	\$175.00
Pressure vessels with a capacity of 10,000 gallons or more, but less than 20,000 gallons.....	\$250.00
Pressure vessels with a capacity of 20,000 gallons or more, but less than 30,000 gallons.....	\$325.00
Pressure vessels with a capacity of 30,000 gallons or more, but less than 50,000 gallons.....	\$350.00
Pressure vessels with a capacity of 50,000 gallons or more.....	\$400.00

(Authorized by and implementing K.S.A. 2004 Supp. 44-926; effective April 28, 2000; amended Jan. 27, 2006.)

49-49-2. Failure to pay fees. (a) An inspection certificate shall not be issued or a certificate issued at the time of inspection shall be cancelled if the owner or user fails to pay the proper inspection fee.

(b) The appropriate county or district attorney shall be notified by the secretary of any boiler that is operated in violation of the act. (Authorized by K.S.A. 1985 Supp. 44-916; implementing K.S.A. 44-925, effective May 1, 1987.)

Article 50.—GENERAL REQUIREMENTS FOR ALL BOILERS

49-50-1. Major repair to boilers and pressure vessels. (a) Boiler and pressure vessel repairs or alterations shall be made so that each boiler or pressure vessel conforms to original specifications. Any repairs or alterations not covered by this regulation shall be subject to the requirements for new construction.

(b) Welding.

(1) Repairs or alterations by fusion welding shall be approved by an authorized inspector before beginning the work. All welding repairs or

alterations shall be made in accordance with the appropriate section of "repairs and alterations to boilers and pressure vessels by welding," part RC, of the national board inspection code.

(2) All welding shall be done by either of the following:

(A) An organization holding the applicable ASME certificate of authorization or the national board "R" or "NR" stamp; or

(B) an owner or user who has demonstrated to the satisfaction of the chief state boiler inspector all of the following:

(i) The owner or user maintains an acceptable quality control system.

(ii) Welding work completed by the owner or user is in compliance with ASME standards for welding.

(iii) Before the welding operations, the owner or user has assured that all welders are qualified by compliance with ASME standards.

(iv) The owner or user has notified the applicable insurance company boiler inspector or state boiler inspector before doing any welding.

The organization performing the repair shall be responsible for filing the national board's repair or alteration form with the office of the chief state boiler inspector.

(c) Each welder or welding operator shall qualify for each welding process used in the repair or alteration of a boiler or pressure vessel. The qualifications for welders shall be those established in section IX of the ASME code, and by a qualified welding procedure specification of the organization making the repair or alteration.

(d) Each organization making repairs or alterations under this regulation shall list the parameters applicable to welding that are to be performed in the welding procedure specification (WPS) documents. The documents shall have been qualified by the organization as required by the applicable section of the ASME code. The organization shall qualify its WPS by the welding of test coupons, the testing of specimens, and recording the welding data and test results in its procedure qualification record (PQR) document.

(e)(1) The organization making the repair or alteration shall adopt specific procedures for performing welding operations in the shop or the field. The procedure specification shall comply with the requirements of section IX of the ASME code and the national board inspection code.

(2) The procedure specifications shall be written and shall provide all pertinent details about

the methods and procedure to be used, including the following:

(A) The type of electrode or rod to be used;

(B) the shape of the welding groove;

(C) the number and sequence of the beads;

(D) the manner in which slag is to be cleaned;

(E) peening and current characteristics, if electric welding; and

(F) if gas welding, the size of the tip, the nature of the flame, and the designation of forehand or backhand technique used.

(3) The procedure specification shall ensure that weld metal and welded joints comply with the characteristics required by section IX of the ASME code and the national board inspection code.

(4) A test demonstrating the sufficiency of the procedure specification shall be witnessed by the inspector, or authentic evidence documenting the sufficiency of the specifications shall be provided to the inspector.

(f) The material used for patches shall be of the same general quality, shall have, at least, the minimum physical properties of the plate to be patched and shall be traceable. The thickness of any patch shall be at least equal to, but not more than, $\frac{1}{8}$ inch greater than the plate being patched. Flush or butt-welded patches in unstayed shells, drums, or headers shall be radiographed and stress-relieved to conform to the requirements of the national board inspection code, part RC, 1998 edition. (Authorized by and implementing K.S.A. 1998 Supp. 44-916; effective May 1, 1987; amended April 28, 2000.)

49-50-2. Combustion air supply and ventilation of boiler room.

(a) A permanent source of outside air shall be provided for each boiler room to permit satisfactory combustion of the fuel as well as proper ventilation of the boiler room under normal operating conditions. One opening shall be 12 inches above floor level, and one opening shall be 12 inches below ceiling level. The opening 12 inches below ceiling level shall be at least $\frac{1}{3}$ of the area of the lower opening. The size of the lower opening shall not be less than is required in subsection (b) below, or as required in NFPA 31, 1997 edition, and NFPA 54, 1996 edition, both of which are hereby adopted by reference.

(b) The total requirements of the burners in the boiler room shall be used to determine the louver sizes, whether fired by coal, oil, or gas. However, the minimum net free-louvered area of the lower

opening shall not be less than one square foot. The following table or either of the following formulas shall be used to determine the net louvered area of the lower opening in square feet, or as required in NFPA 31 and NFPA 54:

INPUT BTU/Hour	REQUIRED AIR CU. FT./MIN.	MIN. NET LOUVERED AREA SQ. FT.
500,000	125	1.0
1,000,000	250	1.0
2,000,000	500	1.6
3,000,000	750	2.5
4,000,000	1,000	3.3
5,000,000	1,250	4.1
6,000,000	1,500	5.0
7,000,000	1,750	5.8
8,000,000	2,000	6.6
9,000,000	2,250	7.5
10,000,000	2,500	8.3

$$\frac{(\text{BTUH} \div 100) \times 1.5 \text{ MIN. NET AREA}}{60 \div 300}$$

REQ. SQ. Ft.

(c) When mechanical ventilation is used in lieu of the requirements of subsection (b), the supply of combustion and ventilation air to the boiler room and the firing device shall be interlocked with the fan so that the firing device will not operate with the fan off. The velocity of the air through the ventilating fan shall not exceed 500 feet per minute, and the total air delivered shall be equal to or greater than that shown in subsection (b) above. (Authorized by and implementing K.S.A. 1998 Supp. 44-916; effective May 1, 1987; amended April 28, 2000.)

49-50-3. Boiler combustion chamber vents. Each boiler shall be equipped with vents to convey the products of combustion safely from the boiler furnace to the outside atmosphere. Flue piping, draft hoods, draft diverters, and chimney connections shall be installed according to the boiler manufacturer's instructions and the provisions of the national fire codes NFPA 31, "standard for the installation of oil-burning equipment," and NFPA 54, "national fuel gas code," as adopted by reference in K.A.R. 49-50-2. (Authorized by and implementing K.S.A. 44-916; effective May 1, 1987; amended April 28, 2000; amended Nov. 3, 2006.)

49-50-4. Cross-connection control. (a) A person shall not install any water-operated equipment or mechanism, or use any water-treating chemical or substance, if it is found that this equip-

ment, mechanism, chemical, or substance may cause pollution of the domestic water supply. The equipment or mechanism may be permitted only when equipped with an approved backflow prevention device.

(b) Each backflow prevention device installed in a potable water supply system shall be maintained in good working condition by the person or persons having control of the device. The devices may be inspected by authorized inspectors and, if found to be defective or inoperative, shall be repaired or replaced as directed by the inspector. A device shall not be removed from use or relocated or another device substituted without formal notification to the office of the responsible authorized inspection agency.

(c) Potable water piping shall not be installed or maintained within any piping or device conveying sewage, wastes, or other materials hazardous to health and safety.

(d) Each hot water heating and steam boiler connection shall be protected by an approved backflow prevention device as set forth in subsection (e) of this regulation and shall be tested and inspected by a qualified inspector.

(e) Nonpotable water piping. If it is impractical to correct individual cross-connections on the domestic water line, the line supplying these outlets shall be considered a nonpotable water line. Drinking or domestic water outlets shall not be connected to the nonpotable water line. Backflow or back-siphonage from the nonpotable water line into the domestic water line shall be prevented by the installation of a gravity tank or by a tank having a pump designated for nonpotable water. The domestic water inlets to the nonpotable water tank shall have an approved air gap as specified within the ASME code and the international plumbing code. Whenever it is impractical to install this tank, an approved pressure-type backflow or back-siphonage prevention device shall be installed as follows:

(1) If reverse flow is possible only as a result of gravity or a vacuum within the line, an approved pressure-type vacuum breaker unit or other approved backflow prevention device shall be installed in the supply line.

(2) Each pressure-type vacuum breaker unit shall be installed at a height of at least 12 inches (.3m) above the highest tank, equipment, or other point at which the nonpotable water is used. Other approved backflow prevention devices shall be installed in a manner satisfactory to the responsi-

ble authorized inspection agency, but in no case less than 12 inches (.3m) above the surrounding ground or floor.

(3) If backflow can occur, creating a higher pressure in the nonpotable water line, an approved backflow prevention device shall be installed in the supply line. The backflow prevention device shall be installed at least 12 inches (.3m) above the surrounding ground or floor, or higher than five feet above the floor or surrounding ground, unless a work platform and ladder are provided.

(f) Whenever possible, all portions of the nonpotable water line shall be exposed, and all exposed portions shall be properly identified in a manner satisfactory to the responsible authorized inspection agency. Each outlet on the nonpotable water line that could be used for drinking or domestic purposes shall be posted with the following sign: DANGER—WATER UNSAFE.

(g) An approved backflow prevention device shall conform to the requirements of the American society of sanitary engineering (ASSE) publication 1013, as revised October 1993, and the American water works association (AWWA) publication C511-97, effective February 1, 1998, which are hereby adopted by reference. (Authorized by and implementing K.S.A. 1998 Supp. 44-916; effective May 1, 1987; amended April 28, 2000.)

49-50-5. Excessive water pressure control for hot water supply systems. When local water pressure is in excess of 80 pounds per square inch (55.2kPa), an approved pressure-type regulator preceded by an adequate strainer shall be installed and the pressure shall be reduced to 80 pounds per square inch (55.2kPa) or less. Potable water systems, up to and including 1½ inch (31.1mm) regulators, shall be constructed to prevent pressure, on the building side of the regulator, from exceeding the main supply pressure. Approved regulators with integral by-passes shall be acceptable. Each regulator and strainer shall be in an accessible location. The strainer shall be readily accessible for cleaning without removing the regulator or strainer body or disconnecting the supply piping. All pipe size determinations shall be based on 80 percent of the reduced pressure. (Authorized by and implementing K.S.A. 1985 Supp. 44-916; effective May 1, 1987.)

49-50-6. Hydrostatic pressure tests and inspection. (a) When there is doubt as to the extent of a defect or deterioration found in a pres-

sure vessel or boiler, a pressure test may be required by the inspector. A pressure test shall not be required as part of a normal periodic inspection. A pressure test shall be required when either of the following conditions is met:

(1) Forms of deterioration are found that could affect the safety of a vessel.

(2) Major repairs have been completed.

(b) Pressure test considerations shall be as follows:

(1) To determine tightness, the test pressure shall not be required to be greater than the set pressure of the safety valve having the lowest setting.

(2) The pressure test shall not exceed 1½ times the maximum allowable working pressure, as adjusted for temperature. When the original test pressure included consideration of corrosion allowance, the test pressure may be further adjusted based on the remaining corrosion allowance and other requirements set forth in part RC of the national board inspection code, which is adopted by reference in K.A.R. 49-45-20.

(3) If the test pressure will exceed the set pressure of the safety valve having the lowest setting, the safety relief valve or valves shall be removed during the test or each disc held down by means of a test clamp and not by applying additional load to the valve spring by turning the compression screw.

(4) The temperature of the water used to apply a hydrostatic test shall not be less than 60°F, unless the owner provides information on the toughness characteristics of the vessel material to indicate the acceptability of a lower test temperature. The metal temperature shall not exceed 120°F, unless the owner specifies the requirements for a higher test temperature that are acceptable to the inspector.

(5) When contamination of the vessel contents by any other medium is prohibited or when a hydrostatic test is not possible, other testing media may be used if the precautionary requirements of the applicable sections of the ASME code and the national board inspection code (NBIC), as adopted in these regulations, are followed. In these cases, there shall be agreement as to the testing procedure among the owner, repair organization, the inspector, and the chief inspector.

(c) Each boiler log, record of maintenance, corrosion rate record, and any other examination results shall be reviewed by the inspector. The owner or user shall consult with the inspector regarding repairs, if any, made since the last internal inspec-

tion. The records of the repairs shall be reviewed for compliance with applicable requirements.

(d) Any defects or deficiencies in condition, maintenance practices, or misuse of the boiler shall be identified and documented by the inspector and owner, and, if necessary, corrective action shall be taken by the owner. All repairs shall be carried out in accordance with the requirements of part RC of the national board inspection code. (Authorized by K.S.A. 44-916; implementing K.S.A. 44-916 and 44-923; effective May 1, 1987; amended April 28, 2000; amended Nov. 2, 2007.)

49-50-7. Boiler blowoff equipment; general requirements. (a) The blowdown from a boiler or boilers that enters a sanitary sewer system or blowdown that is considered a hazard to life or property shall pass through some form of blowoff equipment that will reduce pressure and temperature as required by this regulation.

(b) The temperature of the water leaving the blowoff equipment shall not exceed 140° F.

(c) The pressure of the blowdown leaving any type of blowoff equipment shall not exceed 5 psig.

(d) The blowoff piping and fitting between the boiler and boilers and the blowoff tank or tanks shall meet the requirements of paragraphs PG-58 and PG-59 of the ASME boiler and pressure vessel code, section I, which is adopted in K.A.R. 49-45-1. Blowdown piping shall not be galvanized.

(e) All blowoff tank construction shall meet the requirements of the ASME pressure vessel code, section VIII, division I, as adopted in K.A.R. 49-45-29, and all materials used in the fabrication of boiler blowoff equipment shall meet the requirements of section II of the ASME boiler and pressure vessel code, as adopted in K.A.R. 49-45-2, K.A.R. 49-45-3, K.A.R. 49-45-4, and K.A.R. 49-45-4a.

(f) When a steam separator is used, it shall be designed to withstand at least twice the operating pressure of the boiler. The steam separator shall be equipped with a vent, an inlet and outlet, and a pressure gauge.

(g) All blowoff equipment shall be fitted with openings to facilitate cleaning and inspection.

(h) In addition to meeting the other requirements in these regulations, all blowoff equipment shall meet the requirements in "a guide for blowoff vessels," as published by the national board of boiler and pressure vessel inspectors and adopted by reference in K.A.R. 49-51-11, a copy of which may be obtained from the national board of boiler and pressure vessel inspectors or

from the chief inspector. (Authorized by and implementing K.S.A. 44-916; effective May 1, 1987; amended April 28, 2000; amended Nov. 3, 2006.)

49-50-8. Piping system. (a) Piping connected to the outlet of a boiler shall be attached by one of the following methods:

(1) Screwing into a tapped opening with a screwed fitting or a valve at the other end;

(2) screwing each end into tapered flanges, fittings, or valves with or without rolling or peening;

(3) bolted joints, including those of the van stone type; or

(4) expanding into grooved holes, seal welded, if desired.

(b) Pipe that is expanded, rolled, or peened shall be made from open-hearth or electric-furnace steel. Blowoff piping of fire-tube boilers that is exposed to products of combustion shall be attached by the method in paragraph (a)(1). The attachment methods in paragraphs (a)(2), (3), or (4) may be used for blowoff piping of fire-tube boilers that is not exposed to combustion products. Fusion welding may be used for sealing purposes at the junction of bolted joints.

(c) Welding may be used to attach piping to nozzles or fittings if the rules adopted for fusion welding or forge welding at K.A.R. 49-50-1(b)(1) are followed. All welded piping that is external to the boiler, from the boiler out to the first stop valve, in a single installation, and out to the second stop valve when two or more boilers with manholes are connected to a common steam or high temperature water main or header, shall be installed by a manufacturer or contractor authorized to use any one of the American society of mechanical engineers code symbol stamps for pressure piping ("PP"), power boilers ("S"), or assembly stamp ("A"). The piping or fittings that are adjacent to the welded joint farthest from the boiler shall be stamped with the pressure piping, power boiler, or assembly code symbol stamp of the American society of mechanical engineers when approved by the inspector.

(d) Power boiler piping shall be inspected in all segments of the system carrying substantially the same pressures and temperature encountered in the boiler. The piping shall be inspected to the extent necessary to assure compliance with engineering design, material specifications, fabrication, assembly, and test requirements of section I of the ASME boiler and pressure vessel code, "rules for construction of power boilers," for the

piping between the boiler and the first stop valve in a single boiler installation, or the second stop valve in a multiple boiler installation. Power piping and piping beyond these limits shall be installed as required by the appropriate section of ASME B31.1 power piping.

(e) When welded assembly is used, the contractor who welded the pipe shall present welding procedure specification and proof of the welder's qualifications to the inspector for review. The contractor shall be responsible for the quality of the welding performed by the contractor's organization.

(f) Visual inspection of welding performed by qualified welders shall be deemed sufficient unless codes or engineering specifications state otherwise or unless the inspector wishes to augment this visual inspection with other non-destructive tests, including radiography. All tests or retests required by the inspector shall be at the owner's or contractor's expense.

(g) Signed certification of the contractor regarding satisfactory hydrostatic tests performed on piping may be accepted by the inspector. These tests may be required by the inspector to be performed in the inspector's presence.

(h) Heating boiler piping shall be inspected in all segments of the piping system carrying substantially the same pressure and temperatures as the boiler. The piping shall be inspected to the extent necessary to insure good fit-up, assembly, tightness, and support of the system. Welded joints shall be visually inspected for soundness of the weld and freedom from undercutting, cracking, and other surface imperfections. All inspections of piping shall be conducted to the first stop valve on a single boiler installation or the second stop valve in a multiple boiler installation.

(i) Hot water supply boiler installations shall be inspected for conformance with section IV of the ASME heating boiler code. (Authorized by and implementing K.S.A. 1998 Supp. 44-916; effective May 1, 1987; amended April 28, 2000.)

49-50-9. Notification of inspection requirements. (a) A certificate inspection shall be carried out before the expiration date of the certificate. Each owner or user shall ensure that the boiler or pressure vessel is inspected on or before the date on which the inspection is due. Internal certificate inspections shall be scheduled in advance by the inspector. External inspections may be performed by the inspector during normal business hours without prior notification to the owner or user.

(b) An internal inspection, appropriate pressure test, or both may be requested by the inspector when an external inspection or determination by other objective means indicates that continued operation of the boiler constitutes a menace to public safety. In these instances, the owner or user shall prepare the boiler for the inspections, tests, or both as the inspector designates.

(c) All boilers and pressure vessels that are not exempted by the act and that are subject to regular inspections shall be prepared for inspection as required in subsection (d).

(d) The owner or user shall prepare each boiler for inspection. The owner or user shall prepare for and apply a hydrostatic pressure test on the date arranged by the inspector. The date shall not be fewer than seven days after the date of notification. The owner or user shall prepare a boiler for internal inspection in the following manner:

(1) Water shall be drawn off, and the boiler shall be washed thoroughly.

(2) The manhole and handhole plates, wash-out plugs, and inspection plugs in water column connections shall be removed as required by the inspector. The furnace and combustion chambers shall be cooled and thoroughly cleaned.

(3) All grates of internally fired boilers shall be removed.

(4) The insulation or brickwork shall be removed as required by the inspector in order to determine the condition of the boiler, headers, furnace, supports, or other parts.

(5) The pressure gauge shall be removed for testing, as required by the inspector.

(6) The leakage of steam or hot water into the boiler shall be prevented by disconnecting the pipe or valve at the most convenient point or by any other appropriate means approved by the inspector.

(7) The nonreturn and steam stop valves shall be closed, tagged, and preferably padlocked, and the valves drained or the cocks between the two valves opened. Before opening the manhole or handhole covers and entering any part of the steam-generating unit connected to a common header with other boilers, the feed valves shall be closed, tagged, and preferably padlocked, and the valves drained or the cocks located between the two valves opened. After draining the boiler, the blowoff valves shall be closed, tagged and preferably padlocked. Blowoff lines, where practicable, shall be disconnected between pressure parts and valves. All drains and vent lines shall be opened.

(e) If a boiler has not been properly prepared

for an internal inspection or if the owner or user has failed to comply with the requirements for a pressure test as specified in these regulations, the inspection or test may be postponed, and the inspection certificate shall be withheld or the right to operate revoked until the owner or user complies with the requirements.

(f) If the boiler is jacketed so that the longitudinal seams of shells, drums, or domes cannot be seen, sufficient jacketing, setting wall, or other form of casting or housing shall be removed to permit reasonable inspection of the seams and other areas necessary to determine the condition and safety of the boiler, if this information cannot be determined by other means.

(g) If a lapseam crack is discovered along a longitudinal riveted joint in the shell or drum of a boiler, the use of that shell or drum shall be immediately discontinued. Patching shall be prohibited.

(h) All lock-out, tag-out, and confined space entry procedures shall be observed. (Authorized by K.S.A. 44-916; implementing K.S.A. 44-916 and 44-923; effective May 1, 1987; amended April 28, 2000; amended Nov. 3, 2006.)

49-50-10. Safety valve repair. (a) All national board capacity-certified ASME code section I, “V” stamped safety and safety relief valves and section VIII “UV” safety relief valves, in addition to all other coded piping systems using code-constructed safety and safety relief valves, shall be repaired in accordance with the national board of boiler and pressure vessel inspectors “VR” program specified in NBIC ANSI/NB-23, which is adopted by reference in K.A.R. 49-45-20. Each repair shall be performed by an organization in possession of a “VR” certificate of authorization issued by the national board of boiler and pressure vessel inspectors.

(b) Repair of a safety valve or safety relief valve shall be considered to be the replacement, re-machining, or cleaning of any critical part, lapping of the seat and disc, or any other operation that could affect the flow pressure, capacity, function, or pressure-retaining integrity of the valve. Disassembly and either reassembly or adjustments, or both, that affect the safety valve or safety relief valve function shall be considered repairs.

(c) The initial installation, testing, and adjustments of a new safety valve or a safety relief valve on a boiler or pressure vessel shall not be considered a repair if made by the manufacturer or assembler of the valve.

(d) Each valve intended for steam services shall be tested on steam. Each valve intended for air or gas service shall be tested on air or gas. All ASME code section IV “HV” and “V” stamped safety valves and relief valves designed for use on low pressure boilers shall be repaired only by the original manufacturer. (Authorized by and implementing K.S.A. 44-916; effective May 1, 1987; amended April 28, 2000; amended Nov. 3, 2006.)

49-50-11. Condemned boilers and pressure vessels. Any boiler or pressure vessel that is inspected and declared unfit for further service by the chief inspector or deputy inspector shall be stamped by the inspector with an arrowhead stamp having an overall length of $\frac{1}{2}$ inch and width of $\frac{3}{8}$ inch on either side of the letters “XXX” and the letters of the state, as shown by the following facsimile: XXX KXXX. Each condemned boiler or pressure vessel shall be immediately taken out of service by shutting off the boiler’s or pressure vessel’s source of energy, followed by total disconnection of gas, electrical, and system piping. Any person, firm, partnership, or corporation installing or using a condemned boiler or pressure vessel within this state shall be subject to the penalties provided by K.S.A. 44-925, and amendments thereto. (Authorized by K.S.A. 1998 Supp. 44-916; implementing K.S.A. 1998 Supp. 44-925; effective May 1, 1987; amended April 28, 2000.)

49-50-12. Reinstalled boiler or pressure vessel. When a stationary boiler or pressure vessel is moved and reinstalled, it shall be brought up to code and shall be subject to immediate certification inspection upon reinstallation. The owner, user, or installer shall notify the chief inspector of the reinstallation. However, a pressure vessel shall not require inspection if moved to a different location or reinstalled by the same owner. (Authorized by K.S.A. 1998 Supp. 44-916; implementing K.S.A. 1998 Supp. 44-917; effective May 1, 1987; amended April 28, 2000.)

49-50-13. Reinstalled boiler or pressure vessel at same location. If a boiler or pressure vessel located in this state is moved for temporary use or repair, it shall be subject to immediate certification inspection upon reinstallation. The reinstalled boiler or pressure vessel shall be brought up to the current code requirements. The boiler or pressure vessel shall have a certification inspection if the boiler or pressure vessel has not been previously registered. The owner, user, or installer

shall notify the chief inspector of the reinstallation. (Authorized by K.S.A. 44-916; implementing K.S.A. 44-917; effective May 1, 1987; amended April 28, 2000; amended Nov. 3, 2006.)

49-50-14. Shipment of nonstandard boilers or pressure vessels into the state. Shipment of nonstandard, nonexempt boilers or pressure vessels into this state for use shall be prohibited unless a variance and an operating permit have been granted by the secretary or the secretary's designee. (Authorized by K.S.A. 1998 Supp. 44-916; implementing K.S.A. 1998 Supp. 44-917; effective May 1, 1987; amended April 28, 2000.)

49-50-15. Installation of used or second-hand boilers or pressure vessels. A used or secondhand boiler or pressure vessel may be shipped for installation in this state only following an inspection by an inspector qualified by an examination equal to that required by this state or by an inspector holding a national board commission, at the location where originally installed. Data submitted by the inspector shall be filed by the owner, user, or installer of the boiler with the chief inspector of this state for the chief inspector's approval. The boilers or pressure vessels, when installed in the state, shall be subject to inspection by the chief inspector or deputy inspector and shall meet current safety codes as set forth in these regulations. (Authorized by K.S.A. 1998 Supp. 44-916; implementing K.S.A. 1998 Supp. 44-923; effective May 1, 1987; amended April 28, 2000.)

49-50-16. Working pressure for existing installations. (a) The working pressure on any existing installation may be decreased by the inspector if the boiler condition warrants it.

(b) If the owner or user does not concur with the inspector's decision, the owner or user may appeal to the secretary who may request a joint inspection by the chief inspector and the deputy inspector or special inspector. Each inspector shall render a report to the secretary. The secretary shall render the final decision, based upon the data contained in the inspector's reports. (Authorized by K.S.A. 1985 Supp. 44-916; implementing K.S.A. 1985 Supp. 44-916 and K.S.A. 44-928; effective May 1, 1987.)

49-50-17. Steam cleaners and hot water power washers. (a) Each steam cleaner or hot water power washer in which water can flash into steam when released directly to the atmosphere

through a manually operated nozzle, on which adequate controls and safety devices are installed, and on which safety relief valves are installed shall be subject to the boiler safety act if the cleaner or washer exceeds any of the limitations or conditions specified in section I, part PG-2.3 in the ASME boiler and pressure vessel code, which is adopted by reference in K.A.R. 49-45-1.

(b) Each steam cleaner and each hot water power washer subject to this regulation shall meet the requirements in "high-pressure cleaning machines," UL 1776, third edition, published on June 7, 2002 by underwriters laboratories, inc. and hereby adopted by reference, including the appendix. (Authorized by K.S.A. 44-916; implementing K.S.A. 2005 Supp. 44-915; effective May 1, 1987; amended April 28, 2000; amended Nov. 3, 2006.)

49-50-18. Minimum construction standards for all boilers and pressure vessels.

(a) Each new boiler or pressure vessel installed for operation in this state, unless otherwise exempt, shall be designed, constructed, inspected, stamped, and installed in accordance with the applicable ASME code and addenda thereto and these regulations. Each boiler or pressure vessel shall bear the manufacturer's NB number as registered with the national board. A copy of the manufacturer's data report, signed by the manufacturer's representative and the national board-commissioned inspector, shall be filed with the chief inspector through the national board of boiler and pressure vessel inspectors.

(b) Variance. If a boiler or pressure vessel cannot bear the ASME and national board stamping, details of the proposed construction material specifications and calculations shall be submitted to the chief inspector by the owner and user, and approval as a variance shall be obtained before construction is started. Design drawings and calculations shall be certified by a professional engineer currently registered in the state of Kansas. The boiler or pressure vessel shall be constructed and inspected as required by the national board inspection code (NBIC). (Authorized by and implementing K.S.A. 1998 Supp. 44-916; effective May 1, 1987; amended April 28, 2000.)

49-50-19. Combustion safeguards and waterside control appurtenances. (a) Each automatically fired boiler shall be protected against the perils of low water, furnace explosion, over-

pressure, and overtemperature by equipping the boiler with controls and safety devices in accordance with the requirements of ASME CSD-1. ASME CSD-1 and the national board inspection code, which are adopted by reference in K.A.R. 49-45-27 and K.A.R. 49-45-20, shall apply to new installations, used or secondhand boilers, boilers moved and relocated, retrofitting of any boiler system having experienced incidental failure of its control equipment, major alterations of existing installations, and any boiler that could lack controls and safety devices.

(b) To implement the provisions of ASME CSD-1 and the national board inspection code, manufacturers of new boilers shall provide documentation to installing contractors verifying that the boiler was constructed in compliance with CSD-1, Part CG-510. The testing and maintenance instructions obtained by the installing contractor and presented to the boiler owner or user shall be filed with the installation report and made available to the inspector upon request.

(c) Combustion and waterside controls and safety devices for boilers with burner inputs that exceed the 12,500,000 BTUH input limit of CSD-1 shall meet the requirements of all applicable ASME and NFPA standards and the national board inspection code, as adopted by reference in these regulations. Applicable flame safeguard requirements for the prevention of furnace explosions shall be those set forth in the national fire code, sections 85, 85A, 85F, and 86, which are adopted by reference in K.A.R. 49-45-37, K.A.R. 49-45-38, K.A.R. 45-49-39, and K.A.R. 49-45-40. Combustion and waterside controls and safety devices for existing boiler installations with burner inputs that exceed the 12,500,000 BTUH limit of CSD-1 shall meet the applicable provisions of the edition of the ASME and NFPA standards in effect when they were constructed and installed. Whenever existing installations are considered unsafe, undergo extension repair due to accidental damage, major alteration due to accidental damage, or lack a qualified 24-hour attendant, flame safeguard and other pertinent controls and safety devices shall be brought up to the current code requirements.

(d) Each owner, user, or installer of boilers using flame safeguard equipment shall document the results of combustion safety testing. The frequency of testing shall be in accordance with the equipment manufacturer's recommendations but shall be conducted at least upon the initial start-up and

shutdown of the boiler. An inspection and maintenance schedule shall be established and performed to comply with the boiler and combustion system manufacturer's recommendations. Documentation relative to the combustion safety testing shall be kept on permanent file at the boiler location and shall be made available to the authorized inspector upon request. The use of rebuilt or remanufactured flame safeguard equipment shall not be allowed. Each boiler control shall be listed as UL (underwriters laboratories), FM (factory mutual), or AGA (American gas association).

(e) Each boiler that operates continuously for more than 24 hours shall have a self-checking scanner that is compatible with the type of fuel being burned. (Authorized by and implementing K.S.A. 44-916; effective May 1, 1987; amended April 28, 2000; amended Nov. 3, 2006.)

49-50-20. New boilers, new pressure vessels, new boiler rooms, and boiler clearances.

(a) Each owner, user, and installer of a new boiler or pressure vessel shall be responsible for notifying the office of the chief inspector within 72 hours of a boiler or pressure vessel installation. Each new boiler or pressure vessel shall be inspected at the time of installation by an inspector duly commissioned in accordance with K.S.A. 44-918 through K.S.A. 44-922, and amendments thereto.

(b) Each new boiler or pressure vessel shall have adequate clearance for repair, inspection, maintenance, and operation. Each new boiler that is not enclosed in a separate building or separate room shall be isolated from the public and employees by a fire-rated wall as determined by occupancy in chapter 8 in NFPA 101, "life safety code," 2000 edition, excluding sections 8.4.4 and 8.4.5, which is published by the national fire protection association and hereby adopted by reference.

(c) Each new boiler room shall have one or more means of exit as determined by the chief boiler inspector. Where more than one exit is provided, each exit shall be remotely located from the other. Each elevation of runway shall have at least two means of egress, each remotely located from the other.

(d) Each new boiler or pressure vessel shall be located so that adequate space will be provided for the proper operation of the boiler or pressure vessel, and its appurtenances, for the inspection of all surfaces, tubes, water walls, economizers, piping, valves, hand holes, manholes, and other equipment, and for their necessary maintenance and repair. Specifications for all minimum clearances

shall be provided by each boiler or pressure vessel manufacturer and shall be listed in the manual provided to the installing contractor. In no case shall clearance for access to any boiler or pressure vessel be less than that listed in section 1014.0 of the uniform mechanical code, 2000 edition as adopted by reference in K.A.R. 49-45-32 and the installation requirements of the national board inspection code as adopted by reference in K.A.R. 49-45-20. The installation instruction manual shall remain available to the authorized inspector upon the inspector's request. (Authorized by and implementing K.S.A. 44-916; effective May 1, 1987; amended April 28, 2000; amended Nov. 2, 2007.)

49-50-21. Boilers and other appliances fired with LP gas. Boilers and other appliances fired with LP gas shall not be installed below grade, or in pits or other depressions where LP gas could accumulate. This prohibition shall apply unless the system meets the following conditions:

(a) Is equipped with an alarm system that sounds an alarm or with other approved alerting devices;

(b) shuts down all of the equipment in the space; and

(c) is equipped with an approved exhaust system. (Authorized by and implementing K.S.A. 1998 Supp. 44-916; effective April 28, 2000.)

49-50-22. Venting of atmospheric vents, gas vents, and bleed or relief lines. (a) Each gas pressure regulator, pressure switch, safety shutoff valve, and any other gas control that has a threaded fitting shall be vented to the outdoors to a safe point of discharge. The material for each vent line shall be metallic, in accordance with the standards in NFPA 54, which is adopted in K.A.R. 49-50-2.

(b) The atmospheric vent lines shall not be connected to any common gas vent, to any threaded gas vent, or to any bleed or relief line on any double-block-and-bleed fuel train. Each boiler shall be vented separately.

(c) Each atmospheric vent line that has a threaded connection shall be manifolded together in a common atmospheric vent line having a cross-sectional area that is not less than the area of the largest vent line plus 50% of the total areas of the additional vent lines.

(d) Each gas regulator and each pressure interlock switch, as well as any other fuel train component that requires atmospheric pressure to balance diaphragms or other similar devices, shall

be provided with a pipe-threaded connection for its vent line. The vent line shall be extended outdoors to a safe point of discharge. A means shall be provided at the vent line's terminating point to prevent blockage of the line by foreign material, moisture, or insects.

(e) Each vent line and actuating line inside boiler casings shall be made of metallic material. (Authorized by and implementing K.S.A. 44-916; effective April 28, 2000; amended Nov. 3, 2006.)

49-50-23. Certificate of inspection. The current certificate of inspection for each stationary boiler shall be posted under a clear covering on the boiler room wall in a conspicuous location. The current certificate of inspection for each portable boiler shall be attached to the boiler. A utility power plant's certificate current certificate of inspection shall be posted under a clear covering in the control room of the utility power plant or another suitable location accessible to the inspector. (Authorized by K.S.A. 44-916; implementing K.S.A. 44-924; effective Nov. 3, 2006.)

49-50-24. Installer qualifications. Each person who installs, repairs, or tests boilers that have the capacity to generate 1,250,000 BTUH or more shall be authorized by the chief boiler inspector before proceeding with the installation, repair, or testing of that type of boiler. If the chief boiler inspector confirms that the person meets the applicable requirements in the standards and codes for the installation, repair, or testing, the chief boiler inspector shall authorize the person to install, repair, or test that type of boiler. The person shall inform the chief boiler inspector before the boiler installation, repair, or testing begins and after it is completed. (Authorized by and implementing K.S.A. 44-916; effective Nov. 3, 2006.)

Article 51.—HIGH PRESSURE BOILERS

49-51-1. Age limit of existing boilers. (a) Any boiler of nonstandard construction installed before calendar year 1977 shall be removed from service at the age limit of 30 years except when both of these requirements are met:

(1) After a thorough internal and external inspection of such a nonstandard boiler and when required by the inspector, a hydrostatic pressure test of 1½ times the allowable working pressure held for a period of at least 30 minutes shall be performed. If no distress or leakage develops, any

boiler having other than a lap-riveted longitudinal joint may be continued in operation past the 30-year age limit at the working pressure determined by K.A.R. 49-51-3.

(2) The age limit of any nonstandard boiler having lap-riveted longitudinal joints and operating at a pressure in excess of 50 psig shall be 20 years. This type of boiler, when removed from an existing setting, shall not be reinstated for a pressure in excess of 15 psig. A reasonable time for replacement, not to exceed one year, may be granted by the chief boiler inspector.

(b) The age limit of boilers of standard construction installed before the date this law became effective shall be dependent on the results of thorough internal and external inspection and, when required by the inspector, a hydrostatic pressure test not exceeding 1½ times the allowable working pressure. If the boiler, under these test conditions, exhibits no distress or leakage, it may be continued in operation at the working pressure determined by K.A.R. 49-51-2.

(c) The shell or drum of a boiler in which a lapseam crack develops along a longitudinal lap-riveted joint shall be condemned. (Authorized by and implementing K.S.A. 1998 Supp. 44-916; effective May 1, 1987; amended April 28, 2000.)

49-51-2. Maximum allowable working pressure for standard boilers and pressure vessels. The maximum allowable working pressure for standard boilers and pressure vessels shall be determined in accordance with the applicable provisions of the edition of the ASME code under which they were constructed and stamped. (Authorized by and implementing K.S.A. 1998 Supp. 44-916; effective May 1, 1987; amended April 28, 2000.)

49-51-3. Maximum allowable working pressure for nonstandard boilers. (a) The maximum allowable working pressure of a nonstandard boiler shall be determined by the application of the following formula:

$$\frac{TStE}{RFS} = \text{maximum allowable working pressure psig}$$

where:

- TS = ultimate tensile strength of shell plates, psig
- t = minimum thickness of shell plate, in the weakest course, in inches

- E = efficiency of longitudinal joint:
For tube ligaments, E shall be determined by the rules given in section I of the ASME code.
For riveted construction, refer to the national board inspection code, 1998 edition.
For seamless construction, E shall be considered to be 100 percent.
- R = inside radius of the weakest course of the shell, in inches.
- FS = factor of safety permitted.

Nonstandard boilers with welded seams shall not be operated at pressures exceeding 15 psig for steam or 30 psig for water.

(b) Tensile strength. When the tensile strength of steel or wrought iron shell plates is not known, it shall be deemed to be 55,000 psig for steel and 45,000 psig for wrought iron.

(c) Crushing strength of mild steel. The resistance to crushing of mild steel shall be deemed to be 95,000 psig.

(d) Strength of rivets in shear. When computing the ultimate strength of rivets in shear, the following values in pounds per square inch of the cross-sectional area of the rivet shank shall be used:

	PSIG
Iron rivets in single shear.....	38,000
Iron rivets in double shear.....	76,000
Steel rivets in single shear.....	44,000
Steel rivets in double shear.....	88,000

When the diameter of the rivet holes in the longitudinal joints of a boiler is not known, the diameter and cross-sectional area of rivets, after driving, may be selected from the following table, or as ascertained by cutting out one rivet in the body of the joint:

Table sizes of rivets based on plate thickness

thickness of plate- inch.....	1/4	9/32	5/16	11/32	3/8	13/32
diameter of rivet after driving-inch.....	11/16	11/16	3/4	3/4	13/16	13/16
thickness of plate- inch.....	7/16	15/32	1/2	9/16	5/8	
diameter of rivet after driving-inch.....	15/16	15/16	15/16	1 1/16	1 1/16	

(Authorized by and implementing K.S.A. 1998 Supp. 44-916; effective May 1, 1987; amended April 28, 2000.)

49-51-3a. Safety factors for boilers and pressure vessels. The department's inspector

shall decrease the working pressure if the condition and safety of the boiler or pressure vessel warrant it. The following safety factors shall represent the minimum values to be used: (a) The lowest safety factor permissible on existing boilers and pressure vessels and newly installed boilers shall be 4.0.

(b) The safety factor shall be eight for horizontal-return tubular boilers that have continuous longitudinal lapseams that are more than 12 feet in length. If this type of boiler is removed from its existing setting, it shall not be reinstalled in a manner that allows the boiler to operate at pressures in excess of 15 psig.

(c) The lowest permissible safety factor for new pressure vessels shall be no less than 3.5.

(d) If an existing boiler or pressure vessel is constructed to operate with a higher safety factor than a safety factor required by this regulation, the higher safety factor shall not be lowered for any reason. (Authorized by and implementing K.S.A. 44-916; effective April 28, 2000; amended Nov. 3, 2006.)

49-51-4. Cast iron headers and mud drums. The maximum allowable working pressure on a water tube boiler with tubes which are secured to cast iron or malleable iron headers or which have cast iron mud drums shall not exceed 160 psig. (Authorized by and implementing K.S.A. 1985 Supp. 44-916; effective May 1, 1987.)

49-51-5. Pressure on cast iron boilers. The maximum allowable working pressure for any cast iron boiler, except hot water boilers, shall be 15 psig. (Authorized by and implementing K.S.A. 1985 Supp. 44-916; effective May 1, 1987.)

49-51-6. Safety valves. (a) Weighted-lever safety valves or safety valves that have either a seat or a disk that is made of cast iron shall not be used. The owner, user, or installer of the boiler shall replace any valve of this type of construction, when found, with a direct, spring-loaded, pop-type valve that conforms to the applicable standards of the following:

(1) ASME code, section I, rules for construction of power boilers, which is adopted in K.A.R. 49-45-1;

(2) ASME code, section IV, rules for construction of heating boilers, which is adopted in K.A.R. 49-45-5; and

(3) ASME code, section VIII, rules for construction of pressure vessels, division 1, which is adopted in K.A.R. 49-45-29.

(b) Each high pressure boiler shall have at least one safety valve that is approved and certified by the ASME and the national board. If the boiler has more than 500 square feet of water-heating surface or an electric power input of more than 500 kw, the boiler shall have two or more safety valves of the same type.

(c) Each safety valve required in subsection (b) shall be connected to the boiler in a vertical position, shall be independent of any other steam connection, and shall be attached as close as possible to the boiler without unnecessary intervening pipe or fittings. If an alteration is required to conform to this requirement, the owner, user, or installer of the boiler shall be allowed a reasonable period of time in which to complete the work as permitted by the chief inspector.

(d) No valves of any type shall be placed between the safety valve and the boiler or on any escape pipe. If an escape pipe is used, its size shall be at least the same size of the safety valve discharge, and the pipe shall be fitted with an open drain to prevent water from lodging in the upper part of the safety valve or in the escape pipe. Horizontal escape piping that provides adequate gravity drainage shall not normally require the fitting of an open drain. If an elbow is placed on a safety valve escape pipe, the elbow shall be located close to the safety outlet, or the escape pipe shall be anchored and supported securely. All safety discharges shall be so located or piped to be carried clear of walkways or platforms. If discharge piping is directed downward, the pipe shall terminate no more than six inches above floor level. Plastic discharge piping shall not be used on any safety valve discharge line.

(e) The safety valve capacity of each boiler shall be sufficient to discharge all of the steam that can be generated by the boiler without allowing the pressure of the boiler to rise more than six percent above the boiler's highest pressure to which any valve is set. The pressure of the boiler shall not be allowed to rise more than six percent above the boiler's maximum allowable working pressure.

(f) Each boiler shall have one or more safety valves that are set at or below the maximum allowable working pressure of the boiler. The remaining valves may be set within a range of three percent above the maximum allowable working pressure of the boiler. The range of the settings for all of the safety valves on a boiler shall not exceed 10% of the highest pressure to which any valve is set.

(g) When two or more interconnected boilers are operating at different pressures and with different safety valve settings, the lower-pressure boilers or the interconnected piping shall be equipped with safety valves that have a sufficient capacity to prevent overpressure, considering the maximum generating capacity of all of the boilers.

(h) If a boiler is supplied with feedwater directly from water mains without the use of a feeding apparatus, excluding return traps, a safety valve shall not be set at a pressure greater than 94% of the lowest pressure obtained in the water supply main feeding the boiler. The relieving capacity of all of the safety valves on that boiler shall be checked by one of the three following methods, and, if their relieving capacity is found to be insufficient, additional valves shall be provided:

(1) By making an accumulation test. An accumulation test shall consist of shutting off all other steam discharge outlets from the boiler and forcing the fires to the maximum. The safety valve's relieving capacity shall be sufficient to prevent a rise of pressure in excess of six percent of the boiler's maximum allowable working pressure. This method shall not be used on a boiler with a superheater or reheater;

(2) by measuring the maximum amount of fuel that can be burned and by computing the corresponding steam-generating capacity upon the basis of the heating value of this fuel. These computations shall be made as outlined in the appendix of the ASME code, section I, which is adopted in K.A.R. 49-45-1; or

(3) by measuring the maximum amount of feedwater that can be evaporated.

If either of the methods outlined in paragraphs (h)(1) and (h)(2) is employed, the sum of the safety valve capacities shall be equal to or greater than the maximum evaporative capacity, which is the maximum steam-generating capacity of the boiler.

(i) Top-discharge safety valves shall not be used on any steam boiler. (Authorized by and implementing K.S.A. 44-916; effective May 1, 1987; amended April 28, 2000; amended Nov. 3, 2006.)

49-51-7. Boiler feeding. (a) Each boiler shall have a feed supply that will permit it to be fed at any time while under pressure.

(b) Each boiler having more than 500 square feet of water-heating surface shall have at least two suitable means of feeding, at least one of which shall be a feed pump. A source of feed at a pressure three percent greater than the set pressure of the safety

valve with the highest setting may be considered one of the means. Boilers fired by gaseous, liquid, or solid fuel in suspension may be equipped with a single means of feeding water, if means are furnished for the shutoff of heat input before the water level reaches the lowest safe level.

(c) The feedwater shall be introduced into the boiler in a manner preventing it from discharge close to riveted joints of shell or furnace sheets, directly against surfaces exposed to products of combustion, or to direct radiation from the fire.

(d) The feed piping to the boiler shall be provided with a check valve near the boiler and a valve or cock between the check valve and the boiler. When two or more boilers are fed from a common source, there shall also be a valve on the branch to each boiler between the check valve and the source of supply. Whenever a globe valve is used on feed piping, the inlet shall be under the disk of the valve.

(e) In all cases in which returns are fed back to the boiler by gravity, there shall be a check valve and stop valve in each return line. The stop valve shall be placed between the boiler and the check valve. Both shall be located as close to the boiler as is practicable.

(f) If deaerating heaters are not employed, the temperature of the feedwater shall not be less than 120 degrees F to avoid the possibility of setting up localized stress. If deaerating heaters are employed, the minimum feedwater temperature shall not be less than 215 degrees F so that dissolved gases may be thoroughly released. (Authorized by and implementing K.S.A. 1998 Supp. 44-916; effective May 1, 1987; amended April 28, 2000.)

49-51-8. Water level indicators. (a) No outlet connections, except for any damper regulator, feedwater regulator, low water fuel cutout, drain, gauge, or other apparatus that does not permit the escape of an appreciable amount of steam or water from it, shall be placed on the piping that connects the water column to the boiler. The water column shall be provided with a valved drain of at least 3/4 inch pipe size. The discharge shall be piped to a safe location.

(b) For all installations in which the water gauge glass or glasses are more than 30 feet above the boiler operating floor, remote water level indicating or recording gauges shall be installed at eye height above the operating floor. (Authorized by and implementing K.S.A. 1998 Supp. 44-916; effective May 1, 1987; amended April 28, 2000.)

49-51-9. Steam gauges. (a) Each steam boiler shall have a steam gauge with dial range not less than 1½ or more than 3½ times the maximum allowable working pressure connected to the steam space or to the steam connection to the water column. The steam gauge shall be connected to a siphon or equivalent device of sufficient capacity to keep the gauge tube filled with water. The steam gauge shall be arranged so that the gauge cannot be shut off from the boiler except by a cock placed near the gauge. The cock shall be provided with a tee or lever handle arranged to be parallel to the pipe in which it is located when the cock is open.

(b) When a steam gauge connection longer than eight feet becomes necessary, a shut-off valve may be used near the boiler if the valve is the outside-screw-and-yoke type and is locked open. The line shall be of ample size with provision for free blowing.

(c) Each boiler shall be provided with a ½-inch nipple and globe valve connected to the steam space for the exclusive purpose of attaching a test gauge when the boiler is in service so that the accuracy of the boiler steam gauge may be ascertained. (Authorized by and implementing K.S.A. 1998 Supp. 44-916; effective May 1, 1987; amended April 28, 2000.)

49-51-10. Stop valves. (a) Each steam outlet from a boiler, except safety valve and water column connections, shall be fitted with a stop valve located as close as practicable to the boiler.

(b) When a stop valve is so located that water can accumulate, ample drains shall be provided. The drainage shall be piped to a safe location and shall not be discharged on the top of the boiler or its setting.

(c) When boilers provided with manholes are connected to a common steam main, the steam connection from each boiler shall be fitted with two stop valves that have an ample free blow drain between them. The discharge of the drain shall be visible to the operator while manipulating the valves and shall be piped clear of the boiler setting. One of the stop valves shall be an automatic nonreturn valve that is set next to the boiler, and the second valve shall be the outside-screw-and-yoke type and shall meet the requirements of sections I, IV, and VIII of the ASME code. All piping, fittings, and valves shall meet the requirements of the current code of construction. (Authorized by and implementing K.S.A. 1998 Supp. 44-916; effective May 1, 1987; amended April 28, 2000.)

49-51-11. Blowoff connection. (a) The construction of the setting around each blowoff pipe shall permit free expansion and contraction. These setting openings shall be sealed without restricting the movement of the blowoff piping.

(b) All blowoff piping exposed to furnace heat shall be protected by fire brick or other heat-resistant material constructed to provide access to the piping for inspection.

(c) Each boiler shall have a blowoff pipe that is fitted with a valve or cock that is directly connected to the lowest water space. Each cock shall be a gland or guard cock and shall be suitable for the pressure allowed. Globe valves shall not be used. If the maximum allowable working pressure of the boiler exceeds 100 psig, each blowoff pipe shall be provided with either two valves or a valve and a cock.

(d) If the maximum allowable working pressure of the boiler exceeds 100 psig, the portion of the boiler's blowoff piping from the boiler to the valve or valves shall consist of extra heavy steel. The blowoff piping shall be full size, and reducers or bushings shall not be used in the piping. The piping shall not be galvanized.

(e) All fittings between the boiler and blowoff valve shall consist of steel. If blowoff pipes or fittings are renewed, they shall be installed in accordance with the regulations for new installations contained within these regulations.

(f) Each blowdown from a boiler or boilers that enters a sanitary sewer system and any blowdown that is determined by the chief boiler inspector to be a hazard to life or property shall pass through some form of blowoff equipment that will reduce pressure and temperature as required in this subsection.

(1) The temperature of the water leaving the blowoff equipment shall not exceed 140°F.

(2) The pressure of the blowdown leaving any type of blowoff equipment shall not exceed 5 psig.

(3) The blowoff piping and fittings between the boiler and the blowoff tank shall meet the requirements of paragraphs PG-58 and PG-59 of the ASME boiler and pressure vessel code, section I, as adopted in K.A.R. 49-45-1.

(4) All materials used in the fabrication of boiler blowoff equipment shall meet the requirements of the material specifications in section II of the ASME boiler and pressure vessel code, as adopted in K.A.R. 49-45-2, K.A.R. 49-45-3, K.A.R. 49-45-4, and K.A.R. 49-45-4a.

(5) Blowdown tanks shall be constructed to meet the requirements of section VIII of the ASME code, rules for the construction of pres-

sure vessels, division I, as adopted in K.A.R. 49-45-29, K.A.R. 49-45-30, and K.A.R. 49-45-31.

(6) All blowoff equipment shall be fitted with openings to facilitate cleaning and inspection.

(7) All blowoff equipment shall be installed in accordance with "a guide for blowoff vessels," 2004 edition, NB-27, rev. 2, which is hereby adopted by reference. (Authorized by and implementing K.S.A. 44-916; effective May 1, 1987; amended April 28, 2000; amended Nov. 3, 2006.)

49-51-12. Repairs and renewals of boiler and pressure vessel fittings and appliances. If repairs are made to any fittings or appliances of a boiler or pressure vessel or if it becomes necessary to replace them, the repairs or replacements shall meet the provisions of the following standards:

(a) ASME code sections I and VIII, as adopted in K.A.R. 49-45-1, K.A.R. 49-45-29, K.A.R. 49-45-30, and K.A.R. 49-45-31;

(b) ASME B 31.1, as adopted in K.A.R. 49-45-28;

(c) ASME CSD-1, as adopted in K.A.R. 49-45-27;

(d) NFPA sections 85, 85A, 85F, and 86, as adopted in K.A.R. 49-45-37, K.A.R. 49-45-38, K.A.R. 49-45-39, K.A.R. 49-45-40; and

(e) the national board inspection code, as adopted in K.A.R. 49-45-20. (Authorized by and implementing K.S.A. 44-916; effective May 1, 1987; amended April 28, 2000; amended Nov. 3, 2006.)

49-51-13. Conditions not covered by these requirements. All cases not specifically covered by these requirements shall be treated as new installations or may be referred to the chief inspector for instructions concerning the requirements. (Authorized by and implementing K.S.A. 1985 Supp. 44-916; effective May 1, 1987.)

49-51-14. (Authorized by and implementing K.S.A. 1985 Supp. 44-916; effective May 1, 1987; revoked April 28, 2000.)

Article 52.—LOW PRESSURE HEATING BOILERS

49-52-1. Standard boilers. The maximum allowable working pressure of standard boilers shall in no case exceed the pressure indicated by the manufacturer's identification stamped or cast on the boiler or on a plate secured to it. (Authorized by and implementing K.S.A. 1985 Supp. 44-916; effective May 1, 1987.)

49-52-2. Nonstandard riveted boilers. The maximum allowable working pressure on the

shell of a nonstandard riveted heating boiler shall be determined in accordance with K.A.R. 49-51-3. The maximum working pressure of a steam heating boiler shall be 15 psig and the maximum working pressure or temperature of a hot water boiler shall be 160 psig or 250°F temperature. (Authorized by and implementing K.S.A. 1985 Supp. 44-916 and K.S.A. 44-914; effective May 1, 1987.)

49-52-3. Nonstandard welded boilers. The maximum allowable working pressure of a nonstandard steel or wrought iron heating boiler of welded construction shall not exceed 15 psig for steam. For other than steam service, the maximum allowable working pressure shall be calculated in accordance with section IV of the ASME code (in effect on January 1, 1987), but in no case shall it exceed 30 psig. (Authorized by and implementing K.S.A. 1985 Supp. 44-916; effective May 1, 1987.)

49-52-4. Nonstandard cast iron boilers. (a) The maximum allowable working pressure of a nonstandard boiler composed principally of cast iron shall not exceed 15 psig for steam service or 30 psig for hot water service.

(b) The maximum allowable working pressure of a nonstandard boiler having cast iron shell or heads and steel or wrought iron tubes shall not exceed 15 psig for steam service or 30 psig for hot water service. (Authorized by and implementing K.S.A. 1985 Supp. 44-916; effective May 1, 1987.)

49-52-5. Safety valves. (a) Each steam boiler shall have one or more ASME or national board-approved and certified safety valves of the spring pop-type adjusted and sealed to discharge at a pressure not to exceed 15 psig. Seals shall be attached in a manner that prevents the valve from being taken apart without breaking the seal. The safety valves shall be arranged so that they cannot be reset to relieve at a higher pressure than the maximum allowable working pressure of the boiler. A body drain connection below seat level shall be provided by the manufacturer, and this drain shall not be plugged during or after field installation. For valves exceeding two inches of pipe size, the drain hole or holes shall be tapped not less than $\frac{3}{8}$ inch pipe size. For valves less than two inches, the drain hole shall not be less than $\frac{1}{4}$ inch in diameter.

(b) A safety valve for a steam boiler shall not be smaller than $\frac{1}{2}$ inch unless the boiler and radiating surfaces consist of a self-contained unit. A safety

valve shall not be larger than 4½ inches. The inlet opening shall have an inside diameter equal to or greater than the seat diameter.

(c) The minimum relieving capacity of the valve or valves shall be governed by the capacity marking on the boiler.

(d)(1) The minimum valve capacity in pounds per hour shall be the greater of the valves determined by either of the following:

(A) Dividing the maximum BTUH output at the boiler nozzle obtained by the firing of any fuel for which the unit is installed by 1,000; or

(B) using the pounds of steam generated per hour per square foot of boiler heating surface as given in the following table:

Minimum pounds of steam per hour per square foot of heating surface

Boiler heating surface:	Firetube boilers	Watertube boilers
Hand-fired	5	6
Stoker-fired	7	6
Oil, gas, or pulverized fuel-fired	8	10
Waterwell heating surface:		
Hand-fired	8	8
Stoker-fired	10	12
Oil, gas, or pulverized fuel-fired	14	16

(2) When a boiler is fired only by gas with a heat value not in excess of 200 BTUH per cubic feet, the minimum safety valve or safety relief valve relieving capacity shall be based on the value given for hand-fired boilers above.

(3) The minimum safety valve or safety relief valve relieving capacity for electric boilers shall be 3½ pounds per hour per kilowatt input.

(4) The amount of heating surface in a boiler shall be determined according to the provisions of ASME code section IV, paragraph HG-403.

(e) The safety valve capacity for each steam boiler shall be such that, with the fuel-burning equipment installed and operating at maximum capacity, the pressure cannot rise more than 5 psig above the maximum allowable working pressure.

(f) When operating conditions are changed or additional boiler heating surface is installed, the valve capacity shall be increased, if necessary, to meet the new conditions in accordance with subsection (e). When additional valves are required, they may be installed on the outlet piping if there is no intervening valve.

(g) If there is any doubt as to the capacity of the safety valve, an accumulation test shall be run in accordance with the ASME code, section VI.

(h) No valve of any description shall be placed between the safety valve and the boiler nor on the discharge pipe between the safety valve and the atmosphere. The safety valve shall be installed in a vertical position.

(i) The discharge pipe shall be at least full size and shall be fitted with an open drain to prevent water lodging in the upper part of the safety valve or in the discharge pipe. When an elbow is placed on the safety valve discharge pipe, the elbow shall be located close to the safety valve outlet, or the discharge pipe shall be securely anchored and supported. All safety valve discharges shall be located or piped in a manner that will not endanger persons working in the area. When discharge piping is directed downward, the pipe shall terminate six inches above floor level. Plastic discharge piping shall not be used.

(j) When two or more safety valve discharge lines are connected together, the cross-sectional area of the common discharge line shall equal or exceed the cross-sectional area of the combined safety valve discharge outlets. (Authorized by and implementing K.S.A. 1998 Supp. 44-916; effective May 1, 1987; amended April 28, 2000.)

49-52-6. Safety relief valve requirements for hot water boilers and hot water supply boilers.

(a)(1) Each hot water heating boiler shall have at least one ASME-certified or national board-certified safety relief valve set to relieve at or below the maximum allowable working pressure of the boiler. Each hot water supply boiler of the water tube or coil type shall have at least one safety relief valve that is approved and certified by ASME or the national board. The safety relief valve shall be of the automatic reseating type and shall be set to relieve at or below the maximum allowable working pressure of the boiler. If the capacity of the safety relief valve is certified by the ASME or the national board, the safety relief valve shall have pop action when tested by steam.

(2) If more than one safety relief valve is used on either a hot water heating boiler or a hot water supply boiler, the additional valve or valves shall be ASME-rated. The additional valves shall be set to relieve at or below the maximum allowable working pressure of the vessel or any component in the system.

(3) Each safety relief valve shall be spring-loaded. A safety relief valve shall not be capable of being reset at a higher pressure than the maximum allowable working pressure of the boiler or pressure vessel.

(b) Materials that can fail due to deterioration or vulcanization when subjected to saturated steam temperatures corresponding to the maximum capacity test pressure shall not be used for safety relief valves.

(c) A safety relief valve shall not be smaller than $\frac{3}{4}$ inch or larger than $4\frac{1}{2}$ inches standard pipe size, except that boilers having a heat input not greater than 15,000 BTUH may be equipped with a safety relief valve of $\frac{1}{2}$ -inch standard pipe size. The inlet opening shall have an inside diameter that is approximately equal to or greater than the seat diameter. The minimum opening through any part of the valve shall not be less than $\frac{1}{2}$ inch in diameter or its equivalent area.

(d) The steam-relieving capacity, in pounds per hour, of each pressure-relieving device on a boiler shall be the greater of the steam-relieving capacity determined by either of the following methods:

(1) Dividing the maximum output in BTUH by 1,000, where the maximum output is the output obtained at the boiler nozzle by the firing of any fuel the unit is capable of using; or

(2) using the number of pounds of steam generated per hour per square foot of boiler heating surface as specified in the table in K.A.R. 49-52-5(d)(1).

(e) If operating conditions are changed or additional boiler heating surface is installed, the valve capacity shall be increased, if necessary, to meet the new conditions in accordance with subsection (f).

(f) The additional valves required because of the changed conditions or additional heating surfaces may be installed on the outlet piping if there is no intervening valve.

(f) The safety relief valve capacity for each boiler shall be sufficient to prevent the pressure from rising more than 5 psig above the boiler's maximum allowable working pressure with the fuel-burning equipment installed. Each storage water heater and each hot water supply boiler shall have T & P relief valves with a relieving capacity and an American gas association rating that is equal to or exceeds the burner BTUH input or the electrical power kilowatt input. Each hot water supply boiler that is of the coil or water tube type shall be equipped with a safety relief valve. The connecting hot water storage tank shall have a

pressure and temperature safety relief valve with a temperature-relieving capacity equivalent to the total burner BTUH input.

(g)(1) Each safety relief valve shall be installed in a vertical position, except for T & P relief valves that are installed on storage water heaters equipped with side tappings to accommodate the insertion of the T & P valve thermostat. The T & P valve thermostat shall be immersed in the water and located in the top six inches of the vessel. No valve of any type shall be placed between the safety relief valve and the boiler or on the discharge pipe between the safety relief valve and the atmosphere.

(2) The diameter of the discharge pipe shall not be less than the diameter of the safety discharge opening and shall be fitted with an open drain to prevent water from lodging in the upper part of the safety relief valve or in the discharge pipe. Horizontal discharge piping that provides adequate gravity drainage shall not require the fitting of an open drain, except as specified in this paragraph. If an elbow is placed on the safety relief valve discharge pipe, the elbow shall be located close to the safety relief valve outlet, or the discharge pipe shall be securely anchored and supported.

(3) All safety relief valve discharges shall be located or piped in a manner that does not endanger persons working in the area. If discharge piping is directed downward, the pipe shall terminate no more than six inches above floor level. Plastic discharge piping shall not be used on any safety relief valve discharge line, including discharge lines for domestic hot water heaters of any size.

(4) If two or more safety relief valve discharge lines are connected together, the cross-sectional area of the common discharge line shall equal or exceed the combined cross-sectional areas of all of the connected safety relief valve outlets. (Authorized by and implementing K.S.A. 44-916; effective May 1, 1987; amended April 28, 2000; amended Nov. 3, 2006.)

49-52-7. Steam gauges. (a) Each steam boiler shall have a steam gauge connected to its water column or a steam connection by means of a siphon or equivalent device exterior to the boiler. The siphon shall be of sufficient capacity to keep the gauge tube filled with water and shall be arranged so that the gauge cannot be shut off from the boiler except by a cock with tee or lever handle placed in the pipe near the gauge. The handle of the cock shall be parallel to the pipe in which it is located when the cock is open.

(b) The scale on the dial of a steam gauge shall be graduated to not less than 30 psig or more than $3\frac{1}{2}$ times the maximum allowable working pressure. The gauge shall be provided with effective stops for the indicating pointer at the zero point and at the maximum pressure point. The pointer shall travel at least three inches from the zero to 30 psig pressure mark. (Authorized by and implementing K.S.A. 1998 Supp. 44-916; effective May 1, 1987; amended April 28, 2000.)

49-52-8. Pressure or altitude gauge and thermometers. (a) Each hot water boiler shall have a pressure or altitude gauge connected to it or to its flow connection in such a manner that it cannot be shut off from the boiler except by a cock with tee or lever handle placed on the pipe near the gauge. The handle of the cock shall be parallel to the pipe in which it is located when the cock is open.

(b) The scale on the dial of the pressure or altitude gauge shall display approximate graduation to not less than $1\frac{1}{2}$ or more than three times the maximum allowable working pressure.

(c) Piping or tubing for pressure altitude gauge connections shall be of nonferrous metal when smaller than one inch of pipe size.

(d) Each hot water boiler shall have a thermometer that is located and connected in such a manner that both of the following conditions are met:

(1) The thermometer is easily readable during observation of the water pressure or altitude gauge.

(2) The thermometer will at all times indicate the temperature, in degrees Fahrenheit, of the water in the boiler at or near the outlet.

(e) Each hot water supply boiler shall have a thermometer installed in the hot water supply line. (Authorized by and implementing K.S.A. 1998 Supp. 44-916; effective May 1, 1987; amended April 28, 2000.)

49-52-9. Water gauge glasses. (a) Each steam boiler shall have one or more water gauge glasses attached to the water column or boiler by means of valved fittings. The lower fitting shall be provided with a drain valve of the straightway type with an opening not less than $\frac{1}{4}$ inch in diameter to facilitate cleaning. Gauge glass replacement shall be possible while the boiler is under pressure.

(b) Transparent material, other than glass, may be used for the water gauge if the material has proven suitable for the pressure, temperature, and corrosive conditions encountered in service.

(c) Gauge glasses shall be installed to show a water level in the boiler at or above the lowest permissible level as defined by the manufacturer of the boiler, and the low water cutoffs shall be installed accordingly. (Authorized by and implementing K.S.A. 1998 Supp. 44-916; effective May 1, 1987; amended April 28, 2000.)

49-52-10. Stop valves and check valves.

(a) If a boiler can be closed off from the heating system by closing a steam stop valve, there shall be a check valve in the condensate return line between the boiler and the system.

(b) If any part of a heating system can be closed off from the remainder of the system by closing a steam stop valve, there shall be a check valve in the condensate return pipe from that part of the system.

(c) If multiple steam boilers with manholes are functionally connected to each other through a manifold, each boiler shall have two stop valves with a free blow drain between the two valves. (Authorized by and implementing K.S.A. 44-916; effective May 1, 1987; amended Nov. 3, 2006.)

49-52-11. Feedwater connections, automatic low water fuel cutoff, and water-feeding devices.

(a) Feedwater, makeup water, or water treatment materials shall be introduced into a boiler through the return piping system or through an independent feedwater connection that does not discharge against parts of the boiler exposed to direct radiant heat from the fire. Feedwater, makeup water, or water treatment materials shall not be introduced through openings or connections provided for any of the following:

(1) Inspection or cleaning;

(2) safety valves or safety relief valves; or

(3) surface blowoff, or the water column, water gauge glass, pressure gauge, or temperature gauge.

(b) The feedwater pipe shall be provided with a check valve near the boiler and a stop valve or cock between the check valve and the boiler or return pipe system.

(c) Each automatically fired steam or vapor system boiler shall be equipped with an automatic low water fuel cutoff located in a manner that will automatically cut off the fuel supply when the surface of the water falls to the lowest safe water line. The boiler shall also have a secondary low water cutoff that will cut off the fuel supply and lock out the burner and shall be equipped with a manual reset. If a water-feeding device is installed, it shall

be constructed so that the water inlet valve cannot feed water into the boiler through the float chamber. The interfeeding device shall be located to supply requisite feedwater. The lowest safe water line shall not be lower than the lowest visible part of the water glass.

(d) A fuel or feedwater control device may be attached directly to a low pressure boiler on the tapped openings in low pressure boilers that are provided for attaching a water glass directly to the boiler. The connections between the boiler and the water glass shall be nonferrous tees or Ys of not less than ½ inch pipe size. The water glass shall be attached directly, and as closely as possible, to the boiler. The water glass fittings shall be attached to the straightway topping of the Y or T. The fuel cutoff or water-feeding device shall be attached to the side outlet of the Y or T. The ends of all nipples shall be reamed to full-size diameter.

(e) Designs using a float and float bowl shall have a vertical, straight-away valve drain pipe at the lowest point in the water-equalizing pipe. The connections in this installation shall permit the bowl and the equalizing pipe to be flushed and the device tested. A low water fuel cutoff control device shall be installed in all hot water heating systems with inputs exceeding 400,000 BTUH. Blowdown valves and pipe attachments shall be a minimum of ¾ inches.

(f) A low water fuel cutoff shall be installed on all hot water heating systems, including systems under 400,000 BTUH that are not exempted. The low water cutoff shall be a float type, flow switch, or probe type installed in the boiler or piping above the boiler.

(g) Low water cutoffs installed on all hot water heating boilers shall be installed above the boiler and shall be equipped with a manual reset, with no intervening valves between the boiler and the low water cutoff. (Authorized by and implementing K.S.A. 1998 Supp. 44-916; effective May 1, 1987; amended April 28, 2000.)

49-52-12. Return pump. Each boiler equipped with a condensate return pump shall be provided with a water level control arranged to automatically maintain the water level in the boiler within the range of the gauge glass. (Authorized by and implementing K.S.A. 1985 Supp. 44-916; effective May 1, 1987.)

49-52-13. Provisions for thermal expansion in hot water systems. (a) All hot water

heating systems incorporating hot water tanks or fluid relief columns shall be installed in a manner that will prevent freezing under normal operating conditions.

(b) Systems with open expansion tank. If the system is equipped with an open expansion tank, an indoor overflow from the upper portion of the expansion tank shall be provided in addition to an open vent. The indoor overflow shall be carried within the building to a suitable plumbing fixture or the basement.

(c) Closed systems. If the system is closed, an airtight tank or other suitable air cushion shall be installed that will be consistent with the volume and capacity of the system, and it shall be suitably designed for a hydrostatic test pressure of 2½ times the allowable working pressure of the system. Expansion tanks for systems designed to operate above 30 psig shall be constructed in accordance with section VIII, division 1, as required by section IV of the ASME code. Provisions shall be made to drain the tank without emptying the system, except for prepressurized tanks.

(d) Non-code expansion tanks installed on hot water heating systems shall be restricted to no more than 30 psi working pressure. (Authorized by and implementing K.S.A. 1998 Supp. 44-916; effective May 1, 1987; amended April 28, 2000.)

49-52-14. Repair and replacement of fittings and appliances. (a) If repairs are made to fittings or appliances or if it becomes necessary to replace them, the repairs shall meet the following standards:

(1) Sections I, IV, and VIII of the ASME code for new construction, as adopted in K.A.R. 49-45-1, K.A.R. 49-45-5, K.A.R. 49-45-29, K.A.R. 49-45-30, and K.A.R. 49-45-31;

(2) ASME CSD-1, as adopted in K.A.R. 49-45-27;

(3) NFPA 85, 85A, 85F, and 86, as adopted in K.A.R. 49-45-37 through K.A.R. 49-45-40; and

(4) the national board inspection code, as adopted in K.A.R. 49-45-20.

(b) Each electrical control and each safety device shall bear a label and shall be listed by a nationally recognized agency, including UL (underwriters laboratories), FM (factory mutual), or AGA (American gas association), and shall bear an identification label from one of these agencies. (Authorized by and implementing K.S.A. 44-916; effective May 1, 1987; amended April 28, 2000; amended Nov. 3, 2006.)

49-52-15. (Authorized by and implementing K.S.A. 1985 Supp. 44-916; effective May 1, 1987; revoked April 28, 2000.)

49-52-16. Provisions for thermal expansion in hot water supply systems. If the system is equipped with a check valve or pressure-reducing valve in the cold water inlet line, an airtight expansion tank or other suitable air cushion shall be used. If provided, the tank shall be constructed according to the requirements of section VIII, division 1 of the ASME code, with a maximum allowable working pressure to equal or exceed the working pressure of the hot water supply boiler. (Authorized by and implementing K.S.A. 1998 Supp. 44-916; effective April 28, 2000.)

49-52-17. Emergency shutoff switches. An emergency shutoff switch shall be installed on each hot water supply boiler, on each boiler of any size that is equipped with power burners, and on each boiler with a BTUH input of 400,000 or more, regardless of burner type. Each heating and power boiler shall have an emergency shutdown switch installed by each exit to meet the requirements of NFPA 70, "national electrical code," 2002 edition, which is adopted by reference, and ASME CSD-1, as adopted in K.A.R. 49-45-27. Each boiler with an input of 12,500,000 BTUH or more shall meet the requirements of NFPA 70 and NFPA 85, 85A, 85F, and 86, as adopted in K.A.R. 49-45-37 through K.A.R. 49-45-40. Each emergency shutdown switch shall be marked for easy identification. (Authorized by and implementing K.S.A. 44-916; effective April 28, 2000; amended Nov. 3, 2006.)

49-52-18. Hot water supply boilers. (a) No hot water supply boiler or commercial or domestic type of water heater of any size shall be used for any type of comfort heat. This prohibition shall include floor heat and closed-loop hot water heating systems of any kind. Each boiler that is used for heating purposes and is not made of cast iron shall be code-stamped and registered with the national board of boiler and pressure vessel inspectors.

(b) No hot water heating system shall be connected with any domestic hot water system or be used in combination as a building heating system and domestic hot water system.

(c) No hot water supply boiler code-stamped "HLW" shall be used for any kind of comfort heat.

(d) For the purposes of each boiler certification inspection, when a hot water supply boiler is connected to a hot water supply tank, this combination shall be considered one unit.

(e) Each hot water supply boiler that requires electricity to power burners, to stack dampers, or to start an electronic ignition shall be hardwired into the facility's electrical system. (Authorized by and implementing K.S.A. 44-916; effective Nov. 3, 2006.)

49-52-19. Pool heaters. (a) Each pool heater shall have the following controls and safety devices that meet the following requirements:

(1) A safety relief valve, with a set pressure not to exceed the maximum allowable working pressure of the lowest rated component in the system; and

(2) a pressure switch or a flow switch that prevents the burner from operating if the circulating pump is not in operation and that maintains adequate temperature controls conforming to the generally acceptable standards for pool heaters.

(b) Each pool heater that can generate at least 400,000 BTUH shall be constructed to meet the requirements of ASME section IV, as adopted by reference in K.A.R. 49-45-5, and shall be registered with the national board. Each pool heater shall be equipped with the controls and safety devices required for heating boilers. (Authorized by and implementing K.S.A. 44-916; effective Nov. 3, 2006.)

Article 53.—NUCLEAR POWER PLANT COMPONENTS

49-53-1 to 49-53-2. (Authorized by and implementing K.S.A. 1985 Supp. 44-916; effective May 1, 1987; revoked Nov. 22, 1996.)

Article 54.—HEARINGS

49-54-1 to 49-54-3. (Authorized by K.S.A. 1985 Supp. 44-916; implementing K.S.A. 44-928 and as amended by L. 1986, Ch. 318, § 63; effective May 1, 1987; revoked April 28, 2000.)

Article 55.—AMUSEMENT RIDE REGULATIONS

49-55-1. Applicability. Unless exempted by the act, this article of the department's regulations shall apply to all amusement rides, as defined in K.S.A. 2016 Supp. 44-1601 and amend-

ments thereto, within the state. (Authorized by and implementing K.S.A. 2016 Supp. 44-1614, as amended by 2017 H Sub for SB 86, sec. 13; effective May 28, 2010; amended, T-49-6-27-17, July 1, 2017; amended Oct. 13, 2017.)

49-55-2. Definitions. (a) “Act” means the Kansas amusement ride act and amendments thereto.

(b) “Amusement ride records” means the following:

- (1) The current certification of an inspector’s qualifications to inspect amusement rides;
- (2) the current certificate of inspection signed by a qualified inspector;
- (3) the current results of nondestructive testing;
- (4) each amusement ride manufacturer’s operational manual;
- (5) each amusement ride manufacturer’s non-destructive testing recommendations;
- (6) each amusement ride manufacturer’s inspection guidelines; and
- (7) the records required to be maintained in accordance with K.S.A. 2016 Supp. 44-1603, and amendments thereto.

(c) “Permanent amusement ride” means an amusement ride, as defined in K.S.A. 2016 Supp. 44-1601 and amendments thereto, that is permanently affixed to the real estate where the amusement ride is operated. A permanent amusement ride is not capable of being transported from one location to another without significant physical alteration of the location and the amusement ride.

(d) “Reasonable period of time to comply with the provisions of K.S.A. 2016 Supp. 44-1601 et seq., and amendments thereto, and K.S.A. 40-4801 et seq., and amendments thereto” means 30 days after publication of the regulations adopted by the secretary pursuant to K.S.A. 2016 Supp. 44-1614(b), and amendments thereto.

(e) “Temporary amusement ride” means an amusement ride, as defined in K.S.A. 2016 Supp. 44-1601 and amendments thereto, that is movable from location to location without significant physical alteration of the location and the amusement ride. (Authorized by and implementing K.S.A. 2016 Supp. 44-1614, as amended by 2017 H Sub for SB 86, sec. 13; effective May 28, 2010; amended, T-49-6-27-17, July 1, 2017; amended Oct. 13, 2017.)

49-55-3. (Authorized by K.S.A. 2009 Supp. 44-1614; implementing K.S.A. 2009 Supp. 44-

1602; effective May 28, 2010; revoked, T-49-6-27-17, July 1, 2017; revoked Oct. 13, 2017.)

49-55-4. Permit application; certificate of inspection. Each application for a permit shall include the following:

- (a) The name of the owner and operator of the amusement ride;
- (b) the location of the amusement ride or the location where the amusement ride is stored when not in use;
- (c) proof of insurance;
- (d) certification that the amusement ride meets the applicable standards of the American society for testing and materials (ASTM) international F24 committee; and
- (e) a copy of a valid certificate of inspection for that amusement ride. Each certificate of inspection shall provide an expiration date. (Authorized by K.S.A. 2016 Supp. 44-1614, as amended by 2017 H Sub for SB 86, sec. 13; implementing K.S.A. 2016 Supp. 44-1602, as amended by 2017 H Sub for SB 86, sec. 7, and 2017 H Sub for SB 86, sec. 1; effective May 28, 2010; amended, T-49-6-27-17, July 1, 2017; amended Oct. 13, 2017.)

49-55-5. (Authorized by L. 2009, ch. 71, sec. 3 and K.S.A. 2008 Supp. 44-1602; implementing K.S.A. 2008 Supp. 44-1604; effective May 28, 2010; revoked, T-49-6-27-17, July 1, 2017; revoked Oct. 13, 2017.)

49-55-6. Record retention. The owner of each amusement ride shall retain all amusement ride records for a period of three years, which shall be grouped according to amusement ride. The owner shall retain all amusement ride records at the location of the amusement ride’s operation. The records shall be accessible upon request by the department in accordance with K.S.A. 2016 Supp. 44-1603 and amendments thereto, each person who contracts with the owner for the amusement ride’s operation, and each operator. (Authorized by K.S.A. 2016 Supp. 44-1614, as amended by 2017 H Sub for SB 86, sec. 13; implementing K.S.A. 2016 Supp. 44-1603, as amended by 2017 H Sub for SB 86, sec. 8, and K.S.A. 2016 Supp. 44-1605; effective May 28, 2010; amended, T-49-6-27-17, July 1, 2017; amended Oct. 13, 2017.)

49-55-7. Location of evidence of inspection. The owner of each amusement ride shall affix a copy of the current inspection results under a weatherproof covering in a conspicuous location

on the amusement ride so that each patron can see the results before boarding the amusement ride. (Authorized by L. 2009, ch. 71, sec. 3; implementing K.S.A. 2008 Supp. 44-1602; effective May 28, 2010.)

49-55-8. Procedure for selection of an amusement ride for compliance audit. (a) Amusement rides shall be randomly selected each quarter by the department for compliance audit by location. Random selection for compliance audit shall include selecting amusement rides from a list of amusement rides that have been issued a valid permit by the department and amusement rides that are identified on location reports submitted to the department in accordance with K.A.R. 49-55-10.

(b) A compliance audit may also be conducted for amusement rides that are determined to be in need of a compliance audit by the secretary or the secretary's designee. (Authorized by K.S.A. 2016 Supp. 44-1614, as amended by 2017 H Sub for SB 86, sec. 13; implementing K.S.A. 2016 Supp. 44-1602, as amended by 2017 H Sub for SB 86, sec. 7; effective May 28, 2010; amended, T-49-6-27-17, July 1, 2017; amended Oct. 13, 2017.)

49-55-9. Location of safety instructions. The owner shall affix the safety instructions for each amusement ride in a conspicuous location under a waterproof covering that allows patrons to read the instructions before boarding the amusement ride. (Authorized by L. 2009, ch. 71, sec. 3; implementing K.S.A. 2008 Supp. 44-1606; effective May 28, 2010.)

49-55-10. Reporting of amusement ride locations. (a) Permanent amusement ride. The owner of each permanent amusement ride shall annually report the location of that amusement ride on a form provided by the department. If the owner removes a permanent amusement ride from service or places a new permanent amusement ride in service, the owner shall report the removal or placement to the department within 30 calendar days.

(b) Temporary amusement ride. The owner of each temporary amusement ride shall file with the department an itinerary at least 30 calendar days before the beginning date on the itinerary. The owner shall submit the itinerary on a form provided by the department. If the owner changes the itinerary, the owner shall report the change to the department by the next business day following the

day the change occurred. (Authorized by L. 2009, ch. 71, sec. 3; implementing K.S.A. 2008 Supp. 44-1602; effective May 28, 2010.)

49-55-11. Submitting reports and other documents; notification of death. (a) Except as provided in subsection (b), each report and any other document required by these regulations or the act shall be submitted to the department's director of industrial safety and health by mail, facsimile, hand delivery, or electronic mail.

(b) For each serious injury that results in the death of a patron, notification by the owner shall be made initially by telephone, with a written notification sent within 24 hours after the initial notification. (Authorized by and implementing K.S.A. 2016 Supp. 44-1614, as amended by 2017 H Sub for SB 86, sec. 13; effective May 28, 2010; amended, T-49-6-27-17, July 1, 2017; amended Oct. 13, 2017.)

49-55-12. Violations; reporting violations to the attorney general, county attorney, or district attorney. (a) Each notice of violation issued by the department for a violation of the act or these regulations shall specify the following:

- (1) The nature of the violation;
- (2) the facts supporting the determination that a violation took place; and
- (3) specification of the action that the owner shall take to comply with the act or these regulations.

(b) Each notice of violation shall be reported by the department to the attorney general, county attorney, or district attorney. (Authorized by K.S.A. 2016 Supp. 44-1614, as amended by 2017 H Sub for SB 86, sec. 13; implementing K.S.A. 2016 Supp. 44-1610, as amended by 2017 H Sub for SB 86, sec. 11, and K.S.A. 2016 Supp. 44-1611; effective May 28, 2010; amended, T-49-6-27-17, July 1, 2017; amended Oct. 13, 2017.)

49-55-13. Nationally recognized organizations that issue certificates or other evidence of qualification to inspect amusement rides. The nationally recognized organizations that issue certifications or other evidence of qualification to inspect amusement rides and that require education, experience, and training at least equivalent to that required for a level II certification from NAARSO as of July 1, 2017, shall include the following:

- (a) The national association of amusement ride safety officials (NAARSO), for level II certification;

(b) the amusement industry manufacturers and suppliers international (AIMS), for level II certification;

(c) the association for challenge course technology (ACCT), for qualified inspector certification; and

(d) Pennsylvania department of agriculture, for general qualified inspector status. (Authorized by and implementing K.S.A. 2016 Supp. 44-1614, as amended by 2017 H Sub for SB 86, sec. 13; effective, T-49-6-27-17, July 1, 2017; effective Oct. 13, 2017.)

Agency 50
Department of Labor—
Division of Employment

Editor's Note:

The Department of Human Resources was renamed the Department of Labor by Executive Reorganization Order No. 31. See L. 2004, Ch. 191.

Articles

- 50-1. MEANING OF TERMS.
- 50-2. UNEMPLOYMENT INSURANCE; CONTRIBUTING, REIMBURSING AND RATED GOVERNMENTAL EMPLOYMENT.
- 50-3. UNEMPLOYMENT INSURANCE BENEFITS.
- 50-4. DISCLOSURE OF INFORMATION.

Article 1.—MEANING OF TERMS

50-1-1. (Authorized by K.S.A. 1965 Supp. 44-714(a); effective Jan. 1, 1966; amended May 1, 1980; revoked May 1, 1987.)

50-1-2. Meaning of terms relating to both unemployment compensation contributions and benefits. (a) Division. "Division" means the division of employment security, department of human resources, state of Kansas.

(b) State. "State," for purposes of the interstate reciprocal coverage arrangement, the interstate benefit payment agreement, and the interstate plans for wage combining, means the states of the United States, the District of Columbia, Guam, Puerto Rico, the Virgin Islands, and Canada, if the state has subscribed to the agreement or arrangement and has not terminated its adherence thereto. (Authorized by and implementing K.S.A. 1999 Supp. 44-714(a), (k); effective Jan. 1, 1966; amended May 1, 1980; amended Feb. 16, 2001.)

50-1-3. Definitions relating primarily to unemployment compensation contributions. (a) "Market" means the place or point where the producer or grower of the commodity customarily parts with economic interest in its future form or destiny.

(b) "Wages paid" shall include both wages actually received by the worker and wages constructively paid. Wages are constructively paid when they meet the following criteria:

- (1) Are credited to the account of or set apart

for a worker without any substantial restriction as to the time or manner of payment or condition upon which payment is to be made;

(2) are made available so that they may be drawn upon by the worker at any time; or

(3) are brought within the worker's own control and disposition, although not then actually reduced to possession. (Authorized by and implementing K.S.A. 1999 Supp. 44-703 and 44-714(a); effective Jan. 1, 1966; amended Jan. 1, 1972; amended May 1, 1980; amended May 1, 1983; amended May 1, 1987; amended Feb. 16, 2001.)

50-1-4. Definitions; unemployment compensation claims and benefit payments. (a) "Additional benefits" means benefits payable to exhaustees by reason of conditions of high unemployment or other special factors under provisions of any other state law. An "exhaustee" is an individual who has been paid all available unemployment insurance benefits.

(b) "Agent state" means any state in which an individual files a claim for benefits against another state.

(c) "Continued claim" means a request, filed as prescribed, for waiting period credit or benefits for a week of unemployment.

(d) "Covered wages" means wages paid for employment that is subject to the provisions of the Kansas employment security law.

(e) "Initial application or claim" means a new application or an additional application.

(1) "New application or claim" means a notice by a worker, filed as prescribed, that the work-

er intends to claim unemployment compensation benefits and desires a determination as to the worker's rights to benefits, the validity of the claim, and, if valid, the inclusive dates of the worker's benefit year and the amount of benefits for which the worker is qualified on the basis of base period wage credits.

(2) "Additional application or claim" means a notice by any worker with a benefit year currently in effect, filed as prescribed, that the worker intends to resume the worker's claim in the previously established benefit year.

(f) "Interstate benefit payment plan" means the plan approved by the interstate conference of employment security agencies under which benefits are payable to unemployed individuals absent from the state or states in which benefit credits have been accumulated.

(g) "Interstate claimant" means an individual who claims benefits under the unemployment compensation law of a liable state from another state, through the facilities of an agent state or directly with the liable state. The term "interstate claimant" shall not include any individual who customarily commutes from a residence in another state to work in a liable state unless the liable state finds that this exclusion would create undue hardship on claimants in specified areas.

(h) "Liable state" means any state against which an individual files a claim for benefits.

(i) A "mass layoff" means a layoff of 25 or more workers because of lack of work, by an employer, at or about the same time.

(j) "Student," as used in K.S.A. 44-703(i)(4)(N) and amendments thereto, is an individual who performs services in the employ of a school, college, or university and who is enrolled and regularly attending classes at the school, college, or university. If the individual is pursuing a regular course of study in accordance with the requirements of the school the individual attends, the individual shall meet the requirements of "regularly attending classes."

Any individual who performs services in the employ of a school, college, or university that are incidental to and for the purposes of pursuing a course or courses of study at the school shall be considered to have the status of a student in the performance of that service. An individual who performs services in the employ of a school, college, or university primarily as a means of earning a livelihood may be considered an employee even though the individual takes a course or courses of

study at the school. This individual shall not be classified as a "student" in the performance of these services.

(k) Types of unemployed workers.

(1) "Full-time employment" means that, with respect to any one week, an individual works 40 or more hours or any other number of hours that is the recognized custom in the industry, irrespective of the individual's earnings for the week.

(2) "Partial unemployment" means that, with respect to any one week, an individual works less than full time because of lack of work and earns less than the individual's weekly benefit amount. Work and earnings from all employment shall be considered together in determining whether the individual worked less than full time and earned less than the individual's weekly benefit amount during the week.

(3) "Temporary unemployment" means that the individual has been laid off due to lack of work by an employing unit for which the individual has worked full time and for which the individual expects to again work full time, and that the individual's employment with the employing unit, although temporarily suspended, has not been terminated. Temporary unemployment shall not exceed four consecutive weeks.

(4) "Total unemployment" means that, with respect to any one week, the individual performs no services and earns no remuneration for services.

(l) "Week" means the calendar week of seven consecutive days beginning 12:01 a.m. Sunday and ending 12:00 midnight the following Saturday.

(m) "Week of unemployment" shall include any week of unemployment, as defined in the law of the liable state, from which benefits with respect to that week are claimed. (Authorized by K.S.A. 1999 Supp. 44-714; implementing K.S.A. 1999 Supp. 44-703, 44-704, 44-705, 44-709, and 44-714; effective Jan. 1, 1966; amended Jan. 1, 1971; amended Jan. 1, 1972; amended Jan. 1, 1974; amended May 1, 1984; amended Feb. 16, 2001.)

50-1-5. Meaning of terms relating to successor classification. The following terms are used when determining whether an employing unit is to be classified as a successor employer when acquiring the business of a predecessor employer in accordance with K.S.A. 44-703(h)(4) and 44-710a(b)(1).

(a) Employing enterprises. "Employing enterprises" means those business locations with employment.

(b) Organization. "Organization" means employees or employee positions required to continue the business.

(c) Trade. "Trade" means the clientele or customers which frequent the business.

(d) Business. "Business" means the goods sold, the services provided or some combination thereof.

(e) Assets. "Assets" means all items which are necessary to the normal operations of the day-to-day business. (Authorized by K.S.A. 44-714; implementing K.S.A. 44-703, 44-710a; effective May 1, 1983.)

**Article 2.—UNEMPLOYMENT
INSURANCE; CONTRIBUTING,
REIMBURSING AND RATED
GOVERNMENTAL EMPLOYMENT**

50-2-1. Rules pertaining to the cash value of remuneration in kind. (a) Board, lodging, and any other forms of payment in kind to a worker that represent remuneration for services in addition to or in lieu of cash payments shall constitute wages, unless K.S.A. 44-703 (o) (11), and amendments thereto, applies. When payment for services is made partially in kind and deducted from the cash wages otherwise due a worker, the original cash wages due shall constitute the worker's wages.

(b) The value of payments in kind determined by the secretary shall be used to compute contributions due and benefit payments.

(c) A cash value of payments in kind furnished to a worker agreed upon by the worker and the worker's employing unit shall be deemed the value of this payment in kind unless it is less than the value of the payment in kind as specially determined by the secretary or, in the case of board and lodging, less than the value prescribed in subsection (d) of this regulation.

(d) Unless a different rate for board or lodging is determined by the secretary for a particular case, board or lodging furnished in addition to or in lieu of cash wages shall be deemed to have the following values:

(1) Lodging: Two-thirds of the market rental value of comparable lodging; and

(2) meals: 120% of the cost of all meal ingredients. (Authorized by and implementing K.S.A. 1999 Supp. 44-703(o); effective Jan. 1, 1966; amended May 1, 1980; amended May 1, 1987; amended Feb. 16, 2001.)

50-2-2. Records to be maintained by employing unit. (a) Each employing unit shall maintain records as hereinafter indicated and shall preserve such records against damage or loss for a period of not less than five years from the due date of the contributions for the period in which the remuneration to which they relate was paid, or if not paid, was due.

(1) For each worker:

(A) Name.

(B) Social security account number.

(C) State or states in which services are performed; and if any of such services are performed outside the state and are not incidental to the services within the state, the base of operations with respect to such services (or if there is no base of operations then the place from which such services are directed or controlled) and residence (by state). Where the services are performed in Canada or the base of operations with respect to such services or the residence of the worker is in Canada, it shall be recorded as if Canada were a state.

(D) Date on which the worker was hired, re-hired, or returned to work after temporary layoff and date separated from work and reason therefor.

(E) Remuneration paid for services and dates of payment showing separately: (i) Cash remuneration, including special payments (such as bonuses, gifts, back pay awards, dismissal payments, and similar payments); (ii) reasonable cash value of remuneration in any medium other than cash including special payments (such as bonuses, gifts, back pay awards, dismissal payments, and similar payments).

(F) Amounts paid as allowances or reimbursement for traveling or other business expenses, dates of payment, and the amounts of each expenditure actually incurred and accounted for.

(G) With respect to pay periods in which the worker performs services in both employment and nonsubject work: (i) Hours spent in employment; (ii) hours spent in nonsubject work including agricultural employment.

(2) General:

(A) Beginning and ending dates for each pay period.

(B) Total amount of wages paid in any quarter with respect to or for employment.

(b) Records shall be maintained by employing units in such form as to make it possible to determine from an inspection thereof with respect to any worker:

(1) Earnings by pay-period weeks, if paid on a weekly basis, or, if not so paid, then by calendar weeks or by such other seven-consecutive-day period as the secretary may prescribe as to any individual or group of individuals.

(2) Weeks of less than full-time work.

(3) Time lost due to reasons other than lack of work.

(4) Calendar days worked by each employee. (Authorized by K.S.A. 1980 Supp. 44-714(f); effective Jan. 1, 1966; amended May 1, 1980.)

50-2-3. Payment of contributions and benefit cost payments. (a) Contributions and benefit cost payments with respect to wage payments. Contributions and benefit cost payments shall be payable for each calendar quarter with respect to wages paid during that calendar quarter.

(b) First contribution and benefit cost payment. The first contribution and benefit cost payment of any employing unit that becomes an employer at any time during the calendar year shall, except as otherwise provided in this regulation, become due on, and shall be paid on or before, the 25th day following the close of the quarter in which the employing unit becomes an employer and shall include contributions and benefit cost payments with respect to all wages paid during that calendar year, through the last day of that calendar quarter.

(c) Contributions and benefit cost payments: payment on notice of liability. Whenever the secretary or designee has, in writing, advised an employing unit that it has been determined not to be an employer or that services performed for it do not constitute employment, and when a legal obligation on the part of that unit to pay contributions and benefit cost payments is subsequently established, accrued contributions and benefit cost payments shall become due and interest shall accrue thereon 10 days after the employing unit is informed of its liability.

(d) Assessment of penalty and interest on newly subject employers. New employers subject to this act who fail to file wage reports and pay contributions and benefit cost payments due within the 10-day period authorized by K.S.A. 44-717(a), and amendments thereto, shall be assessed penalty and interest from the first contribution and benefit cost payment due date shown on the form "notice of establishment or change" mailed to the employer.

(e) First contribution and benefit cost payment: payment; elective coverage. The first contribution and benefit cost payment of any employing

unit that elects to become an employer or to have nonsubject services performed for it deemed employment shall, upon notice of approval of that election by the secretary, become due on and shall be paid, except as otherwise provided by this regulation, on or before the last day of the month following the close of the calendar quarter that includes either of the following, whichever is later:

(1) The effective date of the election; or

(2) the date of approval.

The first payment shall include contributions and benefit cost payments with respect to all wages for services covered by the election paid on and after the effective date and through the last day of the calendar quarter.

(f) Saturdays, Sundays, and holidays. When the regular payment day for any employer falls on Saturday, Sunday or a legal holiday, the payment shall be due and payable on the first regular business day following the payment day.

(g) Mail payments and wage reports. Payments and wage reports received through the mail shall be deemed to have been made or filed on the date they are placed in the United States mail. For the purpose of this regulation, the date placed in the United States mail shall mean the postmark date.

(h) Payment by check. When payment is made by check, the checks shall be payable to the Kansas employment security fund.

(i) Past due payments. Any employer who fails to pay any applicable contributions, payment in lieu of contributions, or benefit cost payment when due shall be subject to the interest, penalty, and actions provisions of K.S.A. 44-717, and amendments thereto. (Authorized by and implementing K.S.A. 1999 Supp. 44-710(a) and K.S.A. 1999 Supp. 44-717; effective Jan. 1, 1966; amended Jan. 1, 1971; amended Jan. 1, 1974; amended May 1, 1980; amended May 1, 1983; amended Feb. 16, 2001.)

50-2-4. Identification of workers. (a) Each employer shall ascertain the social security number of each worker performing services for him or her in employment.

(b) Each employer shall report a worker's social security number in making any report required by the secretary with respect to such worker. (Authorized by K.S.A. 1980 Supp. 44-714(f); effective May 1, 1980.)

50-2-5. Reports; required of employers.

(a) General requirements. Each employing unit shall make such reports as the secretary may require

and shall comply with the instructions printed upon any report form issued by the secretary pertaining to the preparation and return of such report.

(b) Report to determine status. Every employing unit for which services are performed in employment shall file a report to determine status within fifteen (15) days after such first employment.

(c) Employing unit becoming an employer. An employing unit not already an employer which becomes an employer shall immediately give notice to the secretary of that fact. Such notice shall contain the employer's name and address and the business address and business name, if any.

(d) Employer terminating business. Any employer who terminates a business for any reason whatsoever or transfers or sells all of the organization, trade or business, or any part thereof, or, except in the usual course of business, sells a substantial part of the assets, or changes the trade name of such business or address thereof, shall immediately after such termination, transfer, sale or change of name or address give notice in writing to the secretary of that fact. Such notice shall contain the employer's account number, name, former address, and present address and, in the event of a transfer or sale, the name and address of any new owner, and business name, if any.

(e) Final wage and contribution report. Any employer who sells or discontinues all employing enterprises shall file a final wage and contribution report with payment of all contributions due within fifteen (15) days following such action. (Authorized by K.S.A. 1980 Supp. 44-714(f); effective Jan. 1, 1966; amended May 1, 1980.)

50-2-6. Cooperation with other states.

(a) Only states subscribing to the interstate reciprocal coverage arrangement are governed by this regulation.

(b) Submission and approval of coverage elections under the interstate reciprocal coverage arrangement.

(1) Election to cover multi-state workers under the Kansas employment security law.

(A) Each employer shall complete and file an "employer's election to cover multi-state workers under the Kansas employment security law" with the chief of contributions.

(B) The chief of contributions or the chief's designee shall initially approve or disapprove the election. If approved, a copy of the election shall be forwarded to each interested state specified on the election and under whose employment insur-

ance law the individual or individuals in question might, in absence of that election, be covered.

(C) Each interested state agency shall approve or disapprove the election and shall notify the Kansas agency accordingly. Upon notification, the chief of contributions or the chief's designee shall provide the employer with a copy of the approved or disapproved election.

(2) Elections to cover multi-state workers under other state laws.

The elected state shall forward applications for elections to the chief of contributions or the chief's designee who shall approve or disapprove the election and notify the elected agency accordingly.

(c) Effective period of elections.

(1) Commencement. Each election duly approved under this regulation shall become effective at the beginning of the calendar quarter in which the election was submitted unless the election, as approved, specifies the beginning of a different calendar quarter.

(2) Termination. The application of an election to any individual under this regulation shall terminate if the elected state finds that the nature of the services customarily performed by the individual for the electing unit has changed so that they are no longer customarily performed in more than one interested state. The termination shall be effective as of the close of the calendar quarter in which notice of that finding is mailed to all parties affected.

(3) Whenever an election under this regulation ceases to apply to any individual, the electing unit shall notify the affected individual accordingly. (Authorized by and implementing K.S.A. 1983 Supp. 44-714; effective Jan. 1, 1966; amended May 1, 1980; amended May 1, 1984.)

50-2-7. (Authorized by K.S.A. 44-714(a); effective Jan. 1, 1966; amended Jan. 1, 1971; revoked May 1, 1983.)

50-2-8. (Authorized by K.S.A. 44-710b(d); effective Jan. 1, 1966; amended May 1, 1980; revoked May 1, 1983.)

50-2-9. (Authorized by K.S.A. 1980 Supp. 44-703(x), 44-710(e)(1) and (3), 44-711(e); effective Jan. 1, 1972; amended May 1, 1980; revoked Feb. 16, 2001.)

50-2-10. (Authorized by K.S.A. 44-711(e) (1); effective Jan. 1, 1972; amended Jan. 1, 1974; revoked May 1, 1987.)

50-2-11. Payments by reimbursing employers. Payments by reimbursing employers shall become due and payable 30 days after the date of mailing of the reimbursing employers quarterly statement of benefit charges. (Authorized by K.S.A. 1980 Supp. 44-710(e)(2); effective Jan. 1, 1972; amended May 1, 1980.)

50-2-12. Reports by reimbursing employers. Each reimbursing employer shall file, with the division, a report on forms furnished or authorized by the division. The report shall indicate for each covered worker the following information:

- (a) Social security number;
- (b) first and middle initial, and last name; and
- (c) total amount of wages, before deductions, paid during the quarter.

Each employer shall be subject to the provisions of K.S.A. 44-717, and amendments thereto. (Authorized by K.S.A. 1999 Supp. 44-714; implementing K.S.A. 1999 Supp. 44-710(e)(2), 44-717; effective Jan. 1, 1972; amended May 1, 1980; amended May 1, 1984; amended Feb. 16, 2001.)

50-2-13. (Authorized by K.S.A. 1980 Supp. 44-710(e)(2)(B); effective Jan. 1, 1972; revoked May 1, 1980.)

50-2-14. (Authorized by K.S.A. 1980 Supp. 44-710(b); effective Jan. 1, 1972; amended Jan. 1, 1974; revoked May 1, 1980.)

50-2-15 and 50-2-16. (Authorized by K.S.A. 1980 Supp. 44-710(e); effective Jan. 1, 1972; revoked May 1, 1980.)

50-2-17. Classification of employers by industrial activity. All employers subject to the Kansas employment security law shall be classified by industrial activity in accordance with the following, both of which are hereby adopted by reference:

- (a) The “standard industrial classification manual,” 1987 edition, published by the office of management and budget; and
- (b) the “North American industry classification system,” 1997 edition, published by the office of management and budget. (Authorized by and implementing K.S.A. 1999 Supp. 44-710a; effective May 1, 1983; amended Feb. 16, 2001.)

50-2-18. Surety bond or surety deposit requirements for reimbursing employers. (a) Each employer who elects to become liable for payments in lieu of contributions in accordance with K.S.A. 44-710(e)(1), and amendments there-

to, shall be required to file with the secretary a surety bond or surety deposit as set forth in K.S.A. 44-710(e)(2)(F), and amendments thereto.

(b) Minimum time period. The bond or deposit shall be required for a minimum period of four complete calendar years. If, at the close of that time period, the employer has a history of timely reporting and prompt payment of reimbursing the employer’s quarterly benefit charges, the surety bond or deposit shall no longer be required by the secretary.

(c) Termination or inactivity. Any reimbursing employer who ceases to be an employer under the Kansas employment security law while a surety bond or deposit is in effect shall be required to maintain that bond or deposit for a minimum period of three years after required reporting of wages ends.

(d) Surety amount when wages not paid during four calendar quarters immediately preceding effective date of election. The surety amount shall not exceed 5.4% of an estimate of the organization’s taxable wages for a four-calendar-quarter period. If an organization has an increase in employment during the time a surety bond or deposit is required, the organization may be required by the secretary or designee to increase the amount of the bond or deposit. The employer shall be notified of the increase within 60 days after the beginning of the calendar year in which the change is to be effective, and the employer shall have 30 days from the date of mailing of the notice to file the increased surety bond or deposit. (Authorized by and implementing K.S.A. 1999 Supp. 44-710(e); effective May 1, 1983; amended Feb. 16, 2001.)

50-2-19. Contribution appeal process for employers. To resolve any protest to any determination made pursuant to K.S.A. 44-703, 44-710, 44-710a, 44-710b, 44-710d, 44-717(j), and 44-719(e), and amendments thereto, the following procedures shall be followed:

(a) Request for administrative review. The administrative review shall be made by the chief of contributions or the chief of contributions’ authorized representative based upon facts presented or upon additional facts furnished by the employer or secured by the agency. An appeal to the chief of contributions or the chief’s authorized representative’s determination shall not stay the enforcement of the order made unless the chief of contributions or the authorized representative orders a suspension of enforcement.

(1) Notice of liability determinations. Each employer shall be notified by the secretary or designee of any determination made pursuant to K.S.A. 44-703 and amendments thereto. That determination shall become conclusive and binding upon the employer, unless within 20 days after the mailing of notice of the determination to the employer's last known address, or within 15 days after the hand delivery of that notice, the employer requests, in writing, an administrative review. The request shall set forth the reasons an administrative review is desired.

(2) Notice of contribution rate or benefit cost rate. Each contributing employer shall be notified by the secretary or designee of the employer's rate of contributions and each rated governmental employer of its benefit cost rate for any calendar year pursuant to K.S.A. 44-710, 44-710a, and 44-710d, and amendments thereto. Those determinations shall become conclusive and binding upon the employer, unless within 15 days after the mailing of notice to the employer's last known address, or within 15 days after the hand delivery of that notice, the employer requests, in writing, an administrative review. The request shall set forth the reasons a review is requested.

(3) Notice of benefit payments. Notice shall be given annually to each contributing employer and each rated governmental employer of the benefits paid and charged to its account during the 12-month period immediately preceding the computation date. Notice shall be given quarterly to each reimbursing employer of the reimbursable benefits paid during the previous calendar quarter. Each employer shall have 20 days from the mailing of the notice to the employer's last known address, or within 15 days after hand delivery of the notice to the employer, to request in writing an administrative review to protest the correctness of the pro rata charges of benefit payments to the employer's account. Nothing in this regulation shall be construed to permit the protest of the eligibility of a claimant to receive benefits under K.S.A. 44-705, and amendments thereto, or to protest a prior determination of chargeability at the time a valid new claim is presented under K.S.A. 44-710(c), and amendments thereto. In the absence of the request in writing for an administrative review, the benefits paid and charged to the employer's account shall become conclusive and binding upon the employer for all purposes.

(4) Notice of transfer of experience rating factors. Notice shall be given to the predecessor

and successor employers of the transfer of experience rating factors of a predecessor employer whose business has been acquired by a successor employer as defined in K.S.A. 44-710a(b), and amendments thereto. That determination shall become conclusive and binding upon the predecessor and the successor, unless within 20 days after the mailing of notice thereof to the predecessor's and successor's last known addresses, or within 15 days after the hand delivery of the notice, the predecessor employer, the successor employer, or both, request in writing an administrative review.

(5) Notice of willful failure to pay determinations. Any officer, major stockholder, or other person who has charge of the affairs of an employer shall be notified by the secretary of human resources or designee of any determination made pursuant to K.S.A. 44-717(j) and 44-719(e), and amendments thereto. Those determinations shall become conclusive and binding upon the employer, unless within 20 days after the mailing of the notice to the individual's last known address, or within 15 days after hand delivery of the notice, the individual requests, in writing, an administrative review. The request shall set forth the reasons a review is requested.

(b) Request for administrative hearing.

(1) The employer shall be notified within 60 days of the results of the administrative review, in writing, by the chief of contributions or an authorized representative. The results of the administrative review shall become conclusive and binding upon the employer unless, within 20 days after the mailing of notice thereof to the employer's last known address, or within 15 days after the hand delivery of that notice, the employer requests, in writing, an administrative hearing. The request shall include the reasons a hearing is desired.

(2) If the secretary or designee grants an administrative hearing, the employer shall be notified of that determination within 10 days and shall be granted an opportunity for a fair hearing before the secretary or designee.

(3) Upon receipt of a determination granting an administrative hearing as specified in this subsection and upon agreement of all parties in interest, the parties may notify the secretary or designee, in writing, within 10 days from the receipt of the determination, of the parties' desire for mediation. This notice shall include the names and addresses of all parties in interest and a statement that all parties in interest are agreeing to mediation.

(A) Within 10 days from the receipt of a request for mediation, the parties shall be notified by the secretary or designee of the determination. If the request for mediation is denied, the matter shall proceed to administrative hearing. If the request is granted, the administrative hearing may be held in abeyance pending completion of the mediation process. The determination granting or denying a request for mediation shall not be subject to review or appeal.

(B) If the parties are unable to reach agreement through mediation, the matter shall be set for administrative hearing.

(4) At the administrative hearing, the employer shall be entitled to the following:

(A) To be present;

(B) to be represented by counsel or by a designated representative of the employer's choice, at the employer's own expense;

(C) to present oral testimony or written evidence, or both;

(D) to examine witnesses and documents;

(E) to cross-examine witnesses; and

(F) to offer rebuttal testimony or evidence.

(5) Witnesses may be subpoenaed to present materials including books, papers, and records, or to give oral testimony as provided in K.S.A. 44-714(h), (i), and (j), and amendments thereto.

(c) **Judicial review.** The hearing officer shall render a decision concerning all matters at issue in the hearing within 90 days. The employer shall be notified within 30 days of the secretary's findings as a result of the administrative hearing. An appeal may be taken from the order of the secretary or designee pursuant to K.S.A. 44-710b(b) or K.S.A. 60-2101(d), and amendments thereto, whichever is applicable. (Authorized by K.S.A. 1999 Supp. 44-714; implementing K.S.A. 1999 Supp. 44-703, 44-710, 44-710a, 44-710b, and K.S.A. 44-710d; effective May 1, 1983; amended Feb. 16, 2001.)

50-2-20. Notice of effective date of election or termination of reimbursing employer status. Any governmental entity, nonprofit organization or any group of nonprofit organizations identified in K.S.A. 44-710(e)(1), shall be notified by mail of the effective date of their election to become a reimbursing employer for a minimum period of four complete calendar years. An employer shall also be notified by mail of the effective date of the termination of the reimbursing employer payment option when applicable. Employers terminating their reimbursing employer status shall

remain liable for reimbursing payments until all wage credits on file as a reimbursing employer are no longer used in determining benefit entitlement. (Authorized by and implementing K.S.A. 44-710(e)(1)(E); effective May 1, 1983.)

50-2-21. Computation of employer contribution rates. (a) The terms "total wages" and "taxable wages," as used in this regulation, shall refer to all payrolls for contributing employers, reported and received by September 1 following the computation date of June 30, for all employment during the fiscal year ending on the computation date. The certified payroll information on September 30 that is required for the computation delineated in this regulation shall be provided by the director of data processing.

(b) **Planned yield.** The approximate amount of the planned yield for the ensuing calendar year shall be computed as follows:

(1) The planned yield on total wages in column B of schedule III A, of K.S.A. 44-710a(a)(3), and amendments thereto, shall be determined by the reserve fund ratio in column A of the same schedule. The reserve fund ratio shall be computed by dividing the total assets of the employment security fund, on July 31, following the computation date and as certified by the chief of management, by the total payrolls for the preceding fiscal year ended June 30, as certified by the director of data processing.

(2) The average rate of contributions shall be determined by multiplying the ratio of total to taxable payrolls for the preceding fiscal year ended June 30 by the planned yield computed in paragraph (b)(1) of this regulation. In any calendar year in which the taxable wage base changes, the calculation for that calendar year and the following calendar year shall be an estimate of what the taxable wages would have been if the new taxable wage base had been in effect during the preceding fiscal year ending June 30.

(3) The approximate amount of the planned yield for the ensuing calendar year shall be the taxable wages for the previous fiscal year ended June 30, multiplied by the average rate of contributions computed in paragraph (b)(2) of this regulation, rounded to the nearest \$100,000.00.

(c) **Estimated yield from ineligible employer accounts.**

(1) Estimated contributions for industry-rated employers.

(A) The computation shall be made using a certified tabulation provided by the director of data

processing entitled “all accounts except reimbursing—cross-classification by rate and industry.” The procedure for computing the average contribution rate for all industries and for each industry division shall be identical. The rate of the preceding calendar year for each rate group in the industry division shall be cumulatively multiplied times the taxable wages in each corresponding rate group for the industry division. The cumulative total shall be divided by the total taxable wages in the industry to determine the industry rate. The assigned rate for each industry shall be the sum of 1.0 percent plus the computed rate or the sum of 1.0 percent plus the average rate of all employers, whichever is higher. The assigned rate shall not be less than 2.0 percent.

(B) The average rate for all industries shall be computed by cumulatively multiplying the calculated rate of each industry division times the total taxable wages for that industry division and dividing the cumulative total by the total taxable wages for the industry divisions.

(C) The estimated contributions for each specially rated industry division and all other divisions shall be computed by multiplying the taxable wages for the corresponding industry divisions or all other industry divisions by the appropriate assigned rate.

(2) The total estimated yield for active ineligible employer accounts shall be the sum of the estimated contributions for industry-rated employers.

(3) Negative account balance employers, as defined in K.S.A. 44-710a(d), and amendments thereto, shall pay at the statutory rate of 5.4 percent. In addition, negative balance employers shall be assessed a surcharge based on the size of the employer’s negative reserve ratio. The director of data processing shall provide a certified listing of all negative account balance employers. The listing shall contain the negative reserve ratio, number of employers, and taxable wages for the fiscal year ended June 30. Each negative account balance employer shall be identified as shown in schedule II of K.S.A. 44-710a, and amendments thereto. The assigned rate shall be the sum of the statutory rate of 5.4 percent plus the applicable surcharge identified in schedule II of K.S.A. 44-710a, and amendments thereto. The estimated contributions of negative account balance employers shall be computed by multiplying the taxable wages of all negative account balance employers by only the statutory rate. The resultant product shall reflect the estimated yield from negative account balance employers.

(d) The required yield for eligible employer accounts shall be the approximate amount of the planned yield, computed in paragraph (b)(3) of this regulation, less the total estimated yield for active ineligible employer accounts computed in paragraph (c)(2) of this regulation and less the total estimated yield from negative account balance employers computed in paragraph (c)(3) of this regulation.

(e) Rate adjustment for active eligible employer accounts.

(1) A certified array of each active eligible employer account shall be provided by the director of data processing in accordance with schedule I, K.S.A. 44-710a, and amendments thereto. The tabulation shall include the following:

- (A) The lowest reserve ratio in each rate group;
- (B) the number of employers in each rate group;
- (C) the amount of taxable wages in each rate group;
- (D) the cumulative amount of taxable wages for all accounts from the first through each succeeding rate group; and

(E) the final, total taxable payrolls for the fiscal year ended June 30, for all active eligible employer accounts. In any calendar year in which the taxable wage base changes, the taxable wages used in the calculation for that calendar year and the following calendar year shall be an estimate of what the taxable wages would have been if the new taxable wage base had been in effect during all of the preceding fiscal year ending June 30.

(2) The average rate required shall be the required yield for eligible employer accounts, determined in subsection (d) of this regulation, divided by the total taxable payrolls listed in paragraph (e)(1)(E) of this regulation.

(3) The average rate required shall be divided by the average estimated yield of the array to develop an adjustment factor. The average estimated yield of the array shall be computed by cumulatively multiplying the taxable payrolls in each rate group by the experience factor denoted for each rate group in schedule I, K.S.A. 44-710a(a)(2), and amendments thereto, and dividing by the total taxable payrolls for active accounts. The experience factor for each rate group in schedule I shall be multiplied by the adjustment factor to determine the adjusted tax rate for each rate group, with the statutory maximum as an upper limit.

(4) The taxable payrolls for each rate group shall be multiplied by the adjusted tax rate computed for each rate group to determine the estimated contributions for each rate group.

(A) If the adjusted tax rate reaches the statutory maximum at a rate group numerically lower than the highest numbered rate group, or if the computed rate for any group is higher than the statutory maximum, the adjusted tax rates shall be adjusted further. The estimated additional contribution incurred because of the statutory maximum limit of the unadjustable groups shall be prorated over rate groups other than those that are unadjustable. The taxable payrolls and estimated contributions of the unadjustable groups shall be subtracted, respectively, from the totals of all groups and the balances used in the readjustment.

(B) The readjustment shall be accomplished by dividing the total estimated contributions of the adjustable groups by the total taxable payrolls of the adjustable rate groups to determine the required rate of yield for the groups. The estimated rate of yield for the rate groups shall be computed by cumulatively multiplying the experience factor by the corresponding taxable payroll in each rate group and dividing the cumulative total by the total taxable wages of the rate groups. The required rate of yield shall be divided by the estimated rate of yield for the adjustable groups to determine the final adjustment factor.

(C) The experience factors of all rate groups in schedule I shall be multiplied by the final adjustment factor to determine the final effective contribution rates for the eligible contributing employers, with no effective contribution rate to exceed 5.4 percent.

(f) A computation and listing of the effective employer contribution rates shall be prepared by the chief of labor market information services. If, in rounding to the terminal digit, it is determined that the position following the terminal digit is five and all succeeding digits are zero, the terminal digit shall be rounded to the nearest even digit. All such calculations shall be rounded to the nearest $\frac{1}{1000}$ except as mandated by K.S.A. 44-710a(a)(3), and amendments thereto, requiring all rounding be to the nearest $\frac{1}{100}$. (Authorized by K.S.A. 1999 Supp. 44-714; implementing K.S.A. 1999 Supp. 44-710a; effective May 1, 1983; amended May 1, 1984; amended May 1, 1987; amended June 25, 1990; amended Nov. 22, 1996; amended Feb. 16, 2001.)

50-2-21a. Computation of employer contribution rates for calendar years 2010 and 2011. (a) For the purpose of computation of employer contribution rates for calendar years 2010 and 2011, the following definitions shall apply:

(1) The term “contribution rate,” as used in K.A.R. 50-2-21, shall mean the specific tax rate assigned to a particular tax rate group. The contribution rate is the rate assessed on each of the 51 rate groups determined pursuant to K.S.A. 44-710a(a)(2)(D), and amendments thereto.

(2) The term “the 2010 original tax rate computation table,” as used in K.S.A. 44-710 and amendments thereto and in this regulation, shall mean the rates calculated in the initial calculation for calendar year 2010 of active eligible employer accounts pursuant to K.A.R. 50-2-21(e) before any readjustments leading to the readjusted final effective contribution rates are calculated pursuant to K.A.R. 50-2-21.

(b) Despite the planned yield determined pursuant to schedule III and other provisions of K.S.A. 44-710a and amendments thereto, for calendar years 2010 and 2011, the tax rates for eligible employers with positive account balances shall be calculated pursuant to K.S.A. 44-710, and amendments thereto, and these regulations.

(c) Despite K.A.R. 50-2-21(e), for calendar years 2010 and 2011, the contribution rates assigned to groups 1 through 51 of eligible employers as determined pursuant to K.S.A. 44-710a(a)(2)(D), and amendments thereto, shall be the rates listed in the 2010 original tax rate computation table. For the purposes of K.S.A. 44-710a and amendments thereto, for calendar years 2010 and 2011, employers in groups 33 through 51 shall pay a contribution rate of 5.4 percent.

(d) For calendar year 2011, new experience ratings for employers shall be calculated by the secretary, and employers shall be assigned to tax rate groups based upon these experience ratings. However, the tax rates for rate groups 1 through 51 of eligible employers shall not be recalculated for 2011, and the rates for the individual rate groups shall be those set for calendar year 2010 as specified in subsection (c).

(e) This regulation shall expire on January 1, 2012. (Authorized by K.S.A. 2009 Supp. 44-714; implementing K.S.A. 2009 Supp. 44-710, as amended by 2010 HB 2676, sec. 1; effective, T-50-5-12-10, May 12, 2010; effective Aug. 27, 2010.)

50-2-22. Concurrent employment by related corporations with a common paymaster. (a)(1) For the purposes of this regulation, when two or more related corporations concurrently employ the same individual and compensate that individual through a common paymaster,

and when the common paymaster is one of the related corporations that employs the individual, each corporation shall be considered to have paid only the remuneration it actually disburses to that individual. If all of the remuneration to the individual from the related corporations is disbursed through the common paymaster, the total amount of contributions imposed, with respect to wages under K.S.A. 44-703(o), and any amendments thereto, is determined as though the individual has only one employer, the common paymaster. The common paymaster shall be responsible for filing the "employer's quarterly wage report and contribution return" with respect to "wages" it is considered to have paid.

(2) The corporation which intends to act as a common paymaster for a group of related corporations shall notify the division of employment in writing at least 30 days prior to the beginning of the quarter in which the common paymaster reporting is to be effective. That corporation shall furnish the name and account number of each of the corporations in the group. The common paymaster for the group shall also notify the division of employment at least 30 days prior to any change in the group of corporations or termination of the arrangement.

(b) Definitions. The definitions contained in this subsection shall be applicable only to this regulation.

(1) Related corporations. Corporations shall be considered "related corporations" for an entire calendar quarter if they satisfy any one of the following tests:

(A) The corporations are members of a "controlled group of corporations." For the purposes of this regulation, the term "controlled group of corporations" means:

(i) two or more corporations connected through stock ownership with a common parent corporation, if the parent corporation owns stock possessing at least 50 percent of the total combined voting power of all classes of stock entitled to vote or at least 50 percent of the total value of shares of all classes of stock of each of the other corporations; or

(ii) two or more corporations, if five or less persons who are individuals, estates, or trusts own stock possessing at least 50 percent of the total combined voting power of all classes of stock entitled to vote or at least 50 percent of the total value of shares of all classes of stock of each corporation.

(B) in the case of corporations which do not issue stock, at least 50 percent of the members of

one corporation's board of directors are members of the board of directors of the other corporations;

(C) at least 50 percent of one corporation's officers are concurrently officers of the other corporations; or

(D) at least 30 percent of one corporation's employees are concurrently employees of the other corporations.

(2) Common paymaster. A "common paymaster" of a group of related corporations is any member of the group that disburses remuneration to employees of two or more of those corporations, including their own, on the behalf of those corporations. The common paymaster shall be responsible for keeping books and records for the payroll with respect to those employees. The provisions of this regulation shall not apply to any remuneration to an employee that is not disbursed through the common paymaster.

(3) Concurrent employment. The term "concurrent employment" means the simultaneous existence of an employment relationship, as described in K.S.A. 44-703(i), and any amendments thereto, between an individual and two or more corporations.

(c) Allocations of contributions.

(1) Subject to the requirements of this regulation, each common paymaster shall have the primary responsibility for remitting contributions with respect to the remuneration it disburses as the common paymaster. The common paymaster shall compute these contributions as though it were the sole employer of the concurrently employed individuals.

(2) If the common paymaster fails to remit these contributions in whole or in part, it shall remain liable for the full amount of the unpaid portion of these contributions. In addition, each of the other related corporations using the common paymaster shall be jointly and severally liable for its appropriate share, plus a proportionate share of the common paymaster's unpaid contributions. (Authorized by K.S.A. 1983 Supp. 44-714; implementing K.S.A. 1983 Supp. 44-710i; effective May 1, 1984.)

50-2-23. Payments under employers' plans on account of sickness or accident disability. (a) Payment by third parties.

(1) Any third party making a payment on account of sickness or accident disability when the payment is not excluded from the term "wages" under paragraph (2) of K.S.A. 44-703(o) shall be

treated as the employer with respect to the wages, unless the third party promptly notifies the employer for whom the services are normally rendered of the amount of wages paid. Thereafter, the employer, and not the third party, shall be required to report and pay the contributions due with respect to the wages. The written notice shall be provided by the third party promptly following the end of each calendar quarter so the employer for whom services are normally rendered may report the wages and pay contributions when due each quarter. The written notice shall contain the following information:

- (A) The name of the employee paid sick pay; and
- (B) The social security account number of the employee paid the sick pay; and
- (C) The total amount of sick pay paid to the employee during the calendar quarter.

(2) A third party making a payment on account of sickness or accident disability to an employee as an agent for the employer or making such a payment directly to the employer shall not be treated as the employer under paragraph (1) with respect to the payment unless the agreement between the third party and the employer so provides. The third party shall not be considered an agent of the employer if the third party bears an insurance risk. If the third party bears no insurance risk and is reimbursed on a cost plus fee basis, the third party shall be considered an agent of the employer whether or not the third party is responsible for making determinations regarding the eligibility of the employer's individual employees for payments. If the third party is paid an insurance premium and is not reimbursed on a cost plus fee basis, the third party shall not be considered an agent of the employer, and shall be treated as the employer as provided in paragraph (1).

(b) Special rules.

(1) For the purposes of paragraph (1) of subsection (a), the last employer for whom the employee worked prior to becoming sick or disabled or for whom the employee was working at the time the employee became sick or disabled shall be deemed to be the employer for whom services are normally rendered, if the employer made contributions on behalf of the employee to the plan or system under which the employee is being paid.

(2) For purposes of subsection (a), when payments on account of sickness or accident disability are made to employees by a third party insurer pursuant to a contract of insurance with a multi-employer plan which is obligated to make

payments on account of sickness or accident disability to the employees pursuant to a collective bargaining agreement, and if the third party insurer making the payments complies with the requirements of paragraph (1) of subsection (a) and notifies the plan of the amount of wages paid each employee within the time required for notification of the employer, then the plan, not the third party insurer, shall be required to report and pay the contributions due with respect to the wages. If the plan notifies the employer for whom services are normally rendered of the amount of wages paid each employee within six business days of receipt of the notification, the employer, not the plan, shall be required to report and pay the contributions due with respect to the wages. (Authorized by K.S.A. 44-714 as amended by L. 1986, Ch. 191, Sec. 4; implementing K.S.A. 1985 Supp. 44-703, as amended by L. 1986, Ch. 190, Sec. 1; effective, T-87-40, Dec. 8, 1986; effective May 1, 1987.)

50-2-24a. Levy and distraint; requirement of notice before levy. (a) A levy upon the salary, wages or other property of any employer may be made with respect to any unpaid tax as described in K.S.A. 1985 Supp. 44-717, as amended, only after the secretary or the secretary's designee has notified the employer in writing of the secretary's intention to make the levy.

(b) Not less than 10 days before the day of the levy the notice required under subsection (a) shall be:

- (1) made by personal service;
- (2) left at the dwelling, or usual place of abode, or place of business of the employer; or
- (3) sent by first class U.S. mail to the employer's last known address.

(c) If the secretary has made a finding under K.S.A. 44-717(e) that the collection of tax is in jeopardy, the 10-day period provided in subsection (b) shall not be required. (Authorized by K.S.A. 1985 Supp. 44-714 as amended by L. 1986, Ch. 191, Sec. 4; implementing K.S.A. 1985 Supp. 44-717 as amended by L. 1986, Ch. 191, Sec. 5; effective, T-87-40, Dec. 8, 1986; effective May 1, 1987.)

50-2-24b. Levy and distraint; service of levy. (a) The levy shall be served upon an employer or third party by personal service or by mail in accordance with the following requirements.

- (1) Personal service.
 - (A) Individual service. Service upon an individual, other than a minor or incapacitated person, shall be made by:

(i) delivering a copy of the notice of levy to the individual personally;

(ii) leaving a copy at the individual's dwelling or usual place of abode with some person of suitable age and discretion then residing there;

(iii) leaving a copy at the business establishment with an officer or employee of the establishment; or

(iv) delivering a copy to an agent authorized by appointment or by law to receive service of process.

If the agent is one designated by a statute to receive service, any additional notice required by statute shall be given. If service as prescribed above cannot be made with due diligence, the secretary or the secretary's designee may order service to be made by leaving a copy of the notice of levy at the dwelling house, usual place of abode or business establishment.

(B) Corporations and partnerships. Service upon a domestic or foreign corporation or upon a partnership or other unincorporated association, when by law it may be sued as such, shall be made by delivering a copy of the notice of levy to an officer, partner or resident, managing or general agent of it or them by leaving a copy at any business office with the person in charge or by delivering a copy to any other agent authorized by appointment or required by law to receive service of process. If the agent is one authorized by law to receive service, and if the law so requires, any additional notice required by statute shall be given.

(C) The "certification of service" on the notice of levy form shall be completed by the secretary's representative who serves the levy and the person served shall acknowledge receipt of the certification by signing and dating it.

(2) Service by mail. Upon the direction of the secretary or the secretary's designee, the notice of levy may be served upon a third party holding property of the employer by registered or certified mail to the third party's address. The return receipt shall be the certificate of service of the notice of levy. (Authorized by K.S.A. 1985 Supp. 44-714 as amended by L. 1986, Ch. 191, Sec. 4; implementing K.S.A. 1985 Supp. 44-717 as amended by L. 1986, Ch. 191, Sec. 5; effective, T-87-40, Dec. 8, 1986; effective May 1, 1987.)

50-2-24c. Levy and distraint; continuing levy on salary and wages. (a) A levy upon a third party pertaining to the salary, wages or other income payable to or to be received by an employer shall be effective from the date the levy is first made until the liability out of which the levy arose is satisfied.

(b) A levy shall be released promptly when the liability out of which the levy arose is satisfied and the employer and third party shall be promptly notified that the levy has been released. (Authorized by K.S.A. 1985 Supp. 44-714 as amended by L. 1986, Ch. 191, Sec. 4; implementing K.S.A. 1985 Supp. 44-717 as amended by L. 1986, Ch. 191, Sec. 5; effective, T-87-40, Dec. 8, 1986; effective, May 1, 1987.)

50-2-24d. Levy and distraint; surrender of property subject to levy. Any person in possession of or obligated with respect to property or rights to property that is subject to levy and upon which a levy has been made shall, upon demand of the secretary, surrender the property or rights or discharge the obligation to the secretary, except the part of the property or rights which is, at the time of the demand, subject to an attachment or execution under any judicial process. (Authorized by K.S.A. 1985 Supp. 44-714 as amended by L. 1986, Ch. 191, Sec. 4; implementing K.S.A. 1985 Supp. 44-717 as amended by L. 1986, Ch. 191, Sec. 5; effective, T-87-40, Dec. 8, 1986; effective May 1, 1987.)

50-2-24e. Levy and distraint; enforcement of levy. (a) Any employer who fails or refuses to surrender any property or rights to property that is subject to levy, upon demand by the secretary, shall be subject to proceedings to enforce the amount of the levy.

(b) Any third party who fails or refuses to surrender any property or rights to property subject to levy, upon demand by the secretary, shall be subject to proceedings to enforce the amount of the levy or any lesser amount the third party may owe the employer. A final demand shall be served on any third party who fails or refuses to surrender property. Proceedings shall not be initiated by the secretary until five days after service of the final demand.

(c) When a third party who is in possession of or obligated with respect to property or rights to property that is subject to levy and upon which a levy has been made surrenders the property or rights to property on demand of the secretary or discharges such obligation to the secretary, the third party shall be discharged from any obligation or liability to the delinquent employer with respect to the property or rights to property arising from the surrender or payment to the secretary or the secretary's designee.

(d) Person defined. The term “person,” as used in K.S.A. 44-717(e)(2), is an individual, or an officer or employee of a corporation, or a member or employee of a partnership, who is under a duty to surrender the property or rights to property, or to discharge the obligation. (Authorized by K.S.A. 1985 Supp. 44-714 as amended by L. 1986, Ch. 191, Sec. 4; implementing K.S.A. 1985 Supp. 44-717 as amended by L. 1986, Ch. 191, Sec. 5; effective, T-87-40, Dec. 8, 1986; effective May 1, 1987.)

50-2-24f. Levy and distraint; production of books. If a levy has been made or is about to be made on any property, or right to property, any third party having custody or control of any books or records that contain evidence or statements relating to the property or right to property subject to levy shall, upon demand of the secretary, produce and exhibit the books or records to the secretary. (Authorized by K.S.A. 1985 Supp. 44-714 as amended by L. 1986, Ch. 191, Sec. 4; implementing K.S.A. 1985 Supp. 44-717 as amended by L. 1986, Ch. 191, Sec. 5; effective, T-87-40, Dec. 8, 1986; effective May 1, 1987.)

50-2-24g. Levy and distraint; appraisal of property. Any representative of the secretary seizing property shall appraise and set aside to the employer the amount of property declared to be exempt. If the employer objects at the time of the seizure to the valuation fixed by the secretary’s representative making the seizure, the secretary shall appoint three disinterested individuals who shall make the valuation. (Authorized by K.S.A. 1985 Supp. 44-714 as amended by L. 1986, Ch. 191, Sec. 4; implementing K.S.A. 1985 Supp. 44-717 as amended by L. 1986, Ch. 191, Sec. 5; effective, T-87-40, Dec. 8, 1986; effective May 1, 1987.)

50-2-24h. Levy and distraint; sale of seized property. (a) Notice of seizure. As soon as practical after the seizure of property, notice in writing shall be:

(1) given by the secretary to the employer owning the property and in the case of personal property, any possessor of the property; or

(2) left at the usual place of abode or business of the employer or possessor. If the employer cannot be readily located, or has no dwelling or place of business within the state, the notice may be mailed to the employer’s last known address as shown on the Department’s records. The notice shall specify the sum demanded, and shall contain a listing of any personal property seized and a

description, with reasonable certainty, of any real property seized.

(b) Notice of sale. The secretary shall, as soon as practical after the seizure of the property:

(1) give notice to the employer, in the manner prescribed in subsection (a);

(2) publish a notification in some newspaper published or generally circulated in the county in which the property is seized; and

(3) post a notice at the post office nearest the place where the seizure is made and in at least two other public places. The notice shall specify the property to be sold and the time, place, manner and conditions of the sale. Whenever a levy is made without regard to the 10-day period provided in K.S.A. 44-717(e)(2), public notice of the sale of the property seized shall not be made prior to 10 days following seizure unless the goods seized are perishable.

(c) Sale of indivisible property. If any property subject to levy is not divisible, the whole property shall be sold.

(d) Time and place of sale. The time of sale shall not be less than 10 days nor more than 40 days from the time of giving public notice. The sale may be postponed for good reason as determined by the chief of contributions. The postponement may not be more than 30 days from the original date of the sale. The place of sale shall be within the county in which the property is seized, except by special order of the secretary.

(e) Manner and conditions of sale.

(1) Rules applicable to sale.

(A) The sale shall be conducted by public auction or public sale under sealed bids.

(B) If several items of property are seized, the notice of sale shall state whether:

(i) the items will be offered separately, in groups, or in the aggregate; or

(ii) the property will be offered both separately, in groups and in the aggregate, and sold under whichever method produces the highest aggregate amount.

(C) The announcement of the minimum price determined by the secretary may be delayed until the receipt of the highest bid.

(D) Payment in full may be required at the time of the acceptance of a bid, or in the alternative part of the payment may be deferred for not more than one month.

(E) The sale may be advertised as appropriate in order to attract the largest number of prospective bidders.

(F) The secretary may adjourn the sale from time to time for a period not to exceed one month.

(2) Payment of amount bid.

(A) If payment in full is required at the time of acceptance of a bid and the purchaser fails to do so the secretary shall immediately sell the property again. If the conditions of the sale permit part of the payment to be deferred, and if the part deferred is not paid within the prescribed period, suit may be instituted against the purchaser for the purchase price or the part of it that has not been paid or the sale may be declared by the secretary to be null and void for failure to make full payment of the purchase price and the property may be advertised again and sold.

(B) If the property is readvertised and sold again, the new purchaser shall receive the property or the rights to the property, free and clear of any claim or any right of the defaulting purchaser. The amount paid upon the bid price by the defaulting purchaser shall be forfeited. The amount forfeited shall be applied first to sale expenses and then to the original tax debt. (Authorized by K.S.A. 1985 Supp. 44-714 as amended by L. 1986, Ch. 191, Sec. 4; implementing K.S.A. 1985 Supp. 44-717 as amended by L. 1986, Ch. 191, Sec. 5; effective, T-87-40, Dec. 8, 1986; effective May 1, 1987.)

50-2-24i. Levy and distraint; sale of perishable goods. If the secretary determines any property seized is likely to perish or become greatly reduced in price or value by selling it in accordance with 50-2-24h or the property cannot be kept without great expense, the value of such property shall be appraised by the secretary and shall be returned or sold as provided below:

(a) Return to employer. If the employer owning the property can be readily found, the employer shall be given notice of the determination of the appraised value of the property. The property shall be returned to the employer if the employer pays to the secretary an amount equal to the appraised value within the time specified in the notice.

(b) Immediate sale. If the employer does not pay the appraised price of the seized property, the property shall be sold publicly as soon as practical. (Authorized by K.S.A. 1985 Supp. 44-714 as amended by L. 1986, Ch. 191, Sec. 4; implementing K.S.A. 1985 Supp. 44-717 as amended by L. 1986, Ch. 191, Sec. 5; effective, T-87-40, Dec. 8, 1986; effective May 1, 1987.)

50-2-24j. Levy and distraint; redemption of property. (a) Before sale. Any employer whose property has been the subject of levy shall have the right to pay the amount due, together with the expenses of the proceeding, to the secretary at any time prior to the sale. Upon full payment, the property shall be restored to the employer by the secretary, and all proceedings in connection with the levy on the property shall cease from the time of the payment.

(b) Redemption of real estate after sale.

(1) Period for redemption. The employer whose real property is sold, the heirs, executors, administrators, or any other person having any interest in the property, or having a lien upon it, or any person acting on their behalf, shall be permitted to redeem the property sold, or any particular tract of the property, at any time within 180 days after the sale.

(2) Price. Any property or tract of property may be redeemed upon payment to the purchaser of the amount paid by the purchaser together with accrued interest computed at the rate of 18 percent per annum.

(3) Record of redemption. When any lands are redeemed, an appropriate entry of the redemption shall be made upon the record mentioned in K.A.R. 50-2-24m, and the entry on the record shall be evidence of such redemption. (Authorized by K.S.A. 1985 Supp. 44-714 as amended by L. 1986, Ch. 191, Sec. 4; implementing K.S.A. 1985 Supp. 44-717 as amended by L. 1986, Ch. 191, Sec. 5; effective, T-87-40, Dec. 8, 1986; effective May 1, 1987.)

50-2-24k. Levy and distraint; certificate of sale; deed of real property. (a) Certificate of sale. When property is sold, a certificate of sale shall be given by the secretary to the purchaser upon payment in full of the purchase price. The certificate for real property sold shall set forth the legal description of the real property, the name of the defaulting employer, the name of the purchaser, and the price paid.

(b) Deed to real property. When any real property is sold and not redeemed within the time provided, a quit-claim deed to the purchaser of the real property shall be executed by the secretary upon the surrender of the certificate of sale. The deed shall recite the facts set forth in the certificate. (Authorized by K.S.A. 1985 Supp. 44-714 as amended by L. 1986, Ch. 191, Sec. 4; implementing K.S.A. 1985 Supp. 44-717 as amended by L.

1986, Ch. 191, Sec. 5; effective, T-87-40, Dec. 8, 1986; effective May 1, 1987.)

50-2-24I. Levy and distraint; legal effect of certificate of sale of personal property and deed of real property. (a) Certificate of sale of property other than real property. In all cases of the sale of property other than real property, the certificate of sale shall have the following legal effect:

(1) As evidence. The certificate shall be prima facie evidence of the right of the secretary to make the sale and conclusive evidence of the regularity of the proceedings in making the sale.

(2) As conveyance. The certificate shall transfer to the purchaser all right, title, and interest of the delinquent employer in and to the property sold.

(3) As authority for transfer of corporate stock. If the property consists of stock, the secretary's certificate shall be notice to any corporation, company, or association of the transfer, and shall be authority for the corporation, company, or association to record the transfer on its books and records in the same manner as if the stocks were transferred or assigned by the party holding the same. The certificate shall be in lieu of any original or prior certificate which shall be void whether canceled or not.

(4) As receipt. If the subject of sale is securities or other evidences of debt, the secretary's certificate shall be a good and valid receipt to the person holding them against any person holding or claiming to hold possession of the securities or other evidences of debt.

(5) As authority for transfer of title to motor vehicle. If the property consists of a motor vehicle, the secretary's certificate shall be notice to any public official charged with the registration of title to motor vehicles of the transfer and shall be authority to the official to record the transfer on the appropriate books and records in the same manner as if the certificate of title to the motor vehicle were transferred or assigned by the party holding it. The certificate shall be in lieu of any original or prior certificate which shall be void whether canceled or not.

(b) Deed of real property.

(1) Deed as evidence. The deed given shall be prima facie evidence of the facts stated in it.

(2) Deed as conveyance of title. If the proceedings of the secretary as set forth have been substantially in accordance with the provisions of law, the deed shall be considered and operate as a conveyance of all the right, title, and interest the

delinquent employer had in and to the real property sold at the time the lien of the department attached to it.

(c) Effect on junior encumbrances. A certificate of sale of personal property or a deed to real property shall discharge the property from all liens, encumbrances, and titles over which the lien and levy of the department had priority. (Authorized by K.S.A. 1985 Supp. 44-714 as amended by L. 1986, Ch. 191, Sec. 4; implementing K.S.A. 1985 Supp. 44-717 as amended by L. 1986, Ch. 191, Sec. 5; effective, T-87-40, Dec. 8, 1986; effective May 1, 1987.)

50-2-24m. Levy and distraint; records of sale. (a) Requirement. A record of all sales and redemptions of real property shall be kept by the secretary. The record shall set forth the tax for which any sale was made, the dates of seizure and sale, the name of the employer, all proceedings in making the sale, the amount of expenses, the names of the purchasers and the date of the deed.

(b) Copy as evidence. A copy of the record, or any part thereof, certified by the secretary, shall be evidence in any court of the truth of the facts stated. (Authorized by K.S.A. 1985 Supp. 44-714 as amended by L. 1986, Ch. 191, Sec. 4; implementing K.S.A. 1985 Supp. 44-717 as amended by L. 1986, Ch. 191, Sec. 5; effective, T-87-40, Dec. 8, 1986; effective May 1, 1987.)

50-2-24n. Levy and distraint; expense of levy and sale. The secretary shall determine the expenses to be allowed in all cases of levy and sale. (Authorized by K.S.A. 1985 Supp. 44-714 as amended by L. 1986, Ch. 191, Sec. 4; implementing K.S.A. 1985 Supp. 44-717 as amended by L. 1986, Ch. 191, Sec. 5; effective, T-87-40, Dec. 8, 1986; effective May 1, 1987.)

50-2-24o. Levy and distraint; application of proceeds of levy. When the department has an interest in property in the form of a lien arising under the provisions of K.S.A. 44-717(e) and the department receives money through seizure, surrender or sale of the property, or by redemption of the property prior to its sale by the department, the money realized by these actions shall:

(a) First, be applied toward the expenses of the proceedings;

(b) Second, be applied toward the employer's liability; and

(c) Third, be refunded or credited by the secretary upon written application. The application shall state there is a surplus remaining in the

hands of the secretary and the applicant is legally entitled to receive it. (Authorized by K.S.A. 1985 Supp. 44-714 as amended by L. 1986, Ch. 191, Sec. 4; implementing K.S.A. 1985 Supp. 44-717 as amended by L. 1986, Ch. 191, Sec. 5; effective, T-87-40, Dec. 8, 1986; effective May 1, 1987.)

50-2-24p. Levy and distraint; authority to release levy and return property. (a) Release of levy. It shall be lawful for the secretary to release the levy upon all or part of the property or rights to property subject to levy when the secretary determines that a release will facilitate the collection of the liability. Such a release shall not prevent any subsequent levy.

(b) Return of property. If the secretary determines that a levy has been placed wrongfully upon the property, it shall be lawful for the secretary to return:

- (1) the specific property subject to levy;
- (2) an amount of money equal to the amount of money levied upon; or
- (3) an amount of money equal to the amount of money received by the department from a sale of such property. (Authorized by K.S.A. 1985 Supp. 44-714 as amended by L. 1986, Ch. 191, Sec. 4; implementing K.S.A. 1985 Supp. 44-717 as amended by L. 1986, Ch. 191, Sec. 5; effective, T-87-40, Dec. 8, 1986; effective May 1, 1987.)

50-2-25a. Electronic filing, definitions. (a) “Electronically filed document” means a “status determination report,” an “employer’s quarterly wage report and contribution return,” or any document filed with the secretary of human resources, pursuant to chapter 44 of the Kansas statutes annotated, that is filed pursuant to these regulations.

(b) “Electronic filing” means the authorized electronic transmission of information required by the Kansas statutes annotated and these regulations when an employing unit or the employing unit’s representative transmits to the secretary of human resources a “status determination report” or an “employer’s quarterly wage report and contribution return,” pursuant to chapter 44 of the Kansas statutes annotated and these regulations.

(c) “Filing party” means the following:

- (1) the employing unit;
- (2) the employing unit’s representative; or
- (3) the person authorized to make electronic filings.

(d) “INK” means the information network of Kansas.

(e) “Secretary” means the secretary of human resources. (Authorized by and implementing L. 1996, Ch. 157, Sec. 1; effective July 7, 1997.)

50-2-25b. Electronic filing, authorized user. A filing party may be authorized to use electronic filing upon the written authorization of the secretary or the secretary’s designee and INK.

(a) The filing party shall be authorized by the secretary and INK to use electronic filing if these requirements are met:

- (1) the filing party has an account with INK; and
- (2) the secretary and INK determine, after appropriate testing, that the secretary is capable of receiving, indexing, and retrieving the data transmitted by the filing party.

(b) The filing party’s authorization to use electronic filing may be suspended or revoked by the secretary when the secretary determines that a filing party’s transmissions are incompatible with the electronic filing system or when the secretary receives notification from INK that the filing party is delinquent in making payments on its account.

(c) Each request for authorization to use electronic filing shall be submitted to INK. Upon receiving a request for authorization, INK shall notify the secretary. INK shall provide the requesting party with the necessary information and software or specifications to test the filing party’s electronic filing capabilities.

(d) If the filing party is authorized to use electronic filing, INK shall assign an identification number to the filing party. If the filing party will act as a representative for an employing unit, the filing party shall submit to INK a sworn statement attesting to that authorization signed by the employing unit, and INK shall assign an identification number to the employing unit. If the employing unit terminates its relationship with the filing party, the employing unit shall notify INK in writing, and its identification number shall be invalidated. (Authorized by and implementing L. 1996, Ch. 157, Sec. 1; effective July 7, 1997.)

50-2-25c. Electronic filing, contents of transmission. (a) Each transmission of one or more documents for electronic filing shall include the applicable requirements of chapter 44 of the Kansas statutes annotated and shall identify the filing party in a form approved by the secretary and INK.

(b) Each electronically filed document that requires identification of an employing unit shall

contain the federal tax identification number and shall indicate whether the debtor is an individual or another entity.

(c) When a request is made for a paper copy of an electronically filed document, the copy printed by the secretary shall include a notation stating that the document is an electronically filed document. (Authorized by and implementing L. 1996, Ch. 157, Sec. 1; effective July 7, 1997.)

50-2-25d. Electronic filing, identification of employing unit. When a regulation adopted pursuant to chapter 44 requires the name of the employing unit or the address of the employing unit, the filing party shall transmit to the secretary and INK an employing unit identification number designated by INK with each document. (Authorized by and implementing L. 1996, Ch. 157, Sec. 1; effective July 7, 1997.)

50-2-25e. Electronic filing, date of filing. (a) An electronically filed document shall be deemed to have been filed on the date and at the time the transmission is received and confirmed by the secretary.

(b) Each filing party shall be provided by the secretary, through INK, a confirmation that all transmitted documents meet the requirements of these regulations, including the date and time of filing.

(c) Any document transmitted to the secretary that does not contain the information required by these regulations shall not be filed, and the filing party shall be provided by the secretary, through INK, with a notice that identifies the document and states the reason for rejection of the document. (Authorized by and implementing L. 1996, Ch. 157, Sec. 1; effective July 7, 1997.)

50-2-26. Interest on overpayments. (a) Interest shall be allowed and paid upon any overpayment of contributions or benefit cost payments that the secretary has determined was erroneously collected at the rate established under K.S.A. 79-2968, and amendments thereto.

(b) This interest shall be allowed and paid as follows:

(1) In the case of a credit, no interest shall be paid if the employer chooses to use the credit against future taxes.

(2) In the case of a refund, interest shall be allowed from the last day prescribed for filing the overpaid return to the date of the refund check to the employer.

(3) Notwithstanding paragraph (b)(1) or (2) in the case of a return or an adjustment of tax that is filed after the last date prescribed for filing the return, no interest shall be allowed or paid for any day before the date on which the return or adjustment is filed.

(4) No interest shall be paid until the return is in a processible form. A return shall be deemed to be in a processible form if both of the following conditions are met:

(A) The return is filed on a permitted form.

(B) The return contains the following information:

(i) The employer's name, address, account number, and reporting period; and

(ii) sufficient required information, whether on the return or on required attachments, to permit the mathematical verification of tax liability and the required wage credits shown on the return as set forth in the form instructions. (Authorized by K.S.A. 1999 Supp. 44-714; implementing K.S.A. 1999 Supp. 44-717(h); effective Feb. 16, 2001.)

Article 3.—UNEMPLOYMENT INSURANCE BENEFITS

50-3-1. Employing unit requirements.

(a) Benefit posters. Each employer shall post and maintain an unemployment insurance benefit poster and the certificate of registration as an employer in a conspicuous place in each plant, branch, or establishment maintained by that employer. Each employer shall be furnished by the secretary with sufficient copies of the poster and certificate to enable compliance with this regulation.

(b) List of workers affected by labor dispute. Upon request by the secretary, an employing unit shall furnish the secretary with a list showing the names and social security numbers of all workers ordinarily performing services in the department or establishment where unemployment is or was caused by a strike, lockout, or other labor dispute.

(c) Information pertaining to workers scheduled for mass layoff. Upon receiving a request from the secretary, an employer shall furnish the secretary with a list of employees scheduled to be involved in a mass layoff, showing the name, social security number, and scheduled date of layoff for each employee.

(d) Response to employer notice. Any base period employer who desires to request reconsideration of a charge to the employer's experience rating account, under K.S.A. 44-710(c) and amendments thereto, shall, within 10 days from

the date the notice was sent to the employer, complete all requested information according to the instructions contained on the employer notice and return the form by mail, telefacsimile machine, electronic mail, or any other telephonic or electronic communications.

The employer shall provide the following information:

- (1) A complete explanation of the circumstances;
- (2) the date of separation, if any;
- (3) the signature and title of the person completing the form for the employer;
- (4) the employer's firm name and address;
- (5) the date the form is completed; and
- (6) any other information required by the form.

(e) Request for separation information, job refusal information, and verification of earnings. The secretary shall be authorized to require special reports from any employing unit to verify earnings, separation information, and job refusal information for individuals who have performed services or refused work for that employing unit when that information is needed for any purpose connected with the orderly administration of the benefit provisions of the unemployment insurance law of any state or of the federal government. In response to a request to verify earnings, separation information, or job refusal information, each employing unit shall, within 10 days from the date the request is sent to the employing unit, furnish all of the information requested, in the form stipulated. (Authorized by and implementing K.S.A. 1999 Supp. 44-705(a) and (b), 44-709(a), 44-710(c), and 44-714(a) and (f); effective Jan. 1, 1966; amended Jan. 1, 1971; amended May 1, 1980; amended May 1, 1983; amended May 1, 1988; amended Feb. 16, 2001.)

50-3-2. Initial claims for benefits; intrastate workers. (a) Filing an initial claim. Each unemployed worker shall file a claim by telephone, mail, electronic mail, any other telephonic or electronic communications, or any manner prescribed by the secretary.

(b) Definitions. For purposes of determining eligibility for waiver of the one-week waiting period under K.S.A. 44-705 and amendments thereto, these terms shall be defined as follows:

(1) "Terminating business operations within this state" means the cessation or ending of activities that produce goods or provide services by an employer within the state of Kansas. The employer has not provided each employee displaced by this

action an opportunity to transfer to another of the employer's business operations in Kansas, or the employer has no other business operation in Kansas. This term shall include the closing of a plant, store, or worksite; the destruction of the business due to natural disaster or civil disruption; and sale of the plant or store to another entity if the new owner does not keep all the employees of the previous owner.

(2) "Declaring bankruptcy" means the filing by an employer for any class of bankruptcy under the federal bankruptcy laws.

(3) The "WARN Act" means the worker adjustment and retraining notification act, public law 100-379, which requires an employer to give the employees at least a 60-day advance notice of a plant closing or mass layoff if an employment site will be shut down, resulting in any of the following:

(A) A facility or operating unit is shut down for more than six months.

(B) Fifty or more employees lose their jobs during any 30-day period at a single site of employment.

(C) A layoff of six months or longer meets one of the following conditions:

(i) Affects 500 or more employees; or

(ii) results in an employment loss of 50 to 499 employees if the employees comprise at least 33 percent of the active workforce at a single employment site.

(c) Effective date of initial claim. The effective date of an initial claim shall be the first day of the calendar week in which the filing date, as defined in subsection (d) of this regulation, occurs, unless otherwise provided. When filing occurs with respect to a week that overlaps a preceding benefit year, the effective date shall be the first day immediately following the expiration date of the preceding benefit year.

(d) Filing date of initial claims.

(1) Claim filed by telephone or other form of telephonic communication. The filing date of initial claims filed by telephone or any other form of telephonic communication shall be the actual date the worker contacts the division's call center to file the initial claim. If the worker fails to provide all required information during the original call or within seven days of the original filing date, the filing date shall become the date the information is provided in its entirety.

(2) Claim filed by mail.

(A) The filing date of initial claims filed by mail shall be the date the worker mailed a written re-

quest to the division for claim forms or otherwise attempted to file a claim. If the worker fails to return the completed forms to the claims office by the end of the calendar week following the week in which the forms were mailed to the worker, the filing date of the initial claim shall be the date on which the completed forms are mailed to the claims office.

(B) When a worker is given claim forms for completion and directed by a division representative to complete and return the forms to the claims office, the filing date of the initial claim shall be the actual date the forms were given to the worker. However, if the completed claim forms are not mailed to the claims office before the end of the calendar week following the actual date the forms were provided to the worker, the filing date of the initial claim shall be the actual date the completed forms were mailed to the claims office.

(3) Claim filed by electronic mail or any other means of electronic communication. The filing date of initial claims filed by electronic mail or any other means of electronic communication shall be the actual date the claim is transmitted by electronic mail or other means of electronic communication to the division.

(e) Late filed initial claim by totally or partially unemployed workers. If the effective date of an initial claim, established in accordance with subsection (c) of this regulation, is later than the first day of the calendar week in which the worker became unemployed because of a late filing date, and if the worker establishes good cause for the late reporting in accordance with K.A.R. 50-3-4(a) and files the initial claim during the second consecutive week in which the individual is unemployed, the effective date of the claim shall be the first day of the week in which the worker became unemployed.

(f) New claims. A new claim for benefits shall be filed in a manner prescribed by the secretary, which shall set forth the dates and reasons for separation from recent employment, and any other information required by the division. A new claim for benefits filed by a partially unemployed or temporarily unemployed worker shall constitute that employee's registration for work. Claims by workers living outside the United States and its territories shall be filed in the same manner as that for intrastate claims. Claims personnel shall give each claimant necessary and appropriate assistance as they reasonably can, including referral to the public employment office most accessible to the employee.

Those employees temporarily unemployed, partially unemployed, or affiliated with a union that customarily places its members in employment may be excused from registration for work.

(g) Additional claims. A worker having previously established a benefit year that has not ended shall reinstate the claim by filing an additional claim if either of the following conditions is met:

(1) The employee has earned wages equal to or in excess of the employee's weekly benefit amount.

(2) The employee has failed to continue the claim for one or more consecutive weeks and has had intervening employment.

The additional claim shall be filed in a manner prescribed by the secretary, which shall set forth the date and reasons for separation from recent employment, and any other information that the division may prescribe in the forms. Claims by workers living outside the United States and its territories shall be filed in the same manner as that for intrastate claims. An additional claim for benefits filed by a partially unemployed or temporarily unemployed worker shall constitute that employee's registration for work.

(h) Payment of benefits for waiting week pursuant to K.S.A. 44-705 and amendments thereto. The benefits for the waiting week period shall be paid in the claimant's fourth week of unemployment. A break in claims during the period of three consecutive weeks or the claimant's failure to meet the eligibility requirements during any of the three weeks shall result in a nonpayable waiting week. (Authorized by and implementing K.S.A. 2006 Supp. 44-709(a) and K.S.A. 2006 Supp. 44-705(d), as amended by L. 2007, ch. 16, §2; effective Jan. 1, 1966; amended Jan. 1, 1971; amended Jan. 1, 1974; amended May 1, 1980; amended May 1, 1983; amended Feb. 16, 2001; amended Nov. 2, 2007.)

50-3-2a. Waiver of requirement to register for work, exceptions. (a) Except as provided by subsection (b) of this regulation, the requirements of K.S.A. 44-705(a), and amendments thereto, shall be waived for all claimants.

(b) Each claimant who is identified by the secretary as likely to exhaust benefits and who is selected to participate in reemployment services through the system established under K.S.A. 44-705(f), and amendments thereto, shall comply with the requirements of K.S.A. 44-705(a), and amendments thereto, requiring the claimant to register for work and to report at an employment

office in order to meet the eligibility requirements of K.S.A. 44-705, and amendments thereto, unless the secretary determines the claimant has satisfied the criteria of paragraphs (1) or (2) of K.S.A. 44-705(f), and amendments thereto.

(c) Nothing in this regulation shall be deemed to waive the requirement in subsection (c) of K.S.A. 44-705, and amendments thereto, that all claimants are to be able to work, available for work, and pursuing employment in accordance with the provisions of K.S.A. 44-705(c), and amendments thereto. (Authorized by and implementing K.S.A. 2005 Supp. 44-705; effective Nov. 3, 2006.)

50-3-3. Continued claims for benefits; intrastate workers.

(a) Continued claim for benefits. Continued claims for benefits shall be filed as prescribed by the division setting forth the following:

- (1) That the worker is unemployed;
- (2) that the worker has performed no services and earned no wages except as reported; and
- (3) any other information required.

(A) Change in status. A worker who initiated a claim as partially unemployed and who becomes temporarily unemployed and remains so through four consecutive weeks shall be formally registered for work in accordance with practices of the job service and thereafter continue the claims as a totally unemployed worker until the worker again becomes partially unemployed.

(b) Manner of reporting. The worker shall file continued claims by mail, telephone, or as otherwise directed by the division.

(c) Frequency of reporting.

(1) Workers filing claims for total, partial, or temporary unemployment shall file their continued claims for benefits on a weekly basis by telephone or as otherwise instructed.

(2) Claims for partial or temporary unemployment. A worker filing continued claims for benefits for partial or temporary unemployment shall file these claims by telephone, or as otherwise instructed any time within seven days from the close of the week of partial or temporary unemployment being claimed.

(d) Failure to contact a representative of the division or late filing; totally or partially unemployed workers. If a worker fails to file a continued claim for benefits as directed, as provided in subsection (c) of this regulation, but does so during the subsequent week, establishes good cause in accordance with K.A.R. 50-3-4(a) for the late filing, and is otherwise eligible, the claim shall be accepted

by the division. If a worker fails to contact the division when directed to do so in accordance with subsection (c) of this regulation, then subsequent continued claims filed by the worker shall be denied until the worker contacts a representative of the division. These denied claims shall be reinstated and allowed if the worker is otherwise eligible, and if the individual contacts a representative of the division within 14 days from the date the worker should have contacted a representative and at that time establishes good cause as provided in K.A.R. 50-3-4(a) for the failure to contact a representative of the division as directed.

(e) Failure to report to participate in the worker profiling and reemployment service program. A worker selected to participate in reemployment services shall have good cause for failure to do so if the worker was prevented from participation due to any of the following reasons:

- (1) Employment;
- (2) illness or disability;
- (3) current participation in or previous completion of similar services;
- (4) relocation from the area or residing beyond a reasonable commuting distance from the services;
- (5) compelling personal reasons; or
- (6) unreasonableness or impracticality of participation. (Authorized by and implementing K.S.A. 1999 Supp. 44-705(a) and (b), 44-709(a), and 44-714(a); effective Jan. 1, 1966; amended Jan. 1, 1971; amended Jan. 1, 1974; amended May 1, 1980; amended Feb. 16, 2001.)

50-3-4. Good cause for late filing; claims for total or partial unemployment.

(a) If any of the conditions listed below in subsection (b) is met, at the time that the action listed below in paragraph (a)(1), (2), or (3) occurred, a worker shall be deemed to have good cause for any of the following:

(1) Late filing of an initial claim, at the time the worker intended to file and during the balance of the calendar week;

(2) failure to file continued claims; or

(3) failure to contact a representative of the division as otherwise directed.

(b)(1) The office to which the worker reports was unable to provide service as scheduled.

(2) The worker was employed for wages.

(c) The worker was ill or disabled.

(d) The worker was influenced by coercion or intimidation exercised by an employer to prevent the worker from filing.

(e) The worker made reasonable efforts to file claim but was prevented by circumstances beyond the worker's control from actually doing so.

(f) There was good cause shown that prevented the worker from filing a claim.

(g) The worker's failure to file a claim resulted from erroneous information or instructions given the worker by a representative of the division. (Authorized by and implementing K.S.A. 1999 Supp. 44-705(a) and (b), 44-709(a), and 44-714(a); effective Jan. 1, 1966; amended May 1, 1980; amended Feb. 16, 2001.)

50-3-5. Benefit payments; interstate workers. (a) Interstate cooperation. The following regulation shall govern administrative cooperation with other states adopting a similar regulation for the payment of benefits to interstate claimants.

(b) Definitions. As used in this regulation, unless the context clearly requires otherwise, the following terms shall have the meanings specified below:

(1) "Agent state" means any state from or through which an individual files a claim for benefits from another state.

(2) "Benefits" means the compensation payable to an individual, with respect to unemployment, under the unemployment insurance law of any state.

(3) "Interstate benefit payment plan" means the plan approved by the interstate conference of employment security agencies under which benefits are payable to unemployed individuals absent from the state or states in which benefit credits have been accumulated.

(4) "Interstate claimant" means an individual who files a claim for benefits under the unemployment insurance law of a liable state from another state, through the facilities of an agent state, or directly with the liable state. The term "interstate claimant" shall not include any individual who customarily commutes from a residence in another state to work in a liable state, unless the Kansas department of human resources, division of employment security finds that this exclusion would create undue hardship on these claimants in specified areas.

(5) "Liable state" means any state against which an individual files, from or through another state, a claim for benefits.

(6) "State" shall include the District of Columbia, Puerto Rico, and the Virgin Islands.

(7) "Week of unemployment" shall include any week of unemployment as defined in the law of the liable state from which benefits with respect to that week are claimed.

(c) Notification of interstate claim. The liable state shall notify the agent state of each initial claim and each week claimed filed from the agent state, using the uniform procedures and record format pursuant to the interstate benefit payment plan.

(d) Registration for work.

(1) The agent state shall register for work each interstate claimant who files through the agent state or upon notification of direct filing with the liable state as required by the laws, regulations, and procedures of the agent state. This registration shall be accepted as meeting the registration requirements of the liable state.

(2) Each agent state shall duly report, to the liable state in question, each interstate claimant who fails to meet registration or reemployment assistance reporting requirements of the agent state.

(e) Benefit rights of interstate claimants. If a claimant files a claim against any state and it is determined by the state that the claimant has available benefit credits in the state, the claims shall be filed against the state only as long as benefit credits are available in that state. Thereafter, the claimant may file claims against any other state in which there are available benefit credits. For the purposes of this regulation, benefit credits shall be deemed to be unavailable under either of the following conditions:

(1) Whenever benefits have been exhausted, terminated, or postponed for an indefinite period or for the entire period in which benefits would otherwise be payable; or

(2) whenever benefits are affected by the application of a seasonal restriction.

(f) Claims for benefits.

(1) Claims for benefits or for a waiting period filed through the facilities of an agent state shall be filed by interstate claimants using approved methods and procedures developed pursuant to the interstate benefit payment plan. Claims shall be filed by calendar week. Any adjustments required to fit the type of week used by the liable state shall be made by the liable state.

(2) Claims for benefits or for a waiting period filed by an interstate claimant directly with the liable state shall be filed in accordance with the liable state's procedures.

(3) With respect to weeks of unemployment during which an individual is attached to the indi-

vidual's regular employer, the liable state shall accept as timely any claim, including an initial claim or weeks claimed filed through the agent state within the time limit applicable to these claims under the laws of the agent state.

(g) Providing assistance to interstate claimants.

(1) Each agent state, upon request by an interstate claimant, shall assist the individual with the understanding and filing of necessary notices and documents.

(2) The liable state shall provide interstate claimants with access to information concerning the status of their claims throughout the normal business day.

(h) Eligibility review program. The liable state shall schedule and conduct eligibility review interviews for interstate claimants.

(i) Determination of claims.

(1) The agent state shall, in connection with each claim filed by an interstate claimant, identify to the liable state in question any potential issue relating to the claimant's availability for work and eligibility for benefits as determined by the agent state.

(2) The agent state's responsibility and authority in connection with the determination of interstate claims shall be limited to the identification of potential issues identified in connection with the initial claim or weeks claimed filed through the agent state and the reporting of relevant facts pertaining to each claimant's failure to register for work or report for reemployment assistance as required by the agent state.

(j) Appellate procedure.

(1) The agent state shall afford all reasonable cooperation in the taking of evidence and the holding of hearings in connection with appealed interstate benefit claims when so requested by a liable state.

(2) With respect to the time limits imposed by the law of the liable state upon the filing of an appeal in connection with a disputed benefit claim, an appeal made by an interstate claimant shall be deemed to have been made and communicated to the liable state on the date when it is received by any qualified officer of the agent state.

(3) The liable state shall conduct hearings in connection with appealed interstate benefit claims. The liable state may contact the agent state for assistance in special circumstances.

(k) Extension of interstate benefit payment plan to include claims taken in and for Canada. This regulation shall apply in all its provisions to claims

taken in and for Canada. (Authorized by and implementing K.S.A. 1999 Supp. 44-714(k); effective Jan. 1, 1966; amended Jan. 1, 1971; amended May 1, 1980; modified, L. 1981, ch. 421, May 1, 1981; amended May 1, 1983; amended Feb. 16, 2001.)

50-3-6. Appellate procedure. Issuance of subpoenas. Whenever the attendance of witnesses or the production of documents, payroll records or other evidence is desired by any party to the proceeding, a request for a proper subpoena, on a form provided by the division entitled request for issuance of subpoena, must be filled out, signed by such party, and filed with the office where the claim was filed or at the administrative office in Topeka, Kansas. Such request must be filed in due time for such subpoena to be issued and served prior to the time such appeal is to be heard. Subpoenas to compel the attendance of witnesses and the production of records for any hearing, unless directed to issue by the secretary, or any duly authorized representative of the secretary, shall be issued only upon a showing of a necessity therefore by the party applying for the issuance of the subpoena. After the issuance of a subpoena, a copy thereof shall be served by an employee of the division. (Authorized by K.S.A. 1980 Supp. 44-714(a), (g) and (h); effective Jan. 1, 1966; amended May 1, 1980.)

50-3-7. Affidavit of bona-fide employment and wages paid. Claimant's affidavit will be required in support of his or her benefit claim where the listed employer has either failed to verify claimant's alleged wages, previous employment, or where the agency files do not indicate any records or information concerning the listed employer.

The division will utilize the claimant's affidavit in order to make a monetary or nonmonetary determination only if the claimant submits documentary evidence such as, but not limited to, a form W-2, withholding tax statement or a payroll check stub.

When an affidavit is taken, the division representative will explain to the claimant that the determination based on claimant's statement is not final and may be subject to adjustment upon the receipt of information provided by the claimant's listed employer, or other official reports concerning previous employment and separation information. (Authorized by K.S.A. 1980 Supp. 44-709(a); effective May 1, 1980.)

Article 4.—DISCLOSURE OF INFORMATION

50-4-1. (Authorized by K.S.A. 1980 Supp. 44-714(a); effective Jan. 1, 1966; revoked May 1, 1980.)

50-4-2. Limitations and procedures concerning disclosure. (a) Information obtained from any worker, employing unit, or other persons or groups pursuant to the administration of employment security law shall not be disclosed, directly or indirectly, in any manner revealing the individual's or employing unit's identity, except in the following circumstances:

(1) Information shall be disclosed by telephone, in person, or in writing to the individual or employing unit that furnished the requested information or to the lawful representative, if the individual, employing unit, or representative is properly identified in a manner that insures the identity of the individual, employing unit, or representative.

(2) Information shall be disclosed to any claimant, employing unit, or designated representatives at a hearing before the secretary or a hearing pursuant to K.S.A. 44-709, and amendments thereto, concerning the payment or denial of benefits if all of the following conditions are met:

(A) The requested information relates to the payment or denial of benefits.

(B) The information is to be used by the claimant or employing unit to aid in the preparation of evidence to be presented at a hearing before the secretary or a hearing pursuant to K.S.A. 44-709, and amendments thereto, concerning the payment or denial of benefits.

(C) The request is on a form provided by the secretary.

(D) If the information is to be disclosed to a representative of the claimant or employing unit, the claimant or employing unit designates the representative in writing on the form furnished by the secretary.

(3) Information shall be disclosed to officers or employees of an agency of the federal government or a state, territorial, or local government in the performance of their public duties, upon written request and on a form provided by the secretary, if the following conditions are met:

(A) The written request specifies the information desired.

(B) The written request states that the requested information will not be released or published in any manner. The introduction of any informa-

tion disclosed as evidence at a public hearing or as part of a record available to the public shall constitute publication.

(4) Information shall be disclosed upon written request of either of the parties or their representatives for the purpose of administering or adjudicating a claim for benefits under the provisions of any other state benefit program if both of the following conditions are met:

(A) The written request is accompanied by a subpoena or order for records production from an administrative law judge or other official.

(B) The written request states that the requested information will not be released or published in any manner. The introduction of any information disclosed as evidence at a public hearing or as part of a record available to the public shall constitute publication.

(5) Information shall be disclosed as required by any other statute of the federal government or the state of Kansas if the request for information is in writing and the statutory authorization for the release of the requested information is cited in the written request.

(b) Information disclosing the identity of a claimant or employing unit may be used in criminal or civil court proceedings brought by the state of Kansas or secretary of human resources pursuant to the enforcement of the employment security act.

(c) General information concerning employment opportunities, employment levels and trends, and labor supply and demand may be released if no information disclosing the claimant's or employing unit's identity is included.

(d) In all cases in which an application for information is granted, the information shall be furnished in written form.

(e) Requests for information shall be made to the unemployment insurance claims office where the claim was filed or the administrative office in Topeka, Kansas. Forms for requests for information, which by this regulation shall be supplied by the secretary, shall be made available through the unemployment insurance claims office or the administrative office in Topeka, Kansas.

(f) The secretary may require reimbursement of reasonable expenses incurred in furnishing the requested information, unless the following conditions are met:

(1) The information is furnished to a claimant or employing unit pursuant to an unemployment insurance claim.

(2) Federal or state law specifically requires the information to be furnished without cost to the individual or agency requesting the information.

(g) An individual may request individual wages to be reported by completing an “application for

individual wages” and presenting that individual’s social security card and one picture identification card. (Authorized by K.S.A. 1999 Supp. 44-714(a); implementing K.S.A. 1999 Supp 44-714(f); effective May 1, 1980; amended May 1, 1988; amended Feb. 16, 2001.)

Agency 51
Department of Labor—
Division of Workers Compensation

Editor's Note:

The Department of Human Resources was renamed the Department of Labor by Executive Reorganization Order No. 31. See L. 2004, Ch. 191.

Editor's Note:

This agency was formerly entitled "Workmen's Compensation Director," see Executive Reorganization Order No. 14 (L. 1976, Ch. 354).

Articles

- 51-1. FORMS.
- 51-2. FEES.
- 51-3. TERMINATION OF COMPENSABLE CASES.
- 51-4. ATTORNEYS. (*Not in active use.*)
- 51-5. NOTICE OF ACCIDENT OR DISEASE. (*Not in active use.*)
- 51-6. CLAIM FOR COMPENSATION. (*Not in active use.*)
- 51-7. MEASUREMENT OF DISABILITY.
- 51-8. COMPENSATION FOR EYE INJURIES. (*Not in active use.*)
- 51-9. MEDICAL AND HOSPITAL.
- 51-10. DEATH CASES. (*Not in active use.*)
- 51-11. WAGES.
- 51-12. INJURIES OCCURRING INSIDE OR OUTSIDE THE STATE OF KANSAS.
- 51-13. ELECTIONS.
- 51-14. SECURING PAYMENT OF COMPENSATION BY INSURANCE AND SELF-INSURANCE.
- 51-15. WORKERS COMPENSATION FUND.
- 51-16. SUBCONTRACTING. (*Not in active use.*)
- 51-17. TIME, COMPUTATION AND EXTENSION.
- 51-18. APPEALS.
- 51-19. APPLICATION FOR REVIEW AND MODIFICATION PURSUANT TO K.S.A. 44-528.
- 51-20. GUARDS.
- 51-21. ASSIGNMENT OF COMPENSATION.
- 51-22. REDEMPTION OF LIABILITY. (*Not in active use.*)
- 51-23. RELATIONSHIP OF PARTIES. (*Not in active use.*)
- 51-24. REHABILITATION.

Article 1.—FORMS

51-1-1. (Authorized by K.S.A. 44-573; implementing K.S.A. 44-505, 44-508, 44-510b, 44-527, 44-532, 44-534, 44-534a, 44-542a, 44-543, 44-557, 44-567; effective Jan. 1, 1966; amended, E-74-31, July 1, 1974; amended May 1, 1975; amended May 1, 1983; revoked Nov. 26, 2018.)

51-1-2. (Authorized by K.S.A. 1977 Supp. 44-

505, 44-557, 44-573; effective Jan. 1, 1966; amended Jan. 1, 1969; amended Jan. 1, 1971; amended Jan. 1, 1973; amended Jan. 1, 1974; amended, E-74-31, July 1, 1974; amended May 1, 1975; amended May 1, 1976; amended Feb. 15, 1977; amended May 1, 1978; revoked May 1, 1983.)

51-1-3. (Authorized by K.S.A. 1977 Supp. 44-510, 44-573, 44-5a21; effective Jan. 1, 1966; amended Jan. 1, 1973; amended May 1, 1976;

amended Feb. 15, 1977; amended May 1, 1978; revoked May 1, 1983.)

51-1-4. (Authorized by K.S.A. 44-510, 44-573; effective Jan. 1, 1966; amended Feb. 15, 1977; amended May 1, 1978; revoked May 1, 1983.)

51-1-5. (Authorized by K.S.A. 44-527, K.S.A. 1977 Supp. 44-573; effective Jan. 1, 1966; amended Jan. 1, 1971; amended Feb. 15, 1977; amended May 1, 1978; revoked May 1, 1983.)

51-1-6. (Authorized by K.S.A. 1977 Supp. 44-573; effective Jan. 1, 1966; amended Feb. 15, 1977; amended May 1, 1978; revoked May 1, 1983.)

51-1-7 and 51-1-8. (Authorized by K.S.A. 1977 Supp. 44-573; effective Jan. 1, 1966; amended Jan. 1, 1973; amended Jan. 1, 1974; amended Feb. 15, 1977; amended May 1, 1978; revoked May 1, 1983.)

51-1-8a. (Authorized by K.S.A. 1977 Supp. 44-534a, 44-573; effective, E-74-31, July 1, 1974; effective May 1, 1975; amended Feb. 15, 1977; amended May 1, 1978; revoked May 1, 1983.)

51-1-9. (Authorized by K.S.A. 1977 Supp. 44-573; effective Jan. 1, 1969; amended, E-74-31, July 1, 1974; amended May 1, 1975; amended Feb. 15, 1977; revoked May 1, 1978.)

51-1-10. (Authorized by K.S.A. 1977 Supp. 44-505, 44-573; effective Jan. 1, 1966; amended Jan. 1, 1969; amended, E-74-31, July 1, 1974; amended May 1, 1975; amended Feb. 15, 1977; amended May 1, 1978; revoked May 1, 1983.)

51-1-10a. (Authorized by K.S.A. 1977 Supp. 44-505, 44-573; effective, E-74-31, July 1, 1974; effective May 1, 1975; amended Feb. 15, 1977; amended May 1, 1978; revoked May 1, 1983.)

51-1-11. (Authorized by K.S.A. 1974 Supp. 44-573; effective Jan. 1, 1966; revoked, E-74-31, July 1, 1974; revoked May 1, 1975.)

51-1-11a. (Authorized by K.S.A. 1977 Supp. 44-542a, 44-573; effective, E-74-31, July 1, 1974; effective May 1, 1975; amended, E-76-23, May 30, 1975; amended May 1, 1976; amended Feb. 15, 1977; amended May 1, 1978; revoked May 1, 1983.)

51-1-11b. (Authorized by K.S.A. 1977 Supp. 44-573; effective, E-74-31, July 1, 1974; effective May 1, 1975; amended, E-76-23, May 30, 1975;

amended May 1, 1976; amended Feb. 15, 1977; amended May 1, 1978; revoked May 1, 1983.)

51-1-12. (Authorized by K.S.A. 1974 Supp. 44-573; effective Jan. 1, 1966; revoked, E-74-31, July 1, 1974; revoked May 1, 1975.)

51-1-12a and 51-1-12b. (Authorized by K.S.A. 1977 Supp. 44-573; effective, E-74-31, July 1, 1974; effective May 1, 1975; amended, E-76-23, May 30, 1975; amended May 1, 1976; amended Feb. 15, 1977; amended May 1, 1978; revoked May 1, 1983.)

51-1-13. (Authorized by K.S.A. 1976 Supp. 44-573; effective Jan. 1, 1966; amended Jan. 1, 1969; amended Jan. 1, 1973; revoked Feb. 15, 1977.)

51-1-14. (Authorized by K.S.A. 44-573, 44-5a21; effective Jan. 1, 1966; amended Jan. 1, 1969; revoked Jan. 1, 1971.)

51-1-15 to 51-1-17. (Authorized by K.S.A. 44-573, 44-5a21; effective Jan. 1, 1966; revoked Jan. 1, 1971.)

51-1-18. (Authorized by K.S.A. 44-573, 44-5a21; effective Jan. 1, 1966; transferred Jan. 1, 1973 to K.A.R. 51-1-20.)

51-1-19. (Authorized by K.S.A. 44-573, 44-567; effective Jan. 1, 1966; amended Jan. 1, 1969; transferred Jan. 1, 1973 to K.A.R. 51-1-22.)

51-1-20. (Authorized by K.S.A. 1977 Supp. 44-573, 44-5a21; effective Jan. 1, 1966; amended Jan. 1, 1973; amended Feb. 15, 1977; amended May 1, 1978; revoked May 1, 1983.)

51-1-21. (Authorized by K.S.A. 1957 Supp. 44-573 and K.S.A. 1949 44-543 as amended by L. 1959, Ch. 221; effective Aug. 12, 1959; revoked June 30, 1963.)

51-1-22. (Authorized by K.S.A. 44-573; implementing K.S.A. 44-567; effective Jan. 1, 1966; amended Jan. 1, 1969; amended Jan. 1, 1973; amended July 1, 1974; amended Feb. 15, 1977; amended May 1, 1978; amended May 1, 1980; amended May 1, 1983; revoked May 22, 1998.)

51-1-23. (Authorized by K.S.A. 1977 Supp. 44-573; effective Jan. 1, 1966; amended Feb. 15, 1977; amended May 1, 1978; revoked May 1, 1983.)

51-1-24. (Authorized by K.S.A. 1977 Supp.

44-510b, 44-573; effective May 1, 1978; revoked May 1, 1983.)

51-1-25. (Authorized by K.S.A. 1977 Supp. 44-532, 44-573; effective May 1, 1978; revoked May 1, 1983.)

51-1-26. Submissions; electronic filing (E-filing) system. Except as otherwise specified in the Kansas workers compensation act and the implementing regulations, all forms and other submissions required to be filed with the director or the division of workers compensation (division) in the Kansas department of labor shall be filed through the electronic filing (E-filing) system. Forms filed with the division shall be the forms prescribed or approved by the director.

(a) On and after November 30, 2018, in all workers compensation claims before the division, use of the division's electronic filing system, which is known as the online system for claims administration research and regulation (OSCAR), shall be required for all parties represented by legal counsel. Self-represented parties may file through the E-filing system but shall not be required to do so, as specified in K.A.R. 51-17-2.

(b) Electronic filing shall mean the process by which documents and submissions are created online and by which paper documents are scanned, uploaded, and filed with the division and served upon parties by electronic transmission using the E-filing system. This shall include any documents that become part of the case record, whether submitted by the division or by the litigants. Document service using the E-filing system upon a party represented by legal counsel or a self-represented party choosing to use the E-filing system shall constitute valid service. Document service by or on parties who are not represented by legal counsel and who have not chosen to use the E-filing system shall be performed as otherwise specified in K.A.R. 51-17-2.

(c) Access to the E-filing system shall be through the division's web site. In order to register as a user for an account with the E-filing system, the user shall agree to register and to be bound by and adhere to the terms and conditions of use.

(d) Each submission shall be considered filed when received by the E-filing system. (Authorized by K.S.A. 44-573; implementing K.S.A. 2017 Supp. 44-508, K.S.A. 2017 Supp. 44-532, K.S.A. 2017 Supp. 44-534, K.S.A. 2017 Supp. 44-536a; effective Nov. 26, 2018.)

Article 2.—FEES

51-2-1. Administrative fees. (a) A fee of fifty (.50) cents per page for the first two pages reproduced and an additional ten (.10) cents for each subsequent page shall be charged for photocopying any instrument on file in the office of the workers' compensation director.

(b) An additional charge of fifty (.50) cents shall be made for certifying the copy of any instrument.

(c) A charge of two (2.00) dollars shall be made for obtaining a certification under the act of congress, plus fifty (.50) cents per page for copying the instruments to be certified.

(d) A charge to be levied by the director shall be made for each copy of the workers' compensation law book and each annual supplement.

The twenty (20) percent factor, which is provided in K.S.A. 74-715 and which applies to annual assessments of insurance carriers and self-insureds to be credited to the state general fund, shall not be computed on money collected for the sale of law books nor for copy charges, or other miscellaneous charges made to self-insureds or insurance carriers. (Authorized by K.S.A. 44-563; effective Jan. 1, 1966; amended Jan. 1, 1973; amended May 1, 1976; amended Feb. 15, 1977; amended May 1, 1978.)

51-2-2. (Authorized by K.S.A. 1972 Supp. 44-573; effective Jan. 1, 1966; amended Jan. 1, 1969; amended Jan. 1, 1973; revoked May 1, 1983.)

51-2-3. (Authorized by K.S.A. 44-573; effective Jan. 1, 1966; transferred Jan. 1, 1969 to K.A.R. 51-2-4.)

51-2-4. Distribution of transcripts of hearing or deposition. (a) Each shorthand reporter who takes and transcribes the proceedings at a hearing or testimony at a deposition, either of which is to be used as evidence in a claim before the division of workers compensation, shall furnish the original transcript of that hearing or deposition to the administrative law judge, one copy to the employer, insurance carrier or its attorney, and one copy to the claimant or the claimant's attorney.

(b) In cases involving the workers compensation fund, the reporter shall also furnish one copy of the transcript of hearing or deposition to the attorney representing that fund.

(c) In settlement cases, the reporter shall furnish the original transcript to the director within two weeks. The transcript of the settlement hear-

ing shall constitute a written final award. Copies of the settlement transcript shall be furnished to other parties only on request. Settlement transcripts shall be bound only by stapling without front or back covers. Reporters' fees in settlement cases shall be paid by the respondent unless otherwise indicated in the settlement.

(d) The fees of the reporter for hearings and depositions, including all copies furnished as provided above, shall be paid by the respondent upon completion of the transcript by the reporter. The fees shall be assessed by the administrative law judge in the final award. If the fees are assessed against a party other than the respondent and if the respondent has paid the fees, the party against whom they are assessed shall make the necessary reimbursement.

(e) A determination of the reasonableness of a reporter fee shall be made by the administrative law judge if this fee is challenged. (Authorized by K.S.A. 44-573; implementing K.S.A. 44-552; effective Jan. 1, 1966; amended Jan. 1, 1969; amended Jan. 1, 1973; amended, E-74-31, July 1, 1974; amended May 1, 1975; amended Feb. 15, 1977; amended May 1, 1980; amended May 1, 1983; amended May 22, 1998.)

51-2-5. Special local administrative law judge fees and expenses. (a) The fees for the services of each special local administrative law judge shall be as follows:

(1) A fee of \$50.00 shall be assessed for each settlement hearing that is heard as part of a regular settlement docket.

(2) A fee of \$50.00 shall be assessed for each settlement hearing that is heard at an individual setting.

(3) A fee of \$100.00 shall be assessed for each preliminary hearing, including a preliminary award, and for each full hearing.

(4) A fee of \$100.00 shall be assessed for each prehearing settlement conference.

(5) A fee of \$85.00 per hour shall be assessed for preparing and rendering a final award. The total fee shall not exceed \$500.00.

(b) If a special local administrative law judge incurs expenses conducting one or more settlement hearings in a location other than the judge's home community, the expenses shall be assessed, as costs, proportionately among the cases generating the expenses. (Authorized by K.S.A. 2004 Supp. 44-551 and K.S.A. 44-573; implementing K.S.A. 2004 Supp. 44-551; effective, T-84-16, July 26, 1983; amended, T-88-20, July 1, 1987; effective

May 1, 1988; amended May 22, 1998; amended Nov. 14, 2005.)

51-2-6. Interpreters and interpreters' fees. A qualified interpreter shall be appointed for each person whose primary language is one other than English or who is deaf, hard-of-hearing, or speech-impaired, for all hearings before an administrative law judge or the workers compensation board. A reasonable fee for the services of the interpreter shall be determined and fixed by the administrative law judge or the workers compensation board. The fee shall be paid by the respondent and shall not be assessed against the person whose primary language is one other than English or who is deaf, hard-of-hearing, or speech-impaired. (Authorized by K.S.A. 44-573; implementing K.S.A. 44-523, 44-534a, 44-551 as amended by L. 2001, ch. 121, sec. 4; effective June 21, 2002.)

Article 3.—TERMINATION OF COMPENSABLE CASES

51-3-1. Methods of termination. Compensable cases shall be determined and terminated by only five procedures under the act:

(a) By filing a final receipt and release of liability pursuant to K.S.A. 44-527 and amendments thereto;

(b) by hearing and written award;

(c) by joint petition and stipulation subject to K.A.R. 51-3-16;

(d) by settlement hearing before an administrative law judge; or

(e) by voluntary dismissal by the parties. (Authorized by K.S.A. 44-573; implementing K.S.A. 44-521, 44-523, 44-534; effective Jan. 1, 1966; amended Jan. 1, 1969; amended Jan. 1, 1973; amended, E-74-31, July 1, 1974; amended May 1, 1975; amended Feb. 15, 1977; amended May 1, 1978; amended May 1, 1983; amended May 22, 1998; amended June 21, 2002.)

51-3-2. Final receipt and release of liability. A final receipt and release of liability shall cover all compensation paid and shall not be taken until the disability has terminated, or in case of permanent partial disability, until a final determination of the percentage of that permanent partial disability can be definitely ascertained. No compromise settlements shall be made on a final receipt and release of liability. The physician's report or reports accompanying the final receipt and release of liability shall conform to the amount

paid for the disability except when the rating is an average of the ratings expressed by the doctors.

Dates and figures required shall be specific and accurate, and only in exceptional instances where explanation is necessary may insertions or additions be made.

The final receipt and release of liability shall be signed by the claimant, and the signature shall be notarized. The final receipt and release of liability form shall be accompanied by a physician's final report and by an accident report if the report has not already been filed with the division of workers compensation. (Authorized by K.S.A. 44-573; implementing K.S.A. 44-527; effective Jan. 1, 1966; amended Jan. 1, 1973; amended Feb. 15, 1977; amended May 1, 1978; amended May 1, 1983; amended June 21, 2002.)

51-3-3. Disapproving final receipt and release of liability. A final receipt and release of liability shall be disapproved by the director unless it meets the following requirements:

(a) The form shall be filled out completely.

(b) The form shall be accompanied by a physician's report, and the substance of the report shall conform to the information contained in the final receipt and release of liability.

(c) The form shall show that compensation has been paid in conformity with the requirements of the act.

(d) The form shall be filed within 60 days of execution.

(e) The form shall be executed within 60 days of the last payment of compensation.

(f) The form shall have the notarized signature of the claimant. (Authorized by K.S.A. 44-573, 44-5a21; implementing K.S.A. 44-527; effective Jan. 1, 1966; amended Feb. 15, 1977; amended May 1, 1978; amended May 1, 1980; amended June 21, 2002.)

51-3-4. Setting aside final receipt and release of liability. To commence a proceeding to set aside a final receipt and release of liability, the party requesting the proceeding shall file with the director an application containing all necessary facts, together with an application for hearing, in the same manner as the procedure required for a claim to determine compensation.

The test to determine if the final receipt and release of liability should be set aside shall be whether it provides compensation for the injuries sustained in the accident or the disability from oc-

cupational disease for which the claim was made. (Authorized by K.S.A. 44-573; implementing K.S.A. 44-527; effective Jan. 1, 1966; amended Jan. 1, 1969; amended Jan. 1, 1973; amended Feb. 15, 1977; amended May 1, 1978; amended May 1, 1983; amended June 21, 2002.)

51-3-5. Submission letters. If there is a dispute between the employer and the worker as to the compensation due and hearings are held before the administrative law judge for a determination of the issues, upon completion of submission of its evidence, each party shall write to the administrative law judge a letter submitting the case for decision. The administrative law judge shall not stay a decision due to the absence of a submission letter filed in a timely manner. The submission letter shall contain a list of the evidence to be considered by the administrative law judge in arriving at a decision. That list shall include the following information:

(a) The dates and name of the administrative law judge for each hearing held and a list of exhibits submitted at each hearing;

(b) the date and name of witnesses in each deposition taken and a list of exhibits submitted at each deposition;

(c) a description of any stipulations entered into by the parties outside of a hearing or deposition;

(d) a list of any other exhibits that should be contained in the record;

(e) an itemization of all medical expenses that are in issue;

(f) an itemization of all medical expenses not in issue but that a party wishes itemized in the award; and

(g) a list of the issues to be decided by the administrative law judge, together with a list of those items to which the parties have stipulated. (Authorized by K.S.A. 44-573; implementing K.S.A. 44-523, as amended by L. 1997, Ch. 125, Sec. 6, and K.S.A. 44-534, as amended by L. 1997, Ch. 125, Sec. 8; effective Jan. 1, 1966; amended Jan. 1, 1969; amended Jan. 1, 1973; amended Jan. 1, 1974; amended Feb. 15, 1977; amended May 1, 1978; amended May 1, 1983; amended May 22, 1998.)

51-3-5a. Procedure for preliminary hearings. (a) Medical reports or any other records or statements shall be considered by the administrative law judge at the preliminary hearing. However, the reports shall not be considered as evidence when the administrative law judge makes a final

award in the case, unless all parties stipulate to the reports, records, or statements or unless the report, record, or statement is later supported by the testimony of the physician, surgeon, or other person making the report, record, or statement. If medical reports are not available or have not been produced before the preliminary hearing, either party shall be entitled to an ex parte order for production of the reports upon motion to the administrative law judge.

(b) If the decision of the administrative law judge is not rendered within five days of the hearing, the applicant's attorney shall notify the director, who shall make demand upon the administrative law judge for this decision.

(c) In no case shall an application for preliminary hearing be entertained by the administrative law judge when written notice has not been given to the adverse party pursuant to K.S.A. 44-534a. (Authorized by K.S.A. 44-573; implementing K.S.A. 1996 Supp. 44-534a, as amended by L. 1997, Ch. 125, Sec. 9; effective May 1, 1976; amended Feb. 15, 1977; amended May 1, 1978; amended May 1, 1980; amended May 1, 1983; amended May 22, 1998.)

51-3-6. Out-of-state accidents; venue.

When an accident has occurred outside of the state of Kansas and the parties are subject to the jurisdiction of the Kansas workers compensation act, the county in which the hearing will be held shall be designated by the director. Applications by the employee or employer shall be considered in order to accommodate the parties in determining where a claim shall be set for hearing. (Authorized by K.S.A. 44-573 and implementing K.S.A. 44-549; effective Jan. 1, 1966; amended Jan. 1, 1973; amended Feb. 15, 1977; amended May 1, 1978; amended May 22, 1998.)

51-3-7. (Authorized by K.S.A. 1972 Supp. 44-573; effective Jan. 1, 1966; amended Jan. 1, 1973; revoked Jan. 1, 1974.)

51-3-8. Pretrial stipulations. The parties shall be prepared at the first hearing to agree on the claimant's average weekly wage, unless the weekly wage is to be made an issue in the case.

(a) Before the first hearing takes place, the parties shall exchange medical information and confer as to what issues can be stipulated to and what issues are to be in dispute in the case. The following stipulations shall be used by the parties in every case:

QUESTIONS TO CLAIMANT

- (1) In what county is it claimed that claimant met with personal injury by accident? If in a different county from that in which the hearing is held, then the parties shall stipulate that they consent to the conduct of the hearing in the county in which it is being held.
- (2) Upon what date is it claimed that claimant met with personal injury by accident?
- (3) Upon what date is it claimed that claimant met with personal injury by repetitive trauma?

QUESTIONS TO RESPONDENT

- (4) Does respondent admit that claimant met with personal injury by accident on the date alleged?
- (5) Does respondent admit that claimant met with personal injury by repetitive trauma on the date alleged?
- (6) Does respondent admit that claimant's alleged personal injury "arose out of and in the course" of claimant's employment?
- (7) Does respondent admit proper notice?
- (8) Does respondent admit that the relationship of employer and employee existed?
- (9) Does respondent admit that the parties are covered by the Kansas workers compensation act?
- (10) Did the respondent have an insurance carrier on the date of the alleged accident? If so, what is the name of the insurance company? Was the respondent self-insured?
- (11) Does respondent admit that the accident or repetitive trauma was the prevailing factor causing the injury, the medical condition, and the resulting disability or impairment?

QUESTIONS TO BOTH PARTIES

- (12) What was the average weekly wage?
- (13) Has any compensation been paid?
- (14) Has any medical or hospital treatment been furnished? Is claimant making claim for any future medical treatment?
- (15) Has claimant incurred any medical or hospital expense for which reimbursement is claimed?
- (16) What was the nature and extent of the disability suffered as a result of the alleged injury?
- (17) What medical and hospital expenses does the claimant have?
- (18) What are the additional dates of temporary total disability, if any are claimed?

- (19) Is the workers compensation fund to be impleaded as an additional party?
- (20) Have the parties agreed upon a functional impairment rating?

The same stipulations shall be used in occupational disease cases, except that questions regarding “personal injury” shall be changed to discover facts concerning “disability from occupational disease” or “disablement.”

(b) An informal pretrial conference shall be held in each contested case before testimony is taken in a case. At these conferences the administrative law judge shall determine from the parties what issues have not been agreed upon. If the issues cannot be resolved, the stipulations and issues shall be made a part of the record.

(c) The respondent shall be prepared to admit any and all facts that the respondent cannot justifiably deny and to have payrolls available in proper form to answer any questions that might arise as to the average weekly wage. Evidence shall be confined to the matters actually ascertained to be in dispute. The administrative law judge shall not be bound by rules of civil procedure or evidence. Hearsay evidence may be admissible unless irrelevant or redundant.

(d) All parties shall be given reasonable opportunity to be heard. The testimony taken at the hearing shall be reported and transcribed. That testimony, together with documentary evidence introduced, shall be filed with the division of workers compensation, where the evidence shall become a permanent record. Each award or order made by the administrative law judge shall be set forth in writing, with copies mailed to the parties.

(e) Permission to withdraw admissions or stipulations shall be decided by the administrative law judge, depending on the circumstances in each instance.

(f) Subpoena forms shall be furnished by the director upon request. The party subpoenaing witnesses shall be responsible for the completion, service, and costs in connection with the subpoenas. (Authorized by K.S.A. 44-573; implementing K.S.A. 2010 Supp. 44-523, as amended by L. 2011, ch. 55, sec. 17, and K.S.A. 2010 Supp. 44-551; effective Jan. 1, 1966; amended Jan. 1, 1969; amended Jan. 1, 1973; amended Jan. 1, 1974; amended May 1, 1976; amended Feb. 15, 1977; amended May 1, 1978; amended May 1, 1983; amended May 22, 1998; amended Dec. 23, 2011.)

51-3-9. Medical evidence record for settlements. The administrative law judge shall not issue a settlement award unless: (a) the claimant personally testifies; (b) medical testimony by a competent physician is introduced as evidence, either by the oral testimony of that physician, or through a documentary report of a recent physical examination of the claimant as to the extent of the claimant’s disabilities; and (c) any other testimony as the administrative law judge may require for the proper determination of the extent of disability and the amount of compensation due, if any. If documentary evidence of a medical report covering physical examination of the claimant is introduced in evidence, the claimant shall be able to testify that the claimant has read that report or had the report read to him or her, and that the claimant fully understands the medical evidence as to disability.

If the injured worker submits to hospitalization, the records of the hospitalization and treatment, properly identified, may be received in evidence at a hearing on a claim.

Medical and hospital expenses shall be made part of the record. (Authorized by K.S.A. 44-573; implementing K.S.A. 44-531; effective Jan. 1, 1966; amended Jan. 1, 1973; amended Feb. 15, 1977; amended May 1, 1983.)

51-3-10. (Authorized by K.S.A. 1977 Supp. 44-573; effective Jan. 1, 1974; amended, E-74-31, July 1, 1974; amended May 1, 1975; amended, E-76-23, May 30, 1975; amended May 1, 1976; revoked May 1, 1978.)

51-3-11. (Authorized by K.S.A. 44-573; effective Jan. 1, 1966; transferred Jan. 1, 1973 to K.A.R. 51-3-13.)

51-3-12. (Authorized by K.S.A. 1977 Supp. 44-573; effective Jan. 1, 1966; revoked May 1, 1978.)

51-3-13. (Authorized by K.S.A. 44-553, K.S.A. 1977 Supp. 44-573; effective Jan. 1, 1966; amended Jan. 1, 1973; amended Feb. 15, 1977; revoked May 1, 1978.)

51-3-14. (Authorized by K.S.A. 1977 Supp. 44-573; effective Jan. 1, 1966; amended Jan. 1, 1973; revoked May 1, 1978.)

51-3-15. (Authorized by K.S.A. 1977 Supp. 44-573; effective Jan. 1, 1966; amended Jan. 1, 1969; revoked May 1, 1978.)

51-3-16. Closing cases by joint petition and stipulation. If the claimant resides out of the state of Kansas and it would be a hardship to require the claimant to return to the state of Kansas for hearing and if the parties agree to settlement, the claim may be closed by an award on joint petition and stipulation. Joint petition and stipulation may also be used in death cases where the liability and the entitlement to compensation is clearly defined.

The format to be followed in submitting a case on joint petition and stipulation shall be substantially as set out in a format furnished by the division of workers' compensation.

In cases involving death, the joint petition shall be accompanied by certified copies of the certificate of death, marriage certificate, birth certificates, copies of letters of guardianship and conservatorship, if appropriate, and copies of journal entries of divorce if a prior marriage puts question on a spouse's entitlement to compensation. (Authorized by K.S.A. 44-573; implementing K.S.A. 44-531; effective Jan. 1, 1966; amended Jan. 1, 1973; amended May 1, 1978; amended May 1, 1983.)

51-3-17. (Authorized by K.S.A. 44-573; implementing K.S.A. 44-512; effective Jan. 1, 1966; amended Jan. 1, 1973; amended Feb. 15, 1977; amended May 1, 1983; revoked May 22, 1998.)

51-3-18. (Authorized by K.S.A. 1974 Supp. 44-573; effective Jan. 1, 1966; amended Jan. 1, 1973; revoked, E-74-31, July 1, 1974; revoked May 1, 1975.)

51-3-18a. (Authorized by K.S.A. 44-532a, 44-566a, and 44-573; effective, E-74-31, July 1, 1974; transferred May 1, 1975 to K.A.R. 51-3-19.)

51-3-19. (Authorized by K.S.A. 1977 Supp. 44-532a, 44-566a, 44-573; effective, E-74-31, July 1, 1974; effective May 1, 1975; amended, E-76-23, May 30, 1975; amended May 1, 1976; amended Feb. 15, 1977; revoked May 1, 1978.)

Article 4.—ATTORNEYS

51-4-1. (Authorized by K.S.A. 44-573; implementing K.S.A. 7-104; effective Jan. 1, 1966; amended Feb. 15, 1977; amended May 1, 1978; amended May 1, 1983; revoked May 22, 1998.)

51-4-2. (Authorized by K.S.A. 1977 Supp. 7-104, 44-536, 44-573; effective Jan. 1, 1969; amended May 1, 1975; revoked May 1, 1978.)

Article 5.—NOTICE OF ACCIDENT OR DISEASE

51-5-1. (Authorized by K.S.A. 1977 Supp. 44-520a, 44-573; effective Jan. 1, 1966; amended Jan. 1, 1969; revoked May 1, 1978.)

51-5-2. (Authorized by K.S.A. 1977 Supp. 44-520a, 44-573, 44-5a02, 44-5a21; effective Jan. 1, 1966; amended Feb. 15, 1977; revoked May 1, 1978.)

51-5-3. (Authorized by K.S.A. 1976 Supp. 44-573, 44-5a21; effective Jan. 1, 1974; amended Feb. 15, 1977; revoked May 1, 1983.)

Article 6.—CLAIM FOR COMPENSATION

51-6-1. (Authorized by K.S.A. 44-5a17, K.S.A. 1977 Supp. 44-520a, 44-573, 44-5a21; effective Jan. 1, 1966; amended Jan. 1, 1969; amended Jan. 1, 1973; amended May 1, 1976; amended Feb. 15, 1977; revoked May 1, 1978.)

Article 7.—MEASUREMENT OF DISABILITY

51-7-1. (Authorized by K.S.A. 1977 Supp. 44-510e, 44-573; effective Jan. 1, 1966; amended Jan. 1, 1969; amended Jan. 1, 1973; amended, E-74-31, July 1, 1974; amended May 1, 1975; amended Feb. 15, 1977; revoked May 1, 1978.)

51-7-2. Days expressed as decimal. In computing compensation for fractional parts of a week, record: one day as .14 of a week; two days as .29; three days as .43; four days as .57; five days as .71; and six days as .86. Compensation due shall be determined on the basis of a seven-day week. When the last day of disability is on a Sunday, compensation shall be paid for that day of disability. (Authorized by K.S.A. 44-573; implementing K.S.A. 44-510c; effective Jan. 1, 1966; amended May 1, 1983.)

51-7-3. (Authorized by K.S.A. 1977 Supp. 44-510d, 44-573; effective Jan. 1, 1966; amended Jan. 1, 1969; amended Jan. 1, 1971; amended Jan. 1, 1973; amended, E-74-31, July 1, 1974; amended May 1, 1975; amended Feb. 15, 1977; amended May 1, 1978; revoked May 1, 1983.)

51-7-4. (Authorized by K.S.A. 1977 Supp. 44-510, 44-573; effective Jan. 1, 1966; amended Jan. 1, 1973; revoked May 1, 1978.)

51-7-5. (Authorized by K.S.A. 1972 Supp. 44-573; effective Jan. 1, 1966; amended Jan. 1, 1973; revoked May 22, 1998.)

51-7-6. (Authorized by K.S.A. 1976 Supp. 44-573; effective Jan. 1, 1966; amended Feb. 15, 1977; revoked May 22, 1998.)

51-7-7. (Authorized by K.S.A. 1977 Supp. 44-510, 44-573; effective Jan. 1, 1966; amended Feb. 15, 1977; revoked May 1, 1978.)

51-7-8. Computation of compensation.

(a)(1) If a worker suffers a loss or the loss of use to a member and, in addition, suffers other injuries contributing to the temporary total disability, compensation for the temporary total disability shall not be deductible from the scheduled amount for those weeks of temporary total disability attributable to the other injuries.

(2) The weekly compensation rate for temporary total compensation shall be computed by multiplying .6667 times the worker's average weekly wage. This figure shall be subject to the statutory maximum set in K.S.A. 44-510c, and amendments thereto.

(b) If a healing period of 10% of the schedule or partial schedule is granted, not exceeding 15 weeks, the healing period shall be added to the weeks on the schedule or partial schedule before the following computations are made.

(1) If a loss of or the loss of use occurs to a scheduled member of the body, compensation shall be computed as follows:

(A) Deduct the number of weeks of temporary total compensation from the schedule;

(B) multiply the difference by the percent of loss or the loss of use to the member; and

(C) multiply the result by the applicable weekly temporary total compensation rate.

(2) If part of a finger, thumb, or toe is amputated, compensation shall be calculated as follows:

(A) Multiply the percent of loss, as governed by K.S.A. 44-510d, and amendments thereto, by the number of weeks on the full schedule for that member;

(B) deduct the temporary total compensation; and

(C) multiply the remainder by the weekly temporary total compensation rate.

(3) If a scheduled member other than a part of a finger, thumb, or toe is amputated, compensation shall be computed by multiplying the number of weeks on the schedule by the worker's weekly tem-

porary total compensation rate. The temporary total compensation previously paid shall be deducted from the total amount allowed for the member.

(c)(1) Each injury involving the metacarpals shall be considered an injury to the hand. Each injury involving the metatarsals shall be considered an injury to the foot.

(2) If the injury results in loss of use of one or more fingers and also a loss of use of the hand, the compensation payable for the injury shall be on the schedule for the hand. The percentage of permanent partial loss of use of the hand shall be at least sufficient to equal the compensation payable for the injuries to the finger or fingers alone.

(3) Each injury involving the hip joint shall be computed on the basis of a disability to the body as a whole.

(4) Each injury at the joint on a scheduled member shall be considered a loss to the next higher schedule.

(5) If the tip of a finger, thumb, or toe is amputated, the amputation does not go through the bone, and it is determined that a disability exists, the disability rating shall be based on a computation of a partial loss of use of the entire finger. (Authorized by K.S.A. 44-573; implementing K.S.A. 44-510d, as amended by 2011 HB 2134, sec. 8; effective Jan. 1, 1966; amended Jan. 1, 1971; amended Jan. 1, 1973; amended, E-74-31, July 1, 1974; amended May 1, 1975; amended Feb. 15, 1977; amended May 1, 1978; amended May 1, 1983; amended, T-88-20, July 1, 1987; amended May 1, 1988; amended May 22, 1998; amended Nov. 28, 2011.)

51-7-9. (Authorized by K.S.A. 44-510 and 44-573; effective Jan. 1, 1966; transferred Feb. 15, 1977 to K.A.R. 51-7-11.)

51-7-10. (Authorized by K.S.A. 44-510 and 44-573; effective Jan. 1, 1966; transferred Jan. 1, 1971 to K.A.R. 51-7-12.)

51-7-11. (Authorized by K.S.A. 1977 Supp. 44-510, 44-573; effective Jan. 1, 1966; amended Feb. 15, 1977; revoked May 1, 1978.)

51-7-12. (Authorized by K.S.A. 1977 Supp. 44-510d, 44-573; effective Jan. 1, 1966; amended Jan. 1, 1973; amended Feb. 15, 1977; amended May 1, 1978; revoked May 1, 1983.)

51-7-13. (Authorized by K.S.A. 1972 Supp. 44-510d, 44-573; effective Jan. 1, 1966; amended Jan. 1, 1973; revoked May 1, 1983.)

51-7-14. (Authorized by K.S.A. 1974 Supp. 44-510c, 44-510d, and 44-573; effective Jan. 1, 1966; amended Jan. 1, 1973; revoked, E-74-31, July 1, 1974; revoked May 1, 1975.)

51-7-15. (Authorized by K.S.A. 1977 Supp. 44-510, 44-573; effective Jan. 1, 1966; revoked May 1, 1978.)

51-7-16. (Authorized by K.S.A. 1977 Supp. 44-510a and 44-573; effective Jan. 1, 1969; amended Jan. 1, 1973; amended, E-74-31, July 1, 1974; amended May 1, 1975; revoked May 1, 1978.)

Article 8.—COMPENSATION FOR EYE INJURIES

51-8-1. (Authorized by K.S.A. 1977 Supp. 44-510 and 44-573; effective Jan. 1, 1966; revoked May 1, 1978.)

51-8-2. (Authorized by K.S.A. 44-573; implementing K.S.A. 44-510d; effective Jan. 1, 1966; amended May 1, 1978; amended May 1, 1983; revoked May 22, 1998.)

51-8-3. (Authorized by K.S.A. 44-573; implementing K.S.A. 44-510d; effective Jan. 1, 1966; amended May 1, 1978; amended May 1, 1983; revoked May 22, 1998.)

51-8-4. (Authorized by K.S.A. 44-573; implementing K.S.A. 44-510d; effective Jan. 1, 1966; amended May 1, 1978; amended May 1, 1983; revoked May 22, 1998.)

51-8-5. (Authorized by K.S.A. 44-573; implementing K.S.A. 44-510d; effective Jan. 1, 1966; amended May 1, 1978; amended May 1, 1983; revoked May 22, 1998.)

51-8-6. (Authorized by K.S.A. 44-573; implementing K.S.A. 44-510d; effective Jan. 1, 1966; amended May 1, 1978; amended May 1, 1983; revoked May 22, 1998.)

51-8-7. (Authorized by K.S.A. 44-573; implementing K.S.A. 44-510d; effective Jan. 1, 1966; amended Jan. 1, 1973; amended, E-74-31, July 1, 1974; amended May 1, 1975; amended Feb. 15, 1977; amended May 1, 1978; amended May 1, 1983; revoked May 22, 1998.)

51-8-8. (Authorized by K.S.A. 1977 Supp. 44-510d; effective Jan. 1, 1966; amended Jan. 1,

1973; amended, E-74-31, July 1, 1974; amended May 1, 1975; revoked May 1, 1978.)

51-8-9. (Authorized by K.S.A. 1977 Supp. 44-510, 44-573; effective Jan. 1, 1966; amended Jan. 1, 1971; amended Feb. 15, 1977; amended May 1, 1978; revoked May 22, 1998.)

51-8-10. (Authorized by K.S.A. 44-573; implementing K.S.A. 44-510d; effective Jan. 1, 1966; amended Jan. 1, 1971; amended May 1, 1978; amended May 1, 1983; revoked May 22, 1998.)

51-8-11. (Authorized by K.S.A. 1977 Supp. 44-510 and 44-573; effective Jan. 1, 1966; amended Jan. 1, 1971; amended Jan. 1, 1973; amended, E-74-31, July 1, 1974; amended May 1, 1975; amended May 1, 1978; revoked May 1, 1983.)

Article 9.—MEDICAL AND HOSPITAL

51-9-1. (Authorized by K.S.A. 1977 Supp. 44-510 and 44-573; effective Jan. 1, 1966; amended Jan. 1, 1969; amended Jan. 1, 1971; amended Jan. 1, 1973; amended, E-74-31, July 1, 1974; amended May 1, 1975; amended Feb. 15, 1977; revoked May 1, 1978.)

51-9-2. Appliances. The word “apparatus”, contained in K.S.A. 44-510, shall mean such appliances as glasses, teeth, or artificial member.

When an appliance or apparatus is already being worn, and its usefulness is destroyed by an accident, the question as to whether the appliance is to be replaced as medical expense is one to be determined on the facts in each individual case. If an incident in direct connection with the work being done causes the destruction of the appliance being worn, it will be determined that personal injury by accident resulted, and the appliance is to be replaced as medical expense. (Authorized by K.S.A. 1977 Supp. 44-510 and 44-573; effective Jan. 1, 1966; amended Feb. 15, 1977; amended May 1, 1978.)

51-9-3. (Authorized by K.S.A. 1974 Supp. 44-510 and 44-573; effective Jan. 1, 1966; amended Jan. 1, 1969; amended Jan. 1, 1971; revoked, E-74-31, July 1, 1974; revoked May 1, 1975.)

51-9-4. (Authorized by K.S.A. 1976 Supp. 44-510, 44-573; effective Jan. 1, 1966; amended Feb. 15, 1977; amended May 1, 1980; revoked May 1, 1983.)

51-9-5. Refusal to submit to medical treatment. An unreasonable refusal of the employee

to submit to medical or surgical treatment, when the danger to life would be small and the probabilities of a permanent cure great, may result in denial or termination of compensation beyond the period of time that the injured worker would have been disabled had the worker submitted to medical or surgical treatment, but only after a hearing as to the reasonableness of such refusal. (Authorized by K.S.A. 44-573; implementing K.S.A. 44-518, K.S.A. 1996 Supp. 44-510, as amended by L. 1997, Ch. 125, Sec. 4, and K.S.A. 44-573; effective Jan. 1, 1966; amended Jan. 1, 1973; amended May 1, 1978; amended May 22, 1998.)

51-9-6. Neutral physician. If a neutral physician is appointed, the written report of that neutral physician shall be made a part of the record of hearing. Either party may cross examine each neutral physician so employed. The fee of the neutral physician giving such testimony shall be assessed as costs to a party at the administrative law judge's discretion. (Authorized by K.S.A. 44-573; implementing K.S.A. 44-516; effective Jan. 1, 1966; amended Jan. 1, 1973; amended, E-74-31, July 1, 1974; amended May 1, 1975; amended May 1, 1978; amended May 1, 1983.)

51-9-7. Fees for medical and hospital services. Fees for medical, surgical, hospital, dental, and nursing services, medical equipment, medical supplies, prescriptions, medical records, and medical testimony rendered pursuant to the Kansas workers compensation act shall be the lesser of the following:

(a) The usual and customary charge of the health care provider, hospital, or other entity providing the health care services; or

(b) the amount allowed by the "2019 schedule of medical fees" published by the Kansas department of labor, effective on March 29, 2019, and approved by the director of workers compensation on November 21, 2018, including the ground rules for each type of medical treatment or service within the schedule and the appendix, which is hereby adopted by reference.

This regulation shall be effective on and after March 29, 2019. (Authorized by and implementing K.S.A. 2018 Supp. 44-510i; effective Jan. 1, 1966; amended Jan. 1, 1969; amended Jan. 1, 1973; amended May 1, 1976; amended May 1, 1978; amended, T-88-20, July 1, 1987; amended May 1, 1988; amended Nov. 1, 1993; amended April 5, 1996; amended Aug. 29, 1997; amended

Oct. 1, 1999; amended Dec. 1, 2001; amended Dec. 1, 2003; amended Dec. 2, 2005; amended Jan. 1, 2008; amended Jan. 1, 2010; amended Jan. 1, 2011; amended Jan. 1, 2012; amended Jan. 1, 2014; amended Jan. 1, 2015; amended Jan. 1, 2017; amended March 29, 2019.)

51-9-8. (Authorized by K.S.A. 1974 Supp. 44-510 and 44-573; effective Jan. 1, 1966; amended Jan. 1, 1973; revoked, E-74-31, July 1, 1974; revoked May 1, 1975.)

51-9-9. (Authorized by K.S.A. 1977 Supp. 44-510, 44-515, 44-573; effective Jan. 1, 1966; amended Jan. 1, 1973; revoked May 1, 1978.)

51-9-10. Medical bills, reports, and treatment. (a) Upon the completion of treatment in all compensation cases, physicians shall promptly notify the employer or carrier, and shall render their final bills forthwith. Bills for medical care providers and hospitals shall be itemized showing the date and the charge for services rendered. Separate bills should be presented to the employer or carrier by each surgeon, assistant, anesthetist, consultant, hospital, or nurse. In cases requiring prolonged treatment, physicians should submit partial bills, fully itemized, at intervals of at least 60 days.

(b)(1) Medical reports of the physician should be submitted on a periodic basis depending upon the nature and severity of the injuries involved and, in all cases, immediately upon request of the respondent or insurance carrier. A report shall be rendered on the date on which the physician releases the worker to return to work and forwarded to the employer or insurance carrier and to the employee, if requested.

(2) In cases of amputation, the physician shall mark the exact point of amputation on a diagram showing the member involved.

(3) The patient privilege preventing the furnishing of medical information by doctors and hospitals is waived by a worker seeking workers compensation benefits, and all reports, records, or other data concerning examinations or treatment shall be furnished to the employer or insurance carrier or the director at that individual's request without the necessity of a release by the worker.

(4) Unreasonable refusal by the worker to cooperate with the employer or insurance carrier or the director by failing to furnish medical information releases for the worker's medical history may result in compensation being denied or terminated after hearing before the director.

(5) The employee shall immediately be furnished a copy of any medical report that authorizes return to work.

(c) Nurses, whether registered or practical, shall be furnished in an institution or the worker's home when the treating doctor recommends this nursing care. Nursing service by a member of the worker's family shall be provided if approved in advance by the treating physician. (Authorized by K.S.A. 1996 Supp. 44-510, as amended by L. 1997, Ch. 125, Sec. 4 and K.S.A. 44-573; effective Jan. 1, 1966; amended Jan. 1, 1969; amended Jan. 1, 1971; amended Jan. 1, 1973; amended, E-74-31, July 1, 1974; amended May 1, 1975; amended, E-76-23, May 30, 1975; amended Feb. 15, 1977; amended May 1, 1978; amended May 22, 1998.)

51-9-11. Transportation to obtain medical treatment. (a) It shall be the duty of the employer to provide transportation to obtain medical services to and from the home of the injured employee whether those services are outside the community in which the employee resides or within the community.

(b) The employer shall reimburse the worker for the reasonable cost of transportation under the following conditions:

(1) if an injured worker does not have a vehicle or reasonable access to a vehicle of a family member living in the worker's home; or

(2) if the worker, because of the worker's physical condition, cannot drive and must therefore hire transportation to obtain medical treatment.

Reimbursement may include, among other things, reimbursement for the cost of taxi service, other public transportation, and ambulance service, if required by a physician, and for the cost of hiring another individual to drive the worker for medical treatment. Any charges presented to the employer or insurance carrier for payment shall be a fair and reasonable amount based on the customary charges for those services.

(c) If an injured worker drives that worker's own vehicle or drives, or is driven in, a vehicle of a family member living in the home of the worker, and if any round trip exceeds five miles, the respondent and insurance carrier shall reimburse the worker for an amount comparable to the mileage expenses provided in K.S.A. 44-515.

(d) In any dispute in regard to charges for mileage expenses, and on application by any party to the proceedings, the reasonable cost of transpor-

tation shall be determined by a hearing before a workers compensation administrative law judge. (Authorized by K.S.A. 44-573; implementing K.S.A. 1996 Supp. 44-510, as amended by L. 1997, Ch. 125, Sec. 4; effective May 1, 1980; amended May 1, 1983; amended May 22, 1998.)

51-9-12 through 51-9-14. (Authorized by K.S.A. 44-573 and K.S.A. 1996 Supp. 44-510, as amended by L. 1997, Ch. 125, Sec. 4; implementing K.S.A. 1996 Supp. 44-510, as amended by L. 1997, Ch. 125, Sec. 4; effective May 22, 1998; revoked June 21, 2002.)

51-9-15. (Authorized by K.S.A. 74-717, 44-557a, 44-573; implementing K.S.A. 44-557a, 74-716; effective Aug. 9, 2002; revoked July 19, 2013.)

51-9-16. Submission of data on expenditures for health care services. (a) Each insurance carrier, self-insured employer, group-funded workers compensation pool, and health care facility shall submit a summary of medical records and related charges if either of the following conditions is met:

(1) The total cost for any workers compensation medical claim exceeds \$150,000.

(2) Any medical treatment in the workers compensation claim continues for more than 60 months.

(b) Complete medical and billing records may be required by the division to be submitted for individually selected claims or for randomly selected claims to evaluate trend developments. (Authorized by K.S.A. 74-717, 44-573; implementing K.S.A. 2001 Supp. 44-510i, K.S.A. 74-716; effective Aug. 16, 2002.)

51-9-17. Release 3.1 standards for trading partner profiles; submission of data; first reports of injury. (a) Each insurer, group-funded workers compensation pool, and self-insured employer shall participate in the electronic data interchange (EDI) program and shall submit to the director a completed EDI trading partner profile at least 30 days before submitting claim information pursuant to the international association of industrial accident boards and commissions' (IAIABC's) release 3.1 standards, as provided in K.S.A. 44-557a and amendments thereto. The EDI trading partner profile shall be completed according to the "Kansas EDI release 3.1 guide for reporting first (FROI) and subsequent (SROI) reports of injury"

as revised on July 16, 2018 by the Kansas department of labor and hereby adopted by reference. This document shall be referred to as the “Kansas EDI release 3.1 guide” in this regulation.

(b) Each insurer, group-funded workers compensation pool, and self-insured employer shall report to the director within five days any changes to information submitted in the EDI trading partner profile.

(c) All claim information submitted pursuant to K.S.A. 44-557a, and amendments thereto, by electronic data interchange shall be submitted according to the Kansas EDI release 3.1 guide.

(d) All claim information submitted pursuant to K.S.A. 44-557a, and amendments thereto, and the Kansas EDI release 3.1 guide’s first report of injury, commonly called “FROI 00,” shall be considered the filing of an accident report pursuant to K.S.A. 44-557, and amendments thereto. This information shall not be open to public inspection, except as provided in K.S.A. 44-550b and amendments thereto.

(e) All claim information submitted pursuant to K.S.A. 44-557a, and amendments thereto, shall be considered a medical record to the extent that the information refers to an individual worker’s identity. No references in the claim information to an individual worker’s identity shall be open to public inspection, except as provided in K.S.A. 44-550b and amendments thereto. For purposes of this regulation, the claim number used by an insurance carrier, self-insured employer, or group-funded workers compensation pool to identify an individual worker’s claim shall be considered a reference to the individual worker’s identity.

(f) On or before the compliance date specified in subsection (g), each insurer shall file claim information for all “lost time/indemnity” and “denied” cases through EDI rather than by submitting paper forms. The insurer shall file the electronic form in accordance with the Kansas EDI release 3.1 guide.

(g) Each insurer shall comply on or before the implementation date of November 29, 2018 for reporting electronic FROI or SROI. Each claim administrator submitting claims as EDI filings in production status using the IAIABC’s release 3 national standard shall convert to release 3.1 and shall be in production status by the implementation date. (Authorized by K.S.A. 44-573 and K.S.A. 74-717; implementing K.S.A. 2018 Supp. 44-550b, K.S.A. 2018 Supp. 44-557, K.S.A. 2018 Supp. 44-557a, and K.S.A. 74-716; effective Jan. 1, 2004; amended June 17, 2005; amended Feb.

8, 2013; amended, T-51-11-15-18, Nov. 15, 2018; amended March 15, 2019.)

Article 10.—DEATH CASES

51-10-1. (Authorized by K.S.A. 44-527, K.S.A. 1977 Supp. 44-513a, 44-520a, 44-535, 44-549, 44-573; effective Jan. 1, 1966; amended Feb. 15, 1977; revoked May 1, 1978.)

51-10-2. (Authorized by K.S.A. 1977 Supp. 44-510, 44-511, 44-573; effective Jan. 1, 1966; amended Jan. 1, 1969; amended Jan. 1, 1971; amended Jan. 1, 1973; amended, E-74-31, July 1, 1974; amended May 1, 1975; amended, E-76-23, May 30, 1975; amended May 1, 1976; amended Feb. 15, 1977; revoked May 1, 1978.)

51-10-3. (Authorized by K.S.A. 1977 Supp. 44-510b, 44-511 and 44-573; effective Jan. 1, 1966; amended Jan. 1, 1969; amended Jan. 1, 1973; amended, E-74-31, July 1, 1974; amended May 1, 1975; amended Feb. 15, 1977; revoked May 1, 1978.)

51-10-4. (Authorized by K.S.A. 1974 Supp. 44-510 and 44-573; effective Jan. 1, 1966; revoked, E-74-31, July 1, 1974; revoked May 1, 1975.)

51-10-4a. (Authorized by K.S.A. 1977 Supp. 44-510b and 44-573; effective, E-74-31, July 1, 1974; effective May 1, 1975; amended Feb. 15, 1977; revoked May 1, 1978.)

51-10-5. (Authorized by K.S.A. 1977 Supp. 44-510b, 44-573; effective Jan. 1, 1966; amended Jan. 1, 1969; amended, E-74-31, July 1, 1974; amended May 1, 1975; amended Feb. 15, 1977; revoked May 1, 1978.)

51-10-6. (Authorized by K.S.A. 44-573; implementing K.S.A. 44-509, 44-513a; effective Jan. 1, 1966; amended Jan. 1, 1973; amended Feb. 15, 1977; amended May 1, 1978; amended May 1, 1983; amended May 22, 1998; revoked June 21, 2002.)

51-10-7. (Authorized by K.S.A. 1977 Supp. 44-510b, 44-573; effective, E-74-31, July 1, 1974; effective May 1, 1975; amended Feb. 15, 1977; revoked May 1, 1978.)

Article 11.—WAGES

51-11-1. (Authorized by K.S.A. 1974 Supp. 44-573; effective Jan. 1, 1966; amended Jan. 1,

1973; amended, E-74-31, July 1, 1974; revoked May 1, 1975.)

51-11-1a. (Authorized by K.S.A. 1977 Supp. 44-510, 44-511, 44-573; effective May 1, 1975; amended Feb. 15, 1977; revoked May 1, 1978.)

51-11-2. (Authorized by K.S.A. 1977 Supp. 44-511, 44-573; effective Jan. 1, 1966; amended Jan. 1, 1973; amended, E-74-31, July 1, 1974; amended May 1, 1975; amended, E-76-23, May 30, 1975; amended May 1, 1976; amended Feb. 15, 1977; revoked May 1, 1978.)

51-11-3. (Authorized by K.S.A. 1974 Supp. 44-573; effective Jan. 1, 1966; amended Jan. 1, 1973; revoked May 1, 1975.)

51-11-3a. (Authorized by K.S.A. 1977 Supp. 44-511 and 44-573; effective May 1, 1975; revoked May 1, 1978.)

51-11-4. (Authorized by K.S.A. 1977 Supp. 44-511 and 44-573; effective Jan. 1, 1966; amended Jan. 1, 1973; amended May 1, 1975; amended Feb. 15, 1977; revoked May 1, 1978.)

51-11-5. (Authorized by K.S.A. 44-514, K.S.A. 1977 Supp. 44-573; effective Jan. 1, 1966; amended Feb. 15, 1977; revoked May 1, 1978.)

51-11-6. Computing employers gross payroll. In computing the gross annual payroll for an employer to determine whether they are subject to the workers' compensation act, all payroll paid by that employer to all workers shall be included. The computation shall include all payroll whether or not that payroll is paid to employees in the state of Kansas or outside the state of Kansas.

The provision in K.S.A. 44-505 excluding the payroll of workers who are members of the employer's family shall not apply to corporate employers.

A corporate employer's payroll for purposes of determining whether the employer is subject to the workers' compensation act shall be determined by the total amount of payroll paid to all corporate employees even when a corporate employee has elected out of the workers' compensation act pursuant to K.S.A. 44-543. (Authorized by K.S.A. 44-573; implementing K.S.A. 44-505, 44-543; effective May 1, 1978; amended May 1, 1983.)

Article 12.—INJURIES OCCURRING INSIDE OR OUTSIDE THE STATE OF KANSAS

51-12-1. (Authorized by K.S.A. 1977 Supp. 44-506 and 44-573; effective Jan. 1, 1966; amended Jan. 1, 1973; amended, E-74-31, July 1, 1974; amended May 1, 1975; amended, E-76-23, May 30, 1975; amended May 1, 1976; amended Feb. 15, 1977; revoked May 1, 1978.)

51-12-2. Notices. (a) Employers operating under this act shall post notice in one or more conspicuous places advising employees what to do in case of injury. This notice form may be obtained at no cost from the division of workers compensation.

(b) Immediately upon receiving notice of injury or death of an employee, the employer shall mail or deliver to the employee or legal beneficiary a copy of the appropriate division of workers compensation form. (Authorized by K.S.A. 44-573; implementing K.S.A. 44-5,101 and K.S.A. 44-5,102; effective May 22, 1998.)

Article 13.—ELECTIONS

51-13-1. Employer's election to come under the act. (a)(1) A parent company shall not file an election to cover itself and a subsidiary; each entity shall file an election on its own behalf.

(2) Failure of an employer to cover its employees by means of insurance policy or through an approved self-insurance plan shall result in the employer being a non-qualified self-insurer and shall result in the employer paying direct compensation benefits to the injured employee.

(b) The election by individuals, partners, and all self-employed persons to bring themselves within the provision of the workers compensation act shall be signed by the individual or partner and by a representative of the insurance carrier issuing the insurance policy. (Authorized by K.S.A. 44-573; implementing K.S.A. 44-505, as amended by L. 1997, Ch. 125, Sec. 2; effective Jan. 1, 1966; amended Jan. 1, 1969; amended Jan. 1, 1973; amended, E-74-31, July 1, 1974; amended May 1, 1975; amended, E-76-23, May 30, 1975; amended May 1, 1976; amended Feb. 15, 1977; amended May 1, 1978; amended May 1, 1983; amended May 22, 1998.)

51-13-2. (Authorized by K.S.A. 44-542; effective Jan. 1, 1966; revoked, E-74-31, July 1, 1974; revoked May 1, 1975.)

51-13-2a. (Authorized by K.S.A. 1977 Supp. 44-573; effective May 1, 1975; revoked May 1, 1978.)

51-13-3. (Authorized by K.S.A. 1974 Supp. 44-543; effective Jan. 1, 1966; amended Jan. 1, 1973; revoked, E-74-31, July 1, 1974; revoked May 1, 1975.)

51-13-3a. (Authorized by K.S.A. 1977 Supp. 44-543 and 44-573; effective May 1, 1975; revoked May 1, 1978.)

51-13-4. (Authorized by K.S.A. 44-505, 44-505a and 44-573; effective Jan. 1, 1966; revoked, E-74-31, July 1, 1974; revoked May 1, 1975.)

51-13-5. (Authorized by K.S.A. 1977 Supp. 44-573; effective, E-74-31, July 1, 1974; effective May 1, 1975; amended Feb. 15, 1977; revoked May 1, 1978.)

51-13-6. (Authorized by K.S.A. 1977 Supp. 44-543 and 44-573; effective Feb. 15, 1977; revoked May 1, 1978.)

Article 14.—SECURING PAYMENT OF COMPENSATION BY INSURANCE AND SELF-INSURANCE

51-14-1. (Authorized by K.S.A. 1976 Supp. 44-532 and 44-573; effective Jan. 1, 1966; amended Jan. 1, 1969; amended Jan. 1, 1971; amended Jan. 1, 1973; revoked Feb. 15, 1977.)

51-14-2. (Authorized by K.S.A. 1977 Supp. 44-532 and 44-573; effective, E-74-31, July 1, 1974; effective May 1, 1975; amended May 1, 1976; amended Feb. 15, 1977; revoked May 1, 1978.)

51-14-3. (Authorized by K.S.A. 1977 Supp. 44-557a, 44-573; effective May 1, 1975; amended May 1, 1978; revoked May 1, 1983.)

51-14-4. Self-insurance. An employer operating under the act shall only become qualified as a self-insurer through the process of applying to the division of workers' compensation for a self-insurance permit. An employer making an application shall, upon the request of the director, submit information that the director may require to effectively evaluate the financial status of the employer. An application for a self-insurance permit or a self-insured employer seeking a renewal permit, shall, if the director requests, pay the fees of a consultant approved by the division of work-

ers' compensation to determine if the employer has the financial ability to become self-insured or to have his self-insurance permit renewed.

The applicant for a new permit or an employer seeking a renewal permit shall furnish to the division of workers' compensation a bond written by a surety company admitted to the state, and authorized by the Kansas insurance department to write surety bonds as required by the division. The bond shall be in an amount to adequately insure that if the employer should become insolvent, payments on all claims will be guaranteed to the injured workers.

The applicant for a new permit or an employer seeking a renewal permit shall furnish a certificate of excess insurance in an amount that may be required by the division of workers' compensation, and the division shall be notified by the self-insured and insurance carrier at least 20 days prior to the cancellation or non-renewal of any excess insurance policy. The excess workers' compensation insurance shall be in conformity with Kansas insurance statutes and regulations of the Kansas insurance commissioner.

An applicant for a new permit or an employer seeking a renewal permit shall set up financial reserves, furnish letters of credit or provide other security in amounts and in a manner directed by the division of workers' compensation to insure the payment of all workers' compensation claims as may be required by the Kansas workers' compensation act.

An employer shall furnish to the division of workers' compensation any other information the division may request which will aid in fairly and adequately evaluating an application for a new or a renewal permit for self-insurance.

The self-insurance permit of any employer shall expire on the anniversary date of the issuance of a self-insurance permit and any anniversary date thereafter, except when it has been renewed by the division prior to that date. The employer shall furnish any information that the division of workers' compensation may require to effectively evaluate an application to renew a self-insurance permit at least 45 days prior to the anniversary date of the original permit.

An employer whose original or renewal application for self-insurance has been denied, or who takes exception to insurance or reserve requirements may request a reconsideration by the division of workers' compensation. The request shall be made within 20 days of the receipt by the

employer of the information which the applicant wishes reconsidered. If the employer desires to have a record of the hearing, the reporter's costs shall be assessed to the employer. (Authorized by K.S.A. 44-573; implementing K.S.A. 44-505b, 44-505e, 44-505f, 44-532; effective Feb. 15, 1977; amended May 1, 1978; amended May 1, 1983; amended May 1, 1984.)

Article 15.—WORKERS COMPENSATION FUND

51-15-1. (Authorized by K.S.A. 44-566, K.S.A. 1972 Supp. 44-567, 44-568, 44-569, 44-569a, 44-570 and 44-573; effective Jan. 1, 1966; amended Jan. 1, 1969; amended Jan. 1, 1973; revoked, E-74-31, July 1, 1974; revoked May 1, 1975.)

51-15-2. Workers compensation fund.

(a) Insurance carriers and self-insureds shall not withhold compensation from an injured employee during negotiations with the workers compensation fund but shall pay compensation due under the act and then seek reimbursement for any compensation paid.

(b) The workers compensation fund shall be entitled to a hearing on the question of its liability imposed by the provisions of K.S.A. 44-532a. The administrative law judge may award compensation pursuant to K.S.A. 44-532a against the workers compensation fund following a preliminary hearing if the fund was properly impleaded and given the statutory notice of the hearing.

(c) "First full hearing," as used in K.S.A. 44-567(c), as amended, means the first hearing before an administrative law judge, other than a preliminary hearing provided by K.S.A. 1996 Supp. 44-534a, as amended, at which pre-trial stipulations are taken and testimony is presented. (Authorized by K.S.A. 44-573; implementing K.S.A. 44-566, K.S.A. 1996 Supp. 44-566a, as amended by L. 1997, Ch. 125, Sec. 15, K.S.A. 44-569, K.S.A. 44-569a, and K.S.A. 1996 Supp. 44-534a, as amended by L. 1997, Ch. 125, Sec. 9; effective, E-74-31, July 1, 1974; effective May 1, 1975; amended May 1, 1976; amended Feb. 15, 1977; amended May 1, 1978; amended May 1, 1982; amended, T-88-20, July 1, 1987; amended May 1, 1988; amended May 22, 1998.)

51-15-3. (Authorized by K.S.A. 1977 Supp. 44-566, 44-566a, 44-569, 44-569a, 44-570, 44-575; effective May 1, 1975; revoked May 1, 1978.)

Article 16.—SUBCONTRACTING

51-16-1. (Authorized by K.S.A. 1977 Supp. 44-503; effective Jan. 1, 1966; amended Jan. 1, 1969; amended Jan. 1, 1973; amended Feb. 15, 1977; revoked May 1, 1978.)

Article 17.—TIME, COMPUTATION AND EXTENSION

51-17-1. (Authorized by K.S.A. 60-206, K.S.A. 1972 Supp. 44-573; effective Jan. 1, 1966; amended Jan. 1, 1973; revoked June 21, 2002.)

51-17-2. Methods of filing; service. On and after November 30, 2018, each party represented by legal counsel shall file workers compensation case documents through the electronic filing (E-filing) system of the division of workers compensation (division) in the Kansas department of labor, as specified in K.A.R. 51-1-26. Any party not represented by legal counsel may file using the division's electronic filing system. If a party not represented by legal counsel chooses not to use the division's electronic filing system, the party shall file by facsimile, by mail, or by hand-delivery directly to the division and shall serve a copy of each document on the parties.

(a) Definitions. Each of the following terms as used in this regulation, unless the context requires otherwise, shall have the meaning specified in this subsection:

(1) "Document" shall include not more than one pleading and corresponding exhibits.

(2) "Facsimile filing" and "filing by fax" mean the facsimile transmission of a document to the division for filing with the division.

(3) "Facsimile machine" means a machine that can send a facsimile transmission.

(4) "Facsimile transmission" means the transmission of a copy of a document by a system that encodes a document into electronic signals, transmits the signals over a telephone line or other communications medium, and reconstructs the signals to print a duplicate of the document at the receiving end.

(5) "Fax" is an abbreviation for "facsimile" and means, as indicated by the context, the facsimile transmission or document so transmitted.

(6) "Filing" means the act of submitting a document to the division for the division's consideration and action. A document is filed by delivering it to the division by one of the means specified in this regulation.

(7) "Filing by hand-delivery" means submitting a document to the division by delivery in person to the division. Proof of filing by hand-delivery is established by retention of a copy of the hand-delivered document that has been date-stamped by an employee of the division at the time of the hand-delivery.

(8) "Filing by mail" means submitting a document to the division through the United States postal service, or other service or system by which letters and parcels are collected and delivered for a fee, addressed to an office of the division of workers compensation. Filing by mail is complete upon receipt by the division.

(9) "Serve" means to deliver a document, or copy thereof, by a party in a legal action or proceeding in which the party is involved, to another person, entity or party, electronically, by fax, by mail, or by hand-delivery.

(10) "Service by fax" means the transmission of a document by facsimile machine. Service by fax shall be complete upon generation of a transmission record by the transmitting machine indicating the successful transmission of the entire document. Service that occurs after midnight, central standard time, shall be deemed to have occurred on the next day.

(11) "Service by hand-delivery" means the delivery in person of a document to the party upon whom service is required or, if the party is a nonperson entity, by handing the document to a person in charge or person designated for this purpose at an office of the party.

(12) "Service by mail" means the delivery of a document by United States postal service, or other service or system by which letters and parcels are collected and delivered for a fee, addressed to the party's last known address. Service by mail shall be presumed if a person fills out and signs a written certificate of service.

(13) "Transmission record" means the document printed by the sending facsimile machine stating the telephone number of the receiving machine, the number of pages sent, the transmission time, and an indication of any errors in transmission.

(b) Form of documents.

(1) The document placed in the transmitting fax machine shall comply with all applicable requirements on the form, format, and signature of papers.

(2) The first page of each document filed by fax shall include the words "by fax." Each page shall be numbered and shall include an abbreviated

caption of the case and an abbreviated title of the document. The party shall also include the party's name, address, telephone number, and fax number on the document.

(c) Methods of filing by a party not represented by legal counsel.

(1) If a party not represented by legal counsel chooses not to use the division's electronic filing system, the party may file by fax directly to the division of workers compensation, at the facsimile numbers authorized, or by mail or hand-delivery to the division.

(2) The division's facsimile machine shall be available on a 24-hour basis. This provision shall not prevent the division from sending documents by fax or providing for normal repair and maintenance of the fax machine. Facsimile filings received in the division shall be deemed filed at the time printed by the division facsimile machine on the final page of the facsimile document received.

(3) Each facsimile document filed shall be accompanied by the facsimile transmission cover sheet, which shall contain the date, the docket number, case caption, party name, address, telephone and fax numbers, and the name of the document. The cover sheet shall be the first page transmitted.

(4) Each party filing by fax shall cause the transmitting facsimile machine to print a transmission record of each filing by fax. If the facsimile filing is not filed with the division due to an error in the transmission of the document the occurrence of which was unknown to the sender, any other failure not within the sender's control, or a failure to process the facsimile filing when received by the division, the sender may move the administrative law judge or the workers compensation board for an order to accept the timely filing of the document. The motion shall be accompanied by the transmission record, a copy of the document transmitted, and an affidavit of transmission by fax as set forth in a form specified by the director.

(5) Filing of documents by mail, properly addressed with postage or delivery fees paid, or by hand-delivery to the division's office in Topeka, Kansas shall be complete upon receipt by the division.

(d) Possession of documents. Each party not represented by legal counsel who files by fax shall retain the original document in the party's possession or control during the pendency of the action and shall produce this document upon request by the division, administrative law judge, workers

compensation board, or any party to the action. Upon failure to produce the document, the fax may be stricken, and the party may be subject to sanctions under K.S.A. 44-5,120(d)(20), and amendments thereto.

(e) Signatures. Each signature reproduced by facsimile transmission shall be considered an original signature.

(f) Service by the division by electronic transmission and by mail.

The division shall serve documents and notices requiring service electronically upon any party represented by legal counsel and upon any party not represented by legal counsel who has elected to use the division's electronic filing system. Documents and notices requiring service shall be served by mail on a party not represented by legal counsel who has not elected to use the division's electronic filing system.

(g) Certificates of service.

(1) Each electronically filed document shall include a certificate of service if service is required. Each certificate of service by electronic transmission shall include the following:

(A) The date of electronic transmission;

(B) a statement that the service was made by electronic transmission;

(C) the name and electronic-mail address of each party served; and

(D) the signature of the person serving the document by electronic transmission.

(2) Each certificate of service by fax shall include the following:

(A) The date of transmission;

(B) the name and facsimile machine telephone number of each party served;

(C) a statement that the document was served by facsimile transmission and that the transmission was reported as complete and without error; and

(D) the signature of the person serving the document by facsimile transmission.

(3) Each certificate of service by mail shall include the following:

(A) The date of mailing;

(B) the name and mailing address of each party served;

(C) a statement that the document was served by depositing it in the mail; and

(D) the signature of the person serving the document by mail. (Authorized by K.S.A. 44-573; implementing K.S.A. 2017 Supp. 44-534, K.S.A. 2017 Supp. 44-551; effective May 22, 1998; amended Nov. 26, 2018.)

Article 18.—APPEALS

51-18-1. (Authorized by K.S.A. 1977 Supp. 44-556; effective Jan. 1, 1966; amended Jan. 1, 1969; revoked May 1, 1978.)

51-18-2. Review by workers compensation board. (a) The effective date of the administrative law judge's acts, findings, awards, decisions, rulings, or modifications, for review purposes, shall be the day following the date noted thereon by the administrative law judge.

(b) Application for review by the workers compensation board shall be considered as timely filed only if received in the central office or one of the district offices of the division of workers compensation on or before the tenth day after the effective date of the act of an administrative law judge.

(c) An application for review may be filed by facsimile directly to the division of workers compensation. (Authorized by K.S.A. 44-573; implementing K.S.A. 1996 Supp. 44-525 and K.S.A. 1996 Supp. 44-551, as amended by L. 1997, Ch. 125, Sec. 12; effective Jan. 1, 1966; amended Jan. 1, 1969; amended Jan. 1, 1973; amended May 1, 1983; amended May 22, 1998.)

51-18-3. Applications for review. Applications for review should specify the issues to be considered and the jurisdictional basis for the appeal from a preliminary hearing, pursuant to K.S.A. 1996 Supp. 44-534a, as amended. (Authorized by K.S.A. 44-573; implementing K.S.A. 1996 Supp. 44-551, as amended by L. 1997, Ch. 125, Sec. 12; effective May 22, 1998.)

51-18-4. Time schedule for briefs on review; summary calendar. (a) Following an application for review by the workers compensation board, each brief that a party files shall be served upon opposing counsel and thereafter filed with the workers compensation board, division of workers compensation, according to the following schedule.

(1) The appellant's brief shall be submitted within 30 days from the date of filing the application for review.

(2) The appellee's brief shall be submitted within 20 days thereafter.

(3) The appellant may submit a reply brief limited to new issues raised in the appellee's brief within 10 days thereafter.

An original and five copies of each brief shall be filed with the workers compensation board. Every

brief shall be supplied in two copies to all counsel of record.

(b) The workers compensation board may maintain a summary calendar. If a review involves no new questions of law and if oral argument is not deemed necessary for a fair hearing of the case, the workers compensation board may set the case on the summary calendar. When a case is placed on the summary calendar, it shall be deemed submitted to the board without oral argument unless a motion by one of the parties for oral argument is granted. This motion shall be served on all parties and filed with the board within 10 days after notice of calendaring has been mailed by the board and shall set forth the reasons why it is thought that oral argument would be helpful to the board. (Authorized by K.S.A. 44-573; implementing K.S.A. 1996 Supp. 44-551, as amended by L. 1997, Ch. 125, Sec. 12; effective May 22, 1998.)

51-18-5. Extensions of time. An application for an extension of time for the performance of any act required by any person regarding review by the board shall be addressed to the workers compensation board. No extension shall be granted except on stated grounds reasonably indicating the necessity therefor. The consent of adverse parties to an application shall be considered but shall not be controlling. A copy of any application under this regulation shall be served on all parties. (Authorized by K.S.A. 44-573; implementing K.S.A. 1996 Supp. 44-551, as amended by L. 1997, Ch. 125, Sec. 12; effective May 22, 1998.)

51-18-6. Voluntary dismissals. An application for review by the workers compensation board may be dismissed upon the agreement of all parties to the review. If a settlement is reached, the appellant shall promptly notify the workers compensation board. (Authorized by K.S.A. 44-573; implementing K.S.A. 1996 Supp. 44-551, as amended by L. 1997, Ch. 125, Sec. 12; effective May 22, 1998.)

Article 19.—APPLICATION FOR REVIEW AND MODIFICATION PURSUANT TO K.S.A. 44-528

51-19-1. Review and modification. (a) When there has been an application for review or appeal upon an award and the same is either affirmed or modified, application for review and modification pursuant to K.S.A. 44-528 may still be made to the division. Initial hearings on such

applications shall be conducted by an administrative law judge.

(b) Application for review and modification pursuant to K.S.A. 44-528 shall set forth at least one of the reasons contained therein.

(c) Review and modification applications should not be made more than once during any six-month interval except in highly unusual situations. However, upon the completion of vocational rehabilitation, as provided for under this act, the worker, employer, or insurance carrier shall have the right to seek a review and modification of the award rendered, granting any compensation to the employee for any disability. (Authorized by K.S.A. 44-573; implementing K.S.A. 44-510g, 44-528, 44-573; effective Jan. 1, 1966; amended Jan. 1, 1973; amended, E-74-31, July 1, 1974; amended May 1, 1975; amended Feb. 15, 1977; amended May 1, 1978; amended May 22, 1998.)

Article 20.—GUARDS

51-20-1. Failure of employee to use safety guards provided by employer. The director rules that where the rules regarding safety have generally been disregarded by employees and not rigidly enforced by the employer, violation of such rule will not prejudice an injured employee's right to compensation. (Authorized by K.S.A. 1977 Supp. 44-501, 44-573; effective Jan. 1, 1966; amended Jan. 1, 1973; amended Feb. 15, 1977; amended May 1, 1978.)

Article 21.—ASSIGNMENT OF COMPENSATION

51-21-1. Waiver of liability. A worker, under the act, cannot contract with the employer to relieve the latter of liability in case of an accident. (Authorized by K.S.A. 44-573; implementing K.S.A. 44-514, as amended by L. 1997, Ch. 182, Sec. 72; effective Jan. 1, 1966; amended Feb. 15, 1977; amended May 1, 1978; amended May 22, 1998.)

Article 22.—REDEMPTION OF LIABILITY

51-22-1. (Authorized by K.S.A. 1974 Supp. 44-531 and 44-573; effective Jan. 1, 1966; amended Jan. 1, 1973; revoked, E-74-31, July 1, 1974; revoked May 1, 1975.)

Article 23.—RELATIONSHIP OF PARTIES

51-23-1. (Authorized by K.S.A. 1977 Supp.

44-508 and 44-573; effective Jan. 1, 1966; amended, E-74-31, July 1, 1974; amended May 1, 1975; amended Feb. 15, 1977; revoked May 1, 1978.)

Article 24.—REHABILITATION

51-24-1. Vocational rehabilitation. (a) Each insurance carrier and employer shall furnish to the selected vocational rehabilitation vendor, or at the administrator's request, to the rehabilitation administrator, any medical reports that may be necessary to make an effective vocational rehabilitation determination.

(b) The rehabilitation administrator shall be the coordinator between the parties seeking a vocational assessment and the state or federal vocational rehabilitation agency or a qualified private agency. (Authorized by K.S.A. 44-573; implementing K.S.A. 44-510g; effective May 1, 1976; amended Feb. 15, 1977; amended May 1, 1978; amended May 1, 1983; amended March 30, 1992; amended May 22, 1998; amended June 21, 2002.)

51-24-2. (Authorized by K.S.A. 44-573; implementing K.S.A. 44-510, 44-510g; effective May 1, 1976; amended Feb. 15, 1977; amended May 1, 1983; revoked May 22, 1998.)

51-24-3. Definitions. As used in K.A.R. 51-24-1 through 51-24-10, the following definitions shall apply: (a) "Director" means the director of the Kansas division of workers compensation.

(b) "Job placement specialist" means a person who has provided the director with the necessary proof of eligibility for qualification under K.A.R. 51-24-5(c) and who has received a certification of qualification from the director.

(c) "Office" means a place in which business, professional, or clerical activities are conducted. An office may be part of a home if both of the following conditions are met:

(1) A portion of the home is regularly and exclusively used only for business.

(2) The home is the principal place for the administrative or management activities of the business or is the principal place for the vendor to meet or deal with patients, clients, or customers in the normal course of business.

(d) "Training facility" means a private agency, facility, or employer rehabilitation service program that has filed with the director the necessary evidence for the director to deem that agency, facility, or employer rehabilitation service program qualified to perform rehabilitation education or training.

(e) "Vendor" means a vocational rehabilitation facility, institution, agency, or employer program pursuant to K.S.A. 44-510g and amendments thereto.

(f) "Vocational rehabilitation counselor" and "counselor" mean a person who has provided the director with the necessary proof of eligibility for qualification under K.A.R. 51-24-5(a) and who has received a certification of qualification from the director.

(g) "Vocational rehabilitation evaluator" and "evaluator" mean a person who has provided the director with the necessary proof of eligibility for qualification under K.A.R. 51-24-5(b) and who has received a certification of qualification from the director. (Authorized by K.S.A. 44-573; implementing K.S.A. 44-510g; effective, T-88-20, July 1, 1987; effective May 1, 1988; amended June 21, 2002.)

51-24-4. Qualifications and duties of a vendor. For vocational rehabilitation cases under the Kansas workers compensation act, each person, firm, or corporation proposing to qualify as a vendor shall file an application with the director. The application shall be updated if changes occur that could affect the standing of the applicant to become or remain qualified. Each application shall include the following: (a) A statement that the person, firm, or corporation will maintain an office in the state of Kansas or in the metropolitan Kansas City area capable of responding to written or telephone inquiries regarding cases referred to that vendor;

(b) the addresses and telephone numbers of the offices within and without the state of Kansas from which vocational rehabilitation services will be performed for cases under the Kansas workers compensation act;

(c) a listing of each person employed to perform services as a medical manager, counselor, evaluator, or job placement specialist for cases referred to that vendor and an indication of each person's discipline;

(d) a statement that the person, firm, or corporation will employ or contract with one or more persons qualified to perform work as a medical manager, counselor, evaluator, or job placement specialist as necessary to carry out the purpose of the referral;

(e) a statement that the person, firm, or corporation will be responsible for the appropriateness and timeliness of service delivery by each medical manager, counselor, evaluator, and job placement

specialist employed or under contract to carry out the purpose of the referral;

(f) a statement indicating whether the person, firm, or corporation wants to be included in the list of vendors qualified and requesting to receive referrals from employers or the director;

(g) a statement that the person, firm, or corporation will report, in a form prescribed by the director, to the vocational rehabilitation administrator each referral received from an employer or insurance carrier and the date of the referral;

(h) a statement that the person, firm, or corporation will report upon the status of each evaluation 30 days after the referral and report upon the status of the evaluation and plan on each occasion upon which changes occur that affect the evaluation or plan. These reports shall be in a form prescribed by the director;

(i) a statement that the person, firm, or corporation will provide copies of all vocational assessments, plans, and progress reports to all parties involved, including attorneys for the claimant and respondent if it is a litigated case;

(j) a statement that the person, firm, or corporation will provide objective and impartial assessments of the injured worker's need for rehabilitation services;

(k) a statement that the person, firm, or corporation acknowledges that the authorization by the director to provide vocational rehabilitation services pursuant to the Kansas workers compensation act and regulations may be suspended or revoked for failure to comply with regulations adopted by the director; and

(l) a statement that the person, firm, or corporation will adhere to the fee schedule pursuant to K.S.A. 44-510i, and amendments thereto. (Authorized by K.S.A. 44-573; implementing K.S.A. 44-510g; effective, T-88-20, July 1, 1987; effective May 1, 1988; amended Nov. 27, 1989; amended March 30, 1992; amended June 21, 2002.)

51-24-5. Qualifications for counselor, evaluator, and job placement specialist. (a)

Each person seeking to qualify as a vocational rehabilitation counselor for cases under the Kansas workers compensation act shall:

(1) furnish proof to the director that the person has:

(A) a masters degree from a nationally accredited program in rehabilitation counselor education; or

(B)(i) a masters degree in counseling, guidance

and counseling, clinical psychology, counseling psychology, clinical social work or any related field which includes nine hours of graduate course work in counseling; and

(ii) one year of experience as a vocational rehabilitation counselor or completion of a nationally accredited rehabilitation counselor internship program from a college or university; or

(C) 32 graduate hours from an accredited rehabilitation counseling program, including coursework from at least nine of the following graduate courses:

(i) Medical aspects of disability;

(ii) counseling theories;

(iii) individual and group appraisal;

(iv) career information service;

(v) evaluation techniques in rehabilitation;

(vi) placement process in rehabilitation;

(vii) psychological aspects of disability;

(viii) case management in rehabilitation;

(ix) utilization of community resources;

(x) survey of rehabilitation;

(xi) supervised practicum in rehabilitation; or

(D) a bachelors degree in rehabilitation services and three years of experience as a vocational rehabilitation counselor;

(2) furnish the director with the addresses and telephone numbers of that person's offices and the names of the vendors with whom that person is affiliated;

(3) acknowledge that the person's qualification may be suspended or revoked if the person performs work in a rehabilitation discipline other than a discipline in which that person has been found to be qualified by the director; and

(4) acknowledge that the person's qualification may be suspended or revoked if the person repeatedly fails to file reports with the director in a timely manner or fails to comply with the regulations adopted by the director.

(b) Each person seeking to qualify as a vocational rehabilitation evaluator shall:

(1) furnish proof to the director that the person has:

(A) a masters or doctoral degree in vocational evaluation, rehabilitation counseling or work adjustment, and one year of experience as a vocational evaluator; or

(B) a masters degree in counseling, psychology, adult education or any related field which includes at least nine graduate hours in testing, evaluation and assessment and one year of experience as a vocational evaluator; or

(C) one year of experience as a vocational evaluator and 32 graduate hours from an accredited rehabilitation counseling program, including coursework from at least nine of the following graduate courses:

- (i) Medical aspects of disability;
- (ii) counseling theories;
- (iii) individual and group appraisal;
- (iv) career information service;
- (v) evaluation techniques in rehabilitation;
- (vi) placement process in rehabilitation;
- (vii) psychological aspects in disability;
- (viii) case management in rehabilitation;
- (ix) utilization of community resources;
- (x) survey of rehabilitation; and
- (xi) supervised practicum in rehabilitation; or

(D) a bachelors degree in vocational rehabilitation evaluation, psychology, special education or rehabilitation services and three years of experience as a vocational evaluator under the supervision of a masters degree vocational evaluator;

(2) furnish the director with the addresses and telephone numbers of that person's offices and the names of the vendors with whom that person is affiliated; and

(3) acknowledge that the person's qualification may be suspended or revoked if the person performs work in a rehabilitation discipline other than a discipline in which that person has been found to be qualified by the director; and

(4) acknowledge that the person's qualification may be suspended or revoked if the person repeatedly fails to file reports with the director in a timely manner or fails to comply with the regulations adopted by the director.

(c) Each person seeking to qualify as a vocational rehabilitation job placement specialist shall:

(1) furnish proof to the director that the person has:

(A) a masters or bachelors degree in vocational rehabilitation counseling, vocational counseling, rehabilitation services or job placement; or

(B) a bachelors degree in counseling, sociology, psychology or any related field and one year of experience as a job placement specialist for disabled individuals; or

(C) at least two years of college level education and three years of experience as a job placement specialist for disabled individuals; or

(D) qualified as a vocational rehabilitation counselor under K.A.R. 51-24-5;

(2) furnish the director with the addresses and telephone numbers of the person's offices and the

names of the vendors with whom that person is affiliated;

(3) acknowledge that the person's qualification may be suspended or revoked if the person performs work in a rehabilitation discipline other than a discipline in which that person has been found to be qualified by the director; and

(4) acknowledge that the person's qualification may be suspended or revoked if the person fails to file reports with the director in a timely manner or fails to comply with the regulations adopted by the director.

(d) Each person employed by or working under contract as a counselor, evaluator or job placement specialist for the Kansas department of rehabilitation services or other state or federal vocational rehabilitation agency shall be considered qualified in that person's discipline while working for that agency. (Authorized by K.S.A. 1988 Supp. 44-573; implementing K.S.A. 1988 Supp. 44-510g, as amended by 1989 SB 354, Sec. 1; effective, T-88-20, July 1, 1987; effective May 1, 1988; amended Nov. 27, 1989.)

51-24-6. Qualification of private training facility. Before a private training facility begins providing vocational rehabilitation training or education to persons under the Kansas workers compensation act, the vendor formulating the training plan shall file with the vocational rehabilitation administrator a sufficient description of the course work and qualifications of the individuals performing the training or education to satisfy the vocational rehabilitation administrator that the training is adequate and appropriate to fulfill the goal of the plan. (Authorized by K.S.A. 44-573; implementing K.S.A. 44-510g, as amended by 1987 HB 2573, Sec. 1; effective, T-88-20, July 1, 1987; effective May 1, 1988.)

51-24-7. (Authorized by K.S.A. 44-573; implementing K.S.A. 44-510g, as amended by 1987 HB 2573, Sec. 1; effective, T-88-20, July 1, 1987; effective May 1, 1988; revoked May 22, 1998.)

51-24-8. Standards of conduct for vocational rehabilitation vendors and vocational rehabilitation professionals. Each vocational rehabilitation vendor (vendor) and vocational rehabilitation professional (professional) who has been authorized by the director to provide vocational rehabilitation services pursuant to the Kansas workers compensation act and regulations: (a) shall adhere to all applicable federal,

state and local laws establishing and regulating business practices;

(b) shall adhere to the Kansas workers compensation law and regulations;

(c) shall report any known violation of these standards of conduct using the complaint procedures established in K.A.R. 51-24-9;

(d) shall not circumvent a standard of conduct through the actions of another;

(e) shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation;

(f) shall not engage in any conduct that adversely affects the vendor's or professional's fitness to perform assessments, evaluations, plans or any other act to be performed under the Kansas workers compensation act and regulations;

(g) shall not conceal or knowingly fail to disclose that which the vendor or professional is required by law to reveal;

(h) shall not knowingly use perjured testimony or false evidence;

(i) shall not knowingly make false statements of law or fact;

(j) shall not participate in the creation or preservation of evidence which the vendor or professional knows, or should reasonably know, is false;

(k) shall not counsel or assist in conduct that the vendor or professional knows to be illegal or fraudulent;

(l) shall not misrepresent himself or herself, the job duties or credentials of the vendor or professional nor promise results or offer services the vendor or professional has not been approved by the director to provide;

(m) shall not solicit referrals either directly or indirectly by offering to any one person or firm money or gifts, excluding food and beverages, that have a fair market value of more than \$50 per annum;

(n) shall not accept or continue employment or other contractual relationships if the exercise of professional judgement by the vendor or professional will be affected by financial, business, property, or personal interests of the vendor or professional;

(o) shall not accept a referral of a person who may unduly influence the vendor's or professional's actions;

(p) shall not provide any services in investigation of claims or negotiating for, or attempting to effect the settlement of a claim;

(q) shall not request a medical provider to change restrictions or ratings issued by that medical provider. The furnishing of occupational and

medical information to a medical provider so that the medical provider has adequate information on which to base a medical decision shall not be considered as a request that a medical provider change a restriction or rating;

(r) shall not accompany the injured worker during medical treatment or medical consultations if either the injured worker or the medical provider objects to the presence of the vendor or professional;

(s) shall not attempt to interpret the workers compensation act or regulations for a party but shall, at the first interview with an injured worker, furnish to the injured worker information prepared by the director for such purpose and maintain in the case file acknowledgement from the injured worker that such information was furnished;

(t) shall not communicate as to the merits of a litigated case or request specific case direction from the administrative law judge or hearing officer before whom the case is pending nor the rehabilitation administrator assigned except:

(1) in the course of the official proceedings in the case;

(2) in writing, if a copy is promptly furnished to each party or each party's attorney; or

(3) as otherwise authorized by law; and

(u) shall establish a bookkeeping system which insures that all charges made by the vendor or professional are for actual services rendered and that reports to the director regarding such charges are accurate and reflect entirely the consideration asked and given for services in each case. (Authorized by K.S.A. 1991 Supp. 44-573; implementing K.S.A. 1991 Supp. 44-510g; effective March 30, 1992.)

51-24-9. Procedure for reviewing and processing complaints of violations of standards of conduct.

(a) Individuals and firms approved by the director as qualified vocational rehabilitation professionals and vendors under K.A.R. 51-24-1 et seq., shall be subject to disciplinary action for violation of the standards of conduct set forth in K.A.R. 51-24-8.

(b) Oral or unsigned complaints of violations of the standards of conduct shall be considered as informal complaints and shall be handled by the director or administrator as deemed appropriate.

(c) Complaints of standards of conduct violations that are in writing and signed by the complaining party shall be considered formal complaints.

(d) The following procedure shall be used to address formal complaints of standards of conduct

violations: (1) Each formal complaint of standards of conduct violations shall be in writing, signed by the complaining party and directed to the administrator. The complaint shall identify the vendor or professional complained of (hereinafter referred to as respondent), the nature of the violation and a statement of the facts constituting the violation.

(2) A copy of the complaint shall be sent by the administrator to each respondent by certified mail, return receipt requested. The complaining party shall be notified by the administrator of receipt of the complaint.

(3) Each respondent shall have 30 days from the date of the certified receipt to deliver to the administrator a factual written response to each particular of the complaint. If requested in writing by respondent before the expiration of the 30-day response time, one 30-day extension of time to file a response may be granted by the administrator. Failure to provide a timely written response to the administrator shall result in immediate suspension of the qualification of the respondent. This suspension shall remain in effect until the response is received or until appropriate hearing processes are completed.

(4) Each respondent shall cooperate fully with attempts at resolving the complaint. Cooperation shall include: (A) responding fully and promptly to the administrator, administrative law judge or hearing officer concerning any questions on the subject of the complaint;

(B) providing copies of pertinent records, reports, logs, data or cost information; and

(C) attending meetings or hearings held by the administrator, administrative law judge or hearing officer on the subject of the complaint.

(5) Meetings with the complaining party and the respondent, individually or jointly, may be scheduled by the administrator prior to the appointment of an administrative law judge or hearing officer for: (A) clarification;

(B) explanation;

(C) settlement of issues;

(D) obtaining information;

(E) instructing parties to the complaint; or

(F) to address the issues.

(6) Upon receipt of a response, the complaint and response shall be reviewed by the administrator and, within 30 days, a conclusion shall be reached by the administrator as to whether there is sufficient indication that respondent may have violated the standards of conduct.

(7) If the administrator concludes that there is

not substantial indication that respondent violated the standards of conduct, the complaint shall be dismissed by the administrator. The complaining party and the respondent shall be notified by the administrator of the actions of the administrator and the reasons for the conclusions reached.

(8) If the administrator concludes that there is a substantial indication that respondent may have violated the standards of conduct, an administrative law judge or hearing officer shall be appointed by the director to hear the complaint. The administrative law judge or hearing officer shall conduct a hearing or hearings and make recommendations as to whether disciplinary action should be taken, and if so, recommend the degree and type of discipline warranted.

(9) Any evidentiary hearing conducted by the administrative law judge or hearing officer regarding the complaint shall be recorded verbatim by a certified shorthand reporter. If there is a decision not to discipline the respondent, the verbatim notes of the reporter shall not be transcribed. However, such notes shall be retained as part of the records of the division of workers compensation. If there is a decision to discipline the respondent, the recording of the hearing shall be transcribed and retained as part of the records of the division of workers compensation. Costs of the shorthand reporter shall be assessed to respondent if it is found discipline is warranted.

(10) If within 10 days the complaining party, respondent or administrator request a review of the recommendations of the administrative law judge or hearing officer, a review, de novo, shall be conducted by the director on the record of the hearing or hearings and the recommendations of the administrative law judge or hearing officer.

(11) Within 20 days after completion of the review, a decision shall be entered by the director which may either affirm, modify or reverse the decision of the administrative law judge or hearing officer. The director's determination shall be in writing, with copies sent to the: (A) administrative law judge or hearing officer;

(B) administrator;

(C) complaining party; and

(D) respondent.

(12) Any action of the director shall be subject to judicial review in accordance with the act for judicial review and civil enforcement of agency actions, K.S.A. 77-601 et seq. and amendments thereto.

(e) If disciplinary measures are imposed on a professional at the final level of hearing or ap-

peal, and the disciplinary measures taken prevent the professional from completing all or part of the rehabilitation process on a case or cases assigned to the professional, the vendor for whom the disciplined professional was performing services shall effect the reassignment of the case to another professional.

(f) If disciplinary measures are imposed on a vendor at the final level of hearing or appeal, and the disciplinary measures taken prevent the vendor from completing all or part of the rehabilitation process on a case or cases assigned to the vendor, the administrator shall effect the reassignment of the case to another vendor. (Authorized by K.S.A. 1990 Supp. 44-573; implementing K.S.A. 44-510g, as amended by 1991 HB 2457, Sec. 4; effective March 30, 1992.)

51-24-10. Penalties for violations of standards of conduct. If a person or firm qualified by the director pursuant to K.A.R. 51-24-4 or K.A.R. 51-24-5 is found, following the procedure in K.A.R. 51-24-9, to have violated the standards of conduct

set out in K.A.R. 51-24-8, any combination of the following disciplinary measures may be imposed:

(a) the respondent may be issued a letter of censure by the director;

(b) the respondent may be required to create and implement a written corrective action plan acceptable to the director;

(c) the respondent may be prohibited from undertaking work on any new cases for a stated period of time;

(d) the respondent may be prohibited from working on the respondent's existing caseload for a stated period of time;

(e) the respondent may be permanently or temporarily prohibited from accepting cases from specific referral sources;

(f) the respondent's qualification may be revoked for a stated period of time; or

(g) the respondent's qualification may be revoked permanently. (Authorized by K.S.A. 1990 Supp. 44-573; implementing K.S.A. 44-510g, as amended by 1991 HB 2457, Sec. 4; effective March 30, 1992.)

Agency 53

State Records Board

Editor's Note:

Articles 1 and 2 have been approved by the State Records Board but do not fall under the statutory definition of a rule and regulation (see K.S.A. 77-415). Therefore, the rules and regulations are not published but may be found at the Kansas Historical Society and at www.kshs.org.

Articles

53-3. GENERAL RECORDS RETENTION DISPOSITION SCHEDULE FOR STATE AGENCIES.

53-4. RECORDS OFFICER.

Article 3.—GENERAL RECORDS RETENTION DISPOSITION SCHEDULE FOR STATE AGENCIES

53-3-1. General records retention and disposition schedule for state agencies. (a) A general schedule for the retention and disposition of state government records, as approved by the state records board on October 13, 1988, is adopted by reference. This schedule shall be followed in the retention and disposition of records in the custody of each state agency except that:

(1) Agencies may elect to retain records for longer periods of time than as stated in the general schedule.

(2) If other federal or state regulations require longer retention for specific records, the longer period shall prevail.

(3) All records required for state or federal audits shall be maintained until those audits are completed regardless of the retention periods appearing in the general schedule.

(b) The disposition of any state government records not included in the general schedule shall require authorization by the state record board unless that disposition involves transfer of records to the state archives. Each agency requesting disposition authorization shall submit the request through the state archivist.

(c) Copies of the general schedule for retention and disposition of state government records, as well as other schedules approved by the state records board, may be obtained from the state historical society's department of archives. (Authorized by and implementing K.S.A. 75-3504, as amended by L. 1988, ch. 366; effective Dec. 5, 1988.)

Article 4.—RECORDS OFFICER

53-4-1. Records officer. (a) A staff member shall be appointed by the director of each state agency to the position of agency records officer; a separate records officer for each major organizational subdivision may be appointed by directors of larger agencies. The duties of the records officer shall be to:

(1) Maintain a liaison between the agency, the state records board, and the state historical society's department of archives;

(2) prepare and maintain an inventory of each record series in the custody of the agency in cooperation with the archives staff;

(3) prepare and submit retention and disposition schedules for the state agency's records for approval or modification to the state records board in cooperation with the archives staff;

(4) periodically review the agency's records retention and disposition schedules, and submit requests for any needed modifications to the state records board;

(5) disseminate pertinent information regarding records management to appropriate staff members within the state agency; and

(6) formulate and oversee implementation of agency records management policies and procedures with the assistance of the archives staff to ensure compliance with all applicable federal and state statutes and regulations. These policies and procedures shall include:

(A) Precautions against the destruction or other disposition of agency records without authorization of the state records board, except that these records may be transferred to the state archives with the consent of the state archivist under K.S.A. 45-405;

(B) storage conditons and procedures for handling agency records with enduring value that will minimize damage and deterioration;

(C) security arrangements that prevent loss, defacement or destruction of agency records due to theft or vandalism; and

(D) procedures to ensure that all microfilm copies of records with enduring value meet the requirements of K.S.A. 75-3506 and K.S.A. 45-412.

(b) At the discretion of each agency director, the records officer may be responsible for ensur-

ing adequate public access to agency records as required by the open records act, K.S.A. 45-201 *et seq.*, and for ensuring that satisfactory safeguards exist against unauthorized disclosure of confidential records.

(c) Each records officer shall be a staff member holding an administrative or professional position. The duties of the records officer may be collateral duties to an existing position in the agency. (Authorized by and implementing K.S.A. 75-3504 amended by L. 1988, ch. 366; effective Dec. 5, 1988.)

Agency 54

State Library

Articles

- 54-1. REGIONAL SYSTEMS OF COOPERATING LIBRARIES.
- 54-2. ESTABLISHING A PUBLICATION COLLECTION AND DEPOSITORY SYSTEM.
- 54-3. FINANCIAL AID FOR BLIND AND PHYSICALLY HANDICAPPED SUB-REGIONAL LIBRARIES.
- 54-4. CHILDREN'S INTERNET PROTECTION; PUBLIC LIBRARY REQUIREMENTS.

Article 1.—REGIONAL SYSTEMS OF COOPERATING LIBRARIES

54-1-1. Establishment of regional system of cooperating libraries. Libraries petitioning the state library advisory commission for establishment of a regional system of cooperating libraries shall present to the state library advisory commission a comprehensive plan of service to be rendered by the regional system of cooperating libraries, and such plan of services shall be approved by the state library advisory commission prior to establishment of a regional system of cooperating libraries. (Authorized by K.S.A. 1967 Supp. 75-2552; effective Jan. 1, 1968.)

54-1-2. Same: resolution by participants. Libraries petitioning the state library advisory commission for the establishment of a regional system of cooperating libraries, or participation in a regional system of cooperating libraries, shall present to said commission resolutions adopted by the board of trustees or other governing body of each petitioning library which requests approval of such system. Appropriate forms shall be provided by the state librarian. (Authorized by K.S.A. 1967 Supp. 75-2552; effective Jan. 1, 1968.)

54-1-3. Admission to regional system of cooperating libraries. Any library desiring to participate in a regional system of cooperating libraries which has theretofore been established by the state library advisory commission shall file a petition to participate in said regional system of cooperating libraries with the regional system of cooperating libraries' board of trustees, and said board shall, if it approves the petition to participate, petition the state library advisory commission to include said library as a participating library in such regional system of cooperating libraries. If such petition is approved by the state li-

brary advisory commission, the petitioning library shall become an official participant in the regional system of cooperating libraries and shall have regional system of cooperating libraries board of trustees representation. Such library shall be entitled to services of the regional system of cooperating libraries one year from the 1st day of January following the approval of said petition by the state library advisory commission, unless financial contribution or other agreement by such library is agreed upon between the board of trustees of the regional system of cooperating libraries and the petitioning library and approved by the state library advisory commission to authorize services at an earlier date. (Authorized by K.S.A. 1967 Supp. 75-2552; effective Jan. 1, 1968.)

54-1-4. Federal civil rights compliance. Each library participating in, or receiving services or other benefits from a regional system of cooperating libraries, shall file an assurance of compliance with the federal civil rights act of 1964 with the state library and shall file continuing assurances each year thereafter. Regional systems of cooperating libraries shall file assurances of compliance with the federal civil rights act of 1964 with the state library within thirty (30) days following establishment. Regional systems of cooperating libraries shall file continuing assurance of compliance with the federal civil rights act of 1964 annually, following the initial signing of such compliance. Appropriate forms shall be supplied by the state librarian. (Authorized by K.S.A. 1967 Supp. 75-2552; effective Jan. 1, 1968.)

54-1-5. Annual program. Regional systems of cooperating libraries shall submit annually to the state library advisory commission for review and amendment a program of services and tentative budget of the regional system of cooperating

libraries. Forms for said program of services shall be supplied by the state librarian. (Authorized by K.S.A. 1967 Supp. 75-2552; effective Jan. 1, 1968.)

54-1-6. Annual audit. Each regional system of cooperating libraries shall annually have its accounts audited as provided for cities in K.S.A. 1967 Supp. 75-1122. (Authorized by K.S.A. 1967 Supp. 75-2552; effective Jan. 1, 1968.)

54-1-7. Personnel. Regional systems of cooperating libraries shall employ a person certified to be a professional librarian by the state library advisory commission as director of the system. The state library advisory commission shall certify no person as a professional librarian unless he possesses the following qualifications:

(a) General education: A bachelor's degree from a recognized college or university.

(b) Professional education: A fifth year degree or its equivalent from an accredited library school.

(c) Experience: Two years full-time professional experience in an administrative position. (Authorized by K.S.A. 1967 Supp. 75-2552; effective Jan. 1, 1968.)

54-1-8. Provision for free service. Libraries participating in a regional system of cooperating libraries shall permit any citizen of the territory comprising the system to borrow materials or receive services without charge, subject to reasonable library rules. (Authorized by K.S.A. 1967 Supp. 75-2552; effective Jan. 1, 1968.)

54-1-9. Administrative center. Regional systems of cooperating libraries shall establish an administrative center. (Authorized by K.S.A. 1967 Supp. 75-2552; effective Jan. 1, 1968.)

54-1-10. Annual reports. Regional systems of cooperating libraries and all libraries participating in regional systems of cooperating libraries shall submit annual reports regarding such statistical or other information as may be required by the state librarian. Appropriate forms will be provided by the state librarian. (Authorized by K.S.A. 1967 Supp. 75-2552; effective Jan. 1, 1968.)

54-1-11. Grants. No grant of state or federal funds to a regional system of cooperating libraries will be approved unless such regional system of cooperating libraries has presented to the state library advisory commission a plan and budget for use of such grant. (Authorized by K.S.A. 1967 Supp. 75-2552; effective Jan. 1, 1968.)

54-1-12. Withdrawal from regional system of cooperating libraries. A library participating in a regional system of cooperating libraries may petition the state library advisory commission for withdrawal from said regional system of cooperating libraries if such petition for withdrawal is presented to the state library advisory commission no less than one year prior to the time that the regional system of cooperating libraries is required to publish its annual budget. (Authorized by K.S.A. 1967 Supp. 75-2552; effective Jan. 1, 1968.)

54-1-13. Same: opinion of regional system board of trustees. Prior to approval of a petition for withdrawal from a regional system of cooperating libraries the state library advisory commission shall seek the advice and opinion thereon of the regional system of cooperating libraries board of trustees from which the library is petitioning to withdraw. (Authorized by K.S.A. 1967 Supp. 75-2552; effective Jan. 1, 1968.)

54-1-14. Same: hearing. The state library advisory commission shall within thirty (30) days after the receipt of a petition for withdrawal from a regional system of cooperating libraries by a participating library set a date for a hearing to consider said petition. (Authorized by K.S.A. 1967 Supp. 75-2552; effective Jan. 1, 1968.)

54-1-15. Same: transfer of property. Books, furniture, equipment or other property purchased for a library participating in a regional system of cooperating libraries and paid for from regional system of cooperating libraries or state funds shall be the property of the regional system of cooperating libraries. In the event a participating library should petition the state library advisory commission for withdrawal from the regional system of cooperating libraries and such withdrawal is permitted by the state library advisory commission all books, furniture, equipment, or other property which has been purchased with regional system of cooperating libraries or state funds shall be returned to the regional system of cooperating libraries upon demand of the regional system of cooperating libraries' board of trustees. (Authorized by K.S.A. 1967 Supp. 75-2552; effective Jan. 1, 1968.)

54-1-16. Name of regional system of cooperating libraries. The name selected by the regional system of cooperating libraries board of trustees for the regional system of cooperating li-

braries shall be approved by the state library advisory commission. (Authorized by K.S.A. 1967 Supp. 75-2552; effective Jan. 1, 1968.)

54-1-17. Exclusion from regional system of cooperating libraries. Whenever (1) a public library is established according to law after the date of establishment of a regional system of cooperating libraries in which such public library is included as a part of the taxing district of the regional system of cooperating libraries and (2) if the governing body of such public library has regularly levied one-fourth mill or more of tax for support of said public library for a period of not less than two years, then, such governing body may petition the state library advisory commission for exclusion from the regional system of cooperating libraries taxing district. Such petition for exclusion shall be presented to the state library advisory commission not later than November 15 of each year. Such petition shall include but shall not be limited to the following:

- (a) The official name of the public library;
- (b) The official name of the governing body and the name of the county in which such public library is located;
- (c) The number of persons served by the public library within the taxing district supporting such public library;
- (d) Official evidence of support by tax levy for a period of not less than two years;
- (e) Evidence of adequacy of service by such public library;
- (f) Evidence of the legality of establishment of such public library;
- (g) Any other information as may be required by the state library advisory commission.

The state library advisory commission shall within thirty (30) days after the receipt of a petition for exclusion set a date for a hearing to consider said petition.

If the petition meets the requirements for making such petition and if exclusion will do no manifest harm to the regional system of cooperating libraries, the state commission may enter its order excluding such taxing district from the regional system. Such order shall be filed with the state librarian and the governing body of the regional system of cooperating libraries. (Authorized by K.S.A. 1968 Supp. 75-2552; effective Jan. 1, 1969.)

54-1-18. Club or private libraries. Any club or private library desiring to participate in a

regional system of cooperating libraries shall participate in like manner as required for a public library established and operating under Kansas law; however, such club or private library shall participate only under provisions of K.S.A. 12-2904 as amended by chapter 221 of the 1968 Laws of Kansas, and such contracts as are required shall be subject to the approval of the attorney general and the state librarian. (Authorized by K.S.A. 1968 Supp. 75-2552; effective Jan. 1, 1969.)

54-1-19. School, community, junior college and college or university library. The governing body of any school district, community junior college district or any college or university desiring to participate in a regional system of cooperating libraries may file a petition to participate in a regional system of cooperating libraries in the manner set forth in the rule and regulation 54-1-3. The library of such institution shall meet standards of the north central association of colleges and secondary schools. The board of the regional system of cooperating libraries shall, if it approves such petition, file a petition and amendment to its plan as approved by the state library advisory commission, thereby requesting the state library advisory commission to approve said petition and plan permitting participation in the regional system of cooperating libraries. (Authorized by K.S.A. 1968 Supp. 75-2552; effective Jan. 1, 1969.)

54-1-20. Contracts. Any regional system of cooperating libraries' board of trustees is authorized to contract with the board of any participating library or with any other regional system of cooperating libraries governing body, but such contract shall not take effect until approved by the state librarian. (Authorized by K.S.A. 1968 Supp. 75-2552; effective Jan. 1, 1969.)

54-1-21. Exclusion from regional system of cooperating libraries. When a public library taxing district, regularly levies one-fourth mill or more of tax for a period of not less than two consecutive years for the support of a public library, and which taxing district has been included in a regional system, the governing body of the taxing district may petition for exclusion from the taxing district of the regional system of cooperating libraries in the manner prescribed under K.A.R. 54-1-17. (Authorized by K.S.A. 75-2552; implementing K.S.A. 75-2550; effective Jan. 1, 1970; amended May 1, 1982.)

54-1-22. Inclusion in regional system of cooperating libraries. When the governing body of a taxing district which has been excluded from the taxing district of a regional system of cooperating libraries fails to levy one-fourth or more mills of tax for public library support for a period of two consecutive years, the state library advisory commission shall enter its order to include such taxing district as a part of the regional system of cooperating libraries taxing district. (Authorized by K.S.A. 1969 Supp. 75-2552; effective Jan. 1, 1970.)

54-1-23. Allocation of the grant-in-aid fund among the regional systems of cooperating libraries. (a) The system grant-in-aid distribution specified by K.S.A. 75-2555, shall allocate a base grant of equal size to each regional library system.

(b) The remainder of each annual authorization shall be allocated using a formula with the following two factors:

(1) one-fourth of the population of the system territory; and

(2) the total square miles of the system territory.

(c) The base grant component of the distribution shall be increased or decreased by an amount determined using the following calculations:

(1) Determine the percent of change in the total annual authorization from the prior fiscal year to the current fiscal year; and

(2) Multiply the percent determined under paragraph (1) by the difference between the total annual authorization in the prior fiscal year and the total annual authorization in the current fiscal year. This amount shall be added to the base grant component in those years when the authorization has been increased or subtracted from the base grant component when the authorization has been decreased.

(3) This method of allocation between the base and formula components shall be followed until the two components are equal.

(4) Future increases in the authorization shall then be equally divided between the base and formula components.

(d) In any year that the total annual authorization is decreased to, or below, the level of the 1989 amount, the fund shall be divided equally among the systems. (Authorized by and implementing K.S.A. 75-2555; effective Jan. 25, 1993.)

Article 2.—ESTABLISHING A PUBLICATION COLLECTION AND DEPOSITORY SYSTEM

54-2-1. Deposit by state agency. The state librarian shall determine the number of copies to be supplied by each state agency in accordance with the needs of the depository system, and shall inform each state agency on a quarterly basis as to any change in the number of copies needed. (Authorized by K.S.A. 1976 Supp. 75-2568; effective Feb. 15, 1977.)

54-2-2. Distribution of publications. The state library shall forward one (1) copy to each complete depository, and one (1) copy of each publication requested by each selective depository. (Authorized by K.S.A. 1976 Supp. 75-2568; effective Feb. 15, 1977.)

54-2-3. Complete depository library defined. Complete depository library as employed here shall mean any Kansas resource library, regional public library, libraries in institutions of higher education or other libraries that have contracted with the state librarian having agreed to receive one (1) copy of all publications, and agreeing to provide adequate facilities for the storage and use of any such publication, and agreeing to render reasonable service without charge to qualified patrons in the use of such publications, and agreeing to maintain that full collection of publications subject to disposal only upon approval by the state librarian, and agreeing to abide by other such provisions of the contract as stipulated by the state librarian. (Authorized by K.S.A. 1976 Supp. 75-2568; effective Feb. 15, 1977.)

54-2-4. Selective depository library defined. Selective depository library as here employed shall mean any Kansas resource library, regional public library, libraries in institutions of higher education or other libraries that have been designated by the state librarian as a selective depository, and have contracted with the state librarian agreeing to receive one (1) copy of all publications requested and agreeing to provide adequate facilities for storage and use of any such publication, and agreeing to render reasonable service without charge to qualified patrons in the use of such publications, and agreeing to maintain that collection subject to disposal upon approval by the state librarian, and agreeing to abide by such oth-

er provisions of the contract as stipulated by the state librarian. (Authorized by K.S.A. 1976 Supp. 75-2568; effective Feb. 15, 1977.)

54-2-5. Selection of publication by selective depositories. Request for publications by selective depositories shall be submitted in writing to the state librarian, and on proper forms provided by the state librarian. The written request for publication(s) must state the item number(s) of the publication(s) to be received by the selective depositories. (Authorized by K.S.A. 1976 Supp. 75-2568; effective Feb. 15, 1977.)

54-2-6. Item number. The state librarian shall assign each publication or group of publications a specific item number, and shall provide a list of such item numbers and the publication to which they correspond to each complete and selective depository library. Said list shall be revised on an annual basis. (Authorized by K.S.A. 1976 Supp. 75-2568; effective Feb. 15, 1977.)

54-2-7. Agency list of publications. Each state agency shall furnish to the state library a complete list of its publications for the previous year. (Authorized by K.S.A. 1976 Supp. 75-2568; effective Feb. 15, 1977.)

Article 3.—FINANCIAL AID FOR BLIND AND PHYSICALLY HANDICAPPED SUBREGIONAL LIBRARIES

54-3-1. Definitions. “Blind and physically handicapped sub-regional library” means a public library (city, county, or multi-county) serving a minimum of two hundred (200) readers in cooperation with its regional library for the blind and physically handicapped. “Eligible blind and physically handicapped readers” means those individuals who cannot read or use ordinary printed books, and other printed materials because of physical limitations. This limitation may be temporary or permanent. (Authorized by K.S.A. 75-2542, 75-2547; effective May 1, 1978.)

54-3-2. Procedures for determining eligibility for grant. An application shall be filed before June 1 of each year with the state librarian on such forms as provided by the state librarian:

(a) Budget

(1) The administrative agency receiving the grant funds shall submit a budget of proposed expenditures.

(2) Federal, state and local funds shall be itemized.

(3) The local administrative agency may not deviate more than fifteen percent (15%) for any proposed expenditure category without submission of a revised budget to the Kansas state library with a request that the revision be approved.

(4) No revisions may take force until written approval is received from the state librarian. (Authorized by K.S.A. 75-2542, 75-2547; modified, L. 1978, ch. 446, May 1, 1978.)

54-3-3. Procedure for determining contract payments. (a) Federal funds. Each subregional library shall receive, as a contract payment, that portion of available federal money which equals the subregional's average percentage of the total active readers served during each of the preceding three years, as certified by the state library on October 15 of each year.

(b) State funds. Each annual budget request prepared by the state librarian shall include the estimated amount needed to fund this program. After a base contract payment of \$7,500 for each subregional library, any additional payment shall be allocated to each subregional using the percentage method identified in subsection (a).

(c) Contract payments. State and federal funds shall be paid to each qualifying subregional library in two payments, on or about October 1 and April 1, subject to appropriation of state and federal funds. (Authorized by K.S.A. 75-2542; implementing K.S.A. 75-2547 and 75-2551; modified, L. 1978, ch. 446, May 1, 1978; modified, L. 1982, ch. 470, May 1, 1982; amended Jan. 16, 1989.)

Article 4.—CHILDREN'S INTERNET PROTECTION; PUBLIC LIBRARY REQUIREMENTS

54-4-1. Public library internet access policy; adoption and review. (a) The governing body of each public library shall adopt an internet access policy that meets the applicable requirements of subsection (b) and K.S.A. 2013 Supp. 75-2589, and amendments thereto.

(b) Each internet access policy shall meet the following requirements:

(1) State that the purpose of the policy is to restrict access to those materials that are child pornography, are harmful to minors, or are obscene;

(2) state how the public library will meet the

applicable requirements of K.S.A. 2013 Supp. 75-2589, and amendments thereto;

(3) require the public library to inform its patrons of the procedures that library employees follow to enforce the applicable requirements of K.S.A. 2013 Supp. 75-2589, and amendments thereto; and

(4) require the public library to inform its patrons that procedures for the submission of com-

plaints about the policy, the enforcement of the policy, and observed patron behavior have been adopted and are available for review.

(c) The governing body of each public library shall review its internet access policy at least once every three years. (Authorized by and implementing K.S.A. 2013 Supp. 75-2589; effective March 14, 2014.)

Agency 55

Board for the Registration and Examination of Landscape Architects

Editor's Note:

Effective July 1, 1976, the Board for the Registration and Examination of Landscape Architects was abolished and its powers and duties transferred to the State Board of Technical Professions. The rules and regulations formerly appearing under this Agency 55 have been replaced by rules and regulations adopted by the State Board of Technical Professions, see Agency 66.

Articles

- 55-1. *APPLICATIONS. (Not in active use.)*
- 55-2. *FEEES. (Not in active use.)*
- 55-3. *EXAMINATION. (Not in active use.)*
- 55-4. *SEAL AND CERTIFICATE. (Not in active use.)*

Article 1.—APPLICATIONS

55-1-1. (Authorized by K.S.A. 1970 Supp. 6-209, 6-212; effective Jan. 1, 1971; powers and duties transferred July 1, 1976 to agency 66.)

55-1-2. (Authorized by K.S.A. 1970 Supp. 6-209, 6-212; effective Jan. 1, 1971; powers and duties transferred July 1, 1976 to agency 66.)

Article 2.—FEES

55-2-1. (Authorized by K.S.A. 1970 Supp. 6-209, 6-212; effective Jan. 1, 1971; powers and duties transferred July 1, 1976 to agency 66.)

55-2-2. (Authorized by K.S.A. 1970 Supp. 6-208, 6-209, 6-216; effective Jan. 1, 1971; powers and duties transferred July 1, 1976 to agency 66.)

Article 3.—EXAMINATION

55-3-1. (Authorized by K.S.A. 1970 Supp.

6-209, 6-213; effective Jan. 1, 1971; powers and duties transferred July 1, 1976 to agency 66.)

55-3-2. (Authorized by K.S.A. 1970 Supp. 6-209, 6-214; effective Jan. 1, 1971; powers and duties transferred July 1, 1976 to agency 66.)

55-3-3. (Authorized by K.S.A. 1970 Supp. 6-209, 6-212, 6-214; effective Jan. 1, 1971; powers and duties transferred July 1, 1976 to agency 66.)

55-3-4. (Authorized by K.S.A. 1970 Supp. 6-209, 6-219; effective Jan. 1, 1971; powers and duties transferred July 1, 1976 to agency 66.)

Article 4.—SEAL AND CERTIFICATE

55-4-1. (Authorized by K.S.A. 1970 Supp. 6-209, 6-214; effective Jan. 1, 1971; powers and duties transferred July 1, 1976 to agency 66.)

55-4-2. (Authorized by K.S.A. 1970 Supp. 6-209; effective Jan. 1, 1971; powers and duties transferred July 1, 1976 to agency 66.)

Agency 56

Adjutant General's Department

Articles

- 56-1. ARMORIES.
- 56-2. STANDARDS FOR LOCAL DISASTER AGENCIES.
- 56-3. NUCLEAR EMERGENCY PREPAREDNESS FEES.

Article 1.—ARMORIES

56-1-1. Definitions. (a) "Armory" means any armory property deeded to the Kansas military advisory board; any armory property licensed, leased, or rented from an agency within the state; and any armory property licensed from a federal military agency permitted by chapter 133, title 10, U.S.C.A.

(b) "State military" means any unit of the Kansas national guard or when organized, any state guard unit, or both, provided by K.S.A. 48-204 and K.S.A. 48-501.

(c) "State military use of the armory" means the common practice of a Kansas national guard unit or, when organized, a state guard unit using the armory for training that is permitted by state and federal military law. It shall include two other state military uses:

(1) Any activity that is compatible with any unit morale program;

(2) Any activity that results from a natural or manmade disaster emergency under provisions of K.S.A. 48-907.

(d) "Station commander" means any commissioned officer in the Kansas national guard who has been appointed by the adjutant general to manage an armory operation.

(e) "Use of armories for other public functions" shall include activities of non-profit organizations or noncommercial activities. (Authorized by K.S.A. 48-907, L. 1982, ch. 225; implementing K.S.A. 48-324, 48-907, K.S.A. 1982 Supp. 48-301, 48-309; effective May 1, 1983.)

56-1-2. Armory purpose and funding. (a) Purpose.

- (1) Each unit shall use the armory for:
 - (A) An assembly area;
 - (B) state military training provided for by federal and state military law;
 - (C) storage and security of property and equipment; and

(D) other state military unit activity.

(2) Each armory shall be utilized to the fullest extent possible that is compatible with each Kansas national guard unit activity provided by state and federal military law.

(3) Any person may be temporarily housed in any armory when the governor or the governor's authorized agent has declared a natural or man-made disaster emergency.

(4) The state guard, when organized, may use any armory.

(b) Funding.

Any operational cost associated with use of any armory for a public function shall be reimbursed by one or more contractual means as follows:

- (1) Cash;
- (2) equipment;
- (3) services;
- (4) goods;

(5) any other item or items of value. (Authorized by K.S.A. 1982 Supp. 48-301; implementing K.S.A. 48-206, K.S.A. 1982 Supp. 48-301, 48-309, 48-324, K.S.A. 48-504, 48-907; effective May 1, 1983; amended May 1, 1984.)

56-1-3. Policies. (a) Written copies of all armory related orders and rules, and of K.A.R. 56-1-1, *et seq.*, shall be furnished in writing to any person, community or government agency upon request.

(b) Any person, community or government agency, and any Kansas national guard unit or, when organized, any state guard unit that uses any armory shall comply with the alcoholic beverage laws provided for by K.S.A. 1981 Supp. 41-719.

(c) Any state military use of the armory shall take precedence over any other use of the armory. (Authorized by K.S.A. 48-907, L. 1982, ch. 225; implementing K.S.A. 48-304, 48-504, K.S.A. 1982 Supp. 48-301; effective May 1, 1983.)

56-1-4. Responsibilities. (a) Each person or government agency shall:

(1) Submit to the station commander a completed application form or a written request for temporary use of the armory;

(2) Submit a completed application form or a written request for regular use of the armory to the adjutant general's office in the State Defense Building, 2800 Topeka Avenue. This shall include any request for pre-school use of any armory located in any city pursuant to K.S.A. 1982 Supp. 48-324;

(3) Meet each requirement listed in the agreement or contract for use of any armory.

(b) Each station commander shall:

(1) Plan, procure, and manage the use of any fund, equipment, good, or service or any other item of value which the armory may receive for its use;

(2) Publish supplemental armory policy and procedure that is consistent with each adjutant general policy, city ordinance, county resolution, lawful business practice, and state and federal military law. The station commander shall forward to the adjutant general a copy of each publication;

(3) Approve each request for temporary use of the armory if that use is for a public function as defined in K.A.R. 56-1-1;

(4) Meet each requirement listed in the agreement or contract for use of the armory;

(5) Forward to the adjutant general any requests for:

(A) Temporary use of the armory when that use is not granted;

(B) any regular use of the armory. The station commander shall include an appropriate recommendation with each request;

(C) a determination as to whether a proposed temporary use of the armory constitutes a public function as defined in K.A.R. 56-1-1;

(6) Submit annually, or more often if needed, to the adjutant general, an armory income statement and any other financial management report required by the adjutant general. The statement and any other required report shall include any item of value used or expected to be received in an armory operation. All cash receipts shall be reported; and

(7) Establish and maintain permanent records on use of the armory.

(d) Each unit administrator shall:

(1) Administer and manage daily unit and armory operations;

(2) Exercise the responsibilities of the station commander listed in subsection (b) when the station commander is not available for duty;

(3) Open the armory for temporary use by any person when a natural or manmade disaster emergency has been declared by the governor or the governor's authorized agent. "Unit administrator" shall mean any qualified person appointed by the adjutant general who is:

(A) A federal employee under the provisions of title 32, U.S.C.A.; or

(B) both a member of the Kansas national guard and a state unclassified employee. (Authorized by K.S.A. 1982 Supp. 48-301, K.S.A. 48-907; implementing K.S.A. 48-204, K.S.A. 1982 Supp. 48-301, 48-309, 48-324, K.S.A. 48-504, 48-907; effective May 1, 1983; amended May 1, 1984.)

56-1-5. Variance. If exceptional circumstances make strict conformity with K.A.R. 56-1, *et seq.*, impractical or not feasible, any person, community, or government agency may submit a written request to the adjutant general for an exception. The military advisory board may be given the opportunity to review the request and make appropriate recommendations to the adjutant general. The adjutant general may grant an exception in the interest of public health, safety, and welfare. (Authorized by K.S.A. 48-907, K.S.A. 1982 Supp. 48-301; implementing K.S.A. 48-204, 48-304, 48-907, L. 1982, ch. 225; effective May 1, 1983.)

56-1-6. Enforcement. (a) Any person or government agency violating any of these regulations or armory rules and procedures may be expelled and ejected from the armory.

(b) Any dispute concerning applicant rights or obligations under the rental or lease agreement or concerning any decision made by the adjutant general shall be submitted to the military advisory board. The decision of the board shall be final and binding on all parties. (Authorized by K.S.A. 48-204, K.S.A. 48-205, K.S.A. 1982 Supp. 48-301, K.S.A. 48-304; implementing K.S.A. 48-204, K.S.A. 1982 Supp. 48-301, K.S.A. 48-304; effective May 1, 1983; amended May 1, 1984.)

Article 2.—STANDARDS FOR LOCAL DISASTER AGENCIES

56-2-1. Definitions. (a) "Local disaster agency" means any county disaster agency established as required by K.S.A. 48-929(a), any city disaster agency required by the governor under K.S.A. 48-929(b) and any interjurisdictional disaster agency ordered by the governor under K.S.A. 48-930.

(b) “Division” means the division of emergency preparedness within the adjutant general’s department as established in K.S.A. 48-905.

(c) “Coordinator” means the disaster agency head appointed as required by K.S.A. 48-929(c), regardless of official local title. (Authorized by K.S.A. 48-907; and implementing K.S.A. 48-929; effective Jan. 3, 1994.)

56-2-2. Standards for local disaster agencies. Each local jurisdiction shall establish and provide to the division a copy of the following items.

(a) An ordinance or resolution by the local governing body shall be established and provided to the division which:

(1) Establishes a disaster agency as required by K.S.A. 48-929 or 48-930;

(2) provides for an appointed coordinator to head the agency;

(3) outlines the general authority of the agency before, during and after a disaster emergency;

(4) outlines the basic functions of the agency which, at a minimum, shall include the following:

(A) Coordination of response and recovery activities during and following a disaster emergency;

(B) development and maintenance of a local hazard analysis;

(C) development of a local emergency planning program and maintenance of an all-hazard emergency operations plan;

(D) the implementation of a local technological hazards program which includes participation on the local emergency planning committee as provided for in K.S.A. 65-5703 and the development and coordination of a radiological protection system;

(E) development and maintenance of an active public education program, both through direct public presentations and contacts with the local news media;

(F) development and coordination of a local exercise program to test the capability of the jurisdiction to implement the emergency operations plan;

(G) development and coordination of a local emergency preparedness training program;

(H) development and coordination of local hazard warning and notification systems;

(I) coordination of all requests for assistance from other jurisdictions, and the state and federal governments during a disaster emergency;

(J) identification of mitigation actions necessary to prevent hazards or to lessen their impact; and

(K) advice and assistance to the local governing body in preparation of emergency declarations under K.S.A. 48-932;

(5) sets forth the support to be provided to the agency, which, at a minimum shall include the following:

(A) Jurisdiction-provided office space and clerical support sufficient to perform the required emergency preparedness functions;

(B) jurisdiction-provided transportation or reimbursement for private transportation used for official duties;

(C) jurisdiction-provided portable radio, pager, cellular telephone or other communications arrangement for 24-hour a day notification of the disaster agency; and

(D) designation of one or more persons to act as an alternate disaster agency head when coordinator is not available; and

(6) requires all other agencies and employees of the jurisdiction to cooperate with the disaster agency in all matters pertaining to emergency preparedness.

(b) A position description for the coordinator shall be established and provided to the division which:

(1) Outlines required duties and responsibilities of the position;

(2) establishes the requirements for selection to and continued employment in the position, which, at a minimum, shall include the following qualifications. Each coordinator shall:

(A) possess a valid driver’s license;

(B) possess a high school diploma or equivalent;

(C) be available to work a variety of hours and be physically able to respond to disaster emergencies;

(D) be available to travel to attend training courses and emergency preparedness conferences;

(E) have skills to organize and coordinate activities of other persons;

(F) have the ability to understand and work with state and federal regulations pertaining to emergency preparedness, hazardous materials and radiological protection;

(G) have the ability to work without direct supervision; and

(H) obtain, within 24 months of appointment, and maintain certification as an emergency manager from an association or institution identified on a list, published by the division, of recognized certifying entities.

(3) specifies the number of hours per week to be spent on emergency preparedness duties; and

(4) sets forth the salary range of the position.

(c) Official written notification within 10 working days of any changes to the resolution, ordinance or job description and of any change of disaster agency head shall be provided to the division.

(d) Quarterly activity reports, as stipulated by the division, shall be provided, addressing emergency preparedness activities performed by the disaster agency. The reports shall include, but not be limited to, the actions taken to perform the functions outlined in paragraph (a) (4) of this regulation.

(e) Annually, at a time specified by the division, statements of local emergency preparedness goals, anticipated work and requested state and federal assistance for the next federal fiscal year shall be provided to the division. (Authorized by K.S.A. 48-907; and implementing K.S.A. 48-929; effective Jan. 3, 1994.)

Article 3.—NUCLEAR EMERGENCY PREPAREDNESS FEES

56-3-1. Definitions. As used in article 2 of these regulations: (a) "Act" means the Kansas nuclear safety emergency preparedness act, as established by L. 1993, Chap. 113, Section 1.

(b) "Adjutant general" is the adjutant general of Kansas.

(c) "Fiscal year" means the state of Kansas fiscal year, which is July 1 to June 30.

(d) "Fund" means the nuclear safety emergency preparedness fee fund.

(e) "KDEP" means the Kansas division of emergency preparedness in the adjutant general's department.

(f) "Producer" means any person engaged in the production of electricity through the utilization of nuclear energy at a nuclear facility and responsible for fee payment.

(g) "State and local government agencies" means state agencies which have duties under the state of Kansas emergency operations plan, and annexes and appendices, and county governments which are required to have emergency operations plans because they are in emergency planning zones of nuclear facilities. (Authorized by and implementing L. 1993, Chap. 113, Sec. 4; effective, T-56-1-19-94, Jan. 19, 1994; effective March 7, 1994.)

56-3-2. Nuclear safety emergency preparedness fee fund. (a) Each producer shall pay an annual fee to the adjutant general to cover the costs incurred by state and local government

agencies to establish, maintain, and implement appropriate emergency preparedness plans and programs required to respond to an emergency at a nuclear facility. The fee shall include the costs of administering this act.

(b) Fee payments shall be made in accordance with the following requirements.

(1) The annual fee payment shall equal the total annual fee approved by the adjutant general pursuant to K.A.R. 56-3-5 as determined to apply to any specific nuclear facility.

(2) On or before June 1 of the fiscal year preceding the fiscal year for which the fee applies, the producer shall be notified by the adjutant general of the amount of the annual fee.

(3) Fee payment shall be made within 30 days of receipt of written notification from the adjutant general of the annual fee, or by July 1, whichever date is earlier.

(4) The fee payment shall be made by check, draft, money order, or electronic means payable to the adjutant general. (Authorized by and implementing L. 1993, Chap. 113, Sec. 3; effective, T-56-1-19-94, Jan. 19, 1994; effective March 7, 1994.)

56-3-3. Disbursements. Any state or local government agency that incurs expenses related to nuclear emergency preparedness may apply to the adjutant general for disbursements to pay for expenses subject to the following limitations.

(a) Each request for disbursement shall comply with the procedural requirements of K.A.R. 56-3-4.

(b) Expenses for which disbursement is sought shall be related to the responsibilities assigned to a particular state or local government agency by the state of Kansas emergency operations plan, including annexes and appendices, or county emergency operations plans for emergency actions in the event of an emergency at a nuclear facility.

(c) Expenses eligible for disbursement may include all reasonable costs associated with:

(1) salaries of state or local government agency personnel for time spent on nuclear emergency preparedness planning, exercises, drills, or training;

(2) nuclear emergency training including per diem, lodging, transportation, facility use fees, and training costs;

(3) documenting, printing, and copying nuclear emergency preparedness planning and training materials;

(4) direct expenditures incurred while participating in nuclear emergency exercises and drills;

(5) capital equipment used for nuclear emergency training or implementation of nuclear emergency plans including the costs of operating, calibrating, and maintaining the equipment; and

(6) other activities approved by the adjutant general as necessary to develop, maintain and implement an effective nuclear emergency plan, or for the effective administration of the act.

(d) The following costs shall not be eligible for disbursement from the fund:

(1) costs anticipated to be recovered from sources other than the fund including, but not limited to, other agreements with nuclear facilities and grants or contracts with state or federal agencies;

(2) costs of services identified by the adjutant general as unnecessarily duplicative;

(3) other costs identified by the adjutant general as unrelated to the development, maintenance, or implementation of nuclear emergency preparedness plans or programs; and

(4) costs identified by the adjutant general as unnecessary to administer the act. (Authorized by and implementing L. 1993, Chap. 113, Sec. 3; effective, T-56-1-19-94, Jan. 19, 1994; effective March 7, 1994.)

56-3-4. Requests for disbursement. Each state or local government agency requesting disbursement under the provisions of K.A.R. 56-3-3 shall comply with the following requirements. (a) Each request for disbursement shall be submitted to KDEP not later than May 1 of the fiscal year preceding, by two years, the fiscal year for which disbursement is sought, except that requests for disbursement for expenses expected to be incurred during the fiscal year beginning July 1, 1994, shall be submitted not later than March 1, 1994.

(b) Each disbursement request shall contain the following information.

(1) There shall be a proposed budget summary of expenses for which disbursement is requested in a format consistent with the form and nomenclature used by the Kansas department of administration in preparation of the annual state of Kansas budget.

(A) Each line item shall state budget-specifically the goods and services to be provided.

(B) The relationship to nuclear safety and emergency preparedness shall be clearly defined.

(2) There shall be a listing of positions for which disbursement of salaries has been requested.

(A) For each position, a narrative description of

the services to be provided shall accompany the request.

(B) The percent of time each position devotes to nuclear safety and emergency preparedness shall be indicated.

(3) There shall be a brief description of the intended use of any capital equipment proposed for purchase.

(4) There shall be a clear delineation of the specific nuclear facility to which expenses shall be allocated.

(c) Each state or local government agency requesting a disbursement shall include the request in that individual agency's or government's budget for consideration by appropriation authorities or as otherwise required by law. Before submission, budget requests to appropriation authorities shall be modified if an amendment or disapproval of any part of the disbursement request is received from the adjutant general.

(d) Each state and local government agency requesting disbursement shall notify the adjutant general of changes to original proposed budgets resulting from the passage of appropriation acts or other governmental action. The deadline for notification is May 1 of the fiscal year preceding the fiscal year to which the budget applies.

(e) Moneys received from the fund by a state or local government agency, either directly or by interagency fund vouchers, shall be deposited into an account dedicated to the receipt and expenditure of fund moneys. Moneys remaining in this account at the end of the fiscal year for which the budget was approved shall be returned to the fund before the last business day of July of the following fiscal year. (Authorized by and implementing L. 1993, Chap. 113, Sec. 3; effective, T-56-1-19-94, Jan. 19, 1994; effective March 7, 1994.)

56-3-5. Notification of budget approvals. Each state and local government agency requesting disbursement, and each producer, shall be notified by the adjutant general of final approval of the annual fund budget according to the following schedule.

(a) On or before July 1 of the fiscal year preceding the fiscal year for which the budget is proposed, each state and local government agency requesting disbursement, and each producer, shall receive written notice from the adjutant general of the total proposed fund budget.

(b) Within 15 days of receipt of written notification of the proposed fund budget, any affect-

ed person, agency, or government may provide comment on the proposed budget to the adjutant general for consideration during the preparation of the final fund budget.

(c) On or before August 30 of the fiscal year preceding the fiscal year for which the budget is proposed, each state and local government agency requesting disbursement, and each producer, shall receive notice of final budget approval from the adjutant general, except as provided in subsection (e) of this regulation.

(d) For each fiscal year, except as provided in subsection (e) of this regulation, the final budget approved by the adjutant general shall establish the total annual fee for each nuclear facility affected under the provision of K.A.R. 56-3-2.

(e) Any appropriation act or other government action taken after September 15 of the fiscal year preceding the fiscal year for which the budget is proposed may change the annual fee. If this occurs, each producer shall receive written notice from the adjutant general before the due date of fee payment.

(f) Each state and local government agency requesting disbursement for expenses to be incurred during the fiscal year beginning July 1, 1994, and each producer subject to fee liability for the fiscal year beginning July 1, 1994, shall receive written notice from the adjutant general of the total fund budget proposed not later than March 1, 1994.

Notice of final fund budget approval for the fiscal year beginning July 1, 1994, shall be provided to each affected party within 30 days of the close of the comment period authorized by subsection (b) of this regulation. (Authorized by and implementing L. 1993, Chap. 113, Sec. 3; effective, T-56-1-19-94, Jan. 19, 1994; effective March 7, 1994.)

56-3-6. Direct reimbursement. (a) Any state or local government agency incurring unanticipated expenses that could not have been reasonably foreseen and included in budget requests may seek direct reimbursement from the adjutant general.

(b) Each of these requests shall be considered and acted upon in a timely manner if:

(1) The expenses for which direct reimbursement is sought would have been eligible for prior disbursement under the provisions of K.A.R. 56-3-3;

(2) adequate moneys are available in the fund; and

(3) reimbursement of these expenses will not violate any expenditure limitations imposed upon fund expenses.

(c) The expenses for which direct reimbursement is sought shall be approved by the adjutant general before the actual expenditure of funds by the state or local government agency. (Authorized by and implementing L. 1993, Chap. 113, Sec. 3; effective, T-56-1-19-94, Jan. 19, 1994; effective March 7, 1994.)

Agency 60

State Board of Nursing

Articles

- 60-1. APPROVAL OF SCHOOLS OF NURSING.
- 60-2. REQUIREMENTS FOR APPROVED NURSING PROGRAMS.
- 60-3. REQUIREMENTS FOR LICENSURE AND STANDARDS OF PRACTICE.
- 60-4. FEES.
- 60-5. APPROVAL OF EDUCATIONAL PROGRAMS FOR MENTAL HEALTH TECHNICIANS.
- 60-6. REQUIREMENTS FOR APPROVED PROGRAMS FOR MENTAL HEALTH TECHNICIANS.
- 60-7. REQUIREMENTS FOR LICENSURE AND STANDARDS OF PRACTICE.
- 60-8. FEES.
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- 60-11. ADVANCED PRACTICE REGISTERED NURSES (APRN).
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- 60-16. INTRAVENOUS FLUID THERAPY FOR LICENSED PRACTICAL NURSE.
- 60-17. ADVANCED NURSING EDUCATION PROGRAM.

Article 1.—APPROVAL OF SCHOOLS OF NURSING

60-1-101. (Authorized by K.S.A. 65-1113 *et seq.*, K.S.A. 1974 Supp. 74-1106 *et seq.*; effective Jan. 1, 1966; amended, E-74-29, July 1, 1974; amended May 1, 1975; revoked Sept. 27, 1993.)

60-1-102. Approval procedure. Each institution wanting to establish a nursing program shall meet the following requirements:

(a) Notify the board and provide any information that the board requires to establish satisfactory proof that the institution will maintain the standards and curriculum of an approved nursing program;

(b) submit the name and qualifications of the nursing program administrator for approval by the board;

(c) employ a qualified nursing program administrator;

(d) employ a second faculty member;

(e) have financial resources for faculty, other necessary personnel, equipment, supplies, counseling, and other services;

(f) have adequate clinical and educational facilities to meet student learning outcomes;

(g) provide general education courses required for admission to the nursing program;

(h) submit an application with a detailed proposed three-year budget, curriculum plan, list of prospective faculty, organizational chart, organizing curricular framework, program outcomes, student and faculty policies, program evaluation plan, and contractual agreements for clinical facilities at least six months before enrollment of students; and

(i) be approved before the admission of any students.

This regulation shall be effective on and after January 1, 2022. (Authorized by K.S.A. 65-1129; implementing K.S.A. 65-1119; effective Jan. 1, 1966; amended Jan. 1, 1973; amended, E-74-29, July 1, 1974; modified, L. 1975, ch. 302, § 1, May 1, 1975; amended April 26, 1993; amended Jan. 1, 2022.)

60-1-103. Discontinuing a school of nursing. Each school terminating its program shall submit for approval to the board the school's plan for its currently enrolled students and the school's plan for disposition of records. (Authorized by K.S.A. 65-1129; implementing K.S.A. 65-1119; effective Jan. 1, 1966; amended, E-74-29, July 1, 1974; amended May 1, 1975; amended April 26, 1993; amended Nov. 7, 2008.)

60-1-104. Definitions. Each of the following terms, as used in the board's regulations except articles 5, 6 and 17, shall have the meaning specified in this regulation:

(a) "Affiliating agency" means an agency that cooperates with the nursing program to provide facilities and clinical resources for selected student experiences.

(b) "Approval" means the status granted by the board to a nursing program that provides evidence of both of the following:

(1) The nursing program is operating on a sound educational basis that is consistent with the educational requirements as specified in the nurse practice act and the board's regulations.

(2) The nursing program has no deficiencies that would adversely affect student learning outcomes.

(c) "Articulation" means the process by which a registered professional nurse, licensed practical nurse, or mental health technician who is enrolled in a nursing program is given credit for previous education in nursing or mental health technology.

(d) "Bilevel program" means a nursing program that has one application process, with faculty teaching practical nurse (PN) and registered nurse (RN) content from the first day of the nursing program. The student can opt out of the RN program, which is known as the PN exit option, take the national council license examination-practical nursing (NCLEX-PN), and become licensed as a PN; or the student can matriculate through the entire nursing program, take the national council license examination-registered nurse (NCLEX-RN), and become licensed as an RN.

(e) "Capstone course" means an experiential nursing course for students to demonstrate integration of knowledge and professional nursing supervised by a preceptor during the final semester of the professional nursing program.

(f) "Clinical learning experience" means an active process in which the student participates in nursing activities while being guided by a member of the faculty.

(g) "Clinical observational experience" means the process in which the student views health care interventions but does not participate in the interventions. Affiliating agency personnel shall be responsible for patient care. However, a student may use any of the five senses while with the patient for the sole purpose of observing as the agency professional assesses and provides care to the

patient. The instructor shall not be required to be present, but the students shall be included in the faculty-student ratio.

(h) "Community-based health care" means health care provided outside of hospitals and long-term care facilities, including public health departments, ambulatory health clinics, prenatal and well-baby clinics, hospice agencies, doctors' offices, industrial settings, homeless shelters, nursing centers, home health agencies, and patients' homes.

(i) "Conditional approval" means the status that the board imposes on an approved nursing program for a limited time to comply after finding evidence that the nursing program no longer meets educational requirements as specified in the nurse practice act or the board's regulations. When placed on conditional approval, the nursing program may be directed by the board to limit or cease admissions.

(j) "Contractual agreement" means a written contract signed by the legal representatives for the nursing program and the affiliating agency.

(k) "Criteria for unscheduled survey" means indications that the nursing program no longer meets the requirements in the nurse practice act or the board's regulations.

(l) "Debriefing" means an activity that follows a simulation experience and is led by a facilitator. Participants' reflective thinking is encouraged and feedback is provided regarding the participants' performance while various aspects of the completed simulation are discussed. Participants are encouraged to explore emotions and question, reflect, and provide feedback to one another in order to facilitate the transfer of learning to future situations.

(m) "Faculty degree plan" means the plan for a course of study leading to a degree appropriate for a teaching position.

(n) "Faculty hire exception" means that a nursing program is allowed by the board to hire, on a limited-time basis and in accordance with K.A.R. 60-2-103, an instructor who does not meet the faculty qualifications if no qualified individuals are available.

(o) "Generic student" means one who enters at the beginning of a prelicensure nursing program and plans to complete the entire curriculum.

(p) "Initial approval" means the approval period from the first admission of nursing students to the nursing program through the first full implementation of the curriculum and graduation.

(q) "Loss of approval" means the status that results when the board withdraws its approval of a nursing program.

(r) "National nursing accreditation agency" means the accreditation commission for education in nursing, the commission for nursing education accreditation, or the commission on collegiate nursing education.

(s) "Nursing program administrator" means an individual with successful experience in administration or teaching and with a graduate degree in nursing. However, an individual with successful experience in administration or teaching whose graduate degree is not in nursing and was conferred on or before July 1, 1999 shall be acceptable. This individual has the primary responsibility and dedicated time for effective and continuous oversight of a nursing program, including the following:

(1) Verification that the nursing program complies with the nursing act and the board's regulations;

(2) assurance that nursing program and educational outcomes are met;

(3) assessment of and recommendations for material, human, and clinical resources for effective nursing program implementation;

(4) collaboration with faculty for continuous nursing program improvement; and

(5) responsibility for the development and implementation of the nursing program.

(t) "Nursing program" means practical nursing program or professional nursing program, or both.

(u) "One-plus-one program" means a nursing program that includes two application processes, one for the practical nurse (PN) program and one for the registered nurse (RN) program. The first level has only PN content, and the student must obtain a PN license before continuing in the RN program.

(v) "Online or distance learning" means the acquisition of knowledge and skills through information and instruction provided by means of a variety of technologies.

(w) "PN exit option" means in the bilevel programs that there is one application process for the PN and RN programs. Therefore, a PN exit option allows students to opt out of the RN program at a designated point in the curriculum. At this point, these students apply for licensure and take the NCLEX-PN.

(x) "Practical nursing program" means a course of study leading to a certificate and preparing an individual for licensure as a practical nurse.

(y) "Preceptor" means a registered professional nurse supervising a student in the clinical setting who is not employed as nursing faculty. The preceptor provides oversight of each student's patients and gives feedback to the student and clinical instructor. The nursing program faculty shall not be required to be in the affiliating agency's facilities but shall be immediately available.

(z) "Professional nursing program" means a course of study preparing an individual for licensure as a registered professional nurse. This term shall include baccalaureate degree programs and associate degree programs.

(1) A "baccalaureate degree program" shall lead to a baccalaureate degree with a major in nursing.

(2) An "associate degree program" shall lead to an associate of science or applied science degree, each with a major in nursing.

(aa) "Program evaluation plan" means a nursing program's written systematic methodology or plan for measuring and analyzing student learning outcomes and program outcomes against defined standards and timelines to determine effectiveness and provide for ongoing nursing program improvement.

(bb) "Refresher course" means an educational program for nurses whose licenses are inactive or have lapsed for more than five years.

(cc) "Review course" means an education offering used to prepare students for the licensing examination.

(dd) "Satellite program" means an existing, approved nursing program that is offered at a location geographically separate from the parent nursing program. The students may spend a portion or all of their time at the satellite location. The curricula in all locations shall be the same, and the credential shall be given by the parent institution.

(ee) A "school of nursing" means a nursing program. This term may include any of the following:

(1) A college;

(2) a school;

(3) a division;

(4) a department;

(5) an academic unit; or

(6) a program.

(ff) "Simulation" means a teaching strategy utilizing technology to replace or amplify clinical situations with guided experiences that evoke or replicate substantial aspects of the real world in a fully interactive manner.

(gg) "Survey or site visit" means an in-person assessment of all components of a nursing program to validate information submitted by the nursing

program or to follow up on the board's determination that there is consistent evidence reflecting deficiencies in meeting the requirements.

(hh) "Student learning outcomes" means the achievement of expected knowledge, skills, and attributes demonstrated by students at course and program levels. Student learning outcomes are measured in classroom and experiential settings and are reported in individual and aggregate formats, including retention and graduation rates, performance on licensure and certification examinations, and employment rates.

(ii) "Transfer student" means one who is permitted to apply nursing courses completed at another institution to a nursing program of study.

This regulation shall be effective on and after January 1, 2022. (Authorized by K.S.A. 65-1129; implementing K.S.A. 65-1119; effective April 4, 1997; amended Jan. 24, 2003; amended Nov. 7, 2008; amended Jan. 1, 2022.)

Article 2.—REQUIREMENTS FOR APPROVED NURSING PROGRAMS

60-2-101. Requirements for initial approval. (a) Administration and organization.

(1) Each institution wanting to offer a nursing program shall be a legally constituted body. The controlling body shall be responsible for general policy and shall provide for the financial support of the nursing program.

(2) A nursing program administrator shall have oversight of the nursing program.

(3) The nursing program shall be accredited, be part of an institution that is accredited, or be in the process of being accredited by an agency that is approved by the United States department of education.

(b) Application. Each proposed nursing program shall submit an initial application at least 60 days before a scheduled board meeting. The application shall include the following:

(1) The course of study and credential to be conferred;

(2) the name and title of the administrator of the nursing program;

(3) the name of the controlling body;

(4) the name and title of the administrator of the controlling body;

(5) all sources of financial support;

(6) a proposed curriculum, as specified in K.A.R. 60-2-104, with the total number of hours of both theoretical and clinical instruction;

(7) the number, qualifications, and assignments of faculty members;

(8) a proposed date of initial admission of students to the nursing program;

(9) the number of times students are to be admitted each year and the proposed number of students per admission;

(10) the admission requirements;

(11) a description of the clinical facilities;

(12) copies of the current school bulletin or catalog;

(13) the name of each hospital and affiliating agency providing facilities for clinical experience. Each hospital and affiliating agency shall be licensed, accredited, or approved by the appropriate licensing or certifying body;

(14) a contractual agreement or letter from each clinical facility stating that the clinical facility will provide clinical experiences for the nursing program's students; and

(15) for each applicant with any existing nursing programs, the following:

(A) The nursing program outcomes; and

(B) any nursing program outcomes not meeting the stated benchmark. If any outcomes are not meeting the stated benchmark, a new nursing program shall not be approved.

(c) Surveys. Each nursing program shall have a survey for initial approval by the board. A survey shall be conducted by the board to validate information submitted in the program's initial application before granting initial approval.

(1) During an initial survey, the nursing program administrator shall make available the following:

(A) The educational institution's administration, prospective faculty and students, clinical facility representatives, and support services personnel to discuss the nursing program;

(B) minutes of faculty meetings;

(C) faculty and student handbooks;

(D) policies and procedures;

(E) curriculum materials;

(F) a copy of the nursing program's budget;

(G) each contractual agreement; and

(H) a nursing program evaluation plan that addresses compliance with the nurse practice act and board regulations.

(2) The nursing program administrator or designated personnel shall take the survey team to inspect the nursing educational facilities, including satellite program facilities and library facilities.

(3) Upon completion of the survey, the nursing program administrator shall be asked to correct

any inaccurate statements contained in the survey report, limiting comments to errors, unclear statements, and omissions.

(d) Approval. Each nursing program seeking approval shall perform the following:

(1) Submit a progress report that includes the following:

(A) Updated information on all areas identified in the initial application;

(B) the current number of admissions and enrollments;

(C) the current number of qualified faculty; and

(D) detailed course syllabi; and

(2) have a survey conducted by the board's survey team after the first graduation.

(e) Denial of approval. If a nursing program fails to meet the requirements of the board within a designated period of time, the nursing program shall be notified by the board's designee of the board's intent to deny approval.

This regulation shall be effective on and after January 1, 2022. (Authorized by K.S.A. 65-1129; implementing K.S.A. 65-1119; effective Jan. 1, 1966; amended Jan. 1, 1968; amended Jan. 1, 1972; amended Jan. 1, 1973; amended, E-74-29, July 1, 1974; modified L. 1975, Ch. 302, Sec. 2; modified, L. 1975, Ch. 396, Sec. 1, May 1, 1975; amended May 1, 1987; amended April 4, 1997; amended June 14, 2002; amended Jan. 24, 2003; amended Nov. 7, 2008; amended April 29, 2016; amended Jan. 1, 2022.)

60-2-102. Reapproval requirements. (a) Based on the annual report, each nursing program shall be reviewed for approval annually by the board and pay the annual fee to the board specified in K.A.R. 60-4-103.

(b) Each approval of a nursing program shall be valid for not more than 10 years. If the nursing program is accredited by a national nursing accreditation agency, the next survey visit may be made in coordination with a national nursing accreditation agency visit. Each nursing program without national nursing accreditation shall have a survey visit every five years.

(c) An unannounced survey may be conducted at any time other than a scheduled survey visit if the board determines that there is evidence reflecting any deficiency in meeting the requirements or the board is determining whether or not any deficiency has been corrected by a nursing program on conditional approval.

(d) Each deficiency sufficient to warrant action

by the board shall include the deficiencies specified in subsections (e) through (h). Failure to correct any deficiency within the prescribed period may result in the board's placement of the nursing program on conditional approval or may result in loss of approval.

(e) (1) If the first-time candidates in a nursing program have an annual pass rate on the licensure examination of less than 80 percent for one year, the nursing program shall receive a written notice of concern from the board.

(2) The nursing program shall have three months after the date of the written notice of concern to submit a written report analyzing all aspects of the nursing program, identifying areas contributing to the pass rate and the nursing program's plan of action to improve the pass rate. The nursing program shall have one year after the date of the written notice to demonstrate evidence of implementing strategies to correct any deficiency to bring the pass rate up to at least the 80 percent criterion.

(3) If the nursing program has an annual pass rate of less than 80 percent for two consecutive years, the nursing program may receive a survey for evaluation and recommendation and be placed on conditional approval. The nursing program administrator shall appear before the board and present an analysis of the measures taken and an analysis of the reasons for the nursing program's pass rate below 80 percent.

(4) If the nursing program has an annual pass rate of less than 80 percent for three consecutive years for first-time candidates, the nursing program may be directed by the board to cease admissions.

(f) A nursing program that is accredited by a national nursing accrediting agency and is subsequently placed on warning or whose accreditation by the national nursing accreditation agency is withdrawn shall be scheduled immediately for a survey visit.

(g) Failure to meet the requirements of the education statutes and regulations shall result in action by the board.

(h) Each complaint involving education statutes and regulations reported to board members or staff shall initiate an investigation by the board and may require a survey visit, depending on the seriousness and number of complaints.

(i) The nursing program administrator shall make the following information available during each survey visit:

(1) Data about the nursing program, including the following:

- (A) The number of students;
- (B) the legal body responsible for policy and support of the nursing program;
- (C) the organizational chart;
- (D) an audited fiscal report covering the previous two years, including a statement of income and expenditures;

(2) the nursing program administrator's responsibilities;

(3) for each faculty member and preceptor, the following information:

- (A) Job descriptions;
 - (B) selection policies;
 - (C) orientation plan;
 - (D) faculty organization by-laws;
 - (E) number of full-time and part-time faculty and non-nursing faculty with academic credentials and assignments; and
 - (F) faculty-student clinical ratio;
- (4) degree plan, if applicable;
- (5) a copy of the current curriculum with the date of last revision;

(6) the testing process with test analysis and the written test procedure;

(7) a description of education facilities, including classrooms, offices, library, and computers;

- (8) a list of clinical facilities;
- (9) the number of students by classes; and

(10) the policies for students as listed in K.A.R. 60-2-107.

(j) During each survey visit, the nursing program administrator shall make available the following:

(1) The educational institution's administration, faculty, support services personnel, and students;

(2) staff members of selected affiliating agencies;

(3) faculty minutes for at least the three previous years;

(4) faculty and student handbooks;

(5) student records;

(6) policies and procedures;

(7) curriculum materials;

(8) a copy of the nursing program's audited fiscal report covering the previous two years, including income and expenditures;

(9) contractual agreements;

(10) program evaluation plan and evidence of nursing program effectiveness, which shall address compliance with the nurse practice act and board regulations; and

(11) the school's current catalog.

(k) The nursing program administrator or designated personnel shall take the survey visit team to the nursing educational facilities, including satellite program facilities, library facilities, and clinical agencies.

(l) Upon completion of the survey visit, the nursing program administrator shall be given a copy of the survey report and asked to correct any inaccurate statements contained in the survey report, limiting comments to errors, unclear statements, and omissions.

(m) If a nursing program fails to meet the requirements for approval within the designated period of time, the nursing program shall be provided notice stating the deficiencies and the opportunity for a hearing if requested within 60 days from the date of service of the notice. If no hearing is requested timely, the nursing program shall be removed from the list of approved schools.

(n) The parent institution shall be responsible for securing and providing for the permanent custody and storage of records of all students and graduates.

This regulation shall be effective on and after January 1, 2022. (Authorized by K.S.A. 65-1129; implementing K.S.A. 65-1119; effective April 4, 1997; amended Jan. 24, 2003; amended Nov. 7, 2008; amended Jan. 1, 2022.)

60-2-103. Nursing program faculty and preceptor qualifications. (a) Professional nursing programs.

(1) Each nurse faculty member shall be licensed as a registered professional nurse in Kansas.

(2) Each preceptor shall meet the following requirements:

(A) Be licensed as a registered professional nurse in the state in which the individual is currently practicing nursing; and

(B) complete a preceptor orientation that includes information about the pedagogical aspects of the student-preceptor relationship and course information.

(3) Each nursing program shall have a written plan that includes the method of selection of preceptors, the roles of the faculty members and preceptors, and the methods of contact between faculty members and preceptors during the preceptorship.

(4) Each nurse faculty member shall have academic preparation and experience as follows:

(A) Each nurse faculty member who is assigned the responsibility of a course shall hold a graduate

degree. Each person who is hired as a nurse faculty member shall have a graduate degree in nursing, preferably in the clinical area being taught, except for any person whose graduate degree was conferred before July 1, 2001.

(B) Each nurse faculty member responsible for clinical instruction shall possess a graduate degree or provide to the board a faculty degree plan that projects completion of a graduate degree. Each person who is hired as a nurse faculty member responsible for clinical instruction shall meet one of the following requirements:

(i) Have a graduate degree in nursing, preferably in the clinical area being taught, except for any person whose graduate degree was conferred on or before July 1, 2001; or

(ii) provide to the board a faculty degree plan that projects completion of a graduate degree in nursing.

(b) Practical nursing programs.

(1) Each nurse faculty member shall be licensed as a registered professional nurse in Kansas.

(2) Each nurse faculty member shall have academic preparation and experience as follows:

(A) Each nurse faculty member who is assigned the responsibility of a course shall hold a baccalaureate degree. Each person who is hired as a nurse faculty member shall have a baccalaureate or higher degree in nursing, except for any person whose degree was conferred on or before July 1, 2001.

(B) Each nurse faculty member responsible for clinical instruction shall possess a baccalaureate degree or provide to the board a faculty degree plan that projects completion of a baccalaureate degree. Each person who is hired as a nurse faculty member responsible for clinical instruction shall meet one of the following requirements:

(i) Have a baccalaureate or higher degree in nursing, except for any person whose degree was conferred on or before July 1, 2001; or

(ii) provide to the board a faculty degree plan that projects completion of a baccalaureate or higher degree in nursing.

(c)(1) For each nursing program, each nursing program administrator shall submit to the board the following:

(A) A faculty qualification report for each faculty member newly employed. Faculty with a continuing appointment shall have an appropriate degree;

(B) a faculty degree plan reflecting completion of the degree within six years for each instructor

without the appropriate degree. Upon completion of the degree, a transcript showing completion of the nursing program shall be submitted to the board; and

(C) notification and a rationale for each faculty member who is not following the degree plan as submitted.

(2) The nursing program administrator may request a faculty hire exception to be approved by the board's professional staff, if faculty meeting the criteria specified in this regulation are not available, by providing documentation of the following:

- (A) A lack of qualified applicants;
- (B) a rationale for the need to hire the applicant;
- (C) the applicant's qualifications; and
- (D) a plan for faculty recruitment.

This regulation shall be effective on and after January 1, 2022. (Authorized by K.S.A. 65-1129; implementing K.S.A. 65-1119; effective April 4, 1997; amended Jan. 24, 2003; amended Jan. 1, 2022.)

60-2-104. Curriculum requirements. (a)

The faculty in each nursing program shall develop a curriculum to meet program and student learning outcomes and meet the following requirements:

(1) Identify the competencies of the graduate for the level of nursing practice;

(2) determine the approach and content for learning experiences;

(3) direct clinical instruction as an integral part of the program; and

(4) provide for learning experiences of the depth and scope needed to fulfill the objectives or student learning outcomes for nursing courses.

(b) The curriculum in each nursing program shall include the following:

(1) Content in the biological, physical, social, and behavioral sciences that provides a foundation for safe and effective nursing practice;

(2) the art and science of nursing; and

(3) didactic content and clinical experience to meet the objectives or student learning outcomes specified in subsection (c) or (d).

(c) Each professional nursing program shall provide instruction and clinical learning experience in the following areas:

(1) The aspects of a safe, effective care environment, including the management of care, safety, and infection control;

(2) health promotion and maintenance, including growth and development through the life span and prevention and early detection of disease;

(3) psychosocial integrity, including coping, adaptation, and psychosocial adaptation; and

(4) physiological integrity, including basic care and comfort, pharmacology, parenteral therapies, reduction of risk potential, and physiological adaptation.

(d) Each practical nursing program shall provide instruction and clinical learning experience in the following areas:

(1) The aspects of a safe, effective care environment, including the coordination of care, safety, and infection control;

(2) health promotion and maintenance, including growth and development through the life span and prevention and early detection of disease;

(3) psychosocial integrity, including coping, adaptation, and psychosocial adaptation;

(4) physiological integrity, including basic care and comfort, pharmacology, reduction of risk potential, and physiological adaptation; and

(5) intravenous fluid therapy, including, at minimum, didactic, supervised laboratory or supervised clinical practice as specified in K.A.R. 60-16-104.

(e)(1) Each practical nursing program shall have at least 15 credit hours in nursing courses or the equivalent in clock-hours.

(2) Each professional nursing program shall have at least 30 credit hours in the nursing major.

(f) The faculty in each nursing program shall develop and implement a program evaluation plan.

(g) Each nursing program shall submit major curriculum revisions for approval by the board at least 30 days before the board meetings. The nursing program shall have received board approval before implementation. Major curriculum revisions shall include the following:

(1) Any change in the plan of nursing curriculum organization involving philosophy, number of semesters of study, or the delivery method of nursing courses;

(2) any change in content requiring a change of clock-hours or credit hours in nursing courses; and

(3) any change in the number of students to be admitted to the nursing program.

(h) Each nursing program shall submit other curriculum revisions of a course's content, title, objectives, or outcomes to the board's education specialist for approval. The nursing program shall not implement revisions before receiving approval from the board's education specialist. The information specified in this subsection shall be submitted in writing with the annual report.

(i) The nurse administrator shall submit to the board office each change under subsection (g) or (h).

(j) Each nursing program shall have an articulation plan.

This regulation shall be effective on and after January 1, 2022. (Authorized by K.S.A. 65-1129; implementing K.S.A. 65-1119; effective April 4, 1997; amended Jan. 24, 2003; amended Nov. 7, 2008; amended Jan. 1, 2022.)

60-2-105. Clinical resources. (a) Each contractual agreement shall be kept on file in the nursing program office.

(b) Clinical learning experiences and sites shall be selected to provide learning opportunities necessary to achieve student learning outcomes.

(c) The faculty of each nursing program shall be responsible for student learning outcomes and evaluation in the clinical area.

(d) The nursing program shall provide verification that each affiliating agency used for clinical instruction has clinical facilities that are adequate for the number of students served in terms of space, equipment, and other necessary resources, including an adequate number of patients or clients necessary to meet the nursing program objectives or outcomes.

(e) A maximum of a 1:10 faculty-to-student ratio shall be maintained during the clinical learning experience and the clinical observational experience.

(f)(1) The objectives or student learning outcomes for each clinical observational experience shall reflect observation rather than participation in nursing interventions.

(2) Affiliating agencies in which clinical observational experiences take place shall not be required to be staffed by registered nurses.

(3) Clinical observational experiences shall constitute no more than 15 percent of the total hours for the clinical course.

(4) Simulation experiences shall constitute no more than 50 percent of the total hours for the clinical course.

(g) Clinical learning experiences with preceptors shall be no more than 20 percent of the total clinical hours of the nursing program. This prohibition shall not apply to the capstone course.

(h) Each affiliating agency used for clinical instruction shall be staffed independently of student assignments.

(i) The number of affiliating agencies used for clinical learning experiences and clinical observational experiences shall be adequate for meeting

curriculum objectives and student learning outcomes. The nursing program faculty shall provide the affiliating agency staff with the organizing curriculum framework and objectives and student learning outcomes for clinical learning experiences and clinical observational experiences used.

(j) A sufficient number and variety of patients representing all age groups shall be utilized to provide clinical learning experiences that meet curriculum objectives or outcomes. If more than one nursing program uses the same affiliating agency, the nursing programs shall document the availability of appropriate clinical learning experiences for all students.

This regulation shall be effective on and after January 1, 2022. (Authorized by K.S.A. 65-1129; implementing K.S.A. 65-1119; effective April 4, 1997; amended Jan. 24, 2003; amended March 6, 2009; amended Jan. 1, 2022.)

60-2-106. Educational facilities. (a) Classrooms, laboratories, and conference rooms shall be available when needed and shall be adequate in size, number, and type according to the number of students and the educational purposes for which the rooms are to be used.

(b) Each nursing program shall provide the following:

- (1) A physical facility that is safe and is conducive to learning;
- (2) space for counseling students in private that is available and adequate in size and number;
- (3) secure space for nursing student records; and
- (4) current technological resources and student support services for online or distance learning if online or distance learning is provided.

(c) The library resources, instructional media, and materials shall be of sufficient recency, pertinence, level of content, and quantity as indicated by the curriculum to meet the needs of nursing students and faculty and shall be available to online or distance learning students.

This regulation shall be effective on and after January 1, 2022. (Authorized by K.S.A. 65-1129; implementing K.S.A. 65-1119; effective April 4, 1997; amended Jan. 24, 2003; amended March 6, 2009; amended Jan. 1, 2022.)

60-2-107. Student policies. (a) Each nursing program shall have clearly defined written student policies for the following:

- (1) Admission:

- (A) Generic students;
- (B) transfer students; and
- (C) articulation;
- (2) oral and written English proficiency;
- (3) readmission;
- (4) progression criteria;
- (5) counseling and guidance;
- (6) the difference between the student role and the employee role;
- (7) representation on faculty governance;
- (8) graduation;
- (9) refund policies governing all fees and tuition paid by students; and
- (10) ethical practices for the performance of activities including recruitment, admission, and advertising.

(b) Each nursing program shall have a written policy providing information to all students regarding licensure disqualifications pursuant to K.S.A. 65-1120, and amendments thereto. The information shall be provided to each student before admission to the nursing program.

This regulation shall be effective on and after January 1, 2022. (Authorized by K.S.A. 65-1129; implementing K.S.A. 65-1119; effective April 4, 1997; amended Nov. 7, 2008; amended Jan. 1, 2022.)

60-2-108. Reports. (a) An annual report and all applicable fees shall be submitted to the board by each nursing program on or before June 30 of each year. Each report shall include the following:

- (1) Changes in the nursing program policies, organizing curriculum framework, objectives or outcomes, and major and other curriculum changes;
- (2) faculty responsibilities for required and elective nursing courses;
- (3) for each faculty member, the name, license number, academic credentials, employment date, and full-time or part-time status;
- (4) for each preceptor, the name, license number, academic credentials, current clinical area of practice, and place where currently employed;
- (5) the nurse administrator's teaching responsibilities;
- (6) for each affiliating agency, the following information:
 - (A) The name;
 - (B) the location; and
 - (C) the student-faculty clinical ratio for the reporting period;
- (7) statistics for generic, articulation, and transfer students, including the following:

(A) Admissions, readmissions, withdrawals, and graduations; and

(B) first-time pass rate for each of the last five years;

(8) faculty statistics, including hiring, retention, and separation;

(9) the budget spent for library and audiovisual acquisitions to support the nursing program for the most recent year;

(10) an audited fiscal report covering the previous two years, including a statement of income and expenditures;

(11) any complaints involving educational statutes and regulations;

(12) a response to the recommendations and requirements from the last annual report or last survey or site visit;

(13) any plans for the future, including proposed changes to the nursing program;

(14) a description of the practices used to safeguard the health and well-being of students;

(15) a copy of the school's current catalog;

(16) the total number of library holdings and number of holdings regarding nursing;

(17) a list of the theory courses and the clinical courses in the curriculum; and

(18) statistics for each clinical course, including the following:

(A) Total number of hours;

(B) total number of clinical observation experience hours;

(C) total number of precepted hours; and

(D) total number of simulation experience hours.

(b) If the nursing program fails to meet the requirements of the board or to submit required reports within a designated period of time, the nursing program shall be notified and given the opportunity for a hearing regarding the board's intent to remove the nursing program from the list of approved nursing programs.

This regulation shall be effective on and after January 1, 2022. (Authorized by K.S.A. 65-1129; implementing K.S.A. 65-1119; effective April 4, 1997; amended Jan. 24, 2003; amended Nov. 7, 2008; amended Jan. 1, 2022.)

Article 3.—REQUIREMENTS FOR LICENSURE AND STANDARDS OF PRACTICE

60-3-101. Licensure. (a) Licensure by examination. (1) Not later than 30 days before the examination date, each applicant for licensure by

examination shall file with the board a completed application and tender the fee prescribed by K.A.R. 60-4-101.

(2) The application shall be filed on a form adopted by the board.

(3) Each applicant for nursing licensure shall take and pass the examination prepared by the national council of state boards of nursing.

(b) Licensure by endorsement.

(1) Each applicant for licensure by endorsement shall file with the board a completed application and tender the fee prescribed by K.A.R. 60-4-101. The application shall be filed on a form adopted by the board.

(2) Verification of a current Kansas license shall be provided to other state boards upon request and upon payment of the prescribed fee.

(c) Information regarding examinations.

(1) The examination for licensure shall be administered at designated sites.

(2) Each candidate shall present a validated admission card in order to be admitted to the examination center.

(3) Any applicant cheating or attempting to cheat during the examination shall be deemed not to have passed the examination.

(4) If the answer key is lost or destroyed through circumstances beyond the control of the board, the candidate shall be required to retake the examination in order to meet requirements for licensure, except that there shall be no examination fee charged to the applicant.

(5) Individual examination results shall be released to the school from which the examinee graduated.

(6) Any candidate requesting modifications to the examination procedures or materials because of a learning disability shall provide written documentation from the appropriate medical professional confirming the learning disability, an evaluation completed within the last five years by a learning disabilities evaluation team, and a letter from the nursing program confirming learning and testing modifications made during the course of study.

(d) Application for reexamination. Any applicant who fails to make a passing score on the licensure examination may retake the examination and shall pay an examination fee for each retest as established by K.A.R. 60-4-101. (Authorized by K.S.A. 65-1129; implementing K.S.A. 1997 Supp. 65-1115 and K.S.A. 1997 Supp. 65-1116; effective Jan. 1, 1966; amended Jan. 1, 1972; amended, E-74-29, July 1, 1974; modified, L. 1975, Ch.

302, Sec. 3, May 1, 1975; amended May 1, 1980; amended May 1, 1987; amended April 26, 1993; amended Jan. 29, 1999.)

60-3-102. Duplicate of initial license. When an individual's initial license has been lost or destroyed, a duplicate may be issued by the board upon payment of the fee specified in K.S.A. 65-1118, and amendments thereto. (Authorized by K.S.A. 65-1129; implementing K.S.A. 2015 Supp. 74-1106; effective Jan. 1, 1966; amended Jan. 1, 1972; modified, L. 1975, Ch. 302, Sec. 11, May 1, 1975; amended Nov. 21, 1994; amended April 29, 2016.)

60-3-103. Change of name. If an applicant for licensure or a licensee changes that individual's name after submitting an application or obtaining a license, the applicant or licensee shall submit legal documentation or an affidavit indicating the change of name upon a form approved by the board. The applicant or licensee shall submit the document to the board within 30 days of the change, pursuant to K.S.A. 65-1117 and amendments thereto. (Authorized by K.S.A. 65-1129; implementing K.S.A. 2015 Supp. 65-1117; effective Jan 1, 1966; amended May 1, 1975; amended April 29, 2016.)

60-3-104. (Authorized by K.S.A. 65-1113 et seq., K.S.A. 1974 Supp. 74-1106 et seq.; effective Jan. 1, 1966; amended May 1, 1975; revoked May 9, 1994.)

60-3-105. Reinstatement of license. (a) Any applicant whose Kansas license has lapsed may, within five years of its expiration date, reinstate that license by submitting satisfactory proof that the applicant has obtained 30 contact hours of approved continuing nursing education within the preceding two-year period.

(b) Any applicant whose Kansas license has lapsed for more than five years beyond its expiration date may reinstate the license by submitting evidence of:

(1) current licensure in another jurisdiction which requires completion of a number of contact hours of continuing nursing education for license renewal which are equivalent to or greater than the number of hours required in Kansas;

(2) licensure in another jurisdiction sometime during the preceding five-year period, and completion of 30 contact hours of approved continuing nursing education within the preceding two-year period; or

(3) satisfactory completion of a refresher course approved by the board. (Authorized by K.S.A. 65-1129 and K.S.A. 1994 Supp. 65-1117, as amended by L. 1995, Ch. 97, § 1; implementing K.S.A. 1994 Supp. 65-1117, as amended by L. 1995, Ch. 97, §1; effective Feb. 15, 1977; amended May 1, 1987; amended Sept. 2, 1991; amended May 9, 1994; amended Feb. 16, 1996.)

60-3-106. Licensure qualifications. (a) As part of the application process, each individual applying for original licensure in Kansas who is a graduate of a foreign nursing school shall submit that individual's education and licensure credentials for evaluation to a credentialing agency approved by the board.

(b) Any individual applying for licensure in Kansas who is a graduate of a foreign nursing school in which instruction was not in English may be granted a license if that individual meets all other requirements for licensure in effect at the time of application and shows proof of proficiency in English by passing one of the following:

(1) The test of English as a foreign language and the test of spoken English; or

(2) similar examinations, as approved by the board.

(c) Each graduate of a foreign nursing school licensed in another jurisdiction shall submit that individual's education and licensure credentials for evaluation to a credentialing agency approved by the board or to the board's representative.

(d) If an individual fails to pass the licensure examination or does not take the licensure examination within 24 months after graduation, the individual shall petition the board in writing before being allowed to take or retake the licensure examination. The petition shall be submitted on a form provided by the board and shall contain the following, as applicable:

(1) The name of the school of graduation;

(2) the date of graduation;

(3) the number of months or years since graduation;

(4) the number of times that the individual has taken the licensure examination;

(5) the dates of the licensure examinations;

(6) areas of deficiency identified on the diagnostic profile for each examination;

(7) copies of all diagnostic profiles;

(8) any study completed since the last attempt of taking the licensure examination;

(9) any work experience in the last two years; and

(10) a sworn statement by the petitioner that the facts contained in the petition are true to the best of that person's knowledge and belief.

(e) An individual shall be allowed by the board to retake the licensure examination after 24 months from graduation only upon demonstrating to the board's satisfaction that the individual has identified and addressed the reasons for prior failure and that there is a reasonable probability that the individual will pass the examination. A plan of study or review course may be required by the board before the individual retakes the licensure examination.

(f) If the board requires a plan of study before retaking the licensure examination, the plan shall contain the following:

(1) A list of all the low performance areas of the test plan identified by the diagnostic profile from each examination;

(2) a specific content outline for all of the areas of low performance on the diagnostic profile;

(3) methods of study, including the following:

(A) Self-study;

(B) study groups;

(C) tutors; or

(D) any other methods approved by the board;

(4) a schedule for study that meets the following requirements:

(A) 30 hours for each low performance area;

(B) a start date; and

(C) completion in six months or the petition shall be considered abandoned;

(5) learning resources identified to be used in the study that meet these requirements:

(A) A written bibliography in a standard documentation format, with resources no more than five years old; and

(B) four types for each low performance area selected from the list as follows:

(i) Textbooks;

(ii) journals;

(iii) review books;

(iv) audiovisuals;

(v) computer-assisted instruction; or

(vi) computer review programs.

(g) A registered professional nurse shall provide written verification that the individual has completed the study plan.

(h) Academic nursing courses, clinical observations, or other learning activities to meet study requirements may also be prescribed by the board. (Authorized by K.S.A. 65-1129; implementing K.S.A. 65-1115 and K.S.A. 65-1116; effective Feb. 15, 1977; amended Sept. 2, 1991;

amended May 9, 1994; amended April 4, 1997; amended Jan. 29, 1999; amended June 14, 2002; amended Nov. 7, 2008.)

60-3-106a. Temporary permit. (a) A temporary permit to practice as a registered professional nurse or licensed practical nurse for a period not to exceed 120 days may be issued to an applicant who holds a license in a state or territory of the United States that was granted by an examination approved by the board for either of the following:

(1) To enable the applicant to gain employment while completing continuing education requirements necessary for reinstatement of a Kansas license; or

(2) to enable the applicant to gain employment while completing the requirements necessary for endorsement.

(b) A copy of the applicant's current nursing license in another state or in a territory of the United States shall be required for issuance of a temporary permit for endorsement and for reinstatement of a Kansas license as prescribed by K.A.R. 60-3-105. (Authorized by K.S.A. 65-1129 and K.S.A. 2007 Supp. 74-1106; implementing K.S.A. 65-1115, K.S.A. 65-1116, and K.S.A. 2007 Supp. 65-1117; effective May 9, 1994; amended April 3, 1998; amended July 29, 2005; amended Nov. 7, 2008.)

60-3-107. Expiration dates of applications. Applications for initial licensure by examination or endorsement and for reinstatement while awaiting documentation of qualifications shall be active for six months.

(a) The expiration date of each application shall be six months after the date of receipt at the board's office.

(b) If the application has expired, each individual seeking licensure shall submit a new application along with the appropriate fee as prescribed by K.A.R. 60-4-101. (Authorized by and implementing K.S.A. 65-1115, K.S.A. 65-1116, and K.S.A. 65-1117; effective, E-77-8, March 19, 1976; effective Feb. 15, 1977; amended April 3, 1998; amended July 29, 2005.)

60-3-108. License expiration and renewal. (a) Except as specified in subsection (b), all licenses for registered professional nurses and licensed practical nurses shall be renewed according to the following requirements:

(1) The expiration date of each license shall be the last day of the month in which the licensee's birthday occurs.

(2)(A) The renewal date for each licensee whose year of birth is an odd-numbered year shall be in each odd-numbered year.

(B) The renewal date for each licensee whose year of birth is an even-numbered year shall be in each even-numbered year.

(b) If a licensee would otherwise be required to renew the license within six months from the date on which the licensee qualified for the license, the expiration and renewal date shall be the last day of the month following the licensee's third birthday from the date of licensure or reinstatement. (Authorized by K.S.A. 65-1117 and K.S.A. 74-1106; implementing K.S.A. 65-1117; effective, E-77-8, March 19, 1976; effective Feb. 15, 1977; amended, E-79-8, March 16, 1978; amended May 1, 1979; amended July 29, 2005.)

60-3-109. (Authorized by K.S.A. 65-1113 *et seq.*, 74-1106 *et seq.*; modified by L. 1975, Ch. 302, Sec. 4, effective May 1, 1975; amended Feb. 15, 1977; revoked May 1, 1982.)

60-3-109a. Standards of practice. (a) Each registered professional nurse shall be familiar with the Kansas nurse practice act, the standards of practice of the profession and the code of ethics for professional nurses.

(b) Each licensed practical nurse shall be familiar with the Kansas nurse practice act, the standards of practice and the code of ethics for practical nurses. (Authorized by K.S.A. 65-1113; implementing K.S.A. 74-1106; effective May 1, 1985.)

60-3-110. Unprofessional conduct. Any of the following shall constitute "unprofessional conduct":

(a) Performing acts beyond the authorized scope of the level of nursing for which the individual is licensed;

(b) assuming duties and responsibilities within the practice of nursing without making or obtaining adequate preparation or maintaining competency;

(c) failing to take appropriate action or to follow policies and procedures in the practice situation designed to safeguard each patient;

(d) inaccurately recording, falsifying, or altering any record of a patient or agency or of the board;

(e) physical abuse, which shall be defined as any act or failure to act performed intentionally or carelessly that causes or is likely to cause harm to a patient. This term may include any of the following:

(1) The unreasonable use of any physical restraint, isolation, or medication that harms or is likely to harm a patient;

(2) the unreasonable use of any physical or chemical restraint, medication, or isolation as punishment, for convenience, in conflict with a physician's order or a policy and procedure of the facility or a state statute or regulation, or as a substitute for treatment, unless the use of the restraint, medication, or isolation is in furtherance of the health and safety of the patient;

(3) any threat, menacing conduct, or other non-therapeutic or inappropriate action that results in or might reasonably be expected to result in a patient's unnecessary fear or emotional or mental distress; or

(4) failure or omission to provide any goods or services that are reasonably necessary to ensure safety and well-being and to avoid physical or mental harm;

(f) commission of any act of sexual abuse, sexual misconduct, or sexual exploitation related to the licensee's practice;

(g) verbal abuse, which shall be defined as any word or phrase spoken inappropriately to or in the presence of a patient that results in or might reasonably be expected to result in the patient's unnecessary fear, emotional distress, or mental distress;

(h) delegating any activity that requires the unique skill and substantial specialized knowledge derived from the biological, physical, and behavioral sciences and judgment of the nurse to an unlicensed individual in violation of the Kansas nurse practice act or to the detriment of patient safety;

(i) assigning the practice of nursing to a licensed individual in violation of the Kansas nurse practice act or to the detriment of patient safety;

(j) violating the confidentiality of information or knowledge concerning any patient;

(k) willfully or negligently failing to take appropriate action to safeguard a patient or the public from incompetent practice performed by a registered professional nurse or a licensed practical nurse. "Appropriate action" may include reporting to the board of nursing;

(l) leaving an assignment that has been accepted, without notifying the appropriate authority and allowing reasonable time for replacement;

(m) engaging in conduct related to licensed nursing practice that is likely to deceive, defraud, or harm the public;

(n) diverting drugs, supplies, or property of any patient or agency;

(o) exploitation, which shall be defined as misappropriating a patient's property or taking unfair advantage of a patient's physical or financial resources for the licensee's or another individual's personal or financial advantage by the use of undue influence, coercion, harassment, duress, deception, false pretense, or false representation;

(p) solicitation of professional patronage through the use of fraudulent or false advertisements, or profiting by the acts of those representing themselves to be agents of the licensee;

(q) advertising nursing superiority or advertising the performance of nursing services in a superior manner;

(r) failing to comply with any disciplinary order of the board;

(s) failing to submit to a mental or physical examination or an alcohol or drug screen, or any combination of these, when so ordered by the board pursuant to K.S.A. 65-4924 and amendments thereto, that the individual is unable to practice nursing with reasonable skill and safety by reason of a physical or mental disability or condition, loss of motor skills or the use of alcohol, drugs, or controlled substances, or any combination of these;

(t) failing to complete the requirements of the impaired provider program of the board;

(u) failing to furnish the board, its investigators, or its representatives with any information legally requested by the board;

(v) engaging in nursing practice while using a false or assumed name or while impersonating another person licensed by the board;

(w) practicing without a license or while the license has lapsed;

(x) allowing another person to use the licensee's license to practice nursing; or

(y) knowingly aiding or abetting another in any act that is a violation of any health care licensing act. (Authorized by K.S.A. 65-1129; implementing K.S.A. 2015 Supp. 65-1120; effective May 1, 1982; amended Sept. 27, 1993; amended Sept. 6, 1994; amended Oct. 25, 2002; amended April 29, 2016.)

60-3-111. Inactive license. (a) Before expiration of an active license, a registered professional nurse or licensed practical nurse may request to be put on inactive status.

(b) The request shall be accompanied by the inactive license fee, as prescribed by K.A.R. 60-4-101.

(c) Continuing nursing education shall not be required while on inactive status.

(d) The licensee shall remain on inactive status until filing an application and meeting all the requirements for reinstatement. (Authorized by K.S.A. 65-1129; implementing K.S.A. 2000 Supp. 65-1117 and 65-1118; effective April 26, 1993; amended Oct. 12, 2001.)

60-3-112. Exempt license. (a) An exempt license shall be granted only to a registered professional or practical nurse who meets these requirements:

(1) Is not regularly engaged in nursing practice in Kansas, but volunteers nursing services or is a charitable health care provider as defined by K.S.A. 75-6102 and amendments thereto; and

(2)(A) Has been licensed in Kansas for the five years previous to applying for an exempt license; or

(B) has been licensed in another jurisdiction for the five years previous to applying for an exempt license and meets all requirements for endorsement into Kansas.

(b) The expiration date of the exempt license shall be in accordance with K.A.R. 60-3-108.

(c) Each application for renewal of an exempt license shall be submitted upon a form furnished by the board and shall be accompanied by the fee in accordance with K.A.R. 60-4-101. (Authorized by and implementing K.S.A. 65-1115 and K.S.A. 65-1116; effective April 3, 1998; amended Oct. 25, 2002; amended July 29, 2005.)

60-3-113. Reporting of certain misdemeanor convictions by the licensee. Pursuant to K.S.A. 65-1117 and amendments thereto, each licensee shall report to the board any misdemeanor conviction for any of the following substances or types of conduct, within 30 days from the date the conviction becomes final:

(a) Alcohol;

(b) any drugs;

(c) deceit;

(d) dishonesty;

(e) endangerment of a child or vulnerable adult;

(f) falsification;

(g) fraud;

(h) misrepresentation;

(i) physical, emotional, financial, or sexual exploitation of a child or vulnerable adult;

(j) physical or verbal abuse;

(k) theft;

(l) violation of a protection from abuse order or protection from stalking order; or

(m) any action arising out of a violation of any state or federal regulation. (Authorized by K.S.A. 2015 Supp. 65-1117 and K.S.A. 65-1129; implementing K.S.A. 2015 Supp. 65-1117; effective Nov. 7, 2008; amended April 29, 2016.)

60-3-114. Satisfactory completion of a refresher course approved by the board. (a) Each refresher course shall provide didactic instruction and clinical learning as follows:

(1) At least 120 clock-hours of didactic instruction; and

(2) at least 180 clock-hours of clinical learning, which shall be verified by the preceptor and refresher course administrator or by the refresher course faculty member, according to the following requirements:

(A) For the registered professional nurse refresher course, at least 110 of the required clock-hours in an acute care setting; and

(B) for the licensed practical nurse refresher course, all 180 clock-hours in an acute care or skilled nursing setting.

(b) The didactic instruction and clinical learning content areas of the registered professional nurse refresher course shall be the following:

(1) Safe, effective care environment, including management of care and safety and infection control;

(2) health promotion and maintenance;

(3) psychosocial integrity;

(4) physiological integrity, including basic care and comfort, pharmacological and parenteral therapies, reduction of risk potential, and physiological adaptation; and

(5) integrated content, including the nursing process, caring, communication, documentation, teaching, and learning.

(c) The didactic instruction and clinical learning content areas of the licensed practical nurse refresher course shall be the following:

(1) Safe and effective care environment, including coordinated care and safety and infection control;

(2) health promotion and maintenance;

(3) psychosocial integrity;

(4) physiological integrity, including basic care and comfort, pharmacological therapies, reduction of risk potential, and physiological adaptation; and

(5) integrated content, including the nursing process, caring, communication, documentation, teaching, and learning.

(d)(1) Each refresher course student shall be supervised by the course faculty member or preceptor.

(2) All clinical learning experiences shall be under the direct supervision of a registered professional nurse. Direct supervision shall mean that a registered professional nurse observes, directs, and evaluates the refresher course student's performance.

(3) The faculty member or preceptor shall be on site when the refresher course student is assigned responsibilities that include nursing skills and abilities in which the student has acquired proficiency and the care required is simple and routine.

(4) The faculty member or preceptor shall be on the premises when the refresher course student is assigned responsibilities that include nursing skills and abilities in which the student is gaining proficiency and the clients assigned to the student have severe or urgent conditions or are unstable, or both.

(5) Each student in a registered professional nurse refresher course shall demonstrate clinical skills appropriate for the scope of practice for the registered professional nurse.

(6) Each student in a licensed practical nurse refresher course shall demonstrate clinical skills appropriate for the scope of practice for the licensed practical nurse.

(7) Upon successful completion of the didactic portion of the refresher course, the unlicensed student shall submit an application for licensure in Kansas before beginning clinical learning. (Authorized by K.S.A. 65-1115, 65-1116, and 65-1129; implementing K.S.A. 65-1115 and 65-1116; effective Nov. 7, 2008.)

Article 4.—FEES

60-4-101. Payment of fees. The following fees shall be charged by the board of nursing:

(a) Fees for professional nurses.

(1) Application for single-state license
by endorsement to Kansas \$100.00

(2) Application for single-state license by
examination..... 100.00

(3) Biennial renewal of single-state license..... 85.00

(4) Application for reinstatement of single-
state license without temporary permit... 150.00

(5) Application for reinstatement of single-
state license with temporary permit..... 150.00

(6) Certified copy of Kansas license 25.00

(7) Inactive license 10.00

(8) Verification of licensure.....	30.00
(9) Application for exempt license.....	50.00
(10) Renewal of exempt license.....	50.00
(11) Application for multistate license by endorsement.....	125.00
(12) Application for multistate license by examination.....	125.00
(13) Biennial renewal of multistate license.....	85.00
(14) Application for reinstatement of multistate license.....	150.00
(15) Application for reinstatement of multistate license with temporary permit.....	150.00
(b) Fees for practical nurses.	
(1) Application for single-state license by endorsement to Kansas.....	75.00
(2) Application for single-state license by examination.....	75.00
(3) Biennial renewal of single-state license.....	85.00
(4) Application for reinstatement of single- state license without temporary permit...	150.00
(5) Application for reinstatement of single- state license with temporary permit.....	150.00
(6) Certified copy of Kansas license.....	25.00
(7) Inactive license.....	10.00
(8) Verification of licensure.....	30.00
(9) Application for exempt license.....	50.00
(10) Renewal of exempt license.....	50.00
(11) Application for multistate license by endorsement.....	125.00
(12) Application for multistate license by examination.....	125.00
(13) Biennial renewal of multistate license.....	85.00
(14) Application for reinstatement of multistate license.....	150.00
(15) Application for reinstatement of multistate license with temporary permit.....	150.00

This regulation shall become effective on July 1, 2019. (Authorized by K.S.A. 65-1129; implementing K.S.A. 65-1118; effective Jan. 1, 1966; amended Jan. 1, 1972; amended, E-74-29, July 1, 1974; modified, L. 1975, Ch. 302, Sec. 5, May 1, 1975; amended, E-77-8, March 19, 1976; amended Feb. 15, 1977; amended, E-79-8, March 16, 1978; amended May 1, 1979; amended May 1, 1980; amended May 1, 1983; amended March 9, 1992; amended May 17, 1993; amended May 9, 1994; amended Feb. 6, 1995; amended April 3, 1998; amended July 1, 2001; amended April 20, 2007; amended July 1, 2014; amended May 12, 2017; amended July 1, 2019.)

60-4-102. (Authorized by K.S.A. 65-1113 *et seq.* and 74-1106 *et seq.*; effective May 1, 1979; revoked May 1, 1980.)

60-4-103. Fees and travel expenses for school approval and approval of continuing education providers. (a) The fees for school approval and approval of continuing nursing education providers shall be the following:

(1) Application for approval — schools of nursing.....	\$1,000.00
(2) Annual report of approval — schools of nursing.....	200.00
(3) Application for approval of continuing nursing education providers.....	200.00
(4) Annual report for continuing nursing education providers.....	50.00
(5) Approval of single continuing nursing education offerings.....	100.00
(6) Consultation by request, per day on site ...	300.00

(b) All fees prescribed in subsection (a) shall be due at the time of application.

(c) The person, firm, corporation, or institution requesting the board's consultation services shall pay each consultant's travel expenses. (Authorized by K.S.A. 65-1129; implementing K.S.A. 65-1118a; effective, E-82-18, Sept. 30, 1981; effective May 1, 1982; amended Sept. 14, 1992; amended May 17, 1993; amended May 9, 1994; amended June 14, 2002; amended April 17, 2015.)

Article 5.—APPROVAL OF EDUCATIONAL PROGRAMS FOR MENTAL HEALTH TECHNICIANS

60-5-101. (Authorized by K.S.A. 65-4201 *et seq.* and K.S.A. 1974 Supp. 74-1106 *et seq.*; rejected, L. 1975, Ch. 302, May 1, 1975.)

60-5-102. Approval procedure. (A) An institution contemplating the establishment of a program for mental health technicians:

(1) Shall write a letter of intent to the Kansas state board of nursing.

(2) Shall submit the name and qualifications of the nurse administrator to the board of nursing for approval.

(3) Shall employ a qualified nurse administrator.

(4) Shall employ a second faculty member.

(5) Shall file with the board an application for an approved program two months prior to the anticipated opening date with the payment of any required fees.

(6) Shall receive in writing the decision of the board.

(7) Shall be approved prior to the admission of students. (Authorized by K.S.A. 65-4201 *et seq.*,

K.S.A. 1974 Supp. 74-1106 *et seq.*; modified, L. 1975, Ch. 302, Sec. 6, May 1, 1975.)

60-5-103. Discontinuing a program for mental health technicians. A program terminating its course shall submit for approval to the board the plan for students currently enrolled and the disposition of records. (Authorized by K.S.A. 65-4201 *et seq.* and K.S.A. 1974 Supp. 74-1106 *et seq.*; effective May 1, 1975.)

Article 6.—REQUIREMENTS FOR APPROVED PROGRAMS FOR MENTAL HEALTH TECHNICIANS

60-6-101. Requirements. (a) Accreditation and approval.

(1) Each educational institution shall be approved by the appropriate state agency.

(2) Each hospital and agency providing facilities for clinical experience shall be licensed, accredited, or approved by the licensing or certifying body.

(b) Administration and organization.

(1) The educational program or the institution of which it is a part shall be a legally constituted body. The controlling body shall be responsible for general policy and shall provide for the financial support of the educational unit.

(2) Authority and responsibility for administering the program shall be vested in the director of the educational unit.

(c) Faculty for mental health technician programs. Each faculty member shall have the necessary preparation, experience, and personal qualifications to meet the specifications of the position.

(1) The director of the educational unit shall be licensed to practice as a registered professional nurse in Kansas and shall be responsible for the development and implementation of the educational program. The director shall have a baccalaureate degree, successful experience in administration or teaching, and at least two years of experience in psychiatric or developmental disability nursing.

(2) Each instructor in a mental health technician program shall meet at least one of the following requirements:

(A) Be licensed to practice as a registered professional nurse in Kansas and have at least two years of experience in psychiatric or developmental disability nursing; or

(B) be licensed to practice as a licensed mental health technician and have at least five years of experience postlicensure. Two years of work experience shall be waived for those licensed mental health technicians possessing an associate degree.

(3) Each instructor in the behavioral sciences shall have earned an academic degree with appropriate education relative to the area of instruction.

(d) Curriculum.

(1) Before implementation of the program, the institution shall submit the proposed curriculum in writing to the board for approval. The institution shall submit, in writing, any proposed changes to an approved curriculum to the board for its approval before the changes may be implemented.

(2) The curriculum shall be organized to cover both theoretical instruction and clinical instruction. The curriculum for mental health technician courses shall consist of a minimum of 300 hours of theoretical instruction and 300 hours of clinical instruction. By July 1, 1978, the curriculum shall consist of a minimum of 450 hours of theoretical instruction and 450 hours of clinical instruction. In academic institutions, one semester hour of credit shall be equal to 15 hours of theoretical instruction or 45 hours of clinical instruction.

(3) The curriculum shall also include the following two courses, which shall be of a theoretical nature. Each course shall consist of 45 hours of instruction.

(A) Human growth and development. This course shall include aspects of growth and development from the prenatal period through senescence.

(B) Behavioral science. This course shall include human needs, group processes, family dynamics, and social, economic, and cultural factors of behavior.

(4) The curriculum shall also include the following two courses, which shall include both theoretical and clinical instruction.

(A) Basic nursing concepts. This course shall include bed making, personal hygiene, administration and effect of medications, feeding, asepsis, elimination, recognition of illness, vital signs, basic nutrition, special care of patients, first aid and emergency nursing, assisting with physical examinations, and admission and discharge of patients.

(B) Psychiatric therapeutic treatment. This course shall include interpersonal relationships, psychopathology and classifications, coping

mechanisms, communication skills, therapeutic modalities, and special reporting and recording techniques.

(e) Clinical facilities and resources.

(1) All clinical facilities shall be approved by the board, and appropriate contractual agreements shall be renewed annually with all cooperating agencies.

(2) Each clinical area used for student learning experiences shall be staffed by nursing service independent of student assignments.

(3) Each clinical unit used for educational purposes shall be under the direct supervision of a registered nurse.

(f) Students.

(1) Admission. Each program shall have clearly defined policies for admission.

(2) Credit for previous study.

Each program shall have clearly defined written policies concerning credit for previous study, transfer of credits, and readmission of students. These policies shall conform to the policies of the institution.

(3) Promotion and graduation policies shall be in writing.

(g) Evaluation. A written plan for continuing program evaluation shall be developed and implemented. (Authorized by K.S.A. 1998 Supp. 65-4206 and 74-1106; implementing K.S.A. 1998 Supp. 65-4206; modified, L. 1975, Ch. 302, Sec. 7, May 1, 1975; amended March 31, 2000.)

Article 7.—REQUIREMENTS FOR LICENSURE AND STANDARDS OF PRACTICE

60-7-101. Licensure. (a) The applicant shall file with the board one month preceding the examination a completed application on an adopted form with payment of the application and examination fees prescribed by K.A.R. 60-8-101.

(b) Verification of current Kansas license shall be provided by request to other state boards upon payment of fee.

(c) Information regarding examinations.

(1) The examination for licensure shall be given at least twice a year.

(2) Each candidate shall present a validated admission card in order to be admitted to the examination center.

(3) Any applicant cheating or attempting to cheat during the examination shall be deemed not to have passed the examination.

(4) In the event that answer sheets are lost or destroyed through circumstances beyond the control of the board, the candidate shall be required to retake the examination in order to meet requirements for licensure, except that no additional charge shall be made.

(5) Individual examination results shall be released to the school from which the examinee graduated.

(6) Any candidate requesting modifications to the examination procedures or materials because of a learning disability shall provide written documentation from the appropriate medical professional confirming the learning disability, an evaluation completed within the last five years by a learning disabilities evaluation team, and a letter from the mental health technician program confirming the learning and testing modifications made during the course of study.

(d) Application for retest. An applicant who fails to make a passing score on the licensure examination may retake the examination and shall pay an examination fee for each retest as established by K.A.R. 60-8-101.

(e) If an individual fails to pass the licensure examination within 24 months from graduation, the individual shall petition the board in writing before being allowed to retake the licensure examination. The petition shall be on a form provided by the board and shall contain the following:

(1) The name of the school of graduation;

(2) the date of graduation;

(3) the number of months or years since graduation;

(4) the number of times taking the licensure examination;

(5) the dates of the licensure examinations;

(6) areas of deficiency identified on the diagnostic profile for each examination;

(7) copies of all diagnostic profiles;

(8) any study completed since the last attempt of taking the licensure examination;

(9) any work experience in the last two years; and

(10) a sworn statement by the petitioner that the facts contained in the petition are true to the best of the person's knowledge and belief.

(f) An individual shall be allowed by the board to retake the licensure examination after 24 months from graduation only upon demonstrating to the board's satisfaction that the individual has identified and addressed the reasons for prior failure and that there is a reasonable probability that the individual will pass the examination. A plan of

study may be required by the board before the individual retakes the licensure examination.

(g) If the board requires a plan of study before retaking the licensure examination, the plan shall contain the following:

(1) A list of all the low performance competencies of the test plan identified by the diagnostic profile from each examination;

(2) a specific content outline for all the low performance competencies on the diagnostic profile;

(3) methods of study, including the following:

(A) Self-study;

(B) study groups;

(C) tutors; or

(D) any other methods as approved by the board;

(4) a schedule for study that meets the following requirements:

(A) 30 hours per each low performance competency;

(B) a start date; and

(C) completion in six months or the petition shall be considered abandoned;

(5) learning resources identified to be used in the study, meeting these requirements:

(A) a written bibliography in a standard documentation format, with resources no more than five years old; and

(B) four types for each low performance competency selected from the list as follows:

(i) Textbooks;

(ii) journals;

(iii) review books;

(iv) audiovisuals;

(v) computer-assisted instruction; or

(vi) computer review programs.

(h) A registered professional nurse shall provide written verification that the individual has completed a study plan.

(i) Academic mental health technician courses, clinical observations, or other learning activities to meet study requirements may also be prescribed by the board. (Authorized by K.S.A. 1997 Supp. 65-4203 and 1997 Supp. 74-1106; implementing K.S.A. 1997 Supp. 65-4203; modified, L. 1975, Ch. 302, Sec. 8, May 1, 1975; amended Jan. 29, 1999.)

60-7-102. Duplicate of initial license.

When an individual's initial license has been lost or destroyed, a duplicate may be issued by the board upon payment of the fee specified in K.S.A. 65-4208, and amendments thereto. (Authorized

by K.S.A. 65-4203; implementing K.S.A. 65-4208; modified, L. 1975, Ch. 302, Sec. 9, May 1, 1975; amended April 20, 2001; amended April 29, 2016.)

60-7-103. Change of name. Once an application for licensure has been filed, or a license has been issued, the applicant or licensee shall submit an affidavit indicating a change of name upon forms approved by the board. (Authorized by K.S.A. 65-4201 *et seq.*, K.S.A. 1974 Supp. 74-1106 *et seq.*; effective May 1, 1975.)

60-7-104. Reinstatement of license. (a) Any applicant whose Kansas license has lapsed may reinstate the license by submitting satisfactory proof that the applicant within the preceding two-year period has obtained 30 hours of approved continuing education.

(b) Any applicant whose license has lapsed may request that a one-time, temporary permit to practice for 120 days be issued while the applicant completes the required continuing education hours. (Authorized by K.S.A. 1994 Supp. 65-4203, as amended by L. 1995, Ch. 97, § 4; implementing K.S.A. 1994 Supp. 65-4205, as amended by L. 1995, Ch. 97, § 5; effective May 1, 1975; amended May 9, 1994; amended Feb. 16, 1996.)

60-7-105. Standards of practice. (A) The licensed mental health technician shall:

(1) Be familiar with the mental health technician's licensure act.

(2) Function primarily in a psychiatric-mental retardation setting, and shall not substitute for registered nurses or licensed practical nurses in adult care facilities. (Authorized by K.S.A. 65-4201 *et seq.*, K.S.A. 1974 Supp. 74-1106 *et seq.*; modified, L. 1975, Ch. 302, Sec. 10, May 1, 1975.)

60-7-106. Unprofessional conduct. Any of the following shall constitute "unprofessional conduct":

(a) Performing acts beyond the authorized scope of mental health technician practice for which the individual is licensed;

(b) assuming duties and responsibilities within the practice of mental health technology without adequate preparation or without maintaining competency;

(c) failing to take appropriate action or to follow policies and procedures in the practice situation designed to safeguard the patient;

(d) inaccurately recording, falsifying, or altering any record of a patient, an agency, or the board;

(e) physical abuse, which shall be defined as any act or failure to act performed intentionally or carelessly that causes or is likely to cause harm to a patient. This term may include any of the following:

(1) The unreasonable use of any physical restraints, isolation, or medication that harms or is likely to harm a patient;

(2) the unreasonable use of any physical or chemical restraint, medication, or isolation as a punishment, for convenience, in conflict with a physician's order or a policy and procedure of the facility or a statute or regulation, or as a substitute for treatment, unless the use of the restraint, medication, or isolation is in furtherance of the health and safety of the patient;

(3) any threat, menacing conduct, or other non-therapeutic or inappropriate action that results in or might reasonably be expected to result in a patient's unnecessary fear or emotional or mental distress; or

(4) any failure or omission to provide any goods or services that are reasonably necessary to ensure safety and well-being and to avoid physical or mental harm;

(f) the commission of any act of sexual abuse, sexual misconduct, or sexual exploitation related to the licensee's practice;

(g) verbal abuse, which shall be defined as any word or phrase spoken inappropriately to or in the presence of a patient that results in or might reasonably be expected to result in the patient's unnecessary fear, emotional distress, or mental distress;

(h) delegating any activity that requires the unique skill and substantial specialized knowledge derived from the biological, physical, and behavioral sciences and judgment of the mental health technician to an unlicensed individual in violation of the mental health technician's licensure act or to the detriment of patient safety;

(i) assigning the practice of mental health technology to a licensed individual in violation of the mental health technician's licensure act or to the detriment of patient safety;

(j) violating the confidentiality of information or knowledge concerning any patient;

(k) willfully or negligently failing to take appropriate action to safeguard a patient or the public from incompetent practice performed by a licensed mental health technician. "Appropriate action" may include reporting to the board of nursing;

(l) leaving an assignment that has been accepted, without notifying the appropriate authori-

ty and without allowing reasonable time for the licensee's replacement;

(m) engaging in conduct related to mental health technology practice that is likely to deceive, defraud, or harm the public;

(n) diverting drugs, supplies, or property of any patient or agency or violating any law or regulation relating to controlled substances;

(o) exploitation, which shall be defined as misappropriating a patient's property or taking unfair advantage of a patient's physical or financial resources for the licensee's or another individual's personal or financial advantage by the use of undue influence, coercion, harassment, duress, deception, false pretense, or false representation;

(p) solicitation of professional patronage through the use of fraudulent or false advertisements, or profiting by the acts of those representing themselves to be agents of the licensee;

(q) failing to comply with any disciplinary order of the board;

(r) if the licensee is participating in an impaired provider program approved by the board, failing to complete the requirements of the program;

(s) failing to submit to a mental or physical examination or an alcohol or drug screen, or any combination of these, when so ordered by the board pursuant to K.S.A. 65-4924 and amendments thereto, that the individual is unable to practice mental health technology with reasonable skill and safety by reason of a physical or mental disability or condition, loss of motor skills or the use of alcohol, drugs, or controlled substances, or any combination of these;

(t) failing to furnish the board of nursing, or its investigators or representatives, with any information legally requested by the board of nursing;

(u) engaging in mental health technology practice while using a false or assumed name or while impersonating another person licensed by the board;

(v) practicing without a license or while the individual's license has lapsed;

(w) allowing another person to use the licensee's license to practice mental health technology;

(x) knowingly aiding or abetting another in any act that is a violation of any health care licensing act;

(y) having a mental health technician license from a licensing authority of another state, agency of the United States government, territory of the United States, or country denied, revoked, limited, or suspended or being subject to any other disciplinary action. A certified copy of the record

or order of denial, suspension, limitation, revocation, or any other disciplinary action issued by the licensing authority of another state, agency of the United States government, territory of the United States, or country shall constitute prima facie evidence of such a fact;

(z) failing to report to the board of nursing any adverse action taken against the licensee by another state or licensing jurisdiction, a peer review body, a health care facility, a professional association or society, a governmental agency, a law enforcement agency, or a court for acts or conduct similar to acts or conduct that would constitute grounds for disciplinary action under this regulation; or

(aa) cheating on or attempting to subvert the validity of the examination for a license. (Authorized by K.S.A. 65-4203 implementing K.S.A. 2015 Supp. 65-4209; effective, T-88-48, Dec. 16, 1987; effective Sept. 27, 1993; amended Sept. 6, 1994; amended April 20, 2007; amended April 29, 2016.)

60-7-108. Inactive license. (a) Before expiration of an active license, a licensed mental health technician may request to be put on inactive status.

(b) The request shall be accompanied by the inactive license fee specified in K.A.R. 60-8-101.

(c) Continuing licensed mental health technician education shall not be required while on inactive status.

(d) The licensee shall remain on inactive status until filing an application and meeting all the requirements for reinstatement. (Authorized by K.S.A. 1999 Supp. 65-4203; implementing K.S.A. 1999 Supp. 65-4205 and K.S.A. 1999 Supp. 65-4208; effective April 26, 1993; amended April 20, 2001.)

60-7-109. Exempt license. (a) An exempt license shall be granted only to a mental health technician who meets these requirements:

(1) Is not regularly engaged in mental health technician practice in Kansas, but is a charitable health care provider as defined by K.S.A. 75-6102 and amendments thereto; and

(2) has been licensed in Kansas for the five years previous to applying for an exempt license.

(b) The expiration date of the exempt license shall be in accordance with K.A.R. 60-12-106.

(c) All applications for renewal of an exempt license shall be submitted upon forms furnished by the board and shall be accompanied by the fee

in accordance with K.A.R. 60-8-101. (Authorized by and implementing K.S.A. 1996 Supp. 65-4203, as amended by L. 1997, Ch. 158, Sec. 8; effective April 3, 1998.)

60-7-110. Expiration dates of licenses; applications. (a) The expiration date of licenses for licensed mental health technicians shall be on the last day of December in each even-numbered year.

(b) Applications for initial licensure by examination and for reinstatement while awaiting documentation of qualifications shall be active for six months.

(1) The expiration date of each application shall be based upon the date of receipt at the agency.

(2) Once the application has expired, each individual seeking licensure shall file a new application along with the appropriate fee as prescribed by K.A.R. 60-8-101. (Authorized by K.S.A. 1996 Supp. 65-4203, as amended by L. 1997, Ch. 158, Sec. 8 and K.S.A. 1996 Supp. 74-1106, as amended by L. 1997, Ch. 146, Sec. 5; implementing K.S.A. 1996 Supp. 65-4203, as amended by L. 1997, Ch. 158, Sec. 8 and K.S.A. 1996 Supp. 65-4205, as amended by L. 1997, Ch. 146, Sec. 3; effective April 3, 1998.)

60-7-111. Reporting of certain misdemeanor convictions by the licensee. Pursuant to K.S.A. 65-4205 and amendments thereto, each licensee shall report to the board any misdemeanor conviction for any of the following substances or types of conduct:

- (a) Alcohol;
- (b) any drugs;
- (c) deceit;
- (d) dishonesty;
- (e) endangerment of a child or vulnerable adult;
- (f) falsification;
- (g) fraud;
- (h) misrepresentation;
- (i) physical, emotional, financial, or sexual exploitation of a child or vulnerable adult;
- (j) physical or verbal abuse;
- (k) theft;

(l) violation of a protection from abuse order or protection from stalking order; or

(m) any action arising out of a violation of any state or federal regulation. (Authorized by K.S.A. 65-4203 and K.S.A. 2007 Supp. 65-4205; implementing K.S.A. 2007 Supp. 65-4205; effective Nov. 7, 2008.)

Article 8.—FEES

60-8-101. Payment of fees. The following fees shall be charged by the board of nursing:

- (a) Mental health technician programs.
 - (1) Annual renewal of program approval..... \$100.00
 - (2) Survey of a new program..... 200.00
 - (3) Application for approval of continuing education providers..... 200.00
 - (4) Annual renewal for continuing education providers..... 50.00
- (b) Mental health technicians.
 - (1) Application for licensure 50.00
 - (2) Examination..... 40.00
 - (3) Biennial renewal of license 55.00
 - (4) Application for reinstatement of license without temporary permit..... 70.00
 - (5) Application for reinstatement of license with temporary permit 75.00
 - (6) Certified copy of Kansas license 12.00
 - (7) Inactive license 10.00
 - (8) Verification of licensure..... 10.00
 - (9) Duplicate license 12.00
 - (10) Application for exempt license..... 50.00
 - (11) Renewal of exempt license..... 50.00

This regulation shall be effective on and after July 1, 2014. (Authorized by K.S.A. 65-4203; implementing K.S.A. 65-4208; effective May 1, 1980; amended May 1, 1983; amended, T-85-49, Dec. 19, 1984; amended May 1, 1985; amended June 3, 1991; amended May 17, 1993; amended May 9, 1994; amended Feb. 6, 1995; amended April 3, 1998; amended July 1, 2001; amended April 20, 2007; amended Oct. 18, 2013; amended July 1, 2014.)

60-8-102. (Authorized by K.S.A. 65-4201 *et seq.*, 74-1106 *et seq.*; effective May 1, 1979; revoked May 1, 1980.)

Article 9.—CONTINUING EDUCATION FOR NURSES

60-9-101. (Authorized by K.S.A. 1976 Supp. 65-1117; effective Feb. 15, 1977; revoked Sept. 2, 1991.)

60-9-102. (Authorized by and implementing K.S.A. 65-1117; effective Feb. 15, 1977; amended, E-79-8, March 16, 1978; amended May 1, 1979; amended May 1, 1987; revoked Sept. 2, 1991.)

60-9-103. (Authorized by K.S.A. 1976 Supp. 65-1117; effective Feb. 15, 1977; revoked Sept. 2, 1991.)

60-9-104. (Authorized by K.S.A. 1976 Supp. 65-1117; effective Feb. 15, 1977; revoked March 9, 1992.)

60-9-105. Definitions. For the purposes of these regulations, each of the following terms shall have the meaning specified in this regulation:

(a) “Approval” means the act of determining that a providership application or course offering meets applicable standards based on review of either the total program or the individual offering.

(b) “Approved provider” means a person, organization, or institution that is approved by the board and is responsible for the development, administration, and evaluation of the continuing nursing education (CNE) program or offering.

(c) “Authorship” means a person’s development of a manuscript for print or a professional paper for presentation. Each page of text that meets the definition of continuing nursing education (CNE), as defined in K.S.A. 65-1117 and amendments thereto, and is formatted according to the American psychological association’s guidelines shall equal three contact hours.

(1) Authorship of a manuscript means a person’s development of an original manuscript for a journal article or text accepted by a publisher for statewide or national distribution on a subject related to nursing or health care. Proof of acceptance from the editor or the published work shall be deemed verification of this type of credit. Credit shall be awarded only once per topic per renewal period.

(2) Authorship of a professional research paper means a person’s completion of a nursing research project as principal investigator, co-investigator, or project director and presentation to other health professionals. A program brochure, course syllabus, or letter from the offering provider identifying the person as a presenter shall be deemed verification of this type of credit. Credit shall be awarded only once each renewal period.

(d) “Behavioral objectives” means the intended outcome of instruction stated as measurable learning behaviors.

(e) “Certificate” means a document that is proof of completion of an offering consisting of one or more contact hours.

(f) “CE transcript” means a document that is proof of completion of one or more CNE offerings. Each CE transcript shall be maintained by a CNE provider.

(g) "Clinical hours" means planned learning experiences in a clinical setting. Three clinical hours equal one contact hour.

(h) "College course" means a class taken through a college or university, as described in K.S.A. 65-1119 and amendments thereto, and meeting the definition of CNE in K.S.A. 65-1117, and amendments thereto. One college credit hour equals 15 contact hours.

(i) "Computer-based instruction" means a learning application that provides computer control to solve an instructional problem or to facilitate an instructional opportunity.

(j) "Contact hour" means 50 total minutes of participation in a learning experience that meets the definition of CNE in K.S.A. 65-1117, and amendments thereto. Fractions of hours over 30 minutes to be computed towards a contact hour shall be accepted.

(k) "Distance learning" means the acquisition of knowledge and skills through information and instruction delivered by means of a variety of technologies.

(l) "Independent study" means a self-paced learning activity undertaken by the participant in an unstructured setting under the guidance of and monitored by an approved provider. This term shall include self-study programs, distance learning, and authorship.

(m) "Individual offering approval" and "IOA" mean a request for approval of an education offering meeting the definition of CNE, pursuant to K.S.A. 65-1117 and amendments thereto, but not presented by an approved provider or other acceptable approving body, as described in K.S.A. 65-1119 and amendments thereto.

(n) "In-service education" and "on-the-job training" mean learning activities in the work setting designed to assist the individual in fulfilling job responsibilities. In-service education and on-the-job-training shall not be eligible for CNE credit.

(o) "Offering" means a single CNE learning experience designed to enhance knowledge, skills, and professionalism related to nursing. Each offering shall consist of at least 30 minutes to be computed towards a contact hour.

(p) "Orientation" means formal or informal instruction designed to acquaint employees with the institution and the position. Orientation shall not be considered CNE.

(q) "Program" means a plan to achieve overall CNE goals.

(r) "Refresher course" means a course of study providing review of basic preparation and current developments in nursing practice.

(s) "Total program evaluation" means a systematic process by which an approved provider analyzes outcomes of the overall CNE program in order to make subsequent decisions. (Authorized by and implementing K.S.A. 2015 Supp. 65-1117 and K.S.A. 65-1119; effective Sept. 2, 1991; amended March 9, 1992; amended April 26, 1993; amended April 3, 1998; amended April 20, 2001; amended Oct. 25, 2002; amended March 6, 2009; amended May 10, 2013; amended April 29, 2016.)

60-9-106. Continuing nursing education for license renewal. (a) At the time of license renewal, any licensee may be required to submit proof of completion of 30 contact hours of approved continuing nursing education (CNE). This proof shall be documented as follows:

(1) For each approved CNE offering, a certificate or a transcript that clearly designates the number of hours of approved CNE that have been successfully completed, showing the following:

(A) Name of CNE offering;

(B) provider name or name of the accrediting organization;

(C) provider number or number of the accrediting organization, if applicable;

(D) offering date;

(E) number of contact hours awarded; and

(F) the licensee's name and license number as shown on the course roster; or

(2) an approved Kansas state board of nursing IOA, which shall include approval of college courses that meet the definition of continuing education in K.S.A. 65-1117, and amendments thereto.

(b) The required 30 contact hours of approved CNE shall have been completed during the most recent prior licensing period between the first date of the licensing period and the date that the licensee submits the renewal application as required in K.S.A. 65-1117, and amendments thereto, and K.A.R. 60-3-108. Contact hours accumulated in excess of the 30-hour requirement shall not be carried over to the next renewal period.

(c) Acceptable CNE may include any of the following:

(1) An offering presented by an approved long-term or single provider;

(2) an offering as designated in K.S.A. 65-1119, and amendments thereto;

(3) an offering for which a licensee has submitted an IOA, which may include credit requested for a college course that meets the definition of continuing education in K.S.A. 65-1117, and amendments thereto. Before licensure renewal, the licensee may submit an application for an IOA to the board, accompanied by the following:

(A) An agenda representing exact learning time in minutes;

(B) official documentation of successfully completed hours, which may include a certificate of completion or an official college transcript; and

(C) learning or behavior objectives describing learning outcomes;

(4) a maximum of 15 contact hours for the first-time preparation and presentation as an instructor of an approved offering to licensed nurses. Two contact hours of instructor credit shall be granted for each hour of presentation;

(5) an offering utilizing a board-approved curriculum developed by the American heart association, emergency nurses association, or Mandt, which may include the following:

- (A) Advanced cardiac life support;
- (B) emergency nursing pediatric course;
- (C) pediatric advanced life support;
- (D) trauma nurse core course;
- (E) neonatal resuscitation program; or
- (F) Mandt program;

(6) independent study;

(7) distance learning offerings;

(8) a board-approved refresher course if required for licensure reinstatement as specified in K.A.R. 60-3-105 and K.A.R. 60-11-116;

(9) participation as a member of a nursing organization board of directors or the state board of nursing, including participation as a member of a committee reporting to the board. The maximum number of allowable contact hours shall be six and shall not exceed three contact hours each year. A letter from an officer of the board confirming the dates of participation shall be accepted as documentation of this type of CNE; or

(10) any college courses in science, psychology, sociology, or statistics that are prerequisites for a nursing degree.

(d) Fractions of hours over 30 minutes to be computed towards a contact hour shall be accepted.

(e) Contact hours shall not be recognized by the board for any of the following:

(1) Identical offerings completed within a renewal period;

(2) offerings containing the same content as

courses that are part of basic preparation at the level of current licensure or certification;

(3) in-service education, on-the-job training, orientation, and institution-specific courses;

(4) an incomplete or failed college course or any college course in literature and composition, public speaking, basic math, algebra, humanities, or other general education requirements unless the course meets the definition of CNE;

(5) offerings less than 30 minutes in length; or

(6) a board-approved refresher course for license renewal. (Authorized by and implementing K.S.A. 2015 Supp. 65-1117; effective Sept. 2, 1991; amended April 3, 1998; amended April 20, 2001; amended July 20, 2007; amended May 10, 2013; amended April 29, 2016.)

60-9-107. Approval of continuing nursing education. (a) Offerings of approved providers shall be recognized by the board.

(1) Long-term provider. A completed application for initial approval or five-year renewal for a long-term continuing nursing education (CNE) providership shall be submitted to the board at least 60 days before a scheduled board meeting.

(2) Single offering provider. The application for a single CNE offering shall be submitted to the board at least 30 days before the anticipated date of the first offering.

(b) Each applicant shall include the following information on the application:

(1) (A) The name and address of the organization; and

(B) the name and address of the department or unit within the organization responsible for approving CNE, if different from the name and address of the organization;

(2) the name, education, and experience of the program coordinator responsible for CNE, as specified in subsection (c);

(3) written policies and procedures, including at least the following areas:

(A) Assessing the need and planning for CNE activities;

(B) fee assessment;

(C) advertisements or offering announcements. Published information shall contain the following statement: “(name of provider) is approved as a provider of CNE by the Kansas State Board of Nursing. This course offering is approved for contact hours applicable for APRN, RN, or LPN relicensure. Kansas State Board of Nursing provider number: _____”;

(D) for long-term providers, the offering approval process as specified in subsection (d);

(E) awarding contact hours, as specified in subsection (e);

(F) verifying participation and successful completion of the offering, as specified in subsections (f) and (g);

(G) recordkeeping and record storage, as specified in subsection (h);

(H) notice of change of coordinator or required policies and procedures. The program coordinator shall notify the board in writing of any change of the individual responsible for the providership or required policies and procedures within 30 days; and

(I) for long-term providers, a copy of the total program evaluation plan; and

(4) the proposed CNE offering, as specified in subsection (i).

(c) (1) Long-term provider. The program coordinator for CNE shall meet these requirements:

(A) Be a licensed professional nurse;

(B) have three years of clinical experience;

(C) have one year of experience in developing and implementing nursing education; and

(D) have a baccalaureate degree in nursing, except those individuals exempted under K.S.A. 65-1119 (e)(6) and amendments thereto.

(2) Single offering provider. If the program coordinator is not a nurse, the applicant shall also include the name, education, and experience of the nurse consultant. The individual responsible for CNE or the nurse consultant shall meet these requirements:

(A) Be licensed to practice nursing; and

(B) have three years of clinical experience.

(d) For long-term providers, the policies and procedures for the offering approval process shall include the following:

(1) A summary of the planning;

(2) the behavioral objectives;

(3) the content, which shall meet the definition of CNE in K.S.A. 65-1117 and amendments thereto;

(4) the instructor's education and experience, documenting knowledge and expertise in the content area;

(5) a current bibliography that is reflective of the offering content. The bibliography shall include books published within the past 10 years, periodicals published within the past five years, or both; and

(6) an offering evaluation that includes each participant's assessment of the following:

(A) The achievement of each objective; and

(B) the expertise of each individual presenter.

(e) An approved provider may award any of the following:

(1) Contact hours as documented on an offering agenda for the actual time attended, including partial credit for one or more contact hours;

(2) credit for fractions of hours over 30 minutes to be computed towards a contact hour;

(3) instructor credit, which shall be twice the length of the first-time presentation of an approved offering, excluding any standardized, prepared curriculum;

(4) independent study credit that is based on the time required to complete the offering, as documented by the provider's pilot test results; or

(5) clinical hours.

(f) (1) Each provider shall maintain documentation to verify that each participant attended the offering. The provider shall require each participant to sign a daily roster, which shall contain the following information:

(A) The provider's name, address, provider number, and coordinator;

(B) the date and title of the offering, and the presenter or presenters; and

(C) the participant's name and license number, and the number of contact hours awarded.

(2) Each provider shall maintain documentation to verify completion of each independent study offering, if applicable. To verify completion of an independent study offering, the provider shall maintain documentation that includes the following:

(A) The provider's name, address, provider number, and coordinator;

(B) the participant's name and license number, and the number of contact hours awarded;

(C) the title of the offering;

(D) the date on which the offering was completed; and

(E) either the completion of a posttest or a return demonstration.

(g) (1) A certificate of attendance shall be awarded to each participant after completion of an offering, or a CE transcript shall be provided according to the policies and procedures of the long-term provider.

(2) Each certificate and each CE transcript shall be complete before distribution to the participant.

(3) Each certificate and each CE transcript shall contain the following information:

(A) The provider's name, address, and provider number;

- (B) the title of the offering;
- (C) the date or dates of attendance or completion;
- (D) the number of contact hours awarded and, if applicable, the designation of any independent study or instructor contact hours awarded;
- (E) the signature of the individual responsible for the providership; and
- (F) the name and license number of the participant.
- (h) (1) For each offering, the approved provider shall retain the following for two years:
 - (A) A summary of the planning;
 - (B) a copy of the offering announcement or brochure;
 - (C) the title and objectives;
 - (D) the offering agenda or, for independent study, pilot test results;
 - (E) a bibliography;
 - (F) a summary of the participants' evaluations;
 - (G) each instructor's education and experience; and
 - (H) documentation to verify completion of the offering, as specified in subsection (f).
- (2) The record storage system used shall ensure confidentiality and easy retrieval of records by authorized individuals.
- (3) Each approved single offering CNE provider shall submit to the board the original signature roster and a typed, alphabetized roster of individuals who have completed an offering, within 15 working days of course completion.
- (i) (1) Long-term provider application. The provider shall submit two proposed offerings, including the following:
 - (A) A summary of planning;
 - (B) a copy of the offering announcement or brochure;
 - (C) the title and behavioral objectives;
 - (D) the offering agenda or, for independent study, pilot test results;
 - (E) each instructor's education and experience;
 - (F) a current bibliography, as specified in paragraph (d)(5); and
 - (G) the offering evaluation form.
- (2) Single offering provider application. The provider shall submit the proposed offering, which shall include the information specified in paragraphs (i)(1)(A) through (G).
- (j) (1) Long-term provider application. Each prospective coordinator who has submitted an application for a long-term CNE providership that has been reviewed once and found deficient, or has approval pending, shall submit all materials required

by this regulation at least two weeks before the next board meeting. If the application does not meet all of the requirements or the prospective coordinator does not contact the board for an extension on or before this deadline, the application process shall be considered abandoned. A new application and fee shall be submitted if a providership is still desired.

(2) Single offering approval application. If the application for a single offering has been reviewed and found deficient, or has approval pending, the CNE coordinator shall submit all materials required by this regulation before the date of offering. If the application does not meet requirements before the offering deadline, the application shall be considered abandoned. There shall be no retroactive approval of single offerings.

(k) (1) Each approved long-term provider shall pay a fee for the upcoming year and submit an annual report for the period of July 1 through June 30 of the previous year on or before the deadline designated by the board. The annual report shall contain the following:

(A) An evaluation of all the components of the providership based on the total program evaluation plan;

(B) a statistical summary report; and

(C) for each of the first two years of the providership, a copy of the records for one offering as specified in paragraphs (h)(1)(A) through (H).

(2) If approved for the first time after January 1, a new long-term provider shall submit only the statistical summary report and shall not be required to submit the annual fee or evaluation based on the total program evaluation plan.

(l) (1) If the long-term provider does not renew the providership, the provider shall notify the board in writing of the location at which the offering records will be accessible to the board for two years.

(2) If a provider does not continue to meet the criteria for current approval established by regulation or if there is a material misrepresentation of any fact with the information submitted to the board by an approved provider, approval may be withdrawn or conditions relating to the providership may be applied by the board after giving the approved provider notice and an opportunity to be heard.

(3) Any approved provider that has voluntarily relinquished the providership or has had the providership withdrawn by the board may reapply as a long-term provider. The application shall be submitted on forms supplied by the board and accompanied by the designated, nonrefundable fee

as specified in K.A.R. 60-4-103(a)(3). (Authorized by and implementing K.S.A. 2011 Supp. 65-1117 and K.S.A. 65-1119; effective March 9, 1992; amended Sept. 27, 1993; amended April 3, 1998; amended Oct. 25, 2002; amended March 6, 2009; amended May 10, 2013.)

60-9-109. Exceptions. (Authorized by and implementing K.S.A. 1990 Supp. 65-1117; effective Sept. 2, 1991; revoked Dec. 13, 1996.)

Article 10.—ADVANCED REGISTERED NURSE PRACTITIONERS

60-10-101 to 60-10-105. (Authorized by and implementing K.S.A. 65-1128; effective, E-81-12, May 14, 1980; effective May 1, 1981; revoked May 1, 1984.)

60-10-106. (Authorized by and implementing K.S.A. 65-1119; effective, E-81-12, May 14, 1980; effective May 1, 1981; revoked May 1, 1984.)

60-10-107. (Authorized by and implementing K.S.A. 65-1128; effective, E-81-12, May 14, 1980; effective May 1, 1981; revoked May 1, 1984.)

60-10-108 and 60-10-109. (Authorized by and implementing K.S.A. 65-1117 and 65-1128; effective, E-81-12, May 14, 1980; effective May 1, 1981; revoked May 1, 1984.)

Article 11.—ADVANCED PRACTICE REGISTERED NURSES (APRN)

60-11-101. Definition of expanded role; limitations; restrictions. (a) Each “advanced practice registered nurse” (APRN), as defined by K.S.A. 65-1113 and amendments thereto, shall function in an expanded role to provide primary, secondary, and tertiary health care in the APRN’s role of advanced practice. Each APRN shall be authorized to make independent decisions about advanced practice nursing needs of families, patients, and clients and medical decisions based on the authorization for collaborative practice with one or more physicians. This regulation shall not be deemed to require the immediate and physical presence of the physician when care is given by an APRN. Each APRN shall be directly accountable and responsible to the consumer.

(b) “Authorization for collaborative practice” shall mean that an APRN is authorized to develop and manage the medical plan of care for patients or clients based upon an agreement developed

jointly and signed by the APRN and one or more physicians. Each APRN and physician shall jointly review the authorization for collaborative practice annually. Each authorization for collaborative practice shall include a cover page containing the names and telephone numbers of the APRN and the physician, their signatures, and the date of review by the APRN and the physician. Each authorization for collaborative practice shall be maintained in either hard copy or electronic format at the APRN’s principal place of practice.

(c) “Physician” shall mean a person licensed to practice medicine and surgery by the state board of healing arts.

(d) “Prescription” shall have the meaning specified in K.S.A. 65-1626, and amendments thereto.

(e) “Prescription order” shall have the meaning specified in K.S.A. 65-1626, and amendments thereto. (Authorized by and implementing K.S.A. 65-1113, as amended by L. 2011, ch. 114, sec. 39, and K.S.A. 65-1130, as amended by L. 2011, ch. 114, sec. 44; effective May 1, 1984; amended March 31, 2000; amended Sept. 4, 2009; amended May 18, 2012.)

60-11-102. Roles of advanced practice registered nurses. The four roles of advanced practice registered nurses licensed by the board of nursing shall be the following:

- (a) Clinical nurse specialist;
- (b) nurse anesthetist;
- (c) nurse-midwife; and

(d) nurse practitioner. (Authorized by and implementing K.S.A. 65-1113, as amended by L. 2011, ch. 114, sec. 39, and K.S.A. 65-1130, as amended by L. 2011, ch. 114, sec. 44; effective May 1, 1984; amended Sept. 4, 2009; amended May 18, 2012.)

60-11-103. Educational requirements for advanced practice registered nurses. (a) To be issued a license as an advanced practice registered nurse in any of the roles of advanced practice, as identified in K.A.R. 60-11-102, each applicant shall meet at least one of the following criteria:

(1) Complete a formal, post-basic nursing education program located or offered in Kansas that has been approved by the board and prepares the nurse to function in the advanced role for which application is made;

(2) complete a formal, post-basic nursing education program that is not located or offered in Kansas but is determined by the board to meet

the standards for program approval established by K.A.R. 60-17-101 through 60-17-108;

(3) have completed a formal, post-basic nursing education program that could be no longer in existence but is determined by the board to meet standards at least as stringent as those required for program approval by the board at the time of graduation;

(4) hold a current license to practice as an advanced practice registered nurse in the role for which application is made and that meets the following criteria:

(A) Was issued by a nursing licensing authority of another jurisdiction; and

(B) required completion of a program meeting standards equal to or greater than those established by K.A.R. 60-17-101 through 60-17-108; or

(5) complete a formal educational program of post-basic study and clinical experience that can be demonstrated by the applicant to have sufficiently prepared the applicant for practice in the role of advanced practice for which application is made. The applicant shall show that the curriculum of the program is consistent with public health and safety policy and that it prepared individuals to perform acts generally recognized by the nursing profession as capable of being performed by persons with post-basic education in nursing.

(b) Each applicant for a license as an advanced practice registered nurse in a role other than anesthesia or midwifery shall meet one of the following requirements:

(1) Have met one of the requirements of subsection (a) before July 1, 1994;

(2) if none of the requirements in subsection (a) have been met before July 1, 1994, meet one of the requirements of subsection (a) and hold a baccalaureate or higher degree in nursing; or

(3) if none of the requirements in subsection (a) have been met before July 1, 2002, meet one of the requirements of subsection (a) and hold a master's or higher degree in a clinical area of nursing.

(c) Each applicant for a license as an advanced practice registered nurse in the role of anesthesia shall meet one of the following requirements:

(1) Have met one of the requirements of subsection (a) before July 1, 2002; or

(2) if none of the requirements in subsection (a) have been met before July 1, 2002, meet one of the requirements of subsection (a) and hold a master's degree or a higher degree in nurse anesthesia or a related field.

(d) Each applicant for a license as an advanced practice registered nurse in the role of midwifery shall meet one of the following requirements:

(1) Have met one of the requirements of subsection (a) before July 1, 2000;

(2) if none of the requirements in subsection (a) have been met before July 1, 2000, meet one of the requirements of subsection (a) and hold a baccalaureate degree in nursing; or

(3) if none of the requirements in subsection (a) have been met before January 1, 2010, meet one of the requirements of subsection (a) and hold a master's degree or a higher degree in nursing, midwifery, or a related field.

(e) A license may be granted if an individual has been certified by a national nursing organization whose certification standards have been approved by the board as equal to or greater than the corresponding standards established by the board for obtaining a license to practice as an advanced practice registered nurse. National nursing organizations with certification standards that meet this standard shall be identified by the board, and a current list of national nursing organizations with certification standards approved by the board shall be maintained by the board. Any licensee may request that a certification program be considered by the board for approval and, if approved, included by the board on its list of national nursing organizations with approved certification standards.

(f) Each applicant who completes an advanced practice registered nurse program after January 1, 1997 shall have completed three college hours in advanced pharmacology or the equivalent.

(g) Each applicant who completes an advanced practice registered nurse program after January 1, 2001 in a role other than anesthesia or midwifery shall have completed three college hours in advanced pathophysiology or its equivalent and three college hours in advanced health assessment or its equivalent.

(h) Each applicant who completes an advanced practice registered nurse program after July 1, 2009 shall have completed three college hours in advanced pathophysiology or its equivalent and three college hours in advanced health assessment or its equivalent.

(i) Notwithstanding the provisions of subsections (a) through (h), each applicant for a license as an advanced practice registered nurse who has not gained 1,000 hours of advanced nursing practice during the five years preceding the date of

application shall be required to successfully complete a refresher course as defined by the board. (Authorized by and implementing K.S.A. 65-1130, as amended by L. 2011, ch. 114, sec. 44; effective May 1, 1984; amended, T-85-16, June 5, 1984; amended May 1, 1985; amended, T-60-11-14-90, Nov. 14, 1990; amended, T-60-3-14-91, March 14, 1991; amended Sept. 2, 1991; amended March 9, 1992; amended Sept. 14, 1992; amended April 26, 1993; amended Sept. 6, 1994; amended Jan. 3, 1997; amended March 31, 2000; amended Sept. 4, 2009; amended May 18, 2012.)

60-11-104. Functions of the advanced practice registered nurse in the role of nurse practitioner. Each advanced practice registered nurse in the role of nurse practitioner shall function in an advanced role at a specialized level, through the application of advanced knowledge and skills and shall be authorized to perform the following:

(a) Provide health promotion and maintenance, disease prevention, and independent nursing diagnosis, as defined in K.S.A. 65-1113(b) and amendments thereto, and treatment, as defined in K.S.A. 65-1113(c) and amendments thereto, of acute and chronic diseases;

(b) develop and manage the medical plan of care for patients or clients, based on the authorization for collaborative practice;

(c) provide health care services for which the nurse practitioner is educationally prepared and for which competency has been established and maintained. Educational preparation may include academic coursework, workshops, institutes, and seminars if theory or clinical experience, or both, are included;

(d) provide health care for individuals by managing health problems encountered by patients and clients; and

(e) provide innovation in evidence-based nursing practice based upon advanced clinical expertise, decision making, and leadership skills and serve as a consultant, researcher, and patient advocate for individuals, families, groups, and communities to achieve quality, cost-effective patient outcomes and solutions. (Authorized by and implementing K.S.A. 65-1113, as amended by L. 2011, ch. 114, sec. 39, and K.S.A. 65-1130, as amended by L. 2011, ch. 114, sec. 44; effective May 1, 1984; amended, T-85-16, June 5, 1984; amended May 1, 1985; amended Sept. 4, 2009; amended May 18, 2012.)

60-11-104a. Protocol requirements; prescription orders. (a) Each written protocol that an advanced practice registered nurse is to follow when prescribing, administering, or supplying a prescription-only drug shall meet the following requirements:

(1) Specify for each classification of disease or injury the corresponding class of drugs that the advanced practice registered nurse is permitted to prescribe;

(2) be maintained in either a loose-leaf notebook or a book of published protocols. The notebook or book of published protocols shall include a cover page containing the following data:

(A) The names, telephone numbers, and signatures of the advanced practice registered nurse and a responsible physician who has authorized the protocol; and

(B) the date on which the protocol was adopted or last reviewed; and

(3) be kept at the advanced practice registered nurse's principal place of practice.

(b) Each advanced practice registered nurse shall ensure that each protocol is reviewed by the advanced practice registered nurse and physician at least annually.

(c) Each prescription order in written form shall meet the following requirements:

(1) Include the name, address, and telephone number of the practice location of the advanced practice registered nurse;

(2) include the name, address, and telephone number of the responsible physician;

(3) be signed by the advanced practice registered nurse with the letters A.P.R.N.;

(4) be from a class of drugs prescribed pursuant to protocol; and

(5) contain the D.E.A. registration number issued to the advanced practice registered nurse when a controlled substance, as defined in K.S.A. 65-4101(e) and amendments thereto, is prescribed.

(d) Nothing in this regulation shall be construed to prohibit any registered nurse or licensed practical nurse or advanced practice registered nurse from conveying a prescription order orally or administering a drug if acting under the lawful direction of a person licensed to practice either medicine and surgery or dentistry or licensed as an advanced practice registered nurse.

(e) When used in this regulation, terms shall be construed to have the meanings specified in K.S.A. 65-1626, and amendments thereto. (Authorized by and implementing K.S.A. 65-1130,

as amended by L. 2011, ch. 114, sec. 44; effective, T-60-9-12-88, Sept. 12, 1988; effective Feb. 13, 1989; amended May 7, 1990; amended Jan. 3, 1995; amended March 31, 2000; amended May 18, 2012.)

60-11-105. Functions of the advanced practice registered nurse in the role of nurse-midwife. Each advanced practice registered nurse in the role of nurse-midwife shall function in an advanced role through the application of advanced skills and knowledge of women's health care through the life span and shall be authorized to perform the following:

(a) Provide independent nursing diagnosis, as defined in K.S.A. 65-1113(b) and amendments thereto, and treatment, as defined in K.S.A. 65-1113(c) and amendments thereto;

(b) develop and manage the medical plan of care for patients or clients, based on the authorization for collaborative practice;

(c) provide health care services for which the nurse-midwife is educationally prepared and for which competency has been established and maintained. Educational preparation may include academic coursework, workshops, institutes, and seminars if theory or clinical experience, or both, are included;

(d) in a manner consistent with subsection (c), provide health care for women, focusing on gynecological needs, pregnancy, childbirth, the postpartum period, care of the newborn, and family planning, including indicated partner evaluation, treatment, and referral for infertility and sexually transmitted diseases; and

(e) provide innovation in evidence-based nursing practice based upon advanced clinical expertise, decision making, and leadership skills and serve as a consultant, researcher, and patient advocate for individuals, families, groups, and communities to achieve quality, cost-effective patient outcomes and solutions. (Authorized by and implementing K.S.A. 65-1113, as amended by L. 2011, ch. 114, sec. 39, and K.S.A. 65-1130, as amended by L. 2011, ch. 114, sec. 44; effective May 1, 1984; amended, T-85-16, June 5, 1984; amended May 1, 1985; amended Sept. 4, 2009; amended May 18, 2012.)

60-11-106. Functions of the advanced practice registered nurse; nurse anesthetist. The functions that may be performed by any advanced practice registered nurse functioning in

the advanced role of registered nurse anesthetist shall be those functions defined in K.S.A. 65-1158, and amendments thereto. (Authorized by and implementing K.S.A. 65-1113, as amended by L. 2011, ch. 114, sec. 39, and K.S.A. 65-1130, as amended by L. 2011, ch. 114, sec. 44; effective May 1, 1984; amended, T-85-16, June 5, 1984; amended May 1, 1985; amended March 31, 2000; amended May 18, 2012.)

60-11-107. Functions of the advanced practice registered nurse in the role of clinical nurse specialist. Each advanced practice registered nurse in the role of clinical nurse specialist shall function in an advanced role to provide evidence-based nursing practice within a specialty area focused on specific patients or clients, populations, settings, and types of care. Each clinical nurse specialist shall be authorized to perform the following:

(a) Provide independent nursing diagnosis, as defined in K.S.A. 65-1113(b) and amendments thereto, and treatment, as defined in K.S.A. 65-1113(c) and amendments thereto;

(b) develop and manage the medical plan of care for patients or clients, based on the authorization for collaborative practice;

(c) provide health care services for which the clinical nurse specialist is educationally prepared and for which competency has been established and maintained. Educational preparation may include academic coursework, workshops, institutes, and seminars if theory or clinical experience, or both, are included;

(d) provide care for specific patients or clients or specific populations, or both, utilizing a broad base of advanced scientific knowledge, nursing theory, and skills in assessing, planning, implementing, and evaluating health and nursing care; and

(e) provide innovation in evidence-based nursing practice based upon advanced clinical expertise, decision making, and leadership skills and serve as a consultant, researcher, and patient advocate for individuals, families, groups, and communities to achieve quality, cost-effective patient outcomes and solutions. (Authorized by and implementing K.S.A. 65-1113, as amended by L. 2011, ch. 114, sec. 39, and K.S.A. 65-1130, as amended by L. 2011, ch. 114, sec. 44; effective May 1, 1984; amended, T-85-16, June 5, 1984; amended May 1, 1985; amended Sept. 4, 2009; amended May 18, 2012.)

60-11-108. (Authorized by and implementing K.S.A. 65-1133; effective May 1, 1984; amended, T-85-16, June 5, 1984; amended May 1, 1985; amended Aug. 6, 1990; amended Sept. 27, 1993; amended Sept. 6, 1994; amended Feb. 16, 1996; revoked March 31, 2000.)

60-11-109. (Authorized by and implementing K.S.A. 65-1128, K.S.A. 1983 Supp. 65-1131; effective May 1, 1984; revoked Feb. 16, 1996.)

60-11-110. (Authorized by and implementing K.S.A. 65-1132; effective April 28, 1983; amended May 1, 1987; revoked Sept. 2, 1991.)

60-11-111. (Authorized by and implementing K.S.A. 1983 Supp. 65-1117; 65-1128; 65-1132; effective May 1, 1984; revoked Sept. 2, 1991.)

60-11-112. (Authorized by and implementing K.S.A. 65-1132; effective Sept. 2, 1991; revoked Feb. 16, 1996.)

60-11-113. License renewal. (a) Advanced practice registered nurse licenses shall be renewed on the same biennial cycle as the cycle for the registered professional nurse licensure renewal, as specified in K.A.R. 60-3-108.

(b) On and after January 1, 2013, each individual renewing a license shall have completed the required 30 contact hours of approved continuing nursing education (CNE) related to the advanced practice registered nurse role during the most recent prior license period. Proof of completion of 30 contact hours of approved CNE in the advanced practice nurse role may be requested by the board. Contact hours accumulated in excess of the 30-hour requirement shall not be carried over to the next renewal period.

(c) The number of contact hours assigned to any offering that includes a recognized standard curriculum shall be determined by the board.

(d) Any individual attending any offering not previously approved by the board may submit an application for an individual offering approval (IOA). Credit may be given for offerings that the licensee demonstrates as having a relationship to the practice of the advanced practice registered nursing role. Each separate offering shall be approved before the individual submits the license renewal application.

(e) Approval shall not be granted for identical offerings completed within the same license renewal period.

(f) Any individual renewing a license may ac-

cumulate 15 contact hours of the required CNE from instructor credit. Each presenter shall receive instructor credit only once for the preparation and presentation of each course. The provider shall issue a certificate listing the number of contact hours earned and clearly identifying the hours as instructor credit.

(g) Fractions of contact hours may be accepted for offerings over 30 minutes.

(h) All CNE accumulated for APRN license renewal shall also be applicable to the renewal of the registered professional nurse license. (Authorized by K.S.A. 2011 Supp. 65-1117 and K.S.A. 65-1129; implementing K.S.A. 2011 Supp. 65-1117 and K.S.A. 2011 Supp. 65-1132; effective Sept. 2, 1991; amended May 9, 1994; amended July 29, 2005; amended May 18, 2012.)

60-11-114. (Authorized by K.S.A. 1989 Supp. 65-1117 and K.S.A. 65-1129; implementing K.S.A. 1989 Supp. 65-1117 and K.S.A. 65-1132; effective March 9, 1992; revoked Feb. 16, 1996.)

60-11-116. Reinstatement of inactive or lapsed license. (a) Each nurse anesthetist whose Kansas APRN license is inactive or has lapsed and who wants to obtain a reinstatement of APRN licensure shall meet the same requirements as those in K.A.R. 60-13-110.

(b) Any nurse practitioner, clinical nurse specialist, or nurse-midwife whose Kansas APRN license is inactive or has lapsed may, within five years of its expiration date, reinstate the license by submitting proof that the individual has met either of the following requirements:

(1) Obtained 30 hours of continuing nursing education related to the advanced practice registered nurse role within the preceding two-year period; or

(2) been licensed in another jurisdiction and, while licensed in that jurisdiction, has accumulated 1,000 hours of advanced practice registered nurse practice within the preceding five-year period.

(c) Any nurse practitioner, clinical nurse specialist, or nurse-midwife whose Kansas APRN license is inactive or has lapsed for more than five years beyond its expiration date may reinstate the license by submitting evidence of having attained either of the following:

(1) A total of 1,000 hours of advanced practice registered nurse practice in another jurisdiction within the preceding five-year period and 30

hours of continuing nursing education related to the advanced practice registered nurse role; or

(2) completion of a refresher course approved by the board. (Authorized by K.S.A. 2019 Supp. 65-1117 and K.S.A. 65-1129; implementing K.S.A. 2019 Supp. 65-1117 and K.S.A. 65-1132; effective Sept. 2, 1991; amended March 22, 2002; amended May 18, 2012; amended Aug. 21, 2020.)

60-11-117. (Authorized by K.S.A. 1990 Supp. 65-1117 and K.S.A. 65-1129; implementing K.S.A. 1990 Supp. 65-1117 and K.S.A. 65-1132; effective Sept. 2, 1991; revoked Feb. 16, 1996.)

60-11-118. Temporary permit to practice. (a) A temporary permit to practice as an advanced practice registered nurse may be issued by the board for a period of not more than 180 days to an applicant for licensure as an advanced practice registered nurse who meets the following requirements:

- (1) Was previously licensed in this state; and
- (2) is enrolled in a refresher course required by the board for reinstatement of a license that has lapsed for more than five years.

(b) A one-time temporary permit to practice as an advanced practice registered nurse may be issued by the board for a period of not more than 180 days pending completion of the application for a license. (Authorized by K.S.A. 65-1129; implementing K.S.A. 2010 Supp. 65-1132, as amended by L. 2011, ch. 114, sec. 45; effective Sept. 2, 1991; amended April 26, 1993; amended May 18, 2012.)

60-11-119. Payment of fees. Payment of fees for advanced practice registered nurses shall be as follows:

- (a) Initial application for license \$50.00
- (b) Biennial renewal of license..... 55.00
- (c) Application for reinstatement of license without temporary permit 75.00
- (d) Application for license with temporary permit 100.00
- (e) Application for exempt license 50.00
- (f) Renewal of exempt license 50.00
- (g) Inactive license..... 20.00
- (h) Renewal of inactive license..... 20.00

(Authorized by K.S.A. 65-1129 and K.S.A. 65-1131; implementing K.S.A. 2019 Supp. 65-1118 and 65-1131; effective Sept. 2, 1991; amended May 17, 1993; amended Feb. 6, 1995; amended

April 3, 1998; amended July 1, 2001; amended April 20, 2007; amended May 18, 2012; amended July 1, 2014; amended Aug. 21, 2020.)

60-11-120. Expiration dates of licenses; applications. The expiration dates of all licenses and applications shall be in accordance with K.A.R. 60-3-107 and 60-3-108. (Authorized by and implementing K.S.A. 65-1131, as amended by L. 2011, ch. 114, sec. 45, and K.S.A. 2010 Supp. 65-1132, as amended by L. 2011, ch. 114, sec. 46; effective April 3, 1998; amended July 29, 2005; amended May 18, 2012.)

60-11-121. Exempt license. (a) An exempt license shall be granted only to an advanced practice registered nurse who meets these requirements:

- (1) Is not regularly engaged as an advanced practice registered nurse in Kansas, but volunteers advanced practice registered nurse services or is a charitable health care provider, as defined by K.S.A. 75-6102 and amendments thereto; and
- (2) (A) Has been licensed in Kansas for the five years previous to applying for an exempt license; or

(B) has been licensed, authorized, or certified in another jurisdiction for the five years previous to applying for an exempt license and meets all requirements for endorsement into Kansas.

(b) The expiration date of the exempt license shall be in accordance with K.A.R. 60-3-108.

(c) Each application for renewal of an exempt license shall be submitted upon a form furnished by the board and shall be accompanied by the fee in accordance with K.A.R. 60-11-119. (Authorized by and implementing K.S.A. 65-1131, as amended by L. 2011, ch. 114, sec. 45; effective April 3, 1998; amended Oct. 25, 2002; amended July 29, 2005; amended May 18, 2012.)

Article 12.—CONTINUING EDUCATION FOR MENTAL HEALTH TECHNICIANS

60-12-101. (Authorized by K.S.A. 74-1106, implementing K.S.A. 65-4207; effective, T-85-49, Dec. 19, 1984; effective May 1, 1985; revoked Sept. 2, 1991.)

60-12-102. (Authorized by K.S.A. 65-4205; effective, T-85-49, Dec. 19, 1984; effective May 1, 1985; revoked Sept. 2, 1991.)

60-12-103. (Authorized by K.S.A. 74-1106, implementing K.S.A. 65-4207; effective, T-85-49,

Dec. 19, 1984; effective May 1, 1985; revoked Sept. 2, 1991.)

60-12-104. Approval of continuing education offerings. Approval of licensed mental health technician continuing education shall be in accordance with K.A.R. 60-9-107. (Authorized by K.S.A. 65-4203, implementing K.S.A. 65-4207; effective, T-85-49, Dec. 19, 1984; effective May 1, 1985; amended Sept. 27, 1993.)

60-12-105. Definitions. Definitions within this article of terms associated with licensed mental health technician continuing education shall be in accordance with K.A.R. 60-9-105. (Authorized by K.S.A. 65-4203; implementing K.S.A. 65-4205 and 65-4207; effective March 9, 1992; amended Sept. 27, 1993.)

60-12-106. License renewal. (a) Each licensee shall submit a renewal application and the renewal fee specified in K.A.R. 60-8-101 no later than December 31 in each even-numbered year.

(b) Any licensed mental health technician may be required to submit proof of completion of 30 contact hours during the most recent prior licensing period. Contact hours accumulated in excess of the 30-hour requirement shall not be carried over to the next license renewal period. This proof of completion shall be documented as follows:

(1) (A) Name of the continuing mental health technician education (CMHTE) offering or college course;

(B) provider name or name of the accrediting organization;

(C) provider number or number of the accrediting organization, if applicable;

(D) offering date; and

(E) number of contact hours; or

(2) approved IOA.

(c) Any individual attending an offering not previously approved by the board may submit an application for an individual offering approval (IOA). Credit may be given for offerings that the licensee demonstrates to be relevant to the licensee's practice of mental health technology. Each separate offering shall be approved before the licensee submits the license renewal application.

(d) Approval shall not be granted for identical offerings completed within a license renewal period.

(e) Any licensed mental health technician may acquire 30 contact hours of CMHTE from inde-

pendent study, as defined in K.S.A. 65-4202 and amendments thereto.

(f) Any licensed mental health technician may accumulate 15 contact hours of the required CMHTE from instructor credit. Each presenter shall receive instructor credit only once for preparation and presentation of each course. The provider shall issue a certificate listing the number of contact hours earned and clearly identifying the hours as instructor credit.

(g) Fractions of hours may be accepted for offerings over 30 minutes to be computed towards a contact hour. (Authorized by K.S.A. 65-4203; implementing K.S.A. 2011 Supp. 65-4205; effective Sept. 2, 1991; amended Feb. 16, 1996; amended Oct. 12, 2001; amended May 10, 2013.)

60-12-109. (Authorized by K.S.A. 1990 Supp. 65-4203; implementing K.S.A. 1990 Supp. 65-4207; effective Sept. 2, 1991; revoked Feb. 16, 1996.)

Article 13.—FEEES; REGISTERED NURSE ANESTHETIST

60-13-101. Payment of fees. Payment of fees for registered nurse anesthetists shall be as follows:

- (a) Initial application for authorization as a registered nurse anesthetist \$75.00
- (b) Biennial renewal of authorization as a registered nurse anesthetist 55.00
- (c) Application for reinstatement of authorization as a registered nurse anesthetist without temporary permit 60.00
- (d) Application for reinstatement of authorization with temporary permit as a registered nurse anesthetist 70.00
- (e) Initial application with temporary authorization to practice as a registered nurse anesthetist 110.00
- (f) Certified copy of authorization to practice as a registered nurse anesthetist 20.00

This regulation shall be effective on and after July 1, 2014. (Authorized by K.S.A. 65-1129 and 65-1164; implementing K.S.A. 2013 Supp. 65-1118, 65-1154, 65-1155; effective, T-87-38, Nov. 19, 1986; effective May 1, 1987; amended May 17, 1993; amended Feb. 6, 1995; amended July 1, 2001; amended July 1, 2014.)

60-13-102. Approval procedure. (a) Each institution planning to offer a program in registered nurse anesthesia shall:

(1) notify the board of nursing and supply such information as the board of nursing may request;

(2) employ a qualified nurse anesthetist administrator. The name and qualifications of the administrator of the program shall be submitted to the board of nursing; and

(3) employ a second faculty member.

(b) In addition to the requirements in paragraph (a), each program for registered nurse anesthetists established after July 1, 1988 within the state of Kansas, shall be at the masters level. Upon successful completion of the program requirements, the school shall award the student a masters degree.

(c)(1) Written notification of the board's decision to approve or disapprove the program shall be sent to the institution. The program shall be approved by the board of nursing prior to the admission of students.

(2) Discontinuing a school of nurse anesthesia. Each school terminating its program shall submit a plan to the board for approval. The plan shall provide for students currently enrolled to complete their program and for the disposition of school records.

(3) Out of state programs. Out of state programs preparing registered nurse anesthetists may be approved after board of nursing review. (Authorized by K.S.A. 1986 Supp. 64-1160(b), L. 1987, Ch. 234, Sec. 3; implementing K.S.A. 1986 Supp. 65-1152(b); effective, T-88-48, Dec. 16, 1987; effective May 1, 1988.)

60-13-103. School approval requirements. (a) In order for a school of nurse anesthesia to be approved by the board of nursing, consideration shall be given as to whether the school meets the requirements in standards I, II, III, IV, and V and the appendix in the "standards for accreditation of nurse anesthesia educational programs," as revised by the council on accreditation of nurse anesthesia educational programs in January 2006 and effective March 1, 2006. These portions are hereby adopted by reference.

(b) An up-to-date list of approved programs shall be prepared and kept by the board.

(c) A program shall not be approved without the formal action of the board.

(d) (1) A program review shall be conducted by the board at least once every five years, or in conjunction with the council on accreditation review cycles.

(2) The school shall submit to the board of nursing for review a copy of a self-study report

documenting compliance with the established standards.

(3) Additional information may be requested by the board of nursing to assess the school's compliance with standards.

(4) An on-site visit to the school of nurse anesthesia may be conducted by the board of nursing if there is reason to believe that the program is in violation of the established standards or if the program is placed on public probation by the council on accreditation. (Authorized by K.S.A. 65-1164; implementing K.S.A. 65-1152; effective, T-88-48, Dec. 16, 1987; effective May 1, 1988; amended March 22, 2002; amended March 6, 2009.)

60-13-104. Exam approval. The content outline of the examination administered by the council on certification of nurse anesthetists shall be reviewed and approved annually by the board of nursing. (Authorized by K.S.A. 65-1164; implementing K.S.A. 65-1152; effective, T-88-48, Dec. 16, 1987; effective May 1, 1988; amended March 6, 2009.)

60-13-105. (Authorized by K.S.A. 1986 Supp. 65-1159, L. 1987, Ch. 234, Sec. 3; implementing K.S.A. 1986 Supp. 65-1159; effective, T-88-48, Dec. 16, 1987; effective May 1, 1988; revoked Sept. 2, 1991.)

60-13-106. (Authorized by L. 1987, Ch. 234, Sec. 3; implementing K.S.A. 1986 Supp. 65-1153; effective, T-88-48, Dec. 16, 1987; effective May 1, 1988; revoked Sept. 2, 1991.)

60-13-107. (Authorized by L. 1987, Ch. 234, Sec. 3; implementing K.S.A. 1986 Supp. 65-1161; effective, T-88-48, Dec. 16, 1987; effective May 1, 1988; revoked Sept. 2, 1991.)

60-13-108. (Authorized by and implementing K.S.A. 1986 Supp. 65-1165; effective, T-88-48, Dec. 16, 1987; effective May 1, 1988; revoked Sept. 2, 1991.)

60-13-110. Reinstatement of inactive or lapsed authorization. (a) Any nurse anesthetist whose Kansas authorization is inactive or has lapsed may, within five years of its expiration date, reinstate the authorization by submitting proof that the individual has met either of the following requirements:

(1) Obtained 30 hours of continuing nursing education related to nurse anesthesia within the preceding two-year period; or

(2) been authorized in another jurisdiction and, while authorized in that jurisdiction, has accumulated 1,000 hours of nurse anesthesia practice within the preceding five-year period.

(b) Any nurse anesthetist whose Kansas authorization is inactive or has lapsed for more than five years beyond its expiration date may reinstate the authorization by submitting evidence of having attained either of the following:

(1) A total of 1,000 hours of nurse anesthesia practice in another jurisdiction within the preceding five-year period and 30 hours of continuing nursing education related to nurse anesthesia within the preceding two-year period; or

(2) satisfactory completion of a refresher course approved by the board. (Authorized by K.S.A. 65-1164; implementing K.S.A. 65-1155; effective Sept. 2, 1991; amended May 9, 1994; amended March 22, 2002; amended Aug. 21, 2020.)

60-13-111. Continuing education definitions. Continuing education terms shall have the meanings in K.A.R. 60-9-105. (Authorized by K.S.A. 1990 Supp. 65-1164; implementing K.S.A. 1990 Supp. 65-1159; effective Sept. 2, 1991.)

60-13-112. License renewal. (a) Each license to practice as a registered nurse anesthetist (RNA) in Kansas shall be subject to the same biennial expiration dates as those specified in K.A.R. 60-3-108 for the registered professional nurse license in Kansas.

(b) Each individual renewing a license shall have completed the required 30 contact hours of approved continuing nursing education (CNE) related to nurse anesthesia during the most recent prior licensure period. Proof of completion of 30 contact hours of approved CNE in the nurse anesthesia role may be requested by the board. Contact hours accumulated in excess of the 30-hour requirement shall not be carried over to the next renewal period.

(c) The number of contact hours assigned to any offering that includes a recognized standard curriculum shall be determined by the board.

(d) Any individual attending any offering not previously approved by the board may submit an application for an individual offering approval (IOA). Credit may be given for offerings that the licensee demonstrates as having a relationship to the practice of nurse anesthesia. Each separate offering shall be approved before the individual submits the license renewal application.

(e) Approval shall not be granted for identical offerings completed within the same license renewal period.

(f) Any individual renewing a license may accumulate 15 contact hours of the required CNE from instructor credit. Each presenter shall receive instructor credit only once for the preparation and presentation of each course. The provider shall issue a certificate listing the number of contact hours earned and clearly identifying the hours as instructor credit.

(g) Fractions of contact hours may be accepted for offerings over 30 minutes.

(h) All CNE accumulated for RNA license renewal shall also be applicable to the renewal of the registered professional nurse license. (Authorized by K.S.A. 65-1164; implementing K.S.A. 65-1159; effective Sept. 2, 1991; amended Feb. 16, 1996; amended Oct. 12, 2001; amended July 29, 2005; amended May 18, 2012.)

60-13-113. Approval of registered nurse anesthetist continuing education. Approval of registered nurse anesthetist continuing education shall follow the rules of K.A.R. 60-9-107. (Authorized by K.S.A. 1989 Supp. 65-1164; implementing K.S.A. 1989 Supp. 65-1159; effective March 9, 1992.)

60-13-115. (Authorized by K.S.A. 1990 Supp. 65-1164; implementing K.S.A. 1990 Supp. 65-1159; effective Sept. 2, 1991; revoked Feb. 16, 1996.)

Article 15.—PERFORMANCE OF SELECTED NURSING PROCEDURES IN SCHOOL SETTINGS

60-15-101. Definitions and functions. (a) Each registered professional nurse in a school setting shall be responsible for the nature and quality of all nursing care that a student is given under the direction of the nurse in the school setting. Assessment of the nursing needs, the plan of nursing action, implementation of the plan, and evaluation of the plan shall be considered essential components of professional nursing practice and shall be the responsibility of the registered professional nurse.

(b) In fulfilling nursing care responsibilities, any nurse may perform the following:

(1) Serve as a health advocate for students receiving nursing care;

(2) counsel and teach students, staff, families, and groups about health and illness;

(3) promote health maintenance;

(4) serve as health consultant and a resource to teachers, administrators, and other school staff who are providing students with health services during school attendance hours or extended program hours; and

(5) utilize nursing theories, communication skills, and the teaching-learning process to function as part of the interdisciplinary evaluation team.

(c) The services of a registered professional nurse may be supplemented by the assignment of tasks to a licensed practical nurse or by the delegation of selected nursing tasks or procedures to unlicensed personnel under supervision by the registered professional nurse or licensed practical nurse.

(d) "Unlicensed person" means anyone not licensed as a registered professional nurse or licensed practical nurse.

(e) "Delegation" means authorization for an unlicensed person to perform selected nursing tasks or procedures in the school setting under the direction of a registered professional nurse.

(f) "Activities of daily living" means basic caretaking or specialized caretaking.

(g) "Basic caretaking" means the following tasks:

(1) Bathing;

(2) dressing;

(3) grooming;

(4) routine dental, hair, and skin care;

(5) preparation of food for oral feeding;

(6) exercise, excluding occupational therapy and physical therapy procedures;

(7) toileting, including diapering and toilet training;

(8) handwashing;

(9) transferring; and

(10) ambulation.

(h) "Specialized caretaking" means the following procedures:

(1) Catheterization;

(2) ostomy care;

(3) preparation and administration of gastrostomy tube feedings;

(4) care of skin with damaged integrity or potential for this damage;

(5) medication administration;

(6) taking vital signs;

(7) blood glucose monitoring, which shall include taking glucometer readings and carbohydrate counting; and

(8) performance of other nursing procedures as selected by the registered professional nurse.

(i) "Anticipated health crisis" means that a student has a previously diagnosed condition that, under predictable circumstances, could lead to an imminent risk to the student's health.

(j) "Investigational drug" means a drug under study by the United States food and drug administration to determine safety and efficacy in humans for a particular indication.

(k) "Nursing judgment" means the exercise of knowledge and discretion derived from the biological, physical, and behavioral sciences that requires special education or curriculum.

(l) "Extended program hours" means any program that occurs before or after school attendance hours and is hosted or controlled by the school.

(m) "School attendance hours" means those hours of attendance as defined by the local educational agency or governing board.

(n) "School setting" means any public or non-public school environment.

(o) "Supervision" means the provision of guidance by a nurse as necessary to accomplish a nursing task or procedure, including initial direction of the task or procedure and periodic inspection of the actual act of accomplishing the task or procedure.

(p) "Medication" means any drug required by the federal or state food, drug, and cosmetic acts to bear on its label the legend "Caution: Federal law prohibits dispensing without prescription," and any drugs labeled as investigational drugs or prescribed for investigational purposes.

(q) "Task" means an assigned step of a nursing procedure.

(r) "Procedure" means a series of steps followed in a regular, specific order that is part of a defined nursing practice. (Authorized by K.S.A. 2007 Supp. 65-1124 and K.S.A. 65-1129; implementing K.S.A. 2007 Supp. 65-1124 and K.S.A. 65-1165; effective, T-89-23, May 27, 1988; amended, T-60-9-12-88, Sept. 12, 1988; amended Feb. 13, 1989; amended Sept. 2, 1991; amended Sept. 11, 1998; amended July 29, 2005; amended March 6, 2009.)

60-15-102. Delegation procedures. Each registered professional nurse shall maintain the primary responsibility for delegating tasks to unlicensed persons. The registered professional nurse, after evaluating a licensed practical nurse's competence and skill, may decide whether the licensed practical nurse under the direction of the registered professional nurse may delegate tasks

to unlicensed persons in the school setting. Each nurse who delegates nursing tasks or procedures to a designated unlicensed person in the school setting shall meet the requirements specified in this regulation.

(a) Each registered professional nurse shall perform the following:

(1) Assess each student's nursing care needs;

(2) formulate a plan of care before delegating any nursing task or procedure to an unlicensed person; and

(3) formulate a plan of nursing care for each student who has one or more long-term or chronic health conditions requiring nursing interventions.

(b) The selected nursing task or procedure to be delegated shall be one that a reasonable and prudent nurse would determine to be within the scope of sound nursing judgment and that can be performed properly and safely by an unlicensed person.

(c) Any designated unlicensed person may perform basic caretaking tasks or procedures as defined in K.A.R. 60-15-101 (g) without delegation. After assessment, a nurse may delegate specialized caretaking tasks or procedures as defined in K.A.R. 60-15-101 (h) to a designated unlicensed person.

(d) The selected nursing task or procedure shall be one that does not require the designated unlicensed person to exercise nursing judgment or intervention.

(e) If an anticipated health crisis that is identified in a nursing care plan occurs, the unlicensed person may provide immediate care for which instruction has been provided.

(f) The designated unlicensed person to whom the nursing task or procedure is delegated shall be adequately identified by name in writing for each delegated task or procedure.

(g) Each registered professional nurse shall orient and instruct unlicensed persons in the performance of the nursing task or procedure. The registered professional nurse shall document in writing the unlicensed person's demonstration of the competency necessary to perform the delegated task or procedure. The designated unlicensed person shall co-sign the documentation indicating the person's concurrence with this competency evaluation.

(h) Each registered professional nurse shall meet these requirements:

(1) Be accountable and responsible for the delegated nursing task or procedure;

(2) at least twice during the academic year, participate in joint evaluations of the services rendered;

(3) record the services performed; and

(4) adequately supervise the performance of the delegated nursing task or procedure in accordance with the requirements of K.A.R. 60-15-103. (Authorized by K.S.A. 2007 Supp. 65-1124 and K.S.A. 65-1129; implementing K.S.A. 2007 Supp. 65-1124 and K.S.A. 65-1165; effective, T-89-23, May 27, 1988; amended, T-60-9-12-88, Sept. 12, 1988; amended Feb. 13, 1989; amended Sept. 2, 1991; amended Sept. 11, 1998; amended March 6, 2009.)

60-15-103. Supervision of delegated tasks or procedures. Each registered professional or licensed practical nurse shall supervise all nursing tasks or procedures delegated to a designated unlicensed person in the school setting in accordance with the following conditions.

(a) The registered professional nurse shall determine the degree of supervision required after an assessment of appropriate factors, including the following:

(1) The health status and mental and physical stability of the student receiving the nursing care;

(2) the complexity of the task or procedure to be delegated;

(3) the training and competency of the unlicensed person to whom the task or procedure is to be delegated; and

(4) the proximity and availability of the registered professional nurse to the designated unlicensed person when the selected nursing task or procedure will be performed.

(b) The supervising registered professional nurse may designate whether or not the nursing task or procedure is one that may be delegated or supervised by a licensed practical nurse.

(c) Each delegating registered professional nurse shall have a plan to provide nursing care when the delegating nurse is absent. (Authorized by and implementing K.S.A. 1997 Supp. 65-1124; effective, T-89-23, May 27, 1988; amended, T-60-9-12-88, Sept. 12, 1988; amended Feb. 13, 1989; amended Sept. 2, 1991; amended Sept. 11, 1998.)

60-15-104. Medication administration in a school setting. Any registered professional nurse may delegate the procedure of medication administration in a school setting only in accordance with this article.

(a) Any registered professional nurse may delegate the procedure of medication administration in a school setting to unlicensed persons if both of the following conditions are met:

(1) The administration of the medication does not require dosage calculation. Measuring a prescribed amount of liquid medication, breaking a scored tablet for administration, or counting carbohydrates for the purpose of determining dosage for insulin administration shall not be considered calculation of the medication dosage.

(2) The nursing care plan requires administration by accepted methods of administration other than those listed in subsection (b).

(b) A registered professional nurse shall not delegate the procedure of medication administration in a school setting to unlicensed persons when administered by any of these means:

(1) By intravenous route;

(2) by intramuscular route, except when administered in an anticipated health crisis;

(3) through intermittent positive-pressure breathing machines; or

(4) through an established feeding tube that is not inserted directly into the abdomen. (Authorized by K.S.A. 2007 Supp. 65-1124 and K.S.A. 65-1129; implementing K.S.A. 2007 Supp. 65-1124 and K.S.A. 65-1165; effective, T-89-23, May 27, 1988; amended, T-60-9-12-88, Sept. 12, 1988; amended Feb. 13, 1989; amended Sept. 2, 1991; amended Sept. 11, 1998; amended July 29, 2005; amended March 6, 2009.)

Article 16.—INTRAVENOUS FLUID THERAPY FOR LICENSED PRACTICAL NURSE

60-16-101. Definitions. Each of the following terms, as used in this article of the board's regulations, shall have the meaning specified in this regulation:

(a) "Administration of intravenous (IV) fluid therapy" means utilization of the nursing process to deliver the therapeutic infusion or injection of substances through the venous system.

(b) "Admixing" means the addition of a diluent to a medication or a medication to an intravenous solution.

(c) "Calculating" means mathematically determining the flow rate and medication dosages.

(d) "Clock-hour" means 60 continuous minutes.

(e) "Competency examination" means a written

examination and demonstration of mastery of clinical components of IV fluid therapy.

(f) "Discontinuing" means stopping the intravenous flow or removing the intravenous access device, or both, based on an authorized order or nursing assessment.

(g) "Evaluating" means analyzing, on an ongoing basis, the monitored patient response to the prescribed IV fluid therapy.

(h) "Initiating" means starting IV fluid therapy based on an authorized order by a licensed individual. Initiating shall include the following:

(1) Assessing the patient;

(2) selecting and preparing materials;

(3) calculating; and

(4) inserting and stabilizing the cannula.

(i) "Intravenous push" means direct injection of medication into the venous circulation.

(j) "IV" means intravenous.

(k) "Maintaining" means adjusting the control device for continuance of the prescribed IV fluid therapy administration rate.

(l) "Monitoring" means, on an ongoing basis, assessing, observing, and communicating each patient's response to prescribed IV fluid therapy. The infusion equipment, site, and flow rate shall be included in the monitoring process.

(m) "Stand-alone," when used to describe a course, means an IV fluid therapy course offered by a provider that has been approved by the board to offer the course independently of an approved practical nursing program.

(n) "Titration of medication" means an adjustment of the dosage of a medication to the amount required to bring about a given reaction in the individual receiving the medication. (Authorized by and implementing K.S.A. 65-1136; effective Nov. 21, 1994; amended June 12, 1998; amended Oct. 29, 1999; amended June 14, 2002; amended Jan. 17, 2020.)

60-16-102. Scope of practice for licensed practical nurse performing intravenous fluid therapy.

(a) A licensed practical nurse under the supervision of a registered professional nurse may engage in a limited scope of intravenous fluid treatment, including the following:

(1) Monitoring;

(2) maintaining basic fluids;

(3) discontinuing intravenous flow and an intravenous access device not exceeding three inches in length in peripheral sites only; and

(4) changing dressings for intravenous access

devices not exceeding three inches in length in peripheral sites only.

(b) Any licensed practical nurse who has met one of the requirements under K.S.A. 65-1136, and amendments thereto, may perform, in addition to the functions specified in subsection (a) of this regulation, the following procedures relating to the expanded administration of intravenous fluid therapy under the supervision of a registered professional nurse:

- (1) Calculating;
- (2) adding parenteral solutions to existing patient central and peripheral intravenous access devices or administration sets;
- (3) changing administration sets;
- (4) inserting intravenous access devices that meet these conditions:

- (A) Do not exceed three inches in length; and
- (B) are located in peripheral sites only;

(5) adding designated premixed medications to existing patent central and peripheral intravenous access devices or administration sets either by continuous or intermittent methods;

(6) maintaining the patency of central and peripheral intravenous access devices and administration sets with medications or solutions as allowed by policy of the facility;

(7) changing dressings for central venous access devices;

(8) administering continuous intravenous drip analgesics and antibiotics; and

(9) performing the following procedures in any facility having continuous on-site registered professional nurse supervision:

- (A) Admixing intravenous medications; and
- (B) administering by direct intravenous push any drug in a drug category that is not specifically listed as a banned drug category in subsection (c), including analgesics, antibiotics, antiemetics, diuretics, and corticosteroids, as allowed by policy of the facility.

(c) A licensed practical nurse shall not perform any of the following:

(1) Administer any of the following by intravenous route:

- (A) Blood and blood products, including albumin;
- (B) investigational medications;
- (C) anesthetics, antianxiety agents, biological therapy, serums, hemostatics, immunosuppressants, muscle relaxants, human plasma fractions, oxytocics, sedatives, tocolytics, thrombolytics, anticonvulsants, cardiovascular preparations, antineoplastics agents, hematopoietics, autonomic drugs, and respiratory stimulants;

(D) intravenous fluid therapy in the home health setting, with the exception of the approved scope of practice authorized in subsection (a); or

(E) intravenous fluid therapy to any patient under the age of 12 or any patient weighing less than 80 pounds, with the exception of the approved scope of practice authorized in subsection (a);

- (2) initiate total parenteral nutrition or lipids;
- (3) titrate medications;
- (4) draw blood from a central intravenous access device;
- (5) remove a central intravenous access device or any intravenous access device exceeding three inches in length; or
- (6) access implantable ports for any purpose.

(d) Licensed practical nurses qualified by the board before June 1, 2000 may perform those activities listed in subsection (a) and paragraph (b)(9)(A) regardless of their intravenous therapy course content on admixing.

(e) This regulation shall limit the scope of practice for each licensed practical nurse only with respect to intravenous fluid therapy and shall not restrict a licensed practical nurse's authority to care for patients receiving this therapy. (Authorized by and implementing K.S.A. 65-1136; effective Nov. 21, 1994; amended Dec. 13, 1996; amended June 12, 1998; amended Oct. 29, 1999; amended Jan. 24, 2003; amended May 18, 2012; amended Oct. 18, 2013.)

60-16-103. Stand-alone course approval procedure; competency examinations; recordkeeping. (a) Each person wanting approval to offer a stand-alone course shall submit a proposal to the board.

The proposal shall contain the following:

- (1) The name and qualifications of the coordinator;
- (2) the name and qualifications of each faculty member of the course;
- (3) the mechanism through which the provider will determine that each licensed practical nurse seeking to take the course meets the admission requirements;
- (4) a description of the educational and clinical facilities that will be utilized;
- (5) the outlines of the classroom curriculum and the skills curriculum, including time segments. These curricula shall meet the requirements of K.A.R. 60-16-104(b);
- (6) the methods of student evaluation that will be used, including a copy of the final written com-

petency examination and the final skills competency examination; and

(7) if applicable, a request for continuing education approval meeting the following requirements:

(A) For each long-term provider, the stand-alone course provider number shall be printed on the certificates and the course roster, along with the long-term provider number; and

(B) for each single program provider, the single program application shall be completed.

(b) To be eligible to enroll in a stand-alone course, the individual shall be a nurse with a current license.

(c)(1) Each stand-alone course shall meet both of the following requirements:

(A) Consist of at least 30 clock-hours of instruction; and

(B) require at least eight clock-hours of supervised clinical or skills lab practice, which shall include at least one successful peripheral venous access procedure and the initiation of an intravenous infusion treatment modality.

(2) Each stand-alone course, final written competency examination, and final clinical competency examination shall meet the board-approved curriculum requirements specified in K.A.R. 60-16-104 (b) (1)-(23).

(d)(1) Each stand-alone course coordinator shall meet the following requirements:

(A) Be licensed as a registered professional nurse;

(B) be responsible for the development and implementation of the course; and

(C) have experience in IV fluid therapy and knowledge of the IV fluid therapy standards.

(2) Each primary faculty member shall meet the following requirements:

(A) Be currently licensed to practice as a registered professional nurse in Kansas;

(B) have clinical experience that includes IV fluid therapy within the past five years; and

(C) maintain competency in IV fluid therapy.

(3) Each guest lecturer shall have professional preparation and qualifications for the specific subject in which that individual instructs.

(e)(1) The facility in which skills practice and the competency examination are conducted shall allow the students and faculty access to the IV fluid therapy equipment and IV fluid therapy recipients and to the pertinent records for the purpose of documentation. Each classroom shall contain sufficient space, equipment, and teaching aids to meet the course objectives.

(2) There shall be a signed, written agreement between the provider and each affiliating health care facility that specifies the roles, responsibilities, and liabilities of each party. This written agreement shall not be required if the only health care facility to be used is that of the provider.

(f)(1) The stand-alone course coordinator shall perform the following:

(A) Ensure that the clinical record sheet is complete, including competencies and scores;

(B) award a certificate to each licensed nurse documenting successful completion of both the final written competency examination and the final skills competency examination;

(C) submit to the board, within 15 days of course completion, a typed, alphabetized roster listing the name and license number of each individual who successfully completed the course and the date of completion. The coordinator shall ensure that each roster meets the following requirements:

(i) RN and LPN participants shall be listed on separate rosters; and

(ii) the roster shall include the provider name and address, the single or long-term provider number, the stand-alone course provider number, and the coordinator's signature; and

(D) maintain the records of each individual who has successfully completed the course for at least five years.

(g) Continuing education providers shall award at least 32 contact hours to each LPN who successfully completes the course according to K.A.R. 60-9-106. Continuing education providers shall award 20 contact hours, one time only, to each RN who successfully completes the course.

(h) After initial approval, each change in the stand-alone course shall be provided to the board for approval before the change is implemented.

(i)(1) Each stand-alone course provider shall submit to the board an annual report for the period of July 1 through June 30 of the respective year that includes the total number of licensees taking the course, the number passing the course, and the number of courses held.

(2) The single program providership shall be effective for two years and may be renewed by submitting the single offering provider application and by paying the fee specified in K.A.R. 60-4-103(a)(5). Each single program provider who chooses not to renew the providership shall notify the board in writing of the location at which the rosters and course materials will be accessible to the board for three years.

(3) Each long-term provider shall submit the materials outlined in subsection (a) with the five-year long-term provider renewal.

(j) If a course does not meet or continue to meet the requirements for approval established by the board or if there is a material misrepresentation of any fact with the information submitted to the board by a provider, approval may be withheld, made conditional, limited, or withdrawn by the board after giving the provider notice and an opportunity to be heard. (Authorized by and implementing K.S.A. 65-1136; effective Nov. 21, 1994; amended June 14, 2002; amended July 29, 2005; amended May 18, 2012; amended Jan. 17, 2020.)

60-16-104. Standards for course and program curriculum content. (a) The purpose of the intravenous fluid therapy content and stand-alone course shall be to prepare practical nursing students or licensed practical nurses to perform safely and competently the activities as defined in K.A.R. 60-16-102. The course shall be based on the nursing process and current intravenous nursing standards of practice.

(1) Intravenous fluid therapy content provided as part of a practical nursing program's curriculum as specified in K.A.R. 60-2-104 or as a stand-alone course offered by an approved provider shall meet the requirements of this regulation.

(2) Each provider of a stand-alone course shall obtain approval from the board before offering an intravenous fluid therapy course as specified in K.A.R. 60-16-103.

(3) Each provider of a stand-alone course shall submit documentation of the use of the curriculum required in this regulation to the board.

(4) Each practical nursing program administrator wanting to implement the intravenous fluid therapy curriculum as required in this regulation shall submit a major curriculum change form as specified in K.A.R. 60-2-104(g).

(b) Each stand-alone course or practical nursing program curriculum in intravenous fluid therapy shall include instruction in the following topics:

(1) Definition of intravenous fluid therapy and indications as specified in K.A.R. 60-16-101;

(2) scope of practice as specified in K.A.R. 60-16-102;

(3) types of vascular-access delivery devices;

(4) age-related considerations;

(5) legal implications for intravenous fluid therapy;

(6) anatomy and physiology;

(7) fluid and electrolyte balance;

(8) infusion equipment used in intravenous fluid therapy;

(9) patient care;

(10) infusion therapies;

(11) parenteral solutions and indications;

(12) infection control and safety;

(13) site care and maintenance;

(14) vascular-access device selection and placement;

(15) insertion of peripheral short catheters;

(16) administration, maintenance, and monitoring of peripheral intravenous fluid therapy;

(17) infusion-related complications and nursing interventions;

(18) central and peripheral vascular devices;

(19) administration, maintenance, and monitoring of central intravenous fluid therapy;

(20) documentation;

(21) patient education;

(22) a testing component through which each student is able to demonstrate competency related to intravenous fluid therapy; and

(23) a means to verify that a student has successfully completed the stand-alone course or practical nursing program curriculum in intravenous fluid therapy as specified in this regulation. (Authorized by and implementing K.S.A. 65-1136; effective Nov. 21, 1994; amended Dec. 13, 1996; amended Oct. 29, 1999; amended April 20, 2001; amended June 14, 2002; amended July 29, 2005; amended May 18, 2012; amended Jan. 17, 2020.)

60-16-105. (Authorized by and implementing L. 1994, Chap. 218, §1; effective Nov. 21, 1994; revoked July 30, 2010.)

Article 17.—ADVANCED NURSING EDUCATION PROGRAM

60-17-101. Definitions. (a) An “advanced nursing education program” may be housed within a part of any of the following organizational units within an academic institution:

(1) A college;

(2) a school;

(3) a division;

(4) a department; or

(5) an academic unit.

(b) “Affiliating agency” means an agency that cooperates with the advanced nursing education program to provide clinical facilities and resources for selected student experiences.

(c) "Clinical learning" means an active process in which the student participates in advanced nursing activities while being guided by a member of the faculty.

(d) "Contractual agreement" means a written contract or letter signed by the legal representatives of the advanced nursing education program and the affiliating agency.

(e) "Preceptor" means an advanced practice registered nurse or a physician who provides clinical supervision for advanced practice registered nurse students as a part of nursing courses taken during the advanced nursing education program.

(f) "Satellite program" means an existing, accredited advanced nursing education program provided at a location geographically separate from the parent program. The students may spend a portion or all of their time at the satellite location. The curricula in all locations shall be the same, and each credential shall be conferred by the parent institution.

(g) "Transfer student" means an individual who is permitted to apply advanced nursing courses completed at another institution to a different advanced nursing education program. (Authorized by K.S.A. 65-1129 and K.S.A. 2010 Supp. 74-1106; implementing K.S.A. 65-1133, as amended by L. 2011, ch. 114, sec. 47; effective March 31, 2000; amended May 18, 2012.)

60-17-102. Requirements for initial approval. (a) Each hospital and agency serving as an affiliating agency and providing facilities for clinical experience shall be licensed or accredited by the appropriate credentialing groups.

(b) (1) The advanced nursing education program or the institution of which it is a part shall be a legally constituted body. The controlling body shall be responsible for general policy and shall provide the financial support for the advanced nursing education program.

(2) Authority and responsibility for administering the advanced nursing education program shall be vested in the nurse administrator of the advanced nursing education program.

(c) Each new advanced nursing education program shall submit, at least 60 days before a scheduled board meeting, an initial application, which shall include all of the following:

(1) The course of study and credential to be conferred;

(2) the name and title of the nurse administrator of the advanced nursing education program;

(3) the name of the controlling body;

(4) the name and title of the administrator for the controlling body;

(5) the organizational chart;

(6) all sources of financial support, including a three-year budget;

(7) a proposed curriculum, indicating the total number of hours of both theoretical and clinical instruction;

(8) the program objectives or outcomes;

(9) the number, qualifications, and assignments of faculty;

(10) the faculty policies;

(11) the admission requirements;

(12) a copy of the current school bulletin or catalog;

(13) a description of clinical facilities and client census data;

(14) contractual agreements by affiliating agencies for clinical facilities, signed at least three months before the first date on which students may enroll;

(15) the program evaluation plan; and

(16) a proposed date of initial admission of students to the program.

(d) Each advanced nursing education program shall be surveyed for approval by the board, with the exception of nurse anesthesia programs, as determined by K.A.R. 60-13-103.

(1) During a survey, the nurse administrator of the program shall make available all of the following:

(A) Administrators, prospective faculty and students, affiliating agencies, representatives, preceptors, and support services personnel to discuss the advanced nursing education program;

(B) minutes of faculty meetings;

(C) faculty and student handbooks;

(D) policies and procedures;

(E) curriculum materials;

(F) a copy of the advanced nursing education program's budget; and

(G) affiliating agency contractual agreements.

(2) The nurse administrator of the advanced nursing education program or designated personnel shall take the survey team to inspect the nursing educational facilities, including satellite program facilities and library facilities.

(3) Upon completion of the survey, the nurse administrator shall be asked to correct any inaccurate statements contained in the survey report, limiting these comments to errors, unclear statements, or omissions.

(e) Each institution contemplating the establishment of an advanced nursing education pro-

gram shall be surveyed and accredited by the board before the admission of students.

(f) If an advanced nursing education program fails to meet the requirements of the board within a designated period of time, the program shall be notified by the board's designee of the board's intent to deny approval. (Authorized by and implementing K.S.A. 2015 Supp. 65-1133; effective March 31, 2000; amended April 20, 2007; amended April 29, 2016.)

60-17-103. Reapproval requirements. (a)

Based on the annual report required by K.A.R. 60-17-109, each advanced nursing education program shall be reviewed for reapproval by the board every two years.

(b) Each advanced nursing education program shall be resurveyed every five to 10 years.

(1) A survey may be conducted if there is consistent evidence indicating deficiencies in meeting requirements.

(2) A survey of each nurse anesthesia program shall be conducted as required by K.A.R. 60-13-103(d)(4).

(3) If the program is accredited by a national nursing accreditation agency, the resurvey visit may be made in coordination with a national nursing accreditation agency visit. Each program without national nursing accreditation shall be resurveyed every five years.

(c) The nurse administrator of each advanced nursing education program shall make available all of the following information during a survey:

(1) Data about the program, including the following:

(A) The number of students;

(B) the legal body responsible for establishing program policies and for support of the program;

(C) an organizational chart; and

(D) a description of the budgetary process;

(2) a description of the nurse administrator's responsibilities;

(3) information about the faculty and preceptors, including the following:

(A) A description of the responsibilities of each position;

(B) the selection policies;

(C) the orientation plan;

(D) faculty organization by-laws; and

(E) the number of full-time and part-time faculty and nonnursing faculty with academic credentials and assignments;

(4) the faculty degree plan;

(5) a copy of the current curriculum with the date of last revision;

(6) a description of education facilities, including classrooms, offices, library, and computers;

(7) a list of clinical facilities;

(8) the number of students enrolled; and

(9) policies for students as listed in K.A.R. 60-2-107.

(d) During a survey, the nurse administrator of the advanced nursing education program shall make available all of the following:

(1) Educational institution administrators, faculty, support services personnel, preceptors, and students;

(2) staff at selected clinical facilities;

(3) faculty minutes for at least the previous three years;

(4) faculty and student handbooks;

(5) student records;

(6) policies and procedures;

(7) curriculum materials;

(8) a copy of the advanced nursing education program's budget; and

(9) affiliating agency contractual agreements.

(e) The nurse administrator of the advanced nursing education program or designated personnel shall take the survey team to the nursing educational facilities, including satellite program facilities, library facilities, and affiliating or clinical facilities.

(f) Upon completion of the survey, the nurse administrator shall correct any inaccurate statements contained in the survey report, limiting these comments to errors, unclear statements, or omissions.

(g) If an advanced nursing education program fails to meet requirements of the board within a designated period of time, the program shall be notified by the board's designee of the board's intent to deny reapproval. This notification shall be made pursuant to K.S.A. 77-512, and amendments thereto, and shall inform the program of its right to a hearing pursuant to the Kansas administrative procedures act. (Authorized by and implementing K.S.A. 65-1133; effective March 31, 2000; amended April 20, 2007.)

60-17-104. Faculty and preceptor qualifications. (a) Each nurse faculty member shall be licensed as a registered professional nurse in Kansas.

(b) Each preceptor shall be licensed in the state in which the preceptor is currently practicing. Each

preceptor shall complete a preceptor orientation that includes information about the pedagogical aspects of the student-preceptor relationship.

(c) For advanced nursing education programs in the role of nurse anesthesia, each nurse faculty member shall have the following academic preparation and experience:

(1) The nurse administrator who is responsible for the development and implementation of the advanced nursing education program shall have had experience in administration or teaching and shall have a graduate degree.

(2) Each nurse faculty member who is assigned the responsibility of a course shall hold a graduate degree.

(3) Each nurse faculty member responsible for clinical instruction shall possess a license as an advanced practice registered nurse and a graduate degree.

(d) For advanced nursing education programs in any role other than nurse anesthesia, each nurse faculty member shall have the following academic preparation and experience:

(1) The nurse administrator who is responsible for the development and implementation of the advanced nursing education program shall have had experience in administration or teaching and shall have a graduate degree in nursing.

(2) Each nurse faculty member who is assigned the responsibility of a course shall hold a graduate degree. Each person who is hired as a nurse faculty member shall have a graduate degree in nursing, except for any person whose graduate degree was conferred before July 1, 2005.

(3) Each nurse faculty member responsible for coordinating clinical instruction shall possess a license as an advanced practice registered nurse in the role for which clinical instruction is provided and shall have a graduate degree. Each person who is hired as a nurse faculty member shall have a graduate degree in nursing, except for any person whose graduate degree was conferred before July 1, 2005.

(4) Each preceptor or adjunct faculty shall be licensed as an advanced practice registered nurse or shall be licensed as a physician in the state in which the individual is currently practicing. Each preceptor shall complete a preceptor orientation including information about the pedagogical aspects of the student-preceptor relationship.

(e) The nonnursing faculty of each advanced nursing education program shall have graduate degrees in the area of expertise.

(f) The nurse administrator of each advanced nursing education program shall submit to the board a faculty qualification report for each faculty member who is newly employed by the program. (Authorized by K.S.A. 65-1129 and K.S.A. 2010 Supp. 74-1106; implementing K.S.A. 65-1133, as amended by L. 2011, ch. 114, sec. 47; effective March 31, 2000; amended April 20, 2007; amended May 18, 2012.)

60-17-105. Curriculum requirements.

(a) The faculty in each advanced nursing education program shall fulfill these requirements:

(1) Identify the competencies of the graduate for each role of advanced nursing practice for which the program provides instruction;

(2) determine the approach and content for learning experiences;

(3) direct clinical instruction as an integral part of the program; and

(4) provide for learning experiences of the depth and scope needed to fulfill the objectives or outcomes of advanced nursing courses.

(b) The curriculum in each advanced nursing education program shall include all of the following:

(1) Role alignment related to the distinction between practice as a registered professional nurse and the advanced role of an advanced practice registered nurse as specified in K.A.R. 60-11-101;

(2) theoretical instruction in the role or roles of advanced nursing practice for which the program provides instruction;

(3) the health care delivery system;

(4) the ethical and legal implications of advanced nursing practice;

(5) three college hours in advanced pharmacology or the equivalent;

(6) three college hours in advanced pathophysiology or its equivalent and three college hours in advanced health assessment or its equivalent for licensure as an advanced practice registered nurse in a role other than nurse anesthesia and nurse midwifery;

(7) if completing an advanced practice registered nurse program after July 1, 2009, three college hours in advanced pathophysiology or its equivalent and three college hours in advanced health assessment or its equivalent; and

(8) clinical instruction in the area of specialization, which shall include the following:

(A) Performance of or ordering diagnostic procedures;

(B) evaluation of diagnostic and assessment findings; and

(C) the prescription of medications and other treatment modalities for client conditions.

(c) (1) Each program shall consist of at least 45 semester credit hours or the academic equivalent. As used in this regulation, “academic equivalent” shall mean the prorated proportionate credit for formal academic coursework if that coursework is completed on the basis of trimester or quarter hours rather than semester hours.

(2) The clinical component shall consist of at least 260 hours of clinical learning. After January 1, 2003, the clinical component shall consist of at least 500 hours of clinical learning. After July 1, 2009, the clinical component shall consist of at least 500 hours of clinical learning in each clinical track, or the program shall provide documentation of the overlap if any clinical track consists of less than 500 clinical hours.

(d) Each nurse administrator shall meet the following requirements:

(1) Develop and implement a written plan for program evaluation; and

(2) submit any major revision to the curriculum of advanced nursing courses for board approval at least 30 days before a meeting of the board. The following shall be considered major revisions to the curriculum:

(A) Any significant change in the plan of curriculum organization; and

(B) any change in content.

(e) Each nurse administrator shall submit all revisions that are not major revisions, as defined in paragraph (d)(2), to the board or the board’s designee for approval. (Authorized by K.S.A. 65-1129 and K.S.A. 2010 Supp. 74-1106; implementing K.S.A. 65-1133, as amended by L. 2011, ch. 114, sec. 47; effective March 31, 2000; amended April 20, 2007; amended May 18, 2012.)

60-17-106. Clinical resources. (a) Each advanced nursing education program shall have appropriate written contractual agreements with each affiliating agency. Each signed contract shall be kept on file in the advanced nursing education program office.

(b) Clinical learning experiences and sites shall be selected to provide learning opportunities necessary to achieve the advanced nursing education program objectives or outcomes.

(c) Faculty shall facilitate and evaluate student learning experiences in the clinical area.

(d) Preceptors shall be responsible for assessing performance in the clinical setting.

(e) The advanced nursing education program shall provide verification that each agency used for clinical instruction has clinical facilities that are adequate for the number of students served in terms of space, equipment, and other necessary resources, including an adequate number of patients or clients necessary to meet the program objectives or outcomes.

(f) The advanced nursing education program shall contract with an adequate number of appropriate affiliating agencies so that there will be appropriate clinical experiences to meet curriculum objectives or outcomes. The advanced nursing education program faculty shall provide the affiliating agency staff with the organizing curriculum framework and either the objectives or outcomes for that clinical learning experience. A sufficient number and variety of patients representing appropriate age groups shall be available to provide learning experiences to meet curriculum objectives or outcomes. If more than one advanced nursing education program uses the same affiliating agency, each advanced nursing education program shall document the availability of appropriate learning experiences for all of its students. (Authorized by and implementing K.S.A. 65-1133; effective March 31, 2000.)

60-17-107. Educational facilities. (a) Classrooms, laboratories, and conference rooms shall be available at the time needed and shall be adequate in size, number, and type, according to the number of students and the educational purposes for which the rooms are to be used.

(b) The advanced nursing education program shall provide all of the following:

(1) A physical facility that is safe and conducive to learning;

(2) space that is available and adequate in size, amount, and type to provide faculty with privacy in counseling students;

(3) secured space for nursing student records; and

(4) student support services for distance learning if distance learning is provided.

(c) Library holdings, instructional media, and materials shall be of sufficient recency, pertinence, level of content, and quantity as indicated by the curriculum to meet the needs of nursing students and faculty and shall be available to distance learning students. (Authorized by and im-

plementing K.S.A. 65-1133; effective March 31, 2000; amended April 20, 2007.)

60-17-108. Student policies. Each advanced nursing education program shall have clearly defined written policies for all of the following:

- (a) Admission, including a requirement that each student in the program must have a current license to practice as a registered professional nurse in the United States or any of its territories;
- (b) transfer students;
- (c) readmission;
- (d) counseling and guidance;
- (e) progression criteria;
- (f) student representation in faculty governance; and
- (g) graduation. (Authorized by and implementing K.S.A. 65-1133; effective March 31, 2000; amended April 20, 2007.)

60-17-109. Reports. (a) Each advanced nursing education program shall submit an annual report to the board on or before June 15 of each year, which shall include all of the following data:

- (1) Any changes in program policies, the organizing framework for the curriculum, and program objectives or outcomes;
- (2) a description of faculty responsibilities for required advanced nursing courses;
- (3) the name, license number, academic credentials, employment date, and full- or part-time status of each member of the program faculty;
- (4) the name, license number, academic credentials, professional experience, and place of practice for each preceptor;
- (5) a description of the nurse administrator's teaching responsibilities;
- (6) the name and address of each affiliating agency;
- (7) student enrollment, retention, and graduation statistics;
- (8) faculty hiring, retention, and separation statistics;
- (9) the total number of library holdings and the number of holdings regarding nursing;
- (10) for the most recent year, either a list of new library and audiovisual acquisitions or the budget spent on library and audiovisual acquisitions;
- (11) a response to the recommendations and requirements identified by the board based on the program's last annual report or the last survey visit; and

(12) any proposed changes to the program.

(b) If the advanced nursing education program fails to meet requirements of the board or to submit required reports within a designated period of time, the program shall be removed from the list of accredited nursing education programs after it has received notice and has been given an opportunity to be heard. These proceedings shall be conducted in accordance with the provisions of K.S.A. 77-512 and amendments thereto. (Authorized by and implementing K.S.A. 65-1133; effective March 31, 2000.)

60-17-110. Discontinuing an advanced practice registered nurse program. Each school terminating its program shall submit, for board approval, the school's plan for its currently enrolled students and for disposition of its records. (Authorized by K.S.A. 65-1129 and K.S.A. 2010 Supp. 74-1106; implementing K.S.A. 65-1133, as amended by L. 2011, ch. 114, sec. 47; effective March 31, 2000; amended April 20, 2007; amended May 18, 2012.)

60-17-111. Requirements for advanced practice registered nurse refresher course.

(a) (1) Each refresher course that prepares advanced practice registered nurses (APRNs) who have not been actively engaged in advanced nursing practice for more than five years shall be accredited by the board.

(2) If a formal refresher course is not available, an individualized course may be designed for a nurse. Each individualized course shall be accredited by the education specialist.

(b) Each refresher course student shall meet both of the following conditions:

(1) Be licensed currently as a Kansas registered professional nurse; and

(2) have been licensed as an advanced practice registered nurse in Kansas or another state or have completed the education required to be licensed as an advanced practice registered nurse in Kansas.

(c) Continuing nursing education contact hours may be awarded for completion of APRN refresher courses. A contact hour shall equal a 50-minute hour of instruction.

(d) The objectives and outcomes of the refresher course shall be stated in behavioral terms and shall describe the expected competencies of the applicant.

(e) Each instructor for an APRN refresher

course shall be licensed as an APRN and shall show evidence of recent professional education and competency in teaching.

(f) Each provider that has been accredited by the board to offer an APRN refresher course shall provide the following classroom and clinical experiences, based on the length of time that the student has not been actively engaged in advanced nursing practice:

(1) For students who have not engaged in advanced nursing practice for more than five years, but less than or equal to 10 years, 150 didactic hours and 350 clinical hours; and

(2) for students who have not engaged in advanced nursing practice for more than 10 years, 200 didactic hours and 500 clinical hours.

(g) The content, methods of instruction, and learning experiences shall be consistent with the objectives and outcomes of the course.

(h) Each refresher course for the roles of nurse practitioner, clinical nurse specialist, and nurse-midwife shall contain the following content:

(1) Didactic:

(A) Role alignment related to recent changes in the area of advanced nursing practice;

(B) the ethical and legal implications of advanced nursing practice;

(C) the health care delivery system;

(D) diagnostic procedures for the area of specialization; and

(E) prescribing medications for the area of specialization; and

(2) clinical:

(A) Conducting diagnostic procedures for the area of specialization;

(B) prescribing medications for the area of specialization;

(C) evaluating the physical and psychosocial health status of a client;

(D) obtaining a comprehensive health history;

(E) conducting physical examinations using basic examination techniques, diagnostic instruments, and laboratory procedures;

(F) planning, implementing, and evaluating care;

(G) consulting with clients and members of the health care team;

(H) managing the medical plan of care prescribed based on protocols or guidelines;

(I) initiating and maintaining records, documents, and other reports;

(J) developing teaching plans; and

(K) counseling individuals, families, and groups on the following issues:

(i) Health;

(ii) illness; and

(iii) the promotion of health maintenance.

(i) Each student in nurse-midwife refresher training shall also have clinical hours in the management of the expanding family throughout pregnancy, labor, delivery, postdelivery care, and gynecological care.

(j) The provider of each refresher course shall provide official evidence of completion to each individual who successfully completes the refresher course. (Authorized by K.S.A. 65-1129 and K.S.A. 2010 Supp. 74-1106; implementing K.S.A. 65-1130, as amended by L. 2011, ch. 114, sec. 44, and K.S.A. 65-1133, as amended by L. 2011, ch. 114, sec. 47; effective March 31, 2000; amended July 29, 2005; amended May 18, 2012.)

Agency 61

Kansas Board of Barbering

Editor's Note:

Effective July 1, 1990, the Board of Barber Examiners shall be and hereby is officially designated as the Kansas Board of Barbering. See L. 1990, Ch. 225.

Articles

- 61-1. SANITARY RULES AND REGULATIONS GOVERNING BARBER SHOPS, SCHOOLS AND COLLEGES AND PUBLIC REST ROOMS IN CONNECTION THEREWITH.
- 61-3. SCHOOLS; REQUIREMENTS.
- 61-4. ISSUANCE, RENEWAL, REVOCATION AND SUSPENSION OF CERTIFICATES OF REGISTRATION.
- 61-5. APPLICATIONS.
- 61-6. RECIPROCITY.
- 61-7. FEES.

Article 1.—SANITARY RULES AND REGULATIONS GOVERNING BARBER SHOPS, SCHOOLS AND COLLEGES AND PUBLIC REST ROOMS IN CONNECTION THEREWITH

61-1-1. When open for inspection. All barber shops, schools or colleges, or public rest rooms in connection therewith or any place where barbering is being carried on, shall be open for inspection at any time during business hours to the members of the state board of barber examiners and their deputies, to enable the board to enforce proper observance of the provisions of K.S.A. 65-1808 to 65-1822, inclusive. (Authorized by K.S.A. 1977 Supp. 74-1805; effective Jan. 1, 1966; amended May 1, 1978.)

61-1-2. Ventilation; water; sanitary condition; disinfection; closing shops. All barber shops, schools or colleges, and all rest rooms in connection therewith shall be well ventilated, provided with hot and cold running water and kept in a sanitary condition and they shall be efficiently disinfected when ordered by an inspector or the proper health officer. The members of the board shall have power to close shops where, in their judgment, unsanitary conditions exist, until such conditions are abolished. (Authorized by K.S.A. 1977 Supp. 74-1805; effective Jan. 1, 1966; amended May 1, 1978.)

61-1-3. Water supply; lavatory; waste disposal. (a) Each barbershop, barber school or barber college within an area which is served by an approved public water supply and sewer system shall be connected to that system, shall have positive pressure on both hot and cold water, and shall have the lavatory drain connected to the approved sewer system.

(b) Each barbershop, barber school or barber college that is within an area which does not have an approved public water or sewer system shall install a closed tank with a spigot or a storage system of water. Waste water from such a barber facility shall be drained into a septic tank-lateral field installation or other private sewerage system approved by the appropriate authority.

(c) A lavatory shall be near each station at which a barber is working. (Authorized by K.S.A. 1983 Supp. 74-1805 and K.S.A. 74-1806; implementing K.S.A. 1983 Supp. 74-1805; effective Jan. 1, 1966; amended May 1, 1981; amended May 1, 1984.)

61-1-4. Expectoration; use of cuspidors prohibited. No barber or other person shall expectorate on the floor or in any lavatory of any barber shop, school or college of barbering, or any rest room; or upon any sidewalk adjacent thereto. The use of cuspidors or other receptacles for sputum in any barber shop or other place where barber services are performed is hereby prohibited. (Authorized by K.S.A. 1977 Supp. 74-1805; effective Jan. 1, 1966; amended May 1, 1978.)

61-1-5. Sterilization of tools and instruments. All tools and instruments used in performing barber services that come in direct contact with the human head, hair, face, or neck, shall be sterilized by immersion as hereinafter provided. Tools shall be submerged in one of the solutions approved by the board. Tools shall be sterilized as herein provided immediately before use on each separate person served. Containers of adequate size and depth, equipped with an adequate supply of solutions shall be provided for each barber chair in use. All tools and instruments, when not in use, shall be thoroughly cleansed and placed in a dust proof drawer or cabinet where only tools and instruments are kept. No tools or instruments shall be left in an exposed condition on the work stand or other place at any time after use on a patron. (Authorized by K.S.A. 74-1806; implementing K.S.A. 74-1805; effective Jan. 1, 1966; amended May 1, 1981.)

61-1-6. Shaving brushes and mugs; use prohibited. The use of shaving mugs and lather brushes, or either of them, in barber shops, schools and colleges of barbering and other places where barber services are performed, is hereby prohibited. (Authorized by K.S.A. 74-1805; effective Jan. 1, 1966.)

61-1-7 to 61-1-12. (Authorized by K.S.A. 74-1805; effective Jan. 1, 1966; revoked May 1, 1981.)

61-1-13. (Authorized by K.S.A. 74-1805; effective Jan. 1, 1966; amended May 1, 1978; revoked May 1, 1981.)

61-1-14. Mandatory use of neck strips, or towels, sanitary. The hair cloth shall never be permitted to come in direct contact with the neck of the patron. Sanitary neck strips or towels must be used at all times necessary to prevent such contacts. (Authorized by K.S.A. 1977 Supp. 74-1805; effective Jan. 1, 1966; amended May 1, 1978.)

61-1-15. Cleansing hands before serving customer. Every barber or student shall thoroughly cleanse his or her hands before serving a customer. (Authorized by K.S.A. 74-1806; authorized by and implementing K.S.A. 1981 Supp. 74-1805; effective Jan. 1, 1966; amended May 1, 1982.)

61-1-16. Use of shop for living quarters or business purposes prohibited. No barber shop, school or college or rest room in connection

therewith shall be used for living quarters, or business purposes except for the sale of items related to hair and skin care. If a room or rooms used for residential or non-barbering business purposes are in the same room or rooms or adjacent to a room or rooms used for the practice of barbering, then a solid partition shall separate the premises used for residential or non-barbering business purposes from the barbering area. The partition may contain a door, provided it remains closed except for entering and leaving. A separate outside entrance must be provided for the barber shop. (Authorized by K.S.A. 74-1805, 74-1806; effective Jan. 1, 1966; amended May 1, 1978; amended May 1, 1979; amended May 1, 1981.)

61-1-17. (Authorized by K.S.A. 74-1805; effective Jan. 1, 1966; revoked May 1, 1981.)

61-1-18. (Authorized by K.S.A. 74-1805; effective Jan. 1, 1966; amended May 1, 1982; revoked May 1, 1983.)

61-1-19. Persons suffering from contagious or infectious diseases not served. No person suffering from communicable or infectious diseases, which are dangerous to the public health, shall knowingly be served in a barber shop, school or college, or rest room in connection therewith. (Authorized by K.S.A. 74-1805; implementing K.S.A. 74-1805; effective Jan. 1, 1966; amended May 1, 1982; amended May 1, 1988.)

61-1-20. Infectious or contagious disease; when examination of barbers required. Any member of the board or proper health officer shall have authority to require any barber to submit to a physical examination when in the judgment of this officer, the barber may be affected with a contagious or infectious disease. (Authorized by K.S.A. 74-1806; authorized by and implementing K.S.A. 1981 Supp. 74-1805; effective Jan. 1, 1966; amended May 1, 1982.)

61-1-21. Use of tools or instruments on corpses or outside shop; disinfection. All tools or instruments used by barbers outside of the shop in serving any person suffering from infectious or contagious disease or used on a corpse are required to thoroughly and efficiently disinfect them with formaldehyde solution immediately after being used for same. (Authorized by K.S.A. 74-1805; effective Jan. 1, 1966.)

61-1-22. (Authorized by K.S.A. 74-1805; effective Jan. 1, 1966; amended, E-72-10, March 17, 1972; amended Jan. 1, 1973; revoked May 1, 1981.)

61-1-23. (Authorized by K.S.A. 74-1805; effective Jan. 1, 1966; revoked May 1, 1981.)

61-1-24. Temporary permits issued; permits and licenses conspicuously displayed. (a) A temporary permit issued to any student graduating from a Kansas barber school or barber college shall be valid until the next examination.

(b) All permits, barber licenses, and shop licenses shall be displayed in a conspicuous manner. (Authorized by K.S.A. 65-1825a; implementing K.S.A. 2016 Supp. 65-1812 and K.S.A. 65-1818; effective Jan. 1, 1966; amended May 1, 1979; amended May 1, 1982; amended Dec. 2, 2016.)

61-1-25. (Authorized by K.S.A. 65-1825, 74-1806; effective Jan. 1, 1966; amended May 1, 1978; amended May 1, 1981; revoked May 1, 1983.)

61-1-26. (Authorized by K.S.A. 65-1825, K.S.A. 1977 Supp. 74-1805; effective Jan. 1, 1966; revoked, L. 1975, ch. 388, May 1, 1978.)

61-1-27. Head rests. Clean cloth or clean tissue shall be placed on head rests before serving each patron. When the head rest is not in use, it shall be kept in a clean place, free from dust and dirt. (Authorized by K.S.A. 74-1805; effective Jan. 1, 1966.)

61-1-28. Pets. The keeping of dogs, cats, birds, and other pets in all barber shops, schools or colleges, or in public rest rooms in connection therewith, or in any place where barbering is carried on is hereby prohibited. (Authorized by K.S.A. 1977 Supp. 74-1805; effective Jan. 1, 1966; amended May 1, 1978.)

61-1-29. Opening of a new, relocated or change of ownership of any barber shop in the state of Kansas. No person, firm or corporation shall open or commence the operation of a barber shop in the state of Kansas until said shop has been duly licensed or has the permission of the state board of barber examiners or one of its inspectors to open. This shall include new, relocated or shops that have changed ownership. Upon receipt of said notice of opening, the board shall inspect such barber shop, and upon approval of said barber shop and its facilities and upon receipt of the annual shop inspection and license fee, the

board shall issue a shop certificate to the proprietor thereof. Any such license may be suspended or revoked or issuance denied by the board for violation of the laws of the state of Kansas or the rules and regulations promulgated by the board under authority of law. (Authorized by K.S.A. 1965 Supp. 74-1806; effective Jan. 1, 1966.)

61-1-30. Clean towels, discarding, supply of. Each barber shop, school or college shall have a sufficient supply of clean towels on hand at all times. These towels shall be kept in enclosed cabinets or containers readily accessible to each operator until immediately before use in serving each customer. All used towels shall be discarded into enclosed containers immediately after use. (Authorized by K.S.A. 74-1806; implementing K.S.A. 74-1805; effective May 1, 1981.)

61-1-31. Lump alum, styptic sticks or pencils, powder puffs, sponges or finger or towel bowls; use prohibited. The use of lump alum, styptic sticks or pencils, powder puffs, sponges or finger or towel bowls is prohibited. (Authorized by K.S.A. 74-1806; implementing K.S.A. 1982 Supp. 74-1805; effective May 1, 1981; modified, L. 1983, ch. 354, May 1, 1983.)

Article 3.—SCHOOLS; REQUIREMENTS

61-3-1. Approval of school by state board of barber examiners. No person, firm or corporation shall operate or maintain, within the state of Kansas, a school or college of barbering, unless and until duly approved by the state board of barber examiners, and unless full compliance shall be made with the rules and regulations herein set forth and established. (Authorized by K.S.A. 1965 Supp. 65-1825, 74-1806; effective Jan. 1, 1966.)

61-3-2. Minimum requirements for courses of instruction. (a) No barber school or barber college shall be approved by the board unless the barber school or barber college requires, as a prerequisite to graduation, a course of instruction of at least 1,200 hours and not more than 1,500 hours completed within nine months of not more than eight hours in any one working day. This course of instruction consisting of 1,200-1,500 hours shall not apply to any student who is a person specified in paragraph (b)(1) or (2).

(b)(1) Each barber certified as a barber by a branch of the United States military services shall

meet the requirements of K.A.R. 61-3-3(b), in addition to the credits that the individual earned to become a certified barber in the United States military services.

(2) Each person licensed as a cosmetologist by the Kansas board of cosmetology shall meet the requirements of K.A.R. 61-3-3(b), in addition to the hours that the individual earned to become a licensed cosmetologist in Kansas. (Authorized by K.S.A. 65-1825a; implementing K.S.A. 2016 Supp. 65-1810 and 65-1812; effective Jan. 1, 1966; amended Dec. 2, 2016.)

61-3-3. Subjects required in courses of instruction. (a) Each barber school or barber college shall conduct regular classes teaching the theory and practice of all phases of barbering. The course of instruction shall meet the curriculum requirements in the board's document titled "Kansas barber minimum curriculum (1,200 hours)," as adopted by the board on July 28, 2016, which is hereby adopted by reference. This course of instruction shall not apply in its entirety to any student who is a person specified in subsection (b).

(b) Any person certified as a barber by a United States military service who meets the requirements of K.A.R. 61-3-2(b)(1) and any Kansas cosmetologist who meets the requirements of K.A.R. 61-3-2(b)(2) may apply to take the Kansas barbering examination if the applicant has completed at least 500 hours of instruction, at a barber school or barber college licensed by the board, in subjects listed in the curriculum specified in this subsection. The board's document titled "industry-related minimum additional curriculum (500 hours)," as adopted by the board on July 28, 2016, is hereby adopted by reference. (Authorized by K.S.A. 65-1825a; implementing K.S.A. 2016 Supp. 65-1810 and 65-1812; effective Jan. 1, 1966; amended May 1, 1983; amended Dec. 2, 2016.)

61-3-4. Permit to operate a barber school or college; annual fee; proof of financial responsibility. Any person, firm or corporation may apply to the state board of barber examiners for a permit to establish and operate a school or college of barbering. Such permit shall be issued only upon proper and sufficient showing of the character and competency of the applicant with the requirements of these rules and regulations, and upon payment to the board of an annual fee. No permit to establish or operate a school or college of barbering shall be issued

to any applicant until such applicant shall have filed with the board a financial statement, duly verified by such applicant. The board shall either refuse to issue or shall suspend or revoke any permit to establish or operate a school or college of barbering of any person, firm or corporation who fails to file such statement or who makes any false statement therein. (Authorized by K.S.A. 65-1825, K.S.A. 1977 Supp. 74-1806; effective Jan. 1, 1966; amended May 1, 1978.)

61-3-5. Qualifications for supervisors of barber schools or barber colleges. The individual supervising the barbering course of study at a barber school or barber college shall be a Kansas-licensed barber instructor. (Authorized by K.S.A. 65-1825a; implementing K.S.A. 2016 Supp. 65-1810; effective Jan. 1, 1966; amended Dec. 2, 2016.)

61-3-6. (Authorized by K.S.A. 74-1806; effective Jan. 1, 1966; revoked May 1, 1982.)

61-3-7. Minimum requirements for opening a barber school or barber college. (a) Each approved barber school or barber college shall have at least three students enrolled and at least five feet between the centers of each adjoining barber chair in the clinical demonstration room before opening. If the barber school or barber college is located in a building in which another entity operates a business or school that conducts or teaches anything other than barbering as defined in K.S.A. 65-1809 and amendments thereto, the barber school or barber college shall have a separate entrance and shall be completely separate within that building, except as provided in subsection (b).

Each barber school or barber college shall have at least two rooms accessible to its students at all times. One room shall be used for class study, examinations, and lectures, and the other room shall be used for practical demonstrations. The barber school or barber college shall provide at least one restroom with a toilet and washbasin, which shall be kept in a sanitary condition. Each room shall be equipped to meet the requirements of all applicable regulations of the board.

(b) Any barber school or barber college that shares a building in which another entity operates a business or school that conducts or teaches anything other than barbering may share the following facilities with that entity:

(1) Classrooms other than the clinic floor, if no

classroom is used by both the entity and the barber school or barber college at the same time;

(2) restrooms; and

(3) common areas, including reception areas, lounges, and hallways. (Authorized by and implementing K.S.A. 65-1825a, K.S.A. 2015 Supp. 74-1806; effective Jan. 1, 1966; amended May 1, 1988; amended March 20, 2015; amended May 13, 2016.)

61-3-8. Minimum equipment. The minimum equipment with which a school or college shall be permitted to operate is as follows:

One chair, lavatory and back stand, a proper cabinet for immediate linen supply and individual sterilizers for each student and other such equipment required in the teaching of proper sanitation and sterilization for protection of the public. (Authorized by K.S.A. 74-1806; implementing K.S.A. 74-1805; effective Jan. 1, 1966; amended May 1, 1981.)

61-3-9. Application for admission. No school or college of barbering shall enroll or admit any student thereto unless such student shall make and file, in duplicate, a duly verified application upon forms prescribed and furnished by the board. One copy of such application shall be retained by the school or college, and the school or college shall file the other with said board. (Authorized by K.S.A. 1965 Supp. 65-1825, 74-1806; effective Jan. 1, 1966.)

61-3-10. Qualifications for students. No student shall be admitted to any school or college unless he or she is at least sixteen (16) years of age and of good moral character and temperate habits, and unless he or she furnishes a certificate from a Kansas licensed physician, showing that he or she is free from any contagious, infectious or communicable diseases. The certificate shall not be dated more than thirty (30) days prior to the date of his or her admittance. (Authorized by K.S.A. 65-1825; implementing K.S.A. 65-1810, 65-1811, 65-1812 and 65-1814; effective Jan. 1, 1966; amended May 1, 1978; amended May 1, 1981.)

61-3-11. Library. Each school or college shall maintain an adequate library containing suitable reference books, including medical dictionaries, books on anatomy and physiology, or other books dealing with the functions of the human body as applicable to the proper practice of

barbering. (Authorized by K.S.A. 1965 Supp. 65-1825, 74-1806; effective Jan. 1, 1966.)

61-3-12. Positions shall not be guaranteed. No one in any way connected with a school of barbering shall guarantee positions to students nor guarantee financial aid to students in equipping a shop. (Authorized by K.S.A. 1965 Supp. 65-1825, 74-1806; effective Jan. 1, 1966.)

61-3-13. Students to receive no fees for services; tuition and other charges to be paid to school or college. No student shall be allowed to receive compensation, directly or indirectly, for services rendered by him or her in any barber school or college. All sums for tuition or other charges made for services or expenses shall be paid to the school or college. (Authorized by K.S.A. 65-1825, K.S.A. 1977 Supp. 74-1806; effective Jan. 1, 1966; amended May 1, 1978.)

61-3-14. Designation as school or college. Every barber school or college shall designate to the public that it is a barber school or college by having a sign on the front window or entrance, with letters not less than six inches in height, reading "Barber School (or College). All work in This School (or College) Done by Students Only." No school or college shall erect or maintain a barber pole. (Authorized by K.S.A. 1965 Supp. 65-1825, 74-1806; effective Jan. 1, 1966.)

61-3-15. Clothing during school hours. Students shall be attired in clean, neat, washable clothing at all times during school hours. (Authorized by K.S.A. 65-1825, K.S.A. 1977 Supp. 74-1806; effective Jan. 1, 1966; amended May 1, 1978.)

61-3-16. Labels on bottles and containers. All bottles and other containers must be distinctly and correctly labeled, showing the nature of and intended use of the contents. (Authorized by K.S.A. 1965 Supp. 65-1825, 74-1806; effective Jan. 1, 1966.)

61-3-17. School hours; attendance; examinations. Regular school hours shall be established by all schools and colleges. Any time lost by the student shall be made up before a diploma is issued. A minimum of ten recitations per week, including practical shop work, of one hour each, shall be required of all students. All examinations and other written papers shall be carefully graded and returned to the students. (Authorized by

K.S.A. 1965 Supp. 65-1825, 74-1806; effective Jan. 1, 1966.)

61-3-18. Graduation. All students shall be given a complete course in barbering as prescribed by the curriculum set forth above, and no student shall be issued a diploma of graduation from any school or college unless and until he or she shall have satisfactorily passed examinations covering the entire course of instruction. (Authorized by K.S.A. 65-1825, K.S.A. 1977 Supp. 74-1806; effective Jan. 1, 1966; amended May 1, 1978.)

61-3-19. Records. Each school or college shall forward to the state board of barber examiners a completed application for enrollment upon the date of admission of each student. Each school or college shall keep a daily class record of each student showing the total number of hours in attendance, the hours and classes missed and such daily records shall be subject to inspection by members of the board at all times. The owner or manager of each school (or college) shall furnish the state board of barber examiners, at the end of each month, the names of all students enrolled therein and the record of their attendance. A final record and summary of each student's grades, hours and attendance shall be prepared by the manager, certified by him as correct, and presented to the student upon graduation. (Authorized by K.S.A. 1965 Supp. 65-1825, 74-1806; effective Jan. 1, 1966.)

61-3-20. Teaching staff. Each barber school and each barber college shall have at least one licensed instructor for every 10 or fewer students. Each licensed instructor shall instruct and supervise all student work. The maximum instructor-to-student ratio during instruction and supervision of all student work shall be no less than 1:10. (Authorized by K.S.A. 65-1825a; implementing K.S.A. 2016 Supp. 65-1810; effective Jan. 1, 1966; amended May 1, 1978; amended Dec. 2, 2016.)

61-3-21. Postgraduate course. No school or college of barbering shall enroll or admit a student in a postgraduate course for the purpose of qualifying the student to pass the examination conducted by the board to determine fitness to practice barbering. (Authorized by K.S.A. 65-1825, 74-1806; effective Jan. 1, 1966; amended May 1, 1981.)

61-3-22. Schools ineligible for a permit to operate a barber school or barber college. No correspondence school shall be granted

a permit to establish or operate a barber school or barber college. (Authorized by K.S.A. 65-1825a, K.S.A. 2014 Supp. 74-1806; implementing K.S.A. 65-1810; effective Jan. 1, 1966; amended May 1, 1988; amended March 20, 2015.)

61-3-23. Revocation of permit. Failure on the part of any school or college to comply with applicable statutes or the rules and regulations prescribed therein, or with the sanitary rules and regulations of the board, shall be sufficient grounds for revocation of its permit and removal of such school from the list of recognized and approved barber colleges or schools. However no revocation of permit will be made unless and until notice shall have been given and public hearing conducted by the board in the same manner as now provided by K.S.A. 65-1821, relating to certificates of registration. (Authorized by K.S.A. 1965 Supp. 65-1825, 74-1806; effective Jan. 1, 1966.)

61-3-24. Eligibility to take registered barber examination. A person shall not be permitted to take an examination conducted by the state board of barber examiners to determine his or her fitness to practice as a registered barber, as provided in K.S.A. 65-1812, until he or she has furnished the board with evidence of his or her satisfactory completion of the regular course of study at any school or college of barbering which complies with the standards and offers the course of study established by this article for schools and colleges of barbering, and which has been approved by the state board of barber examiners. (Authorized by K.S.A. 65-1825; implementing K.S.A. 1982 Supp. 65-1812; effective Jan. 1, 1966; amended May 1, 1978; amended May 1, 1982; amended May 1, 1983.)

61-3-25. Supervision of registered apprentice barbers. Every registered barber who supervises a registered apprentice barber within the state of Kansas shall give notice thereof in writing not more than ten (10) days after the commencement of the period of supervision of such registered apprentice barber. Such notice shall be given on a form supplied by the board of barber examiners and shall be given to the administrative officer of said board at his or her office in Topeka. No supervision more than ten (10) days prior to the giving of such notice may be included in the period of twelve (12) months of supervised practice required for the registered apprentice barber by K.S.A. 65-1811. Upon termination of the

supervision of any registered apprentice barber within the state of Kansas, his or her supervisor shall file in the office of the administrative officer of the board a statement showing the date such supervision commenced, the date of termination, any interval of supervision within such period and the average number of hours per week of supervised practice of barbering by such registered apprentice during such period. Said statement shall be made on a form provided by the board and shall be verified by the supervisor. (Authorized by K.S.A. 1977 Supp. 74-1806; effective Jan. 1, 1966; amended May 1, 1978.)

61-3-26. Night classes permitted. Any school or college of barbering may be issued a permit to operate night classes provided that the classes are held in the school or college of barbering. (Authorized by K.S.A. 65-1825, 74-1806; implementing K.S.A. 65-1810; effective May 1, 1988.)

Article 4.—ISSUANCE, RENEWAL, REVOCATION AND SUSPENSION OF CERTIFICATES OF REGISTRATION

61-4-1. (Authorized by K.S.A. 65-1825; effective Jan. 1, 1966; revoked May 1, 1982.)

61-4-2. Issuance and renewal of licenses.

(a) Each barber license, shop owner license, and instructor license shall be renewed annually on an alphabetical basis as follows:

(1) For each licensee whose last name begins with A, B, C, M, N, or O, on or before March 31;

(2) for each licensee whose last name begins with D, E, F, P, Q, or R, on or before June 30;

(3) for each licensee whose last name begins with G, H, I, S, T, or U, on or before September 30; and

(4) for each licensee whose last name begins with J, K, L, V, W, X, Y, or Z, on or before December 31.

(b) The restoration fee for late renewals shall be in accordance with K.A.R. 61-7-2.

(c) Except as specified in subsection (e), any student may be issued a barber license upon passing the barber examination, paying a prorated license fee, and meeting all other requirements of K.S.A. 65-1808 et seq. and amendments thereto. The license shall expire as specified in subsection (a).

(d) Each barber school and each barber college shall renew the license annually on or before December 31.

(e) Any person who has complied with K.A.R. 61-3-3(b) and meets the following requirements may be granted a Kansas barber license:

(1) Has filed an application to take the Kansas barber examination;

(2) has paid the applicable examination and licensing fees; and

(3) has passed the Kansas barber examination. (Authorized by K.S.A. 65-1825a; implementing K.S.A. 2016 Supp. 65-1812 and 65-1819; effective, E-81-37, Dec. 10, 1980; effective May 1, 1981; amended May 1, 1982; amended May 1, 1983; amended Dec. 2, 2016.)

61-4-3. Potentially disqualifying civil and criminal records; advisory opinion; fee. (a) For purposes of this regulation, “conviction” shall mean the rendering of a judgment or order by a court of competent jurisdiction in any state, or a subdivision thereof, or territory of the United States, by a court of the United States, or by a military court-martial pursuant to the uniform code of military justice.

(b) The following criminal records may disqualify an applicant from receiving a license or permit:

(1) Conviction of any offense classified as a felony in the jurisdiction in which the conviction occurred;

(2) conviction of any offense classified as a class A person misdemeanor or similar classification in the jurisdiction in which the conviction occurred;

(3) conviction of any offense classified as a class A misdemeanor pursuant to K.S.A. 21-5701 et seq. and amendments thereto, any predecessor statute before its repeal, or any similar classification in the jurisdiction in which the conviction occurred; and

(4) conviction of any other misdemeanor pursuant to K.S.A. 21-5701 et seq. and amendments thereto, any predecessor statute before its repeal, or any similar classification in the jurisdiction in which the conviction occurred if one of the following conditions is met:

(A) Fewer than five years have passed since the applicant completed that individual’s sentence, including any term of incarceration, probation, or community supervision or payment of any fine, fees, or restitution; or

(B) the applicant has been convicted of another crime in the five years immediately preceding the date of the application for license or permit.

(c) Civil records that may disqualify an applicant from receiving a license or permit shall be

any records of any court judgment or settlement in which the applicant admitted or was found to have engaged in conduct that would constitute a violation of the barbering act or any of the board's regulations. Those records shall not be used to disqualify an applicant for more than five years after the applicant satisfied any judgment or restitution ordered by the court or the settlement agreement signed by the parties.

(d) Any individual with a criminal or civil record described in this regulation may petition the board for an informal, advisory opinion concerning whether the individual's civil or criminal record may disqualify the individual from licensure. Each petition shall include the following:

- (1) The details of the individual's civil or criminal record, including a copy of court records and the settlement agreement signed by the parties;
- (2) an explanation of the circumstances that resulted in the civil or criminal record or settlement agreement; and
- (3) a check or money order in the amount of \$50.00. (Authorized by K.S.A. 65-1825a and 74-120; implementing K.S.A. 65-1820a and 74-120; effective Feb. 19, 2021.)

Article 5.—APPLICATIONS

61-5-1. Limitation on filing date. Any person who desires to practice barbering shall file with the board a completed application with proper amount of fees not later than 15 days before the examination. (Authorized by K.S.A. 65-1825; implementing K.S.A. 1982 Supp. 65-1817; effective Jan. 1, 1966; amended May 1, 1982; amended May 1, 1983.)

Article 6.—RECIPROCITY

61-6-2. Barbers who qualify for reciprocity. Effective July 1, 1980, a reciprocal barber's license shall be issued to licensed registered barbers who meet the following requirements: (1) Currently licensed in a state, territory, or country, which has a reciprocal agreement with Kansas.

(2) Actively licensed and practicing barbering for at least twenty-four (24) months. The applicant shall provide the board with a notarized statement from previous and current employers attesting to this.

(3) Submit a letter from the current licensing board verifying that the licensee is in good standing.

(4) Certify in writing that he or she has read, un-

derstands, and will abide by the rules, regulations, and statutes of the state of Kansas.

(5) Submit an application subject to approval by the board. The reciprocal fee shall accompany the application.

(6) The reciprocal fee shall be a processing and license fee equal to the examination and barber license fee. (Authorized by K.S.A. 65-1813, 65-1825, 74-1806; effective, E-81-17, June 25, 1980; effective May 1, 1981.)

Article 7.—FEES

61-7-1. (Authorized by K.S.A. 65-1825; implementing K.S.A. 1982 Supp. 65-1817; effective May 1, 1983; revoked May 13, 2016.)

61-7-2. Fees. The following fees shall be charged by the board:

- (a) Barber license
 - (1) Examination to practice barbering..... \$100
 - (2) Issuance of license to practice barbering 80
 - (3) Renewal of license to practice barbering 80
 - (4) Restoration of expired license to practice barbering

(A) If the expiration period is not more than three years, the restoration and lapsed fees shall be as follows:

- lapsed 1 through 30 days 100
- lapsed 31 through 365 days 160
- lapsed 366 through 730 days 240
- lapsed 731 through 1,095 days 320

(B) For each barbering license that has lapsed for more than three years, the applicant shall be reexamined upon payment of the barbering examination and issuance of license fees..... 180

- (b) Instructor license
 - (1) Examination to instruct barbering 40
 - (2) Issuance of license to instruct barbering 40
 - (3) Renewal of license to instruct barbering 40
 - (4) Restoration of expired instructor's license

(A) If the expiration period is not more than three years, the restoration and lapsed fees shall be as follows:

- lapsed 1 through 30 days 60
- lapsed 31 through 365 days 80
- lapsed 366 through 730 days 120
- lapsed 731 through 1,095 days 160

<p>(B) For each instructor’s license that has lapsed for more than three years, the instructor shall be reexamined upon payment of the examination, instructor’s license, and renewal fees 120</p> <p>(c) License to operate a barber school or barber college (annual fee) 500</p> <p>(d) License to operate a barber shop</p> <p>(1) Shop inspection and annual license fee 40</p> <p>(2) Restoration of expired shop license. If the</p>	<p>expiration period is not more than three years, the restoration and lapsed fees shall be as follows:</p> <p>lapsed 1 through 30 days 55</p> <p>lapsed 31 through 365 days 120</p> <p>lapsed 366 through 730 days 160</p> <p>lapsed 731 through 1,095 days 200</p> <p>(3) New shop, relocation, or change of ownership 80</p> <p>(e) Seminar permit 80</p> <p>(f) Student learning license 55</p> <p>(Authorized by and implementing K.S.A. 2015 Supp. 65-1817; effective May 13, 2016.)</p>
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Agency 63

State Board of Mortuary Arts

Articles

- 63-1. EMBALMING; CONTINUING EDUCATION OF EMBALMERS AND FUNERAL DIRECTORS.
- 63-2. FUNERAL DIRECTING.
- 63-3. PREPARATION AND TRANSPORTATION OF BODIES, BURIAL IN MAUSOLEUMS AND FUNERAL ESTABLISHMENTS.
- 63-4. FEES.
- 63-5. ADMINISTRATIVE HEARINGS AND DISCIPLINARY ACTION.
- 63-6. CONTINUING EDUCATION.
- 63-7. CREMATORIES.

Article 1.—EMBALMING; CONTINUING EDUCATION OF EMBALMERS AND FUNERAL DIRECTORS

63-1-1. Definitions. (a) “Board” means the Kansas state board of mortuary arts.

(b) “Casket” means a rigid container that is designed for the encasement and burial of dead human bodies.

(c) “Disposition” means burial, cremation, or permanent delivery of a dead human body to a medical institution.

(d) “Embalmer” means any person licensed in embalming.

(e) “Apprentice embalmer” means any person that has passed the written Kansas embalmer examination.

(f) “Student embalmer” means any person that meets both of the following conditions:

(1) Is currently enrolled or has graduated from mortuary college with the intention of becoming an embalmer; and

(2) has registered with the board.

(g) “Embalming” means the chemical preparation of a dead human body for disposition. This term shall include all activities leading up to and including arterial and cavity embalming, including the setting of features, raising of vessels, and suturing of incisions.

(h) “Funeral service or funeral” means a religious service or other rite or ceremony with a dead human body present.

(i) “Suitable combustible container” means any receptacle or enclosure other than a casket that is

of sufficient strength to be used to hold and transport human remains. This term shall include the following enclosures:

(1) A cardboard container;

(2) a pressed wood container;

(3) a composition container; and

(4) a canvas pouch. (Authorized by K.S.A. 65-1730 and K.S.A. 2006 Supp. 74-1704; implementing K.S.A. 65-1703 and K.S.A. 65-1730; effective Jan. 1, 1966; amended Jan. 1, 1974; modified by L. 1978, ch. 465, May 1, 1978; amended May 1, 1979; amended May 1, 1982; amended May 1, 1986; amended May 1, 1987; amended May 1, 1988; amended Jan. 6, 1992; amended Feb. 16, 2007.)

63-1-2. (Authorized by K.S.A. 74-7104; implementing K.S.A. 65-1701a, 74-1704; effective Jan. 1, 1966; amended May 1, 1976; amended May 1, 1982; revoked Nov. 13, 1995.)

63-1-3. Registration and apprenticeship.

(a) In order to be granted an embalmer license, the following educational requirements shall be met: Each applicant shall enroll in an approved school of mortuary science offering at least an AA degree in mortuary science, while accumulating during this training at least 30 semester hours in mortuary science.

(b) Each person desiring to enter the practice of embalming dead human bodies within the state of Kansas shall apply to the board for a “certificate of registration” in order to take the embalmer’s examination. Application forms provided by the board shall be used. Each application form shall be accompanied by the following:

(1) Official transcripts from approved institutions of higher learning showing that the applicant has met the educational requirements of K.S.A. 65-1701a, and amendments thereto, or their equivalent;

(2) verification that the applicant completed a mortuary science program that results in at least an AA degree in mortuary science and is accredited by the American board of funeral service education; and

(3) the fee as prescribed in K.A.R. 63-4-1.

(c) The applicant may file a "certificate of completion" in lieu of a transcript if a transcript is unavailable at the time of application. A transcript shall be filed with the board before beginning the apprenticeship.

(d) Upon passing the examination, each applicant shall be registered under a licensed Kansas embalmer or embalmers or an embalmer who is approved by the board for an embalmer apprenticeship. Each licensee under whom an apprentice is registered shall file quarterly reports of progress with the board. Upon successful completion of the apprenticeship and payment of the prorated biennial fee, an embalmer's license shall be issued by the board. An apprentice embalmer shall successfully complete one year of apprenticeship in the practice of embalming dead human bodies in order to be qualified for an embalmer license. In order for an embalmer apprenticeship to be successfully completed, all of the following requirements shall be met:

(1) The apprentice shall file quarterly progress reports with the board on forms approved by the board concerning the apprentice's progress in the practice of embalming.

(2) The supervising embalmer shall file quarterly progress reports with the board on forms approved by the board concerning the apprentice's progress in the practice of embalming.

(3) The progress reports of the apprentice and supervising embalmer shall be reviewed by the board to assist in determining if the apprentice's progress in the practice of embalming is acceptable or unacceptable.

(e) If either the apprentice or the supervising embalmer fails to timely submit a quarterly report to the board, that quarter shall not be counted toward successful completion of the apprenticeship. Timely submission of a quarterly report shall be within 10 days following the conclusion of the quarter.

(f) At the conclusion of one year of apprenticeship, the apprentice shall be required to appear

before the board. If the board determines acceptable progress by the apprentice in the practice of embalming in each quarter of the apprenticeship, the apprentice shall be granted a license to practice embalming. If the board determines that the progress of the apprentice is unacceptable in one or more quarters of the apprenticeship, the apprentice shall be required to successfully complete one or more additional quarters of an embalming apprenticeship.

(g) Each transcript and record filed with the board shall become part of the board's permanent files and records.

(h) If the applicant does not pass the examination within two years from the date of first application, that application shall automatically expire. Time served in the armed forces shall not be counted in computing this period. If the applicant desires to reapply, the applicant shall make a new application in accordance with subsection (b).

(i) If an apprentice embalmer fails to complete the apprenticeship within two years following the successful completion of the examination, the apprenticeship shall expire. An extension of up to one year may be granted by the board in cases of illness or other extraordinary circumstances. Each application for extension shall be submitted on the form provided by the board. Time served in the armed forces shall not be counted in computing this period. If the applicant later desires to complete the apprenticeship, the applicant shall first retake and pass the embalmer's examination.

(j) Each applicant who passes the examination shall receive credit toward the apprenticeship for time spent in the armed forces if the applicant's primary duties were preparation of, and caring for, dead human bodies under the supervision of a person holding a valid embalmer's license in any state. This supervising licensee shall certify as to the duties of the applicant on forms approved by the board.

(k) Each embalmer apprentice shall serve full-time. "Full-time" means employed 40 hours per week for 50 weeks per year and available to assist in embalming 24 hours per day. (Authorized by K.S.A. 65-1730; implementing K.S.A. 1999 Supp. 65-1701a; effective Jan. 1, 1966; amended Jan. 1, 1967; amended Jan. 1, 1969; amended Jan. 1, 1974; amended, E-76-14, Feb. 28, 1975; amended May 1, 1976; amended May 1, 1978; amended May 1, 1982; amended May 1, 1983; amended May 1, 1986; amended May 1, 1987; amended May 1, 1988; amended June 26, 1989; amended

March 19, 1990; amended Jan. 6, 1992; amended June 7, 1993; amended Dec. 6, 1993; amended April 3, 1995; amended Jan. 12, 2001.)

63-1-4. Examination. Only applicants who have met the requirements of K.S.A. 65-1701a, and amendments thereto, and K.A.R. 63-1-3 may take the embalmer's examination approved by the board, which is the examination administered by the international conference of funeral service examining boards. In order to pass the examination, each applicant shall receive a score of at least 75 in the funeral service arts section and in the funeral service science section. Each applicant shall be required to pass both sections of the examination to be eligible for apprenticeship and licensure. (Authorized by K.S.A. 65-1730; implementing K.S.A. 65-1701a, as amended by L. 2004, ch. 57, sec. 3; effective Jan. 1, 1966; amended May 1, 1978; amended May 1, 1987; amended June 26, 1989; amended March 19, 1990; amended July 1, 1993; amended Jan. 12, 2001; amended Nov. 12, 2004.)

63-1-5. Requirements for a reciprocal embalmer's license. Each applicant who is currently licensed in another state and desires reciprocal licensure as an embalmer in Kansas shall obtain all necessary original documents required for licensure under K.S.A. 65-1701b and amendments thereto. These original documents shall be delivered with the application and fee to the board by the 15th of the month before the quarterly meeting of the board at which the application will be considered. (Authorized by K.S.A. 65-1730; implementing K.S.A. 65-1701b; effective Jan. 1, 1966; amended May 1, 1978; amended May 1, 1982; modified, L. 1983, ch. 351, May 1, 1983; amended May 1, 1987; amended May 1, 1988; amended Jan. 12, 2001.)

63-1-6. General requirements relating to the practice of embalming, cremation, and funeral directing. (a) Following the loss or destruction of the license of any embalmer, funeral director, assistant funeral director, crematory operator, or establishment or branch establishment, a duplicate license shall be issued by the board upon the licensee's written request and payment of the duplicate license fee specified in K.A.R. 63-4-1.

(b) Each licensee shall promptly notify the board of all changes in the licensee's address.

(c) Each licensee shall promptly and fully cooperate at all times with the state department of

health and environment and with the board in all matters pertaining to the general practice of embalming and cremation.

(d) Any licensee's name may be used in the form of an endorsement of a preneed funeral plan if the recommendation is genuine and representative of the current opinion of the licensee. The endorsement shall apply to the preneed funeral plan advertised. The licensee making the recommendation shall disclose to the public any financial interest in the preneed funeral plan or a related entity, or any direct or indirect benefit as a stockholder, officer, or employee.

(e) A licensee shall not be connected in any way with an insurance company if either of the following conditions is met:

(1) Policies are payable in merchandise or require the service of a designated funeral director or a member of a designated group of funeral directors.

(2) The certificate or policy of that company provides for a reduction on the value of merchandise or services furnished or the price to be paid for them. (Authorized by K.S.A. 65-1730, K.S.A. 2010 Supp. 74-1704, K.S.A. 74-1707, and K.S.A. 2010 Supp. 65-1774; implementing K.S.A. 65-1701, K.S.A. 65-1730, K.S.A. 74-1707; effective Jan. 1, 1966; modified, L. 1979, ch. 345, May 1, 1979; amended May 1, 1982; amended May 1, 1983; amended May 1, 1984; amended May 1, 1987; amended May 1, 1988; amended June 26, 1989; amended Jan. 12, 2001; amended Sept. 16, 2011.)

63-1-7. (Authorized by and implementing K.S.A. 65-1711a; effective Jan. 1, 1966; amended Jan. 1, 1974; modified, L. 1978, ch. 465, May 1, 1978; amended May 1, 1987; revoked, T-88-43, Oct. 27, 1987; revoked May 1, 1988.)

63-1-8. (Authorized by and implementing K.S.A. 65-1711a, 74-1704; effective Jan. 1, 1966; amended May 1, 1978; amended May 1, 1982; amended May 1, 1984; amended May 1, 1986; amended May 1, 1987; revoked May 1, 1988.)

63-1-9. (Authorized by K.S.A. 74-1704; effective Jan. 1, 1966; revoked May 1, 1982.)

63-1-10. (Authorized by K.S.A. 74-1704; effective Jan. 1, 1966; amended Jan. 1, 1974; amended May 1, 1978; revoked May 1, 1982.)

63-1-11. (Authorized by K.S.A. 74-1704; effective Jan. 1, 1966; revoked May 1, 1976.)

63-1-12. Embalmer's biennial renewals.

(a) Each embalmer license renewal fee shall be paid on a biennial basis. Each renewal fee shall be initially prorated to the nearest whole month, to establish the biennial renewal process.

(b) Each expiration date shall be assigned alphabetically according to the first letter of the licensee's surname, as follows:

- (1) A and M shall expire on January 31.
- (2) B and N shall expire on February 28.
- (3) C and O shall expire on March 31.
- (4) D and P shall expire on April 30.
- (5) E and Q shall expire on May 31.
- (6) F and R shall expire on June 30.
- (7) G and S shall expire on July 31.
- (8) H and T shall expire on August 31.
- (9) I and U shall expire on September 30.
- (10) J and V shall expire on October 31.
- (11) K and W shall expire on November 30.
- (12) L, X, Y, and Z shall expire on December 31.

Each licensee whose surname begins with the letters A through L shall renew in even-numbered years; M through Z shall renew in odd-numbered years.

(c) (1) Any license that expires may be reinstated within six months of the expiration date upon payment of the renewal fee in arrears and a reinstatement fee in the amount equal to the renewal fee.

(2) Each licensee shall make up all past continuing education hours accrued during the expiration period within one year of reinstatement.

(d) Subsection (a) shall not apply to apprentice licensees or the period of apprenticeship under K.S.A. 65-1701a and amendments thereto. The initial licensure fee for new embalmers shall be charged on a pro rata basis in order to place new licensees within the expiration dates of subsection (b).

(e) Each licensee changing the licensee's surname shall notify the board of the change, and the expiration date shall be adjusted to the month so designated in subsection (b). (Authorized by and implementing K.S.A. 65-1702; effective, E-80-17, Oct. 17, 1979; effective May 1, 1980; amended May 1, 1986; amended May 1, 1988; amended June 26, 1989; amended Jan. 6, 1992; amended Jan. 12, 2001.)

63-1-13. (Authorized by K.S.A. 65-1712, 65-1723; implementing K.S.A. 65-1702, 65-1716; effective, E-81-41, Dec. 17, 1980; modified, L. 1981, ch. 410, May 1, 1981; revoked May 1, 1982.)

63-1-14. (Authorized by K.S.A. 65-1712, 65-1723; implementing K.S.A. 65-1702, 65-1716; effective, E-81-41, Dec. 17, 1980; modified, L. 1981, ch. 410, May 1, 1981; amended May 1, 1982; amended May 1, 1983; amended May 1, 1987; revoked May 1, 1988.)

63-1-15. (Authorized by and implementing K.S.A. 65-1702, 65-1716; effective, E-81-41, Dec. 17, 1980; modified, L. 1981, ch. 410, May 1, 1981; amended May 1, 1982; amended May 1, 1983; amended May 1, 1987; revoked May 1, 1988.)

63-1-16. (Authorized by and implementing K.S.A. 65-1702, 65-1716; effective, E-81-41, Dec. 17, 1980; modified, L. 1981, ch. 410, May 1, 1981; amended May 1, 1982; amended May 1, 1983; amended May 1, 1987; revoked May 1, 1988.)

63-1-17. (Authorized by K.S.A. 65-1712, 65-1723; implementing K.S.A. 65-1702, 65-1716; effective, E-81-41, Dec. 17, 1980; modified, L. 1981, ch. 410, May 1, 1981; amended May 1, 1982; revoked May 1, 1988.)

63-1-18. (Authorized by K.S.A. 65-1723; implementing K.S.A. 65-1702, 65-1716; effective, E-81-41, Dec. 17, 1980; modified, L. 1981, ch. 410, May 1, 1981; amended May 1, 1982; amended May 1, 1983; amended May 1, 1987; revoked May 1, 1988.)

63-1-19. (Authorized by K.S.A. 65-1712; implementing K.S.A. 65-1702; effective, E-81-41, Dec. 17, 1980; rejected, L. 1981, ch. 410, May 1, 1981.)

63-1-20. (Authorized by and implementing K.S.A. 65-1702, 65-1716; effective, E-81-41, Dec. 17, 1980; modified, L. 1981, ch. 410, May 1, 1981; amended May 1, 1982; amended May 1, 1983; amended May 1, 1987; revoked May 1, 1988.)

63-1-21. (Authorized by K.S.A. 65-1712, 65-1723; implementing K.S.A. 65-1702, 65-1716; effective, E-81-41, Dec. 17, 1980; modified, L. 1981, ch. 410, May 1, 1981; amended May 1, 1982; revoked May 1, 1988.)

63-1-22. (Authorized by and implementing K.S.A. 65-1702, 65-1716; effective, E-81-41, Dec. 17, 1980; modified, L. 1981, ch. 410, May 1, 1981; amended May 1, 1982; amended May 1, 1987; revoked May 1, 1988.)

63-1-23. Requirements for an embalmer's license by endorsement. (a) Each applicant who is currently licensed in another state and desires licensure as an embalmer by endorsement in Kansas shall provide the board with the following information:

(1) Proof of licensure as an embalmer in another state for at least five consecutive years;

(2) completion of five consecutive years of active practice in embalming within the past five years;

(3) proof of having passed the national board examination (N.B.E.) of the international conference of funeral service examining boards; and

(4) verification that no adverse action has been taken against the licensee by any state board in which licensure is or has been held.

(b) Each applicant shall submit the information specified in paragraphs (a) (1), (2) and (4) on applications provided by the state board.

(c) Each applicant shall have the information specified in paragraph (a) (3) sent directly to the board by the international conference of funeral service examining boards.

(d) The applications, fee, and proof of passing the national examination shall be delivered to the board by the 15th of the month before the quarterly meeting of the board, at which the applicant shall meet with the board and the application shall be considered. (Authorized by K.S.A. 65-1712; implementing K.S.A. 2001 Supp. 65-1727; effective May 17, 2002.)

Article 2.—FUNERAL DIRECTING

63-2-1. Embalming regulations adopted. The following regulations of this board relating to the subject of embalming and any amendments thereto are adopted and incorporated herein by reference, and made a part of the regulations of this board on the subject of funeral directing, so far as the same are applicable: K.A.R. 63-1-1, K.A.R. 63-1-6, and K.A.R. 63-1-8. (Authorized by K.S.A. 65-1722, 74-1704, 74-1707; implementing K.S.A. 65-1714, 65-1722, 74-1707; effective Jan. 1, 1966; amended May 1, 1979; amended May 1, 1987.)

63-2-2. (Authorized by K.S.A. 74-1704; effective Jan. 1, 1966; amended May 1, 1976; revoked Nov. 13, 1995.)

63-2-3. Responsibilities of funeral director. (a) A Kansas funeral director shall not have charge of more than one funeral establishment.

(b) Any Kansas licensed funeral director owning or having an interest in more than one Kansas funeral establishment shall employ at all times, for each of these establishments, a Kansas licensed funeral director, who shall have personal supervision and charge of the establishments.

(c) A funeral, or any portion of it, and all attendant funeral arrangements shall not be conducted without a licensed funeral director or assistant funeral director being present. (Authorized by K.S.A. 74-1704; implementing K.S.A. 65-1713a; effective Jan. 1, 1966; amended Jan. 1, 1967; amended May 1, 1978; amended May 1, 1982; amended May 1, 1983; amended May 1, 1987; amended April 3, 1995.)

63-2-4 and 63-2-5. (Authorized by K.S.A. 74-1704; effective Jan. 1, 1966; revoked May 1, 1977.)

63-2-6. (Authorized by K.S.A. 74-1704; effective Jan. 1, 1966; revoked May 1, 1982.)

63-2-7. General rule relating to the practice of funeral directing. (a) Only persons licensed under the laws of the state of Kansas as funeral directors or assistant funeral directors shall be employed as funeral directors or assistant funeral directors or hold themselves out to the public or advertise as funeral directors or assistant funeral directors within the state of Kansas.

(b) All licensees shall promptly notify the secretary of the board of all changes in their addresses. A licensee shall notify the secretary of the board before that licensee's funeral establishment or branch establishment is sold or discontinued, or if that licensee's connection with a funeral establishment or branch establishment is to be terminated. (Authorized by K.S.A. 65-1730, K.S.A. 74-1704; implementing K.S.A. 65-1730, K.S.A. 74-1704; effective Jan. 1, 1966; amended May 1, 1978; amended May 1, 1982; amended Jan. 12, 2001.)

63-2-8. (Authorized by K.S.A. 74-1704; implementing K.S.A. 65-1722; effective Jan. 1, 1966; amended May 1, 1978; amended May 1, 1987; revoked, T-88-43, Oct. 27, 1987; revoked May 1, 1988.)

63-2-9. (Authorized by K.S.A. 74-1704; effective Jan. 1, 1966; revoked May 1, 1979.)

63-2-10. Requirements for a funeral director's license. (a) Before serving an apprenticeship toward a funeral director's license, each

prospective funeral director apprentice shall submit a transcript to the board showing that the prospective funeral director apprentice has earned prior credit of not less than 60 semester hours at a community college, college, or university that is accredited by an accrediting agency recognized by the United States commissioner of education as the proper agency for accrediting such a school.

(b) The 60 semester hours earned shall include a minimum of the following:

- (1) Six semester hours of humanities;
- (2) six semester hours of social science;
- (3) four semester hours of natural science;
- (4) two semester hours of business; and
- (5) two semester hours of fine arts.

(c) The prospective funeral director apprentice may select the remaining 40 semester hours. (Authorized by K.S.A. 65-1730; implementing K.S.A. 65-1714; effective May 1, 1977; amended Nov. 13, 1995; amended Jan. 12, 2001.)

63-2-11. Requirements for a reciprocal funeral director's license. Each applicant who is currently licensed in another state and desires reciprocal licensure as a funeral director in Kansas shall obtain all necessary original documents required for licensure under K.S.A. 65-1721 and amendments thereto. These original documents shall be delivered with the application and fee to the board by the 15th of the month before the quarterly meeting of the board at which the application will be considered. (Authorized by K.S.A. 65-1730; implementing K.S.A. 65-1721; effective May 1, 1977; amended May 1, 1978; amended May 1, 1982; modified, L. 1983, ch. 351, May 1, 1983; amended May 1, 1987; amended Jan. 12, 2001.)

63-2-12. Funeral director apprenticeship. "Funeral director apprentice" means a licensed assistant funeral director who is completing practical experience in funeral directing under the supervision of a licensed funeral director.

(a) Embalmer and funeral director apprenticeships may be served concurrently upon appropriate licensure and registration with the board.

(b) A funeral director apprentice shall be licensed as an assistant funeral director, registered under a licensed funeral director, and employed at the funeral director's funeral establishment or branch establishment full-time. "Full-time" means employed 40 hours per week for 50 weeks per year and available to assist in funeral directing 24 hours per day.

(c) Any time served in a funeral director apprenticeship under the direction or supervision of any person other than a Kansas-licensed funeral director shall not be credited by the board toward the apprenticeship requirements.

(d) Each funeral director apprentice and the supervising licensed funeral director shall notify the board if the apprentice leaves the employ of the funeral director or if the apprenticeship is terminated for any other reason before completion. A supervising licensed funeral director who fails or refuses to so notify the board without showing just cause to the board shall not subsequently be considered eligible to supervise a funeral director apprentice.

(e) If the licensed funeral director dies during the apprenticeship, three affidavits from reputable citizens having knowledge of the apprenticeship may be accepted by the board in lieu of the funeral director's verification of apprenticeship. These affidavits shall include the dates of the apprenticeship.

(f) An apprentice funeral director shall successfully complete one year of apprenticeship in the practice of funeral directing in order to be qualified for a funeral director license. In order for the apprenticeship to be successfully completed, all of the following requirements shall be met:

(1) The apprentice shall file quarterly progress reports with the board on forms approved by the board concerning the apprentice's progress in the practice of funeral directing.

(2) The supervising funeral director shall file quarterly progress reports with the board on forms approved by the board concerning the apprentice's progress in the practice of funeral directing.

(3) The progress reports of the apprentice and supervising funeral director shall be reviewed by the board to assist in determining if the apprentice's progress in the practice of funeral directing is acceptable or unacceptable.

(g) If either the apprentice or supervising funeral director fails to timely submit a quarterly report to the board, that quarter shall not be counted toward successful completion of the apprenticeship. Timely submission of a quarterly report shall be within 10 days following the conclusion of the quarter.

(h) At the conclusion of one year of apprenticeship, the apprentice shall be required to appear before the board. If the board determines that progress of the apprentice is unacceptable in one or more of the quarters of the apprenticeship, the

apprentice shall be required to successfully complete one or more additional quarters of the funeral director apprenticeship.

(i) Each apprentice funeral director shall meet the educational requirements specified in K.A.R. 63-2-10 and then successfully complete a funeral director apprenticeship to be considered eligible to take the funeral director examination. (Authorized by K.S.A. 65-1723; implementing K.S.A. 65-1714, 65-1717; effective May 1, 1977; amended May 1, 1980; amended May 1, 1987; amended April 3, 1995; amended Jan. 12, 2001.)

63-2-13. Funeral director's license examination. (a) The funeral director's license examination shall consist of the following subjects:

- (1) mortuary law and business law;
- (2) sociology of funeral service;
- (3) psychology;
- (4) mortuary administration;
- (5) accounting;
- (6) Kansas and federal laws pertaining to funeral directing and pre-need funeral agreements.

(b) Each applicant shall obtain a minimum score of 75% before the issuance of a funeral director's license.

(c) If the applicant fails the examination, the applicant shall be allowed to take the exam at the next regularly scheduled exam date without submitting a new examination fee. If the applicant fails the second examination or fails to appear for it, then the applicant may make a new application, pay another examination fee, and take the examination. (Authorized by and implementing K.S.A. 65-1714 and 65-1730; effective May 1, 1977; amended May 1, 1978; amended May 1, 1980; amended May 1, 1988; amended Nov. 13, 1995.)

63-2-14. Funeral director's biennial renewals. (a) Each funeral director's license shall be renewed on a biennial basis.

(b) Expiration dates shall be established alphabetically according to the first letter of each licensee's surname, as follows:

- (1) A and M shall expire on January 31;
- (2) B and N shall expire on February 28;
- (3) C and O shall expire on March 31;
- (4) D and P shall expire on April 30;
- (5) E and Q shall expire on May 31;
- (6) F and R shall expire on June 30;
- (7) G and S shall expire on July 31;
- (8) H and T shall expire on August 31;
- (9) I and U shall expire on September 30;

- (10) J and V shall expire on October 31;
- (11) K and W shall expire on November 30; and
- (12) L and X, Y, and Z shall expire on December 31.

Each licensee whose surname begins with letter A through L shall renew on even-numbered years. Each licensee whose surname begins with letter M through Z shall renew on odd-numbered years.

(c) Any expired license within six months of the date of expiration may be reinstated upon payment of the renewal fee in arrears and a reinstatement fee in an amount equal to the renewal fee.

(d) Each licensee shall make-up all past continuing education hours accrued during the expiration period within one year of reinstatement.

(e) Each licensee changing the licensee's surname shall notify the secretary to the board of the change and the expiration date shall be adjusted to the month designated in subsection (b). (Authorized by and implementing K.S.A. 65-1716; effective, E-80-17, Oct. 17, 1979; effective May 1, 1980; amended May 1, 1987; amended June 26, 1989.)

63-2-15. Assistant funeral directors biennial renewals. (a) All assistant funeral directors licenses shall be paid on a biennial basis. The board of mortuary arts shall prorate to the nearest whole month all renewal fees on a one time basis, in order to establish the biennial renewal process for the calendar year 1980.

(b) Expiration dates will be done alphabetically according to the first letter of the licensees surname, as follows:

- (1) A and M shall expire on January 31;
- (2) B and N shall expire on February 28;
- (3) C and O shall expire on March 31;
- (4) D and P shall expire on April 30;
- (5) E and Q shall expire on May 31;
- (6) F and R shall expire on June 30;
- (7) G and S shall expire on July 31;
- (8) H and T shall expire on August 31;
- (9) I and U shall expire on September 30;
- (10) J and V shall expire on October 31;
- (11) K and W shall expire on November 30;
- (12) L and XYZ shall expire on December 31;

Renewal surname letters A through L will renew on even numbered years; M through Z will renew on odd numbered years.

(c) Licensees changing their surnames shall notify the secretary to the board of the change and the expiration date shall be adjusted to the month designated in section (b). (Authorized by and implementing K.S.A. 65-1717; effective, E-80-17,

Oct. 17, 1979; effective May 1, 1980; amended May 1, 1986; amended May 1, 1987.)

63-2-16 to 63-2-25. (Authorized by K.S.A. 65-1723; implementing K.S.A. 65-1716; effective, E-81-41, Dec. 17, 1980; rejected, L. 1981, Ch. 410, May 1, 1981.)

63-2-26. Assistant funeral director's license examination. (a) The assistant funeral director's license examination shall cover the following subjects:

(1) The Kansas laws pertaining to funeral directing;

(2) the Kansas laws pertaining to preneed funeral agreements; and

(3) the federal laws pertaining to funeral directing, including the federal trade commission's funeral rule.

(b) Each applicant shall be required to obtain a score of at least 75% on the assistant funeral director's license examination.

(c) If an applicant fails the examination, the applicant shall be allowed to retake the exam at the next regularly scheduled exam date by submitting a new examination application on or before the 15th of the month before the month in which the next exam is scheduled. If the applicant fails the second examination or fails to appear for the second examination, the applicant shall be required to submit a new examination application and another examination fee on or before the 15th of the month before the month in which the next exam is scheduled. (Authorized by and implementing K.S.A. 65-1717, as amended by L. 2007, ch. 87, §1; effective Feb. 8, 2008.)

Article 3.—PREPARATION AND TRANSPORTATION OF BODIES, BURIAL IN MAUSOLEUMS AND FUNERAL ESTABLISHMENTS

63-3-1 to 63-3-8. (Authorized by K.S.A. 74-1704; effective Jan. 1, 1966; revoked Jan. 1, 1969.)

63-3-9. Embalming fluids and compounds. Fluids or compounds which contain arsenic, lead, mercury, zinc, silver, antimony, chloral, or any poisonous alkaloid shall not be used in the embalming of a dead human body. (Authorized by and implementing K.S.A. 65-1712; effective Jan. 1, 1969; amended May 1, 1978; amended Nov. 13, 1995.)

63-3-10. Death from infectious or contagious diseases. (a) Each embalmer and funeral director shall, at all times, undertake and be responsible for appropriate precautionary measures to prevent the spread of infectious or contagious diseases from deceased human bodies to employees of mortuary establishments, to persons under contract to provide services involved in the preparation and handling of dead human bodies, and to the general public.

(b) When death has occurred from meningococcal infection, Ebola virus infection, Lassa fever, anthrax, rabies, brucellosis, or any other infectious or contagious disease known to be transmissible from human corpses to living humans as determined by the secretary of the department of health and environment, the body shall be handled and prepared by a licensed Kansas embalmer. If any of the above-described infections occurred or was reasonably suspected to be present at the time of death, the body shall be embalmed and placed in a casket or suitable combustible container before transporting and final disposition.

(c) Any body dead from one of the above-described infectious diseases may be cremated or buried without embalming if final disposition takes place within 24 hours of death. Each unembalmed body to be buried within 24 hours following death shall be placed in a metal-lined, hermetically sealed container before burial. Each unembalmed body to be cremated within 24 hours following death shall be placed in a suitable combustible container. (Authorized by and implementing K.S.A. 65-1712, K.S.A. 74-1704; effective Jan. 1, 1969; amended May 1, 1978; modified, L. 1979, ch. 353, May 1, 1979; amended May 1, 1988; amended June 7, 1993; amended Aug. 15, 1997.)

63-3-11. Preparation and transportation of dead human bodies. A dead human body shall not be transported by private conveyance or common carrier until the following conditions are met. (a) Any unembalmed body released by the family or proper authority, other than a body dead with an infectious or contagious disease, may be transported by private conveyance within the state of Kansas if:

(1) A certificate of death has been filed according to laws and regulations set forth by the Kansas state department of health and environment; and

(2) after the body has been released to a funeral director, any transportation is supervised personally by the funeral director.

(b) In addition to meeting the requirements of subsection (a), each body dead with an infectious or contagious disease shall be handled pursuant to K.A.R. 63-3-10 prior to being transported by private conveyance or common carrier.

(c) A body dead from any cause may be transported by common carrier if:

(1) The body has been prepared and properly disinfected by arterial and cavity injection with an approved disinfecting fluid having a minimum phenol coefficient equal to that of a five percent formaldehyde solution. The amount of the fluid injected shall not be less than $\frac{1}{10}$ of the body weight;

(2) all body orifices have been disinfected and plugged with dry cotton;

(3) the body has been washed with five percent formaldehyde or other disinfectant of equivalent coefficient; and

(4) the body is encased in a shipping case which is acceptable under the rules of the common carrier.

(d) A body dead from any cause may be interred or cremated without embalming if interment or cremation is within 24 hours of death. A reasonable period of time beyond 24 hours may be permitted if:

(1) religious beliefs, laws or customs do not permit transportation or interments on Sabbath or holy days; and

(2) no health hazard or nuisance will result from such a delay. Each body dead with an infectious or contagious disease shall be handled pursuant to K.A.R. 63-3-10.

(e) A body dead from any cause other than infectious or contagious disease may be interred or cremated without embalming if embalming would violate personal or religious beliefs and a health hazard or nuisance will not result. An unembalmed body may be retained in storage at a constant temperature of less than 40 degrees Fahrenheit. When that body is removed from storage and transported, the body shall reach its final destination within 24 hours following the removal from storage. If the body is placed in a metal or metal-lined, hermetically sealed container immediately after death, the body may be considered an embalmed body, for the purpose of transportation.

(f) If a casket has not been used in the preparation and transportation of a body that is to be cremated, the body shall be placed in a suitable combustible container which shall be permanently closed before being released to a receiving crematory.

(g) This regulation shall not apply to bodies donated to the university of Kansas school of medicine. (Authorized by and implementing K.S.A. 65-1712, K.S.A. 74-1704, K.S.A. 65-1723; effective Jan. 1, 1960; amended, E-72-6, Dec. 17, 1971; amended Jan. 1, 1973; amended May 1, 1976; amended May 1, 1978; modified, L. 1979, ch. 353, May 1, 1979; amended Jan. 6, 1992; amended June 7, 1993.)

63-3-12. Mangled, burned, and decomposed bodies. Any body which is so badly mangled, burned, decomposed or partially decomposed that it cannot be prepared pursuant to K.A.R. 63-3-11 shall not be transported from a licensed funeral establishment until it is first thoroughly disinfected by a disinfecting compound or preservative and placed in a non-permeable container. (Authorized by and implementing K.S.A. 65-1712; effective Jan. 1, 1969; modified, L. 1976, ch. 331, § 1, May 1, 1976; amended May 1, 1978; amended Nov. 13, 1995.)

63-3-13. Disinterment. Disinterred remains transported by common carrier or by private conveyance shall be subject to K.A.R. 63-3-11 and K.A.R. 63-3-15. (Authorized by and implementing K.S.A. 65-1703, as amended by 1995 HB 2163, and 65-1712; effective Jan. 1, 1969; amended May 1, 1978; amended, T-88-43, Oct. 27, 1987; amended May 1, 1988; amended Nov. 13, 1995.)

63-3-14. (Authorized by K.S.A. 74-1704; effective Jan. 1, 1969; revoked Nov. 13, 1995.)

63-3-15. Dead bodies in transit. (a) Each dead human body entering the state of Kansas via any common carrier or private conveyance shall be transported in compliance with the embalming and transportation rules of the state from which the body was shipped including a removal permit if required.

(b) Any person, agent or owner of any common carrier or private conveyance, who is in charge of any dead human body that is in transit, has not been properly prepared or embalmed, and has become offensive or dangerous to public health, shall refuse to continue transportation until the body has been properly prepared, so that public health is not endangered. (Authorized by and implementing K.S.A. 65-1703, as amended by 1995 HB 2163, and 65-1712; effective Jan. 1, 1969; amended Nov. 13, 1995.)

63-3-16. Burial in mausoleum. Each dead human body shall be embalmed in accordance with K.A.R. 63-3-11 before it may be placed in a mausoleum. (Authorized by and implementing K.S.A. 65-1712; effective Jan. 1, 1969; amended May 1, 1978; amended Nov. 13, 1995.)

63-3-17. Services and merchandise pricing. (a) Each funeral service casket in the casket selection room shall have a card or brochure that sets forth the price of the service using that casket and lists the services and any other merchandise included in the price. If there are separate prices for the casket, services, or the use of facilities and equipment, the card shall indicate the price of the casket and of each item separately priced.

(b) If a funeral service establishment uses the facilities of a manufacturer, jobber, or other place where caskets are displayed for selection, the funeral licensee conducting the service shall place the cards or brochures required by subsection (a) in the caskets before any selection is made by those arranging a funeral.

(c) Each funeral service licensee shall give to the person or persons making funeral arrangements a written price statement signed by the licensee or a representative of the funeral establishment or branch establishment. The written statement shall be provided at the time funeral arrangements are made or before the merchandise or services are provided. This written statement shall show the following information:

(1) The price of the service that the family has selected and the services that are included in it;

(2) the price of each of the supplemental items of service or merchandise, or both, requested; and

(3) the amount involved for each of the items for which the funeral director can advance funds as an accommodation to the family, insofar as any of the above can be specified at that time.

(d) Funeral service rental caskets shall be separately designated with a card or brochure in each casket and shall be designated as rental caskets on the casket price list. (Authorized by and implementing K.S.A. 65-1723, K.S.A. 65-1730; effective Jan. 1, 1974; amended May 1, 1978; amended May 1, 1982; amended Jan. 6, 1992; amended Jan. 12, 2001.)

63-3-18. Requirements for the funeral establishment and branch establishment. (a) Necessary equipment. Every funeral establishment and branch establishment shall possess and keep on

the premises any equipment that the board deems necessary for the conduct of business and the protection of the public health. This equipment shall be kept in good working condition.

(b) Sanitary conditions. All portions of each funeral establishment and branch establishment shall be kept in a clean and sanitary condition.

(c) Preparation room.

(1) Every funeral establishment shall maintain, on the premises, a preparation or embalming room. The preparation or embalming room shall be adequately equipped and maintained in a sanitary manner and shall be used only for the preservation and care of dead human bodies. This room shall contain only those articles, facilities, and instruments necessary for the preparation of dead human bodies for burial or final disposition. Those articles, facilities, and instruments shall be kept in a clean and sanitary condition.

(2) The minimal requirements for a preparation or embalming room shall be as follows:

(A) Each preparation or embalming room shall be equipped with the following:

(i) A sanitary floor made of nonporous material;

(ii) adequate ventilation;

(iii) suitable and sanitary material, methods, and equipment, which shall be used to clean and disinfect all embalming instruments;

(iv) running hot and cold water;

(v) an exhaust fan. This exhaust fan shall be permanently installed, operable, and sufficiently powerful to effectively reduce the formaldehyde concentration in the room;

(vi) sanitary plumbing connected with a sewer or cesspool; and

(vii) a porcelain, stainless steel, metal-lined, or fiberglass operating table.

(B) All opening windows and outside doors shall have opaque glass.

(C) Each hydro-aspirator shall be equipped with at least one air breaker.

(D) Containers for refuse, trash, and soiled linens shall be covered or sealed at all times.

(E) The funeral establishment or branch establishment license shall be prominently displayed at all times.

(3) Each preparation room entrance shall be able to be locked and shall display a sign indicating private or restricted entry. (Authorized by K.S.A. 65-1723; implementing K.S.A. 1999 Supp. 65-1713a and K.S.A. 65-1723; effective May 1, 1976; amended May 1, 1978; amended May 1, 1982; amended May 1, 1984; amended Jan. 12, 2001.)

63-3-19. Establishment and branch establishment licenses; biennial renewals. (a) Each establishment and branch establishment license shall be renewed on a biennial basis.

(b) Each establishment and branch establishment license shall be renewed before its expiration date according to the first letter of the establishment and branch establishment license surname, as follows:

(1) H through J and T through Z shall expire on March 31;

(2) E through G and R through S shall expire on June 30;

(3) C, D, and N through Q shall expire on September 30; and

(4) A, B, and K through M shall expire on December 31.

Each license with a surname beginning with letters A through J shall expire in odd-numbered years. Each license with a surname beginning with letters K through Z shall expire in even-numbered years.

(c) At least 30 days before a change of ownership, name, or location of any establishment or branch establishment, the funeral director in charge shall apply for an establishment or branch establishment license. The funeral director in charge shall also submit a report of any prefinanced funeral agreements which were transferred with the establishment. The funeral director in charge shall receive a new license before conducting funeral business under new ownership, under a new name, or in a new location.

(d) When a change of ownership of an establishment or branch establishment occurs, the funeral director in charge shall submit a new license application fee pro-rated in accordance with subsection (b).

(e) For a name change of an establishment or branch establishment, the funeral director in charge shall submit a license fee for a new license. The license fee shall be pro-rated in accordance with subsection (b) with a credit given towards the pro-rated fee based on all unused months of the previous license.

(f) For a location change of an establishment or branch establishment, the funeral director in charge shall submit a duplicate license fee for the amount specified in K.A.R. 63-4-1.

(g) Each initial establishment or branch establishment license fee shall be charged on a pro-rated basis to the nearest whole month under subsection (b).

(h) Each establishment or branch establishment renewal shall be judged delinquent on midnight of the expiration date and may only be renewed after that day by payment of the renewal fee and a reinstatement fee in an amount equal to the renewal fee. (Authorized by K.S.A. 65-1730; implementing K.S.A. 65-1729, as amended by 1995 HB 2163, and K.S.A. 65-1730; effective, E-80-17, Oct. 17, 1979; effective May 1, 1980; amended May 1, 1985; amended Jan. 6, 1992; amended June 7, 1993; amended Nov. 13, 1995.)

63-3-20. Reporting of prefinanced funeral agreements. (a) Each funeral director in charge of a funeral establishment or branch establishment licensed in the state of Kansas shall report to the state board of mortuary arts, on forms provided by the board, the following information concerning prefinanced funeral agreements entered into pursuant to K.S.A. 16-301 through K.S.A. 16-309 and amendments thereto:

(1) The numbers that identify the accounts, in the records of the funeral establishment or branch establishment, of each purchaser of merchandise and services pursuant to these agreements;

(2) either the name of each bank, trust company, savings and loan association, or credit union into which each purchaser's funds were deposited and the number of each named account or the name of the insurance company in which the funeral establishment or branch establishment has been designated as the beneficiary or designated assignee;

(3) the amounts of each purchase pursuant to these agreements or policies;

(4) the date of each purchase;

(5) all prefinanced funeral agreements funded by an insurance policy or held in trust;

(6) the total number of all insurance-funded agreements and the total dollar amount of all these agreements;

(7) the total number of all trust-funded agreements and the total dollar amount of all these agreements; and

(8) the total number of all prefinanced agreements and the total dollar amount of all these agreements.

(b) The reports shall accompany each funeral establishment's or branch establishment's biennial application for renewal of its funeral establishment or branch establishment license, as required by K.A.R. 63-3-19, and any notification from the secretary of the board made according to K.A.R.

63-2-7(b). Each report shall include all prefinanced funeral agreements entered into by the funeral establishment or branch establishment for which any merchandise or service has not yet been rendered.

(c) Each funeral director in charge of a funeral establishment or branch establishment may be required by the board to report the name and address of any purchaser and the corresponding account number described in subsection (a) above. The funeral director in charge of a funeral establishment or branch establishment shall report the additional information in writing within 10 days of receipt of the board's written request.

(d) Failure of any funeral director in charge of a funeral establishment or branch establishment to comply with this regulation shall be grounds for refusal or revocation of its funeral establishment, branch establishment, or funeral director license. (Authorized by and implementing K.S.A. 74-1707; effective May 1, 1984; amended May 1, 1986; amended Jan. 6, 1992; amended March 16, 1992; amended Jan. 12, 2001.)

63-3-21. General requirements relating to prefinanced funeral agreements. (a) Each funeral director shall transfer all funds obtained by any prefinanced funeral agreement funded by one or more insurance policies, upon request by the purchaser, to the funeral director that provides the services or merchandise, or both, as specified in the prefinanced funeral agreement.

(b) If any balance is left in the prefinanced funeral agreement funded by an insurance policy after the disposition of the funds according to the agreement, the funeral director shall pay the remaining balance to the purchaser, the estate of the deceased, or the family of the deceased. However, if the purchaser or the deceased received any medical assistance from the department of social and rehabilitation services and if the department of social and rehabilitation services has provided the funeral director with written notice that the purchaser or the deceased had received medical assistance, then the funeral director shall pay the remaining balance, to the extent of the cost of the medical assistance expended on the purchaser or deceased recipient, to the secretary of social and rehabilitation services or the secretary's designee. (Authorized by K.S.A. 74-1707; implementing K.S.A. 2003 Supp. 16-311, as amended by L. 2004, ch. 36, sec. 2; effective March 16, 1992; amended Nov. 12, 2004.)

63-3-22. Inspections of funeral establishments and branch establishments. (a) Each funeral establishment and branch establishment shall be subject to routine inspections at least once every year by the board or its designee, to determine compliance with the "regulation of embalmers and funeral directors; funeral establishments" act and the board's regulations adopted under this act.

(b) Each funeral establishment and branch establishment may be subject to additional inspections if any of the following conditions exists:

(1) The funeral establishment or branch establishment incurred a violation in a previous inspection.

(2) A change occurred in ownership or in the funeral director in charge.

(3) The funeral director in charge did not timely renew the funeral establishment and branch establishment license.

(c) Inspections shall be made between the hours of 8:00 a.m. and 6:00 p.m., or at any time business is being conducted, unless otherwise agreed by both parties.

(d) Inspections shall be made by the board or its designee.

(e) Inspections of each funeral establishment and branch establishment may be authorized by the board or its executive secretary.

(f) The authorized inspection may be conducted without notice to the funeral director in charge. (Authorized by and implementing K.S.A. 2001 Supp. 65-1723; effective May 17, 2002.)

63-3-23. Inspection generated by a complaint. (a) Each funeral establishment or branch establishment shall be subject to inspection by the board or its designee, to investigate any specific complaint filed with the board.

(b) Any inspection generated by a complaint may be authorized by the board or its executive secretary at any time. Inspections shall be limited as follows:

(1) Inspections shall be made between the hours of 8:00 a.m. and 6:00 p.m., or at any time business is being conducted, unless otherwise agreed by both parties.

(2) Inspections shall be made by the board or its designee. (Authorized by and implementing K.S.A. 2001 Supp. 65-1723; effective May 17, 2002.)

Article 4.—FEES

63-4-1. Payment of fees. The following shall be charged by the Kansas state board of mortuary arts:

Embalmer's reciprocity application fee	\$350.00
Embalmer's reciprocity application and funeral director's reciprocity application fee, if submitted simultaneously.....	\$350.00
Embalmer's endorsement application fee.....	\$350.00
Embalmer's biennial license and renewal fee	\$168.00
Apprentice embalmer's registration fee	\$100.00
Funeral director's examination fee	\$200.00
Funeral director's reciprocity application fee	\$350.00
Funeral director's biennial license and renewal fee	\$228.00
Assistant funeral director's examination fee	\$50.00
Assistant funeral director's application fee....	\$150.00
Assistant funeral director's biennial license and renewal fee	\$180.00
Crematory operator's biennial license and renewal fee	\$50.00
Funeral establishment and branch establishment biennial license and renewal fee	\$650.00
Funeral establishment and branch establishment license and crematory license fee, if submitted simultaneously.....	\$950.00
Funeral establishment and branch establishment license renewal and crematory license renewal fee, if submitted simultaneously	\$950.00
Crematory license and renewal fee	\$650.00
Duplicate license	\$15.00
Rule book.....	\$5.00

(Authorized by and implementing K.S.A. 2010 Supp. 65-1727, as amended by L. 2010, ch. 131, sec. 7; effective May 1, 1983; amended May 1, 1986; amended May 1, 1987; amended, T-88-43, Jan. 1, 1988; amended May 1, 1988; amended Jan. 6, 1992; amended June 7, 1993; amended Jan. 1, 1994; amended Jan. 1, 1996; amended Jan. 1, 2000; amended May 17, 2002; amended Nov. 4, 2005; amended Feb. 8, 2008; amended Sept. 16, 2011.)

Article 5.—ADMINISTRATIVE HEARINGS AND DISCIPLINARY ACTION

63-5-1. Definition of unprofessional or dishonorable conduct. “Unprofessional or dishonorable conduct” by a licensee shall include any of the following: (a) Misrepresentation or fraud in the conduct of the licensee’s business;

(b) refusing or neglecting to promptly obtain, complete, and file any death certificate, out-of-state transportation permit, or coroner’s permit to cremate;

(c) refusing or neglecting to file monthly reports of bodies prepared for burial in accordance with K.A.R. 28-17-16;

(d) refusing or neglecting to file quarterly progress reports as specified in K.A.R. 63-1-3 and K.A.R. 63-2-12;

(e) committing abuse or showing disrespect in the handling of a dead human body;

(f) interference with, failure in, breach of, or obstruction of the performance of the contractual duties or services between a licensee and either the next of kin or a legal representative of any deceased person;

(g) requiring the purchase of a casket as a condition to providing funeral services if the dead body is to be cremated;

(h) disclosure of the confidences or secrets of any party served or the use of these confidences or secrets to the disadvantage of any party served;

(i) using alcoholic liquor or using illegally a controlled substance while performing the duties or services of a licensee;

(j) placing any item on a funeral bill that is not a reasonable funeral expense;

(k) failure to pay, in a timely manner, the prefunded funeral agreement audit fees assessed by the secretary of state; or

(l) gross negligence or repeated instances of ordinary negligence in the rendering of professional services as an embalmer, funeral director, or assistant funeral director. (Authorized by and implementing K.S.A. 2005 Supp. 65-1751; effective, T-88-43, Oct. 27, 1987; effective May 1, 1988; amended Nov. 13, 1995; amended Jan. 12, 2001; amended Nov. 12, 2004; amended Feb. 16, 2007.)

63-5-2. (Authorized by and implementing K.S.A. 65-1711a, 74-1704; effective May 1, 1988; revoked Nov. 13, 1995.)

63-5-3. Potentially disqualifying civil and criminal records; advisory opinion; fee. (a) For purposes of this regulation, “conviction” shall mean a judgment or order of guilt by a court of competent jurisdiction in any state, or a subdivision thereof, or territory of the United States, by a court of the United States, or by a military court martial pursuant to the uniform code of military justice.

(b) The following criminal records may disqualify an applicant from receiving a license:

(1) A conviction of any offense classified as a felony in the jurisdiction in which the conviction occurred;

(2) a conviction of criminal desecration as defined in K.S.A. 2018 Supp. 21-6205, and amendments thereto, or a crime defined as substantially similar in the jurisdiction in which the conviction occurred;

(3) a conviction of any offense classified as a class A misdemeanor, or a similar classification in the jurisdiction in which the conviction occurred, that involves any of the following:

(A) A crime whose victim was a client, customer, or other individual with whom the applicant had a professional or fiduciary relationship;

(B) a crime that occurred at the applicant's work site or while the applicant was on work duty;

(C) a crime involving fraud, theft, or misappropriation of another person's money, property, or services;

(D) giving a worthless check or causing unlawful prosecution for a worthless check;

(E) counterfeiting;

(F) criminal use of a financial card;

(G) a crime classified as a sex offense or requiring registration as a sex offender by the jurisdiction in which the conviction occurred;

(H) a crime involving assault, battery, domestic battery, battery of a law enforcement officer, sexual battery, stalking, or criminal restraint as defined by the jurisdiction in which the conviction occurred;

(I) a crime involving promoting obscenity, promoting material to minors that is harmful, or promoting prostitution;

(J) a crime that involved knowingly violating a protection from abuse order, a protective order, or a restraining order;

(K) cruelty to animals;

(L) a crime involving the unlawful use, possession, or distribution of any illegal drug or controlled substance;

(M) a crime involving the unlawful use or possession of paraphernalia with intent to use to manufacture, cultivate, plant, propagate, harvest, test, analyze, or distribute a controlled substance;

(N) a crime involving harassment by telephone, any telecommunications device, or telefacsimile communication;

(O) unlawful administration of a substance as defined in K.S.A. 2018 Supp. 21-5425, and amendments thereto, or defined as substantially similar in the jurisdiction in which the conviction occurred;

(P) driving under the influence of drugs or alcohol, or any other crime in which the applicant

was intoxicated when the applicant committed the crime;

(Q) a crime involving the abuse, neglect, or exploitation of a child, elderly person, or disabled person as defined by the jurisdiction in which the conviction occurred; or

(R) a crime involving the unlawful use, possession, distribution, or discharge of a firearm; and

(4) conviction of a misdemeanor offense that meets both of the following conditions:

(A) The crime involved at least one of the circumstances described in paragraph (b)(3); and

(B) one of the following conditions is met:

(i) Fewer than five years have passed since the applicant completed the applicant's sentence, including any term of incarceration, probation, or community supervision or payment of any fine, fees, or restitution; or

(ii) the applicant has been convicted of another crime in the five years immediately preceding the date of the application for license.

(c) Civil or administrative records that may disqualify an applicant from receiving a license shall be any records of any court or administrative agency judgment, order, or a settlement in which the applicant admitted or was found to have engaged in conduct that would constitute a violation of the mortuary arts act or any of the implementing regulations. Those records shall not be used to disqualify an applicant for more than five years after the applicant satisfied the judgment, order, or settlement agreement.

(d) Any individual with a criminal, civil, or administrative record described in this regulation may submit a petition on a form provided by the board for an informal, advisory opinion concerning whether the individual's civil, administrative, or criminal record may disqualify the individual from licensure. Each petition shall include the following:

(1) The details of the individual's civil, administrative, or criminal record, including a copy of each court or administrative record or any settlement by the parties;

(2) an explanation of the circumstances that resulted in the civil, administrative, or criminal record; and

(3) a check or money order in the amount of \$50.00. (Authorized by K.S.A. 65-1712, 65-1723, 65-1730, 65-1766, and 74-120; implementing K.S.A. 65-1751, 65-1766, and 74-120; effective March 8, 2019.)

Article 6.—CONTINUING EDUCATION**63-6-1. Continuing education requirements.**

(a) Except as provided in subsection (d), each licensed embalmer or funeral director in this state shall submit with the license renewal application satisfactory proof of completion of a minimum of six clock-hours per year of continuing education credit approved by the board. Each licensee filing proof of completion of continuing education credit with the board on forms approved by the board shall file separately the verification of attendance at each continuing education activity. Compliance with this continuing education requirement shall be a prerequisite for each embalmer or funeral director license renewal.

(b) Continuing education credit may be obtained by attending and participating in continuing education courses or workshops approved by the executive secretary, continuing education committee, or the board if the program meets the requirements stated in K.A.R. 63-6-2.

(c) Any licensee desiring to obtain credit for completing more than 12 hours of approved continuing education credit during any two licensure years shall report this carry-over credit to the board on or before the expiration of the licensee's current license. The carry-over credit shall be limited to no more than six clock-hours.

(d) The continuing education requirements for each individual newly licensed shall be waived for the first-time renewal of that individual's license.

(e) No more than six hours shall be granted for any one approved continuing education topic.

(f) One hour of continuing education shall consist of at least 50 minutes of actual approved program time. (Authorized by and implementing K.S.A. 65-1702, 65-1716; effective May 1, 1988; amended Jan. 6, 1992; amended April 3, 1995; amended Jan. 12, 2001; amended Nov. 12, 2004.)

63-6-2. Standards for approval. (a) A continuing education course or workshop shall be qualified for approval if the board determines that the course or workshop meets the following conditions:

(1) Constitutes an organized program of learning, including a symposium, that contributes directly to the professional competency of the licensee;

(2) is related to the profession of mortuary science, funeral directing, cremation, or embalming with content intended to enhance the licensee's knowledge, skill, values, ethics, or ability to prac-

tice as an embalmer, crematory operator, or funeral director;

(3) is conducted by individuals considered experts in the subject matter of the program by reason of education, training, or experience; and

(4) is accompanied by a paper, a manual, or written outline that substantially describes the subject matter and the length of the program.

(b) Continuing education credit not exceeding three credit hours of the annual total required hours for embalmers and funeral directors and one credit hour for crematory operators may be approved by the board for any of the following:

(1) Correspondence work;

(2) video, sound-recorded, or television programs;

(3) information transmitted by other similar means as authorized by the board; or

(4) community service programs that are related to the profession of mortuary science, funeral directing, or embalming.

(c) Continuing education credit for service as a lecturer, presenter, or discussion leader may be approved by the board if this activity contributes to the professional competence of the applicant. Repetitions of an initial presentation shall not be counted. Not more than 50 percent of the total required hours for embalmers and funeral directors may be satisfied in this manner.

(d) The maximum number of credit hours that shall be granted for any single continuing education course or workshop single topic is six.

(e) Lists of approved continuing education programs shall be available on the board's web site.

(f) A person, licensed embalmer, licensed funeral director, crematory operator, or organization requesting approval for a continuing education course or a workshop shall make application at least 30 days before the date of each proposed course or workshop. Applications filed but not meeting this deadline shall be reviewed by the board or the continuing education committee at its next regularly scheduled meeting. (Authorized by and implementing K.S.A. 65-1702, K.S.A. 65-1716, and K.S.A. 2010 Supp. 65-1772; effective May 1, 1988; amended April 3, 1995; amended Jan. 12, 2001; amended Sept. 16, 2011.)

63-6-3. Post approval and review. (a) Each licensed embalmer, crematory operator, or funeral director and each organization seeking continuing education credit for prior attendance or participation in a program or activity that has not already

been approved shall submit, on forms provided by the board, the following information to the board:

- (1) The dates;
 - (2) the subject matter;
 - (3) the names of the instructors and their qualifications, if applicable;
 - (4) a description of the program or activity; and
 - (5) the number of credit hours requested.
- A complete written outline describing the subject matter or activity and the time of the program shall accompany all requests. Within 90 days after receipt of the application, the licensee seeking credit shall be advised by the board, in writing and by mail, whether the activity is approved and the number of credit hours allowed. Any licensee may be denied credit if the licensee fails to comply with the requirements of this subsection.

(b) Any continuing education program already approved by the board may be monitored or reviewed by the board. Upon evidence of variation in the program presented from the program approved, all or any part of the program may be disapproved. (Authorized by and implementing K.S.A. 65-1702, K.S.A. 65-1716, and K.S.A. 2010 Supp. 65-1772; effective May 1, 1988; amended June 26, 1989; amended April 3, 1995; amended Jan. 12, 2001; amended Sept. 16, 2011.)

63-6-4. (Authorized by K.S.A. 65-1716; effective May 1, 1988; revoked Nov. 13, 1995.)

63-6-5. Report of licensee. Each licensee shall file with the board a signed report of continuing education credit hours completed and of any time when the licensee was exempted by K.S.A. 65-1702(f) and 65-1716(f) during the continuing education compliance period. The licensee shall file the report with the application for renewal of license. (Authorized by and implementing K.S.A. 65-1702, 65-1716; effective May 1, 1988; amended Nov. 13, 1995.)

63-6-6. Inactive status. (a) Disability or illness shall be a sufficient cause for exemption under K.S.A. 65-1702 and 65-1716, and amendments thereto.

(b) Any licensee who is not engaged in practice in the state of Kansas may be granted a waiver of compliance and obtain a certificate of exemption upon written application to the board. Each application shall contain a statement that the applicant will not engage in the practice of embalming or funeral directing in Kansas without first complying with all regulations governing reinstatement

after exemption. Each application for a certificate of exemption shall be submitted on the form provided by the board.

(c) Any inactive practitioner who has been granted a waiver of compliance with article six of these regulations, and who obtains a certificate of exemption, may give notice to the board of the termination of inactive status and request reinstatement of the license.

(1) Upon receipt by the board of a request for reinstatement to active license status and payment of the reinstatement fee, the person's license shall be reinstated.

(2) Within one year of reinstatement, each licensee shall make up all past continuing education hours for all the years of inactive licensure.

(3) Failure to comply with paragraph (c)(2) shall result in automatic termination of active status. (Authorized by and implementing K.S.A. 65-1702, 65-1716; effective May 1, 1988; amended June 26, 1989; amended Jan. 12, 2001.)

63-6-7. (Authorized by K.S.A. 65-1712, 65-1723; implementing K.S.A. 65-1702, 65-1716; effective May 1, 1988; revoked June 26, 1989.)

63-6-8. (Authorized by and implementing K.S.A. 65-1702, 65-1716; effective May 1, 1988; revoked June 26, 1989.)

Article 7.—CREMATORIES

63-7-1. Definitions. (a) "Board" means the Kansas state board of mortuary arts.

(b) "Change of ownership" means the transfer of more than 25 percent of the stock or assets of a licensed crematory.

(c) "Closed container" means any container in which cremated remains can be placed and closed in a manner that prevents both the leakage or spillage of remains and the entrance of foreign material.

(d) "Coroner's permit to cremate" means the document that is required to be issued by a Kansas coroner before the act of cremation.

(e) "Cremation container" means the container in which human remains are transported to the crematory and placed in the cremation chamber for a cremation. A cremation container shall meet all of the following requirements:

(1) Be composed of readily combustible or consumable materials suitable for cremation;

(2) be able to be closed in order to provide a complete covering for the human remains;

(3) be resistant to leakage or spillage;
 (4) be rigid enough for handling with ease; and
 (5) be able to provide protection for the health, safety, and personal integrity of crematory personnel.

(f) “Cremation interment container” and “urn vault” mean a rigid outer container that meets both of the following requirements, subject to each cemetery’s policies:

(1) Is composed of concrete, steel, fiberglass, or a similar material in which an urn is placed before being interred in the ground; and

(2) is designed to withstand prolonged exposure to the elements and to support the earth above the urn.

(g) “Crematory act” means K.S.A. 65-1760 through K.S.A. 65-1774, and amendments thereto.

(h) “Final disposition” means the burial or other disposition on a permanent basis of a dead human body, cremated remains, or parts of a dead human body.

(i) “Niche” means a compartment or cubicle for the memorialization or permanent placement of an urn containing cremated remains.

(j) “Person” means an individual, partnership, association, or corporation.

(k) “Processing” means the reduction of identifiable bone fragments after the completion of the cremation process to unidentifiable bone fragments by manual or mechanical means.

(l) “Pulverization” means the reduction of identifiable bone fragments after the completion of the cremation and processing to granulated particles by manual or mechanical means.

(m) “Scattering area” means a designated area for the scattering of cremated remains usually in a cemetery and on dedicated cemetery property where cremated remains that have been removed from their container can be mixed with, or placed on top of, the soil or ground cover or can be buried in an underground receptacle on a commingled basis. (Authorized by and implementing K.S.A. 65-1766, as amended by L. 2010, ch. 131, sec. 13, and K.S.A. 2010 Supp. 65-1774; effective May 17, 2002; amended Sept. 16, 2011.)

63-7-2. Crematory operator in charge; crematory operator; recordkeeping. (a) The crematory operator in charge or crematory operator shall furnish to each person who delivers human remains to the crematory a receipt showing the date and time of the delivery, the name of the person from whom the human remains were re-

ceived, the name of the person who received the human remains on behalf of the crematory, and the name of the decedent. The crematory operator or crematory operator in charge shall retain a copy of this receipt in its permanent records.

(b) Upon the release of cremated remains, the crematory operator or crematory operator in charge shall furnish to the person who receives the cremated remains from the crematory a receipt signed by the person who receives the cremated remains and showing the date of the release, the identification number of the deceased, and the name of the decedent. The crematory operator in charge shall retain a copy of this receipt in its permanent records.

(c) Each crematory operator in charge or crematory operator shall create and maintain on the premises an accurate record of every cremation provided. The records shall include all of the following information for each cremation:

(1) The name of the person, funeral establishment, or branch establishment delivering the body for cremation;

(2) the name of the deceased and the identification number assigned to the body;

(3) the time and date of acceptance of delivery;

(4) the date that the body was placed in the cremation chamber;

(5) the date and the name of the individual receiving the cremated remains;

(6) the name and address of the person who signed the authorization to cremate; and

(7) all supporting documentation, including the coroner’s permit to cremate and the authorizing agent’s authorization to cremate.

(d) The records required under subsection (c) shall be maintained for five calendar years after the release of the cremated remains. Following this period, the crematory operator in charge or crematory operator may then place the records in storage or reduce them to microfilm, microfiche, laser disc, or any other method that can produce an accurate reproduction of the original record, for retention for seven calendar years from the date of the release of the cremated remains. At the end of this period, the crematory operator in charge may destroy the records by shredding, incineration, or any other manner that protects the privacy of the individuals identified.

(e) The crematory operator in charge or crematory operator shall maintain a permanent record of the name of the deceased and the date the deceased’s body was cremated.

(f) The crematory operator in charge or crematory operator shall maintain a permanent record of all cremated remains disposed of by the crematory. (Authorized by and implementing K.S.A. 65-1723, K.S.A. 2010 Supp. 65-1762, as amended by L. 2010, ch. 131, sec. 9; effective May 17, 2002; amended Sept. 16, 2011.)

63-7-3. Crematory license; biennial renewals. (a) Each crematory operator in charge who desires to renew a license shall submit a biennial renewal application to the state board of mortuary arts, accompanied by a fee fixed by the state board of mortuary arts. The application and fee shall be due and paid to the state board of mortuary arts on or before the expiration date of the license.

(b) (1) Each crematory license shall be renewed before its expiration date, according to the first letter of the name of the crematory, as follows:

(A) H through J and T through Z shall expire on March 31.

(B) E through G and R through S shall expire on June 30.

(C) C and D, and N through Q shall expire on September 30.

(D) A and B, and K through M shall expire on December 31.

(2) The license of each crematory with a name beginning with any of the letters A through J shall expire in odd-numbered years. The license of each crematory with a name beginning with any of the letters K through Z shall expire in even-numbered years.

(c) At least 30 days before a change in ownership, name, or location of any crematory or a change in the crematory operator in charge, the crematory operator in charge shall apply for a crematory license. The crematory operator in charge shall receive a new license before conducting business under new ownership, under a new name, at a new location, or with a new crematory operator in charge.

(d) When a change in ownership of a crematory occurs, the crematory operator in charge shall submit a new license application fee prorated in accordance with subsection (b).

(e) For a name change of a crematory, the crematory operator in charge shall submit a license fee for a new license. The license fee shall be prorated in accordance with subsection (b), with a credit towards the prorated fee based on all unused months of the previous license.

(f) For a location change or change in crematory operator in charge of a crematory, the crematory operator in charge shall submit a duplicate license fee for the amount specified in K.A.R. 63-4-1.

(g) The fee for each initial crematory license shall be charged on a prorated basis to the nearest whole month specified under subsection (b).

(h) Each crematory license shall be prominently displayed at all times.

(i) Each crematory operator in charge of a crematory shall promptly notify the executive secretary of the board of any change of address of record for the crematory operator in charge. (Authorized by K.S.A. 2001 Supp. 65-1727 and 65-1766; implementing K.S.A. 2001 Supp. 65-1727, 65-1766, and 65-1768; effective May 17, 2002.)

63-7-4. Responsibility of a crematory operator in charge. Each person who owns an interest in a Kansas crematory shall employ at all times and for each crematory a crematory operator in charge, who shall be responsible for personal supervision and charge of the crematory. (Authorized by and implementing K.S.A. 2001 Supp. 65-1723 and 65-1762; effective May 17, 2002.)

63-7-5. Requirements for crematories. (a) Necessary equipment. Each crematory operator in charge shall ensure that each crematory under that individual's supervision maintains on the premises a motorized or mechanical device for processing cremated remains. This and all other equipment shall be kept in good working condition and inspected by the board.

(b) Holding facility. Each crematory operator in charge shall ensure that each crematory under that individual's supervision has a holding facility that is secure from access by anyone except crematory personnel authorized by the crematory operator in charge.

(c) Sanitary conditions. All portions of each crematory shall be kept in a clean and sanitary condition. (Authorized by and implementing K.S.A. 2001 Supp. 65-1762 and 65-1766; effective May 17, 2002.)

63-7-6. Licensure applications for crematories. (a) Each crematory operator in charge shall submit a completed application for a crematory license for each crematory that the individual currently supervises. The application shall be submitted in writing on forms provided by the board and shall contain the following information:

(1) The name, address, and location of the crematory;

(2) a roster of all crematory operators employed at the crematory;

(3) the name and form of ownership of the business;

(4) the names and titles of all individual owners or, if a corporation, all officers;

(5) evidence confirming the date the crematory desires to be licensed;

(6) a description of the type of structure, equipment, and process being used in the operation of the crematory;

(7) verification of compliance with all applicable local and state building codes, zoning laws, ordinances, and environmental standards, including those guidelines adopted by the centers for disease control and prevention regarding bio-safety; and

(8) any further information that the board may require regarding compliance with the crematory act.

(b) A crematory operator in charge may be in charge of not more than one licensed crematory. (Authorized by K.S.A. 2010 Supp. 65-1774; implementing K.S.A. 2010 Supp. 65-1771; effective May 17, 2002; amended Sept. 16, 2011.)

63-7-7. Inspection of crematories. (a) Each crematory shall be subject to routine inspections at least once a year by the board or its designee, to determine compliance with the crematory act and the board's regulations adopted under this act.

(b) A crematory may be subject to additional inspections if any of the following conditions exists:

(1) The crematory incurred a violation in a previous inspection.

(2) A change occurred in ownership or in the crematory operator in charge.

(3) The crematory operator in charge did not timely renew the crematory license.

(4) The board has information that violations could exist or could have occurred.

(c) Inspections shall be made between the hours of 8:00 a.m. and 6:00 p.m. or at any time business is being conducted, unless otherwise agreed by both parties.

(d) Inspections shall be made by the board or its designee.

(e) Inspections of crematories may be authorized by the board or its executive secretary.

(f) Any authorized inspection may be conducted without notice to the crematory operator in

charge. (Authorized by and implementing K.S.A. 65-1723; effective May 17, 2002; amended Sept. 16, 2011.)

63-7-8. Inspection generated by a complaint. (a) Each crematory shall be subject to inspection by the board or its designee, to investigate any specific complaint filed with the board.

(b) Any inspection generated by a complaint may be authorized by the board or its executive secretary at any time. Inspections shall be limited as follows:

(1) Inspections shall be made between the hours of 8:00 a.m. and 6:00 p.m., or at any time business is being conducted, unless otherwise agreed by both parties.

(2) Inspections shall be made by the board or its designee. (Authorized by and implementing K.S.A. 2001 Supp. 65-1723; effective May 17, 2002.)

63-7-9. Crematory operator's license; application requirements. (a) Each person seeking licensure as a crematory operator shall meet the requirements of K.S.A. 65-1771, and amendments thereto, and shall pay the fee specified in K.A.R. 63-4-1. For purposes of the training, the following requirements shall apply:

(1) Fifty minutes of training shall constitute one hour.

(2) Proof of completion of training shall be provided to the board by the provider of the program on a form approved by the board.

(3) A list of approved programs shall be listed on the board's web site.

(b) All licenses issued shall be signed by the president and the secretary of the board and attested by its seal. Each crematory operator shall at all times prominently display the crematory operator's license in the crematory operator's place of employment. (Authorized by K.S.A. 2010 Supp. 65-1774; implementing K.S.A. 2010 Supp. 65-1771; effective Sept. 16, 2011.)

63-7-10. Crematory operator's initial license; biennial renewal. (a) The initial licensure fee for crematory operators shall be charged on a pro rata basis in order to place new licensees according to the expiration dates specified in subsection (c).

(b) Each crematory operator license renewal fee shall be paid on a biennial basis. Each renewal fee shall be initially prorated to the nearest whole month, to establish the biennial renewal process.

(c) Each expiration date shall be assigned alphabetically according to the first letter of the applicant's or licensee's surname, as follows:

- (1) A and M shall expire on January 31.
- (2) B and N shall expire on February 28.
- (3) C and O shall expire on March 31.
- (4) D and P shall expire on April 30.
- (5) E and Q shall expire on May 31.
- (6) F and R shall expire on June 30.
- (7) G and S shall expire on July 31.
- (8) H and T shall expire on August 31.
- (9) I and U shall expire on September 30.
- (10) J and V shall expire on October 31.
- (11) K and W shall expire on November 30.
- (12) L, X, Y, and Z shall expire on December 31.

Each licensee whose surname begins with a letter from A through L shall renew in even-numbered years. Each licensee whose surname begins with a letter from M through Z shall renew in odd-numbered years.

(d) Each licensee shall make up all past continuing education hours accrued during the expiration period within one year of reinstatement.

(e) Each licensee changing the licensee's surname shall notify the board of the change, and the expiration date shall be adjusted to the month designated in subsection (c). (Authorized by K.S.A.

2010 Supp. 65-1772 and K.S.A. 2010 Supp. 65-1774; implementing K.S.A. 2010 Supp. 65-1772; effective Sept. 16, 2011.)

63-7-11. Continuing education. (a) Each crematory operator shall submit with the license renewal application satisfactory proof of completion of at least two board-approved clock-hours of continuing education related to cremation per biennial licensure period. Each crematory operator shall file proof of completion of continuing education credit with the board on forms approved by the board.

(b) Any licensee may obtain continuing education credit by attending and participating in continuing education courses or workshops that meet the requirements of K.A.R. 63-6-2.

(c) The continuing education requirements for each individual newly licensed shall be waived for the first-time renewal of that individual's license.

(d) Compliance with this regulation shall be a requirement for each crematory operator that is separate from the continuing education requirements for embalmers and funeral directors. (Authorized by K.S.A. 2010 Supp. 65-1774; implementing K.S.A. 2010 Supp. 65-1772; effective Sept. 16, 2011.)

Agency 64

Board of Engineering Examiners

Editor's Note:

Effective July 1, 1976, the Board of Engineering Examiners was abolished and its powers and duties transferred to the State Board of Technical Professions. The rules and regulations formerly appearing under Agency 64 have been replaced by rules and regulations adopted by the State Board of Technical Professions, see Agency 66.

Articles

- 64-1. *CODE OF ETHICS. (Not in active use.)*
- 64-2. *PROVISIONS FOR PROFESSIONAL ENGINEERS REGISTERED UNDER THE VOLUNTARY REGISTRATION LAW. (Not in active use.)*
- 64-3. *EXAMINATION, LICENSE AND FEES. (Not in active use.)*
- 64-4. *ENGINEER-IN-TRAINING. (Not in active use.)*

Article 1.—CODE OF ETHICS

64-1-1. (Authorized by K.S.A. 26a-108; effective Jan. 1, 1966; amended Jan. 1, 1967; amended, E-69-14, July 16, 1969; amended Jan. 1, 1970; powers and duties transferred July 1, 1976 to agency 66.)

Article 2.—PROVISIONS FOR PROFESSIONAL ENGINEERS REGISTERED UNDER THE VOLUNTARY REGISTRATION LAW

64-2-1 and 64-2-2. (Authorized by K.S.A. 26a-108; effective Jan. 1, 1966; powers and duties transferred July 1, 1976 to agency 66.)

Article 3.—EXAMINATION, LICENSE AND FEES

64-3-1 through 64-3-4. (Authorized by K.S.A. 26a-108; effective Jan. 1, 1966; powers and duties transferred July 1, 1976 to agency 66.)

64-3-5. (Authorized by K.S.A. 26a-108; effective Jan. 1, 1966; amended Jan. 1, 1967; powers and duties transferred July 1, 1976 to agency 66.)

64-3-6 through 64-3-7. (Authorized by K.S.A. 26a-108; effective Jan. 1, 1966; powers and duties transferred July 1, 1976 to agency 66.)

64-3-8 through 64-3-11. (Authorized by K.S.A. 26a-108; effective Jan. 1, 1970; powers and duties transferred July 1, 1976 to agency 66.)

Article 4.—ENGINEER-IN-TRAINING

64-4-1 and 64-4-2. (Authorized by K.S.A. 26a-108; effective Jan. 1, 1966; amended Jan. 1, 1970; powers and duties transferred July 1, 1976 to agency 66.)

64-4-3 and 64-4-4. (Authorized by K.S.A. 26a-108; effective Jan. 1, 1966; powers and duties transferred July 1, 1976 to agency 66.)

64-4-5. (Authorized by K.S.A. 26a-108; effective Jan. 1, 1966; amended Jan. 1, 1970; amended, E-71-27, July 2, 1971; powers and duties transferred July 1, 1976 to agency 66.)

64-4-6 and 64-4-7. (Authorized by K.S.A. 26a-108; effective Jan. 1, 1966; powers and duties transferred July 1, 1976 to agency 66.)

64-4-8. (Authorized by K.S.A. 26a-108; effective Jan. 1, 1966; amended Jan. 1, 1967; amended Jan. 1, 1970; powers and duties transferred July 1, 1976 to agency 66.)

64-4-9. (Authorized by K.S.A. 26a-108; effective Jan. 1, 1966; powers and duties transferred July 1, 1976 to agency 66.)

Agency 65

Board of Examiners in Optometry

Articles

- 65-4. GENERAL PROVISIONS.
- 65-5. LICENSES.
- 65-6. *GENERAL PROVISIONS. (Not in active use.)*
- 65-7. *CODE OF ETHICS. (Not in active use.)*
- 65-8. MINIMUM STANDARDS FOR OPHTHALMIC SERVICES.
- 65-9. TRADE NAMES.
- 65-10. MAINTAINING AN OFFICE.
- 65-11. ADVERTISING.

Article 4.—GENERAL PROVISIONS

65-4-1. Definitions. For the purpose of these rules and regulations the following terms shall have the meanings respectively ascribed to them.

(a) “Advertising” means all representations disseminated in any manner or by any means, for the purpose of inducing, or which are likely to induce, directly or indirectly, the purchase of professional services or ophthalmic goods.

(b) “Biomicroscopy” means evaluation of the exterior and interior segments of the eye under highly magnified conditions by use of a biomicroscope.

(c) “Board” means the Kansas board of examiners in optometry.

(d) “Contact lens adaptation” means the period of time from the initial dispensing of contact lenses until a licensee exercising professional judgment determines by follow-up visits that the patient has achieved an acceptable level of wearing time with no indication of eye health- or vision-related problems.

(e) “Contact lens evaluation” means measurement of the anatomical and physiological characteristics of the eyes and lids for designing or determining the fit and effect on the eyes and lids of a therapeutic or cosmetic contact lens, including a plano contact lens.

(f) “Coordination testing” means subjective and objective far and nearpoint balance test for the investigation of the binocular functions of accommodation and convergence.

(g) “External examination” means objective evaluation of the globe (cornea, aqueous, iris, pu-

pil, conjunctiva), the lids, cilia and lacrimation by use of magnification instruments as required by the licensee.

(h) “License” means a license to practice optometry granted pursuant to the optometry law.

(i) “Licensee” means a person licensed pursuant to the optometry law to practice optometry.

(j) “Medical facility” shall have the meaning ascribed to that term in subsection (c) of K.S.A. 65-411 and amendments thereto.

(k) “Medical care facility” shall have the meaning ascribed to that term in K.S.A. 65-425 and amendments thereto.

(l) “National board examination” means all parts of the examination being then administered by the national board of examiners in optometry and any examination then being administered by the international association of boards on treatment and management of ocular disease.

(m) “Office or practice location” means that address, building, or location, including each location of a mobile facility, where any optometric services or the practice acts are performed and from which a licensee has, maintains, or derives a financial benefit or interest either directly or indirectly.

(n) “Ophthalmic goods” means any goods which are used, sold or supplied in conjunction with or as a result of optometric services including, but not limited to:

- (1) spectacles;
- (2) any component of spectacles;
- (3) contact lenses; and
- (4) any care products associated with contact lenses.

(o) "Ophthalmic lenses" means any type of spectacle or contact lenses.

(p) "Ophthalmoscopy" means evaluating the interior anatomy of the eye with a self-illuminated magnifying instrument such as an ophthalmoscope.

(q) "Optometric services" means those acts which constitute the practice of optometry as defined in K.S.A. 65-1501.

(r) "Orthoptic or visual training evaluation" means measuring the sensory, motor, and inter-sensory functions related to visual perception and coordination of the two eyes for efficient binocular vision by using instrumentation for measuring deviations of visual axes alignment, retinal correspondence, foveal integrity, perception, form and visual memory testing.

(s) "Person" means an individual, association, partnership, corporation or other entity.

(t) "Prescription" means a verbal or written order from a licensee which designates either the specifications and directions for lenses, prisms, orthoptic exercises or visual training therapy to be used for the aid of any insufficiencies or abnormal conditions of the eyes.

(u) "Prescription for topical pharmaceutical drugs" means a verbal or written order, directly from a licensee expressly certified to prescribe drugs pursuant to the optometry law, authorizing the purchase or use of topical pharmaceutical drugs.

(v) "Refraction" means the determination of the spherical and cylindrical lens powers required for each eye to achieve the state of emmetropia at a specified distance by use of appropriate instruments capable of producing reliable findings.

(w) "Topical pharmaceutical drugs" means drugs administered topically and not by other means for the examination, diagnosis and treatment of the human eye and its adnexae including:

- (1) anesthetics;
- (2) mydriatics;
- (3) cycloplegics;
- (4) anti-infectives; and
- (5) anti-inflammatory agents limited to a fourteen day supply.

(x) "Tonometry" means the measurement of the intraocular pressure by use of an indentation, applanation, or non-contact type of tonometer, capable of producing reliable findings. (Authorized by K.S.A. 74-1504(a)(6); implementing K.S.A. 65-1501, K.S.A. 65-1501a, K.S.A. 1991 Supp. 65-1502, K.S.A. 65-1504b and K.S.A. 65-1506; effective May 18, 1992.)

65-4-2. Hearings before the board. (a) All hearings and procedures of the board shall be conducted in accordance with the Kansas administrative procedures act, K.S.A. 77-501 et seq.

(b) Summary adjudicative proceedings may be used for:

- (1) a denial of initial licensure;
- (2) a cease and desist order, informal admonishment, warning, reprimand, restriction, or limitation;
- (3) a cancellation of a license for failure to meet the requirements for license renewal; and
- (4) an approval of a trade or assumed name, a declaration that approval to practice under a trade or assumed name has lapsed, or approval of transfer of a trade or assumed name.

(c) Any person subject to a summary adjudicative action may request that the summary proceeding be converted to a conference or formal adjudicative proceeding.

(d) Each order listed in (b) shall contain a notice informing any person subject to the order that a request for review or conversion may be made within 15 days.

(e) Conference adjudicative proceedings may be used for actions in which:

- (1) there is no disputed issue of material fact; or
- (2) the parties agree to a conference adjudicative proceeding.

(f) All proceedings shall be formal adjudicative proceedings except emergency adjudicative proceedings or proceedings which have been initiated as or converted to conference or summary adjudicative proceedings. (Authorized by K.S.A. 74-1504(a)(6); implementing K.S.A. 74-1504; effective May 18, 1992.)

65-4-3. Fees. The following fees shall be collected by the board:

- | | |
|---|----------|
| (a) Initial license examination..... | \$150.00 |
| (b) First retaking of license examination..... | \$ 75.00 |
| (c) The second and each subsequent
retaking of license examination | \$ 45.00 |
| (d) License issued by examination..... | \$ 30.00 |
| (e) Reciprocal license..... | \$150.00 |
| (f) (1) Biennial renewal of license..... | \$450.00 |
| (2) Additional fee to obtain license renewal
upon the failure to renew license
before expiration date | \$500.00 |
| (g) Conversion of license status from
inactive to active | \$100.00 |

(Authorized by K.S.A. 74-1504; implementing K.S.A. 2009 Supp. 65-1505 and K.S.A. 2009 Supp. 65-1509; effective May 18, 1992; amended

June 7, 1993; amended Sept. 4, 1998; amended Feb. 22, 2002; amended June 25, 2004; amended July 2, 2010.)

65-4-4. Notice to board. A licensee shall provide notice to the board in writing within 20 days of the following:

(a) the licensee's conviction of a felony, whether or not related to the practice of optometry;

(b) the revocation, suspension or limitation of a licensee's license to practice optometry in another state, territory, nation or the District of Columbia;

(c) the censure of the licensee by the proper licensing authority of another state, territory, nation or the District of Columbia;

(d) a finding by a court of competent jurisdiction that the licensee is mentally ill, disabled, not guilty by reason of insanity or incompetent to stand trial;

(e) sanctions or disciplinary actions taken against the licensee by a peer review committee, medical care facility or professional association or society;

(f) adverse action for acts or conduct similar to acts or conduct which would constitute grounds for disciplinary action under the optometry law taken against the licensee by another state or licensing jurisdiction, a peer review body, a medical care facility, a professional association or society, a governmental agency, by a law enforcement agency or a court;

(g) surrender of the licensee's license or authorization to practice optometry in another state or jurisdiction or surrender of the licensee's membership on any professional staff or in any professional association or society;

(h) an adverse judgment, award or settlement against the licensee resulting from a medical liability claim. (Authorized by and implementing K.S.A. 74-1504(a)(6); effective May 18, 1992; amended June 7, 1993.)

65-4-5. Professional judgment. (a) No licensee shall allow any unlicensed person to:

(1) interfere with the licensee's professional judgment; or

(2) control, directly or indirectly, the licensee's professional judgment or practice.

(b) A licensee shall be deemed to have allowed an unlicensed person to improperly interfere with the licensee's professional judgment or control, directly or indirectly, the licensee's professional judgment or practice if the licensee enters into any agreement, arrangement or affiliation with any unlicensed person, other than those which oc-

cur as part of a practice authorized by the Kansas professional corporation act or through the lawful functioning of a professional partnership or association with other health care providers, which:

(1) provides for the referral of patients between the licensee and the unlicensed person or entity;

(2) provides for any type of compensation, rebate, commission or remuneration for the referral of patients between the licensee and the unlicensed person or entity;

(3) establishes quotas for the number of examinations performed or prescriptions written by a licensee;

(4) bases any type of compensation, rebate, commission or remuneration to a licensee based on the number of examinations performed or prescriptions written by the licensee;

(5) results in a practice situation which would indicate or imply that:

(A) the unlicensed person is engaged in or maintains an office for the practice of optometry; or

(B) the licensee's practice is being carried on as part of or in association with the business enterprise of the unlicensed person;

(6) prevents all patient prescription files and all records pertaining to the practice of optometry from being the sole property of the licensee and free from involvement with any unlicensed person, firm or corporation;

(7) permits an unlicensed person to directly or indirectly affect:

(A) the nature, scheduling, pricing or manner of performing optometric services;

(B) the licensee's decisions relating to advertising, patient records or patient communications regarding optometric services or ophthalmic goods.

(8) in the judgment of the board, otherwise constitutes improper interference.

(c) Non-profit benevolent referral services shall not be deemed to be improper interference. (Authorized by K.S.A. 74-1504(a)(6); implementing K.S.A. 1991 Supp. 65-1516; effective May 18, 1992.)

Article 5.—LICENSES

65-5-1. Qualifications for licensure by examination. In addition to other requirements, to be qualified for licensure by examination, an applicant shall:

(a) File a completed application with the secretary-treasurer on a form prescribed by the board;

(b) Advise the board if he or she has ever been the subject of a disciplinary action or, within the preceding 24 months, been the subject of an investigation or proceeding that could lead to disciplinary action by any state professional licensing authority;

(c) Provide sufficient proof that the applicant:

(1) is a graduate of an accredited school or college of optometry;

(2) has never had his or her license to practice optometry revoked;

(3) has never surrendered his or her license to practice optometry as a result of disciplinary action by any state professional licensing authority; and

(4) if the applicant is applying to take any Kansas board examination after January 1, 1993, has successfully completed all parts of the national board examination within the five years preceding application; and

(5) submit the prescribed, non-refundable application fee. (Authorized by K.S.A. 74-1504(a)(6); implementing K.S.A. 1991 Supp. 65-1505; effective May 18, 1992.)

65-5-2. Application for licensure by examination. (a) An application for licensure by examination shall be forwarded to the secretary-treasurer at least 30 days prior to the scheduled examination. The applicant shall submit with the application:

(1) the applicant's academic transcript, proof of receipt of degree, and proof of completion of an optometric program;

(2) the appropriate, non-refundable fee; and

(3) three written references.

(A) two reference shall be from optometrists familiar with the applicant's work.

(B) if the applicant is a student or a recent graduate, one reference shall be from the academic supervisor. For all other applicants, one reference shall be from the current or most recent work supervisor.

(C) references from individuals other than optometrists may be accepted under extenuating circumstances and shall address the applicant's moral character.

(b) Any application found to be insufficient for lack of qualifications may be held by the board for a period up to one year. If the applicant has not supplemented the application to make it sufficient by the end of that year, the application shall expire. Upon expiration, an application may be renewed through submission of a new application,

fee and all supporting documents. (Authorized by K.S.A. 74-1504(a)(6); implementing K.S.A. 1991 Supp. 65-1505; effective May 18, 1992.)

65-5-3. Examinations. (a) Kansas state examinations to determine the qualifications of an applicant may be oral, in writing or both at the board's discretion.

(b) These examinations shall include:

(1) an inquiry into the moral qualifications and general learning of each applicant;

(2) tests of the following:

(A) practical, theoretical, psychological and physiological optics;

(B) orthoptics;

(C) theoretical and practical optometry;

(D) anatomy and physiology of the eye;

(E) ocular pathology; and

(F) pharmacology with emphasis on the use of topical pharmaceutical drugs for diagnostic and therapeutic purposes.

(c) After January 1, 1993, any topic addressed as part of the national board examination may be eliminated from the state examinations by the board. (Authorized by K.S.A. 74-1504(a)(6); implementing K.S.A. 1991 Supp. 65-1505; effective May 18, 1992.)

65-5-4. Approved schools or colleges of optometry. An approved school or college of optometry shall be a school or college that has been determined by the board to at least meet the standard of the University of Missouri-St. Louis school of optometry as they existed on January 1, 1991. (Authorized by K.S.A. 74-1504(a)(6); implementing K.S.A. 1991 Supp. 65-1505; effective May 18, 1992.)

65-5-5. (Authorized by K.S.A. 74-1504(a)(6); implementing K.S.A. 1991 Supp. 65-1508; effective May 18, 1992; revoked Dec. 3, 2004.)

65-5-6. Continuing education. (a) Each licensed optometrist shall earn annually 24 hours of documented and approved continuing education during each license renewal period.

(b) No more than eight hours of the 24 annually required hours of documented and approved continuing education may be obtained through courses that do not include a live presentation. No more than four of the 24 annually required hours of documented and approved continuing education may be obtained through observing ophthalmic surgery. No more than four of the 24 annually

required hours of documented and approved continuing education may be in the subject area of practice management.

Courses including those presented through the internet, by correspondence, in journals or other publications, and by presentation that is remote or recorded, or both, shall be subject to the limitations specified in this subsection.

(c) Each academic credit hour shall be equivalent to 15 hours of continuing education. Credit for auditing an academic course shall be given for actual hours attended during which instruction was given and shall not exceed the number of hours allowed for academic credit.

(d) The following educational programs may be used to meet the annual educational requirement:

- (1) Educational meetings of the American optometric association;
- (2) educational meetings of the Kansas optometric association;
- (3) scientific sections of the American academy of optometry;
- (4) postgraduate courses offered at any accredited school of optometry; and
- (5) other educational programs approved by the board.

(e) Each provider seeking board approval for a continuing education offering shall submit a copy of the continuing education program, schedule, or outline to the secretary-treasurer at least 60 days before the date of the program.

(f) Each licensee shall submit a certificate of attendance to the secretary-treasurer with or before the licensee's application for renewal. The certificate of attendance shall contain the following:

- (1) The name of the sponsoring organization;
- (2) the name, signature, and address of the licensee;
- (3) the number of hours attended;
- (4) the subject of the approved education program;
- (5) the date of the educational program; and
- (6) any other evidence of attendance required by the board.

(g) The certificate of attendance shall be on a form approved by the board and shall be signed by the licensee and an appropriate representative of the sponsoring organization. (Authorized by K.S.A. 74-1504(a)(6); implementing K.S.A. 2014 Supp. 65-1509a; effective May 18, 1992; amended March 7, 1997; amended June 9, 2000; amended Oct. 3, 2003; amended June 5, 2015.)

65-5-7. Reciprocal licenses. An applicant for reciprocal licensure shall:

(a) file a completed application with the secretary-treasurer on a form prescribed by the board;

(b) submit with the application:

(1) a certified copy of the current registration or license issued by examination from the reciprocal state;

(2) proof that the reciprocal state's requirements for the type of license held by the applicant are equivalent to the requirements for licensure in Kansas of the type applied for;

(3) a sworn statement from the reciprocal state's licensing authority:

(A) stating whether the applicant has ever been the subject of disciplinary action and, if so, the nature thereof; and

(B) stating whether, within the preceding 24 months, the applicant has been the subject of any investigation or proceeding that could lead to disciplinary action;

(4) the prescribed fee;

(5) proof of at least three consecutive years of active practice of optometry in the reciprocal state prior to the date of application for reciprocal licensure; and

(6) a statement that the licensee has not failed the Kansas examination for licensure by examination within the five year period preceding the date of application for reciprocal licensure. (Authorized by K.S.A. 74-1504(a)(6); implementing K.S.A. 1991 Supp. 65-1505; effective May 18, 1992.)

65-5-8. Reinstatement. (a) Any individual seeking reinstatement of a license revoked by the board shall apply using the form prescribed by the board.

(b) Any applicant for license reinstatement shall present evidence satisfactory to the board of full rehabilitation from the offense or condition for which the license was revoked and any other evidence the board deems necessary to determine the application.

(c) The applicants shall comply with all conditions imposed by the board to prove the extent of rehabilitation.

(d) Conditions or restrictions shall be imposed on the reinstatement of the applicant's license as the board deems appropriate. (Authorized by K.S.A. 74-1504(a)(6); implementing K.S.A. 1991 Supp. 65-1509; effective May 18, 1992.)

65-5-9. Suspension, termination or denial of licensee's authority to practice when found in contempt of court pursuant to subsection (f) of K.S.A. 20-1204a.

(a) (1) Within 30 days after receipt of a court-ordered notice and a copy of the court order finding an individual in contempt of court in a child support proceeding, the individual shall be notified by the board in writing of the board's intent to suspend, deny or withhold renewal of a license and of the individual's rights and duties under K.S.A. 1995 Supp. 74-147.

(2) If the notice accompanied by the court order provides inadequate information identifying the person in contempt, the person serving the notice shall be promptly contacted by the board for additional information. The 30-day notice shall commence when sufficient information identifying the person to contact is received.

(b) Notice to licensee. The written notice issued by the board shall inform the licensee of the following:

(1) The board's intent to deny, refuse to renew, or suspend a license commencing six months after the date the notice is issued unless the licensee furnishes to the board a court order releasing the individual from the contempt citation; and

(2) If the individual does not furnish the release before the expiration of the six-month period, proceedings will be commenced by the board to deny the issuance, refuse to renew, or to suspend the license following the summary procedure stated in K.S.A. 1995 Supp. 77-537 and amendments thereto.

(c) Temporary license.

(1) If an individual has applied for issuance or renewal of a license and is otherwise eligible, a temporary license shall be issued by the board and shall accompany the notice issued pursuant to subsection (b). The temporary license shall be valid for six months after the date of the notice issued pursuant to subsection (b).

(2) If a licensee is eligible to request renewal of a license and has previously received the notice required by subsection (b), the temporary license shall be valid only for the remainder of the six-month period that commenced upon issuance of the notice.

(3) The temporary license shall include a date of issuance and a date of expiration.

(4) A temporary license shall not be extended except that the temporary license may be extended by the board for up to 30 days to prevent extreme hardship for a patient of the licensee.

(5) The licensee shall obtain a release from the court which found the individual in contempt before the permanent license may be issued or renewed by the board.

(6) The release shall be furnished to the board before the expiration of the temporary license. If the release is not furnished within the six-month period of time, the temporary license shall expire and summary proceedings to deny issuance shall be commenced by the board or renewal of the permanent license may be refused by the board.

(d) Hearing.

(1) If the licensee does not provide a copy of the release pursuant to paragraph (c)(5) to the board within the six-month time period, the permanent license shall be denied, refused for renewal or suspended by the board in accordance with the summary proceedings of K.S.A. 1995 Supp. 57-537 and amendments thereto.

(2)(A) The issues at the hearing shall be limited to the following:

(i) the identity of the individual;

(ii) the validity of the notices pursuant to K.S.A. 1995 Supp. 74-147; and

(iii) the validity of any additional conditions imposed by the board if such conditions are otherwise subject to review.

(B) The board shall not have jurisdiction over any issues related to child support.

(3) If the board issues an order denying, refusing to renew, or suspending a permanent license of an individual pursuant to this subsection, the individual may apply for reinstatement of the application or license, as appropriate, if the individual furnishes a court order releasing the individual from the contempt citation and it is determined by the board that the individual is otherwise eligible for a license.

(e) Fees. If a license is denied, refused for renewal or suspended, any fees paid by the individual shall not be refunded. (Authorized by K.S.A. 74-1504(a)(6); implementing K.S.A. 1995 Supp. 74-146 and K.S.A. 1995 Supp. 74-147; effective Feb. 28, 1997.)

65-5-10. (Authorized by K.S.A. 74-1504(a)(6); implementing K.S.A. 1998 Supp. 65-1501, K.S.A. 1998 Supp. 65-1501a, K.S.A. 1998 Supp. 65-1505, K.S.A. 1998 Supp. 65-4915(b), and K.S.A. 65-1525; effective Feb. 28, 1997; amended Nov. 29, 1999; revoked June 5, 2015.)

65-5-11. (Authorized by and implementing K.S.A. 74-1504 and K.S.A. 2003 Supp. 65-1509; effective June 25, 2004; revoked June 5, 2015.)

65-5-12. Reinstatement of license. Each applicant who applies for reinstatement of a license more than 12 months after the license was canceled for failure to renew it shall be required to pass the examination given by the board to applicants for licensure or any other competency examination that the board may specify. (Authorized by K.S.A. 74-1504; implementing K.S.A. 2003 Supp. 65-1509; effective Dec. 3, 2004.)

65-5-13. Professional liability insurance. Each person licensed by the board shall, before rendering professional services within the state, obtain and maintain professional liability insurance coverage of at least \$1,000,000 for each claim. (Authorized by K.S.A. 74-1504; implementing K.S.A. 2014 Supp. 65-1505; effective June 5, 2015.)

Article 6.—GENERAL PROVISIONS

65-6-1 to 65-6-5. (Authorized by K.S.A. 74-1504; effective Jan. 1, 1966; revoked Feb. 15, 1977.)

65-6-6. (Authorized by K.S.A. 1978 Supp. 65-1501, 65-1502, 65-1506; effective Jan. 1, 1966; amended Jan. 1, 1971; amended, E-76-40, Aug. 1, 1975; amended May 1, 1976; amended, E-80-1, Jan. 18, 1979; amended May 1, 1979; revoked May 1, 1988.)

65-6-7. (Authorized by K.S.A. 65-1503; effective Jan. 1, 1966; amended, E-76-40, Aug. 1, 1975; revoked May 1, 1976.)

65-6-8. (Authorized by K.S.A. 74-1504; implementing K.S.A. 65-1505, as amended by L. 1987, Ch. 235, Sec. 3; effective Jan. 1, 1966; amended, E-76-40, Aug. 1, 1975; amended May 1, 1976; amended May 1, 1988; revoked May 18, 1992.)

65-6-9. (Authorized by K.S.A. 1975 Supp. 65-1509a; effective Jan. 1, 1966; amended Jan. 1, 1971; revoked, E-76-40, Aug. 1, 1975; revoked May 1, 1976.)

65-6-10. (Authorized by K.S.A. 1976 Supp. 65-1505; effective Jan. 1, 1966; revoked Feb. 15, 1977.)

65-6-11. (Authorized by K.S.A. 74-1504; implementing K.S.A. 65-1505, as amended by L. 1987, Ch. 235, Sec. 3; effective Jan. 1, 1966; amended, E-76-40, Aug. 1, 1975; modified, L.

1976, Ch. 270, May 1, 1976; amended May 1, 1988; revoked May 18, 1992.)

65-6-12. (Authorized by K.S.A. 74-1504; implementing K.S.A. 65-1505, as amended by L. 1987, Ch. 235, Sec. 3; effective Jan. 1, 1966; amended, E-76-40, Aug. 1, 1975; amended May 1, 1976; amended May 1, 1988; revoked May 18, 1992.)

65-6-13. (Authorized by K.S.A. 74-1504; effective Jan. 1, 1966; amended, E-76-40, Aug. 1, 1975; amended May 1, 1976; revoked Feb. 15, 1977.)

65-6-14. (Authorized by K.S.A. 1976 Supp. 65-1505; effective Jan. 1, 1966; revoked Feb. 15, 1977.)

65-6-15. (Authorized by K.S.A. 1976 Supp. 65-1505; effective Jan. 1, 1966; amended Jan. 1, 1971; revoked Feb. 15, 1977.)

65-6-16. (Authorized by K.S.A. 1978 Supp. 65-1501, 65-1502, 65-1505; effective Jan. 1, 1966; amended Jan. 1, 1971; amended, E-80-1, Jan. 18, 1979; amended May 1, 1979; revoked May 18, 1992.)

65-6-17. (Authorized by K.S.A. 74-1504, K.S.A. 1978 Supp. 65-1501, 65-1505; effective Jan. 1, 1966; amended, E-76-40, Aug. 1, 1975; amended May 1, 1976; amended May 1, 1979; revoked May 1, 1988.)

65-6-18. (Authorized by K.S.A. 74-1504, K.S.A. 1977 Supp. 65-1501; effective Jan. 1, 1966; amended, E-76-40, Aug. 1, 1975; amended May 1, 1976; revoked May 1, 1979.)

65-6-19 and 65-6-20. (Authorized by K.S.A. 1975 Supp. 65-1509; effective Jan. 1, 1966; amended, E-76-40, Aug. 1, 1975; amended May 1, 1976; revoked May 1, 1979.)

65-6-21 to 65-6-23. (Authorized by K.S.A. 1976 Supp. 65-1509; effective Jan. 1, 1966; revoked Feb. 15, 1977.)

65-6-24. (Authorized by K.S.A. 74-1504, K.S.A. 1975 Supp. 65-1509; effective Jan. 1, 1966; amended, E-76-40, Aug. 1, 1975; modified, L. 1976, ch. 270, May 1, 1976; revoked May 1, 1988.)

65-6-25. (Authorized by and implementing K.S.A. 74-1504, K.S.A. 65-1509a, as amended by L. 1987, Ch. 235, Sec. 4; effective Jan. 1, 1966;

amended Jan. 1, 1971; amended, E-76-40, Aug. 1, 1975; amended May 1, 1976; amended May 1, 1979; amended May 1, 1988; revoked May 18, 1992.)

65-6-26. (Authorized by K.S.A. 1978 Supp. 65-1509a; effective Jan. 1, 1966; amended, E-76-40, Aug. 1, 1975; amended May 1, 1976; revoked May 1, 1979.)

65-6-27. (Authorized by K.S.A. 1976 Supp. 65-1509a; effective Jan. 1, 1966; amended Jan. 1, 1971; revoked Feb. 15, 1977.)

65-6-28. (Authorized by K.S.A. 1976 Supp. 65-1509a; effective Jan. 1, 1966; revoked Feb. 15, 1977.)

65-6-29. (Authorized by K.S.A. 1976 Supp. 65-1502; effective Jan. 1, 1966; amended Jan. 1, 1971; revoked Feb. 15, 1977.)

65-6-30. (Authorized by K.S.A. 74-1504; implementing K.S.A. 65-1501, 65-1501a, as amended by L. 1987, Ch. 235, Sec. 1 and 2, 65-1502, 65-1504b, K.S.A. 1986 Supp. 65-1506; effective Jan. 1, 1966; amended Jan. 1, 1971; amended, E-76-40, Aug. 1, 1975; modified, L. 1976, Ch. 270, May 1, 1976; amended, E-80-1, Jan. 18, 1979; amended May 1, 1979; amended May 1, 1988; revoked May 18, 1992.)

65-6-31. (Authorized by K.S.A. 65-1504a, K.S.A. 1975 Supp. 65-1504, 65-1509; effective Jan. 1, 1966; amended Jan. 1, 1970; amended Jan. 1, 1971; amended, E-76-40, Aug. 1, 1975; modified, L. 1976, ch. 270, May 1, 1976; revoked May 1, 1988.)

65-6-32. (Authorized by K.S.A. 1975 Supp. 65-1506; effective Jan. 1, 1966; amended, E-76-40, Aug. 1, 1975; amended May 1, 1976; revoked May 1, 1988.)

65-6-33. (Authorized by K.S.A. 74-1504; implementing K.S.A. 74-1504 and K.S.A. 1986 Supp. 65-1506; effective Jan. 1, 1966; amended, E-76-40, Aug. 1, 1975; amended May 1, 1976; amended May 1, 1988; revoked May 18, 1992.)

65-6-34. (Authorized by K.S.A. 1976 Supp. 74-1504g; effective Jan. 1, 1966; revoked Feb. 15, 1977.)

65-6-35. (Authorized by K.S.A. 74-1504; effective Jan. 1, 1966; revoked May 1, 1979.)

65-6-36. (Authorized by K.S.A. 74-1504, K.S.A. 1978 Supp. 65-1501, 65-1502, 65-1504, 65-1504b; effective, E-80-1, Jan. 18, 1979; effective May 1, 1979; revoked May 18, 1992.)

65-6-37. (Authorized by and implementing K.S.A. 65-1505, as amended by L. 1987, Ch. 235, Sec. 3 and 74-1504; effective May 1, 1988; revoked May 18, 1992.)

Article 7.—CODE OF ETHICS

65-7-1. (Authorized by K.S.A. 74-1504; effective Jan. 1, 1966; amended May 1, 1979; revoked May 18, 1992.)

65-7-2. (Authorized by K.S.A. 75-1504; effective Jan. 1, 1966; amended May 1, 1979; revoked May 18, 1992.)

65-7-3. (Authorized by K.S.A. 75-1504; effective Jan. 1, 1966; amended May 1, 1979; revoked May 1, 1988.)

65-7-4. (Authorized by K.S.A. 74-1504; effective Jan. 1, 1966; amended May 1, 1979; revoked May 18, 1992.)

65-7-5. (Authorized by K.S.A. 74-1504; effective Jan. 1, 1966; revoked May 1, 1979.)

65-7-6. (Authorized by K.S.A. 74-1504; effective Jan. 1, 1966; amended, E-76-40, Aug. 1, 1975; amended May 1, 1976; revoked May 1, 1979.)

65-7-7. (Authorized by K.S.A. 74-1504; effective Jan. 1, 1966; revoked May 1, 1979.)

65-7-8. (Authorized by K.S.A. 74-1504; effective Jan. 1, 1966; amended Jan. 1, 1971; amended May 1, 1979; revoked May 18, 1992.)

65-7-9. (Authorized by K.S.A. 74-1504; effective Jan. 1, 1966; amended Jan. 1, 1971; amended May 1, 1979; revoked May 18, 1992.)

65-7-10. (Authorized by K.S.A. 75-1504; effective Jan. 1, 1966; amended Jan. 1, 1971; amended May 1, 1979; revoked May 1, 1988.)

65-7-11. (Authorized by K.S.A. 74-1504; effective Jan. 1, 1966; amended Jan. 1, 1971; amended, E-76-40, Aug. 1, 1975; amended May 1, 1976; amended May 1, 1979; revoked May 18, 1992.)

65-7-12. (Authorized by K.S.A. 74-1504; effective Jan. 1, 1966; amended Jan. 1, 1970; amended Jan. 1, 1971; amended, E-76-40, Aug.

1, 1975; amended May 1, 1976; amended May 1, 1979; revoked May 18, 1992.)

65-7-13. (Authorized by K.S.A. 75-1504, K.S.A. 1978 Supp. 65-1510; effective Jan. 1, 1966; amended Jan. 1, 1970; amended Jan. 1, 1971; amended, E-76-40, Aug. 1, 1975; amended May 1, 1976; amended May 1, 1979; revoked May 18, 1992.)

65-7-14. (Authorized by K.S.A. 74-1504; effective Jan. 1, 1966; amended May 1, 1979; revoked May 18, 1992.)

Article 8.—MINIMUM STANDARDS FOR OPHTHALMIC SERVICES

65-8-1. Examination and adaptation procedures. (a) The following minimum standards for examination procedures shall be performed by a licensee during any examination conducted to determine if a prescription for corrective lenses should be provided:

(1) visual acuity testing of each eye at far and nearpoint;

(2) external examination;

(3) refraction (objective and subjective);

(4) coordination testing;

(5) ophthalmoscopy;

(6) biomicroscopy; and

(7) Tonometry (if the patient is age 25 or over).

(b) In addition to the minimum standards in (a), the following additional minimum standards for procedures shall be performed during any contact lens evaluation:

(1) measurement to determine anterior curvatures of the cornea by use of an instrument capable of producing and providing reliable findings;

(2) evaluation of appropriate eye variables and biomicroscopic evaluation of lid health and corneal integrity;

(3) application of known diagnostic lenses to each eye to include evaluation of acuity, overrefraction, and biomicroscopic evaluation of lens fit with use of chemical dyes, as indicated; and

(4) discussion with the patient of the probable success and risks of contact lens wear.

(c) In addition to the minimum standards for examination and evaluation procedures set out in (a) and (b), the following are additional minimum standards for procedures to be performed during any contact lens adaptation to determine a patient's first contact lens prescription:

(1) provide patient adequate training in lens care, lens application and removal, lens wear, lens

care solutions and products, and proper disinfection procedures;

(2) provide patient adequate training in proper wearing schedule, warning signs and recall intervals;

(3) provide for a minimum of two follow-up visits over a minimum period of the two months prior to determining the contact lens prescription; and

(4) visual acuity testing and biomicroscopic evaluation of each eye with and without lenses at each follow-up visit. (Authorized by K.S.A. 74-1504(a)(6); implementing K.S.A. 1991 Supp. 65-1501; effective May 18, 1992.)

65-8-2. Instruments. (a) Commonly accepted instrumentation and methods designed to produce accurate and reliable findings shall be utilized to perform the minimum standard requirements in K.A.R. 65-8-1.

(b) The result of each performed procedure shall be recorded.

(c) Commonly accepted measuring units and nomenclature shall be used. (Authorized by K.S.A. 74-1504(a)(6); implementing K.S.A. 1991 Supp. 65-1501; effective May 18, 1992.)

65-8-3. Records. (a) The records of all patients shall contain at least the following information:

(1) the patient's full name, address, phone number and date of birth;

(2) a case history including all complaints;

(3) all objective and subjective findings taken;

(4) a diagnosis;

(5) the treatment plan given, including any ophthalmic or medical prescriptions;

(6) the final disposition, including any follow-up requirements or any patient referral;

(7) the date and location of the examination; and

(8) the name and signature of the licensee performing the examination.

(b) Any and all patient records required by these rules and regulations shall be maintained for at least five years.

(c) All findings and recordings entered into the patient records shall be made using normally accepted nomenclature and units of measure. (Authorized by K.S.A. 74-1504(a)(6); implementing K.S.A. 1991 Supp. 65-1502; effective May 18, 1992.)

65-8-4. Content of prescription. (a) Any prescription issued by a licensee for spectacle lenses shall include:

(1) the sphere power;

(2) the cylinder power;

- (3) the axes location;
 - (4) the prism power and base direction;
 - (5) the type, size, and power of multifocal; and
 - (6) the interpupillary distance, far and near.
- (b) No prescription for spectacle lenses shall include instructions to obtain the specifications from existing lenses without examination.
- (c) Any prescription issued by a licensee for rigid contact lenses shall include:
- (1) the lens material;
 - (2) the base curve;
 - (3) the back vertex power;
 - (4) the prism power;
 - (5) the overall diameter;
 - (6) the optic zone diameter;
 - (7) peripheral curve radii and widths;
 - (8) the center thickness;
 - (9) the tint; and
 - (10) the edge shape.
- (d) Any prescription issued by a licensee for flexible contact lenses shall include:
- (1) the base curve;
 - (2) the power;
 - (3) the diameter, when necessary;
 - (4) the manufacturer;
 - (5) the water content, where necessary;
 - (6) the type, spherical, toric, or extended wear;
 - (7) the color; and
 - (8) the manufacturer's suggested sterilization method.
- (e) No prescription issued by a licensee for rigid or flexible contact lenses shall include instructions to obtain the specifications from:
- (1) existing lenses, without examination; or
 - (2) conversion of a spectacle lens prescription.
- (f) In addition, the following information shall be included on any prescription issued by a licensee for any ophthalmic lenses:
- (1) the printed name and license registration number of the prescribing licensee;
 - (2) the address and telephone number at which the patient's records are maintained and at which the prescribing licensee can be reached for consultation;
 - (3) the name of the patient;
 - (4) the signature of the prescribing licensee;
 - (5) the date the prescription was issued, the date of the examination, and expiration date, if appropriate;
 - (6) any instructions necessary for the fabrication or use of the ophthalmic lenses; and
 - (7) any special instructions.
- (g) Any prescription issued by a licensee for spec-

tacle lenses which does not include the requirements for flexible or rigid contact lens prescriptions shall not become an adequate prescription for contact lenses by any comment on the prescription indicating it can be used for contact lenses.

(h) Any prescription issued by a licensee for a topical pharmaceutical drug shall include:

- (1) the printed name and license registration number of the prescribing licensee;
 - (2) the address and telephone number at which the patient's records are maintained and at which the prescribing licensee can be reached for consultation;
 - (3) the name and address of the patient;
 - (4) the name and quantity of the drugs prescribed;
 - (5) directions for use;
 - (6) the number of refills permitted;
 - (7) the date of issue and expiration; and
 - (8) the signature of the prescribing licensee.
- (Authorized by K.S.A. 74-1504(a)(6); implementing K.S.A. 1991 Supp. 65-1501; effective May 18, 1992.)

65-8-5. (Authorized by K.S.A. 74-1504; implementing K.S.A. 65-1504b; effective June 22, 2001; revoked June 25, 2004.)

Article 9.—TRADE NAMES

65-9-1. Use. No licensee, including any licensee who practices in a partnership, association, professional corporation, limited liability company, or other group practice, shall engage in the practice of optometry under a trade or assumed name until an application to use that name at a specific location or locations has been approved by the board. (Authorized by and implementing K.S.A. 1997 Supp. 65-1522; effective May 18, 1992; amended April 9, 1999.)

65-9-2. Application. (a) To request approval of a trade or assumed name, one or more of the licensees associated with the optometric office at which the trade or assumed name will be used shall file a fully completed application with the secretary-treasurer on a form prescribed by the board.

(b) As part of the application, each applicant shall certify that the applicant:

- (1) has personally made a diligent search and is unaware of any other person or entity using the trade or assumed name or a name so similar as to create a potential for confusion; and

(2) intends to actively engage in the practice of optometry under the trade or assumed name upon obtaining approval from the board.

(c) If any applicant desires to use the trade or assumed name at any practice location other than the one approved by the board, an additional application for approval shall be made to the board. (Authorized by K.S.A. 74-1504(a)(6); implementing K.S.A. 1991 Supp. 65-1509; effective May 18, 1992.)

65-9-3. Approval. (a) No trade or assumed name which, in the judgment of the board, is false, misleading, deceptive or for which it deems there is good reason for disapproval shall be approved by the board.

(b) Except in cases of transfer under 65-10-4, the approval to use a trade or assumed name shall lapse and become invalid if the applicant fails to actively engage in the practice of optometry under that trade or assumed name for a period of six months, unless the applicant can establish to the satisfaction of the board that the failure was due to a temporary mental or physical disability or for any other reason as the board finds to be sufficient justification.

(c) Approval to use a trade or assumed name may be revoked by the board for:

(1) making any false statement on the application;
 (2) the failure of an applicant to comply with these rules and regulations;

(3) a determination by the board that continued use of the trade or assumed name would be false, misleading or deceptive, or any other good cause. (Authorized by K.S.A. 74-1504(a)(6); K.S.A. 1991 Supp. 65-1509; effective May 18, 1992.)

65-9-4. Transfer. (a) The approval to use a trade or assumed name shall not be transferable except with the approval of the board.

(b) Any applicant seeking to transfer the approval for the use of a trade or assumed name to another licensee which is authorized to engage in the practice of optometry in this state shall file a completed application with the secretary-treasurer on a form prescribed by the board.

(c) If the transfer is approved, the transferee shall become responsible for compliance with the applicable requirements of K.A.R. 65-9-1, et seq. (Authorized by K.S.A. 74-1504(a)(6); implementing K.S.A. 1991 Supp. 65-1509; effective May 18, 1992.)

65-9-5. Practice under a trade or assumed name. (a) Each licensee who has obtained approval to use a trade or assumed name shall notify the board in writing:

(1) of all licensees who will practice under that name; and

(2) within 30 days if there is a change in the licensees practicing under the name.

(b) In the entrance or reception area of the optometric or practice office where a trade or assumed name is used, a chart or directory listing the names of all licensees practicing at that particular location shall be kept prominently and conspicuously displayed at all times.

(c) The names of all licensees who have practiced under the trade or assumed name shall be maintained in the optometric office for five years following their departure from the practice.

(d) In any practice where a trade or assumed name is used subsequent to the administration of any optometric service, the licensee providing the service shall be placed in the patient's record following a description of the service rendered. If the treatment is rendered by a licensee other than the licensee of record, the name of that licensee shall be placed in the record of the patient.

(e) In any practice where a trade or assumed name is used, the name of the licensee providing care shall appear on the initial statement of charges and on the receipt given to the patient.

(f) No trade or assumed name may be used which contains the name of an inactive, retired, removed or deceased licensee, except that, for a period of no more than one year from the date of succession to a practice, a licensee may list the name of the inactive, retired, removed or deceased licensee with the words "succeeded by," "succeeding," or "successor to" and the licensee's own name.

(g) Each licensee who has obtained approval to use a trade or assumed name shall be personally responsible for compliance with K.A.R. 65-9-1, et seq. (Authorized by K.S.A. 74-1504(a)(6); implementing K.S.A. 1991 Supp. 65-1509; effective May 18, 1992.)

Article 10.—MAINTAINING AN OFFICE

65-10-1. Practice locations. (a) No licensee shall perform any optometric services at any office or practice location unless the licensee has displayed at that office or practice location an original license issued to the licensee by the board. A licensee shall display a separate original license at each office or practice location.

(b) Practice in a governmental institution shall not be considered an office or practice location, but

practice in a medical facility or medical care facility shall be considered an office or practice location.

(c) No licensee shall maintain an office or practice location in a manner that indicates or implies either of the following.

(1) An unlicensed person is engaged in or maintains an office for the practice of optometry.

(2) The licensee's practice is being carried on as part of or in association with the business enterprise of the unlicensed person. (Authorized by K.S.A. 74-1504(a)(6); implementing K.S.A. 65-1502; effective May 18, 1992; amended Aug. 1, 1997.)

65-10-2. Unlawfully maintaining an office. Except as authorized by the Kansas professional corporation act or the Kansas limited liability company act or through the lawful functioning of a professional partnership or association with other health care providers, an unlicensed person shall be deemed to be maintaining an office for the practice of optometry if either of the following conditions is met:

(a) That person bears any expense for this office by having entered into any rental arrangement, lease arrangement, or debt arrangement with a licensee regarding the licensee's practice whereby the cost or terms allow the unlicensed person to exert influence on the professional judgment or practice of the licensee.

(b) The licensee's office, location, or place of practice indicates or implies, by location, advertising, or otherwise, that the licensee is practicing as a part of or in association with the business of an unlicensed person. (Authorized by K.S.A. 74-1504(a)(6); implementing K.S.A. 65-1502; effective May 18, 1992; amended April 9, 1999.)

65-10-3. Licensee ownership of franchised business of optical dispensing. (a) If a licensee obtains any beneficial interest in a franchise or equivalent relationship to engage in the business of marketing ophthalmic goods or contact lenses, all operations of that franchise or equivalent relationship shall be separate and apart from any and all offices or locations at which the licensee, or any entity in which the licensee has a beneficial interest, provides optometric services.

(b) For the purposes of this section, "separate and apart" shall include:

(1) being physically separated; and

(2) the totally independent functioning of the franchise business of optical dispensing and any optometric office or practice location. (Authorized

by K.S.A. 74-1504(a)(6); implementing K.S.A. 1991 Supp. 65-1502; effective May 18, 1992.)

Article 11.—ADVERTISING

65-11-1. Responsibility. (a) Each licensee shall be responsible for any advertising which is designed to benefit the licensee, directly or indirectly, whether or not the licensee authored it or caused it to be published.

(b) Each licensee whose name, trade name, assumed name, office address, phone number or place of practice appears or is mentioned in any advertisement of any kind or character shall be presumed to have caused, allowed, permitted, approved, or sanctioned the advertisement and shall be personally and professionally responsible for its content and character. (Authorized by K.S.A. 74-1504(a)(6); implementing K.S.A. 1991 Supp. 65-1517; effective May 18, 1992.)

65-11-2. Fraudulent advertisement. Advertisements which will be deemed to be fraudulent shall include, but are not limited to, those which:

(a) use language that is likely to be misunderstood;

(b) contain qualifying statements in small type which are likely to be overlooked by the casual reader;

(c) exaggerate the quality of goods or services;

(d) contain any promise of improved condition;

(e) contain any information which would misrepresent the scope of the licensee's license or indicate that the licensee is able to render services the licensee is not qualified or licensed to do;

(f) do not contain a full breakdown and itemization of professional services versus ophthalmic goods when advertising the cost and availability of optometric goods and services;

(g) indicate or imply that the licensee is engaged in or maintains an office for the practice of optometry as part of, or in association with, the business or operation of an unlicensed person or entity, except as authorized by the Kansas professional corporation act or through the lawful functioning of a professional partnership or association with other health care providers;

(h) contain a licensee's name that is not accompanied by the designation O.D., Optometrist or Doctor of Optometry; and

(i) contain statements or claims of superiority over other licensees or other health care professionals. (Authorized by K.S.A. 74-1504(a)(6); im-

plementing K.S.A. 1991 Supp. 65-1517; effective May 18, 1992.)

65-11-3. Associated advertising. Except when practicing as authorized by the Kansas professional corporation act, the Kansas limited liability company act, or through the lawful functioning of a professional partnership, or in association with other health care providers, all signs,

advertising, and displays of any licensee shall be separate and distinct from those of any other person, firm, or corporation and shall not in any way suggest that the licensee is associated with any other person, firm, or corporation with which the licensee is not associated. (Authorized by K.S.A. 74-1504(a)(6); implementing K.S.A. 1997 Supp. 65-1517; effective May 18, 1992; amended April 9, 1999.)

Agency 66

State Board of Technical Professions

Articles

- 66-1. ORGANIZATION. (*Not in active use.*)
- 66-2. ARCHITECTS. (*Not in active use.*)
- 66-3. ENGINEERS. (*Not in active use.*)
- 66-4. LAND SURVEYORS. (*Not in active use.*)
- 66-5. LANDSCAPE ARCHITECTS. (*Not in active use.*)
- 66-6. PROFESSIONAL PRACTICE.
- 66-7. APPLICATIONS.
- 66-8. EXAMINATIONS.
- 66-9. EDUCATION.
- 66-10. EXPERIENCE.
- 66-11. INTERN CERTIFICATION AND ADMISSION TO THE FUNDAMENTALS EXAMINATION.
- 66-12. MINIMUM STANDARDS FOR THE PRACTICE OF PROFESSIONAL SURVEYING.
- 66-13. ADMINISTRATIVE PROCEDURES.
- 66-14. CONTINUING EDUCATION REQUIREMENTS.
- 66-15. FEES.

Article 1.—ORGANIZATION

66-1-1. (Authorized by K.S.A. 1977 Supp. 74-7013; effective May 1, 1978; revoked May 1, 1984.)

66-1-2 to 66-1-5. (Authorized by K.S.A. 1977 Supp. 74-7013; rejected, L. 1978, Ch. 457, May 1, 1978.)

Article 2.—ARCHITECTS

66-2-1. (Authorized by K.S.A. 1977 Supp. 74-7013; effective May 1, 1978; revoked May 1, 1984.)

66-2-2 and 66-2-3. (Authorized by K.S.A. 74-7013; effective May 1, 1978; amended May 1, 1980; revoked May 1, 1984.)

66-2-4 to 66-2-6. (Authorized by K.S.A. 1977 Supp. 74-7013; effective May 1, 1978; revoked May 1, 1984.)

Article 3.—ENGINEERS

66-3-1 to 66-3-5. (Authorized by K.S.A. 1977 Supp. 74-7013; effective May 1, 1978; revoked May 1, 1984.)

Article 4.—LAND SURVEYORS

66-4-1 to 66-4-3. (Authorized by K.S.A.

1977 Supp. 74-7013; effective May 1, 1978; revoked May 1, 1984.)

Article 5.—LANDSCAPE ARCHITECTS

66-5-1 and 66-5-2. (Authorized by K.S.A. 1977 Supp. 74-7013; effective May 1, 1978; revoked May 1, 1984.)

Article 6.—PROFESSIONAL PRACTICE

66-6-1. Seals and signatures. (a) Each licensee, within 30 days of a license being issued, shall obtain a seal of the design approved by the board in compliance with K.S.A. 74-7023, and amendments thereto, and this regulation. The seal shall be made of two concentric circles. The outer circle shall be 1 ⁵/₈ inches in diameter. The inner circle shall be 1 ¹/₁₆ inches in diameter and shall contain the words “LICENSED” at the top of the circle and “KANSAS” at the bottom of the circle and the number of the license certificate in the center. The area between the two circles shall, except as provided in this subsection, contain the licensee’s name as it appears on that individual’s license at the top of the circle and the licensee’s profession at the bottom of the circle.

The seal may contain, before the licensee’s surname, an abbreviated form of the licensee’s given

name or a combination of initials representing the licensee's given name. The seal may be a rubber stamp, an embossed seal, or a digital seal.

(b)(1) After the licensee's seal has been applied to any document, the licensee shall apply the licensee's handwritten or authenticated digital signature and the date across the seal. The application of the licensee's seal and signature and the date shall constitute certification that the document on which the seal was applied was created by the licensee or under the licensee's responsible charge.

(2) After a licensee has applied the seal, handwritten or digital signature, and date to a document, that document may be reproduced as necessary for the project in accordance with applicable law.

(3) Any licensee may use a digital signature if the digital signature authentication process meets all of the following requirements:

(A) Is unique to the licensee using the digital signature;

(B) is able to be verified;

(C) is under the sole control of the licensee using the digital signature; and

(D) is linked to an electronic document bearing the digital signature in such a manner that the signature is invalidated if any data in the document is altered.

(4) Each transmitted or stored electronic document containing a digital signature shall bear the signature, date of signing, and seal, which shall be a confirmation that the electronic document was not altered after the initial digital signing of the document. If the electronic document is altered, the signature, date, and seal shall be void.

(c)(1) Except as provided in K.S.A. 74-7031, K.S.A. 74-7032, K.S.A. 74-7033, K.S.A. 74-7034, or K.S.A. 74-7042a and amendments thereto, each document, including drawings, technical reports, original land descriptions for the purpose of conveying an interest in real property, records, and papers, shall be sealed, signed, and dated by the licensee who prepared the document or by the licensee who is in responsible charge. The licensee shall seal, sign, and date only work within the licensee's area of licensure and competence. Unless the licensee is in responsible charge, that licensee shall not review or check technical submissions of another licensed professional or unlicensed person and seal the documents as the licensee's own work.

(2) Documents required to be sealed, signed, and dated shall include the following:

(A) Any document submitted to any public or governmental agency, a client, or a user for final approval or recording; and

(B) each revision to a sealed, signed, and dated document, which shall be identified and sealed, signed, and dated by the licensee responsible for the revision.

(d)(1) The following documents shall be sealed, signed, and dated as specified in this subsection:

(A) For a set of drawings, in one of the following ways:

(i) On each drawing sheet of a set of drawings;

(ii) only on the first sheet of a multisheet set of project drawings if a digital signature authentication process meeting all the requirements in this regulation and capable of digitally linking all drawing sheets to a licensee's area of responsibility is utilized; or

(iii) in a certification block displaying the seal, signature, and date of each licensee in responsible charge and designating the drawing sheets for which each licensee is responsible, which shall be included on the cover sheet or first drawing sheet of the set of drawings;

(B) for project-specific technical specifications, on the cover sheet or index page. If multiple licensees contribute to these specifications, each licensee shall also designate each part for which that licensee is responsible;

(C) for each technical report or survey plat, on the first or last page;

(D) for original land descriptions for the purpose of conveying an interest in real property, on the first or last page;

(E) for each manufacturer's design document submitted in response to a project's delegated design requirements, including performance specifications or drawings for a specific system or components that are not commonly manufactured items standard for order, and prepared by or under the direct supervision of a Kansas licensee, with the submittal sealed, signed, and dated by the manufacturer's Kansas licensee as specified in paragraph (d)(1)(A) or (B); and

(F) for modified standard details or drawings required by a public agency to be incorporated in a project, on the cover sheet or index page of the document.

(2) For multiple seals, each licensee shall affix that individual's seal and signature to the document and shall designate the specific subject matter for which that licensee is responsible, in a note under that licensee's seal or in the title or index

sheet indicating the document to which the seal applies.

(e) The documents not required to be sealed, signed, and dated shall include the following:

(1) A working drawing or preliminary document, if the working drawing or preliminary document contains a statement in large, bold letters stating “PRELIMINARY, NOT FOR CONSTRUCTION, RECORDING PURPOSES, OR IMPLEMENTATION” or words of comparable meaning; and

(2) published standard details, drawings, or specifications adopted by a municipal, county, or public agency, if incorporated in that agency’s own projects. These documents shall be referenced within the project’s set of drawings when used. Nothing in this subsection shall relieve a licensee of the duty of professional conduct.

(f)(1) If a licensee who has responsible charge of the work is unavailable to complete the work, a successor licensee may assume responsible charge by performing all professional services, including developing a complete design file with work or design criteria, calculations, code research, and any necessary and appropriate changes to the work, under either of the following conditions:

(A) The work is a site adaptation of a standard design plan.

(B) The non-professional services, including drafting, are not required to be redone by the successor licensee but clearly and accurately reflect the successor licensee’s work.

(2) The successor licensee shall have responsible charge over the work product.

(3) The successor licensee shall be responsible for compliance with this subsection. (Authorized by K.S.A. 74-7013; implementing K.S.A. 74-7023; effective May 1, 1978; amended May 1, 1984; amended May 1, 1985; amended May 4, 1992; amended Feb. 22, 1993; amended Feb. 13, 1995; amended March 1, 1996; amended Feb. 6, 1998; amended Nov. 2, 2001; amended March 28, 2008; amended, T-66-5-30-14, July 1, 2014; amended Sept. 26, 2014; amended June 3, 2016; amended Dec. 4, 2020.)

66-6-2. (Authorized by K.S.A. 1977 Supp. 74-7013; effective May 1, 1978; revoked May 1, 1984.)

66-6-3. (Authorized by and implementing K.S.A. 74-7013; effective May 1, 1978; amended May 1, 1984; amended May 4, 1992; revoked Feb. 22, 1993.)

66-6-4. Professional conduct. (a) For the purposes of this regulation, “licensee” shall mean an architect, a landscape architect, a professional engineer, a professional geologist, or a professional surveyor.

(b) If any licensee’s professional judgment has been disregarded under circumstances in which the safety, health, or welfare of the public is endangered, the licensee shall inform the employer or client of the possible consequences, and the licensee shall notify the authority who issued the building permit or otherwise has jurisdiction.

(c) The licensee shall not advertise to perform or undertake to perform any assignment involving a specific technical profession unless the licensee is licensed and qualified by education and experience in that technical profession, as defined in K.S.A. 74-7003, and amendments thereto.

(d) A licensee in any technical profession shall not affix a personal or digital signature, seal, or both to any plan or document dealing with subject matter that is outside the licensee’s field of practice as defined by K.S.A. 74-7003, and amendments thereto.

(e) If the competence of any licensee to perform an assignment in a specific technical field is at issue, the licensee may be required by the board to pass an appropriate examination.

(f) In all professional reports, statements, and testimony, each licensee shall meet the following requirements:

(1) Be completely objective and truthful; and

(2) include all relevant and pertinent information.

(g) When serving as an expert or technical witness before any court, commission, or other tribunal, each licensee shall express only opinions founded on the following:

(1) An adequate knowledge of the facts at issue;

(2) a background of technical competence in the subject matter; and

(3) an actual, good-faith belief in the accuracy and propriety of the licensee’s testimony.

(h) If a licensee issues any statements, criticisms, or arguments on public policy matters that are inspired or paid for by any interested party or parties, those comments shall be prefaced by and include disclosure of the following:

(1) The identity of each party on whose behalf the licensee is speaking; and

(2) the existence of any pecuniary interest of the licensee.

(i) Each licensee shall disclose all known or potential conflicts of interest to employers or clients

by promptly informing them of any business association, interest, or any other circumstances that could influence that licensee's judgment or the quality of the licensee's services.

(j) A licensee shall not accept compensation, financial or otherwise, from more than one party for services on the same project or for services pertaining to the same project, unless the circumstances are fully disclosed and agreed to by all interested parties.

(k) A licensee shall not solicit or accept financial or other valuable consideration, directly or indirectly, from either of the following:

(1) Material or equipment suppliers for specifying their products; or

(2) contractors, their agents, or other parties in connection with work for employers or clients for which the licensee is responsible.

(l) A licensee shall not solicit a contract from a governmental body on which a principal or officer of the licensee's organization serves as a member, except upon public disclosure of all pertinent facts and circumstances and consent of the appropriate public authority.

(m) A licensee shall not offer, directly or indirectly, to pay a commission or other consideration or to make a political contribution or other gift in order to secure work, except for payment made to an employment agency for its services.

(n) In all contacts with prospective or existing clients or employers, each licensee shall accurately represent the licensee's qualifications and the scope of the licensee's responsibility in connection with work for which the licensee is claiming credit.

(o) A licensee shall not be associated with, or permit the use of the licensee's personal name or firm name in, a business venture being performed by any person or firm that the licensee knows, or has reason to believe, is engaging in either of the following:

(1) Business or professional practice of a fraudulent or dishonest nature; or

(2) a violation of K.S.A. 74-7001 et seq., and amendments thereto, or the regulations promulgated and adopted by the board, or both.

(p) Each licensee with knowledge of any alleged violation of K.S.A. 74-7001 et seq., and amendments thereto, or the regulations promulgated and adopted by the board, or both, shall report the alleged violation to the board.

(q) Each licensee shall cooperate with the board in its investigation of complaints or possible violations of K.S.A. 74-7001 et seq., and amendments thereto, and the regulations of the board. This co-

operation shall include responding timely to written communications from the board, providing any information or documents requested within 30 days of the date on which the communication was mailed, and appearing before the board or its designee upon request.

(r) A licensee shall not assist any person in applying for licensure if the licensee knows that person to be unqualified with respect to education, training, experience, or character.

(s) Conviction of a felony or the revocation or suspension of a professional license by another jurisdiction, if for a cause that in Kansas would constitute a violation of Kansas law or of these regulations, or both, shall constitute unprofessional conduct.

(t) A licensee shall not violate any order of the board.

(u) Each professional surveyor shall comply with the minimum standards for the practice of professional surveying adopted by reference in K.A.R. 66-12-1.

(v) Each licensee shall take appropriate measures to ensure that the licensee's drawings and specifications meet the following requirements:

(1) Remain the property of the licensee regardless of whether the project contemplated was executed;

(2) are not utilized for projects that were not contemplated at the time of the completion of the drawings and specifications; and

(3) are not used by the client on any other projects, including additions to the contemplated project, unless the licensee defaults or agrees in writing to this use. (Authorized by K.S.A. 2013 Supp. 74-7013, as amended by 2014 SB 349, sec. 12; implementing K.S.A. 2013 Supp. 74-7013, as amended by 2014 SB 349, sec. 12, and K.S.A. 2013 Supp. 74-7026, as amended by 2014 SB 349, sec. 20; effective May 1, 1978; amended May 1, 1984; amended May 1, 1985; amended May 4, 1992; amended Feb. 22, 1993; amended Feb. 13, 1995; amended Feb. 4, 2000; amended Feb. 9, 2001; amended Nov. 2, 2001; amended Feb. 4, 2005; amended Jan. 5, 2007; amended March 28, 2008; amended, T-66-5-30-14, July 1, 2014; amended Sept. 26, 2014.)

66-6-5. (Authorized by K.S.A. 1977 Supp. 74-7013; modified by L. 1978, ch. 457; revoked May 1, 1984.)

66-6-6. Renewal of licenses and certificates of authorization. (a) Each licensee whose last name begins with one of the letters A through

L shall renew the license in even-numbered years. Each licensee whose last name begins with one of the letters M through Z shall renew the license in odd-numbered years. A notice shall be issued by the board to each licensee during the appropriate renewal year, and not later than 30 days before the following expiration dates:

- | | |
|-----------------------------|--------------|
| (1) Architects | June 30; |
| (2) landscape architects | December 31; |
| (3) professional engineers | April 30; |
| (4) professional geologists | June 30; and |
| (5) professional surveyors | March 31. |

(b) Each business entity whose name begins with one of the letters A through L shall renew its certificate of authorization in even-numbered years. Each business entity whose name begins with one of the letters M through Z shall renew its certificate of authorization in odd-numbered years. A notice shall be issued by the board to each business entity during the appropriate renewal year, and not later than 30 days before the December 31 expiration date. (Authorized by K.S.A. 2013 Supp. 74-7013, as amended by 2014 SB 349, sec. 12; implementing K.S.A. 2013 Supp. 74-7025, as amended by 2014 SB 349, sec. 19, and K.S.A. 2013 Supp. 74-7036, as amended by 2014 SB 349, sec. 28; effective May 1, 1984; amended May 4, 1992; amended Feb. 22, 1993; amended Feb. 14, 1994; amended March 1, 1996; amended Feb. 4, 2000; amended Nov. 6, 2009; amended Sept. 26, 2014.)

66-6-7. (Authorized by K.S.A. 74-7013; implementing K.S.A. 74-7025; effective May 1, 1984; amended May 4, 1992; revoked Feb. 22, 1993.)

66-6-8. (Authorized by K.S.A. 74-7013; implementing K.S.A. 74-7025; effective May 1, 1984; amended May 4, 1992; amended Feb. 22, 1993; amended Feb. 14, 1994; amended Feb. 13, 1995; revoked Nov. 6, 2009.)

66-6-9. (Authorized by K.S.A. 74-7013; implementing K.S.A. 74-7025; effective May 1, 1984; amended May 1, 1985; amended May 4, 1992; amended Feb. 22, 1993; amended Feb. 14, 1994; amended Feb. 13, 1995; revoked Nov. 6, 2009.)

66-6-10. License statuses. Any licensee may elect to place the license, at the time of renewal, into one of the following license statuses:

(a) Active status shall require renewal every two years with the appropriate fee. The individual shall have 30 continuing education units (CEUs)

of approved continuing education activities as required for renewal.

(b) Inactive status shall require renewal every two years with the appropriate fee. No CEUs shall be required for a licensee on inactive status. In order to qualify for inactive status, the individual shall have no pending disciplinary action.

An individual on inactive status shall not practice a technical profession in Kansas.

(c) Emeritus status shall require the individual to be at least 60 years of age. The individual shall submit a one-time application, with no fee and no proof of continuing education required. The individual shall have no pending disciplinary action. Any individual who chooses this license status may use that individual's professional title in conjunction with the word "emeritus." An individual on emeritus status shall not practice a technical profession in Kansas. (Authorized by K.S.A. 74-7013 and K.S.A. 74-7025; implementing K.S.A. 74-7025; effective Sept. 26, 2014; amended Dec. 4, 2020.)

Article 7.—APPLICATIONS

66-7-1. Applications. (a) In addition to the appropriate, completed application form and fee, each applicant shall also have the following submitted to the board office:

(1) An official transcript to verify any educational credit; and

(2) verification of any practical experience for which credit is claimed on reference forms approved by the board, which shall be submitted directly to the board office by the individual providing the reference.

(b) Each applicant for a license by reciprocity shall also submit the following:

(1) Verification of any exams previously taken; and

(2) verification of a current active license. (Authorized by K.S.A. 74-7013; implementing K.S.A. 74-7018; effective May 1, 1984; amended May 4, 1992; amended Jan. 6, 2012; amended Dec. 4, 2020.)

66-7-2. Application for certificate of authorization. (a) A separate application shall be submitted for each technical profession for which a business entity wishes to become authorized.

(b) Each application submitted by a foreign business entity shall be accompanied by the following:

(1) A copy of the formation documents from the home state; and

(2) a copy of the certificate of authority to do business in the state of Kansas from the Kansas secretary of state if qualified pursuant to K.S.A. 17-7301 et seq., and amendments thereto, or if exempt pursuant to K.S.A. 17-7303, 17-76,121a, or 56a-1104 et seq., and amendments thereto.

(c) Each application submitted by a domestic business entity shall be accompanied by a copy of the formation documents and a certificate of good standing from the Kansas secretary of state. (Authorized by K.S.A. 74-7013, as amended by L. 2009, Ch. 94, §3; implementing K.S.A. 74-7036, as amended by L. 2009, Ch. 94, §13; effective May 1, 1984; amended May 4, 1992; amended Feb. 5, 1999; amended Feb. 4, 2000; amended Nov. 6, 2009.)

66-7-3. Denial of initial application for license. When evaluating an application for licensure, the following additional factors concerning the applicant shall be considered by the board:

(a) whether the applicant has committed any fraud or misrepresentation in the information contained in or supporting the application;

(b) whether the applicant has been convicted of a felony as stated in K.S.A. 74-7026;

(c) whether the applicant has engaged in acts which would constitute a violation of K.A.R. 66-6-4 or the statutes contained in K.S.A. 74-7001 through K.S.A. 74-7040 under the jurisdiction of the board;

(d) whether the applicant has been disciplined by the licensing agency or other regulatory or authoritative entity of any other jurisdiction; and

(e) any other factors that the board may consider pertinent to the issuance of an initial license. (Authorized by K.S.A. 74-7004, as amended by L. 1995, ch. 104, sec. 4; K.S.A. 74-7018, K.S.A. 74-7019, K.S.A. 74-7020, K.S.A. 74-7021, K.S.A. 74-7022, and K.S.A. 74-7023; implementing K.S.A. 74-7007, as amended by L. 1995, ch. 104, sec. 5; and K.S.A. 74-7013, as amended by L. 1995, ch. 104, sec. 1; effective Feb. 13, 1995; amended March 1, 1996.)

66-7-4. Potentially disqualifying civil and criminal records; advisory opinion; fee. (a) Conviction of any felony may disqualify an applicant from receiving a license.

(b) Civil records that may disqualify an applicant from receiving a license shall be the records of any court judgment or settlement in which the applicant admitted or was found to have engaged

in conduct that would constitute a violation of the technical professions act or any of the board's regulations. Those records shall not be used to disqualify an applicant for more than five years after the applicant satisfied any judgment or restitution ordered by the court or agreed to in the settlement.

(c) Any individual with a criminal or civil record described in this regulation may submit a petition to the board for an informal, advisory opinion concerning whether the individual's civil or criminal record may disqualify the individual from licensure. Each petition shall include the following:

(1) The details of the individual's civil or criminal record, including a copy of the court records or the settlement agreement;

(2) an explanation of the circumstances that resulted in the civil or criminal record; and

(3) a check or money order in the amount of \$50.00. (Authorized by K.S.A. 74-120 and K.S.A. 74-7013; implementing K.S.A. 74-120 and K.S.A. 74-7026; effective Aug. 16, 2019.)

Article 8.—EXAMINATIONS

66-8-1. (Authorized by K.S.A. 74-7013, as amended by L. 1995, ch. 104, sec. 1; implementing K.S.A. 74-7017; effective May 1, 1984; amended May 4, 1992; amended March 1, 1996; revoked Nov. 6, 2009.)

66-8-2. Architectural examination. (a) The examination required of an applicant for architectural licensure shall be the architectural registration examination as prepared by the national council of architectural registration boards (NCARB).

(b) The examination shall be graded by the NCARB, subject to approval by the board.

(c) Each applicant who has passed a section or sections of previous registration examinations shall be granted transfer credits in accordance with the rules approved by the board. These rules shall be available from the board upon request.

(d) Each applicant for a professional license shall take and pass all sections of the architectural examination and meet the architectural experience requirements under K.S.A. 74-7019. (Authorized by K.S.A. 74-7013; implementing K.S.A. 74-7017; effective May 1, 1984; amended May 1, 1985; amended May 4, 1992; amended Feb. 22, 1993; amended Feb. 14, 1994.)

66-8-3. Engineering examinations. (a) The examination required of each applicant for engineering licensure shall be the national council of examiners for engineering and surveying (NCEES) examination consisting of an engineering fundamentals section and a professional practice section.

(b) Each applicant for a professional license shall be required to pass the section on engineering fundamentals and meet the educational requirements under K.A.R. 66-9-4 before submitting an application to take the section on professional practice. (Authorized by K.S.A. 74-7013; implementing K.S.A. 74-7017, K.S.A. 74-7021, and K.S.A. 74-7023; effective May 1, 1984; amended May 4, 1992; amended Feb. 22, 1993; amended Feb. 14, 1994; amended Nov. 6, 2009; amended Dec. 27, 2013; amended Dec. 4, 2020.)

66-8-4. Professional surveyor examinations. (a) The examinations required of each applicant for licensure as a professional surveyor shall be the following:

(1) The national council of examiners for engineering and surveying (NCEES) fundamentals of surveying;

(2) the NCEES principles of practices of surveying; and

(3) the board's state-specific land surveying examination covering Kansas surveying laws and practices.

(b) Any applicant who has passed only one or more sections of the state-specific land surveying examination shall be granted transfer credits for the sections passed.

(c) Each applicant for a license as a professional surveyor shall be required to pass the section on the fundamentals of surveying and shall meet the surveying experience requirements under K.S.A. 74-7022, and amendments thereto, before the applicant may take the section on professional practice. (Authorized by K.S.A. 74-7013; implementing K.S.A. 74-7017, K.S.A. 74-7022, and K.S.A. 74-7023; effective May 1, 1984; amended May 4, 1992; amended Feb. 22, 1993; amended Feb. 14, 1994; amended Feb. 13, 1995; amended Nov. 1, 2002; amended Feb. 3, 2006; amended Nov. 6, 2009; amended Sept. 26, 2014; amended Dec. 4, 2020.)

66-8-5. Landscape architectural examinations. (a) The examination required of an applicant for landscape architectural licensure shall

be the landscape architect registration examination as prepared by the national council of landscape architectural registration boards (CLARB).

(b) The landscape architect registration examination shall be graded by the CLARB, subject to approval by the board.

(c) Each applicant who has passed any sections of previous registration examinations may be granted transfer credits if approved by the board.

(d) Each applicant for a professional license shall be required to take and pass all sections of the landscape architect examinations and to meet the landscape architectural experience requirements pursuant to K.S.A. 74-7020, and amendments thereto. (Authorized by K.S.A. 74-7013; implementing K.S.A. 74-7017; effective May 1, 1984; amended May 4, 1992; amended Feb. 22, 1993; amended Feb. 14, 1994; amended Feb. 6, 2004.)

66-8-6. Reexamination. (a) Any applicant for a license to practice engineering, surveying, or geology who fails an examination on the first attempt may take the examination two additional times, except as specified in subsections (b) and (c).

(b) Except as specified in subsection (c), the fourth and any subsequent attempts by an applicant to retake an examination may be allowed by the board if the applicant establishes that the areas of deficiency identified in the examination failure report provided by the testing administrator have been addressed through either of the following:

(1) Additional coursework; or

(2) experience under the supervision of a person licensed in the technical profession for which the applicant is seeking licensure.

(c) Any applicant's examination results may be rejected by the board and permission to retake an examination may be withheld by the board upon a report by the testing administrator of any possible violation by the applicant of the provisions of any candidate testing agreement regarding examination irregularities.

(d) Each applicant shall submit the appropriate fee for each examination. (Authorized by K.S.A. 2013 Supp. 74-7013, as amended by 2014 SB 349, sec. 12; implementing K.S.A. 2013 Supp. 74-7009, as amended by 2014 SB 349, sec. 10, and K.S.A. 2013 Supp. 74-7023, as amended by 2014 SB 349, sec. 17; effective May 1, 1984; amended May 4, 1992; amended June 18, 2010; amended Dec. 27, 2013; amended Sept. 26, 2014.)

66-8-7. Geology examinations. (a) The examination required of each applicant for geology licensure shall be the national association of state boards of geology (ASBOG®) examination, consisting of a geology fundamentals section and a geologic practice section.

(b) The examination shall be graded by the ASBOG®, subject to approval by the board.

(c) Each applicant for a professional license shall be required to pass the section on geology fundamentals and shall meet the geology experience requirements under 2014 SB 349, sec. 16, and amendments thereto, before submitting an application to take the section on geologic practice. (Authorized by K.S.A. 2013 Supp. 74-7013, as amended by 2014 SB 349, sec. 12; implementing K.S.A. 74-7017, K.S.A. 2013 Supp. 74-7023, as amended by 2014 SB 349, sec. 17, and 2014 SB 349, sec. 16; effective Feb. 4, 2000; amended Nov. 6, 2009; amended, T-66-5-30-14, July 1, 2014; amended Sept. 26, 2014.)

66-8-8. Examination standards acceptable to the board for reciprocity applicants.

(a) The reexamination of an applicant from another jurisdiction shall not be required for a license by reciprocity if that jurisdiction's examination requirements would have met the Kansas requirements in effect on the date when the applicant's original license was issued, as determined by the board.

(b) Another jurisdiction's examination requirements may be accepted by the board if that jurisdiction did not require the national examination when the applicant was originally licensed.

(c) In order to meet the standard acceptable to the board, each applicant for a license by reciprocity as a professional surveyor shall be required to demonstrate proficiency in Kansas surveying laws and practices. This proficiency shall be presumed by the board upon the applicant's successful completion of the examination as specified in K.A.R. 66-8-4(a)(2). (Authorized by K.S.A. 2013 Supp. 74-7013, as amended by 2014 SB 349, sec. 12; implementing K.S.A. 74-7024, as amended by 2014 SB 349, sec. 18; effective Feb. 4, 2005; amended Jan. 5, 2007; amended Sept. 26, 2014.)

Article 9.—EDUCATION

66-9-1. Architectural curriculum approved by the board. “A college or university program that is adequate in its preparation of students for the practice of architecture” means

a baccalaureate or master's curriculum accredited by the national architectural accreditation board (NAAB). Any other architectural curriculum which has not been accredited by NAAB but has been evaluated and found to be of an equivalent standard, may be reviewed and accepted by the board. (Authorized by K.S.A. 74-7013; implementing K.S.A. 74-7019; effective May 1, 1984; amended May 4, 1992; amended Feb. 22, 1993; amended Feb. 14, 1994.)

66-9-2. Landscape architectural curriculum approved by the board. “A college or university program that is adequate in its preparation of students for the practice of landscape architecture” means a baccalaureate or master's curriculum accredited by the landscape architectural accreditation board (LAAB). Any landscape architectural curriculum which has not been accredited by LAAB but has been evaluated and found to be of an equivalent standard, may be reviewed and accepted by the board. (Authorized by K.S.A. 74-7013; implementing K.S.A. 74-7020; effective May 1, 1984; amended May 4, 1992; amended Feb. 22, 1993; amended Feb. 14, 1994.)

66-9-3. (Authorized by K.S.A. 74-7013; implementing K.S.A. 74-7021; effective May 1, 1984; amended May 4, 1992; revoked Feb. 22, 1993.)

66-9-4. Engineering curriculum approved by the board. “A college or university program that is adequate in its preparation of students for the practice of engineering” shall mean any of the following:

(a) A baccalaureate engineering curriculum accredited by the engineering accreditation commission of the accreditation board for engineering and technology (EAC/ABET);

(b) a curriculum for a master's degree or doctorate in engineering, if all college coursework is reviewed and approved by the board and found to be of a standard equivalent to that of an ABET accredited baccalaureate engineering curriculum; or

(c) a baccalaureate engineering curriculum outside the United States that has not been accredited by ABET but meets the following requirements:

(1) Is evaluated by an organization approved by the board and found to be of a standard equivalent to that of ABET; and

(2) is reviewed and approved by the board. (Authorized by K.S.A. 74-7013, as amended by L. 2009, Ch. 94, §3; implementing K.S.A. 74-7021,

as amended by L. 2009, Ch. 94, §5; effective May 1, 1984; amended May 4, 1992; amended Feb. 22, 1993; amended Feb. 14, 1994; amended Feb. 4, 2000; amended Feb. 3, 2006; amended Nov. 6, 2009.)

66-9-5. Surveying curriculum approved by the board. Any applicant seeking licensure as a professional surveyor may fulfill the education requirement by any of the following:

(a) Graduation from an approved engineering curriculum as defined in K.A.R. 66-9-4;

(b) graduation from a four-year surveying baccalaureate curriculum accredited by the accreditation board for engineering and technology (ABET);

(c) graduation from an approved surveying curriculum of two years from a school or college approved by the board;

(d) graduation from an approved four-year related science curriculum, which may include geology, mathematics, chemistry, or physics;

(e) successful completion of the board's "land surveying curriculum," which was approved by the board on December 8, 2006 and is hereby adopted by reference; or

(f) successful completion of at least 12 semester hours of approved surveying coursework consisting of three semester hours in each of the following, from a school or college approved by the board:

(1) Surveying measurements and analysis;
(2) global positioning system (GPS) surveying techniques;

(3) real property law; and

(4) boundary control and legal principles. (Authorized by K.S.A. 74-7013; implementing K.S.A. 74-7022; effective Feb. 22, 1993; amended Feb. 14, 1994; amended Nov. 1, 2002; amended June 29, 2007; amended Sept. 26, 2014; amended Dec. 4, 2020.)

66-9-6. Geology curriculum approved by the board. Graduation from a course of study in geology shall mean successful completion of a baccalaureate or a master's degree in geology that meets the requirements of 2014 SB 349, sec. 16, and amendments thereto. (Authorized by K.S.A. 2013 Supp. 74-7013, as amended by 2014 SB 349, sec. 12; implementing 2014 SB 349, sec. 16; effective Feb. 4, 2000; amended Feb. 4, 2005; amended, T-66-5-30-14, July 1, 2014; amended Sept. 26, 2014.)

66-9-7. Education standard acceptable to the board for reciprocity applicants. For purposes of K.S.A. 74-7024 and amendments thereto, the following shall apply:

(a) Each applicant for a license to practice engineering, surveying, landscape architecture, or geology by reciprocity shall be deemed to have met the education standard acceptable to the board if the applicant's educational qualifications when the original license was issued would have met the Kansas requirements in effect on that date.

(b) Each applicant for a license to practice architecture by reciprocity shall provide one of the following to the board, for the board's review and consideration for approval:

(1) Proof that the applicant's educational qualifications comply with K.A.R. 66-9-1; or

(2) proof of certification from the national council of architectural registration boards (NCARB). (Authorized by K.S.A. 2017 Supp. 74-7013; implementing K.S.A. 2017 Supp. 74-7024; effective Feb. 4, 2005; amended Jan. 6, 2012; amended Dec. 27, 2013; amended Sept. 26, 2014; amended June 14, 2019.)

Article 10.—EXPERIENCE

66-10-1. Architectural experience satisfactory to the board. (a) Each applicant for a license to practice architecture by examination shall complete a structured experience program of at least 3,740 hours in the following experience areas:

(1) In practice management, 160 hours;
(2) in project management, 360 hours;
(3) in programming and analysis, 260 hours;
(4) in project planning and design, 1,080 hours;
(5) in project development and documentation, 1,520 hours; and

(6) in construction and evaluation, 360 hours.

At least 1,860 of these 3,740 hours shall be completed under the supervision of an architect.

(b) Compliance with the "architectural experience program guidelines," dated May 2017 and published by the national council of architectural registration boards (NCARB), shall be prima facie evidence of satisfactory completion of the structured experience program. (Authorized by K.S.A. 74-7013 and 74-7019; implementing K.S.A. 74-7019; effective May 1, 1984; amended May 4, 1992; amended Feb. 22, 1993; amended Feb. 14, 1994; amended Feb. 13, 1995; amended March 1, 1996; amended Feb. 6, 1998; amended Feb. 9, 2001; amended Nov. 1, 2002; amended Feb. 3,

2006; amended March 28, 2008; amended Nov. 6, 2009; amended June 18, 2010; amended Jan. 6, 2012; amended Dec. 27, 2013; amended Sept. 26, 2014; amended June 14, 2019.)

66-10-2. (Authorized by K.S.A. 74-7013; implementing K.S.A. 74-7019; effective May 1, 1984; amended May 4, 1992; revoked Feb. 22, 1993.)

66-10-3. Architectural experience required of a reciprocity applicant. Each applicant for a license to practice architecture by reciprocity shall provide one of the following to the board, for review and consideration for approval:

(a) Proof that the applicant's experience qualifications comply with K.A.R. 66-10-1; or

(b) proof of certification from the national council of architectural registration boards (NCARB). (Authorized by K.S.A. 2017 Supp. 74-7013; implementing K.S.A. 2017 Supp. 74-7019; effective May 1, 1984; amended May 1, 1985; amended May 4, 1992; amended Feb. 22, 1993; amended Feb. 14, 1994; amended Feb. 13, 1995; amended Jan. 6, 2012; amended Dec. 27, 2013; amended June 14, 2019.)

66-10-4. Landscape architecture work experience. (a) The work experience required of each applicant shall expose the applicant to all phases of work integral to the practice of landscape architecture and shall be verified as specified in paragraph (b)(1)(B).

(b)(1) Landscape architectural work experience shall meet the following requirements:

(A) Fall within the definition of the "practice of landscape architecture" under K.S.A. 74-7003 and amendments thereto; and

(B) if performed after February 22, 1993, be supervised and verified by a licensed landscape architect, architect, or engineer.

(2) Beginning April 1, 1995, each applicant for examination shall provide a record of landscape architectural experience that has been compiled and transmitted by the council of landscape architectural boards (CLARB).

(3) Beginning July 1, 2001, each applicant for reciprocity shall provide a record of landscape architectural experience that has been compiled and transmitted by the council of landscape architectural boards (CLARB).

(c) The following requirements and provisions shall be used to assign credit for work experience:

(1) A master's degree in landscape architecture may equal one year of credit toward the four-

year experience requirement for a graduate of an accredited, four-year curriculum in landscape architecture.

(2) Each applicant who is a graduate of an accredited, master's level curriculum in landscape architecture as the first professional degree shall be considered by the board to be equivalent to a graduate of a five-year curriculum and shall meet the experience requirements of that curriculum as specified in K.S.A. 74-7020, and amendments thereto.

(3) Each month of teaching in an accredited landscape architecture curriculum shall qualify for one month of landscape architecture experience. Teaching experience or other allowed experience, but not both, may be approved as experience for any concurrent calendar period.

(4) Credit may be given for 50 percent of the verified work experience obtained after a student has achieved "junior status" in a landscape architectural curriculum accredited by the landscape architectural accreditation board (LAAB). Credit for this work experience shall not exceed one year.

(d) Each applicant shall supply at least three references from licensed landscape architects who are familiar with the applicant's landscape architectural experience. (Authorized by K.S.A. 74-7013; implementing K.S.A. 74-7020; effective May 1, 1984; amended May 1, 1985; amended May 4, 1992; amended Feb. 22, 1993; amended Feb. 14, 1994; amended Feb. 13, 1995; amended Feb. 9, 2001; amended Dec. 4, 2020.)

66-10-5. (Authorized by K.S.A. 74-7013; implementing K.S.A. 74-7021; effective May 1, 1984; amended May 4, 1992; amended Feb. 22, 1993; revoked Feb. 13, 1995.)

66-10-6. (Authorized by K.S.A. 74-7013; implementing K.S.A. 74-7021; effective May 1, 1984; amended May 1, 1985; amended May 4, 1992; revoked Feb. 22, 1993.)

66-10-7. (Authorized by K.S.A. 74-7013; implementing K.S.A. 74-7021; effective May 1, 1984; amended May 4, 1992; revoked Feb. 22, 1993.)

66-10-8. (Authorized by K.S.A. 74-7013; implementing K.S.A. 74-7021; effective May 1, 1984; amended May 4, 1992; revoked Feb. 22, 1993.)

66-10-9. Engineering experience. (a) The work experience required of each applicant shall expose the applicant to all phases of work integral to the discipline of engineering in which the ap-

plicant claims qualification to practice and shall be verified as specified in paragraph (b)(2).

(b) Engineering work experience shall meet the following requirements:

(1) Fall within the definition of the “practice of engineering” pursuant to K.S.A. 74-7003, and amendments thereto;

(2) be directly supervised by a licensed professional engineer. However, direct supervision by a licensed professional engineer shall not be required of the employees of any person, firm, or corporation not offering services in the technical professions to the public, although verification by the applicant’s supervisor shall still be required; and

(3) include at least two years of work experience, which shall have been gained in the United States.

(c) The following requirements and provisions shall be used to assign credit for work experience:

(1) The applicant shall demonstrate four years of acceptable work experience.

(2) One year of credit toward the experience requirement may be given for a master’s or doctoral degree in engineering, unless that degree is used to satisfy the educational requirement described in K.A.R. 66-9-4(b). Credit shall not be allowed for both work experience and master’s or doctoral degree credit obtained during the same time period.

(3) Each month of teaching in an accredited engineering curriculum shall qualify for one month of engineering experience. Teaching experience or other allowed experience, but not both, may be approved as experience for any concurrent calendar period.

(4) Work experience credit shall not be allowed for work performed before graduation with the baccalaureate degree.

(d) Each applicant shall supply at least three references from professional engineers who are licensed in the United States and are familiar with the applicant’s engineering experience. (Authorized by K.S.A. 74-7013; implementing K.S.A. 74-7021; effective May 1, 1984; amended April 9, 1990; amended May 4, 1992; amended Feb. 14, 1994; amended Feb. 13, 1995; amended Nov. 1, 2002; amended Feb. 3, 2006; amended Jan. 5, 2007; amended Nov. 6, 2009; amended Dec. 27, 2013; amended Dec. 4, 2020.)

66-10-10. Surveying experience required of a graduate of an accredited engineering curriculum. Each graduate of an accredited engineering curriculum, as defined by K.A.R. 66-

9-4, shall provide a verified record of six years of surveying experience as specified by K.S.A. 74-7022(a), and amendments thereto. At least four years of experience shall have been in progressive surveying, as defined in K.A.R. 66-10-12(b)(1). (Authorized by K.S.A. 2013 Supp. 74-7013, as amended by 2014 SB 349, sec. 12; implementing K.S.A. 2013 Supp. 74-7022, as amended by 2014 SB 349, sec. 15; effective May 1, 1984; amended May 4, 1992; amended Feb. 22, 1993; amended Feb. 13, 1995; amended Sept. 26, 2014.)

66-10-10a. Surveying experience required of applicant who completes surveying curriculum or is a graduate of an approved surveying curriculum. (a) Each graduate of a four-year surveying curriculum, as described in K.A.R. 66-9-5(b), shall be required to provide documentation of four years of surveying experience, as required by K.S.A. 74-7022(a) and amendments thereto. The four years of experience shall have been in progressive surveying, as described in K.A.R. 66-10-12(b)(1).

(b) Each person who has successfully completed the land surveying curriculum specified in K.A.R. 66-9-5(e) and each graduate of an approved surveying curriculum of two years, as specified in K.A.R. 66-9-5(c), shall be required to provide documentation of six years of surveying experience, as required by K.S.A. 74-7022(a) and amendments thereto. At least four years of experience shall have been in progressive surveying as specified in K.A.R. 66-10-12(b)(1), and the remainder shall have been in either progressive surveying or basic surveying, as specified in K.A.R. 66-10-12(b)(2) or (3). (Authorized by K.S.A. 2013 Supp. 74-7013, as amended by 2014 SB 349, sec. 12; implementing K.S.A. 2013 Supp. 74-7022, as amended by 2014 SB 349, sec. 15; effective Feb. 22, 1993; amended Feb. 13, 1995; amended Jan. 5, 2007; amended June 29, 2007; amended Sept. 26, 2014.)

66-10-10b. Surveying experience required of a graduate in a four-year related science curriculum other than land surveying or engineering. Each graduate of a four-year curriculum considered by the board to be related to land surveying, which may include geology, mathematics, chemistry, or physics, shall provide documentation of six years of surveying experience. At least four years of this experience shall have been in progressive land surveying, as

defined in K.A.R. 66-10-12(b)(1). (Authorized by K.S.A. 74-7013; implementing K.S.A. 74-7022; effective Nov. 1, 2002; amended Dec. 4, 2020.)

66-10-10c. Surveying experience required of an applicant who completed 12 semester hours of approved surveying coursework. Each applicant meeting the education requirements of K.A.R. 66-9-5(f) shall provide documentation of eight years of surveying experience. At least six years of this experience shall have been in progressive surveying as defined in K.A.R. 66-10-12(b)(1). (Authorized by K.S.A. 74-7013; implementing K.S.A. 74-7022; effective Dec. 4, 2020.)

66-10-11. (Authorized by K.S.A. 74-7013 and 74-7022; implementing K.S.A. 74-7022; effective May 1, 1984; amended May 4, 1992; amended Feb. 22, 1993; amended Feb. 13, 1995; amended Feb. 9, 2001; amended Feb. 3, 2006; revoked Sept. 26, 2014.)

66-10-12. Surveying experience. (a)(1) Surveying experience shall meet the following requirements:

(A) Fall within the definition of “practice of professional surveying” in K.S.A. 74-7003, and amendments thereto; and

(B) be under the direct supervision of a licensed professional surveyor for work performed after May 1, 1988.

(2) Each applicant shall supply references from at least three licensed surveyors or licensed engineers who are familiar with the applicant’s surveying experience. At least one reference shall be from a licensed surveyor.

(b) The following requirements shall be used to assign credit for work experience:

(1) Progressive surveying experience shall include each of the following elements of professional surveying:

- (A) Project management;
- (B) research;
- (C) measurements and locations;
- (D) computations and analysis;
- (E) legal principles and reconciliation;
- (F) land planning and design;
- (G) monumentation; and
- (H) documentation and land information systems.

(2) Surveying experience normally identified with engineering projects, including construction staking, curb and gutter projects, sanitary sewers,

and design surveys for highways or bridges other than those that relate to right-of-way surveys, shall not be considered progressive surveying experience. However, this experience may be considered by the board as basic surveying experience.

(3) Each month of teaching in an accredited engineering or surveying curriculum shall qualify for one month of basic surveying experience. Teaching experience or other allowed experience, but not both, may be approved as experience for any concurrent calendar period. (Authorized by K.S.A. 74-7013; implementing K.S.A. 74-7022; effective May 1, 1984; amended May 4, 1992; amended Feb. 22, 1993; amended Feb. 13, 1995; amended Feb. 4, 2000; amended Feb. 9, 2001; amended Nov. 2, 2001; amended Feb. 3, 2006; amended Sept. 26, 2014; amended Dec. 4, 2020.)

66-10-13. Geology experience. (a) The work experience required of each applicant shall expose the applicant to all phases of work integral to the discipline of geology in which the applicant claims qualification to practice and shall be verified as specified in paragraph (b)(2).

(b) Geology experience shall meet the following requirements:

(1) Fall within the definition of “practice of professional geology” in K.S.A. 74-7003, and amendments thereto; and

(2) be directly supervised by a licensed geologist for work performed after July 1, 2000. However, direct supervision by a licensed geologist shall not be required of the employees of any person, firm, or corporation that does not offer services in the technical professions to the public, although verification by the applicant’s supervisor shall still be required.

(c) The following shall be used to assess credit for work experience:

(1) Experience credit shall not be allowed for work performed before graduation.

(2) One year of credit toward the experience requirement may be given for a master’s degree in geology or in a closely related specialty area acceptable to the board.

(3) Each month of teaching in an accredited geology curriculum shall qualify for one month of geology experience. Teaching experience or other allowed experience, but not both, may be approved as experience for any concurrent calendar period.

(d) Each applicant shall supply references from at least three licensed geologists or licensed engi-

neers who are familiar with the applicant's geology experience. At least two of these references shall be licensed geologists. One of the three references may be a licensed engineer. (Authorized by K.S.A. 74-7013; implementing K.S.A. 74-7041a; effective Feb. 4, 2000; amended Feb. 9, 2001; amended Nov. 2, 2001; amended Nov. 1, 2002; amended Dec. 27, 2013; amended, T-66-5-30-14, July 1, 2014; amended Sept. 26, 2014; amended Dec. 4, 2020.)

66-10-14. Engineering, surveying, and geology experience standards acceptable to the board for reciprocity applicants. (a) Each applicant for a professional engineering license by reciprocity shall meet the following requirements:

(1) Provide verification from the employer of at least four years of experience in the practice of professional engineering, as defined in K.S.A. 74-7003 and amendments thereto. One year of credit toward the experience requirement may be given for a master's or doctoral degree in engineering; and

(2) supply references from at least three engineers who are licensed in the United States and are familiar with the applicant's engineering experience.

(b) Each applicant for a professional surveying license by reciprocity shall meet the following requirements:

(1) Provide verification from the employer of at least eight years of surveying experience or education, or a combination of these, pursuant to K.S.A. 74-7022 and amendments thereto, K.A.R. 66-10-10, K.A.R. 66-10-10a, K.A.R. 66-10-10b, and K.A.R. 66-10-11; and

(2) supply references from at least three licensed surveyors or licensed engineers who are familiar with the applicant's surveying experience. At least one reference shall be from a licensed surveyor.

(c) Each applicant for a professional geology license by reciprocity shall meet the following requirements:

(1) Provide verification from the employer of at least four years of experience in the practice of professional geology, as defined in K.S.A. 74-7003 and amendments thereto. One year of credit toward the experience requirement may be given for a master's degree in geology or in a closely related specialty area acceptable to the board; and

(2) supply references from at least three licensed geologists or licensed engineers who are familiar with the applicant's geology experience.

At least two of these references shall be from licensed geologists. One of the three references may be from a licensed engineer. (Authorized by K.S.A. 2013 Supp. 74-7013, as amended by 2014 SB 349, sec. 12, K.S.A. 2013 Supp. 74-7021, as amended by 2014 SB 349, sec. 14, K.S.A. 2013 Supp. 74-7022, as amended by 2014 SB 349, sec. 15, and 2014 SB 349, sec. 16; implementing K.S.A. 2013 Supp. 74-7018, K.S.A. 2013 Supp. 74-7021, as amended by 2014 SB 349, sec. 14, K.S.A. 2013 Supp. 74-7022, as amended by 2014 SB 349, sec. 15, K.S.A. 74-7024, as amended by 2014 SB 349, sec. 18, and 2014 SB 349, sec. 16; effective Feb. 4, 2005; amended Feb. 3, 2006; amended Nov. 6, 2009; amended Dec. 27, 2013; amended, T-66-5-30-14, July 1, 2014; amended Sept. 26, 2014.)

Article 11.—INTERN CERTIFICATION AND ADMISSION TO THE FUNDAMENTALS EXAMINATION

66-11-1. Intern engineer certificate. An intern engineer certificate shall be issued to each individual who meets the following requirements:

(a) Passes the examination in the fundamentals of engineering as administered by the national council of examiners for engineering and surveying (NCEES);

(b) submits proof of completion of a baccalaureate engineering curriculum or equivalent as described in K.A.R. 66-9-4; and

(c) submits an application, on a form provided by the board, that is approved by the board. (Authorized by K.S.A. 2012 Supp. 74-7013; implementing K.S.A. 2012 Supp. 74-7021; effective May 1, 1984; amended May 4, 1992; amended Feb. 14, 1994; amended Nov. 6, 2009; amended Dec. 27, 2013.)

66-11-1a. Intern geologist certificate. An intern geologist certificate shall be issued to each individual who meets both of the following requirements:

(a) Passes the examination in the fundamentals of geology as administered by the national association of state boards of geology (ASBOG®); and

(b) submits proof of completion of a baccalaureate or master's degree in geology pursuant to K.A.R. 66-9-6. (Authorized by K.S.A. 2013 Supp. 74-7013, as amended by 2014 SB 349, sec. 12; implementing 2014 SB 349, sec. 16; effective Nov. 1, 2002; amended Nov. 6, 2009; amended, T-66-5-30-14, July 1, 2014; amended Sept. 26, 2014.)

66-11-1b. Intern surveyor certificate. An intern surveyor certificate shall be issued to each individual who meets both of the following requirements:

(a) Passes the examination in the fundamentals of surveying as administered by the national council of examiners for engineering and surveying (NCEES); and

(b) submits proof of completion of the surveying curriculum described in K.A.R. 66-9-5. (Authorized by K.S.A. 2013 Supp. 74-7013, as amended by 2014 SB 349, sec. 12; implementing K.S.A. 2013 Supp. 74-7022, as amended by 2014 SB 349, sec. 15; effective Nov. 1, 2002; amended Nov. 6, 2009; amended Sept. 26, 2014.)

66-11-2. (Authorized by K.S.A. 74-7013; implementing K.S.A. 74-7021 and 74-7023; effective May 1, 1984; amended May 4, 1992; amended Feb. 22, 1993; amended Feb. 14, 1994; amended Jan. 5, 2007; revoked Dec. 27, 2013.)

66-11-3. (Authorized by K.S.A. 74-7013; implementing K.S.A. 74-7021; effective May 1, 1984; amended May 4, 1992; amended Feb. 22, 1993; revoked Feb. 13, 1995.)

66-11-4. Admission requirements for fundamentals of geology examination. (a) Each application shall be reviewed by the board to determine whether the requirements for examination have been met. Once the board establishes that the requirements have been met, the applicant shall be allowed to sit for the examination.

(b) The requirements for admission shall be either of the following:

(1) Senior status in a geology curriculum described in K.A.R. 66-9-6; or

(2) completion of a geology curriculum described in K.A.R. 66-9-6. (Authorized by K.S.A. 2013 Supp. 74-7013, as amended by 2014 SB 349, sec. 12; implementing K.S.A. 2013 Supp. 74-7023, as amended by 2014 SB 349, sec. 17, and 2014 SB 349, sec. 16; effective Feb. 4, 2000; amended Nov. 6, 2009; amended, T-66-5-30-14, July 1, 2014; amended Sept. 26, 2014.)

66-11-5. Admission requirements for fundamentals of surveying examination. (a) Each application shall be reviewed by the board to determine whether the requirements for admission to take the fundamentals of surveying examination have been met. Once the board establishes that

these requirements have been met, the applicant shall be allowed to sit for the examination.

(b) Each applicant shall meet the following requirements for admission before taking the examination:

(1)(A) Graduation from an accredited surveying curriculum, as defined in K.A.R. 66-9-5 (b) and (c);

(B) graduation from an approved engineering curriculum specified in K.A.R. 66-9-5(a);

(C) graduation from an approved four-year related science curriculum specified in K.A.R. 66-9-5(d); or

(D) successful completion of the surveying curriculum specified in K.A.R. 66-9-5(e) or (f); and

(2) verification of the surveying experience requirements specified in K.A.R. 66-10-10a, K.A.R. 66-10-10b, or K.A.R. 66-10-10c, as applicable. (Authorized by K.S.A. 74-7013; implementing K.S.A. 74-7022 and K.S.A. 74-7023; effective Nov. 1, 2002; amended Feb. 3, 2006; amended June 29, 2007; amended Jan. 23, 2009; amended Sept. 26, 2014; amended Dec. 4, 2020.)

Article 12.—MINIMUM STANDARDS FOR THE PRACTICE OF PROFESSIONAL SURVEYING

66-12-1. Minimum standards for the practice of professional surveying. The board hereby adopts by reference the “minimum standards for boundary surveys and minimum standards for mortgagee title inspections standards of practice” adopted by the Kansas society of land surveyors on November 21, 2020. (Authorized by and implementing K.S.A. 74-7013; effective May 4, 1992; amended Feb. 14, 1994; amended Feb. 13, 1995; amended March 1, 1996; amended Feb. 4, 2000; amended Jan. 23, 2009; amended June 18, 2010; amended Jan. 6, 2012; amended, T-66-5-30-14, July 1, 2014; amended Sept. 26, 2014; amended May 21, 2021.)

Article 13.—ADMINISTRATIVE PROCEDURES

66-13-1. Types of hearings. (a) Where required by Article 74 of the Kansas Statutes Annotated, hearings and procedures of the board shall be in accordance with the hearings and procedures established by the Kansas administrative procedure act.

(b) Summary adjudicative proceedings pursuant to the Kansas administrative procedure act,

and amendments thereto may be used for the following types of action:

- (1) cease and desist orders;
 - (2) enforcement orders based on stipulations;
 - (3) public or private censures.
- (c) Any party who disagrees with and is subject to a summary adjudicative action may request that the proceedings be converted to a conference adjudicative proceeding or a formal adjudicative proceeding. Upon request, the summary proceeding shall be converted to the appropriate proceeding available under the Kansas administrative procedure act or rules and regulations promulgated thereunder.

(d) The order issued pursuant to subsection (b) of this regulation shall contain a notice informing those who are subject to the order that a request for review or conversion must be made within 15 days.

(e) The presiding officer for summary adjudicative proceedings may be the executive director or the executive director's designee.

(f) Conference adjudicative proceedings pursuant to K.S.A. 77-533, 77-534 and 77-535 of the Kansas administrative procedure act may be used for actions in which:

- (1) there is no disputed issue of material fact; or
- (2) the parties agree to a conference adjudicative proceeding. (Authorized by and implementing K.S.A. 74-7013; effective May 4, 1992; amended Feb. 22, 1993.)

Article 14.—CONTINUING EDUCATION REQUIREMENTS

66-14-1. Requirements. (a) Except as provided in subsections (b) and (c), each licensee shall have completed 30 continuing education units (CEUs) of acceptable continuing education activities during the two-year period immediately preceding the biennial renewal date established in K.A.R. 66-6-6 as a condition for license renewal. At a minimum, 24 of the required 30 CEUs shall be related to health, safety, property, and welfare (HSPW). If the licensee exceeds the requirement in any renewal period, the licensee may carry a maximum of 15 HSPW CEUs forward into the subsequent renewal period. Any licensee may obtain a maximum of 10 HSPW CEUs in any 24-hour period.

(b) Each licensee renewing a license in more than one profession shall have completed 20 HSPW CEUs for each profession every two years before

renewal. At least 16 of the required 20 CEUs for each profession shall be HSPW CEUs. The number of CEUs that may be carried over into the next renewal period for each licensee renewing in more than one profession shall not exceed 15 HSPW CEUs in each technical profession.

(c)(1) Each professional surveyor shall complete at least two CEUs of preapproved continuing education activity on the Kansas minimum standards adopted by reference in K.A.R. 66-12-1(b).

(2) Each provider of a continuing education activity on the Kansas minimum standards specified in paragraph (c)(1) shall submit an application for preapproval of the continuing education activity on a form provided by the board.

(3) To qualify for preapproval, each continuing education activity shall meet the following conditions:

(A) The continuing education activity has a definable purpose and objective.

(B) The continuing education activity is created and conducted by a person qualified in the subject area.

(C) The continuing education activity equals two contact hours.

(D) A certificate will be provided to the participant upon completion of the continuing education activity. (Authorized by K.S.A. 74-7013; implementing K.S.A. 74-7013 and 74-7025; effective March 1, 1996; amended Feb. 4, 2000; amended Jan. 23, 2009; amended Dec. 27, 2013; amended Sept. 1, 2015; amended Dec. 4, 2020.)

66-14-2. Definitions. Each of the following terms used in this article of the board's regulations shall have the meaning specified in this regulation:

(a) "College or university course continuing education unit" means a continuing education unit acceptable to the board for successfully completing a semester credit hour in a course. One semester credit hour shall be the equivalent of 15 CEUs.

(b) "Contact hour" means one clock-hour of at least 50 minutes of instruction or presentation of a continuing education activity.

(c) "Continuing education activity" means an activity that meets the following requirements:

(1) Enhances a licensee's level of technical, professional, managerial, or ethical competence in order to further the goal of protecting the health, safety, property, and welfare of the public (HSPW); and

(2) reinforces the need for life-long learning in order to stay current with changing technology,

changing procedures, changing processes, and established standards.

(d) “Continuing education unit” and “CEU” mean a unit of credit accepted by the board for participation in a continuing education activity as specified in K.A.R. 66-14-3. One contact hour shall be the equivalent of one CEU.

(e) “Sponsor” means an individual, organization, association, institution, or other entity that provides a continuing education activity for the purpose of fulfilling the continuing educational requirements of these regulations. (Authorized by K.S.A. 74-7013; implementing K.S.A. 74-7013 and 74-7025; effective March 1, 1996; amended Jan. 23, 2009; amended Sept. 1, 2015; amended Dec. 4, 2020.)

66-14-3. Continuing education activities.

(a) Continuing education activities that meet the continuing education requirement shall include the following:

(1) Attending professional or technical presentations at meetings, conventions, or conferences;

(2) attending in-house programs sponsored by corporations or other organizations;

(3) successfully completing seminars, tutorials, short courses, correspondence courses, televised courses, or videotaped courses;

(4) making professional or technical presentations at meetings, conventions, or conferences;

(5) teaching or instructing, as described in K.A.R. 66-14-5(d);

(6) authoring published papers, articles, or books;

(7) serving as an officer or committee member of a technical profession society or organization, as described in K.A.R. 66-14-5(f);

(8) successfully completing a course semester credit hour at an approved college or university; and

(9) successfully completing health, safety, property, and welfare continuing education activities, which shall include instruction in technical and professional subjects that safeguard the public and that are within any of the following areas necessary for the evaluation, design, construction, utilization, planning, engineering, implementation, construction, testing, operation, maintenance, and renewal of engineered systems in the built environment:

(A) Practice management focused on areas related to the management of the licensee’s practice and details of running a business;

(B) project management focused on areas related to the management of projects through execution, in the profession of the licensee;

(C) programming and analysis focused on areas related to the evaluation of project requirements, constraints, and opportunities;

(D) project planning and design focused on areas related to the preliminary design of sites, buildings, and environmental considerations;

(E) project development and documentation focused on areas related to the integration and documentation of building systems, material selection, and material assemblies into a project; or

(F) construction and evaluation focused on areas related to construction contract administration and post-occupancy evaluation of projects.

(b) Each of the continuing education activities identified in paragraphs (a)(1), (2), (3), (8), and (9) shall meet all of the following conditions:

(1) The continuing education activity has a definable purpose and objective relevant to the licensee’s field of practice.

(2) The program is conducted by a person qualified in the subject area.

(3) The licensee retains a record of registration and attendance. (Authorized by K.S.A. 74-7013; implementing K.S.A. 74-7013 and 74-7025; effective March 1, 1996; amended Feb. 4, 2005; amended Jan. 23, 2009; amended Sept. 1, 2015; amended Dec. 4, 2020.)

66-14-4. (Authorized by K.S.A. 74-7013, as amended by L. 1995, ch. 104, sec. 1; implementing K.S.A. 74-7025, as amended by L. 1995, ch. 104, sec. 1; effective March 1, 1996; revoked Jan. 23, 2009.)

66-14-5. Computation of credit. Continuing education activities shall be measured in continuing education units (CEUs) and shall be computed as follows:

(a) Successfully completing one contact hour of coursework or seminars at meetings, conventions, conferences, or in-house programs shall be the equivalent of one CEU.

(b) Taking an educational tour of a technically significant project shall be the equivalent of one CEU for each toured project, if the tour is conducted by a sponsor including a college, university, or professional organization.

(c) Preparation and making presentations, as specified in K.A.R. 66-14-3(a)(4), shall constitute four CEUs for the first contact hour of presen-

tation plus one CEU for each additional contact hour of presentation.

(d) Teaching credit shall be valid for teaching a course or seminar in its initial presentation only. Full-time faculty at a college, university, or other educational institution shall otherwise not receive teaching credit for teaching their regularly assigned courses. Teaching or instructing a new college or university course for the first time shall be the equivalent of 10 CEUs.

(e) Authoring a published paper, article, or book shall be the equivalent of one of the following:

(1) 10 CEUs for each book or published paper in the licensee's area of professional practice; or

(2) five CEUs for each paper or article in the licensee's area of professional practice.

(f) Serving as an officer or committee member of a technical profession society or public commissions organization shall be the equivalent of two CEUs. Continuing education units shall be limited to two CEUs for each organization and shall not be earned until the completion of each year of service.

(g) Serving as a mentor or sponsor for the architectural experience program (AXP) of the national council of architectural registration boards (NCARB) shall be the equivalent of two CEUs annually.

(h) Successfully completing one university semester hour of credit shall be the equivalent of 15 CEUs.

(i) Successfully completing one contact hour of professional development self-study coursework that is offered by a third-party sponsor with evidence of achievement with a final graded test shall be the equivalent of one CEU. A maximum of five self-study CEUs may be applied in any one renewal period. Proof of course completion shall be required. (Authorized by K.S.A. 74-7013; implementing K.S.A. 74-7013 and 74-7025; effective March 1, 1996; amended Nov. 2, 2001; amended Feb. 4, 2005; amended Jan. 23, 2009; amended Sept. 1, 2015; amended Dec. 4, 2020.)

66-14-6. Exemptions. To qualify for an exemption from the continuing education requirement, the licensee shall submit an application to the board documenting the existence of one of the following conditions:

(a) The licensee is renewing for the first time.

(b) The licensee is called to active duty in the armed forces of the United States for a period ex-

ceeding 120 consecutive days in a renewal period. This individual may be exempt from obtaining 15 CEUs of the 30 CEUs required during the renewal period.

(c) The licensee chooses to have the license placed on inactive status or emeritus status as specified in K.A.R. 66-6-10. If the licensee elects to return to practice, the licensee shall earn 30 CEUs for the last renewal period or shall meet the requirement specified in K.A.R. 66-14-1(b). (Authorized by K.S.A. 74-7013; implementing K.S.A. 74-7013 and K.S.A. 74-7025; effective March 1, 1996; amended Feb. 4, 2000; amended Nov. 1, 2002; amended Sept. 26, 2014; amended Dec. 4, 2020.)

66-14-7. Records. (a) Each licensee shall maintain records on forms prescribed by the board to support the continuing education units claimed by the licensee.

The records shall include the following:

(1) A log showing the type of continuing education activity claimed and the number of CEUs earned; and

(2) supporting documentation, which may include documentation of either of the following:

(A) Presentations or attendance at meetings, conventions, conferences, programs, seminars, and similar functions, which shall be documented by verification records in the form of completion certificates, sign-in sheets, or other documents supporting evidence of attendance; or

(B) authoring published papers, articles, or books, which shall be documented by proof of publication.

(b) Each licensee shall maintain the records specified in subsection (a) for at least four years and shall provide a copy to the board, upon request. (Authorized by K.S.A. 74-7013; implementing K.S.A. 74-7013 and 74-7025; effective March 1, 1996; amended Jan. 23, 2009; amended Sept. 1, 2015; amended Dec. 4, 2020.)

66-14-8. Reinstatement. Any individual may apply for reinstatement of a cancelled license by performing the following:

(a) Submitting an application for reinstatement;

(b) paying the required reinstatement fee; and

(c) providing evidence of obtaining 30 CEUs in the immediately preceding two-year period. (Authorized by K.S.A. 74-7013; implementing K.S.A. 74-7025; effective March 1, 1996; amended Dec. 4, 2020.)

66-14-9. Proof of compliance. Each licensee shall provide proof of meeting the continuing education requirements of the board. If the licensee fails to furnish the information required by the board, the individual's license shall not be renewed. (Authorized by K.S.A. 74-7013; implementing K.S.A. 74-7025; effective March 1, 1996; amended Dec. 4, 2020.)

66-14-10. (Authorized by K.S.A. 2014 Supp. 74-7013; implementing K.S.A. 2014 Supp. 74-7013 and 74-7025; effective March 1, 1996; amended Feb. 9, 2001; amended June 18, 2010; amended Sept. 1, 2015; revoked Dec. 4, 2020.)

66-14-11. (Authorized by K.S.A. 2014 Supp. 74-7013; implementing K.S.A. 2014 Supp. 74-7013 and 74-7025; effective March 1, 1996; amended Sept. 1, 2015; revoked Dec. 4, 2020.)

66-14-12. Disallowance. If the board disallows any continuing education units claimed by an applicant for license renewal or reinstatement, the applicant shall have 120 days after notification of the disallowance to substantiate the original claim or to earn other continuing education units to meet the minimum requirement. (Authorized by K.S.A. 74-7013; implementing K.S.A. 74-7025; effective March 1, 1996; amended Dec. 4, 2020.)

Article 15.—FEES

66-15-1. Fees. The following nonrefundable fees shall be charged to any applicant, licensee,

or holder of a certificate of authorization for any of the technical professions and shall be collected by the board:

- (a) Application for original license \$60.00
- (b) Application for license by reciprocity \$250.00
- (c) Application for certificate of authorization for a business entity..... \$170.00
- (d) Biennial renewal of an active license..... \$70.00
- (e) Biennial renewal of a certificate of authorization for a business entity..... \$95.00
- (f) Late fee for the untimely renewal of a license or certificate of authorization \$20.00
- (g) Return from inactive license to active practice license \$20.00
- (h) Reinstatement of a cancelled license..... \$100.00
- (i) Replacement of a lost, destroyed, or mutilated license or certificate of authorization \$20.00
- (j) Replacement of any revoked or suspended license \$100.00
- (k) Replacement of a revoked or suspended certificate of authorization \$150.00

(Authorized by K.S.A. 74-7013; implementing K.S.A. 74-7009, 74-7025, and 74-7026; effective Jan. 17, 2020.)

Agency 67

Kansas Board of Examiners in Fitting and Dispensing of Hearing Instruments

Editor's Note:

The name of the board relating to licensing, fitting and dispensing of hearing aids which was set forth in K.S.A. 74-5801 as the Kansas Board of Examiners in Fitting and Dispensing of Hearing Aids, and often referred to as the Board of Hearing Aid Examiners, was changed in the 2006 legislative session to the Kansas Board of Examiners in Fitting and Dispensing of Hearing Instruments. See L. 2006, Ch. 115, §1.

Articles

- 67-1. APPLICATION FOR LICENSE.
- 67-2. EXAMINATIONS.
- 67-3. DUTIES OF SPONSORS OF TEMPORARY LICENSEES.
- 67-4. EDUCATIONAL REQUIREMENTS.
- 67-5. RENEWALS.
- 67-6. UNETHICAL CONDUCT.
- 67-7. CALIBRATION OF AUDIOMETRIC EQUIPMENT.
- 67-8. FILING AND INVESTIGATION OF CHARGES.
- 67-9. SUSPENSION OR REVOCATION PROCEEDINGS.
- 67-10. *EDUCATIONAL REQUIREMENTS. (Not in active use.)*
- 67-11. *RENEWALS. (Not in active use.)*
- 67-12. *FILING AND INVESTIGATION OF CHARGES. (Not in active use.)*
- 67-13. *SUSPENSION OR REVOCATION PROCEEDINGS. (Not in active use.)*
- 67-14. *DISPLAY OF LICENSE. (Not in active use.)*
- 67-15. *STATUS OF RULES. (Not in active use.)*

Article 1.—APPLICATION FOR LICENSE

67-1-1. (Authorized by K.S.A. 74-5803 and 74-5806; effective, E-70-25, May 25, 1970; effective Jan. 1, 1971; revoked May 1, 1982.)

67-1-2. (Authorized by K.S.A. 74-5806; effective, E-70-25, May 25, 1970; effective Jan. 1, 1971; revoked May 1, 1982.)

67-1-3. (Authorized by K.S.A. 74-5803 and 74-5806; effective, E-70-25, May 25, 1970; effective Jan. 1, 1971; revoked May 1, 1982.)

67-1-4. (Authorized by K.S.A. 74-5804 and 74-5806; effective, E-70-25, May 25, 1970; effective Jan. 1, 1971; revoked May 1, 1982.)

67-1-5. Applications. (a) All applications shall be signed by the applicant. In the case of a temporary license, the sponsor's statement shall be signed by the sponsor.

(b) A sponsor is defined as a trained person who holds a valid license or certificate of endorsement issued under K.S.A. 74-5812 or K.S.A. 74-5814.

(c) All applications to the board shall state the name and location of the office or place of business where the hearing aid dispenser's license will be regularly displayed. (Authorized by and implementing K.S.A. 74-5806(i); effective May 1, 1982; amended May 1, 1984.)

67-1-6. False information. An applicant furnishing false information shall be denied the right to take the hearing aid dispenser's examination. If the applicant was licensed before the board's knowledge of the submission of false information, the license shall be subject to suspension or revocation. (Authorized by and implementing K.S.A. 74-5806(i); effective May 1, 1982.)

67-1-7. Change of information. When the name or address of the licensee's business is

changed, notice of this change shall be mailed to the executive officer within 10 days of the change. (Authorized by and implementing K.S.A. 74-5806(i); effective May 1, 1982; amended May 1, 1984.)

67-1-8. Potentially disqualifying civil and criminal records; advisory opinion; fee. (a) Any of the following criminal records may disqualify an applicant from receiving a license:

(1) Conviction of any felony related to the fitting and dispensing of hearing instruments;

(2) conviction of any class A misdemeanor that includes any of the following:

(A) A crime whose victim was a client, customer, or other individual with whom the applicant had a professional or fiduciary relationship;

(B) a crime that occurred at the applicant's work site or while the applicant was on work duty;

(C) a crime involving fraud, theft, or misappropriation of another person's money or property;

(D) a crime classified as a sex offense or requiring registration as a sex offender by the jurisdiction in which the conviction occurred;

(E) a crime involving assault or battery as defined by the jurisdiction in which the conviction occurred;

(F) a crime involving the unlawful use, possession, or distribution of drugs; or

(G) a crime involving the abuse, neglect, or exploitation of a child, elderly person, or disabled person as defined by the jurisdiction in which the conviction occurred; or

(3) conviction of any other misdemeanor that meets both of the following conditions:

(A) The crime involved at least one of the circumstances described in paragraph (a)(2); and

(B)(i) Fewer than five years have passed since the applicant completed that individual's sentence, including any term of incarceration, probation, or community supervision; or

(ii) the applicant has been convicted of another crime in the five years immediately preceding the date of application for license.

(b) Civil records that may disqualify an applicant from receiving a license shall be records of any court judgment or settlement in which the applicant admitted or was found to have engaged in conduct that would constitute a violation of the hearing instrument act or any of the board's regulations. Those records shall not be used to disqualify an applicant for more than five years after the applicant satisfied any judgment or res-

titution ordered by the court or agreed to in the settlement.

(c) Any individual with a criminal or civil record described in this regulation may submit a petition to the board for an informal, advisory opinion concerning whether the individual's civil or criminal record may disqualify the individual from licensure. Each petition shall include the following:

(1) The details of the individual's civil or criminal record, including a copy of the court records or the settlement agreement;

(2) an explanation of the circumstances that resulted in the civil or criminal record; and

(3) a check or money order in the amount of \$50.00. (Authorized by K.S.A. 74-120 and 74-5806; implementing K.S.A. 74-120 and 74-5818; effective Jan. 10, 2020.)

Article 2.—EXAMINATIONS

67-2-1 to 67-2-3. (Authorized by K.S.A. 74-5806; effective, E-70-25, May 25, 1970; effective Jan. 1, 1971; revoked May 1, 1982.)

67-2-4. Examinations. (a) Each applicant shall be required to take an examination that includes both written and practical demonstrations of technical proficiency. Each applicant shall be required to take and pass the written examination before taking the practical examination. The passing score on the practical examination shall be at least 75 percent for each individual section. The written examination shall be graded by the international hearing society, subject to approval by the board.

(b) After the board has approved the applicant's passing score on the written examination, the applicant shall be notified by letter of the date, time, and location of the practical examination. If the board receives proof of an applicant's passing score on the written examination from the international hearing society fewer than 30 days before the next scheduled practical examination and determines that the examination site can accommodate an additional examinee, the applicant may be permitted to take that practical examination. The applicant shall be notified by letter of the results of the practical examination within 30 days from the date of that examination. (Authorized by K.S.A. 74-5806; implementing K.S.A. 74-5812; effective May 1, 1982; amended May 1, 1984; amended March 6, 1995; amended May 12, 2000; amended Feb. 17, 2017; amended Jan. 10, 2020.)

Article 3.—DUTIES OF SPONSORS OF TEMPORARY LICENSEES

67-3-1. (Authorized by K.S.A. 74-5806; effective, E-70-25, May 25, 1970; effective Jan. 1, 1971; revoked May 1, 1982.)

67-3-2. Responsibilities and termination of responsibilities. Responsibility for the ethical conduct of a temporary licensee shall rest with the sponsoring license holder. The sponsoring license holder shall be responsible for insuring that the applicant meets all requirements. The sponsoring license holder may terminate this responsibility by discharging the temporary licensee and returning the license by registered mail to the board with an explanation of why the licensee was terminated. (Authorized by and implementing K.S.A. 74-5806; effective May 1, 1982; amended May 12, 2000.)

67-3-3. Surrender of temporary license. When a temporary licensee is separated from employment by the sponsor, the licensee shall surrender the temporary license to the sponsor. The sponsor shall return the license to the board. Upon application of a new sponsor, a new temporary license shall be issued. (Authorized by K.S.A. 74-5806; implementing K.S.A. 74-5806(i), 74-5812(d); effective May 1, 1982.)

67-3-4. Maximum number of temporary licensees. A sponsor shall be limited to three temporary licensees at any time. (Authorized by K.S.A. 74-5806; implementing K.S.A. 74-5806(i), 74-5812(d); effective July 29, 1991.)

67-3-5. Supervising sponsor. (a) “Supervising sponsor” shall mean the person who supervises a temporary licensee pursuant to K.S.A. 74-5812(d) and amendments thereto.

(b) In addition to the requirement pursuant to K.S.A. 74-5812(d) and amendments thereto that a temporary licensee be under the supervision of a person who holds a valid license, the supervising sponsor shall meet the following requirements:

(1) Have a license that is in good standing with the board, which shall mean that the license is not suspended or subject to any condition or limitation ordered by the board, whether by a consent agreement or a final order of the board; and

(2) have been licensed to engage in the practice of fitting and dispensing hearing instruments for at least five years immediately preceding the date on which supervision begins. (Authorized by and im-

plementing K.S.A. 2008 Supp. 74-5812; effective, T-67-2-8-07, Feb. 8, 2007; effective Aug. 21, 2009.)

Article 4.—EDUCATIONAL REQUIREMENTS

67-4-1 to 67-4-5. (Authorized by K.S.A. 74-5806; effective, E-70-25, May 25, 1970; effective Jan. 1, 1971; revoked May 1, 1982.)

67-4-6. Notice to licensees of educational course offers. Current and temporary licensees shall be notified at least thirty 30 days before the date the educational courses are to be offered by the board. (Authorized by K.S.A. 74-5806; implementing K.S.A. 74-5821; effective May 1, 1982; amended May 1, 1984.)

67-4-7. Educational requirements; duties of executive officer; national organizations; acceptance. (a) A written certificate stating the number of credit hours earned by attending an educational course offered by the board shall be provided to each participant.

(b) Any licensee completing the educational requirements through an annual program presented by an approved national hearing organization shall obtain verification of attendance. The licensee shall present this verification to the board with the annual renewal. (Authorized by K.S.A. 74-5806; implementing K.S.A. 74-5821; effective May 1, 1982; amended May 1, 1984; amended May 12, 2000.)

67-4-8 and 67-4-9. (Authorized by K.S.A. 74-5806; implementing K.S.A. 74-5821; effective May 1, 1982; revoked May 1, 1984.)

67-4-10. Same; local organizations; notice of credit hours. Any licensee who desires to complete the educational requirements set forth in K.S.A. 74-5821, and amendments thereto, through a program other than those specified in K.A.R. 67-4-7(b) shall present to the board the title of the proposed program, the name and qualifications of the instructor, and a short statement of the course content. Whether the proposed program meets the educational requirements set forth in K.S.A. 74-5821, and amendments thereto, shall be determined by the board after reviewing the proposed program, within 60 days of its receipt. The applicant shall be notified by the board of its determination and, if the program is accepted, of the number of credit hours allowed pursuant to K.S.A. 74-5821, and amendments thereto.

(Authorized by K.S.A. 74-5806; implementing K.S.A. 74-5821; effective May 1, 1982; amended May 1, 1984; amended May 12, 2000.)

67-4-11 and 67-4-12. (Authorized by K.S.A. 74-5806; implementing K.S.A. 74-5821; effective May 1, 1982; revoked May 1, 1984.)

67-4-13. Same; temporary applicants. An applicant for a temporary license shall present verification from the sponsoring license holder that the basic educational requirements set forth by the board have been met before the temporary license will be issued. These educational requirements shall cover specific areas of study as set forth in K.S.A. 74-5813, and amendments thereto, and shall not exceed 200 clock hours. (Authorized by and implementing K.S.A. 74-5806; effective May 12, 2000.)

Article 5.—RENEWALS

67-5-1 and 67-5-2. (Authorized by K.S.A. 74-5806; effective, E-70-25, May 25, 1970; effective Jan. 1, 1971; revoked May 1, 1982.)

67-5-3. (Authorized by K.S.A. 74-5806; implementing K.S.A. 1999 Supp. 74-5810a; effective May 1, 1982; amended May 1, 1984; amended June 11, 1990; amended May 12, 2000; revoked May 25, 2007.)

67-5-4. Permanent license renewals and reinstatement. (a) Each person who wishes to renew a permanent license shall submit an application for renewal, the renewal fee specified in K.A.R. 67-5-5, and documentation of compliance with the continuing education requirements and with K.A.R. 67-7-4.

(b) An application for renewal of a permanent license shall be considered delinquent on and after the expiration date of the permanent license, but the license may be renewed within 30 days following the expiration date by submitting payment of the late renewal fee specified in K.A.R. 67-5-5 and documentation of compliance with the continuing education requirements and with K.A.R. 67-7-4. After the grace period of 30 days following the expiration date, the permanent license may be reinstated by submitting payment of the reinstatement fee specified in K.A.R. 67-5-5 and documentation of compliance with the continuing education requirements and with K.A.R. 67-7-4. (Authorized by K.S.A. 2006 Supp. 74-5806; implementing K.S.A. 2006 Supp. 74-5816 and K.S.A. 2006 Supp. 74-5821; effective May 1,

1982; amended June 11, 1990; amended May 12, 2000; amended May 25, 2007.)

67-5-5. Fees. The following fees shall be collected by the board:

- (a)(1) License application..... \$100
- (2) Licensure verification, for each state \$15
- (b)(1) Temporary license \$100
- (2) Temporary license renewal \$100
- (3) Change of supervisor \$15
- (c)(1) License \$100
- (2) License or certificate of endorsement renewal \$100
- (3) License or certificate of endorsement late renewal \$200
- (4) License or certificate of endorsement reinstatement \$300
- (5) Inactive license or renewal of inactive license..... \$25
- (6) Conversion of inactive license to active license..... \$100
- (d)(1) Written examination..... \$35
- (2) Practical examination, each section..... \$25
- (e) Replacement of license or certificate \$15
- (f) Insufficient funds check \$25

(Authorized by and implementing K.S.A. 74-5810a; effective May 25, 2007; amended Feb. 17, 2017; amended Jan. 10, 2020.)

Article 6.—UNETHICAL CONDUCT

67-6-1. (Authorized by K.S.A. 74-5806; effective, E-70-25, May 25, 1970; effective Jan. 1, 1971; revoked May 1, 1982.)

67-6-2. Unethical conduct. Unethical conduct shall mean: (a) Obtaining a fee on the making of a sale of a hearing aid by fraud or misrepresentation;

(b) Directly or indirectly employing a suspended or unlicensed person to perform work covered by this act. A licensee who fits or dispenses a hearing aid during a period of suspension shall have that license revoked;

(c) Using, causing, or promoting the use of advertising matter, promotional literature, testimonials, guarantees, warranties, labels, brands, insignia, or other representations, however disseminated or published, which are misleading, deceiving, or untruthful;

(d) Representing that the services or advice of a person licensed to practice medicine will be used or made available in the selection, fitting, ad-

justment, maintenance, or repair of hearing aids when that is not true;

(e) Permitting another person to use the licensee's license or certificate;

(f) Directly or indirectly giving, or offering to give, money or anything of substantial value to a practitioner who is licensed by the Kansas board of healing arts for the purpose of inducing that practitioner to refer patients or clients to the licensee;

(g) Fitting, dispensing and servicing hearing aids in a grossly incompetent or negligent manner;

(h) Failing to return monies within 20 days after an aid has been returned in good condition and pursuant to contract;

(i) Using the term "hearing" in advertisements, letterheads, business cards, or upon the premises without including the term "hearing aid" in a conspicuous place; and

(j) Advertising or promoting the licensee's business without including the name and address of that business in the advertisement. (Authorized by and implementing K.S.A. 74-5806(i); effective May 1, 1982; amended May 1, 1984.)

67-6-3. (Authorized by and implementing K.S.A. 74-5806(i); effective May 1, 1982; revoked May 1, 1984.)

67-6-4. Office conditions; license identification. (a) The office of each licensee shall contain properly maintained equipment and supplies that are necessary for servicing customers' needs. The office and equipment shall be maintained in a professional and hygienic manner.

(b) An identification card shall be issued to each licensee, and it shall indicate the license expiration date. This card shall be kept in the possession of the licensee, and, upon the request of a customer or board member, the licensee shall permit the identification card to be inspected. (Authorized by and implementing K.S.A. 74-5806; effective May 1, 1982; amended May 1, 1984; amended May 12, 2000.)

Article 7.—CALIBRATION OF AUDIOMETRIC EQUIPMENT

67-7-1 and 67-7-2. (Authorized by K.S.A. 74-5806; effective, E-70-25, May 25, 1970; effective Jan. 1, 1971; revoked May 1, 1982.)

67-7-3. (Authorized by and implementing K.S.A. 74-5806; effective May 1, 1982; revoked May 1, 1984.)

67-7-4. Calibration of audiometric equipment. (a) Any audiometric equipment that is used in connection with the sale or fitting of hearing aids in this state shall be calibrated at intervals not exceeding two years.

(b) Each licensee shall submit to the board written proof of each calibration required in subsection (a) of this rule and regulation within 30 days of the required dates of calibration. Written proof of calibration shall include the following:

(1) The name of the owner;

(2) the make, model, and serial number of the equipment;

(3) the date of calibration;

(4) the printed name of the person and company calibrating the equipment;

(5) the signature of the person calibrating the equipment; and

(6) the name of the licensee submitting proof of calibration.

(c) Any of the following acts may constitute unethical conduct for which a licensee may be disciplined under K.S.A. 74-5818 and amendments thereto:

(1) Provides false or misleading information under this rule and regulation;

(2) uses audiometric equipment that has not been calibrated as required by this rule and regulation; or

(3) uses audiometric equipment the calibration of which has not been reported as required by this rule and regulation. (Authorized by and implementing K.S.A. 74-5806 and K.S.A. 1999 Supp. 74-5818; effective, T-86-16, June 17, 1985; effective May 1, 1986; amended May 12, 2000.)

Article 8.—FILING AND INVESTIGATION OF CHARGES

67-8-1 and 67-8-2. (Authorized by K.S.A. 74-5806; effective, E-70-25, May 25, 1970; effective Jan. 1, 1971; revoked May 1, 1982.)

67-8-3. Complaint. A person may make a complaint before the board against a licensee by filing with the executive officer, in writing, a statement that includes the name of the licensee, the nature of the complaint, and the time and place of the complaint's origin. The complaint shall be signed by the complainant. This information shall be kept confidential unless this information is made the basis of a hearing before the board. (Authorized by and implementing

K.S.A. 74-5806; effective May 1, 1982; amended May 1, 1984.)

67-8-4. Defense of complaint. The board shall investigate all complaints before taking action and making public the name of the dispenser against whom the complaint was filed. The board shall also give a dispenser against whom a complaint has been filed an opportunity to defend his or her actions. This defense shall be filed in writing with the board within 10 days after he or she has been notified. (Authorized by and implementing K.S.A. 74-5806; effective May 1, 1982.)

Article 9.—SUSPENSION OR REVOCATION PROCEEDINGS

67-9-1. (Authorized by K.S.A. 74-5806 (j); effective, E-70-25, May 25, 1970; effective Jan. 1, 1971; revoked May 1, 1982.)

67-9-2. (Authorized by K.S.A. 74-5806; effective, E-70-25, May 25, 1970; effective Jan. 1, 1971; revoked May 1, 1982.)

67-9-3 and 67-9-4. (Authorized by K.S.A. 74-5806 (j); effective, E-70-25, May 25, 1970; effective Jan. 1, 1971; revoked May 1, 1982.)

67-9-5. Proceedings. In proceedings for a suspension or revocation of a license, temporary license, or certificate of endorsement, the licensee shall have the right to request a public hearing or a hearing before the board. The board shall mail to the licensee a notice of the charges against the licensee and shall set forth the time and place of the hearing. The licensee shall have 20 days from the date of the notice in which to prepare for hearing. The licensee, upon request, shall be given the opportunity to produce testimony in the licensee's favor and to confront any witness against the licensee. (Authorized by K.S.A. 74-5806; implementing K.S.A. 74-5806, K.S.A. 74-5820; effective May 1, 1982; amended May 1, 1984.)

67-9-6. Notice. This notice shall specifically state the nature of the complaints against the person to whom they are made and shall set forth the time and place of the hearing. (Authorized by and implementing K.S.A. 74-5806; effective May 1, 1982.)

Article 10.—EDUCATIONAL REQUIREMENTS

67-10-1 to 67-10-10. (Authorized by K.S.A. 74-5821; effective, E-70-25, May 25, 1970; effective Jan. 1, 1971; revoked May 1, 1982.)

Article 11.—RENEWALS

67-11-1 and 67-11-2. (Authorized by K.S.A. 74-5806; effective, E-70-25, May 25, 1970; effective Jan. 1, 1971; revoked May 1, 1982.)

Article 12.—FILING AND INVESTIGATION OF CHARGES

67-12-1 to 67-12-3. (Authorized by K.S.A. 74-5806; effective E-70-25, May 25, 1970; effective Jan. 1, 1971; revoked May 1, 1982.)

Article 13.—SUSPENSION OR REVOCATION PROCEEDINGS

67-13-1 and 67-13-2. (Authorized by K.S.A. 74-5806; effective, E-70-25, May 25, 1970; effective Jan. 1, 1971; revoked May 1, 1982.)

Article 14.—DISPLAY OF LICENSE

67-14-1 to 67-14-4. (Authorized by K.S.A. 74-5806; effective, E-70-25, May 25, 1970; effective Jan. 1, 1971; revoked May 1, 1982.)

Article 15.—STATUS OF RULES

67-15-1. (Authorized by K.S.A. 74-5806; effective, E-70-25, May 25, 1970; effective Jan. 1, 1971; revoked May 1, 1982.)

Agency 68

State Board of Pharmacy

Articles

- 68-1. REGISTRATION AND EXAMINATION OF PHARMACISTS.
- 68-2. DRUGSTORES.
- 68-3. RETAIL DEALER'S PERMIT.
- 68-4. MANUFACTURERS. (*Not in active use.*)
- 68-5. GENERAL RULES.
- 68-6. POISONS; ADDITIONS AND DELETIONS TO STATUTORY LIST. (*Not in active use.*)
- 68-7. MISCELLANEOUS PROVISIONS.
- 68-8. ADVERTISING.
- 68-9. AUTOMATED PRESCRIPTION SYSTEMS.
- 68-10. NUCLEAR PHARMACY. (*Not in active use.*)
- 68-11. FEES.
- 68-12. RESALE OF MEDICATION.
- 68-13. PARENTERAL PRODUCTS.
- 68-14. WHOLESALE DISTRIBUTORS.
- 68-15. NONPRESCRIPTION WHOLESALE DISTRIBUTORS.
- 68-16. CANCER DRUG REPOSITORY PROGRAM. (*Not in active use.*)
- 68-18. UTILIZATION OF UNUSED MEDICATIONS.
- 68-19. CONTINUOUS QUALITY ASSURANCE PROGRAMS.
- 68-20. CONTROLLED SUBSTANCES.
- 68-21. PRESCRIPTION MONITORING PROGRAM.
- 68-22. ELECTRONIC SUPERVISION OF MEDICAL CARE FACILITY'S PHARMACY PERSONNEL.

Article 1.—REGISTRATION AND EXAMINATION OF PHARMACISTS

68-1-1. (Authorized by K.S.A. 1975 Supp. 65-1630; effective Jan. 1, 1966; revoked, E-76-31, Aug. 11, 1975; revoked May 1, 1976.)

68-1-1a. Application for registrations or permits; withdrawal of application. After an application for a registration or permit has been accepted, the failure of the applicant or authorized representative to respond to official correspondence regarding the application, when sent by registered or certified mail, return receipt requested, shall be deemed to be a withdrawal of the application. (Authorized by and implementing K.S.A. 65-1630 and K.S.A. 2000 Supp. 65-1631; effective, E-76-31, Aug. 11, 1975; effective May 1, 1976; amended May 1, 1978; amended May 1, 1983; amended June 6, 1994; amended March 20, 1995; amended May 31, 2002.)

68-1-1b. Continuing education for pharmacists. (a)(1) "Continuing education" shall mean an organized and systematic education experience beyond basic preparation that is designed to achieve the following:

(A)(i) Increase knowledge, improve skills, or enhance the practice of pharmacy; or

(ii) improve protection of the public health and welfare; and

(B) ensure continued competence.

(2) "ACPE-NABP CPE monitor service" shall mean the electronic tracking service of the accreditation council for pharmacy education and the national association of boards of pharmacy for monitoring continuing education that pharmacists receive from continuing education providers.

(b) Thirty clock-hours of continuing education shall be required for renewal of a pharmacist license during each licensure period. Continuing education clock-hours may be prorated for licensure periods that are less than biennial at a rate of 1.25 clock-hours per month.

(c)(1) Each continuing education program shall be approved by the board. Each provider or licensee shall submit the continuing education program to the board at least 10 days in advance for consideration for approval. Each provider shall advertise the continuing education program as having only pending approval until the provider is notified of approval by the board.

(2) Continuing education programs shall not include in-service programs, on-the-job training, orientation for a job, an education program open to the general public, a cardiopulmonary resuscitation (CPR) course, a basic cardiac life support (BCLS) course, emergency or disaster training or direct experience at a healthcare facility under a code blue, testing out of a course, and medical school courses.

(3) Each provider shall furnish a certificate of completion to the licensee for each continuing education program that the licensee has successfully completed. Each certificate shall be in a format approved by the board and shall include the following:

- (A) The licensee's name;
- (B) the title and date of the approved continuing education program;
- (C) the name of the provider;
- (D) the number of continuing education clock-hours approved by the board;
- (E) the number of continuing education clock-hours completed by the licensee;
- (F) the approved program number issued by the board; and
- (G) the provider's dated signature, certifying program completion.

(d) Within 30 days of completion, each licensee shall submit to the board proof of completion of any approved continuing education program not reported to the ACPE-NABP CPE monitor service. No credit shall be given for any certificate of completion received by the board after the June 30 expiration date of each licensure period.

(e) A licensee shall not be allowed to carry forward excess clock-hours earned in one licensure period into the next licensure period.

(f) The required continuing education shall be obtained in the two-year licensure period ending on the June 30 expiration date of each license. (Authorized by K.S.A. 65-1630; implementing K.S.A. 2015 Supp. 65-1632; effective, E-76-31, Aug. 11, 1975; effective May 1, 1976; amended May 1, 1978; amended May 1, 1983; amended May 1, 1986; amended May 1, 1987; amended

July 1, 1990; amended July 31, 1998; amended Oct. 20, 2006; amended April 23, 2010; amended Aug. 19, 2016.)

68-1-1c. (Authorized by and implementing K.S.A. 1982 Supp. 65-1631; effective May 1, 1983; revoked May 1, 1987.)

68-1-1d. Approved schools. The following may be recognized and approved by the board: (a) Any school or college of pharmacy or department of a university accredited by the accreditation council for pharmacy education; and

(b) any other school or college of pharmacy or department of a university that, as determined by the board, has a standard of education not below that of the university of Kansas school of pharmacy. (Authorized by and implementing K.S.A. 65-1631; effective May 1, 1983; amended May 1, 1987; amended Oct. 20, 2006.)

68-1-1e. (Authorized by and implementing K.S.A. 65-1631; effective May 1, 1983; amended May 1, 1987; revoked March 22, 2002.)

68-1-1f. Foreign graduates. (a) Each applicant who has graduated from a school or college of pharmacy or a pharmacy department of a university located outside of the United States or who is not a citizen of the United States shall provide proof that the applicant has reasonable ability to communicate verbally and in writing with the general public in English as specified in this regulation.

(b) Each foreign applicant shall be required to meet the English language requirements for licensure under the pharmacy act of the state of Kansas by passing the internet-based test of English as a foreign language (TOEFL iBT) with at least the following minimum scores:

- (1) 22 in reading;
- (2) 21 in listening;
- (3) 26 in speaking; and

(4) 24 in writing. (Authorized by K.S.A. 65-1630 and K.S.A. 65-1631; implementing K.S.A. 65-1631; effective May 1, 1983; amended June 6, 1994; amended March 20, 1995; amended Aug. 1, 1997; amended Oct. 20, 2006; amended Aug. 19, 2016.)

68-1-1g. (Authorized by and implementing K.S.A. 65-1631; effective Oct. 20, 2006; revoked Aug. 19, 2016.)

68-1-1h. Foreign pharmacy graduate equivalency examination. In addition to meeting the requirements of K.A.R. 68-1-1f, each for-

eign applicant shall meet the following requirements for licensure under the pharmacy act of the state of Kansas:

(a) Pass the foreign pharmacy graduate equivalency examination (FPGEE) with a score of at least 75;

(b) obtain foreign pharmacy graduate examination committee (FPGEC) certification from the national association of boards of pharmacy (NABP); and

(c) submit a copy of the FPGEC certificate to the board. (Authorized by and implementing K.S.A. 65-1631; effective Oct. 23, 2009.)

68-1-2. Grades required. (a) Each successful applicant for licensure by examination under the pharmacy act of the state of Kansas shall:

(1) pass an examination approved by the board; and

(2) obtain a grade of not less than 75% on the law examination administered by the board.

(b) Each successful applicant for licensure by reciprocity from another state shall score not less than 75% on the law examination administered by the board.

(c) This regulation shall be effective on May 1, 1989. (Authorized by and implementing K.S.A. 1987 Supp. 65-1631(c), as amended by L. 1988, Ch. 243, Sec. 7; effective Jan. 1, 1966; amended, E-76-31, Aug. 11, 1975; amended May 1, 1976; amended May 1, 1978; amended May 1, 1980; amended May 1, 1985; amended May 1, 1986; amended May 1, 1989.)

68-1-2a. Pharmacist-in-charge examination; acknowledgment. (a) Each prospective pharmacist-in-charge shall take a pharmacy law examination administered by the board, with a passing score of at least 85%. The examination shall include the statutes and rules and regulations, both state and federal, governing the practice of pharmacy.

(b) Each pharmacy or registrant required to have a pharmacist-in-charge that operates for more than 30 days without a designated pharmacist-in-charge who meets the requirements of this regulation shall be deemed to be in violation of K.S.A. 65-1627(e) and amendments thereto.

(c) A pharmacist who has already passed the pharmacist-in-charge examination required by the board shall not be required to retake the examination upon assuming the duties of a

pharmacist-in-charge but shall, at the time of assuming these duties, sign an acknowledgment that states both of the following:

(1) The pharmacist is not currently prevented from performing the duties of a pharmacist-in-charge by an order of the board.

(2) The pharmacist has reviewed the pharmacy act and the board's regulations and is aware of the responsibilities of a pharmacist-in-charge.

The pharmacist-in-charge shall immediately provide this acknowledgment to the board. A copy of the acknowledgment shall be maintained at the premises where the pharmacist is functioning as a pharmacist-in-charge. (Authorized by K.S.A. 2000 Supp. 65-1643 and K.S.A. 2000 Supp. 65-1627; implementing K.S.A. 2000 Supp. 65-1643, K.S.A. 2000 Supp. 65-1627 and K.S.A. 2000 Supp. 65-1626, as amended by L. 2001, ch. 31, sec. 1; effective Aug. 1, 1997; amended May 31, 2002.)

68-1-3. (Authorized by and implementing K.S.A. 65-1630; effective Jan. 1, 1966; amended Jan. 1, 1967; amended, E-76-31, Aug. 11, 1975; amended May 1, 1976; amended May 1, 1978; amended May 1, 1983; revoked March 22, 2002.)

68-1-3a. Qualifying pharmaceutical experience. (a) Pharmaceutical experience that qualifies as one year of experience shall consist of 1,740 clock-hours as a pharmacy student or registered intern while being supervised by a preceptor. A preceptor may supervise at any time no more than two individuals who are pharmacy students or interns. All hours worked when the pharmacy student or intern is in regular attendance at an approved school of pharmacy and during vacation times and other times when the pharmacy student or intern is enrolled but not in regular attendance at an approved school of pharmacy may be counted as qualified hours. However, not more than 60 hours of work shall be acquired in any one week.

(b) No time may accrue to a pharmacy student before acceptance in an approved school of pharmacy or before being registered as an intern with the board. However, any foreign pharmacy graduate who has passed equivalent examinations as specified in K.A.R. 68-1-1f and K.A.R. 68-1-1h may apply for registration as an intern.

(c) Once registered as an intern, the intern shall complete all required hours within six years.

(d) Reciprocity shall not be denied to any applicant who is otherwise qualified and who meets either of the following conditions:

(1) Has met the internship requirements of the state from which the applicant is reciprocating; or

(2) has at least one year of experience as a registered pharmacist. (Authorized by K.S.A. 65-1630; implementing K.S.A. 65-1631; effective, E-76-31, Aug. 11, 1975; effective May 1, 1976; amended May 1, 1983; amended May 1, 1985; amended May 31, 2002; amended Jan. 14, 2005; amended Oct. 23, 2009; amended Dec. 15, 2017.)

68-1-4. (Authorized by K.S.A. 1975 Supp. 65-1630; effective Jan. 1, 1966; revoked, E-76-31, Aug. 11, 1975; revoked May 1, 1976.)

68-1-5. (Authorized by K.S.A. 1975 Supp. 65-1630; effective Jan. 1, 1966; amended, E-76-31, Aug. 11, 1975; amended May 1, 1976; revoked May 1, 1987.)

68-1-6. (Authorized by K.S.A. 1975 Supp. 65-1630; effective Jan. 1, 1966; revoked, E-76-31, Aug. 11, 1975; revoked May 1, 1976.)

68-1-7. Reinstatement after lapse. Upon failure of a pharmacist to renew a registration under the provisions of K.S.A. 65-1632 for three consecutive years or more, the board shall require the applicant to take a written or oral examination prior to reinstatement. Upon satisfactory completion of that examination and compliance with the provisions of K.S.A. 65-1632, the applicant shall be entitled to a renewal of registration if no grounds exist for denying the renewal. (Authorized by and implementing K.S.A. 65-1630; effective Jan. 1, 1966; amended, E-76-31, Aug. 11, 1975; amended May 1, 1976; amended May 1, 1983.)

68-1-8. Registered pharmacist to be on duty. It shall be the duty of the pharmacist in charge of every premise having a pharmacy registration, to ensure that a registered pharmacist is on duty at all times during which the pharmacy is open. (Authorized by and implementing K.S.A. 65-1630; effective Jan. 1, 1966; amended, E-76-31, Aug. 11, 1975; amended May 1, 1976; amended May 1, 1978; amended May 1, 1983.)

Article 2.—DRUGSTORES

68-2-1 to 68-2-4. (Authorized by K.S.A. 1975 Supp. 65-1630; effective Jan. 1, 1966; revoked, E-76-31, Aug. 11, 1975; revoked May 1, 1976.)

68-2-5. Pharmacist-in-charge; notice to board. Each pharmacist shall submit to the

board, on a form provided by the board, notice of ceasing to serve as the pharmacist-in-charge at a pharmacy or registrant required to have a pharmacist-in-charge no later than five days after ceasing to serve as the pharmacist-in-charge. (Authorized by K.S.A. 65-1630; implementing K.S.A. 2019 Supp. 65-1626, K.S.A. 65-1637c, and K.S.A. 65-1643; effective Jan. 1, 1966; amended, E-76-31, Aug. 11, 1975; amended May 1, 1976; amended May 1, 1978; amended May 1, 1988; amended Aug. 1, 1997; amended March 22, 2002; amended Feb. 7, 2020.)

68-2-6 to 68-2-8. (Authorized by K.S.A. 1975 Supp. 65-1630; effective Jan. 1, 1966; revoked, E-76-31, Aug. 11, 1975; revoked May 1, 1976.)

68-2-9. Change of ownership; duty of registrant to notify board. Each registrant shall notify the executive secretary of the board in writing of any change in majority ownership of the operation for which the registration was issued within five days after the date the change in ownership becomes effective. (Authorized by K.S.A. 65-1630; implementing K.S.A. 2001 Supp. 65-1643; effective Jan. 1, 1966; amended, E-76-31, Aug. 11, 1975; amended May 1, 1976; amended May 1, 1978; amended Aug. 1, 1997; amended Feb. 7, 2003.)

68-2-10. Cessation of operations. (a) When any pharmacy ceases operations at the location for which the registration was received, the pharmacist-in-charge shall meet the following requirements:

(1) Within five days after ceasing operations at that location, submit to the board, on a form provided by the board, notice of cessation of pharmacy operations, which shall include the following:

(A) The date the pharmacy ceased operations;
 (B) a signed statement attesting that an inventory of all controlled substances was conducted;
 (C) the location, pharmacy registration number, contact information, and manner of disposition of the remaining stocks of drugs; and

(D) the location, pharmacy registration number, contact information, and manner of disposition of all records required by the Kansas pharmacy practice act to be maintained; and

(2) no more than 10 days after ceasing operations at that location, notify each patient household that has received a prescription from the pharmacy within the previous two-year period, by U.S. mail, phone, text message, or electronic mail,

of the cessation of operations of the pharmacy and the contact information and location for obtaining copies of patient records.

(b) The pharmacist-in-charge of any pharmacy that acquires patient records from a pharmacy that ceases operation shall be responsible for the preservation of the acquired records for the remainder of the term that the records are required by the Kansas pharmacy practice act to be preserved.

(c) In the absence of a pharmacist-in-charge, the owner of each pharmacy shall meet the requirements of this regulation. (Authorized by K.S.A. 65-1630; implementing K.S.A. 65-1642 and K.S.A. 65-1643; effective Jan. 1, 1966; amended, E-76-31, Aug. 11, 1975; amended May 1, 1976; amended Feb. 7, 2003; amended Jan. 3, 2020.)

68-2-11. Security. Each premises for which a pharmacy registration is issued, except medical care facilities, shall be constructed so that the pharmacy can be secured to prevent access to prescription-only drugs when a pharmacist is not on duty. (Authorized by K.S.A. 65-1630; implementing K.S.A. 2001 Supp. 65-1637 and K.S.A. 2001 Supp. 65-1643; effective Jan. 1, 1966; amended, E-76-31, Aug. 11, 1975; amended May 1, 1976; amended Feb. 7, 2003.)

68-2-12. (Authorized by K.S.A. 65-1630; effective Jan. 1, 1966; amended, E-76-31, Aug. 11, 1975; amended May 1, 1976; amended May 1, 1978; revoked May 1, 1983.)

68-2-12a. Minimum requirements for library, equipment, and supplies. (a) Each registered pharmacy, other than a medical care facility pharmacy, shall have a reference library, either immediately accessed by a computer or printed, that is updated at least annually and that includes the following:

(1) A current copy of the Kansas pharmacy practice act, the Kansas uniform controlled substances act, and the regulations under both acts;

(2) a drug information reference specifically drafted for patients, which may include the "professional's guide to patient drug facts," published by facts and comparisons, or "United States pharmacopeia dispensing information," volume II;

(3) one recognized reference in toxicology, pharmacology, and drug interactions;

(4) one recognized reference in drug equivalencies; and

(5) a medical dictionary.

(b) Each registered pharmacy shall also have on the premises the equipment and supplies necessary to compound, dispense, label, administer, and distribute drugs. The equipment shall be in good repair and shall be available in sufficient quantities to meet the needs of the practice of pharmacy conducted there. (Authorized by K.S.A. 65-1630; implementing K.S.A. 2001 Supp. 65-1642; effective May 1, 1983; amended May 1, 1986; amended May 1, 1987; amended April 30, 1990; amended March 20, 1995; amended Dec. 27, 1999; amended Feb. 7, 2003.)

68-2-13. (Authorized by K.S.A. 1975 Supp. 65-1630; effective Jan. 1, 1966; revoked, E-76-31, Aug. 11, 1975; revoked May 1, 1976.)

68-2-14. (Authorized by K.S.A. 1975 Supp. 65-1630; effective Jan. 1, 1966; amended, E-76-31, Aug. 11, 1975; amended May 1, 1976; revoked May 1, 1987.)

68-2-15. Nametags. (a) The following individuals shall wear a visible nametag under the following conditions:

(1) Each pharmacist, pharmacy student, and intern, while performing pharmacist functions in a pharmacy; and

(2) each pharmacy technician, while performing pharmacy technician functions in a pharmacy.

(b) Each nametag shall include the person's name and the designation of whether the person is a pharmacist, a pharmacy student, an intern, or a pharmacy technician. (Authorized by K.S.A. 65-1630; implementing K.S.A. 2001 Supp. 65-1642; effective Jan. 1, 1966; amended, E-76-31, Aug. 11, 1975; amended May 1, 1976; amended April 18, 2003.)

68-2-16. Branches, agents and pickup stations. No pharmacy nor pharmacist shall have, participate in, or permit an arrangement, branch, connection or affiliation whereby prescriptions are solicited, accepted, collected, or picked up, or advertised to be such, from or at any location other than a pharmacy for which a registration in good standing has been issued by the board. (Authorized by K.S.A. 1975 Supp. 65-1630; effective Jan. 1, 1966; amended, E-76-31, Aug. 11, 1975; amended May 1, 1976.)

68-2-17. (Authorized by K.S.A. 1975 Supp. 65-1630; effective Jan. 1, 1966; amended, E-76-31, Aug. 11, 1975; revoked May 1, 1976.)

68-2-18. (Authorized by K.S.A. 65-1630; effective Jan. 1, 1966; revoked May 1, 1987.)

68-2-19. Prescription copies. (A) No registered pharmacist shall fill, and no pharmacy shall permit the filling of, a copy of a prescription. (B) Every reference copy of a prescription shall bear the following legend—"This prescription copy is issued for reference only." (Authorized by K.S.A. 1975 Supp. 65-1630; effective Jan. 1, 1966; amended, E-76-31, Aug. 11, 1975; amended May 1, 1976.)

68-2-20. Pharmacist's function in filling a prescription. (a) As used in this regulation, the following terms shall have the meanings specified in this subsection:

(1) "Authorized prescriber" shall mean a "practitioner" as defined by K.S.A. 65-1626(gg) and amendments thereto, a "mid-level practitioner" as defined by K.S.A. 65-1626(ss) and amendments thereto, or a person authorized to issue a prescription by the laws of another state.

(2) "Legitimate medical purpose," when used in regard to the dispensing of a prescription drug, shall mean that the prescription for the drug was issued with a valid preexisting patient-prescriber relationship rather than with a relationship established through an internet-based questionnaire, an internet-based consultation, or a telephonic consultation.

(b) Those judgmental functions that constitute the filling or refilling of a prescription shall be performed only by a licensed pharmacist or by a pharmacy student or intern under the direct supervision of a licensed pharmacist and shall consist of the following steps:

(1) Read and interpret the prescription of the prescriber;

(2) limit any filling or refilling of a prescription to one year from the date of origin, except as provided by K.S.A. 65-1637 and amendments thereto;

(3) verify the compounding, counting, and measuring of ingredients and document the accuracy of the prescription;

(4) identify, in the pharmacy record, the pharmacist who verifies the accuracy of the completed prescription;

(5) personally offer to counsel each patient or the patient's agent with each new prescription dispensed, once yearly on maintenance medications, and, if the pharmacist deems appropriate, with prescription refills in accordance with sub-

section (c);

(6) ensure the proper selection of the prescription medications, devices, or suppliers as authorized by law;

(7) when supervising a pharmacy technician, delegate only nonjudgmental duties associated with the preparation of medications and conduct in-process and final checks;

(8) prohibit all other pharmacy personnel from performing those judgmental functions restricted to the pharmacist; and

(9) interpret and verify patient medication records and perform drug regimen reviews.

(c) In order to comply with paragraph (b)(5), the pharmacist or the pharmacy student or intern under the pharmacist's supervision shall perform the following:

(1) Personally offer to counsel each patient or the patient's agent with each new prescription dispensed, once yearly on maintenance medications, and, if the pharmacist deems appropriate, with prescription refills;

(2) provide the verbal counseling required by this regulation in person, whenever practical, or by the utilization of a telephone service available to the patient or patient's agent. Any pharmacist may authorize an exception to the verbal counseling requirement on a case-by-case basis for refills, maintenance medications, or continuous medications for the same patient;

(3) when appropriate, provide alternative forms of patient information to supplement verbal patient counseling. These supplemental forms of patient information may include written information, leaflets, pictogram labels, video programs, and auxiliary labels on the prescription vials. However, the supplemental forms of patient information shall not be used as a substitute for the verbal counseling required by this regulation;

(4) encourage proper patient drug utilization and medication administration. The pharmacist shall counsel the patient or patient's agent on those elements that, in the pharmacist's professional judgment, are significant for the patient. These elements may include the following:

(A) The name and a description of the prescribed medication or device;

(B) the dosage form, dosage, route of administration, and duration of therapy;

(C) special directions and precautions for preparation, administration, and use by the patient;

(D) common side effects, adverse effects or interactions, or therapeutic contraindications that

could be encountered; the action required if these effects, interactions, or contraindications occur; and any activities or substances to be avoided while using the medication;

(E) techniques for self-monitoring drug therapy;

(F) proper storage requirements; and

(G) action to be taken in the event of a missed dose; and

(5) expressly notify the patient or the patient's agent if a brand exchange has been exercised.

(d) Nothing in this regulation shall be construed to require a pharmacist to provide the required patient counseling if either of the following occurs:

(1) The patient or the patient's agent refuses counseling.

(2) The pharmacist, based upon professional judgment, determines that the counseling may be detrimental to the patient's care or to the relationship between the patient and the patient's prescriber.

(e) Each pharmacist shall make a reasonable effort to ensure that any prescription, regardless of the means of transmission, has been issued for a legitimate medical purpose by an authorized prescriber. (Authorized by K.S.A. 65-1630; implementing K.S.A. 2008 Supp. 65-1626, K.S.A. 2008 Supp. 65-1637, and K.S.A. 2008 Supp. 65-1642; effective, E-77-39, July 22, 1976; effective Feb. 15, 1977; amended May 1, 1978; amended May 1, 1988; amended Nov. 30, 1992; amended March 20, 1995; amended Aug. 14, 1998; amended Dec. 27, 1999; amended Feb. 7, 2003; amended Jan. 8, 2010.)

68-2-21. (Authorized by K.S.A. 65-1630; implementing K.S.A. 1984 Supp. 65-1642; effective May 1, 1986; revoked May 1, 1987.)

68-2-22. Electronic transmission of a prescription. (a) Each prescription drug order transmitted electronically shall be issued for a legitimate medical purpose by a prescriber acting within the course of legitimate professional practice.

(b) Each prescription drug order communicated by way of electronic transmission shall meet these requirements:

(1) Be transmitted to a pharmacist in a licensed pharmacy of the patient's choice, exactly as transmitted by the prescriber;

(2) identify the transmitter's phone number for verbal confirmation, the time and date of transmission, and the identity of the pharmacy intend-

ed to receive the transmission, as well as any other information required by federal and state laws and regulations;

(3) be transmitted by an authorized prescriber or the prescriber's designated agent; and

(4) be deemed the original prescription drug order, if the order meets the requirements of this regulation.

(c) Any prescriber may authorize an agent to communicate a prescription drug order orally or electronically to a pharmacist in a licensed pharmacy if the identity of the transmitting agent is included in the order.

(d) Each pharmacist shall exercise professional judgment regarding the accuracy, validity, and authenticity of the prescription drug order communicated by way of electronic transmission, consistent with existing federal and state laws and regulations.

(e) All electronic equipment for receipt of prescription drug orders communicated by way of electronic transmission shall be maintained so as to ensure against unauthorized access.

(f) Persons other than those bound by a confidentiality agreement shall not have access to pharmacy records containing confidential information or personally identifiable information concerning the pharmacy's patients.

(g) If communicated by electronic transmission, the prescription drug order shall be maintained in hard copy or as an electronic document for the time required by existing federal or state laws and regulations, whichever is longer.

(h) Any prescription drug order, including that for any controlled substance listed in schedules II, III, IV, and V, may be communicated by way of electronic transmission, if all requirements of K.A.R. 68-20-10a are met.

(i) After the pharmacist views the prescription drug order, this order shall be immediately reduced to a hard copy or an electronic document and shall contain all information required by federal and state laws and regulations.

(j) Each electronic prescription drug order created and transmitted in conformance with 21 C.F.R. part 1311 shall be considered an original, written, signed prescription drug order. (Authorized by K.S.A. 65-1630 and K.S.A. 2014 Supp. 65-1642; implementing K.S.A. 2014 Supp. 65-1637b and K.S.A. 2014 Supp. 65-1642; effective Feb. 5, 1999; amended Dec. 27, 1999; amended June 2, 2006; amended Oct. 23, 2009; amended May 20, 2011; amended Feb. 13, 2015.)

68-2-23. Notification to board; disciplinary action. Each pharmacy owner shall notify the board in writing within 30 days of any denial, limitation, suspension, revocation, voluntary surrender, or other disciplinary action taken by the state of Kansas or another jurisdiction against the pharmacy or the pharmacy owner or any application, license, registration, or permit held by the pharmacy owner. (Authorized by K.S.A. 65-1630; implementing K.S.A. 2017 Supp. 65-1627; effective Jan. 4, 2019.)

Article 3.—RETAIL DEALER’S PERMIT

68-3-1. (Authorized by K.S.A. 1975 Supp. 65-1630; effective Jan. 1, 1966; revoked, E-76-31, Aug. 11, 1975; revoked May 1, 1976.)

68-3-2. (Authorized by K.S.A. 1977 Supp. 65-1630; effective Jan. 1, 1966; amended, E-76-31, Aug. 11, 1975; amended May 1, 1976; revoked May 1, 1978.)

68-3-3 and 68-3-4. (Authorized by K.S.A. 1975 Supp. 65-1630; effective Jan. 1, 1966; revoked, E-76-31, Aug. 11, 1975; revoked May 1, 1976.)

68-3-5. Retail dealer permit required. A retail dealer may engage in the selling in Kansas of nonprescription drugs that are prepackaged, fully prepared by the manufacturer or distributor for use by the consumer, and labeled in accordance with the requirements of the state and federal food, drug, and cosmetic acts only if the retail dealer has obtained a permit to do so from the board. (Authorized by K.S.A. 65-1630; implementing K.S.A. 1998 Supp. 65-1643; effective Sept. 24, 1999.)

68-3-6. Minimum required information for permit. (a) Each retail dealer shall provide the board with the following minimum information as part of the application for the permit required by K.S.A. 65-1643(f), and amendments thereto, and as part of any renewal of this permit:

(1) The name, full business address, and telephone number of the permit holder;

(2) each trade or business name used by the permit holder; and

(3) the address, telephone number, and name of the contact person for each facility used by the permit holder for the storage, handling, and distribution of drugs.

(b) Each permit holder shall submit all revised

information required by subsection (a) within 30 days after any change in that information. (Authorized by K.S.A. 65-1630; implementing K.S.A. 1998 Supp. 65-1643; effective Sept. 24, 1999.)

Article 4.—MANUFACTURERS

68-4-1 to 68-4-4. (Authorized by K.S.A. 1975 Supp. 65-1630; effective Jan. 1, 1966; revoked, E-76-31, Aug. 11, 1975; revoked May 1, 1976.)

68-4-5. (Authorized by K.S.A. 1975 Supp. 65-1630; effective Jan. 1, 1966; amended, E-76-31, Aug. 11, 1975; amended May 1, 1976; revoked May 1, 1986.)

Article 5.—GENERAL RULES

68-5-1. Definitions. The following words and phrases as used throughout these rules and regulations shall have the meanings specified below, unless otherwise indicated by the context of the specific regulation.

(a) Beyond-use date. The term “beyond-use date” means a date placed on a prescription label at the time of dispensing, repackaging, or prepackaging that is intended to indicate to the patient or caregiver a time beyond which the contents of the prescription are not recommended to be used.

(b) Intern. The word “intern” means an individual who is a prospective candidate for examination as a licensed pharmacist and who is qualified to receive and is obtaining pharmaceutical experience as set forth in the pharmacy act of the state of Kansas and its rules and regulations.

(c) Medication order. The term “medication order” means an order by a prescriber for a registered patient of a Kansas licensed medical care facility.

(d) Prescriber. The word “prescriber” means a person who is authorized to issue a prescription order. (Authorized by and implementing K.S.A. 65-1630; effective Jan. 1, 1966; amended Jan. 1, 1967; amended Jan. 1, 1968; amended, E-76-31, Aug. 11, 1975; amended May 1, 1976; amended May 1, 1988; amended April 28, 2000.)

68-5-2. (Authorized by K.S.A. 65-1630; effective Jan. 1, 1966; amended, E-76-31, Aug. 11, 1975; amended May 1, 1976; revoked May 1, 1980.)

68-5-3 to 68-5-5. (Authorized by K.S.A. 1975 Supp. 65-1630; effective Jan. 1, 1966; revoked, E-76-31, Aug. 11, 1975; revoked May 1, 1976.)

68-5-6. (Authorized by K.S.A. 1977 Supp. 65-1630; effective Jan. 1, 1966; amended, E-76-31, Aug. 11, 1975; amended May 1, 1976; amended May 1, 1978; revoked May 1, 1987.)

68-5-7 and 68-5-8. (Authorized by K.S.A. 1975 Supp. 65-1630; effective Jan. 1, 1966; revoked, E-76-31, Aug. 11, 1975; revoked May 1, 1976.)

68-5-9. (Authorized by K.S.A. 1975 Supp. 65-1630; effective Jan. 1, 1966; amended, E-76-31, Aug. 11, 1975; amended May 1, 1976; revoked May 1, 1986.)

68-5-10. (Authorized by K.S.A. 1975 Supp. 65-1630; effective Jan. 1, 1966; amended Jan. 1, 1968; amended, E-76-31, Aug. 11, 1975; amended May 1, 1976; revoked May 1, 1987.)

68-5-11. (Authorized by K.S.A. 65-1630; effective Jan. 1, 1966; amended, E-76-31, Aug. 11, 1975; amended May 1, 1976; revoked April 10, 1989.)

68-5-12 and 68-5-13. (Authorized by K.S.A. 1975 Supp. 65-1630; effective Jan. 1, 1966; revoked, E-76-31, Aug. 11, 1975; revoked May 1, 1976.)

68-5-14. (Authorized by K.S.A. 1977 Supp. 65-1630; effective Jan. 1, 1966; amended, E-76-31, Aug. 11, 1975; amended May 1, 1976; amended May 1, 1978; revoked May 1, 1987.)

68-5-15. Training of pharmacy technicians. (a) The pharmacist-in-charge of any pharmacy in which one or more pharmacy technicians perform any tasks authorized by the pharmacy act shall insure that each pharmacy technician complies with the training requirements in this regulation.

(b) The pharmacist-in-charge of any pharmacy in which one or more pharmacy technicians perform any tasks authorized by the pharmacy act shall insure that there exists for the pharmacy a current pharmacy technician training course, designed for the functioning of that pharmacy and addressing at least the following:

(1) Knowledge and understanding of the different pharmacy practice settings;

(2) knowledge and understanding of the duties and responsibilities of a pharmacy technician in relationship to other pharmacy personnel and knowledge of standards, ethics, laws, and regulations governing the practice of pharmacy;

(3) knowledge and ability to identify and employ pharmaceutical and medical terms, abbreviations, and symbols commonly used in prescribing and dispensing drugs and in record keeping;

(4) knowledge of and the ability to carry out calculations required for common dosage determinations;

(5) knowledge and understanding of the identification of drugs, drug dosages, routes of administration, dosage forms, storage requirements, and manufacturer recalls;

(6) knowledge of and the ability to perform the manipulative and record-keeping functions involved in and related to dispensing prescriptions or other drug distribution systems; and

(7) knowledge of and the ability to perform procedures and techniques, including aseptic techniques, relating to the compounding, packaging, and labeling of drugs.

(c) The pharmacist-in-charge of any pharmacy shall permit a pharmacy technician to perform tasks authorized by the pharmacy act only if the pharmacy technician has successfully completed, within 180 days of the effective date of this regulation or the effective date of the technician's employment in the pharmacy, whichever is later, a training course that meets the requirements of subsection (b) and was designed for the pharmacy in which the tasks are performed.

(d) The pharmacist-in-charge of any pharmacy in which one or more pharmacy technicians perform any tasks authorized by the pharmacy act shall also insure that the following requirements are met:

(1) There is an annual review of the pharmacy technician training course developed for the pharmacy.

(2) Adequate records are maintained documenting the training of each pharmacy technician as required by this regulation. These records shall be maintained at the pharmacy in a manner available for inspection by a board representative.

(3) The board is notified, within 30 days of the effective date of this regulation or the effective date of the employment of a pharmacy technician, of the following:

(i) The full name and current residence address of pharmacy technicians working in a pharmacy for which the pharmacist-in-charge has responsibility;

(ii) the date on which the pharmacy technician began the pharmacy technician training course or courses designed for the pharmacy or pharmacies in which the pharmacy technician is working; and

(iii) the name and address of the pharmacy or pharmacies in which the pharmacy technician is working. (Authorized by K.S.A. 65-1630 and K.S.A. 1998 Supp. 65-1642; implementing K.S.A. 1998 Supp. 65-1642; effective July 23, 1999.)

68-5-16. Ratio of pharmacy technicians to pharmacists. The ratio of pharmacy technicians to pharmacists in any pharmacy shall not exceed four to one. A pharmacist shall not supervise at any time more than two pharmacy technicians who have not passed a certification examination approved by the board pursuant to K.A.R. 68-5-17. (Authorized by and implementing K.S.A. 65-1663; effective, T-68-8-22-05, Aug. 22, 2005; effective May 26, 2006; amended April 27, 2007; amended Feb. 7, 2020.)

68-5-17. Pharmacy technicians; certification examination; request for extension. The following requirements shall apply to each individual who applies for a new pharmacy technician registration on or after July 1, 2017:

(a) Each pharmacy technician shall be required to pass either the pharmacy technician certification board (PTCB) certification examination or the national healthcareer association (NHA) ExCPT certification examination before the first renewal of the pharmacy technician's registration.

(1) Each pharmacy technician shall be required to attain a scaled score of at least 1400 on the PTCB certification examination in order to pass.

(2) Each pharmacy technician shall be required to attain a score of at least 390 on the NHA ExCPT certification examination in order to pass.

(b) Any pharmacy technician who is unable to take or pass an approved certification examination before the first renewal of the pharmacy technician's registration may submit to the board, on a form provided by the board, a request for a six-month extension to pass an approved certification examination. The request shall be submitted to the board at least 30 days before the pharmacy technician's registration expiration date and shall provide the reason for the request, which may include any of the following:

(1) Previous examination attempts and failures;

(2) the commencement date of training or preparation and the reasons for delay;

(3) an event that directly resulted from the occurrence of natural causes outside the pharmacy technician's control;

(4) a change in employment and the relevant dates; or

(5) medical necessity.

(c) Within 30 days after passing an approved certification examination or before the first renewal, whichever is earlier, each pharmacy technician shall submit to the board proof of successful completion of the examination. (Authorized by K.S.A. 2016 Supp. 65-1663, as amended by L. 2017, ch. 34, sec. 15, and K.S.A. 2016 Supp. 65-1692; implementing K.S.A. 2016 Supp. 65-1663, as amended by L. 2017, ch. 34, sec. 15; effective May 11, 2018.)

68-5-18. Pharmacy technicians; continuing education. (a)(1) "Continuing education" shall mean an organized and systematic education experience beyond basic preparation that is designed to achieve the following:

(A)(i) Increase knowledge, improve skills, or enhance the practice of pharmacy; or

(ii) improve protection of the public health and welfare; and

(B) ensure continued competence.

(2) "ACPE-NABP CPE monitor service" shall mean the electronic tracking service of the accreditation council for pharmacy education and the national association of boards of pharmacy for monitoring continuing education that pharmacy technicians receive from continuing education providers.

(b) Twenty clock-hours of continuing education shall be required for renewal of a pharmacy technician registration during each registration period. Continuing education clock-hours may be prorated for registration periods that are less than biennial at a rate of 0.8 clock-hours per month.

(c)(1) Each continuing education program shall be approved by the board. Each provider or registrant shall submit the continuing education program to the board at least 10 days in advance for consideration for approval. Each provider shall advertise the continuing education program as having only pending approval until the provider is notified of approval by the board.

(2) Continuing education programs shall not include in-service programs, on-the-job training, orientation for a job, an education program open to the general public, a cardiopulmonary resuscitation (CPR) course, a basic cardiac life support (BCLS) course, emergency or disaster training or direct experience at a healthcare facility under a code blue, testing out of a course, and medical school courses.

(3) Each provider shall furnish a certificate of completion to the pharmacy technician for each

continuing education program that the registrant has successfully completed. Each certificate shall be in a format approved by the board and shall include the following:

- (A) The registrant's name;
- (B) the title and date of the approved continuing education program;
- (C) the name of the provider;
- (D) the number of continuing education clock-hours approved by the board;
- (E) the number of continuing education clock-hours completed by the registrant;
- (F) the approved program number issued by the board; and
- (G) the provider's dated signature, certifying program completion.

(d) Within 30 days of completion, each pharmacy technician shall submit to the board proof of completion of any approved continuing education program not reported to the ACPE-NABP CPE monitor service. No credit shall be given for any certificate of completion received by the board after the October 31 expiration date of each registration period.

(e) A licensee shall not be allowed to carry forward excess clock-hours earned in one registration period into the next registration period.

(f) The required continuing education shall be obtained in the two-year registration period ending on the October 31 expiration date of each registration. (Authorized by K.S.A. 65-1630 and K.S.A. 2015 Supp. 65-1663; implementing K.S.A. 2015 Supp. 65-1663; effective Aug. 19, 2016.)

Article 6.—POISONS: ADDITIONS AND DELETIONS TO STATUTORY LIST

68-6-1. (Authorized by K.S.A. 1977 Supp. 65-1638; effective Jan. 1, 1966; revoked May 1, 1978.)

68-6-2. (Authorized by K.S.A. 65-1638; effective Jan. 1, 1966; revoked May 1, 1980.)

Article 7.—MISCELLANEOUS PROVISIONS

68-7-1 to 68-7-6. (Authorized by K.S.A. 1975 Supp. 65-1630; effective Jan. 1, 1968; revoked, E-76-31, Aug. 11, 1975; revoked May 1, 1976.)

68-7-7. (Authorized by K.S.A. 1977 Supp. 65-1630; effective, E-76-31, Aug. 11, 1975; effective May 1, 1976; revoked May 1, 1978.)

68-7-8. Records. Original written prescriptions shall be deemed recordation in writing by the pharmacist under the provisions of K.S.A. 65-1637 (b) (1975 Supp.). (Authorized by K.S.A. 1975 Supp. 65-1630; effective, E-76-31, Aug. 11, 1975; effective May 1, 1976.)

68-7-9. (Authorized by K.S.A. 1977 Supp. 74-1606; effective, E-76-31, Aug. 11, 1975; effective May 1, 1976; amended May 1, 1978; revoked May 1, 1987.)

68-7-10. Pharmacy-based drug distribution systems in long-term care facilities; emergency medication kits. (a) Each of the following terms, as used in this regulation, shall have the meaning specified in this subsection:

(1) "Automated drug delivery system" means an automated dispensing system, as defined by K.S.A. 2017 Supp. 65-1626 and amendments thereto, that is located in a long-term care facility, uses a robotic, mechanical, or computerized device to supply each drug to an individual licensed by the board of healing arts or the board of nursing, who shall administer the drug to a patient, and meets the requirements of K.A.R. 68-9-3.

(2) "Formulary" means a prescription drug list approved by the pharmacy and therapeutics committee or an equivalent committee governing the security, control, and distribution of drugs within a long-term care facility.

(3) "Long-term care facility" means "nursing facility," as defined in K.S.A. 39-923 and amendments thereto.

(4) "Traditional system" means a drug distribution system in which the pharmacist receives a prescription order for an individual patient and fills the prescription in any manner other than packaging individual doses in unit-dose containers.

(5) "Unit-dose container" means a single-unit or multiple-unit container for articles intended for administration in single doses and directly from the container, by other than parenteral route.

(A) "Multiple-unit container" means a container that permits the withdrawal of successive portions of the contents without changing the strength, quality, or purity of the remaining portion.

(B) "Single-unit container" means a container that is designed to hold a quantity of a drug intended for administration as a single dose promptly after the container is opened.

(6) "Unit-dose system" means a drug distribution system that is pharmacy-based and uses unit-dose

containers that enable distribution of packaged doses in a manner that preserves the identity of the drug until the time of administration.

(b) Each pharmacy-based drug distribution system for a long-term care facility shall meet the following requirements:

(1) Be consistent with the medication needs of each patient;

(2) conform to all federal and state laws and regulations pertaining to pharmacies; and

(3) meet the following additional requirements:

(A) Each prescription shall be dispensed from a pharmacy within a time period that reasonably meets the needs of the patient, considering the following factors:

(i) The need for the drug as an emergency;

(ii) the availability of the drug;

(iii) the pharmacy's hours of operation; and

(iv) the stability of the drug;

(B) The supplying pharmacy shall be responsible for the safe delivery of drugs to a designated person or persons in the long-term care facility;

(C) the supplying pharmacy shall provide a method of identifying the date and quantity of medication dispensed;

(D) a patient medication profile record system shall be maintained for each long-term care facility patient serviced by the supplying pharmacy and shall contain the information necessary to allow the pharmacist to monitor each patient's drug therapy; and

(E) each medication distribution system container shall be labeled to permit the identification of the drug therapy.

(c) Each unit-dose system shall meet the following requirements, in addition to the requirements in subsection (b):

(1) All medication shall be packaged in unit-dose containers as far as practicable and the packaging shall meet the requirements of K.A.R. 68-7-15 and 68-7-16, unless the manufacturer specifies a different type of packaging to be used to prevent adulteration as defined by K.S.A. 65-668, and amendments thereto.

(2) The pharmacist shall be responsible for filling and refilling prescriptions or prescriber's orders, or both, according to the directions of the prescriber by relying on the original prescription or prescriber's order or a copy thereof.

(3) The pharmacist shall comply with all requirements for prescription orders, including inventory and recordkeeping requirements, under the following:

(A) The Kansas uniform controlled substances act, K.S.A. 65-4101 et seq. and amendments thereto;

(B) the Kansas pharmacy act, K.S.A. 65-1625 et seq. and amendments thereto;

(C) the board's applicable regulations in articles 1 and 20; and

(D) all federal laws and regulations applicable to prescriptions or medication orders.

(4) Packaging for the unit-dose system shall take place at the address of the pharmacy providing the unit-dose system.

(5) Container requirements for unit-dose systems may include trays, bins, carts, and locked cabinets if the requirements of K.A.R. 68-7-14 are met. If these options are used, all patient medication trays or drawers shall be sufficiently labeled to identify each patient.

(6) Each unit-dose system shall provide a verification check at the point of patient administration in order to ensure proper drug utilization.

(7) The delivery time-cycle or hours of exchange shall not be limited to a specific time, but shall depend upon the pharmacist's discretion, the needs of the long-term care facility, the stability of the drug, and the type of container used.

(8) The pharmacist shall have sole responsibility for dispensing under the unit-dose system.

(d)(1) Each emergency medication kit shall contain only the drugs that are generally regarded by practitioners as essential to the prompt treatment of sudden and unforeseen changes in a patient's condition that present an imminent threat to the patient's life or well-being.

(2) Each drug to be contained within an emergency medication kit shall be approved by the long-term care facility's pharmaceutical services committee or its equivalent, either of which shall be composed of at least a practitioner and a pharmacist.

(3) The pharmacist providing each emergency medication kit shall ensure that the following requirements are met:

(A) The kit shall be supplied by a pharmacist, who shall retain possession of the drug until it is administered to the patient upon the valid order of a prescriber.

(B) If the kit is not in an automated drug delivery system, the kit shall be locked or sealed in a manner that indicates when the kit has been opened or tampered with.

(C) The kit shall be securely locked in a sufficiently well-constructed cabinet or cart or in an automated drug delivery system, with drugs prop-

erly stored according to the manufacturer's recommendations. Access to the cabinet or cart shall be available only to each nurse specified by the pharmaceutical services committee or its equivalent.

(D) The kit shall have an expiration date equivalent to the earliest expiration date of the drugs within the kit, but in no event more than one year after all of the drugs were placed in the kit.

(E) Unless the kit is in an automated drug delivery system, all drugs contained within the emergency medication kit shall be returned to the pharmacy as soon as the kit has been opened, along with the prescriber's drug order for medications administered. (Authorized by K.S.A. 65-1630; implementing K.S.A. 2017 Supp. 65-1637, K.S.A. 2017 Supp. 65-1642, and K.S.A. 2017 Supp. 65-1648; effective May 1, 1978; amended May 1, 1983; amended Sept. 9, 1991; amended Aug. 19, 2016; amended Jan. 4, 2019.)

68-7-11. Medical care facility pharmacy.

The scope of pharmaceutical services within a medical care facility pharmacy shall conform to the following requirements:

(a) The pharmacist-in-charge shall be responsible for developing programs and supervising all personnel in the distribution and control of drugs and all pharmaceutical services in the medical care facility.

(b) The pharmacist-in-charge shall develop a policy and procedure manual governing the storage, control, and distribution of drugs within the medical care facility. The pharmacist-in-charge shall submit the policy and procedure manual for approval to the pharmacy and therapeutics committee or an equivalent committee governing the security, control, and distribution of drugs within the facility.

(c) The pharmacist-in-charge shall be responsible for the maintenance of all emergency medication kits.

(d) The pharmacist-in-charge shall be responsible for developing procedures for the distribution and control of drugs within the medical care facility when a pharmacist is not on the premises. These procedures shall be consistent with the following requirements:

(1) Inpatient service. Drugs may be obtained upon a prescriber's medication order for administration to the inpatient by a designated registered professional nurse or nurses with approval and supervision of the pharmacist-in-charge. Adequate records of these withdrawals shall be maintained.

(2) Emergency outpatient service.

(A) An interim supply of prepackaged drugs shall be supplied to an outpatient only by a designated registered professional nurse or nurses pursuant to a prescriber's medication order when a pharmacist is not on the premises and a prescription cannot be filled. The interim supply shall be labeled with the following information:

(i) The name, address, and telephone number of the medical care facility;

(ii) the name of the prescriber. The label shall include the name of the practitioner and, if involved, the name of either the physician's assistant (PA) or the advanced registered nurse practitioner (ARNP);

(iii) the full name of the patient;

(iv) the identification number assigned to the interim supply of the drug or device by the medical care facility pharmacy;

(v) the date the interim supply was supplied;

(vi) adequate directions for use of the drug or device;

(vii) the beyond-use date of the drug or device issued;

(viii) the brand name or corresponding generic name of the drug or device;

(ix) the name of the manufacturer or distributor of the drug or device, or an easily identified abbreviation of the manufacturer's or distributor's name;

(x) the strength of the drug;

(xi) the contents in terms of weight, measure, or numerical count; and

(xii) necessary auxiliary labels and storage instruction, if needed.

(B) The interim supply shall be limited in quantity to an amount sufficient to supply the outpatient's needs until a prescription can be filled. Adequate records of the distribution of the interim supply shall be maintained and shall include the following information:

(i) The original or a copy of the prescriber's order, or if an oral order, a written record prepared by a designated registered professional nurse or nurses that reduces the oral order to writing. The written record shall be signed by the designated registered professional nurse or nurses and the prescriber; and

(ii) the name of the patient; the date supplied; the drug or device, strength, and quantity distributed; directions for use; the prescriber's name; and, if appropriate, the DEA number.

(3) The designated registered professional nurse or nurses may enter the medical care fa-

cility pharmacy and remove properly labeled pharmacy stock containers, commercially labeled packages, or properly labeled prepackaged units of drugs. The registered professional nurse shall not transfer a drug from one container to another for future use, but may transfer a single dose from a stock container for immediate administration to the ultimate user.

(e) The pharmacist-in-charge of the medical care facility pharmacy shall maintain documentation of at least quarterly checks of drug records and conditions of drug storage, in all locations within the facility, including nursing stations, emergency rooms, outpatient departments, and operating suites.

(f) The pharmacist-in-charge shall participate with the pharmacy and therapeutics committee or an equivalent committee in formulating broad professional policies regarding the evaluation, appraisal, selection, procurement, storage, distribution, use, and safety procedures for drugs within the medical care facility.

(g) The pharmacist-in-charge shall be responsible for establishing a drug recall procedure that can be effectively implemented.

(h)(1) The pharmacist-in-charge shall be responsible for developing written procedures for maintaining records of drug distribution, prepackaging, and bulk compounding. Prepackaged drugs shall include the following information:

(A) The brand name or corresponding generic name of the drug;

(B) The name of the manufacturer or distributor of the drug, or an easily identified abbreviation of the manufacturer's or distributor's name;

(C) the strength of the drug;

(D) the contents in terms of weight, measure, or numerical count;

(E) the lot number; and

(F) the beyond-use date.

(2) Prepackaged drugs shall be packaged in suitable containers and shall be subject to all other provisions of the Kansas state board of pharmacy regulations under the uniform controlled substances act of the state of Kansas and under the pharmacy act of the state of Kansas. Before releasing any drugs or devices from the pharmacy, the pharmacist shall verify the accuracy of all prepackaging and the compounding of topical and oral drugs.

(i) The pharmacist-in-charge shall ensure that the medical care facility maintains adequate drug information references commensurate with ser-

vices offered and a current copy of the Kansas pharmacy act, the Kansas uniform controlled substances act, and current regulations under both acts.

(j) The pharmacist-in-charge shall be responsible for pharmacist supervision of all pharmacy technicians and for confining their activities to those functions permitted by the pharmacy practice act. Records shall be maintained describing the following:

(1) The training and related education for non-discretionary tasks performed by pharmacy technicians; and

(2) written procedures designating the person or persons functioning as pharmacy technicians, describing the functions of the pharmacy technicians, and documenting the procedural steps taken by the pharmacist-in-charge to limit the functions of pharmacy technicians to nondiscretionary tasks.

(k) The pharmacist-in-charge shall be responsible for establishing policies and procedures for the mixing or preparation of parenteral admixtures. Whenever drugs are added to intravenous solutions, distinctive supplemental labels shall be affixed that indicate the name and amount of the drug added, the date and the time of addition, the beyond-use date, storage instructions, and the name or initials of the person who prepared the admixture. The pharmacist-in-charge shall comply with all requirements of K.A.R. 68-13-1. Before the parenteral admixture is released from the pharmacy, the pharmacist shall verify the accuracy of all parenteral admixtures prepared by pharmacy technicians.

(l) The pharmacist shall interpret the prescriber's original order, or a direct copy of it, before the drug is distributed and shall verify that the medication order is filled in strict conformity with the direction of the prescriber. This requirement shall not preclude orders transmitted by the prescriber through electronic transmission. Variations in this procedure with "after-the-fact" review of the prescriber's original order shall be consistent with medical care facility procedures established by the pharmacist-in-charge. Each medication order shall be reviewed by a pharmacist within seven days of the date it was written.

(m) Pharmacy services to outpatients during pharmacy hours shall be in accordance with the board's regulations, K.S.A. 65-1625 et seq., and K.S.A. 65-4101 et seq., and amendments thereto, governing community pharmacy practice.

(n) The pharmacist-in-charge shall be responsible for the security of the pharmacy, including the drug distribution systems and personnel.

(1) When a pharmacist is on the premises but not in the pharmacy, a pharmacy technician may be in the pharmacy. A pharmacy technician shall not distribute any drug or device out of the pharmacy when a pharmacist is not physically in the pharmacy unless authorized by the pharmacist.

(2) When a pharmacist is not on the premises, no one shall be permitted in the pharmacy except the designated registered professional nurse or nurses.

(o) Each pharmacist-in-charge who will no longer be performing the functions of the pharmacist-in-charge position shall inventory all controlled substances in the pharmacy before leaving the pharmacist-in-charge position. A record of the inventory shall be maintained for at least five years.

(p) Within 72 hours after beginning to function as a pharmacist-in-charge, the pharmacist-in-charge shall inventory all controlled substances in the pharmacy. A record of the inventory shall be maintained for at least five years.

(q) Except with regard to drugs that have not been checked for accuracy by a pharmacist after having been repackaged, prepackaged, or compounded in a medical care facility pharmacy, a pharmacy technician in a medical care facility may check the work of another pharmacy technician in filled floor stock, a crash cart tray, a unit-dose cart, or an automated dispensing machine if the checking pharmacy technician meets each of the following criteria:

(1) Has a current certification issued by the pharmacy technician certification board or a current certification issued by any other pharmacy technician certification organization approved by the board. Any pharmacy technician certification organization may be approved by the board if the board determines that the organization has a standard for pharmacy technician certification and recertification not below that of the pharmacy technician certification board;

(2) has either of the following experience levels:

(A) One year of experience working as a pharmacy technician plus at least six months experience working as a pharmacy technician in the medical care facility at which the checking will be performed; or

(B) one year of experience working as a pharmacy technician in the medical care facility at which the checking will be performed; and

(3) has successfully completed a written training program and related examination designed by the pharmacist-in-charge of the medical care facility pharmacy to demonstrate competency in accurately checking whether floor stock, a crash cart tray, and an automated dispensing machine have been properly filled. (Authorized by K.S.A. 65-1630; implementing K.S.A. 2008 Supp. 65-1626, K.S.A. 2008 Supp. 65-1642, and K.S.A. 65-1648; effective, E-77-39, July 22, 1976; effective Feb. 15, 1977; amended May 1, 1978; amended May 1, 1988; amended May 1, 1989; amended Dec. 27, 1999; amended April 28, 2000; amended July 20, 2007; amended July 16, 2010.)

68-7-12. Responsibility of pharmacist-in-charge in other than a medical care facility pharmacy. Each pharmacist-in-charge for premises having a pharmacy registration, other than a medical care facility pharmacy, shall be responsible for the following functions.

(a) Each pharmacist-in-charge shall develop, supervise, and coordinate all pharmaceutical services carried on within the pharmacy to ensure compliance with the Kansas pharmacy act, the Kansas uniform controlled substances act, federal drug laws, and all applicable regulations.

(b) Each pharmacist-in-charge shall be personally available to the extent required to ensure comprehensive pharmaceutical services within the pharmacy and to develop a staff of additional licensed pharmacists and supportive personnel as necessary to serve the needs of the pharmacy. Each pharmacist-in-charge shall maintain records in the pharmacy describing the training and education regarding work functions performed by all pharmacy personnel. Each pharmacist-in-charge shall maintain in the pharmacy written procedures that address the following areas:

(1) Designate the person or persons functioning as pharmacy technicians and supportive personnel;

(2) describe the functions of all personnel; and

(3) document the procedural steps taken by the pharmacist-in-charge to limit the functions of all personnel to their respective pharmacy work functions.

(c) Each pharmacist-in-charge shall develop or approve written policies and procedures for the pharmacy that meet all of the following conditions:

(1) Adequate accountability and control of drugs in compliance with the Kansas pharmacy act, the Kansas uniform controlled substances act,

federal drug laws, and all applicable regulations are provided for.

(2) Any incident that occurs as a result of an alleged or real error in filling or dispensing a prescription or medication order is brought to the attention of the pharmacist-in-charge and completely documented in accordance with the requirements of K.A.R. 68-7-12b.

(3) Adequate records of the pharmacy's dispensing, prepackaging, and bulk compounding actions are maintained, and all prepackaging of drugs is done in suitable containers, properly labeled in accordance with K.A.R. 68-7-16.

(d) Each pharmacist-in-charge shall develop written procedures for maintaining records of the pharmacy's dispensing, prepackaging, and bulk compounding actions and shall ensure that prepackaged medication is packaged in suitable containers and properly labeled.

(e) A pharmacist-in-charge who will no longer be performing the functions of the pharmacist-in-charge position shall inventory all controlled substances in the pharmacy before leaving the pharmacist-in-charge position. A record of the inventory shall be maintained for at least five years.

(f) Within 72 hours after beginning to function as a pharmacist-in-charge, the pharmacist-in-charge shall inventory all controlled substances in the pharmacy. A record of the inventory shall be maintained for at least five years. (Authorized by K.S.A. 65-1630 and K.S.A. 2006 Supp. 65-1643; implementing K.S.A. 2006 Supp. 65-1626 and K.S.A. 2006 Supp. 65-1637; effective, E-77-39, July 22, 1976; effective Feb. 15, 1977; amended May 1, 1978; amended May 1, 1989; amended Nov. 30, 1992; amended Feb. 27, 1998; amended Dec. 27, 1999; amended Feb. 7, 2003; amended July 20, 2007.)

68-7-12a. Nonresident pharmacies. Each nonresident pharmacy shall meet the requirements of this regulation to be and remain registered in Kansas by the board.

(a)(1) Each pharmacy shall be currently licensed or registered in good standing in the state in which it is located.

(2) Each practicing pharmacist employed by or under contract with the pharmacy shall be licensed as a pharmacist in the state where the pharmacist practices.

(3) Each pharmacy shall provide and maintain, in readily retrievable form, the record of a satisfactory inspection conducted within the previous

18-month period by the licensing entity of the state where the pharmacy is located. If no such inspection record is readily available, the record of a satisfactory inspection conducted at the expense of the pharmacy within the previous 18-month period by a third party recognized by the board to inspect may be accepted.

(4) Each pharmacy shall designate a pharmacist-in-charge, as defined by K.S.A. 65-1626 and amendments thereto, who shall be named in the application and who shall be responsible for receiving communications from the board.

(A) The pharmacist-in-charge shall timely respond to any lawful request for information from the board or law enforcement authorities.

(B) The pharmacist-in-charge shall be responsible for receiving and maintaining publications distributed by the board.

(b) The owner or the owner's authorized representative of the nonresident pharmacy shall apply for registration and renewal on forms approved by the board. The information reasonably necessary to carry out the provisions of K.S.A. 65-1657 and amendments thereto, including the name, address, and position of each officer and director of a corporation or of the owners if the pharmacy is not a corporation, shall be required by the board.

(c) An exemption for registration may be granted by the board under K.S.A. 65-1657 and amendments thereto, upon application by any nonresident pharmacy that confines its dispensing activity to isolated transactions. The following shall be considered to determine whether to grant an exemption:

(1) The number of prescriptions dispensed or reasonably expected to be dispensed into Kansas;

(2) the number of patients served or reasonably expected to be served in Kansas;

(3) any efforts to promote the pharmacy's services in Kansas;

(4) any contract between the pharmacy and either an employer or organization to provide pharmacy services to employees or other beneficiaries in Kansas;

(5) medical necessity;

(6) the effect on the health and welfare of persons in Kansas; and

(7) any other relevant matters.

(d) The pharmacy owner shall pay an annual registration fee as specified in K.A.R. 68-11-2.

(e) The pharmacy records of drugs dispensed to Kansas addresses shall be maintained so that the records are readily retrievable upon request. These records shall be made available for inspection

tion by the board or by Kansas law enforcement authorities upon request.

(f) The pharmacy shall maintain an incoming toll-free telephone number for use by Kansas customers to facilitate personal communication with a pharmacist with access to patient records.

(1) This service shall be available during normal business hours for at least 40 hours and six days per week.

(2) This telephone number and any others available for use shall be printed on each container of drugs dispensed in Kansas.

(3) The toll-free number shall have a sufficient number of extensions to provide reasonable access to incoming callers.

(g) Generic drugs shall be dispensed into Kansas only pursuant to K.S.A. 65-1637, and amendments thereto.

(h) The facilities and records of the pharmacy shall be subject to inspection by the board. Satisfactory inspections conducted within the previous 18-month period by the licensing entity of the state where the pharmacy is located or a third party recognized by the board to inspect may be accepted in lieu of inspection by the board.

(i) Each owner or owner's authorized representative of the nonresident pharmacy either doing business in Kansas or providing pharmacy services, dispensing, or either delivering or causing to be delivered prescription drugs to Kansas consumers shall designate a resident agent in Kansas for service of process and file this information with the secretary of state. (Authorized by and implementing K.S.A. 2016 Supp. 65-1657; effective March 29, 1993; amended March 20, 1995; amended Feb. 7, 2003; amended Jan. 12, 2018.)

68-7-12b. Incident reports. (a) For purposes of this regulation, "reportable incident" and "incident" shall mean a preventable medication error involving a prescription drug and resulting in any of the following:

- (1) The patient receiving the wrong drug;
- (2) the patient receiving an incorrect drug strength;
- (3) the patient receiving an incorrect dosage form;
- (4) the drug being received by the wrong patient;
- (5) inadequate or incorrect packaging, labeling, or directions; or
- (6) the dispensing of a drug to a patient in a situation that results in or has the potential to result in serious harm to the patient.

(b) For each pharmacy other than a medical care pharmacy, the pharmacist-in-charge shall ensure that procedures exist requiring each pharmacist who becomes aware of a reportable incident to report the incident to the pharmacist-in-charge as soon as practical.

(c) As soon as possible after discovery of the incident, the pharmacist shall prepare a report containing the following information:

- (1) The name, address, age, and phone number of any complainant, if available;
- (2) the name of each pharmacy employee and the license number of each licensee involved;
- (3) the date of the incident and the date of the report;
- (4) the pharmacist's description of the incident;
- (5) the prescriber's name and whether or not the prescriber was contacted; and
- (6) the signatures of all pharmacy employees involved in the incident.

For each pharmacy, the pharmacist-in-charge shall ensure that procedures exist requiring that the incident report be maintained in the pharmacy for at least five years in a manner so that the report can be provided to the board or its representative within three business days, upon request.

(d) The preparation of an incident report that meets the requirements of this regulation shall be the responsibility of each pharmacist involved in the incident and the pharmacist-in-charge. The maintenance of incident reports as required by this regulation shall be the responsibility of the pharmacist-in-charge. (Authorized by K.S.A. 65-1630; implementing K.S.A. 2007 Supp. 65-1626 and K.S.A. 2007 Supp. 65-1626d; effective Feb. 7, 2003; amended Oct. 24, 2008.)

68-7-13. Pharmacist in charge of more than one location. No pharmacist shall be a pharmacist in charge of more than one full-time pharmacy operation, which is defined as being one where the on-premises pharmacist services total 30 hours or more weekly. (Authorized by and implementing K.S.A. 65-1630; effective, E-77-39, July 22, 1976; effective Feb. 15, 1977; amended May 1, 1988.)

68-7-14. Prescription labels. (a) The label of each drug or device shall be typed or machine-printed and shall include the following information:

- (1) The name, address, and telephone number of the pharmacy dispensing the prescription;
- (2) the name of the prescriber;

- (3) the full name of the patient;
- (4) the identification number assigned to the prescription by the dispensing pharmacy;
- (5) the date the prescription was filled or re-filled;
- (6) adequate directions for use of the drug or device;
- (7) the beyond-use date of the drug or device dispensed;
- (8) the brand name or corresponding generic name of the drug or device;
- (9) the name of the manufacturer or distributor of the drug or device, or an easily identified abbreviation of the manufacturer's or distributor's name;
- (10) the strength of the drug;
- (11) the contents in terms of weight, measure, or numerical count; and
- (12) necessary auxiliary labels and storage instructions, if needed.

(b) A pharmacy shall be permitted to label or relabel only those drugs or devices originally dispensed from the providing pharmacy. (Authorized by K.S.A. 65-1630; implementing K.S.A. 65-1626a; effective, E-77-39, July 22, 1976; effective Feb. 15, 1977; amended May 1, 1978; amended May 1, 1980; amended May 1, 1988; amended June 6, 1994; amended March 20, 1995; amended April 28, 2000; amended Oct. 23, 2009.)

68-7-15. Prepackaging or repackaging of oral drugs. All prepackaging or repackaging of oral drugs, whether in a unit-dose container or multiple-dose container, shall meet the requirements of this regulation.

(a) Packaging in advance of immediate need shall be done by a pharmacist or under the pharmacist's direct supervision.

(b) Packaging shall be limited to the drugs dispensed from or supplied by the pharmacy or in accordance with a shared services agreement.

(c) All containers used for packaging and the storage conditions shall be maintained according to the manufacturer's recommendations to preserve the stability of the drug. The expiration date shall be the manufacturer's expiration date, the expiration date for the type of packaging material used, or not more than 12 months from the date of packaging, whichever is earlier.

(d) An electronic or a written record shall be established for lot numbers for recall purposes.

(e) If an area apart or separated from the prescription drug area is used for prepackaging or repackaging, the area shall be enclosed and

locked when a pharmacist is not in attendance in that area.

(f) In lieu of separately dispensing a drug and an ingestible event marker approved by the food and drug administration to monitor whether a patient is taking the drug as prescribed, any pharmacist may use an ingestible event medication adherence package pursuant to a valid prescription order or after obtaining the consent of the practitioner, caregiver, or patient.

(g) For purposes of this regulation, "ingestible event medication adherence package" shall mean an ingestible unit-dose package designed to ensure medication adherence that contains drugs from a manufacturer's original container and an ingestible event marker, as defined by 21 C.F.R. 880.6305, dated April 1, 2016 and hereby adopted by reference.

(h) In addition to meeting the requirements of this regulation, all repackaging of sterile preparations shall meet the requirements of K.A.R. 68-13-4. (Authorized by K.S.A. 65-1630; implementing K.S.A. 65-1634; effective May 1, 1978; amended Dec. 15, 2017; amended Nov. 29, 2019.)

68-7-16. Labels for prepackaged or repackaged drugs. Labels for prepackaged and repackaged drugs shall contain the following:

(a) The generic name with manufacturer and distributor's name or the brand name.

(b) Strength and quantity.

(c) Lot number and date repackaged and the person responsible for packaging.

(d) The expiration date, if applicable.

(e) Auxiliary labels necessary.

(f) Manufacturer, lot numbers, date repackaged and the person responsible may be deleted from the label if a suitable record system is maintained to indicate them. (Authorized by K.S.A. 1977 Supp. 65-1630; effective May 1, 1978.)

68-7-17. (Authorized by K.S.A. 1977 Supp. 65-1630; effective Feb. 15, 1977; revoked May 1, 1978.)

68-7-18. Health departments and private not-for-profit family planning clinics. The distribution and control of drugs provided by health departments and private not-for-profit family planning clinics authorized under K.S.A. 65-1648(d)(1), and amendments thereto, shall conform to the following requirements:

(a) The approved drugs that may be stored and distributed by health departments and not-for-

profit family planning clinics shall be only noncontrolled drugs that are approved by the food and drug administration. In determining the formulary for each health department or not-for-profit family planning clinic, the pharmacist-in-charge shall consult with the medical supervisor and director of nursing for that facility. No state or federal controlled drugs shall be allowed.

(b)(1) The pharmacist-in-charge shall review the procedures outlined below for the distribution and control of all drugs within health department facilities and family planning clinics and shall be responsible for the following:

(A) Ensuring the development of programs for supervision of all personnel in the distribution and control of drugs;

(B) ensuring the development of a policy and procedure manual governing the storage, control, and distribution of drugs;

(C) maintaining documentation of at least quarterly checks of drug records, drug storage conditions, and drugs stored in all locations within the facility;

(D) establishing a drug recall procedure that can be effectively implemented; and

(E) ensuring the development of written procedures for maintaining records of distribution and prepackaging of drugs.

(2) Labels for prepackaged drugs shall contain the following:

(A) The brand name or corresponding generic name of the drug;

(B) the name of the manufacturer or distributor of the drug, or an easily identified abbreviation of the manufacturer's or distributor's name;

(C) the strength of the drug;

(D) the contents in terms of weight, measure, or numerical count;

(E) the lot number of the drug, if the lot number is not recorded on a suitable log; and

(F) the beyond-use date of the drug.

(3) Prepackaged drugs shall be packaged in suitable containers and shall be subject to all other provisions of the Kansas state board of pharmacy regulations under the uniform controlled substances act of the state of Kansas and under the pharmacy act of the state of Kansas.

(c) The procedures for the control and distribution of drugs within health department facilities and family planning clinics shall be consistent with the following requirements:

(1) Adequate records of the distribution of drugs by the designated registered professional nurse or

nurses shall be maintained and shall include the physician's order or written protocol.

(A) If the physician's order was given orally, electronically, or by telephone, the designated registered professional nurse or nurses shall reduce that order to writing. The written copy of the order shall be signed by the designated registered professional nurse and maintained in a permanent patient file.

(B) The records shall include the following:

(i) The full name of the patient;

(ii) the date supplied;

(iii) the name of the drug, the quantity supplied, and strength of the drug distributed;

(iv) the directions for use;

(v) the prescriber's name. The record shall include the name of the practitioner and, if involved, the name of either the physician's assistant (PA) or the advanced registered nurse practitioner (ARNP);

(vi) the expiration date of the drug; and

(vii) the lot number of the drug.

(2) A supply of drugs shall be provided to a patient by a designated registered professional nurse or nurses pursuant to a prescriber's order. Only a designated registered professional nurse or nurses may access the pharmacy area and remove the supply of the drugs. The supply shall conform with the following labeling requirements:

(A) The name, address, and telephone number of the health department or family planning clinic from which the drug is supplied;

(B) the full name of the patient;

(C) adequate directions for use of the drug;

(D) the name of the prescriber. The label shall include the name of the practitioner and, if involved, the name of either the physician's assistant (PA) or the advanced registered nurse practitioner (ARNP);

(E) the date the supply was distributed;

(F) the identification number assigned to the supply of the drug distributed by the health department or family planning clinic;

(G) the brand name or corresponding generic name of the drug;

(H) necessary auxiliary labels and storage instructions, if needed; and

(I) the beyond-use date of the drug issued.

(3) Repackaged drugs shall be packaged in suitable containers and shall be subject to all other provisions of the Kansas state board of pharmacy rules and regulations under the pharmacy act of the state of Kansas.

(d) The appointment of any Kansas licensed pharmacist as pharmacist-in-charge of a health department or family planning clinic shall be subject to the provisions of K.A.R. 68-1-2a and 68-7-13. (Authorized by and implementing K.S.A. 65-1648; effective, T-84-3, Feb. 10, 1983; effective May 1, 1984; amended July 23, 1999; amended April 28, 2000.)

68-7-19. Transfer of a refillable prescription between pharmacies. (a) As used in K.S.A. 65-1656, and amendments thereto, the requested or transferring pharmacy is that pharmacy which has on file the original refillable prescription that the patient wishes to transfer to a second pharmacy. The dispensing or requesting pharmacy is the pharmacy that is wanting the information transferred from the original refillable prescription so that the patient may obtain the medication at this second pharmacy or the pharmacy receiving the transferred prescription.

(b) Valid refillable prescriptions for prescription drugs not listed in schedule II of the uniform controlled substances act may be transferred either by direct communications between two licensed pharmacists from one pharmacy to another pharmacy or by a licensed pharmacist operating a suitable electronic device. Before any prescription is transferred, the prescription information at the transferring pharmacy shall meet all of the following criteria:

(1) The prescription information indicates authorization for refilling by the prescriber.

(2) The drug on the prescription information is not a schedule II controlled substance.

(3) The number of lawfully allowable refills directed by the prescriber has not been exceeded.

(4) The maximum allowable time limit from the original dating of the prescription has not been exceeded.

(c) When a prescription on record is transferred, the following record keeping shall be required:

(1)(A) If the transfer involves a noncontrolled substance, the pharmacist at the transferring pharmacy shall perform the following:

(i) Cancel the transferred prescription by writing the word "void" on its face; and

(ii) record on the face of the prescription the name and address of the pharmacy to which the prescription was transferred, the date of the transfer request, the full name of the pharmacist to which the prescription was transferred, and the full name of the pharmacist transferring the prescription.

(B) If the pharmacy from which the prescription is transferred utilizes a computerized prescription record-keeping system adequate to do so, the transferring pharmacist may record the information required by paragraphs (1)(A)(i) and (ii) in the computer record of the prescription instead of recording the information on the face of the prescription.

(C) Transferring pharmacies that have computerized record-keeping systems that permit requesting pharmacies to electronically transfer prescriptions and prescription information from the transferring pharmacy to the requesting pharmacy shall establish procedures to permit these transfers only in instances of valid and legal requests and to insure that the prescription information required by subsection (b) is available to the requesting pharmacy at the time of the electronic transfer.

(D) If the requesting pharmacy is transferring a prescription and prescription information from another pharmacy without communicating directly with a pharmacist at the transferring pharmacy, the pharmacist at the requesting pharmacy shall insure that there is a sufficient electronic record left at the transferring pharmacy so that a pharmacist at the transferring pharmacy can comply with the record-keeping requirements of K.S.A. 65-1656, and amendments thereto, and these regulations.

(2)(A) If the transfer involves a C-III, IV, or V controlled substance, the pharmacist at the transferring pharmacy shall perform the following:

(i) Cancel the transferred prescription by writing the word "void" on its face; and

(ii) record on the back of the prescription the name, address, and DEA registration number of the pharmacy to which the prescription was transferred, the date of the transfer request, the full name of the pharmacist to which the prescription was transferred, and the full name of the pharmacist transferring the prescription.

(B) Transferring pharmacies that have computerized prescription record-keeping systems that permit requesting pharmacies to electronically transfer prescriptions and prescription information from the transferring pharmacy to the requesting pharmacy shall establish procedures to permit these transfers only in instances of valid and legal requests and to insure that the prescription information required by subsection (b) is available to the pharmacist at the requesting pharmacy at the time of the electronic transfer.

(C) If the requesting pharmacy is transferring a prescription and prescription information from

another pharmacy without communicating directly with a pharmacist at the transferring pharmacy, the pharmacist at the requesting pharmacy shall insure that there is a sufficient electronic record left at the transferring pharmacy so that a pharmacist at the transferring pharmacy can comply with the record-keeping requirements of K.S.A. 65-1656, and amendments thereto, and these regulations.

(3) The prescription record at the pharmacy receiving the transferred prescription shall show the following, in addition to all other lawfully required information of an original prescription:

(A) The word "transfer" written on the face of the prescription record;

(B) the date of original issuance and the date of original filling, if different from the issuance date;

(C) the original number of refills authorized, the number of remaining authorized refills, and the date of last refill;

(D) the original prescription number;

(E) the name, address, and telephone number of the transferring pharmacy, and the name of the transferring pharmacist;

(F) the name, address, and telephone number of the prescriber; and

(G) if the transfer involves a C-III, IV, or V controlled substance, the DEA registration number of the prescriber and of the transferring pharmacy.

(4) If the transfer involves a noncontrolled substance and the pharmacy to which the prescription is transferred utilizes a computerized prescription record-keeping system adequate to do so, the receiving pharmacist may record the information required by paragraphs (3)(A) through (F) in the computer record of the prescription instead of otherwise recording the information.

(d) If two or more pharmacies use common electronic prescription files to maintain dispensing information and do not physically transfer prescriptions or information for dispensing purposes, all pharmacies licensed by the board that have access to these common files shall be responsible to insure that at all times the common files contain at least the following information readily available to any person accessing the file:

(1) Any authorization for refilling by the prescriber;

(2) an indication of whether or not the number of lawfully allowable refills authorized by the prescriber has been exceeded;

(3) an indication of whether or not the maximum allowable time limit from the original date of the prescription has been exceeded;

(4) any other information provided by the original prescription or prescription order; and

(5) the name and address of the pharmacy last dispensing the drug pursuant to the prescription.

(e) The dispensing pharmacy shall advise the patient and notify the transferring pharmacy that the original prescription shall be canceled in the transferring pharmacy.

(f) A Kansas pharmacist may transfer a valid, refillable prescription from or to another pharmacy in or outside the state of Kansas. Noncontrolled substance prescriptions may be transferred more than once, but C-III, IV, and V controlled substance prescriptions shall not be transferred more than one time. (Authorized by and implementing K.S.A. 1998 Supp. 65-1656; effective March 29, 1993; amended July 23, 1999.)

68-7-20. Shared services. (a)(1) "Order" shall mean either of the following:

(A) A prescription order as defined in K.S.A. 65-1626, and amendments thereto; or

(B) a medication order as defined in K.A.R. 68-5-1.

(2) "Shared order filling" shall mean the following:

(A) Preparing, packaging, compounding, or labeling an order, or any combination of these functions, by a person authorized by the pharmacy act to do so and located at a pharmacy on behalf of and at the request of another pharmacy; and

(B) returning the filled order to the requesting pharmacy for delivery to the patient or patient's agent or, at the request of the requesting pharmacy, directly delivering the filled order to the patient.

(3) "Shared order processing" shall mean the following order-processing functions that are performed by a person authorized by the pharmacy act and located at a pharmacy, on behalf of and at the request of another pharmacy:

(A) Interpreting and entering the order; and

(B) performing drug utilization reviews, claims adjudication, refill authorizations, or therapeutic interventions, or any combination of these functions.

(4) "Shared services" shall mean shared order filling or shared order processing, or both.

(b) Each pharmacy participating in shared services shall be registered by the board as either a resident or a nonresident pharmacy.

(c) Pharmacies may provide or utilize shared services functions only if the pharmacies involved meet the following requirements:

(1) Share a common electronic file or appropriate technology to allow access to sufficient information necessary to fill, refill, or perform shared services in conformance with the pharmacy act and the board's regulations; and

(2)(A) Have the same owner; or

(B) have a written contract outlining the services provided and the shared responsibilities of each party in complying with the pharmacy act and the board's regulations.

(d) Each pharmacy engaged in shared services shall meet the following requirements:

(1) Maintain records identifying, individually for each order processed, the name of each pharmacist, technician, pharmacy student, and intern who took part in the drug utilization review, refill authorization, or therapeutic intervention functions performed at that pharmacy;

(2) maintain records identifying, individually for each order filled or dispensed, the name of each pharmacist, technician, pharmacy student, and intern who took part in the filling, dispensing, and counseling functions performed at that pharmacy;

(3) report to the board within 30 days the results of any disciplinary action taken by another state's pharmacy board;

(4) maintain a mechanism for tracking the order during each step of the processing and filling procedures performed at the pharmacy;

(5) maintain a mechanism to identify on the prescription label all pharmacies involved in filling the order;

(6) provide for adequate security to protect the confidentiality and integrity of patient information; and

(7) be able to obtain for inspection any required record or information within 72 hours of any request by a board representative.

(e) Each pharmacy providing or utilizing shared services shall adopt and maintain a joint policies and procedures manual that meets both of the following conditions:

(1) The manual describes how compliance with the pharmacy act and the board's regulations will be accomplished while engaging in shared services.

(2) A copy of the manual is maintained in each pharmacy.

(f) Nothing in this regulation shall prohibit an individual pharmacist licensed in Kansas who is an employee of or under contract with the pharmacy from accessing the pharmacy's electronic database from inside or outside the pharmacy and performing the order-processing functions permitted by

the pharmacy act and the board's regulations, if both of the following conditions are met:

(1) The pharmacy establishes controls to protect the privacy and security of confidential records.

(2) None of the database is duplicated, downloaded, or removed from the pharmacy's electronic database.

(g) Nothing in this regulation shall permit a pharmacy, physician, physician assistant, or mid-level practitioner to utilize shared services to operate a requesting pharmacy that is not actively engaged in the practice of pharmacy. (Authorized by K.S.A. 65-1630 and K.S.A. 65-1656; implementing K.S.A. 2016 Supp. 65-1626, as amended by L. 2017, ch. 34, sec. 1, K.S.A. 2016 Supp. 65-1626a, K.S.A. 2016 Supp. 65-1637, as amended by L. 2017, ch. 34, sec. 6, K.S.A. 2016 Supp. 65-1642, as amended by L. 2017, ch. 34, sec. 8, and K.S.A. 65-1656; effective April 16, 2004; amended April 18, 2008; amended Dec. 15, 2017.)

68-7-21. Institutional drug rooms. (a) All prescription-only drugs dispensed or administered from an institutional drug room shall be in prepackaged units, the original manufacturer's bulk packaging, or patient-specific pharmacy labeled packaging. All prepackaging shall meet the requirements of K.A.R. 68-7-15.

(b) Each pharmacist or practitioner, as that term is defined in K.S.A. 65-1637a and amendments thereto, who is responsible for supervising an institutional drug room shall perform the following:

(1) Develop or approve programs for the training and supervision of all personnel in the providing and control of drugs;

(2) develop or approve a written manual of policies and procedures governing the storage, control, and provision of drugs when a pharmacist or practitioner is not on duty;

(3) maintain documentation of at least quarterly reviews of drug records, drug storage conditions, and the drugs stored in all locations within the institutional drug room;

(4) develop or approve written procedures for maintaining records of the provision and prepackaging of drugs; and

(5) develop or approve written procedures for documenting all reportable incidents, as defined in K.A.R. 68-7-12b, and documenting the steps taken to avoid a repeat of each reportable incident.

(c) The policies and procedures governing the storage, control, and provision of drugs in an institutional drug room when a pharmacist or prac-

itioner is not on duty shall include the following requirements:

(1) A record of all drugs provided to each patient from the institutional drug room shall be maintained in the patient's file and shall include the practitioner's order or written protocol.

(2) If the practitioner's order was given orally, electronically, or by telephone, the order shall be recorded, either manually or electronically. The recorded copy of the order shall include the name of the person who created the recorded copy and shall be maintained as part of the permanent patient file.

(3) The records maintained in each patient's file shall include the following information:

(A) The full name of the patient;

(B) the date on which the drug was provided;

(C) the name of the drug, the quantity provided, and strength of the drug provided;

(D) the directions for use of the drug; and

(E) the prescriber's name and, if the prescriber is a physician's assistant or advanced registered nurse practitioner, the name of that person's supervising practitioner.

(d) All drugs dispensed from an institutional drug room for use outside the institution shall be in a container or package that contains a label bearing the following information:

(1) The patient's name;

(2) the identification number assigned to the drug provided;

(3) the brand name or corresponding generic name of the drug, the strength of the drug, and either the name of the manufacturer or an easily identified abbreviation of the manufacturer's name;

(4) any necessary auxiliary labels and storage instructions;

(5) the beyond-use date of the drug provided;

(6) the instructions for use; and

(7) the name of the institutional drug room.

(e) Each label for any prepackaged or re-packaged drug shall meet the requirements of K.A.R. 68-7-16. (Authorized by K.S.A. 65-1630 and K.S.A. 65-1637a; implementing K.S.A. 2008 Supp. 65-1626, K.S.A. 2008 Supp. 65-1626d, and K.S.A. 65-1637a; effective April 23, 2010.)

68-7-22. Collaborative practice. (a) Each of the following terms, as used in this regulation, shall have the meaning specified in this subsection:

(1) "Collaborative drug therapy management" and "CDTM" mean a practice of pharmacy in which a pharmacist performs certain

pharmaceutical-related patient care functions for a specific patient, and the functions have been delegated to the pharmacist by a physician through a collaborative practice agreement.

(2) "Collaborative practice agreement" and "CPA" mean a signed agreement or protocol voluntarily entered into between one or more pharmacists and one or more physicians that provides for collaborative drug therapy management.

(3) "Pharmacist" means a person licensed, without limitation or restriction, to practice pharmacy in Kansas.

(4) "Physician" means a person who is licensed to practice medicine and surgery in Kansas and who is a signing party to the pharmacist's CPA or update.

(b) Any pharmacist may practice collaborative drug therapy management only pursuant to a collaborative practice agreement or update established and maintained in accordance with this regulation. Although a physician shall remain ultimately responsible for the care of the patient, each pharmacist who engages in CDTM shall be responsible for all aspects of the CDTM performed by the pharmacist.

A pharmacist shall not become a party to a CPA or update that authorizes the pharmacist to engage in any CDTM function that is not appropriate to the training and experience of the pharmacist or physician, or both. A pharmacist shall not provide CDTM to a patient if the pharmacist knows that the patient is not being treated by a physician who has signed the pharmacist's current CPA.

(c)(1) Each CPA and update shall be dated and signed by each physician and each pharmacist. Each CPA and update shall include the following:

(A) A statement of the general methods, procedures, and decision criteria that the pharmacist is to follow in performing CDTM;

(B) a statement of the procedures that the pharmacist is to follow to document the CDTM decisions made by the pharmacist; or

(C) a statement of the procedures that the pharmacist is to follow to communicate to the physician either of the following:

(i) Each change in a patient's condition identified by the pharmacist; or

(ii) each CDTM decision made by the pharmacist;

(D) a statement identifying the situations in which the pharmacist is required to initiate contact with the physician; and

(E) a statement of the procedures to be followed by the pharmacist if an urgent situation involving

a patient's health occurs, including identification of an alternative health care provider that the pharmacist should contact if the pharmacist cannot reach a physician.

(2) A CPA shall not authorize a pharmacist to administer influenza vaccine except pursuant to K.S.A. 65-1635a, and amendments thereto.

(d) Each CPA and update shall be reviewed and updated at least every two years. A signing pharmacist shall deliver a digital or paper copy of each CPA and update to the board within five business days after the CPA or update has been signed by all parties.

(e) Within 48 hours of making any drug or drug therapy change to a patient's treatment, the pharmacist shall initiate contact with a physician, identifying the change.

(f) This regulation shall not be interpreted to impede, restrict, inhibit, or impair either of the following:

(1) Current hospital or medical care facility procedures established by the hospital or medical care facility pharmacy and either the therapeutics committee or the medical staff executive committee; or

(2) the provision of medication therapy management as defined by the centers for medicare and medicaid services under the medicare part D prescription drug benefit.

(g) As part of each pharmacist's application to renew that individual's license, the pharmacist shall advise the board if the pharmacist has entered into a CPA. (Authorized by K.S.A. 65-1630; implementing K.S.A. 2015 Supp. 65-1626a; effective May 27, 2016.)

68-7-23. Dispensing and administration of emergency opioid antagonist without a prescription.

(a) Any pharmacist may dispense an emergency opioid antagonist and the necessary medical supplies needed to administer an emergency opioid antagonist to a patient, bystander, first responder agency, or school nurse without a prescription, in accordance with the opioid antagonist protocol and this regulation.

(b) Each pharmacist dispensing an emergency opioid antagonist pursuant to this regulation shall submit to the board a form provided by the board, within five days of signing the opioid antagonist protocol, and shall maintain a signed and dated copy of the opioid antagonist protocol, which shall be made available to the pharmacist-in-charge, the board, and the board's designee. Each phar-

macist that no longer dispenses emergency opioid antagonists pursuant to the opioid antagonist protocol shall notify the board, in writing, within 30 days of discontinuation.

(c) Each emergency opioid antagonist dispensed by a pharmacist shall be labeled in accordance with the pharmacy practice act and any implementing regulations.

(d) Each pharmacist who dispenses an emergency opioid antagonist pursuant to this regulation shall perform the following:

(1) For each patient, bystander, first responder agency, or school nurse to whom the emergency opioid antagonist is dispensed, instruct that person or entity to summon emergency medical services as soon as practicable either before or after administering the emergency opioid antagonist;

(2) for each patient or bystander to whom the emergency opioid antagonist is dispensed, provide in-person counseling, training, and written educational materials appropriate to the dosage form dispensed, including the following:

(A) Risk factors of opioid overdose;

(B) strategies to prevent opioid overdose;

(C) signs of opioid overdose;

(D) steps in responding to an overdose;

(E) information on emergency opioid antagonists;

(F) procedures for administering an emergency opioid antagonist;

(G) proper storage, disposal, and expiration date of the emergency opioid antagonist dispensed; and

(H) information on where to obtain a referral for substance use disorder treatment; and

(3) for each first responder agency or school nurse to whom the emergency opioid antagonist is dispensed, provide that person or entity with written education and training materials that meet the requirements of paragraphs (d)(1) and (2) and include the requirements to keep inventory records and report any administration of the emergency opioid antagonist to the appropriate healthcare provider pursuant to this regulation.

(e) Each pharmacist shall document the dispensing of any emergency opioid antagonist pursuant to this regulation in a written or electronic prescription record for the patient, bystander, first responder agency, or school nurse to whom the emergency opioid antagonist is dispensed. The pharmacist shall record as the prescriber either that pharmacist or the physician who has signed the opioid antagonist protocol. The prescription

record shall be maintained so that the required information is readily retrievable during the pharmacy's normal operating hours and shall be securely stored within the pharmacy for at least five years.

(f) Any of the following individuals or facilities licensed or registered with the board of pharmacy or the board of healing arts may sell emergency opioid antagonists at wholesale to a first responder agency or school nurse:

- (1) A pharmacist;
- (2) a physician medical director; or
- (3) a pharmacy.

(g) Each first responder, scientist, and technician operating under a first responder agency administering an emergency opioid antagonist shall perform the following:

(1) Summon emergency medical services as soon as practicable either before or after administering the emergency opioid antagonist;

(2) immediately provide information related to the administration to any responding emergency medical services personnel, any emergency room personnel, or any treating physician; and

(3) notify the physician medical director for the first responder agency within 24 hours of administration.

(h) Each first responder agency that is dispensed an emergency opioid antagonist shall ensure that any first responder, scientist, or technician operating under the first responder agency is appropriately trained on the use of emergency opioid antagonists and meets the training requirements in subsection (d) and the opioid antagonist protocol. (Authorized by and implementing 2017 HB 2217, sec. 1; effective, T-68-6-19-17, July 1, 2017; effective Sept. 15, 2017.)

68-7-25. Notification to board; pharmacist, pharmacy technician, or pharmacy intern. Each pharmacist, pharmacy technician, and pharmacy intern shall notify the board in writing of any of the following circumstances within 30 days of the date of occurrence:

(a) Any conduct resulting in a charge of, arrest or indictment for, plea of guilty or no contest to, diversion agreement, or suspended imposition of sentence against the registrant or licensee that would constitute any of the following:

(1) Unprofessional conduct as defined by K.S.A. 65-1626, and amendments thereto;

(2) a violation of the federal or state food, drug, and cosmetic act; or

(3) a violation of the Kansas uniform controlled substances act;

(b) any conviction of any felony against the registrant or licensee; or

(c) any denial, limitation, suspension, revocation, voluntary surrender, or other disciplinary action taken by another jurisdiction against any pharmacy, pharmacist, pharmacy intern, or pharmacy technician application, license, registration, or permit held by the registrant or licensee. (Authorized by K.S.A. 65-1630; implementing K.S.A. 2017 Supp. 65-1626, 65-1627, 65-1663, and 65-1676; effective Jan. 4, 2019.)

Article 8.—ADVERTISING

68-8-1. Advertising. Licensees, registrants, and permit holders shall not use or allow to be used for their benefit any advertising that is false or misleading. (Authorized by and implementing K.S.A. 65-1630; implementing K.S.A. 65-1650; modified, L. 1978, ch. 466, May 1, 1978; amended May 1, 1985; amended May 1, 1988; amended April 18, 2003.)

Article 9.—AUTOMATED PRESCRIPTION SYSTEMS

68-9-1. Electronic data storage systems. All electronic data storage systems operating within this state shall comply with the following requirements:

(a) The pharmacist in charge of such a system shall perform the following:

(1) Adopt a written policy and procedures manual for control, use, and operation of the system;

(2) assure that only licensed pharmacists make decisions concerning judgmental functions as stated in K.A.R. 68-2-20;

(3) be responsible for all drug information within the system;

(4) assure that complete control over the dispensing of medication is vested in licensed pharmacists;

(5) have an auxiliary procedure that shall be used for documentation of refills of all prescription orders if the system becomes inoperable. This auxiliary procedure shall insure that the following criteria are met:

(A) Refills are authorized by the original prescription order;

(B) the maximum number of refills has not been exceeded; and

(C) a daily backup is performed for use in restoring required information in case of a system failure;

(6) maintain a written prescription on file that preserves all information contained in the original prescription. A machine-printed supplement that provides all information necessary to comply with the law may be filed with or attached to the written prescription, if the supplement does not obscure the required information on the original prescription;

(7) provide a method of numerically identifying each patient's written prescription;

(8) maintain the confidentiality of prescriptions and assure that the system has adequate security and systems safeguards to prevent unauthorized access, modification, or manipulation of patient medication profile data; and

(9) maintain a written or electronic prescription daily log. The daily log shall include the following information:

(A) The original prescription number;

(B) the date of the issuance of the original prescription order by the practitioner;

(C) the full name and address of the patient;

(D) the name and address of the practitioner;

(E) the practitioner's DEA registration number if required;

(F) the name, strength, dosage form, and quantity of the medication prescribed;

(G) the quantity dispensed, if different from the quantity prescribed; and

(H) the total number of refills authorized by the prescribing practitioner.

(b) Each electronic data storage system shall have a method for each of the following:

(1) Storing each active patient's medication profile record so that this record is immediately available upon request at the practice site. Sufficient historical patient medication profile data shall be stored and made available for the pharmacist to exercise appropriate clinical judgment when dispensing the prescription;

(2) documenting that an individual pharmacist has taken responsibility for the accuracy of the following:

(A) The information entered; and

(B) each authorized refilling of the prescription;

(3) drug use control, which shall include the following:

(A) The ability to ascertain quantities;

(B) the exact refill data;

(C) the dates of previous refills; and

(D) the number of refills remaining;

(4) identifying on a daily basis the pharmacist filling each prescription;

(5) handling partial fillings and refills of prescriptions;

(6) handling compounded prescriptions;

(7) reproducing all information within the system, in written form and upon authorized request, within 72 hours; and

(8) providing a label containing the information required under K.A.R. 68-7-14 and the date of the original filling of any scheduled drugs. (Authorized by K.S.A. 65-1630 and K.S.A. 2001 Supp. 65-4102; implementing K.S.A. 2001 Supp. 65-1626(t), K.S.A. 2001 Supp. 65-1642, and K.S.A. 65-4121; effective May 1, 1980; amended May 1, 1989; amended April 3, 1990; amended Sept. 9, 1991; amended March 22, 2002.)

68-9-2. Automated drug delivery systems in pharmacies.

(a) For purposes of this regulation, "automated drug delivery system" shall mean an automated dispensing system, as defined by K.S.A. 65-1626 and amendments thereto, that is located in a Kansas pharmacy and uses a robotic, mechanical, or computerized device to perform operations or activities other than compounding or administration, involving the storage, packaging, or labeling of, or any other step before dispensing, drugs. Each prescription medication prepared by an automated drug delivery system shall be verified and documented by a Kansas-licensed pharmacist as part of the dispensing process.

(b) A pharmacist-in-charge of any licensed pharmacy, licensed health care facility, or other location that is required to be supervised by a pharmacist-in-charge and that uses an automated drug delivery system shall perform the following before allowing the automated drug delivery system to be used:

(1) Ensure that the automated drug delivery system is in good working order and accurately selects the correct strength, dosage form, and quantity of the drug prescribed while maintaining appropriate recordkeeping and security safeguards;

(2) ensure that the automated drug delivery system has a mechanism for securing and accounting for all drugs removed from and subsequently returned to the system;

(3) ensure that the automated drug delivery system has a mechanism for securing and accounting for all wasted or discarded drugs, including

a manual override for the pharmacist, pharmacy intern, or pharmacy technician to clear a jammed, blocked, or malfunctioning automated drug delivery system;

(4) ensure compliance with an ongoing continuous quality improvement program pursuant to K.S.A. 65-1695, and amendments thereto, or a risk management program that monitors total system performance and includes the requirement for accuracy in the drug and strength delivered;

(5) ensure that the automated drug delivery system is loaded accurately and according to the original manufacturer's storage requirements;

(6) approve and implement an operational policy that limits the personnel responsible for the loading and unloading of drugs to or from the automated drug delivery system to any of the following:

- (A) A Kansas-licensed pharmacist;
- (B) a Kansas-registered pharmacy intern;
- (C) a Kansas-registered pharmacy technician; or
- (D) a nurse with a license issued pursuant to K.S.A. 65-1115, and amendments thereto;

(7) at the location of the automated drug delivery system, maintain a current list of those approved individuals who are authorized to unload any drug from the automated drug delivery system;

(8) approve and implement security measures that meet the requirements of all applicable state and federal laws and regulations in order to prevent unauthorized individuals from accessing or obtaining drugs;

(9) preapprove all individuals who are authorized to unload any drug from the automated drug delivery system;

(10) ensure that all drugs loaded in the automated drug delivery system are packaged in the manufacturer's original packaging or in repackaged containers, in compliance with K.A.R. 68-7-15 and K.A.R. 68-7-16, or in containers with the lot number and expiration date tracked by the automated drug delivery system;

(11) provide the board with prior written notice of the installation or removal of the automated drug delivery system; and

(12) ensure that a system of preventive maintenance and sanitation for the automated drug delivery system is established and followed. (Authorized by K.S.A. 65-1630; implementing K.S.A. 2017 Supp. 65-1637 and 65-1642; effective July 6, 2001; amended Feb. 7, 2003; amended Aug. 19, 2016; amended Jan. 4, 2019.)

68-9-3. Automated drug delivery system to supply drugs for administration in certain facilities. (a) Each of the following terms, as used in this regulation, shall have the meaning specified in this subsection:

(1) "Automated drug delivery system" means an automated dispensing system, as defined by K.S.A. 2017 Supp. 65-1626 and amendments thereto, that is located in a facility outside of a managing pharmacy and uses a robotic, mechanical, or computerized device to supply each drug to an individual licensed by the board of healing arts or the board of nursing, who shall administer the drug to a patient.

(2) "Facility" means any of the following:

(A) A medical care facility, as defined in K.S.A. 65-1626 and amendments thereto;

(B) an institutional drug room, as defined in K.S.A. 65-1626 and amendments thereto; or

(C) a long-term care facility, which shall mean any of the following:

(i) A nursing facility, as defined in K.S.A. 39-923 and amendments thereto;

(ii) a nursing facility for mental health, as defined in K.S.A. 39-923 and amendments thereto; or

(iii) any other type of adult care home, as defined in K.S.A. 39-923 and amendments thereto, that is not specified in paragraphs (a)(2)(C)(i) and (ii) and, after submitting an application, is approved by the board for an automated drug delivery system.

(3) "Managing pharmacy" means a pharmacy located in Kansas.

(4) "Pharmacist-in-charge" means the pharmacist-in-charge of the managing pharmacy.

(b) Before the initial stocking and use of an automated drug delivery system to supply drugs for administration, the pharmacist-in-charge shall meet the following requirements:

(1) Provide the board with at least 14-day prior written notice, on a form provided by the board; and

(2) ensure that all necessary licenses, registrations, and authorizations, including a drug enforcement administration registration if supplying controlled substances, have been obtained.

(c) The pharmacist-in-charge shall consult with the pharmacy and therapeutics committee or an equivalent committee in establishing the criteria and process for determining a formulary of approved drugs that may be stored in the automated drug delivery system.

(d) A bar code verification, electronic verification, or similar verification process shall be

utilized to ensure the correct selection of drugs placed or to be placed into each automated drug delivery system. The utilization of a bar code, electronic verification, or similar verification process shall require an initial quality assurance validation, followed by a quarterly assurance review by a pharmacist.

(e) The pharmacist-in-charge shall ensure that a policy exists requiring that if, at the time of loading any controlled substance, a discrepancy in the count of that drug in the automated drug delivery system exists, the discrepancy is immediately reported to the pharmacist-in-charge.

Whenever the pharmacist-in-charge becomes aware of a discrepancy regarding the count of a controlled substance in the automated drug delivery system, the pharmacist-in-charge shall be responsible for reconciliation of the discrepancy or proper reporting of the loss.

(f) The pharmacist-in-charge shall be responsible for the following:

(1) Controlling access to the automated drug delivery system;

(2) maintaining policies and procedures for the following:

(A) Operating the automated drug delivery system;

(B) providing prior training and authorization of personnel who are authorized to remove any drug from the automated drug delivery system;

(C) maintaining, at the location of the automated drug delivery system, a list of those individuals who are authorized to remove any drug from the automated drug delivery system;

(D) maintaining patient services whenever the automated drug delivery system is not operating; and

(E) defining a procedure for a pharmacist to grant access to the drugs in the automated drug delivery system;

(3) securing the automated drug delivery system;

(4) ensuring that each patient receives the pharmacy services necessary for appropriate pharmaceutical care;

(5) ensuring that the automated drug delivery system maintains the integrity of the information in the system and protects patient confidentiality;

(6) ensuring compliance with all requirements for packaging and labeling each medication pursuant to K.A.R. 68-7-15 and K.A.R. 68-7-16, unless the medication is already packaged in the manufacturer's original container or in repackaged containers;

(7) ensuring that a system of preventive maintenance and sanitation exists and is implemented for the automated drug delivery system;

(8) ensuring that a policy exists for securing and accounting for all drugs that are wasted or discarded from the automated drug delivery system;

(9) ensuring that inspections are conducted and documented at least monthly to ensure the accuracy of the contents of the automated drug delivery system; and

(10) ensuring the accurate loading and unloading of the automated drug delivery system by approving and implementing an operational policy that limits the personnel responsible for the loading and unloading of the automated drug delivery system to a Kansas-licensed pharmacist or any of the following, each of whom shall be under the supervision of a Kansas-licensed pharmacist:

(A) A Kansas-registered pharmacy intern;

(B) a Kansas-registered pharmacy technician; or

(C) a nurse with a license issued pursuant to K.S.A. 65-1115, and amendments thereto.

(g) A pharmacist shall comply with the medication order review and verification requirements specified in K.A.R. 68-7-11.

(h) Except in the event of a sudden and unforeseen change in a patient's condition that presents an imminent threat to the patient's life or well-being, any authorized individual at a facility may distribute patient-specific drugs utilizing an automated drug delivery system without verifying each individual drug selected or packaged by the automated drug delivery system only if both of the following conditions are met:

(1) The initial medication order has been reviewed and approved by a pharmacist.

(2) The drug is distributed for subsequent administration by a health care professional permitted by Kansas law to administer drugs.

(i) The pharmacist-in-charge shall be responsible for establishing a continuous quality improvement program for the automated drug delivery system. This program shall include written procedures for the following:

(1) Investigation of any medication error related to drugs supplied or packaged by the automated drug delivery system;

(2) review of any discrepancy or transaction reports and identification of patterns of inappropriate use of or access to the automated drug delivery system; and

(3) review of the operation of the automated drug delivery system.

(j) The pharmacist-in-charge shall ensure that the managing pharmacy maintains, in a readily retrievable manner and for at least five years, the following records related to the automated drug delivery system:

(1) Transaction records for all drugs or devices supplied by the automated drug delivery system; and

(2) any report or analysis generated as part of the continuous quality improvement program.

(k) A Kansas-registered pharmacy technician, a Kansas-registered pharmacy intern, or a nurse with a license issued pursuant to K.S.A. 65-1115, and amendments thereto, who the pharmacist-in-charge has determined is properly trained may be authorized by that pharmacist-in-charge to perform the functions of loading and unloading an automated drug delivery system utilizing a bar code verification, electronic verification, or similar verification process as specified in subsection (d).

(l) If any drug has been removed from the automated drug delivery system, that drug shall not be replaced into the automated drug delivery system unless either of the following conditions is met:

(1) The drug's purity, packaging, and labeling have been examined according to policies and procedures established by the pharmacist-in-charge to determine that the reuse of the drug is appropriate.

(2) The drug is one of the specific drugs, including multidose vials, that have been exempted by the pharmacy and therapeutics committee or an equivalent committee.

(m) Upon the removal of any automated drug delivery system, the pharmacist-in-charge shall provide the board with notification, on a form provided by the board. (Authorized by K.S.A. 65-1630; implementing K.S.A. 2017 Supp. 65-1637, 65-1642, and 65-1648; effective Aug. 19, 2016; amended Jan. 4, 2019.)

Article 10.—NUCLEAR PHARMACY

68-10-1 to 68-10-3. (Authorized by and implementing K.S.A. 65-1631; rejected, L. 1983, Ch. 356, effective May 1, 1983.)

Article 11.—FEES

68-11-1. Fees for examination and licensure as a pharmacist. The following fees shall be paid to the board by each applicant for examination and licensure as a pharmacist:

(a) Each applicant for examination shall pay a fee of \$100.00.

(b) Each applicant for reciprocal licensure shall pay a fee of \$125.00.

(c) An additional fee of \$250.00 to evaluate the education and training shall be paid by each applicant for reciprocal licensure or examination who graduated from a school or college of pharmacy or department of a university not approved by the board.

(d) Each licensed pharmacist shall pay a renewal fee of \$150.00.

(e) The penalty fee for a late renewal of a pharmacist license shall be \$200.00. (Authorized by K.S.A. 65-1630 and K.S.A. 65-1645; implementing K.S.A. 65-1645; effective May 1, 1983; amended May 1, 1986; amended May 1, 1987; amended May 1, 1988; amended May 1, 1991; amended Nov. 30, 1992; amended June 6, 1994; amended July 31, 1998; amended Feb. 5, 1999; amended Feb. 7, 2003; amended Oct. 20, 2006; amended May 30, 2014; amended May 31, 2019.)

68-11-2. Fees for premises and service registrations and permits. (a) Pharmacy registration fees shall be as follows:

(1) Each new pharmacy registration shall be \$150.00.

(2) Each renewal pharmacy registration shall be \$125.00.

(b) Manufacturer registration fees shall be as follows:

(1) Each new registration shall be \$350.00.

(2) Each renewal registration shall be \$350.00.

(c) Wholesaler distributor registration fees shall be as follows:

(1) Each new registration shall be \$350.00.

(2) Each renewal registration shall be \$350.00.

(3) For each wholesale distributor who deals exclusively in nonprescription drugs, the registration fee shall be \$50.00.

(4) For each wholesale distributor who deals exclusively in nonprescription drugs, the renewal fee shall be \$50.00.

(d) For each institutional drug room or veterinary medical teaching hospital pharmacy, registration fees shall be as follows:

(1) Each new registration shall be \$25.00.

(2) Each renewal registration shall be \$20.00.

(e) Retail dealer permit fees shall be as follows:

(1) Each new permit shall be \$10.00.

(2) Each renewal permit shall be \$10.00.

(f) Each special auction permit shall be \$28.00.

(g) Sample distribution fees shall be as follows:
 (1) Each new permit shall be \$30.00.
 (2) Each renewal permit shall be \$30.00.
 (h) For each place of business that sells durable medical equipment, registration fees shall be as follows:

(1) Each new registration shall be \$300.00.
 (2) Each renewal registration shall be \$300.00.
 (i) Third-party logistics provider registration fees shall be as follows:

(1) Each new registration shall be \$350.00.
 (2) Each renewal registration shall be \$350.00.
 (3) For each third-party logistics provider who deals exclusively in nonprescription drugs, the registration fee shall be \$50.00.

(4) For each third-party logistics provider who deals exclusively in nonprescription drugs, the renewal fee shall be \$50.00.

(j) For each outsourcing facility or virtual outsourcing facility, registration fees shall be as follows:

(1) Each new registration shall be \$350.00.
 (2) Each renewal registration shall be \$350.00.
 (k) Repackager registration fees shall be as follows:

(1) Each new registration shall be \$350.00.
 (2) Each renewal registration shall be \$350.00.
 (l) For each place of business that operates an automated dispensing system for patient medication administration, registration fees shall be as follows:

(1) Each new registration shall be \$20.00.
 (2) Each renewal registration shall be \$20.00.
 (Authorized by K.S.A. 65-1630 and K.S.A. 65-1645; implementing K.S.A. 65-1645; effective May 1, 1983; amended May 1, 1988; amended June 6, 1994; amended Feb. 7, 2003; amended Oct. 24, 2008; amended May 30, 2014; amended Dec. 15, 2017; amended May 31, 2019.)

68-11-3. Fees for registration as a pharmacy technician or pharmacy intern. The following fees shall be paid to the board:

(a) Each applicant for initial registration as a pharmacy technician shall pay a fee of \$20.00.

(b) Each registered pharmacy technician shall pay a renewal fee of \$20.00.

(c) Each applicant for a pharmacy intern registration shall pay a fee of \$20.00. (Authorized by K.S.A. 65-1630, K.S.A. 2015 Supp. 65-1663, and K.S.A. 2015 Supp. 65-1676; implementing K.S.A. 2015 Supp. 65-1663 and 65-1676; effective Aug. 19, 2016.)

Article 12.—RESALE OF MEDICATION

68-12-1. (Authorized by and implementing K.S.A. 65-1637a; rejected, L. 1983, Ch. 356, effective May 1, 1983.)

68-12-2. Resale of dispensed prescription drugs. Except for prescription drugs in unit-dose systems that contain only one medication and in which the drug has not reached the patient and is still intact, prescription drugs that have been dispensed to the final consumer shall not be resold, redispensed, or distributed by a licensed pharmacist. (Authorized by K.S.A. 65-1630; implementing K.S.A. 65-1634; effective May 1, 1988; amended Nov. 30, 1992; amended, T-68-11-19-92, Nov. 30, 1992; amended March 29, 1993; amended Feb. 7, 2003.)

Article 13.—PARENTERAL PRODUCTS

68-13-1. (Authorized by K.S.A. 65-1630; implementing K.S.A. 2001 Supp. 65-1642; effective May 1, 1988; amended Feb. 7, 2003; revoked Jan. 4, 2019.)

68-13-2. Definitions. As used in this article of the board's regulations, each of the following terms shall have the meaning specified in this regulation:

(a) "Active ingredients" means chemicals, substances, or other components intended for use in the diagnosis, cure, mitigation, treatment, or prevention of diseases in humans or for use as nutritional supplements.

(b) "Added substances" and "inactive ingredients" mean the ingredients necessary to compound a sterile preparation or nonsterile preparation and not intended or expected to cause a human pharmacologic response if administered alone in the amount or concentration contained in a single dose of the drug product.

(c) "Antearea" means an area, separate from the buffer area, that meets the requirements of an ISO class eight environment and in which personal hygiene and garbing procedures, staging of components, order entry, and labeling are performed.

(d) "Batch" means multiple sterile dosage units in a quantity greater than 25 that are compounded in a discrete process by the same individual or individuals during one limited period.

(e) "Beyond-use date" means a date placed on a prescription label at the time of dispensing, re-

packaging, or prepackaging that is intended to indicate to the patient or caregiver a time beyond which the contents of the prescription are not recommended to be used.

(f) “Biological safety cabinet” and “BSC” mean a ventilated cabinet for sterile preparations and hazardous drugs to protect personnel, products, and the environment that has an open front with inward airflow for protection of personnel, downward-airflow LAFS for product protection, and HEPA-filtered exhausted air for environmental protection.

(g) “Buffer area” means an area that meets the requirements for an ISO class seven environment and in which the primary engineering control is located.

(h) “Clean room” means a room that meets the requirements for an ISO class five environment.

(i) “Complex nonsterile compounding” means making a nonsterile preparation that requires special training, environment, facilities, equipment, and procedures to ensure appropriate therapeutic outcomes. Nonsterile preparations made using complex nonsterile compounding shall include transdermal dosage forms, modified-release forms, and suppositories for systemic effects.

(j) “Component” means any active ingredient or added substance intended for use in the compounding of a drug product, including any ingredient that does not appear in the drug product.

(k) “Compounding” has the meaning specified in K.S.A. 2017 Supp. 65-1626, and amendments thereto.

(l) “Compounding area” means any area in a pharmacy or outsourcing facility where compounding is performed.

(m) “Compounding aseptic containment isolator” and “CACI” mean a compounding aseptic isolator designed to provide worker protection from exposure to undesirable levels of airborne drugs throughout the compounding and material transfer process and to provide an aseptic environment for compounding sterile preparations. Air exchange with the surrounding environment shall not occur unless the air is first passed through a HEPA filter capable of containing airborne concentrations of the physical size and state of the drug being compounded. Whenever volatile hazardous drugs are compounded, the exhaust air from the CACI shall be removed by the building’s ventilation system.

(n) “Compounding aseptic isolator” and “CAI” mean a type of isolator specifically designed for

compounding sterile preparations or nonsterile preparations and designed to maintain an aseptic compounding environment within the isolator throughout the compounding and material transfer process. Air exchange into the CAI from the surrounding environment shall not occur unless the air has first passed through a HEPA filter and an ISO class five environment is maintained.

(o) “Cytotoxic,” when used to describe a pharmaceutical, means that the pharmaceutical is capable of killing living cells. This term is also used to describe components classified as cancer chemotherapeutic, carcinogenic, mutagenic, or anti-neoplastic.

(p) “Dosage unit” means the amount of a sterile preparation that would be administered to or taken by one patient at a time.

(q) “Endotoxin” means a potentially toxic, natural compound that is a structural component of bacterial cell walls and that is released mainly when bacteria undergo destruction or decomposition.

(r) “Essentially a copy” means any sterile preparation or nonsterile preparation that is comparable in active ingredients to a commercially available drug product, unless either of the following conditions is met:

(1) There is a change made for an identified individual patient that produces a clinically significant difference for the patient, as determined by the prescribing practitioner, between the comparable commercially available drug product and either the sterile preparation or the nonsterile preparation.

(2) The drug appears on the drug shortage list in section 506E of the federal food, drug, and cosmetic act, 21 U.S.C. 356e, at the time of compounding, distribution, and dispensing.

(s) “Excursion” means a deviation from the range of temperatures specified by the manufacturer for storage or transport of a pharmaceutical based on stability data.

(t) “Glove fingertip test” means a test in which a gloved fingertip is pressed to and cultured on a microbiological growth media plate. Each successful glove fingertip test shall yield no more than three colony-forming units per contact plate for the annual competency evaluation and shall yield zero colony-forming units at least three times for the initial competency evaluation.

(u) “Hazardous drug” means any drug or compounded drug identified by at least one of the following criteria:

(1) Carcinogenicity;

(2) teratogenicity or developmental toxicity;
(3) reproductive toxicity;
(4) organ toxicity at low doses;
(5) genotoxicity; or
(6) drug product structure or toxicity that mimics that of existing hazardous drugs.

(v) "HEPA" means high-efficiency particulate air.

(w) "ISO class eight environment" means an atmospheric environment containing less than 3,520,000 airborne particles measuring at least 0.5 micron in diameter per cubic meter of air.

(x) "ISO class five environment" means an atmospheric environment containing less than 3,520 airborne particles measuring at least 0.5 micron in diameter per cubic meter of air.

(y) "ISO class seven environment" means an atmospheric environment containing less than 352,000 airborne particles measuring at least 0.5 micron in diameter per cubic meter of air.

(z) "Laminar airflow system" and "LAFS" mean an apparatus designed to provide an ISO class five environment for the compounding of sterile preparations using air circulation in a defined direction that passes through a HEPA filter.

(aa) "Manufacturing" means manufacture as defined in K.S.A. 65-1626, and amendments thereto.

(bb) "Media fill test" means a test in which a microbiological growth medium, which may consist of a soybean-casein digest medium, is substituted for an actual drug product to simulate admixture compounding. The media fill test shall be successful if it produces a sterile preparation without microbial contamination.

(cc) "Moderate nonsterile compounding" means making a nonsterile preparation that requires special calculations or procedures to determine quantities of components per nonsterile preparation or per dosage unit or making a nonsterile preparation for which stability data is not available. Nonsterile preparations made using moderate nonsterile compounding shall include morphine sulfate suppositories, diphenhydramine troches, and a mixture of two or more manufactured creams if stability of the mixture is not known.

(dd) "Multiple-dose container" means a multiple-unit container for any sterile preparation intended only for parenteral administration, usually containing antimicrobial preservatives.

(ee) "Nonsterile preparation" means a pharmaceutical made using simple nonsterile compounding, moderate nonsterile compounding, or complex nonsterile compounding.

(ff) "Official compendium" has the meaning specified in K.S.A. 65-656, and amendments thereto.

(gg) "Order" means either a prescription order as defined in K.S.A. 65-1626, and amendments thereto, or a medication order as defined in K.A.R. 68-5-1.

(hh) "Parenteral," when used to refer to a solution, means that the solution is administered by injection through one or more layers of skin or by other routes of administration that bypass the gastrointestinal tract.

(ii) "Parenteral product" means a sterile preparation administered by injection through one or more layers of skin or by other routes of administration that bypass the gastrointestinal tract.

(jj) "Practitioner-patient-pharmacist relationship" means a relationship that meets all of the following conditions:

(1) The practitioner has assumed the responsibility for making medical judgments regarding the health of the patient and the need for medical treatment.

(2) The practitioner has sufficient knowledge of the patient to initiate at least a general or preliminary diagnosis of the medical condition, and the practitioner has examined the patient and is available for follow-up.

(3) The practitioner has communicated the necessary prescriptions to the pharmacist, who is able to provide pharmaceutical care to the patient and, if needed, communicate with the practitioner.

(kk) "Primary engineering control" means a clean room or an apparatus for compounding sterile preparations, including an LAFS, a BSC, a CAI, or a CACI, designed to provide an ISO class five environment for compounding sterile preparations.

(ll) "Purified water" means water that meets the requirements for ionic and organic chemistry purity and protection from microbial contamination specified in section 1231 of the official compendium.

(mm) "Refrigeration" and "controlled cold temperature" mean a temperature maintained thermostatically between 2° and 8°C (36° to 46°F) that allows for excursions between 0° and 15°C (32° to 59°F) that are experienced during storage, shipping, and distribution, such that the allowable calculated mean kinetic temperature is not more than 8°C (46°F).

(nn) "Room temperature" means a temperature maintained thermostatically that meets the following criteria:

(1) Encompasses the usual and customary working environment of 20° to 25°C (68° to 77°F);

(2) results in a mean kinetic temperature calculated to be not more than 25°C (77°F); and

(3) allows for excursions between 15° and 30°C (59° to 86°F) experienced in pharmacies, hospitals, and storage facilities, such that the allowable calculated mean kinetic temperature remains in the allowed range.

(oo) “Segregated compounding area” means a designated, demarcated area or room that is restricted to compounding low-risk sterile preparations, which shall contain a primary engineering control providing unidirectional airflow that maintains an ISO class five environment and shall be void of all activities and materials extraneous to the sterile compounding process.

(pp) “Simple nonsterile compounding” means either of the following:

(1) Making a nonsterile preparation that has a compounding monograph listed in the official compendium or that appears in a peer-reviewed journal containing specifics on component quantities, compounding procedure, equipment, and stability data for the formulation and appropriate beyond-use dates; or

(2) reconstituting or manipulating commercially available products that require the addition of one or more ingredients as directed by the manufacturer.

Nonsterile preparations made using simple nonsterile compounding shall include captopril oral solution, indomethacin topical gel, and potassium bromide oral solution.

(qq) “Single-dose container” means a single-unit container for any sterile preparation intended for parenteral administration that is accessed once for one patient.

(rr) “Specific medical need” means a medical reason why a commercially available drug product cannot be used, excluding cost and convenience.

(ss) “Sterile preparation” means any dosage form of a drug, including parenteral products free of viable microorganisms, made using currently accepted aseptic compounding techniques under acceptable compounding conditions. This term shall include any commercially compounded sterile drug dosage form that has been altered in the compounding process.

(tt) “Sufficient documentation” means either of the following:

(1) A prescription documenting a specific medical need; or

(2) a notation in a pharmacy’s or an outsourcing

facility’s records that verbal or other documentation of the specific medical need was received for each prescription, including the name of the person verifying the specific medical need, the date, and the specific medical need. (Authorized by K.S.A. 65-1630 and K.S.A. 2017 Supp. 65-1637e; implementing K.S.A. 2017 Supp. 65-1626, K.S.A. 2017 Supp. 65-1626a, K.S.A. 65-1634, K.S.A. 2017 Supp. 65-1637c, and K.S.A. 2017 Supp. 65-1642; effective May 11, 2018.)

68-13-3. Nonsterile preparations. (a) This regulation shall apply to the following:

(1) Nonsterile preparations that are compounded in Kansas; and

(2) nonsterile preparations that are shipped or delivered into Kansas by a pharmacy and are to be administered to a patient in Kansas.

(b) “Pharmacy,” as used in this regulation, shall mean a pharmacy, nonresident pharmacy, or outsourcing facility as defined by K.S.A. 2017 Supp. 65-1626, and amendments thereto.

(c) Any pharmacist may compound a nonsterile preparation that is commercially available only if it is different from a product approved by the FDA and there is sufficient documentation of a specific medical need for an individual patient.

(d) A pharmacist shall not compound a nonsterile preparation by any of the following methods:

(1) Using any component withdrawn from the market by the FDA for safety reasons;

(2) receiving, storing, or using any drug component that is not guaranteed or otherwise determined to meet the requirements of an official compendium;

(3) compounding finished drugs from bulk active ingredients that do not meet the requirements of a monograph listed in the official compendium; or

(4) compounding finished drugs from bulk active ingredients that are not components of FDA-approved drugs.

(e) For the convenience of any patient, any pharmacist may compound a nonsterile preparation before receiving an order based on routine, regularly observed prescribing patterns.

(f) Compounding for non-human animals shall meet the same requirements as those for human prescriptions, except that a pharmacist shall not compound bulk chemicals for food-producing animals.

(g) Each nonsterile preparation sold by a pharmacy to a practitioner for administration to a

tient shall be packaged with a label that includes the following text: “For Office Use Only — Not for Resale.”

(h) Any pharmacy may distribute nonsterile preparations without a prescription, including providing limited quantities to a practitioner in the course of professional practice to administer limited quantities to an individual patient, if the nonsterile preparations are not intended for resale.

(i) Each pharmacy selling any prescription nonsterile preparation to a practitioner for office use shall maintain an invoice documenting the following:

- (1) The name and address of the practitioner;
- (2) the drug compounded, including the lot number and expiration date of each component;
- (3) the quantity sold; and
- (4) the date of the transaction.

The invoice shall be maintained in the pharmacy and shall be made readily available to the pharmacist-in-charge, the board, and the board’s designee.

(j) Within each pharmacy in which compounding occurs, one area shall be designated as the principal compounding area, where all nonsterile compounding shall take place.

(1) Each compounding area shall be well-lighted and well-ventilated, with clean and sanitary surroundings, and shall be free of food and beverages.

(2) Each compounding area shall provide the drugs, chemicals, and devices with necessary protection from deterioration due to light, heat, and evaporation and shall be arranged to protect all prescription drugs and devices from theft and any other unauthorized removal.

(3) All components used in compounding nonsterile preparations shall be stored in labeled containers in a clean, dry area and, if required, under proper refrigeration.

(4) Each compounding area shall include a sink that is equipped with hot and cold running water for hand and equipment washing.

(k) Each pharmacist compounding nonsterile preparations shall use purified water if the formulations indicate the inclusion of water.

(l) Each pharmacist-in-charge shall maintain a uniform formulation record for each nonsterile preparation, documenting the following:

- (1) The ingredients, quantities, strength, and dosage form of the nonsterile preparation;
- (2) the equipment used to compound the nonsterile preparation and the mixing instructions;
- (3) the container used in dispensing;

(4) the storage requirements;

(5) the beyond-use date to be assigned;

(6) quality control procedures, which shall include identification of each person performing or either directly supervising or checking each step in the compounding process and which may include monitoring the following:

(A) Capsule weight variation;

(B) Adequacy of mixing to ensure uniformity and homogeneity; and

(C) the clarity, completeness, or pH of solutions;

(7) the source of the formulation, including the name of the person, entity, or publication; and

(8) the name or initials of the person creating the formulation record and the date on which the formulation record was established at the pharmacy.

(m) Each pharmacist-in-charge shall maintain on the original order or on a separate, uniform record a compounding record for each nonsterile preparation, documenting the following:

(1) The name and strength of the nonsterile preparation;

(2) the identifier used to distinguish the nonsterile preparation’s formulation record from other formulation records;

(3) the name of the manufacturer or repackager and, if applicable, the lot number and expiration date of each component;

(4) the total number of dosage units or total quantity compounded;

(5) the name of each person who compounded the nonsterile preparation;

(6) the name of the pharmacist, or the pharmacy student or intern working under the direct supervision and control of the pharmacist, who verified the accuracy of the nonsterile preparation;

(7) the date of compounding;

(8) the assigned internal identification number, if used;

(9) the prescription number, if assigned;

(10) the results of quality control procedures; and

(11) the assigned beyond-use date. In the absence of valid scientific stability information that is applicable to a specific drug or nonsterile preparation, the beyond-use date shall not be later than the expiration date of any component of the formulation and shall be established in accordance with the following criteria:

(A) For nonaqueous and solid formulations, either of the following:

(i) If a manufactured drug product is the source of the active ingredient, six months from the date

of compounding or the time remaining until the manufactured drug product's expiration date, whichever is earlier; or

(ii) if a substance listed in an official compendium is the source of an active ingredient, six months from the date of compounding or the time remaining until the expiration date of any component of the formulation, whichever is earlier;

(B) for water-containing oral formulations, not more than 14 days when stored under refrigeration; and

(C) for water-containing non-oral formulations, not longer than the intended duration of therapy or 30 days, whichever is earlier.

(n) The compounding record and the corresponding formulation record specified in subsections (m) and (l), respectively, shall be retained at the pharmacy for at least five years and shall be made readily available to the pharmacist-in-charge, the board, and the board's designee.

(o) If a patient requests a transfer of the patient's prescription, a copy of the original prescription shall be transmitted upon the request of the receiving pharmacist. The transferring pharmacist shall also transfer the following written information with the prescription:

- (1) Active ingredients;
- (2) concentration;
- (3) dosage form;
- (4) route of delivery;
- (5) delivery mechanism;
- (6) dosing duration; and
- (7) details about the compounding procedure.

(p) The pharmacist-in-charge shall ensure that all support personnel are trained and successfully demonstrate the following before performing delegated compounding:

(1) Comprehensive knowledge of the pharmacy's standard operating procedures with regard to compounding as specified in the policy and procedure manual; and

(2) familiarity with the compounding techniques used at the pharmacy. (Authorized by K.S.A. 65-1630 and K.S.A. 2017 Supp. 65-1637e; implementing K.S.A. 2017 Supp. 65-1626a, K.S.A. 65-1634, K.S.A. 65-1637c, and K.S.A. 2017 Supp. 65-1642; effective May 11, 2018.)

68-13-4. Sterile preparations. (a) This regulation shall apply to the following:

(1) Sterile preparations that are compounded in Kansas; and

(2) sterile preparations that are shipped or de-

livered into Kansas by a pharmacy to be administered to a patient in Kansas.

(b) As used in this regulation, each of the following terms shall have the meaning specified in this subsection:

(1)(A) "High-risk," when used to describe a sterile preparation, means that the sterile preparation meets at least one of the following conditions:

(i) The sterile preparation is compounded from nonsterile ingredients or with nonsterile containers or equipment before terminal sterilization.

(ii) The sterile ingredients or components of the sterile preparation are exposed to air quality inferior to that of an ISO class five environment for more than one hour.

(iii) The sterile preparation contains nonsterile water and is stored for more than six hours before being sterilized.

(iv) The compounding pharmacist cannot verify from documentation received from the supplier or by direct examination that the chemical purity and content strength of the ingredients meet the specifications of an official compendium.

(v) The sterile preparation has been stored at room temperature and administered more than 24 hours after compounding, stored under refrigeration more than three days, or stored frozen from 0° to -20°C (32° to -4°F) or colder for 45 or fewer days, and sterility has not been confirmed by testing.

(B) This term shall apply to sterile preparations including the following:

(i) Alum bladder irrigation solution;

(ii) any morphine preparation made for parenteral administration from nonsterile powder or tablets;

(iii) any total parenteral nutrition solution made from dried amino acids;

(iv) any total parenteral nutrition solution sterilized by final filtration; and

(v) any autoclaved intravenous solution.

(2) "Immediate use" means a situation in which a sterile preparation is compounded pursuant to an order in a medical care facility for administration to the patient within one hour of the start of compounding the sterile preparation.

(3) "Low-risk," when used to describe a sterile preparation, means that the sterile preparation meets the following conditions:

(A) In the absence of sterility testing, is stored at room temperature and administration to the patient has begun not more than 48 hours after compounding, is stored under refrigeration for 14 or fewer days before administration to the patient

over a period not to exceed 24 hours, or is stored frozen at -20°C (-4°F) or colder for 45 or fewer days before administration to the patient over a period not to exceed 24 hours;

(B) is prepared for administration to one patient or is batch-prepared and contains suitable preservatives for administration to more than one patient; and

(C) is prepared by a simple or closed-system aseptic transfer of no more than three sterile, nonpyrogenic, finished pharmaceuticals obtained from licensed manufacturers into sterile final containers obtained from licensed manufacturers with no more than two instances in which a transfer device passes through the designated access point into any one sterile container or package.

(4)(A) "Medium-risk," when used to describe a sterile preparation, means that the sterile preparation meets at least one of the following conditions:

(i) In the absence of sterility testing, is stored at room temperature and administered to the patient not more than 30 hours after compounding, is stored under refrigeration for nine or fewer days, or is stored frozen at -20°C (-4°F) or colder for 45 or fewer days;

(ii) is batch-prepared and intended for use by more than one patient or by one patient on multiple occasions;

(iii) is created by a compounding process that includes complex aseptic manipulations other than a single-volume transfer; or

(iv) is compounded by at least four manipulations of sterile ingredients obtained from licensed manufacturers in a sterile container obtained from a licensed manufacturer by using a simple or closed-system aseptic transfer.

(B) This term shall apply to the following:

(i) Sterile preparations for use in a portable pump or reservoir over multiple days;

(ii) batch-reconstituted sterile preparations;

(iii) batch-prefilled syringes; and

(iv) total parenteral nutrient solutions that are compounded by the gravity transfer of carbohydrates and amino acids into an empty container with the addition of sterile additives using a syringe and needle or that are mixed with an automatic compounding device.

(5) "Pharmacy" means a pharmacy, nonresident pharmacy, or outsourcing facility as defined by K.S.A. 2017 Supp. 65-1626, and amendments thereto.

(c) Any sterile preparation for immediate use may be compounded outside a primary engi-

neering control if both of the following conditions are met:

(1) Administration to the patient begins within one hour of the start of compounding the sterile preparation.

(2) The sterile preparation is compounded by a simple or closed-system aseptic transfer of sterile, nonpyrogenic, finished pharmaceuticals obtained from licensed manufacturers into sterile final containers obtained from licensed manufacturers.

(d) When a multiple-dose container with antimicrobial preservatives has been opened or entered, the container shall be labeled with a beyond-use date not to exceed 28 days, unless otherwise specified by the manufacturer.

(e) Each compounding area shall contain a primary engineering control providing unidirectional airflow that will maintain an ISO class five environment for compounding sterile preparations and shall be void of all activities and materials that are extraneous to compounding.

(f) Each sterile preparation compounded in a segregated compounding area shall be labeled with a beyond-use date of no more than 12 hours.

(g) Each single-dose container shall be labeled as such.

(h) The contents of each single-dose container shall be used within one hour if the container is opened or entered in an area with air quality that does not meet the requirements of an ISO class five environment.

(i) The contents of each single-dose container shall be used within six hours if the container is opened or entered in an area that meets the requirements of an ISO class five environment.

(j) For the convenience of any patient, any pharmacist may compound a sterile preparation before receiving an order if the pharmacist has previously filled orders for the sterile preparation and the sterile preparation is based on routine, regularly observed prescribing patterns.

(k) Compounding for non-human animals shall meet the same requirements as those for human prescriptions, except that a pharmacist shall not compound bulk chemicals for food-producing animals.

(l) Each sterile preparation sold by a pharmacy to a practitioner for administration to a patient shall be packaged with a label that includes the following text: "For Office Use Only — Not For Resale."

(m) Any pharmacy may distribute sterile preparations without a prescription, including providing

limited quantities to a practitioner in the course of professional practice to administer limited quantities to an individual patient, if the sterile preparations are not intended for resale.

(n) A pharmacist shall not compound a sterile preparation that is essentially a copy.

(o) Any pharmacist may compound a sterile preparation that is commercially available only if there is sufficient documentation of a specific medical need for the prescription or the product is temporarily unavailable due to problems other than safety or effectiveness. Each pharmacist shall document any unavailability in the patient's prescription record, including the date the product was unavailable, and shall maintain documentation from the manufacturer or distributor demonstrating the product's unavailability. The pharmacist shall cease compounding the sterile preparation as soon as the product becomes commercially available.

(p) A pharmacist shall not compound a sterile preparation by any of the following methods:

(1) Using any component withdrawn from the market by the FDA for safety reasons;

(2) receiving, storing, or using any drug component that is not guaranteed or otherwise determined to meet the requirements of an official compendium; or

(3) compounding finished drugs through manufacturing, as defined in K.S.A. 65-1626 and amendments thereto, without first receiving an FDA-sanctioned investigational new drug application in accordance with 21 U.S.C. 355(i) and 21 C.F.R. Part 312.

(q) Each pharmacist or pharmacy compounding sterile preparations shall have the following resources:

(1) A primary engineering control that is currently certified by an inspector certified by the controlled environmental testing association to ensure aseptic conditions within the working area and that has the required documentation. The certification shall be deemed current if the certification occurred within the previous six months or on the date the device was last moved to another location, whichever is more recent. The required documentation shall include the following:

(A) Inspection certificates for the past five years or since the date of installation, whichever is more recent;

(B) records of all filter maintenance for the past five years or since the date of installation, whichever is more recent;

(C) records of all HEPA filter maintenance for the past five years or since the date of installation, whichever is more recent; and

(D) records of all disinfecting and cleaning for the past year or since the date of installation, whichever is more recent;

(2) a sink with hot and cold running water;

(3) a refrigerator capable of maintaining a temperature of 2° to 8°C (36° to 46°F) and, if needed, a freezer capable of maintaining a temperature of -25° to -10°C (-13° to 14°F). The temperature shall be monitored and recorded each business day. Each pharmacy with an electronic system that alerts the pharmacist to non-compliant temperatures shall be exempt from daily recording;

(4) the reference materials required by K.A.R. 68-2-12a and a current copy of a reference text on intravenous incompatibilities and stabilities. If an electronic library is provided, a workstation shall be readily available for use by pharmacy personnel, students, interns, and board personnel;

(5) a policy and procedure manual, with a documented review at least every two years by the pharmacist-in-charge or designee, which shall include the following subjects:

(A) Sanitation;

(B) storage;

(C) dispensing;

(D) labeling;

(E) destruction and return of controlled substances;

(F) recordkeeping;

(G) recall procedures;

(H) responsibilities and duties of supportive personnel;

(I) aseptic compounding techniques; and

(J) ongoing evaluation of all staff compounding sterile preparations; and

(6) supplies necessary for compounding sterile preparations.

(r) Each pharmacist-in-charge shall maintain a uniform formulation record for each sterile preparation, documenting the following:

(1) The quantities, strength, and dosage form of all components of the sterile preparation;

(2) the equipment used to compound the sterile preparation and the mixing instructions;

(3) the container used in dispensing;

(4) the storage requirements;

(5) the beyond-use date to be assigned;

(6) quality control procedures, which may include monitoring the following, if applicable:

(A) Adequacy of mixing to ensure uniformity and homogeneity; and

(B) the clarity, completeness, or pH of solutions;

(7) the sterilization methods;

(8) the source of the formulation; and

(9) the name of the pharmacist who verified the accuracy of the formulation record and the date of verification.

(s) Each pharmacist-in-charge shall maintain on the original order or on a separate, uniform record a compounding record for each sterile preparation, documenting the following:

(1) The name and strength of the sterile preparation;

(2) the formulation record reference for the sterile preparation;

(3) the name of the manufacturer or repackager and, if applicable, the lot number and the expiration date of each component;

(4) the total number of dosage units or total quantity compounded;

(5) the name of the person or persons who compounded the sterile preparation;

(6) the name of the pharmacist, or the pharmacy student or intern working under the direct supervision and control of the pharmacist, who verified the accuracy of the sterile preparation;

(7) the date of compounding;

(8) the assigned internal identification number, if applicable;

(9) the prescription number, if assigned;

(10) the results of quality control procedures;

(11) the results of the sterility testing and, if applicable, pyrogen testing for the batch; and

(12) the assigned beyond-use-date. In the absence of valid scientific stability information that is applicable to a component or the sterile preparation, the beyond-use date shall be established in accordance with the following criteria:

(A) For nonaqueous and solid formulations, one of the following:

(i) If the manufactured drug product is the source of the active ingredient, six months from the date of compounding or the time remaining until the manufactured drug product's expiration date, whichever is earlier; or

(ii) if the substance listed in an official compendium is the source of an active ingredient, six months from the date of compounding or the time remaining until the expiration date of any component of the formulation, whichever is earlier;

(B) for formulations containing water and made

from ingredients in solid form, not more than 14 days when stored under refrigeration; and

(C) for all other formulations, not longer than the intended duration of therapy or 30 days, whichever is earlier.

(t) The compounding record and corresponding formulation record specified in subsections (s) and (r), respectively, shall be retained at the pharmacy for at least five years and shall be made readily available to the pharmacist-in-charge, the board, and the board's designee.

(u) Medical care facility pharmacies shall generate a compounding record and a corresponding formulation record only for batch compounding or for any sterile preparation with a beyond-use date of more than seven days.

(v) Except when compounding in any CAI, each person involved in compounding a sterile preparation shall follow personal garbing and washing procedures that include the following minimum requirements:

(1) Preparing for garbing by removing any outer garments, cosmetics, jewelry, and artificial nails;

(2) performing the following procedures, in the order listed:

(A) Donning dedicated shoes or shoe covers;

(B) donning head and facial hair covers;

(C) either washing the hands with soap for at least 20 seconds or using an antiseptic hand scrub in accordance with the manufacturer's instructions; and

(D) donning a nonshedding gown; and

(3) entering the work area and immediately performing an antiseptic hand-cleaning procedure using an alcohol-based surgical hand scrub and successively donning sterile, powder-free gloves. Sterile gloves shall be disinfected after touching any nonsterile area.

(w) All sterile preparations shall be stored and delivered in a manner that is designed to maintain parenteral product stability and sterility.

(x) All sterile preparations, except for sterile preparations for immediate use, shall be compounded under aseptic conditions as follows:

(1) Each low-risk sterile preparation labeled with a beyond-use date of 12 hours or longer shall be compounded in an ISO class five environment using techniques that ensure sterility. Each low-risk sterile preparation labeled with a beyond-use date of less than 12 hours shall, at a minimum, be made in a segregated compounding area.

(2) Each medium-risk sterile preparation shall be compounded in an ISO class five environment using techniques that ensure sterility.

(3) Each high-risk sterile preparation made with nonsterile components shall be sterilized before being administered to a patient and shall have a certificate of analysis indicating that all nonsterile components meet the standards of the "United States pharmacopeia" and the FDA for identity, purity, and endotoxin levels as verified by a pharmacist.

(y) Each pharmacist engaged in the dispensing of sterile preparations shall meet all labeling requirements under state and federal law. In addition, the label of each sterile preparation shall contain the following information:

- (1) The name and quantity of each component;
- (2) the beyond-use date;
- (3) the prescribed flow rate;
- (4) the name or initials of each person who compounded the sterile preparation; and
- (5) any special storage instructions.

(z)(1) The pharmacist-in-charge and all personnel involved in compounding sterile preparations shall have practical or academic training in sterile compounding, clean room technology, laminar flow technology, and quality assurance techniques. The training shall include the following:

- (A) At least one successful media fill test; and
 - (B) a successful glove fingertip test.
- (2) The pharmacist-in-charge shall ensure that all supportive personnel are trained and successfully demonstrate the following before performing any delegated sterile admixture services:

(A) Comprehensive knowledge of the pharmacy's standard operating procedures with regard to sterile admixture services, as specified in the policy and procedure manual;

(B) familiarity with the compounding techniques; and

(C) aseptic technique, which shall be proven by means of a media fill test and a glove fingertip test.

(3) The pharmacist-in-charge shall be responsible for testing the aseptic technique of all personnel involved in compounding sterile preparations annually by means of a media fill test. All personnel involved in compounding high-risk sterile preparations shall undergo this testing twice each year. Each individual who fails to demonstrate acceptable aseptic technique shall be prohibited from compounding sterile preparations until the individual demonstrates acceptable technique by means of a media fill test.

(aa) The pharmacist-in-charge shall document all training and test results for each person before that person begins compounding sterile prepara-

tions. This documentation shall be maintained by the pharmacy for at least five years and shall be made available to the board upon request.

(bb) The pharmacist-in-charge shall be responsible maintaining records documenting the frequency of cleaning and disinfection of all compounding areas, according to the following minimum requirements:

(1) Each ISO class five environment shall be cleaned and disinfected as follows:

- (A) At the beginning of each shift;
- (B) every 30 minutes during continuous periods of compounding individual sterile preparations;
- (C) before each batch; and
- (D) after a spill or known contamination.

(2) All counters, work surfaces, and floors shall be cleaned and disinfected daily.

(3) All walls, ceilings, and storage shelves shall be cleaned and disinfected monthly.

(cc) The pharmacist-in-charge shall be responsible for maintaining records documenting the monitoring of the air pressure and air flow and shall initiate immediate corrective action if indicated. The air pressure of the anteroom shall be maintained at five pascals, and the air flow shall be maintained at 0.2 meters per second. The air pressure and air flow values shall be checked and recorded at least once daily.

(dd) The pharmacist-in-charge shall be responsible for maintaining records documenting the monitoring of the cleanliness and sterility of the sterile compounding environment. Environmental sampling shall be performed in each new facility before any sterile preparation in that facility is provided to a patient and, at a minimum, every six months thereafter. The environmental sampling shall include the primary engineering control, anteroom and buffer area, and equipment and shall be performed following any repair or service performed at the facility and in response to any identified problem or concern.

Environmental sampling shall consist of the following, at a minimum:

- (1) Environmental nonviable particle counts;
- (2) environmental viable airborne particle testing by volumetric collection;
- (3) environmental viable surface sampling; and
- (4) certification of operational efficiency of the primary engineering control by an independent contractor according to the international organization of standardization classification of particulate matter in room air, at least once every six months.

(ee) The environmental sampling records specified in subsection (dd) shall be retained at the pharmacy for at least five years and shall be made readily available to the pharmacist-in-charge, the board, and the board's designee.

(ff) If a microbial growth above acceptable levels is detected in an ISO class five environment, ISO class seven environment, or ISO class eight environment, an immediate reevaluation of the adequacy of compounding practice, cleaning procedures, operational procedures, and air filtration efficiency with the aseptic compounding location shall be conducted and documented. Each investigation into the source of the contamination shall include air sources, personnel garbing, and all filters, at a minimum. The ISO class five environment, ISO class seven environment, or ISO class eight environment shall be cleaned three times and environmental sampling shall be performed and reevaluated. Sterile preparations may be compounded and labeled with a beyond-use date according to subsection (gg) until microbial growth has decreased to acceptable levels.

(1) An ISO class five environment shall have acceptable levels of microbial growth if both of the following conditions are met:

(A) An airborne sample demonstrates no more than one colony-forming unit per cubic meter of air.

(B) A surface sample demonstrates no more than three colony-forming units per contact plate.

(2) An ISO class seven environment shall have acceptable levels of microbial growth if both of the following conditions are met:

(A) An airborne sample demonstrates no more than 10 colony-forming units per cubic meter of air.

(B) A surface sample demonstrates no more than five colony-forming units per contact plate.

(3) An ISO class eight environment shall have acceptable levels of microbial growth if both of the following conditions are met:

(A) An airborne sample demonstrates no more than 100 colony-forming units per cubic meter of air.

(B) A surface sample demonstrates no more than 100 colony-forming units per contact plate.

(gg) Unless sterility has been confirmed by testing, each high-risk sterile preparation shall be administered according to the following:

(1) Within 24 hours of compounding if stored at room temperature;

(2) within three days of compounding if stored under refrigeration; or

(3) within 45 days of compounding if stored frozen at -20°C (-4°F) or colder. (Authorized by K.S.A. 65-1630 and K.S.A. 2017 Supp. 65-1637e; implementing K.S.A. 2017 Supp. 65-1626a, K.S.A. 65-1634, K.S.A. 2017 Supp. 65-1637c, and K.S.A. 2017 Supp. 65-1642; effective May 11, 2018.)

Article 14.—WHOLESALE DISTRIBUTORS

68-14-1. (Authorized by K.S.A. 65-1630; implementing K.S.A. 1998 Supp. 65-1643; effective June 15, 1992; amended March 20, 1995; amended July 30, 1999; revoked Jan. 3, 2020.)

68-14-2. Definitions. As used in this article of the board's regulations and the pharmacy practice act, each of the following terms shall have the meaning specified in this regulation:

(a) "Blood" means whole blood collected from a single donor and processed either for transfusion or for further manufacturing.

(b) "Blood component" means that part of blood separated by physical or mechanical means.

(c) "Common ownership and control" means the power to direct or cause the direction of the management and policies of a person or an organization, whether by ownership of stock, by voting rights, by contract, or by other means.

(d) "Drug sample" means a unit of a prescription-only drug that is not intended to be sold, is intended to promote the sale of the drug, and is distributed on a gratuitous basis.

(e) "Device" has the meaning specified in K.S.A. 65-656, and amendments thereto.

(f) "Emergency medical reasons" shall include transfers of prescription-only drugs by a retail pharmacy to another retail pharmacy to alleviate a temporary shortage, except that the gross dollar value of these transfers shall not exceed five percent of the total prescription-only drug sales revenue of either the transferor or transferee pharmacy during any period of 12 consecutive months.

(g) "Excursion" means a deviation from the range of temperatures specified by the manufacturer for storage or transport of a prescription-only drug or device based on stability data.

(h) "Intracompany sales" and "intracompany distribution" mean any transaction or transfer between any division, subsidiary, parent, affiliated,

or related company under the common ownership and control of a corporate entity.

(i) “Primary owner” means any person owning or controlling more than 50 percent of the wholesaler’s business.

(j) “Room temperature” means a temperature that is maintained thermostatically and meets the following requirements:

(1) Encompasses the usual and customary working environment of 20° to 25°C (68° to 77°F);

(2) results in a mean kinetic temperature calculated to be not more than 25°C (77°F); and

(3) allows for excursions between 15° and 30°C (59° to 86°F) experienced in facilities, such that the allowable calculated mean kinetic temperature remains in the allowed range.

(k) “Virtual wholesale distribution” means arranging for the distribution of a drug or device, which may include taking actual possession of the drug or device and shall include contracting with another entity for the distribution, purchase, and sale of the drug or device.

(l) “Virtual wholesale distributor” means a business entity that arranges for the distribution of a drug or device, with or without taking actual possession of the drug or device, and contracts with others for the distribution, purchase, and sale.

(m) “Wholesale distribution” means distribution of prescription-only drugs or devices to persons other than a consumer or patient and shall include virtual wholesale distribution and virtual wholesale distributors, but this term shall not include either of the following:

(1) The distribution of drug samples by manufacturers’ representatives or representatives of the authorized distributor of record, in accordance with 21 U.S.C. 353; or

(2) the sale, purchase, or trade of blood and blood components intended for transfusion. (Authorized by K.S.A. 65-1630; implementing K.S.A. 65-1626, as amended by L. 2019, ch. 52, sec. 7, K.S.A. 65-1643, K.S.A. 65-1655, K.S.A. 65-1655a, and K.S.A. 65-1655b; effective June 15, 1992; amended July 23, 1999; amended Jan. 3, 2020.)

68-14-3. (Authorized by and implementing K.S.A. 1998 Supp. 65-1655 and 65-1643; effective June 15, 1992; amended July 23, 1999; revoked Jan. 3, 2020.)

68-14-4. Minimum required information for registration. (a) Each wholesale distributor,

virtual wholesale distributor, third-party logistics provider, or outsourcing facility shall provide the board with the following minimum information as part of the registration requirements described in K.S.A. 65-1645, and amendments thereto, and as part of any renewal of any registration:

(1) The name, commercial business address, and telephone number of the registrant;

(2) each trade or business name used by the registrant;

(3) the address, telephone number, and name of the contact person for each facility used by the registrant for the storage, handling, and distribution of prescription-only drugs or devices;

(4) the type of ownership or operation, including partnership, corporation, or sole proprietorship;

(5) the name of each owner, operator, facility manager, and designated representative of the registrant, including the following:

(A) If a person, the name, address, and date of birth of the person;

(B) if a partnership, the name, address, and date of birth of each partner and the name of the partnership;

(C) if a corporation, the name, title, address, and date of birth of each corporate officer and director, the corporate name, and the name of the state of incorporation; and

(D) if a sole proprietorship, the name, address, and date of birth of the sole proprietor and the name of the business entity;

(6) a list of all states where the registrant is registered as a wholesale distributor, virtual wholesale distributor, third-party logistics provider, or outsourcing facility;

(7) a copy of any current DEA registration;

(8) all disciplinary actions or sanctions by any state or federal agency against the registrant or any principal, owner, director, officer, facility manager, or designated representative thereof;

(9) if the facility is located outside of Kansas, a record of the following:

(A) A current registration in the state where the registrant is located;

(B) a satisfactory inspection conducted within the previous 36-month period by the registering entity of the state where the registrant is located. If no such inspection record is readily available, the record of a satisfactory inspection conducted at the expense of the registrant within the previous 36-month period by a third party recognized by the board to inspect may be accepted; and

(C) a designated resident agent in Kansas for service of process, the record of whom shall also be on file with the secretary of state; and

(10) if the registrant is an outsourcing facility, a record of the following:

(A) A current outsourcing facility registration from the food and drug administration (FDA); and

(B) a current inspection report from an FDA inspection conducted within the previous 24-month period that indicates compliance with the requirements of the federal food, drug and cosmetic act, including guidance documents and current good manufacturing practices established by the FDA. If no such inspection record is readily available, the record of a satisfactory inspection conducted at the expense of the registrant within the previous 36-month period by a third party recognized by the board to inspect may be accepted.

(b) Each registrant shall provide the board with a surety bond that meets the requirements of 21 U.S.C. 360eee-2.

(c) Each registrant shall provide and maintain, in readily retrievable form, a list of all manufacturers, wholesale distributors, third-party logistics providers, outsourcing facilities, and dispensers with which the registrant is transacting business.

(d) Each registrant shall submit revised information requested by subsection (a) within 30 days after any change in that information. (Authorized by K.S.A. 65-1630; implementing K.S.A. 65-1643, K.S.A. 65-1645, K.S.A. 65-1655, K.S.A. 65-1655a, and K.S.A. 65-1655b; effective June 15, 1992; amended July 23, 1999; amended Jan. 3, 2020.)

68-14-5. Personnel. (a) Each wholesale distributor registrant, virtual wholesale distributor registrant, third-party logistics registrant, or outsourcing facility registrant shall require each person employed in any wholesale distribution, virtual wholesale distribution, third-party logistics, or outsourcing activity, or any combination of these activities, to receive education, training, and experience sufficient for that person to perform the assigned functions in a manner providing assurance that the drug product quality, safety, and security will at all times be maintained as required by law. Each registrant shall maintain records of the training, education, and experience for five years.

(b) Each wholesale distributor registrant, virtual wholesale distributor registrant, or third-party logistics provider registrant shall designate an individual as the facility manager, who shall be

responsible for all aspects of the registrant's operation.

(c) Each outsourcing facility registrant shall designate a pharmacist-in-charge, as defined by K.S.A. 65-1626 and amendments thereto, who shall be responsible for all aspects of the registrant's operation. (Authorized by K.S.A. 65-1630; implementing K.S.A. 65-1655, K.S.A. 65-1655a, and K.S.A. 65-1655b; effective June 15, 1992; amended July 23, 1999; amended Jan. 3, 2020.)

68-14-6. Violations and penalties. Any license or registration granted under this article may be suspended or revoked by the board for willful and serious violation of these regulations. (Authorized by and implementing K.S.A. 1991 Supp. 65-1655; effective June 15, 1992.)

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. Each wholesale distributor registrant shall meet the following 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 by the registrant and its officers, agents, representatives, and employees:

(a) Facilities. Each facility at which prescription-only drugs and devices are stored, warehoused, handled, held, offered, marketed, transported from, or displayed shall meet the following requirements:

(1) Be of suitable size and construction to facilitate cleaning, maintenance, and proper operations;

(2) have storage areas designed to provide adequate lighting, ventilation, temperature, sanitation, humidity, space, equipment, and security conditions;

(3) have a quarantine area for storage of prescription-only drugs and devices that are outdated, damaged, deteriorated, misbranded, adulterated, counterfeit, or suspected of being counterfeit, or that are in immediate or sealed, secondary containers that have been opened or deemed unfit for distribution;

(4) be maintained in a clean and orderly condition;

(5) be free from infestation by insects, rodents, birds, or vermin of any kind;

(6) be a commercial location and not a personal dwelling or residence;

(7) have sufficient storage space to maintain records of all transactions for at least five years; and

(8) be in a location separate from any other wholesale distributor or pharmacy registered by the board or another state.

(b) Security.

(1) Each facility used for wholesale distribution shall be secure from unauthorized entry.

(A) Access from outside the premises shall be kept to a minimum and be well controlled.

(B) The outside perimeter of the premises shall be well lighted.

(C) Entry into areas where prescription-only drugs or devices are held shall be limited to authorized personnel.

(2) Each facility shall be equipped with an alarm system to detect entry after hours.

(3) Each facility shall be equipped with a security system that will provide suitable protection against theft and diversion. When appropriate, the security system shall provide protection against theft or diversion that is facilitated or hidden by tampering with computers or electronic records.

(4) Each registrant shall ensure adequate accountability and control of all controlled substances in compliance with the Kansas uniform controlled substances act, federal drug laws, and all applicable regulations.

(5) Each registrant shall verify that all persons or entities who undertake, either directly or by any other arrangement, to transport prescription-only drugs or devices on behalf of the registrant ensure security.

(c) Storage. All prescription-only drugs and devices shall be stored at appropriate temperatures and under appropriate conditions in accordance with manufacturer's recommendations to preserve the stability of these drugs and devices.

(1) If no storage requirements are established for a prescription-only drug or device, the drug or device may be held at room temperature, as defined in an official compendium, to help ensure that its identity, strength, quality, and purity are not adversely affected.

(2) Appropriate manual, electromechanical, or electronic temperature and humidity-recording equipment, devices, logs, or a combination of these means shall be utilized to document proper storage of prescription-only drugs and devices at least once during each 24-hour period.

(3) The recordkeeping requirements in subsection (f) shall be followed for all stored prescription-only drugs and devices.

(d) Examination of materials.

(1) Upon receipt, each outside shipping container shall be visually examined to identify and to prevent the acceptance of prescription-only drugs or devices that are contaminated or otherwise unfit for distribution. This examination shall be adequate to reveal container damage that would suggest possible contamination or other damage to the contents.

(2) Each outgoing shipment shall be carefully inspected to identify the prescription-only drugs or devices and to ensure that there is no delivery of prescription-only drugs or devices that have been damaged in storage or held under improper conditions.

(3)(A) No registrant shall engage in the wholesale distribution of prescription-only drugs or devices that are purchased or received from pharmacies or practitioners or from wholesale distributors that obtained the drugs or devices from pharmacies or practitioners.

(B) Any registrant may receive for redistribution prescription-only drugs or devices returned from pharmacies or practitioners that were distributed by the registrant. Before redistribution, the registrant shall examine the prescription-only drug or device to ensure that it has not been opened or used. If the prescription-only drug or device has been opened, it shall be quarantined and physically separated from other prescription-only drugs or devices until the prescription-only drug or device is destroyed.

(C) Any registrant that also operates as a reverse logistics provider or returns processor may receive prescription-only drugs or devices for destruction from pharmacies and practitioners regardless of where the drugs or devices are obtained. Each registrant shall maintain documentation for the disposition of prescription-only drugs or devices sent for destruction with proof of destruction, including a certificate of destruction, for inventory accountability and shall maintain records documenting any return to the supplier.

(4) The recordkeeping requirements in subsection (f) shall be followed for all incoming and outgoing prescription-only drugs or devices.

(e) Returned, damaged, and outdated prescription-only drugs or devices.

(1) Prescription-only drugs or devices that are outdated, damaged, deteriorated, misbranded, or

adulterated shall be quarantined and physically separated from other prescription-only drugs and devices until they are destroyed or returned to their supplier.

(2) Each prescription-only drug or device whose immediate or sealed outer or sealed secondary container has been opened or used shall be identified as such and shall be quarantined and physically separated from other prescription-only drugs or devices until the drug or device is either destroyed or returned to the supplier.

(3) If the conditions under which a prescription-only drug or device has been returned cast doubt on the drug's or device's safety, identity, strength, quality, or purity, then the drug or device shall be destroyed or returned to the supplier, unless examination, testing, or other investigations prove that the drug or device meets appropriate standards of safety, identity, strength, quality, and purity. In determining whether or not the conditions under which a drug or device has been returned cast doubt on the drug's or device's safety, identity, strength, quality, or purity, the registrant shall consider, among other factors, the conditions under which the drug or device has been held, stored, or shipped before or during its return and the condition of the drug or device and its container, carton, or labeling, as a result of storage or shipping.

(4) The recordkeeping requirements in subsection (f) shall be followed for all outdated, damaged, deteriorated, misbranded, or adulterated prescription-only drugs or devices.

(f) Recordkeeping.

(1) Each registrant shall establish and maintain inventories and records of all transactions regarding the receipt and distribution or other disposition of prescription-only drugs and devices. These records shall include the following information:

(A) The source of the drugs and devices, including the name and principal address of the seller or transferor, and the address of the location from which the drugs or devices were shipped;

(B) the identity and quantity of the drugs and devices received and either distributed or disposed of; and

(C) the dates of receipt and either distribution or other disposition of the drugs and devices.

(2) Each record related to the wholesale distribution of prescription-only drugs or devices, including invoices of purchase or sale, packing slips, and shipment records, shall accurately reflect the

name of the registrant as that name appears on the registration issued by the board.

(3) Inventories and records shall be made available for inspection and photocopying by an authorized representative of the board for five years following disposition of the prescription-only drugs or devices.

(4) Records described in this regulation that are kept at the inspection site or that can be immediately retrieved by computer or other electronic means shall be readily available for authorized inspection during the retention period. Records kept at a central location apart from the inspection site and not electronically retrievable shall be made available for inspection within two working days of a request by an authorized representative of the board.

(5) Each registrant shall post all current federal and state registrations in a conspicuous place.

(g) Written policies and procedures. Each registrant shall establish, maintain, and adhere to written policies and procedures concerning the receipt, security, storage, inventory, and distribution of prescription-only drugs and devices, including policies and procedures for identifying, recording, and reporting losses or thefts, and for correcting all errors and inaccuracies in inventories. In addition, each registrant shall establish, maintain, and adhere to the following written policies and procedures:

(1) A procedure by which the oldest approved stock of a prescription-only drug or device is distributed first. The procedure may permit deviation from this requirement, if the deviation is temporary and appropriate to meet the needs of the receiving facility;

(2) a procedure to be followed for handling recalls and withdrawals of prescription-only drugs and devices. This procedure shall be adequate to deal with recalls and withdrawals due to any of the following:

(A) Any action initiated at the request of the food and drug administration or other federal, state, or local law enforcement or other government agency, including the board;

(B) any voluntary action by the manufacturer to remove defective or potentially defective drugs or devices from the market; or

(C) any action undertaken to promote public health and safety by replacing existing merchandise with an improved product or new package design;

(3) a procedure to ensure that wholesale distributors prepare for, protect against, and handle

any crisis that affects security or operation of any facility in the event of strike, fire, flood, or other natural disaster, or other situations of local, state, or national emergency;

(4) a procedure to ensure that all outdated prescription-only drugs or devices are segregated from other drugs or devices and either returned to the manufacturer or destroyed. This procedure shall provide for written documentation of the disposition of outdated prescription-only drugs and devices. This documentation shall be maintained for five years after disposition of the outdated prescription-only drugs or devices; and

(5) a procedure to ensure that prescription-only drugs and devices are distributed only to registered entities with the authority to possess prescription-only drugs or devices in Kansas and to maintain documentation of this authority as part of the distribution record.

(h) Responsible persons. Each registrant shall establish and maintain a list of officers, directors, managers, and other persons in charge of wholesale prescription-only drug and device distribution, storage, and handling, including a description of their duties and a summary of their qualifications. This list shall be made available for inspection by the board.

(i) Compliance with federal, state, and local law.

(1) Each registrant that deals in controlled substances shall register with the DEA.

(2) Each registrant shall permit the board's authorized personnel to enter and inspect the registrant's premises and delivery vehicles and to audit the records and written operating procedures, at reasonable times and in a reasonable manner, to the extent authorized by law.

(3) Each registrant shall operate in accordance with the requirements of 21 U.S.C. 353, 21 U.S.C. 360eee-1, 21 U.S.C. 360eee-2, and any implementing regulation.

(j) Salvaging and reprocessing. Each registrant shall be subject to the provisions of any applicable federal, state, or local laws or regulations that relate to prescription-only drug or device salvaging or reprocessing. (Authorized by K.S.A. 65-1630; implementing K.S.A. 65-1634 and K.S.A. 65-1655; effective June 15, 1992; amended July 23, 1999; amended Jan. 3, 2020.)

68-14-7a. Third-party logistics providers; minimum requirements for operation and maintenance of records. Each third-party logistics provider registrant shall meet the follow-

ing minimum requirements for operation and the maintenance of records:

(a) Facilities. Each facility at which a third-party logistics provider is located shall meet the following requirements:

(1) Be of suitable size and construction to facilitate cleaning, maintenance, and proper operations;

(2) have storage areas designed to provide adequate lighting, ventilation, temperature, sanitation, humidity, space, equipment, and security conditions;

(3) have a quarantine area for storage of prescription-only drugs and devices that are outdated, damaged, deteriorated, misbranded, adulterated, counterfeit, or suspected of being counterfeit or that are in immediate or sealed, secondary containers that have been opened or deemed unfit for distribution;

(4) be maintained in a clean and orderly condition;

(5) be free from infestation by insects, rodents, birds, or vermin of any kind;

(6) be in a location separate from any pharmacy registered by the board or another state;

(7) be a commercial location and not a personal dwelling or residence; and

(8) have sufficient storage space to maintain records of all shipments pertaining to third-party logistics for at least five years.

(b) Security.

(1) Each facility used for third-party logistics shall be secure from unauthorized entry.

(A) Access from outside the premises shall be kept to a minimum and be well controlled.

(B) The outside perimeter of the premises shall be well lighted.

(C) Entry into areas where prescription-only drugs or devices are held shall be limited to authorized personnel.

(2) Each facility shall be equipped with an alarm system to detect entry after hours.

(3) Each facility shall be equipped with a security system that will provide suitable protection against theft and diversion. When appropriate, the security system shall provide protection against theft or diversion that is facilitated or hidden by tampering with computers or electronic records.

(c) Storage. All prescription-only drugs and devices shall be stored at appropriate temperatures and under appropriate conditions in accordance with manufacturer's recommendations to preserve the stability of these drugs and devices.

(1) If no storage requirements are established for a prescription-only drug or device, the drug or device may be held at room temperature, as defined in an official compendium, to help ensure that its identity, strength, quality, and purity are not adversely affected.

(2) Appropriate manual, electromechanical, or electronic temperature and humidity-recording equipment, devices, logs, or a combination of these means shall be utilized to document proper storage of prescription-only drugs and devices at least once during each 24-hour period.

(3) The recordkeeping requirements in subsection (f) shall be followed for all stored prescription-only drugs and devices.

(d) Examination of materials.

(1) Upon receipt, each outside shipping container shall be visually examined to identify and to prevent the acceptance of prescription-only drugs or devices that are contaminated or otherwise unfit for distribution. This examination shall be adequate to reveal container damage that would suggest possible contamination or other damage to the contents.

(2) Each outgoing shipment shall be carefully inspected to identify the prescription-only drugs or devices and to ensure that there is no delivery of prescription-only drugs or devices that have been damaged in storage or held under improper conditions.

(3) The recordkeeping requirements in subsection (f) shall be followed for all incoming and outgoing prescription-only drugs or devices.

(e) Returned, damaged, and outdated prescription-only drugs or devices.

(1) Prescription-only drugs or devices that are outdated, damaged, deteriorated, misbranded, or adulterated shall be quarantined and physically separated from other prescription-only drugs and devices until they are destroyed or returned to their supplier.

(2) Each prescription-only drug or device whose immediate or sealed outer or sealed secondary container has been opened or used shall be identified as such and shall be quarantined and physically separated from other prescription-only drugs and devices until the drug or device is either destroyed or returned to the supplier.

(3) If the conditions under which a prescription-only drug or device has been returned cast doubt on the drug's or device's safety, identity, strength, quality, or purity, then the drug or device shall be destroyed or returned to the supplier, unless

examination, testing, or other investigations prove that the drug or device meets appropriate standards of safety, identity, strength, quality, and purity. In determining whether or not the conditions under which a drug or device has been returned cast doubt on the drug's or device's safety, identity, strength, quality, or purity, the registrant shall consider, among other factors, the conditions under which the drug or device has been held, stored, or shipped before or during its return and the condition of the drug or device and its container, carton, or labeling, as a result of storage or shipping.

(4) The recordkeeping requirements in subsection (f) shall be followed for all outdated, damaged, deteriorated, misbranded, or adulterated prescription-only drugs or devices.

(f) Recordkeeping.

(1) Each registrant shall establish and maintain inventories and records of all transactions regarding the receipt and distribution or other disposition of prescription-only drugs and devices. These records shall include the following information:

(A) The source of the drugs and devices, including the name and principal address of the seller or transferor, and the address of the location from which the drugs or devices were shipped;

(B) the identity and quantity of the drugs and devices received and either distributed or disposed of; and

(C) the dates of receipt and either distribution or other disposition of the drugs and devices.

(2) Inventories and records shall be made available for inspection and photocopying by an authorized representative of the board for five years following disposition of the prescription-only drugs or devices.

(3) The records described in this regulation that are kept at the inspection site or that can be immediately retrieved by computer or other electronic means shall be readily available for authorized inspection during the retention period. Records kept at a central location apart from the inspection site and not electronically retrievable shall be made available for inspection within two working days of a request by an authorized representative of the board.

(4) Each registrant shall post all current federal and state registrations in a conspicuous place.

(g) Written policies and procedures. Each registrant shall establish, maintain, and adhere to written policies and procedures concerning the receipt, security, storage, inventory, and distribution of prescription-only drugs and devices,

including policies and procedures for identifying, recording, and reporting losses or thefts, and for correcting all errors and inaccuracies in inventories. In addition, each registrant shall establish, maintain, and adhere to the following written policies and procedures:

(1) A procedure by which the oldest approved stock of a prescription-only drug or device is distributed first. The procedure may permit deviation from this requirement, if the deviation is temporary and appropriate to meet the needs of the receiving facility;

(2) a procedure to be followed for handling recalls and withdrawals of prescription-only drugs and devices. This procedure shall be adequate to deal with recalls and withdrawals due to any of the following:

(A) Any action initiated at the request of the food and drug administration or other federal, state, or local law enforcement or other government agency, including the board;

(B) any voluntary action by the manufacturer to remove defective or potentially defective drugs or devices from the market; or

(C) any action undertaken to promote public health and safety by replacing existing merchandise with an improved product or new package design;

(3) a procedure to ensure that the registrant prepares for, protects against, and handles any crisis that affects security or operation of any facility in the event of strike, fire, flood, or other natural disaster, or other situations of local, state, or national emergency; and

(4) a procedure to ensure that all outdated prescription-only drugs or devices are segregated from other drugs and devices and either returned to the manufacturer or destroyed. This procedure shall provide for written documentation of the disposition of outdated prescription-only drugs or devices. Each registrant shall maintain this documentation for five years after disposition of each outdated prescription-only drug or device.

(h) Responsible persons. Each registrant shall establish and maintain a list of officers, directors, managers, and other persons in charge of prescription-only drug and device distribution, storage, and handling, including a description of their duties and a summary of their qualifications. This list shall be made available for inspection by the board.

(i) Compliance with federal, state, and local law.

(1) Each registrant that deals in controlled substances shall register with the DEA.

(2) Each registrant shall permit the board's authorized personnel to enter and inspect the registrant's premises and delivery vehicles and to audit the records and written operating procedures, at reasonable times and in a reasonable manner, to the extent authorized by law.

(3) Each registrant shall operate in accordance with the requirements of 21 U.S.C. 360eee, or any implementing regulation. (Authorized by K.S.A. 65-1630; implementing K.S.A. 65-1634 and K.S.A. 65-1655a; effective Jan. 3, 2020.)

68-14-7b. Outsourcing facilities; minimum requirements for operation and maintenance of records. Each registrant who is the owner of an outsourcing facility shall meet the following minimum requirements for operation and the maintenance of records:

(a) Facilities. Each outsourcing facility shall meet the following requirements:

(1) Be of suitable size and construction to facilitate cleaning, maintenance, and proper operations;

(2) have storage areas designed to provide adequate lighting, ventilation, temperature, sanitation, humidity, space, equipment, and security conditions;

(3) have a quarantine area for storage of prescription-only drugs and devices that are outdated, damaged, deteriorated, misbranded, adulterated, or deemed unfit for distribution;

(4) have a quarantine area designated for holding products waiting for testing data before being released for distribution;

(5) be maintained in a clean and orderly condition;

(6) be free from infestation by insects, rodents, birds, or vermin of any kind;

(7) be a commercial location and not a personal dwelling or residence; and

(8) have sufficient storage space to maintain records of all shipments pertaining to outsourcing for at least five years.

(b) Security.

(1) Each facility used for outsourcing shall be secure from unauthorized entry.

(A) Access from outside the premises shall be kept to a minimum and be well controlled.

(B) The outside perimeter of the premises shall be well lighted.

(C) Entry into areas where prescription-only drugs and devices are held shall be limited to authorized personnel.

(2) Each facility shall be equipped with an alarm system to detect entry after hours.

(3) Each facility shall be equipped with a security system that will provide suitable protection against theft and diversion. When appropriate, the security system shall provide protection against theft or diversion that is facilitated or hidden by tampering with computers or electronic records.

(c) Storage. All prescription-only drugs and devices shall be stored at appropriate temperatures and under appropriate conditions in accordance with manufacturer's recommendations to preserve the stability of these drugs and devices.

(1) If no storage requirements are established for a prescription-only drug or device, the drug or device may be held at room temperature, as defined in an official compendium, to help ensure that its identity, strength, quality, and purity are not adversely affected.

(2) Appropriate manual, electromechanical, or electronic temperature and humidity-recording equipment, devices, logs, or a combination of these means shall be utilized to document proper storage of prescription-only drugs and devices at least once during each 24-hour period.

(3) The recordkeeping requirements in subsection (f) shall be followed for all stored prescription-only drugs and devices.

(d) Examination of materials.

(1) Upon receipt, each outside shipping container shall be visually examined to identify and to prevent the acceptance of prescription-only drugs or devices that are contaminated or otherwise unfit for distribution. This examination shall be adequate to reveal container damage that would suggest possible contamination or other damage to the contents.

(2) Each outgoing shipment shall be carefully inspected to identify the prescription-only drugs or devices and to ensure that there is no delivery of prescription-only drugs or devices that have been damaged in storage or held under improper conditions.

(3) The recordkeeping requirements in subsection (f) shall be followed for all incoming and outgoing prescription-only drugs and devices.

(e) Returned, damaged, and outdated prescription-only drugs and devices.

(1) Prescription-only drugs or devices that are outdated, damaged, deteriorated, misbranded, or adulterated shall be quarantined and physically separated from other prescription-only drugs and devices until they are destroyed.

(2) Each prescription-only drug or device whose immediate or sealed outer or sealed secondary container has been opened or used shall be identified as such and shall be quarantined and physically separated from other prescription-only drugs until the drug or device is either destroyed or returned to the supplier.

(3) If the conditions under which a prescription-only drug or device has been returned cast doubt on the drug's or device's safety, identity, strength, quality, or purity, then the drug or device shall be destroyed, unless examination, testing, or other investigations prove that the drug or device meets appropriate standards of safety, identity, strength, quality, and purity. In determining whether or not the conditions under which a drug or device has been returned cast doubt on the drug's or device's safety, identity, strength, quality, or purity, the registrant shall consider, among other factors, the conditions under which the drug or device has been held, stored, or shipped before or during its return and the condition of the drug or device and its container, carton, or labeling, as a result of storage or shipping.

(4) The recordkeeping requirements in subsection (f) shall be followed for all outdated, damaged, deteriorated, misbranded, or adulterated prescription-only drugs and devices.

(f) Recordkeeping.

(1) Each registrant shall establish and maintain records of all transactions regarding the receipt and distribution or other disposition of prescription-only drugs and devices and any bulk active pharmaceutical ingredients used in compounding or manufacturing. These records shall include the following information:

(A) The source of the drugs and devices or the active pharmaceutical ingredients, including the name and principal address of the seller or transferor, the address of the location from which the drugs or devices were shipped, and the certificate of analysis if an active pharmaceutical ingredient was received;

(B) the identity and quantity of the drugs and devices or the active pharmaceutical ingredients received and either distributed or disposed of; and

(C) the date of receipt of the drugs and devices and the date of distribution or any other disposition of the drugs and devices.

(2) Records shall be made available for inspection and photocopying by an authorized representative of the board for five years following disposition of the prescription-only drugs or devices.

(3) The records described in this regulation that are kept at the inspection site or that can be immediately retrieved by computer or other electronic means shall be readily available for authorized inspection during the retention period. Records kept at a central location apart from the inspection site and not electronically retrievable shall be made available for inspection within two working days of a request by an authorized representative of the board.

(4) Each registrant shall post all current federal and state registrations in a conspicuous place.

(g) Written policies and procedures. Each registrant shall establish, maintain, and adhere to written policies and procedures concerning the receipt, security, storage, inventory, and distribution of prescription-only drugs and devices, including policies and procedures for identifying, recording, and reporting losses or thefts, and for correcting all errors and inaccuracies in inventories. In addition, each registrant shall establish, maintain, and adhere to the following written policies and procedures:

(1) A procedure by which the oldest approved stock of a prescription-only drug or device is distributed first. The procedure may permit deviation from this requirement, if the deviation is temporary and appropriate to meet the needs of the receiving facility;

(2) a procedure to be followed for handling recalls and withdrawals of prescription-only drugs and devices including written notification to the board within 24 hours. This procedure shall be adequate to deal with recalls and withdrawals due to any of the following:

(A) Any action initiated at the request of the food and drug administration or other federal, state, or local law enforcement or other government agency, including the board;

(B) any voluntary action by the registrant to remove defective or potentially defective drugs or devices from the market; or

(C) any action undertaken to promote public health and safety by replacing existing merchandise with an improved product or new package design;

(3) a procedure to ensure that the registrant prepares for, protects against, and handles any crisis that affects security or operation of any facility in the event of strike, fire, flood, or other natural disaster, or other situations of local, state, or national emergency;

(4) a procedure to ensure that all outdated prescription-only drugs or devices are segregated

from other drugs or devices and destroyed. This procedure shall provide for written documentation of the disposition of outdated prescription-only drug or device. This documentation shall be maintained for five years after disposition of the outdated prescription-only drug or device; and

(5) a procedure to ensure that prescription-only drugs and devices are sold only to registered entities with the authority to possess prescription-only drugs and devices in Kansas and to maintain documentation of this authority as part of the distribution record.

(h) Responsible persons. Each registrant shall establish and maintain a list of officers, directors, managers, pharmacists, pharmacy technicians, and other persons in charge of drug compounding, distribution, storage, and handling, including a description of their duties and a summary of their qualifications. This list shall be made available for inspection by the board.

(i) Compliance with federal, state, and local law.

(1) Each registrant that deals in controlled substances shall register with the DEA.

(2) Each registrant shall permit the board's authorized personnel to enter and inspect the registrant's premises and delivery vehicles and to audit the records and written operating procedures, at reasonable times and in a reasonable manner, to the extent authorized by law.

(3) Each registrant shall operate in accordance with section 503B of the federal food, drug, and cosmetic act, 21 U.S.C. 353b.

(4) Each drug manufactured, prepared, propagated, compounded, or processed by an outsourcing facility without a registration issued by the board shall be deemed misbranded. (Authorized by K.S.A. 65-1630; implementing K.S.A. 65-1634 and K.S.A. 65-1655b; effective Jan. 3, 2020.)

68-14-8. Wholesale distributors transaction. (a) Notwithstanding any other provision of these regulations under article 14, a wholesale distributor, duly registered with the board, may sell or deliver to a layperson responsible for the control of an animal, a prescription-only drug to be administered to the animal only if a licensed veterinarian practitioner has issued, before the sale or delivery, a lawful written prescription or order for the prescription-only drug in the course of an existing, valid veterinarian-client-patient relationship as defined in K.S.A. 47-816 and amendments thereto. As used in these regulations under article 14, "wholesale distribution" shall include this transaction.

(1) Except as otherwise provided in this regulation, at the time the prescription-only drug leaves the registered location of the wholesale distributor, the wholesale distributor shall possess, at the registered location, a copy of the written prescription or order for the drug.

(2) Except as otherwise provided in this regulation, at the time the prescription-only drug is delivered to the layperson, the person making the delivery shall possess a copy of the written prescription or order for the drug.

(3) The wholesale distributor shall retain, for a period of five years, a copy of the written prescription or order in a manner that makes it readily available for review by a board representative.

(b) In lieu of receiving a written prescription or order from a licensed veterinarian practitioner before a prescription-only drug leaves the registered location, the wholesale distributor may accept a verbal order from a licensed veterinarian practitioner if all of the following conditions are met:

(1) The licensed veterinarian practitioner has created a written prescription or order, but advised the wholesale distributor that, under the circumstances, it is not reasonably possible for the licensed veterinarian practitioner to provide the written prescription or order to the wholesale distributor before the prescription-only drug leaves the registered location.

(2) The licensed veterinarian practitioner provides to the wholesale distributor all of the information required by K.A.R. 70-7-1(n) to be included in a written order for a prescription of legend drugs.

(3) The verbal order is received in a communication directly with the licensed veterinarian practitioner.

(4) The wholesale distributor makes, at the time the verbal order is received, a written confirmation of the information provided by the licensed veterinarian practitioner and records the following information:

(A) The name of the licensed veterinarian practitioner;

(B) the date and time the verbal order was received; and

(C) the name of the person making the written confirmation.

(5) At the time of receiving the verbal order, the wholesale distributor requests that the licensed veterinarian practitioner send a written prescription for the prescription-only drugs so that it is received by the wholesale distributor within 72

hours of receipt of the verbal order and, if it is not received, advises the Kansas board of veterinary examiners of this in writing.

(6) At the time the prescription-only drug leaves the registered location of the wholesale distributor, the wholesale distributor possesses, at the registered location, the original written confirmation.

(7) At the time the prescription-only drug is delivered to the layperson responsible for the control of the animal, the person making the delivery possesses a copy of the written confirmation.

(8) The original written confirmation is maintained by the wholesale distributor for five years in a manner that makes it readily available for review by a board representative. (Authorized by K.S.A. 65-1630; implementing K.S.A. 1999 Supp. 65-1635(d); effective July 23, 1999; amended Nov. 27, 2000.)

Article 15.—NONPRESCRIPTION WHOLESALE DISTRIBUTORS

68-15-1. Nonprescription wholesale distributors. “Nonprescription wholesale distributor” shall mean any person, partnership, corporation, or business firm registered in this state and engaging in the distribution of drugs that are not prescription-only drugs to persons or entities other than a consumer or patient. (Authorized by K.S.A. 65-1630; implementing K.S.A. 1998 Supp. 65-1643(c); effective July 23, 1999.)

68-15-2. Nonprescription wholesale distributor registration required. A nonprescription wholesale distributor may engage in the distribution of nonprescription drugs to persons or entities, other than a consumer or patient in Kansas, if both of the following conditions are met:

(a) The drugs are prepackaged, fully prepared by the manufacturer or distributor for use by a consumer, and appropriately labeled.

(b) The distributor has first obtained a registration to do so from the board. (Authorized by K.S.A. 65-1630; implementing K.S.A. 1998 Supp. 65-1643(c) and K.S.A. 65-1634; effective Sept. 24, 1999.)

68-15-4. Minimum requirements for storage. All drugs shall be stored at appropriate temperatures and under appropriate conditions in accordance with any requirements in the labeling or packaging of the drugs, or with any requirements in the United States pharmacopeia: the na-

tional formulary (USP/NF), as in effect on March 15, 1999 and published January 1, 1995. (Authorized by K.S.A. 65-1630; implementing K.S.A. 1998 Supp. 65-1643(c) and K.S.A. 65-1634; effective Sept. 24, 1999.)

Article 16.—CANCER DRUG REPOSITORY PROGRAM

68-16-1 and 68-16-2. (Authorized by and implementing K.S.A. 2005 Supp. 65-1667; effective Dec. 1, 2006; revoked Feb. 13, 2015.)

68-16-3. (Authorized by and implementing K.S.A. 2007 Supp. 65-1667; effective Dec. 1, 2006; amended April 10, 2009; revoked Feb. 13, 2015.)

68-16-4. (Authorized by and implementing K.S.A. 2005 Supp. 65-1667; effective Dec. 1, 2006; revoked Feb. 13, 2015.)

68-16-5. (Authorized by and implementing K.S.A. 2005 Supp. 65-1665 and K.S.A. 2005 Supp. 65-1667; effective Dec. 1, 2006; revoked Feb. 13, 2015.)

68-16-6, 68-16-7, 68-16-8, and 68-16-9. (Authorized by and implementing K.S.A. 2005 Supp. 65-1667; effective Dec. 1, 2006; revoked Feb. 13, 2015.)

Article 18.—UTILIZATION OF UNUSED MEDICATIONS

68-18-1. Transferring unused medications. (a) Each administrator or operator of an adult care home, pharmacist-in-charge of a mail service pharmacy, and administrator of a medical care facility who wants to become a donating entity, as defined in L. 2008, ch. 9, sec. 2 and amendments thereto, shall submit to the board written notification of intent to participate in the unused medications program. The notification shall be submitted on a form approved by the board.

(b) Before the transfer of each unused medication to a qualifying center or clinic, each mail service pharmacy and medical care facility that has become a donating entity as specified in subsection (a) shall perform the following:

(1) Determine the quality and suitability of each unused medication by a pharmacist's verification that the unused medication meets the following requirements:

(A) Can be identified;

(B) is in the manufacturer's sealed container, a pharmacy unit-dose package, or a hermetically sealed tamper-evident package from the pharmacy;

(C) has not passed its beyond-use date;

(D) is not a controlled substance;

(E) has not been adulterated; and

(F) is not a medication that can be dispensed only to a patient or resident registered with the drug manufacturer;

(2) remove the name of the patient or resident and all of the patient's or resident's personal identifiers in order to protect confidentiality;

(3) consult with the qualifying center or clinic to determine whether the qualifying center or clinic is willing to accept each unused medication; and

(4) ensure that the qualifying center or clinic has a consulting pharmacist and is registered with the board to accept unused medications.

(c) Before the transfer of each unused medication to a qualifying center or clinic, each adult care home that has become a donating entity as specified in subsection (a) shall meet the requirements specified in paragraphs (b)(2), (3), and (4).

(d) When a donating entity transfers an unused medication to a qualifying center or clinic, the donating entity shall meet the following requirements:

(1) Complete a manifest on a form approved by the board; and

(2) include a copy of the manifest with the unused medications.

(e) Each donating entity shall maintain a copy of the manifest that the donating entity provided to the qualifying center or clinic for at least five years. The donating entity shall also maintain a copy of the manifest that was signed and returned by the qualifying center or clinic for at least five years.

(f) A donating entity shall not transfer an unused medication that can be dispensed only to a patient or resident registered with the drug manufacturer. (Authorized by and implementing L. 2008, ch. 9, §7; effective Jan. 2, 2009.)

68-18-2. Accepting unused medications.

(a) Each qualifying center or clinic that elects to participate in the unused medications program shall submit to the board written notification of intent to participate on a form approved by the board.

(b) Each qualifying center or clinic shall maintain all unused medications in a storage unit with controlled access.

(c) After the acceptance of each unused medication from an adult care home that has become a

donating entity as specified in K.A.R. 68-18-1(a), each qualifying center or clinic shall perform the following:

(1) Determine the quality and suitability of each unused medication by verification of a pharmacist that the unused medication meets the following requirements, in addition to the requirements of L. 2008, ch. 9, sec. 4 and amendments thereto:

(A) Can be identified; and

(B) is not a medication that can be dispensed only to a patient or resident registered with the drug manufacturer;

(2) ensure that the name of the patient or resident and all of the patient's or resident's personal identifiers have been removed in order to protect confidentiality;

(3) check each unused medication against the manifest to resolve any discrepancies with the donating entity; and

(4) complete the manifest and return a copy of the manifest to the donating entity.

(d) After the acceptance of each unused medication from a mail service pharmacy or a medical care facility that has become a donating entity as specified in K.A.R. 68-18-1(a), each qualifying center or clinic shall perform the following:

(1) Determine the quality and suitability of each unused medication by the verification of a pharmacist or practitioner that the unused medication meets the following requirements, in addition to the requirements of L. 2008, ch. 9, sec. 4 and amendments thereto:

(A) Can be identified; and

(B) is not a medication that can be dispensed only to a patient or resident registered with the drug manufacturer; and

(2) meet all of the requirements specified in paragraphs (c)(2), (3), and (4).

(e) Each qualifying center or clinic shall maintain a copy of the manifest that was provided by the donating entity for at least five years. The qualifying center or clinic shall also maintain a copy of the manifest signed and returned to the donating agency for at least five years.

(f) A qualifying center or clinic shall not accept or dispense an unused medication that can be dispensed only to a patient or resident registered with the drug manufacturer. (Authorized by and implementing L. 2008, ch. 9, §7; effective Jan. 2, 2009.)

68-18-3. Recall of unused medications.

(a) If an unused medication is recalled and the qualifying center or clinic does not have the lot

number on the label to differentiate between the recalled medications and the nonrecalled medications, all of the unused medications shall be destroyed.

(b) If a donating entity has transferred an unused medication to a qualifying center or clinic, the medication is subsequently recalled, and the donating entity has been notified of the recall, the donating entity shall be responsible for notifying the qualifying center or clinic of the recall.

(c) Each qualifying center or clinic in possession of any unused medication that is expired, adulterated, or recalled shall make a manifest for and destroy that medication.

(d) Following the destruction of any unused medications, the manifest shall be signed by the consulting pharmacist and a witness to verify the destruction. Each drug destruction manifest shall be maintained for at least five years. (Authorized by and implementing L. 2008, ch. 9, §7; effective Jan. 2, 2009.)

Article 19.—CONTINUOUS QUALITY ASSURANCE PROGRAMS

68-19-1. Minimum program requirements. Each pharmacy's continuous quality improvement program shall meet the following minimum requirements:

(a) Meet at least once each quarter of each calendar year;

(b) have the pharmacy's pharmacist-in-charge in attendance at each meeting; and

(c) perform the following during each meeting:

(1) Review all incident reports generated for each reportable event associated with that pharmacy since the last quarterly meeting;

(2) for each incident report reviewed, establish the steps taken or to be taken to prevent a recurrence of the incident;

(3) review each board newsletter published since the last quarterly meeting; and

(4) create a report of the meeting, including at least the following information:

(A) A list of the persons in attendance;

(B) A list of the incident reports and newsletters reviewed; and

(C) a description of the steps taken or to be taken to prevent recurrence of each incident reviewed. (Authorized by and implementing K.S.A. 65-1695; effective April 10, 2009; amended Nov. 29, 2019.)

Article 20.—CONTROLLED SUBSTANCES

68-20-1. Definitions. The following terms in this regulation shall have the meanings specified: (a) “Act” means the uniform controlled substances act of Kansas, K.S.A. 65-4101, et seq., and amendments thereto;

(b) “Basic class” means, as to controlled substances listed in schedules I and II:

(1) each of the opiates, including its isomers, esters, ethers, and salts, and salts of isomers, esters, and ethers, whenever the existence of such isomers, esters, ethers and salts is possible within the specific chemical designation listed in K.S.A. 65-4105(b) and amendments thereto;

(2) each of the opium derivatives, including its salts and isomers, and salts of isomers, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation listed in K.S.A. 65-4105(c) and amendments thereto;

(3) each of the hallucinogenic substances, including its salts and isomers, and salts of isomers, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation listed in K.S.A. 65-4105(d) and amendments thereto;

(4) each of the following substances, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(A) opium, including raw opium, opium extracts, opium fluid extracts, powdered opium, granulated opium, deodorized opium and tincture of opium;

(B) apomorphine;

(C) codeine;

(D) ethylmorphine;

(E) hydrocodone;

(F) hydromorphone;

(G) metopon;

(H) morphine;

(I) oxycodone;

(J) oxymorphone;

(K) thebaine;

(L) mixed alkaloid of opium listed in K.S.A. 65-4107(b)(1) and amendments thereto;

(M) cocaine; and

(N) ecgonine;

(5) each of the opiates, including its isomers, esters, ethers, and salts, whenever the existence of such isomers, esters, ethers and salts is possible

within the specific chemical designation listed in K.S.A. 65-4107(c) and amendments thereto;

(6) methamphetamine, including its salts, isomers, and salts of isomers, when contained in any injectable liquid;

(7) amphetamine, its salts, optical isomers and salts of its optical isomers;

(8) phenmetrazine and its salts; and

(9) methylphenidate.

(c) “Controlled premises” means:

(1) places where original or copies of records or documents required under the act are kept or required to be kept; and

(2) places where persons who are registered under the act or who are exempted from registration under the act may lawfully hold, manufacture, distribute, dispense, administer, or otherwise dispose of controlled substances. Such places shall include factories, warehouses, establishments and conveyances.

(d) “Secretary” means the executive secretary of the state board of pharmacy of the state of Kansas.

(e) “Prescription” means an order for medication which is dispensed to or for an ultimate user, but does not include an order for medication which is dispensed for immediate administration to the ultimate user. An order for a single dose of a drug for immediate administration to a bed patient in a medical care facility shall not be construed to be a prescription.

(f) “Register” and “registration” mean only registration required and permitted under the controlled substances act. K.S.A. 65-4117.

(g) “Registrant” means any person who is registered pursuant to the act K.S.A. 65-4117.

(h) “Bureau” and “BNDD” mean the bureau of narcotics and dangerous drugs.

(i) “Preceptor” means a licensed pharmacist who has been approved, by the board, for the supervision of students who are securing the pharmaceutical experience required by law as a condition precedent to taking the examination for licensure as a pharmacist.

(j) Any term not defined in this regulation shall have the meaning as set forth in the act. To the extent definitions are not in conflict with any provision of the act, terms shall also have the meanings set forth in the pharmacy act of the state and Kansas and amendments thereto.

(k) This regulation shall be effective on May 1, 1989. (Authorized by K.S.A. 65-4102; implementing K.S.A. 65-4101; effective, E-72-24, Aug. 25, 1972; effective Jan. 1, 1973; amended May 1, 1985; amended May 1, 1989.)

68-20-2 to 68-20-4. (Authorized by K.S.A. 65-4102; effective, E-72-24, Aug. 25, 1972; effective Jan. 1, 1973; revoked May 1, 1983.)

68-20-5. (Authorized by K.S.A. 1977 Supp. 65-4115; effective, E-72-24, Aug. 25, 1972; effective Jan. 1, 1973; revoked May 1, 1983.)

68-20-6. (Authorized by K.S.A. 1977 Supp. 65-4115; effective, E-72-24, Aug. 25, 1972; effective Jan. 1, 1973; amended, E-77-42, Sept. 9, 1976; amended Feb. 15, 1977; amended May 1, 1978; revoked May 1, 1983.)

68-20-7. (Authorized by K.S.A. 65-4102; effective, E-72-24, Aug. 25, 1972; effective Jan. 1, 1973; revoked May 1, 1983.)

68-20-8. (Authorized by K.S.A. 1976 Supp. 65-4102; effective, E-72-24, Aug. 25, 1972; effective Jan. 1, 1973; revoked, E-77-42, Sept. 9, 1976; revoked Feb. 15, 1977.)

68-20-8a. (Authorized by K.S.A. 1977 Supp. 65-4115; effective May 1, 1978; revoked May 1, 1983.)

68-20-8b and 68-20-8c. (Authorized by K.S.A. 1976 Supp. 65-4115; effective, E-77-42, Sept. 9, 1976; effective Feb. 15, 1977; rejected, L. 1977, ch. 320, May 13, 1977.)

68-20-9. Fees for registration and reregistration. (a) Fee amounts.

(1) For each registration or reregistration of a manufacturer for each additional location in this state where controlled substances are manufactured, the registrant shall pay a fee of \$50.00.

(2) For each registration or reregistration of each additional location from which controlled substances are distributed, the registrant shall pay a fee of \$50.00.

(3) For each registration or reregistration of each location within this state where research or instructional activities are conducted with controlled substances listed in schedules I through V, the registrant shall pay a fee of \$50.00.

(4) For each registration or reregistration to conduct chemical analysis with controlled substances listed in schedules I through V, as set out in K.S.A. 65-4105, K.S.A. 65-4107, K.S.A. 65-4109, K.S.A. 65-4111, K.S.A. 65-4113 and amendments thereto, within this state, the registrant shall pay a fee of \$50.00.

(b) Time and method of payment; refund.

(1) Registration and reregistration fees shall be paid at the time the application for registration or reregistration is submitted for filing.

(2) Payment shall be made in the form of a personal, certified, cashier's check or a money order payable to the state board of pharmacy.

(3) Payments made in the form of stamps, foreign currency or third party endorsement checks shall not be accepted.

(4) If the application is not accepted for filing or is denied, all payments made under paragraph (1) through (4) of subsection (a) shall be refunded to the applicant.

(c) Exemptions from fees in paragraphs (1) through (4) of subsection (a).

(1) Any official or agency of the U.S. army, navy, marine corps, air force, coast guard, veteran's administration or public health service authorized to procure or purchase controlled substances for official use shall be exempted by the board from the fees set forth in subsection (a), paragraphs (1) through (4).

(2) Any official, employee, or other civil service or agency of the United States, or any state, or any political subdivision or agency thereof, authorized to dispense or administer such substances, to conduct research, instructional activities, or chemical analysis with such substances, or any combination thereof, in the course of the official duties of employment, may be exempted by the board from the fees in subsection (a), paragraphs (1) through (4).

(d) In order to claim exemption from payment of a registration or reregistration fee, the registrant shall have completed the certification on the appropriate application forms. The registrant's superior shall certify the status and address of the registrant and shall certify to the authority of the registrant to acquire, possess, or handle controlled substances.

(e) Exemption from the payment of a registration or reregistration fee shall not relieve the registrant of any other requirements or duties prescribed by law. (Authorized by and implementing K.S.A. 65-4116; effective, E-72-24, Aug. 25, 1972; effective Jan. 1, 1973; amended May 1, 1983; amended May 1, 1986; amended June 6, 1994.)

68-20-10. Requirements of registration.

(a) Persons required to register. Every person who manufactures, distributes, or dispenses any controlled substances within this state, or who proposes to engage in the manufacture, distribution, or dispensing of any controlled substance in this

state shall obtain annually a registration unless exempted by law or pursuant to subsections (d) through (g) of this regulation. Only persons actually engaged in these activities in this state shall be required to obtain a registration.

(b) Separate registration for independent activities.

(1) The following six groups of activities shall be deemed to be independent of each other:

(A) Manufacturing controlled substances;

(B) distributing controlled substances;

(C) dispensing, conducting research, other than research described in paragraph (b)(1)(D), with, and conducting instructional activities with, controlled substances listed in schedules II through V;

(D) conducting research with narcotic drugs listed in schedules II through V for the purpose of continuing the dependence on these drugs of a narcotic drug-dependent person in the course of conducting an authorized clinical investigation in the development of a narcotic addict rehabilitation program pursuant to a notice of claimed investigational exemption for a new drug approved by the food and drug administration;

(E) conducting research and instructional activities with controlled substances listed in schedule I; and

(F) conducting chemical analysis with controlled substances listed in any schedule.

(2) Every person who engages in more than one group of independent activities shall obtain a separate registration for each group of activities, except as provided in this subsection (b). Any person, when registered to engage in the group of activities described in each paragraph in this subsection, shall be authorized to engage in the coincident activities described in that paragraph without obtaining a registration to engage in such coincident activities if, unless specifically exempted, the person complies with all requirements and duties prescribed by law for the following persons registered to engage in the coincident activities:

(A) A person registered to manufacture any controlled substance or basic class of controlled substance shall be authorized to distribute that substance or class, but no other substance or class that the person is not registered to manufacture.

(B) A person registered to manufacture any controlled substance listed in schedules II through V shall be authorized to conduct chemical analysis and preclinical research, including quality control analysis, with narcotic and nonnarcotic controlled

substances listed in those schedules in which the person is authorized to manufacture.

(C) A person registered to conduct research with a basic class of controlled substances listed in schedule I shall be authorized to manufacture this class if and to the extent that the manufacture is set forth in the research protocol filed with the application for registration and to distribute this class to other persons registered to conduct research with this class or to conduct chemical analysis.

(D) A person registered to conduct chemical analysis with controlled substances shall be authorized to perform the following:

(i) Manufacture and import these substances for analytical or instructional purposes;

(ii) distribute these substances to other persons registered to conduct chemical analysis or instructional activities, to persons registered or authorized to conduct research with these substances, and to persons exempted from registration pursuant to subsection (c);

(iii) export these substances to persons in other countries performing chemical analysis or enforcing laws relating to controlled substances or drugs in those countries; and

(iv) conduct instructional activities with controlled substances.

(E) A person registered or authorized to conduct research, other than the research described in paragraph (b)(2)(C), with controlled substances listed in schedules II through V shall be authorized to perform the following:

(i) Conduct chemical analysis with controlled substances listed in those schedules in which the person is authorized to conduct research to manufacture is set forth in a statement filed with the application for registration;

(ii) distribute these substances to other persons registered or authorized to conduct chemical analysis, instructional activities, or research with these substances and to persons exempted from registration pursuant to subsection (c); and

(iii) conduct instructional activities with controlled substances.

(F) A person registered to dispense under the pharmacy act, or to conduct research, other than research described in paragraph (b)(2)(D), with controlled substances listed in schedules II through V shall be authorized to dispense and to conduct research and to conduct instructional research with those substances.

(3) A single registration to engage in any group of independent activities may include one or more

controlled substances listed in the schedules authorized in that group of independent activities. A person registered to conduct research with controlled substances listed in schedule I may conduct research with any substance listed in schedule I for which the person has filed and had approved a research protocol.

(c) Separate registrations for separate locations.

(1) A separate registration shall be required for each principal place of business or professional practice at one general physical location where controlled substances are manufactured, distributed, or dispensed by a person.

(2) The following locations shall be deemed not to be places where controlled substances are manufactured, distributed, or dispensed:

(A) A warehouse where controlled substances are stored by or on behalf of a registered person, unless these substances are distributed directly from the warehouse to registered locations other than the registered location from which the substances were delivered or to persons not required to register by virtue of the pharmacy act, K.S.A. 65-4116 and amendments thereto;

(B) an office used by agents of a registrant where sales of controlled substances are solicited, made, or supervised but which neither contains these substances, other than substances for display purposes only, nor serves as a distribution point for filling sales orders; and

(C) an office used by a practitioner or mid-level practitioner who is registered at another location where controlled substances are prescribed but neither administered nor otherwise dispensed as a regular part of the professional practice of the practitioner or mid-level practitioner at this office, and where no supplies of controlled substances are maintained.

(d) Exemption of agents and employees; affiliated practitioners.

(1) Practitioners, mid-level practitioners, pharmacists, and other persons required to register under this act shall not be exempt from registration because of their status as an agent or employee of a person who is already registered to engage in any group of independent activities. The requirements of registration, however, shall be waived for any agent or employee of a person who is registered to engage in any group of independent activities, if the agent or employee is acting in the usual course of his business or employment.

(2) A practitioner who is an intern, resident, or foreign physician or medical graduate may dis-

pense and prescribe controlled substances under the registration of the hospital or other institution that is registered and by whom the person is employed if all of the following conditions are met:

(A) The practitioner is authorized or permitted to do so by the laws of the state of Kansas.

(B) The dispensing or prescribing is done in the usual course of the practitioner's professional practice.

(C) The hospital or other institution by whom the person is employed has determined that the practitioner is permitted to dispense or prescribe drugs by the state of Kansas.

(D) The practitioner is acting only within the scope of employment in the hospital or institution.

(E) The hospital or other institution authorizes the intern, resident, or foreign physician or medical graduate to dispense or prescribe under the hospital registration and designates a specific internal registration code number for each intern, resident, or foreign physician or medical graduate so authorized. The code number shall consist of numbers, letters, or a combination of both and shall be a suffix to the institution's drug enforcement administration registration number, preceded by a hyphen.

(F) A current list of internal codes and the corresponding practitioners is kept by the hospital or other institution, and an updated copy is on file with the state board of pharmacy of the state of Kansas for the purposes of verifying the authority of the prescribing practitioner.

(e) Exemption of certain military and other personnel.

(1) The requirement of registration shall be waived for any official of the U.S. army, navy, marine corps, air force, coast guard, or public health service who is authorized to prescribe, dispense, or administer, but not to procure or purchase, controlled substances in the course of official duties. These officials shall follow the procedures set forth in K.A.R. 68-20-18, 68-20-19, 68-20-20, and 68-20-21, but shall state the branch of service or agency and the service identification number of the issuing official in lieu of the registration number required on prescription forms. The service identification number for a public health service employee is the person's social security identification number.

(2) If any official exempted by this subsection also engages as a private individual in any activity or group of activities for which registration is required, the official shall obtain a registration for these private activities.

(f) Exemption of law enforcement officials.

(1) The requirement of registration shall be waived for the following persons in the circumstances described in this subsection:

(A) Any officer or employee of the bureau, any officer of the U.S. bureau of customs, any officer or employee of the United States food and drug administration, and any other federal officer who is lawfully engaged in the enforcement of any federal law relating to controlled substances, drugs, or customs, and is duly authorized to possess controlled substances in the course of official duties; and

(B) any officer or employee of the state of Kansas, or any political subdivision or agency thereof, who is engaged in the enforcement of Kansas law or local law relating to controlled substances and is duly authorized to possess controlled substances in the course of official duties.

(2) Any official exempted by this subsection may, when acting in the course of official duties, possess any controlled substance and distribute any such substance to any other official who is also exempted by this subsection and acting in the course of official duties.

(3) Any official exempted by this subsection may procure any controlled substance in the course of an inspection, in accordance with the controlled substances act, K.S.A. 65-4131(c) and amendments thereto, or in the course of any criminal investigation involving the person from whom the substance was procured.

(4) In order to enable law enforcement agency laboratories to obtain and transfer controlled substances for use as standards in chemical analysis, these laboratories shall obtain annually a registration to conduct chemical analysis. These laboratories shall be exempted from payment of a fee for registration. Laboratory personnel, when acting in the scope of their official duties, shall be deemed to be officials exempted by this subsection and within the activities described in the controlled substances act, K.S.A. 65-4115 and amendments thereto. For purposes of this subsection, laboratory activities shall not include field or other preliminary chemical tests by officials exempted by this subsection.

(g) Exemption of civil defense officials.

(1) The requirement of registration shall be waived for any official of a civil defense or disaster relief organization who, in the course of official duties, is authorized to perform either of the following:

(A) Maintain, and distribute for maintenance, controlled substances held for emergency use; or

(B) procure controlled substances for the purposes of maintaining supplies for emergency use, if all procurement is from the U.S. general services administration and in accordance with the rules of the U.S. office of emergency preparedness.

(2) The requirement of registration shall be waived for any official of a civil defense or disaster relief organization during a state of emergency or disaster within the official's jurisdiction proclaimed by the president or by a concurrent resolution of the congress, which official, in the course of official duties during this emergency or disaster, is authorized to perform either of the following:

(A) Dispense controlled substances; or

(B) procure or distribute controlled substances, if all procurement is on a special "civil defense emergency order form," as described in this subsection.

(3) Civil defense emergency order forms shall be furnished by the U.S. office of emergency preparedness and shall contain the name of the civil defense or disaster relief organization. These forms may be used and shall be valid only during a state of emergency disaster proclaimed by the president or by a concurrent resolution of the congress for the area in which the organization using the forms has civil defense or disaster relief jurisdiction, who shall state the position and the nature and legal designation of the emergency or disaster. These forms may be filled by any person registered under the controlled substances act. The organization shall, upon the execution of a civil defense emergency order form, be deemed to be registered under the controlled substances act for purposes of record keeping pursuant to K.A.R. 68-20-16. (Authorized by K.S.A. 65-4116, as amended by L. 1999, Ch. 149, Sec. 9; implementing K.S.A. 65-4116, as amended by L. 1999, Ch. 149, Sec. 9, 65-4131; effective, E-72-24, Aug. 25, 1972; effective Jan. 1, 1973; amended Dec. 27, 1999.)

68-20-10a. Electronic transmission of a controlled substance prescription. (a) Each prescription drug order transmitted electronically shall be issued for a legitimate medical purpose by a prescriber acting within the course of legitimate professional practice.

(b) Each prescription drug order communicated by way of electronic transmission shall fulfill all the requirements of K.A.R. 68-2-22.

(c) A prescription drug order, including that for any controlled substance listed in schedules II, III, IV, and V, may be communicated by electronic transmission in accordance with 21 C.F.R. part 1311.

(d) Each electronic prescription drug order created and transmitted in conformance with 21 C.F.R. part 1311 shall be considered an original, written, signed prescription drug order. (Authorized by K.S.A. 65-1630, K.S.A. 2014 Supp. 65-1642, and K.S.A. 2014 Supp. 65-4102; implementing K.S.A. 2014 Supp. 65-1642, 65-4102, and 65-4123; effective Feb. 5, 1999; amended Dec. 27, 1999; amended April 23, 2010; amended May 20, 2011; amended Feb. 13, 2015.)

68-20-11. Applications for registration.

(a) The expiration date of all registrations shall be the last day of June in each year.

(b) Each application for the following types of registration shall include the controlled substances code number for each basic class or substance to be covered by the registration:

(1) Registration to handle any basic class of controlled substances listed in schedule I, except registration to conduct chemical analysis with such classes;

(2) registration to manufacture a basic class of controlled substances listed in schedules II through V; and

(3) registration to conduct research with any narcotic controlled substance in schedules II through V.

(c) Each application, attachment, or other document filed as part of an application, shall be signed by:

(1) the applicant, if an individual;

(2) the authorized representative, if the registration is for a location;

(3) a partner of the applicant, if a partnership; or

(4) by an officer of the applicant, if a corporation, corporate division, association, trust or other entity.

(d) Any applicant may authorize one or more individuals to sign applications for the applicant or location by filing, with the executive secretary of the board, a power of attorney for each such individual. The power of attorney shall contain the signature of the individual who shall be authorized to sign applications pursuant to that power of attorney. The power of attorney shall be valid until revoked by the applicant.

(e) Any person required to obtain more than one registration may submit all applications in one package. Each application shall be completed and should not refer to any accompanying application for required information.

(f) Applications submitted for filing shall be dated upon receipt. Completed applications shall be accepted for filing. If completed with only minor defects, the board may accept the application for filing and send a request to the applicant for additional information. A defective application shall be returned to the applicant within 10 days following its receipt with a statement of the reason for refusal to accept the application for filing. A defective application may be corrected and resubmitted for filing at any time.

(g) Additional information. The board may require any applicant or the applicant's authorized representative to submit such documents or written statements of fact relevant to the application as it deems necessary to determine whether the application should be granted. The failure of the applicant or authorized representative to provide the documents or statements within a reasonable time after being requested to do so shall be deemed to be a waiver of an opportunity to present the documents or facts for consideration by the board in granting or denying the application.

(h) Amendments to and withdrawal of applications.

(1) Any application may be amended or withdrawn without permission of the board at any time before the date on which the applicant or the applicant's authorized representative receives an order to show cause pursuant to K.S.A. 65-4119. Any application may be amended or withdrawn with permission of the board at any time good cause is shown by the applicant or the applicant's authorized representative, or when the amendment or withdrawal is in the public interest.

(2) After an application has been accepted for filing, a request by the applicant or the applicant's authorized representative for return of the application or failure of the applicant or authorized representative to respond to official correspondence regarding the application, when sent by registered or certified mail, return receipt requested, shall be deemed to be a withdrawal of the application. (Authorized by and implementing K.S.A. 65-4116 as amended by L. 1987, Ch. 244, Sec. 3; effective, E-72-24, Aug. 25, 1972; effective Jan. 1, 1973; amended May 1, 1985; amended May 1, 1988.)

68-20-12. (Authorized by K.S.A. 65-4116, 65-4117, 65-4118, 65-4119; effective, E-72-24, Aug. 25, 1972; effective Jan. 1, 1973; revoked May 1, 1987.)

68-20-13. Hearings generally. In any case where the board shall hold a hearing on any registration or application therefor, the procedures for such hearing shall be conducted in accordance with the procedural provisions of the act and paragraph 68-20-13 of these regulations. Any hearing under this part shall be independent of and not in lieu of, criminal proceedings or other proceedings under the act or any other law of this state.

(A) *Purpose of hearing*—The board shall hold a hearing for the purpose of receiving factual evidence regarding the issues involved in the denial, revocation, or suspension of any registration. Extensive argument should not be offered into evidence but rather presented in opening or closing statements of counsel or in memoranda or proposed findings of fact and conclusions of law.

(B) *Waiver or modification of rules*—The board or its presiding officer (with respect to matters pending before him), may modify or waive any rule or regulation in paragraph 68-20-13 of these regulations by notice in advance of the hearing, if the board determines that no party in the hearing will be unduly prejudiced and the ends of justice will thereby be served. Such notice of modification or waiver shall be made a part of the records of the hearing.

(C) *Hearing; waiver.*

(1) Any person entitled to a hearing may file with the board a waiver of an opportunity for a hearing or to participate in a hearing, together with a written statement regarding his position on the matters of fact and law involved in such hearing. Such statement, if admissible, shall be made a part of the record and shall be considered in light of the lack of opportunity for cross-examination in determining the weight to be attached to matters of fact asserted therein.

(2) If any person entitled to a hearing or to participate in a hearing waives his opportunity to participate in the hearing, the board may proceed without the presence of such person.

(D) *Burden of proof.*

(1) At any hearing for the denial of a registration, the board shall have the burden of proving that the requirements of such registration pursuant to the act (K.S.A. 65-4117, K.S.A. 65-4118) are not satisfied.

(2) At any hearing for the revocation or suspension of a registration, the board shall have the burden of proving that the requirements for such revocation or suspension in accordance with the provisions of the act (K.S.A. 65-4119).

(E) *Time and place of hearing*—The hearing will commence at the place and time designated in the order to show cause (unless expedited pursuant to paragraph 68-20-12D of these regulations) but thereafter, it may be moved to a different place and may be continued from day to day or recessed to a later day without notice other than announcement thereof by the presiding officer at the hearing.

(F) *Final order*—As soon as practicable after the presiding officer has certified the record to the board, the board shall issue its order on the granting, denial, revocation or suspension of the registration. In the event that any application for registration is denied, or any registration is revoked or suspended, the order shall include the findings of fact and conclusions of law upon which the order is based. The order shall specify the date on which it shall take effect. The board shall serve one copy of its order upon each party in the hearing by registered, return receipt requested mail. (Authorized by K.S.A. 65-4117, 65-4118, 65-4119; effective, E-72-24, Aug. 25, 1972; effective Jan. 1, 1973.)

68-20-14. Modification, transfer and termination of registration. (A) *Modification in registration*—Any registrant may apply to modify his registration to authorize the handling of additional controlled substances by submitting a letter of request to the state board of pharmacy. The letter shall contain the registrant's name, address, registration number and the substance and/or schedules to be added to his registration and shall be signed by the same person who signed the most recent application for registration or reregistration. If the registrant is seeking to handle additional controlled substances listed in schedule I for the purpose of research or instructional activities, he shall attach one copy of the federally approved research protocol describing each research project involving the additional substances, or two copies of a statement describing the nature, extent and duration of such instructional activities, as appropriate. One-half of the original fees shall be required to be paid for said modification. The request for modification shall be handled in the same manner as an application for registration.

(B) *Termination of registration*—The registration of any person or location shall terminate if and when such person or authorized representative of a location dies, ceases legal existence, discontinues business or professional practice or changes the location as shown on the certificate of registration. Any registrant who ceases legal existence, discontinues business or professional practice, or changes location as shown on the certificate of registration, shall notify the board promptly of such fact and forthwith deliver the certificate of registration directly to the secretary or executive secretary of the board. In the event of a change in name or mailing address the person or authorized representative of the location shall notify the board promptly in advance of the effective date of this change by filing the change of name or mailing address with the board. This change shall be noted on the original application on file with the board.

(C) *Transfer of registration*—No registration or any authority conferred thereby shall be assigned or otherwise transferred except upon such conditions as the board may specifically designate and then only pursuant to its written consent. (Authorized by K.S.A. 65-4115; effective, E-72-24, Aug. 25, 1972; effective Jan. 1, 1973.)

68-20-15. (Authorized by K.S.A. 1976 Supp. 65-4115; effective, E-72-24, Aug. 25, 1972; effective Jan. 1, 1973; amended, E-77-42, Sept. 9, 1976; amended Feb. 15, 1977; revoked May 1, 1983.)

68-20-15a. Security requirements. (a) General security requirements. Each applicant and registrant shall provide effective controls and procedures to guard against theft and diversion of controlled substances in conformance with the security requirements of federal law, including the requirements of 21 CFR 1301.71 as in effect on April 1, 1999, which are hereby adopted by reference.

(b) Physical security controls for nonpractitioners shall comply with the requirements of 21 CFR 1301.72 and 1301.73 as in effect on April 1, 1999, which are hereby adopted by reference.

(c) Other security controls for nonpractitioners.

(1) Good faith inquiry. Before distributing a controlled substance to any person whom the registrant does not know to be registered to possess a controlled substance, each registrant shall make a good faith inquiry with the board to determine that the person is registered to possess a controlled substance.

(2) Suspicious orders. Each registrant shall design an operative system to disclose to the registrant any suspicious orders of controlled substances. Each registrant shall inform the board of suspicious orders when discovered. Suspicious orders shall include orders of unusual size, orders deviating from a normal pattern, and orders of unusual frequency.

(3) A controlled substance listed in schedules II through V shall not be distributed on a gratuitous basis by a manufacturer or distributor to a practitioner, mid-level practitioner, pharmacist, or any other person.

(d) Physical security controls for prescribers. Each prescriber shall provide effective controls and procedures to guard against theft and diversion of controlled substances in conformance with the security requirements of federal law, including the requirements of 21 CFR 1301.75 and 1301.76 as in effect on April 1, 1999, which are hereby adopted by reference.

(e) Other security controls for prescribers.

(1) In order to minimize the opportunities for diversion of controlled substances, each prescriber shall provide effective physical security, shall initiate additional procedures to reduce access by unauthorized personnel, and shall provide an alarm system if necessary.

(2) Minimum security standards for prescribers as set forth in this article shall be considered as guidelines to be used in evaluating security. Additional security controls and operating procedures may be required by the board to prevent diversion of controlled substances. (Authorized by K.S.A. 1998 Supp. 65-4102; implementing K.S.A. 65-4117; effective May 1, 1983; amended May 1, 1988; amended Sept. 9, 1991; amended March 20, 1995; amended Aug. 1, 1997; amended Feb. 5, 1999; amended Dec. 27, 1999.)

68-20-15b. Notification to board; suspected diversion, theft, or loss of controlled substances. Either the pharmacist-in-charge or the pharmacy owner shall notify the board in writing within one day of any suspected diversion, theft, or loss of any controlled substance and, upon completion, shall provide the board with a copy of the completed DEA 106 form issued by the U.S. department of justice. (Authorized by K.S.A. 2017 Supp. 65-4102; implementing K.S.A. 65-4117; effective Jan. 4, 2019.)

68-20-16. Records and inventories of registrants. (a) Except as provided in this regula-

tion, each registrant shall keep records and maintain inventories in conformance with the record-keeping and inventory requirements of 21 CFR 1304.04(g) and (h), including 21 CFR 1304.04(f) as referred to by 21 CFR 1304.04(g), and 21 CFR 1304.11, as in effect on April 1, 2008, which are hereby adopted by reference. The registrant shall keep the records on file for at least five years.

(b) After the initial inventory is taken, the registrant shall take a subsequent inventory of all controlled substances on hand at least every year. The annual inventory shall be taken at least eight months after the previous inventory.

(c) Each required inventory of schedule II controlled substances and all products containing hydrocodone shall be taken by exact count.

(d) All registrants handling schedule V preparations shall be subjected to the same inventory and recordkeeping requirements specified in subsections (a) and (b). In addition, an inventory of schedule V items shall be taken in conjunction with the required inventory requirements relating to schedules II, III, and IV. (Authorized by K.S.A. 65-4102, as amended by L. 2009, ch. 32, sec. 54, and K.S.A. 65-4121; implementing K.S.A. 65-4121; effective, E-72-24, Aug. 25, 1972; effective Jan. 1, 1973; amended May 1, 1989; amended July 31, 1998; amended Dec. 27, 1999; amended Nov. 13, 2009.)

68-20-17. Order forms. Each transfer of any schedule I or II controlled substance shall require the use of a drug enforcement agency (DEA) 222 form issued by the United States attorney general in accordance with 21 CFR part 1305 or an electronic order placed in accordance with 21 CFR part 1311. (Authorized by K.S.A. 65-4102; implementing K.S.A. 65-4102 and K.S.A. 65-4122; effective, E-72-24, Aug. 25, 1972; effective Jan. 1, 1973; amended May 1, 1987; amended Feb. 5, 1999; amended Dec. 27, 1999; amended April 27, 2007.)

68-20-18. Information concerning prescriptions. (a) Persons entitled to issue prescriptions. A prescription for a controlled substance may be issued only by a practitioner or mid-level practitioner who meets the following conditions:

(1) Is legally authorized to prescribe controlled substances in Kansas or any other competent jurisdiction; and

(2) is either registered or exempted from registration under K.S.A. 65-4116(d) and amendments thereto.

(b) Purpose of issue of prescription.

(1) To be effective, a prescription for a controlled substance shall be issued for a legitimate medical purpose by a practitioner or mid-level practitioner acting in the usual course of professional practice. The responsibility for the proper prescribing and dispensing of controlled substances shall rest with the prescriber, but a corresponding responsibility shall rest with the pharmacist who fills the prescription. The person filling an unlawful prescription, as well as the person issuing it, shall be subject to the penalties provided for violations of the provisions of the controlled substance act, K.S.A. 65-4101, et seq. and amendments thereto.

(2) A prescription shall not be issued in order for a practitioner or mid-level practitioner to obtain controlled substances for supplying that individual or any other prescriber for the purpose of general dispensing to patients.

(3) A prescription shall not be issued for the dispensing of narcotic drugs listed in any schedule to a narcotic drug-dependent person for the purpose of continuing dependence upon these drugs, except in the course of conducting an authorized clinical investigation in the development of a narcotic addict rehabilitation program.

(c) Manner of issuance of prescriptions.

(1) Controlled substance prescriptions in schedules II through V shall not be issued on a prescription blank that is preprinted with the name of a propriety preparation or with the strength, quantity, or directions.

(2) All written prescriptions for controlled substances shall meet the following requirements:

(A) Be dated and manually signed on the day issued;

(B) bear the following information:

(i) The full name, address, and registration number of the practitioner or mid-level practitioner;

(ii) the name and address of the patient; and

(iii) the drug name, strength, dosage form, quantity prescribed, and directions for use; and

(C) be written with ink, indelible pencil, or typewriter.

(3) A practitioner or mid-level practitioner shall manually sign a prescription in the same manner as that individual would sign a check or legal document.

(4) The prescriptions may be prepared by a secretary or agent for the signature of a practitioner or mid-level practitioner, but the prescriber shall be responsible if the prescription does not conform in all essential respects to the state and federal law and regulations. A corresponding liability

shall rest upon the pharmacist who fills a prescription that is not prepared in the form prescribed by this regulation.

(5) An intern, resident, foreign physician, or foreign medical graduate exempted from registration under K.S.A. 65-4116(d), and amendments thereto, shall include on all prescriptions issued the registration number of the hospital or other institution and the special internal code number assigned to the intern, resident, foreign physician, or foreign medical graduate by the hospital or other institution as provided in K.A.R. 68-20-10. This requirement shall be in lieu of the registration number of the practitioner required by this subsection. Each prescription shall have the name of the intern, resident, foreign physician or foreign medical graduate stamped or printed on it, as well as the signature of the physician.

(6) An official exempted from registration under K.A.R. 68-20-10 shall include on all prescriptions issued the official's branch of service or agency and the service identification number. This requirement shall be in lieu of the registration number of the practitioner otherwise required by this subsection. The service identification number for a public health service employee shall be that individual's social security identification number. Each prescription shall have the name of the officer stamped or printed on it, as well as the signature of the officer.

(d) Manner of issuance of prescriptions by facsimile.

(1) Controlled substance prescriptions in schedules III through V may be transmitted by telephone by a prescriber or designated agent to a pharmacy for a patient of the prescriber. The transmitted telephone prescription may be by oral, facsimile, or electronic transmission. Prescription orders shall be reduced to hard copy by the pharmacist and, if telephoned by other than the prescriber, shall bear the name of the person so transmitting or telephoning the prescription.

(2) Controlled substance prescriptions in schedule II may be transmitted by facsimile or electronic transmission from the prescriber to a pharmacy. However, when the prescription is actually dispensed, the original written prescription that is manually signed by the prescriber shall be presented, verified against the facsimile or electronic transmission, and retained for filing. Exceptions to this subsection shall be in compliance with K.A.R. 68-20-10a.

(e) Persons entitled to fill prescriptions.

(1) A prescription for controlled substances shall be filled only by the following:

(A) A pharmacist acting in the usual course of professional practice in a registered pharmacy, hospital drug room, or other registered place of employment; or

(B) a pharmacist intern acting under the immediate personal direction and supervision of a licensed pharmacist.

(2) For the purposes of this regulation, an intern shall mean a prospective candidate for examination as a licensed pharmacist who is qualified to receive, and is obtaining, pharmaceutical experience as defined in K.A.R. 68-5-1.

(3) A medical care facility or other institution registered with the board shall administer or dispense directly a controlled substance listed in schedules III and IV and legend V only pursuant to a written prescription signed by the prescriber or to an order of medication made by a prescriber that is dispensed for immediate administration to the ultimate user. (Authorized by K.S.A. 1998 Supp. 65-4102; implementing K.S.A. 65-4123, as amended by L. 1999, Ch. 115, Sec. 15; effective, E-72-24, Aug. 25, 1972; effective Jan. 1, 1973; amended May 1, 1988; amended Sept. 9, 1991; amended March 29, 1993; amended March 20, 1995; amended Dec. 27, 1999.)

68-20-19. Controlled substances listed in schedule II. (a) Requirements of prescription.

(1) A pharmacist shall dispense a controlled substance listed in schedule II, which is a prescription drug as determined under these regulations, only pursuant to a written prescription signed by the prescribing practitioner, except as provided in paragraph (4) of this subsection.

(2) Any written prescriptions signed by the prescribing practitioner falling under the above provisions of paragraph (1) shall not be filled if submitted more than six months after the original date appearing on the written prescription.

(3) A prescriber may administer a controlled substance listed in schedule II in the course of professional practice without a prescription, subject to K.A.R. 68-20-18.

(4)(A) In the case of an emergency situation, as defined by paragraph (5) of this subsection, a pharmacist may dispense a controlled substance listed in schedule II upon receiving authorization of a prescriber, if all of the following conditions are met:

(i) The quantity prescribed and dispensed is limited to the amount adequate to treat the pa-

tient during the emergency period. Dispensing beyond the emergency period shall be pursuant to a written prescription signed by the prescriber.

(ii) The prescription shall be immediately reduced to a hard copy by the pharmacist and shall contain all information required under K.A.R. 68-20-18(c) except for the signature of the prescriber.

(iii) If the prescriber is not known to the pharmacist, the pharmacist shall make a reasonable effort to determine that the authorization came from the prescriber, which may include a call back to the prescriber, using the prescriber's phone number as listed in the telephone directory or other good faith efforts to insure the prescriber's identity, or both.

(iv) Within seven days after authorizing an emergency prescription drug order, the prescriber shall cause a written prescription drug order for the emergency quantity prescribed to be delivered to the dispensing pharmacist.

(B) In addition to conforming to the requirements of K.A.R. 68-20-18(c), the prescription drug order shall have written on its face "Authorization for Emergency Dispensing" and the date of the prescription drug order.

(C) The written prescription drug order shall be delivered to the pharmacist in person within seven days of authorization or, if delivered by mail, it shall be postmarked within the seven-day period.

(D) Upon receipt, the dispensing pharmacist shall attach this written prescription drug order to the pharmacist's record of the emergency prescription drug order.

(E) The pharmacist shall notify the nearest office of the U.S. drug enforcement administration (DEA) if the prescribing practitioner fails to deliver a written prescription drug order to the pharmacist; failure of the pharmacist to do so shall void the authority conferred by this paragraph to dispense without a written prescription of a prescriber.

(5) For the purposes of authorizing a prescription of any controlled substance listed in schedule II of the federal or state uniform controlled substances act, the term "emergency situation" means those situations in which the prescriber determines the following:

(A) That immediate administration of the controlled substance is necessary for proper treatment of the intended ultimate user;

(B) that no appropriate alternative treatment is available, including administration of a drug that is not a controlled substance under schedule II of the act; and

(C) that it is not reasonably possible for the prescriber to provide a written prescription to be presented, before dispensing, to the pharmacist dispensing the substance.

(b) A medical care facility or other institution registered with the board shall administer or dispense a controlled substance listed in schedule II only pursuant to a written prescription signed by the prescriber or to an order for medication made by a prescriber that is dispensed for immediate administration to the ultimate user.

(c) Partial filling of prescriptions. The partial filling of a prescription for any controlled substance listed in schedule II shall be permissible, only as provided in this subsection.

(1) Whenever the pharmacist is unable to supply the full quantity called for in a written or emergency prescription and the pharmacist makes a notation of the quantity supplied on the face of the written prescription or written record of the emergency prescription, the pharmacist shall perform the following:

(A) Fill the remaining portion of the prescription within 72 hours of the first partial filling or, if the remaining portion cannot be filled within the 72-hour period, the pharmacist shall notify the prescriber of the situation; and

(B) supply no further quantity beyond 72 hours without a new prescription.

(2) Whenever written, prescriptions for schedule II controlled substances for patients in a long-term care facility (LTCF) or for a patient with a medical diagnosis documenting a terminal illness may be filled in partial quantities, including individual dosage units, as provided in this subsection. The pharmacist shall record on the prescription whether the patient is "terminally ill" or an "LTCF patient."

(A) For each partial filling, the dispensing pharmacist shall record on the back of the prescription, or on another appropriate, uniformly maintained, and readily retrievable record, the date of the partial filling, quantity dispensed, remaining quantity authorized to be dispensed, and the identification of the dispensing pharmacist.

(B) The total quantity of schedule II controlled substances dispensed in all partial fillings shall not exceed the total quantity prescribed.

(C) These schedule II prescriptions shall be valid for a period not to exceed 60 days from the issue date unless terminated sooner by the discontinuance of medication.

(d) Labeling of substances. The pharmacist filling a written or emergency prescription for a

controlled substance listed in schedule II shall affix a label to the package showing the following information:

- (1) The date the prescription was filled;
- (2) the name, address, and telephone number of the pharmacy dispensing the prescription;
- (3) the serial number of the prescription;
- (4) the full name of the patient;
- (5) the name of the practitioner and either the physician's assistant (PA) or the advanced registered nurse practitioner (ARNP);
- (6) the directions for use and cautionary statements, if any, contained in the prescription or required by law;
- (7) the brand name or corresponding generic name of the prescription medication;
- (8) the manufacturer or distributor of the prescription medication, or an easily identified abbreviation of the manufacturer's or distributor's name;
- (9) the expiration date of the prescription medication dispensed, if applicable.

(e) Filing of prescriptions.

(1) All written prescriptions and written records of emergency prescriptions shall be kept in accordance with K.A.R. 68-20-16.

(2) All written or emergency prescriptions for a controlled substance listed in schedule II shall be cancelled on the face of the prescription with the name of the pharmacist filling that prescription.

(3) All written or emergency prescriptions for controlled substances listed in schedule II and filled by a pharmacy intern shall be cancelled on the face of the prescription with the names of the pharmacy intern and preceptor authorizing the filling of that prescription. (Authorized by and implementing K.S.A. 1998 Supp. 65-4102 and K.S.A. 65-4123, as amended by L. 1999, Ch. 115, Sec. 15; effective, E-72-24, Aug. 25, 1972; effective Jan. 1, 1973; amended Sept. 9, 1991; amended March 29, 1993; amended March 20, 1995; amended Feb. 5, 1999; amended Dec. 27, 1999.)

68-20-20. Controlled substances listed in schedules III and IV. (a) Requirements of prescription.

(1) A pharmacist may dispense any controlled substance listed in schedule III, IV, or V that is a prescription drug as determined under the federal food, drug, and cosmetic act, pursuant only to a written prescription signed by a prescriber, or an oral prescription made by a prescriber, and promptly reduced to writing by the pharma-

cist containing all information required under K.A.R. 68-20-18(c), except for the signature of the prescriber.

(2) A prescriber may administer any controlled substance listed in schedule III, IV, or V in the course of the practitioner's professional practice without a prescription, subject to K.A.R. 68-20-18.

(3) A medical care facility registered with the board may administer or dispense directly, but shall not prescribe, any controlled substance listed in schedule III, IV, or V only pursuant to a written prescription signed by the prescriber, or to an order for medication made by a prescriber for immediate administration to the ultimate user.

(b) Filling of prescriptions.

(1) Each refilling of a prescription shall be entered on the back of a prescription, with the following additional information:

(A) The date of refilling or dispensing;

(B) the amount dispensed; and

(C) the name or initials of the dispensing pharmacist or pharmacist intern.

(2) Additional quantities of controlled substances listed in schedules III or IV may be authorized by a prescriber through an oral refill authorization transmitted to the pharmacist if all of the following conditions are met:

(A) The total quantity authorized, including the amount of the original prescription, does not exceed five refills or extend beyond six months from the date of issue of the original prescription.

(B) The pharmacist obtaining the oral authorization records on the reverse of the original prescription the following:

(i) The date;

(ii) the quantity of refill;

(iii) the number of additional refills authorized; and

(iv) the initials of the pharmacist who received the authorization from the prescriber.

(C) The quantity of each additional refill authorized is equal to or less than the quantity authorized for the initial filling of the original prescription.

(D) The prescriber executes a new prescription as provided in K.A.R. 68-20-18 for any additional quantities beyond the five-refill, six-month limitation.

(3) As an alternative to the procedures provided by paragraph (b)(2), an automated data-processing system may be used for the storage and retrieval of refill information for prescription orders for controlled substances in schedule III and IV, if all of the following requirements are met:

(A) Any such proposed computerized system shall provide on-line retrieval, via CRT display or hard-copy printout, of original prescription order information for those prescription orders that are currently authorized for refilling. This shall include the following:

- (i) The original prescription number;
- (ii) the date of issuance of the original prescription order by the prescriber;
- (iii) the full name and address of the patient;
- (iv) the name, address, and DEA registration number of the prescriber;
- (v) the name, strength, dosage form, quantity of the controlled substance prescribed, and the quantity dispensed, if different from the quantity prescribed; and
- (vi) the total number of refills authorized by the prescriber.

(B) Any such proposed computerized system shall also provide on-line retrieval, via CRT display or hard-copy printout, of the current refill history for schedule III or IV controlled substance prescription orders that have been authorized for refill during the past six months. This refill history shall include the following information:

- (i) The name of the controlled substance;
- (ii) the date of refill;
- (iii) the quantity dispensed;
- (iv) the identification code, or name or initials of the dispensing pharmacist for each refill; and
- (v) the total number of refills dispensed to date for that prescription order.

(C) Documentation that the refill information entered into the computer each time a pharmacist refills an original prescription order for a schedule III or IV controlled substance is correct shall be provided by the individual pharmacist who makes use of such a system. If this system provides a hard-copy printout of each day's controlled substance prescription order refill data, that printout shall be verified, dated, and signed by the individual pharmacist who refilled the prescription order. The individual pharmacist shall verify that the date indicated is correct and then sign this document in the same manner as the pharmacist would sign a check or legal document. This document shall be maintained in a separate file at the pharmacy for five years from the dispensing date. This printout of the day's controlled substance prescription order refill data shall be provided to each pharmacy using the computerized system within 72 hours of the date on which the refill was dispensed. This document shall be verified

and signed by each pharmacist who is involved with the dispensing. In lieu of such a printout, the pharmacy shall maintain a bound logbook, or separate file, in which each individual pharmacist involved in the dispensing shall sign a statement, in the manner previously described, each day, attesting to the fact that the refill information entered into the computer that day has been reviewed by the pharmacist and is correct as shown. This book or file shall be maintained at the pharmacy employing the system for five years after the date of dispensing the appropriately authorized refill.

(D) Any such computerized system shall have the capability of producing a printout of any refill data that the user pharmacy is responsible for maintaining. This shall include a refill-by-refill audit trail for any specified strength and dosage form of any controlled substance, by brand, generic name, or both. This printout shall include the following:

- (i) The name of the prescriber;
- (ii) the name and address of the patient;
- (iii) the quantity dispensed on each refill;
- (iv) the date of dispensing for each refill;
- (v) the name or identification code of the dispensing pharmacist; and
- (vi) the number of the original prescription order.

(E) In any central computerized system employed by a user pharmacy, the central recordkeeping location shall be capable of sending the printout to the pharmacy within 48 hours, and if an authorized agent of the board requests a copy of this printout from the user pharmacy, it shall, if requested to do so by the agent, verify the printout transmittal capability of its system by documentation.

(F) If a pharmacy that employs such a computerized system experiences system downtime, the pharmacy shall have an auxiliary procedure that will be used for documentation of refills of schedule III and IV controlled substance prescription orders. This auxiliary procedure shall insure that refills are authorized by the original prescription order, that the maximum number of refills has not been exceeded, and that all of the appropriate data is retained for on-line data entry as soon as the computer system is available for use again.

(4) When filing refill information for original prescription orders for schedule III or IV controlled substances, a pharmacy may use one of the two systems described in paragraphs (2) or (3) of this subsection.

(5) In the case of medical care facilities registered with the board, all requirements specified

in paragraphs (b) (1), (2), and (3) above shall be maintained in the medication records or other readily retrievable records regularly maintained by the medical care facility.

(c) Partial filling of prescriptions. A prescription for a controlled substance listed in schedule III, IV, or V may be partially filled if all of the following conditions are met:

(1) Each partial filling is recorded in the same manner as a refilling.

(2) The total quantity dispensed in all partial fillings does not exceed the total quantity prescribed.

(3) Except for a controlled substance listed in schedule V, no dispensing occurs after six months after the date on which the prescription was issued.

(d) Labeling of substances. The pharmacist filling a prescription for a controlled substance listed in schedule III or IV shall affix to the package a label showing the following:

- (1) The pharmacy name and address;
- (2) the serial number of the prescription;
- (3) the date of initial filling;
- (4) the name of the patient;
- (5) the name of the prescriber issuing the prescription;
- (6) the directions for use; and
- (7) cautionary statements, if any, contained in the prescription as required by law, except as provided in 21 CFR 1306.24 as in effect on April 1, 1999, which is hereby adopted by reference.

(e) Filing prescriptions. All prescriptions for controlled substances listed in schedules III, IV, and V shall be kept in accordance with K.A.R. 68-20-16. (Authorized by and implementing K.S.A. 1998 Supp. 65-4102, K.S.A. 65-4121, K.S.A. 65-4123; effective, E-73-24, Aug. 25, 1972; effective Jan. 1, 1973; amended May 1, 1983; amended April 30, 1990; amended Aug. 4, 2000.)

68-20-21. Controlled substances listed in schedule V. Requirements of prescriptions.

(a) A pharmacist may dispense a controlled substance listed in schedule V pursuant to a prescription as required for controlled substances listed in schedules III and IV in K.A.R. 68-20-20 in this article. A prescription for a controlled substance listed in schedule V may be refilled only as expressly authorized by the prescriber on the prescription; if no such authorization is given, the prescription shall not be refilled. A pharmacist dispensing this substance pursuant to a prescription shall label the substance in accordance with subsection (d) of K.A.R. 68-20-20 in this article and file the pre-

scription in accordance with K.A.R. 68-20-16 in this article.

(b) A prescriber may administer a controlled substance listed in schedule V in the course of professional practice without a prescription, subject to subsection (e) of K.A.R. 68-20-18 in this article.

(c) A hospital or other institution registered with the board may administer or dispense any controlled substance listed in schedule V only pursuant to a written prescription signed by the prescriber or to an order for medication made by a prescriber that is dispensed for immediate administration to the ultimate user. (Authorized by K.S.A. 1998 Supp. 65-4113; effective, E-72-24, Aug. 25, 1972; effective Jan. 1, 1973; amended Dec. 27, 1999.)

68-20-22. Dispensing without prescription. A controlled substance listed in schedule V and a controlled substance listed in schedule II, III or IV which is not a prescription drug as determined under the federal food, drug, and cosmetic act, may be dispensed by a pharmacist without a prescription to a purchaser at retail, provided that:

(a) Such dispensing is made only by a pharmacist as that term is defined by the pharmacy act of the state of Kansas and not by a non-pharmacist employee, even if under the supervision of a pharmacist (although after the pharmacist has fulfilled his or her professional and legal responsibilities set forth in this act, the actual cash, credit transaction, or delivery, may be completed by a non-pharmacist.

(b) Not more than 240 cc. (8 ounces) of any such controlled substance containing opium, nor more than 120 cc. (4 ounces), of any other such controlled substance nor more than forty-eight (48) dosage units of any such controlled substance containing opium, nor more than twenty-four (24) dosage units of any other such controlled substance may be dispensed at retail to the same purchaser in any given forty-eight (48) hour period.

(c) The purchaser is at least eighteen (18) years of age.

(d) The pharmacist requires every purchaser of a controlled substance under this section not known to him or her to furnish suitable identification (including proof of age where appropriate).

(e) A bound record book for dispensing of controlled substances under this section is maintained by the pharmacist, which book shall contain the name and address of the purchaser, the name and

quantity of controlled substance purchased, the date of each purchase, and the name or initials of the pharmacist who dispensed the substance to the purchaser (the book shall be maintained in accordance with the record keeping requirements of the uniform controlled substances act of the state of Kansas);

(f) A prescription is not required for distribution or dispensing of the substance pursuant to any other federal, state or local law. (Authorized by K.S.A. 1977 Supp. 65-4116; effective May 1, 1978.)

68-20-23. N-Benzylpiperazine included in schedule I. N-Benzylpiperazine (BZP), including its salts, isomers, and salts of isomers, shall be classified as a schedule I controlled substance. (Authorized by and implementing K.S.A. 65-4102; effective, T-68-11-6-08, Nov. 6, 2008, effective March 6, 2009.)

68-20-31. 2,5-dimethoxy-4-methyl-n-(2-methoxybenzyl)phenethylamine included in schedule I. 2,5-dimethoxy-4-methyl-n-(2-methoxybenzyl)phenethylamine, including its salts, isomers, and salts of isomers, shall be classified as a schedule I controlled substance. (Authorized by and implementing K.S.A. 2014 Supp. 65-4102; effective, T-68-1-23-15, Jan. 23, 2015; effective June 5, 2015.)

Article 21.—PRESCRIPTION MONITORING PROGRAM

68-21-1. Definitions. As used in these regulations, the following terms shall have the meanings specified in this regulation:

(a) “Authentication” means the provision of information, an electronic device, or a certificate by the board or its designee to a dispenser or prescriber that allows the dispenser or prescriber to electronically access prescription monitoring information. The authentication may include the provision of a user name, a password, or an electronic identification device or certificate.

(b) “Dispenser identification number” means the drug enforcement administration (DEA) number if available or, if not available, the national provider identifier (NPI).

(c) “Drug enforcement administration number” means a unique registration number issued to an authorized prescriber of controlled substances by the drug enforcement administration, United States department of justice.

(d) “National provider identifier” and “NPI”

mean a unique 10-digit number issued by the national provider identifier registry and used to identify each health care provider whose services are authorized by medicaid or medicare.

(e) “Patient identification number” means that patient’s unexpired temporary or permanent driver’s license number or state-issued identification card number. If the patient does not have one of those numbers, the dispenser shall use the patient’s insurance identification number. If the patient does not have an insurance identification number, the dispenser shall use the patient’s first, middle, and last initials, followed by the patient’s eight-digit birth date.

(f) “Prescriber identification number” means the DEA number if available or, if not available, the NPI.

(g) “Program” means the Kansas prescription monitoring program.

(h) “Report” means a compilation of data concerning a dispenser, patient, drug of concern, or scheduled substance as defined in K.S.A. 65-1682(g) and amendments thereto.

(i) “Stakeholder” means a person, group, or organization that could be affected by the program’s actions, objectives, and policies.

(j) “Valid photographic identification” means any of the following:

(1) An unexpired permanent or temporary driver’s license or instruction permit issued by any U.S. state or Canadian province;

(2) an unexpired state identification card issued by any U.S. state or Canadian province;

(3) an unexpired official passport issued by any nation;

(4) an unexpired United States armed forces identification card issued to any active duty, reserve, or retired member and the member’s dependents;

(5) an unexpired merchant marine identification card issued by the United States coast guard;

(6) an unexpired state liquor control identification card issued by the liquor control authority of any U.S. state or Canadian province; or

(7) an unexpired enrollment card issued by the governing authority of a federally recognized Indian tribe located in Kansas, if the enrollment card incorporates security features comparable to those used by the Kansas department of revenue for drivers’ licenses.

(k) “Zero report” means an electronic data submission reflecting no dispensing activity for a given period.

This regulation shall take effect 90 days after publication in the Kansas register. (Authorized by K.S.A. 65-1692; implementing K.S.A. 2013 Supp. 65-1682; effective Oct. 15, 2010; amended Aug. 13, 2014.)

68-21-2. Electronic reports. (a)(1) Each dispenser shall file a report with the board for scheduled substances, as defined in K.S.A. 65-1682(g) and amendments thereto, and any drugs of concern dispensed in this state or to an address in this state. This report shall be submitted within 24 hours of the time that the substance is dispensed, unless the board grants an extension as specified in subsection (d).

(2) Each dispenser that does not dispense scheduled substances, as defined in K.S.A. 65-1682(g) and amendments thereto, or any drugs of concern in this state or to an address in this state during the reporting period specified in paragraph (a)(1) shall file a zero report with the board. Each zero report shall meet the following requirements:

(A) Cover not more than a seven-day period in which no such drugs were dispensed; and

(B) be filed the day following the end of the period covered by the zero report.

(b) In addition to the requirements of K.S.A. 65-1683 and amendments thereto, each dispenser shall submit the prescriber's name, the patient's telephone number, and the number of refills for the dispensed drug on the report to the board. As an alternative to reporting the dispenser identification number, any dispenser may report the pharmacy DEA number.

(c) Except as specified in K.A.R. 68-21-3, each report required to be submitted pursuant to subsection (a) shall be submitted by secure file transfer protocol in the electronic format established by the American society for automation in pharmacy, dated no earlier than 2007, version 4, release 1.

(d) An extension may be granted by the board to a dispenser for the submission of any report required to be submitted pursuant to subsection (a) if both of the following conditions are met:

(1)(A) The dispenser suffers a mechanical or electronic failure; or

(B) the dispenser cannot meet the deadline established by subsection (a) because of circumstances beyond the dispenser's control.

(2) The dispenser files a written application for extension on a form provided by the board within 24 hours of discovery of the circumstances necessi-

tating the extension request or on the next day the board's administrative office is open for business.

(e) An extension for the filing of a report shall be granted to a dispenser if the board is unable to receive electronic reports submitted by the dispenser.

(f) Each dispenser that is registered or licensed to dispense scheduled substances, as defined in K.S.A. 65-1682(g) and amendments thereto, or any drugs of concern in this state or to an address in this state but does not dispense any of these drugs shall notify the board in writing that the dispenser will not be reporting to the board. If the dispenser begins dispensing scheduled substances, as defined in K.S.A. 65-1682(g) and amendments thereto, or any drugs of concern in this state or to an address in this state, the dispenser shall notify the board of this fact and shall begin submitting reports to the board pursuant to this regulation.

This regulation shall take effect 90 days after publication in the Kansas register. (Authorized by K.S.A. 2013 Supp. 65-1683 and 65-1692; implementing K.S.A. 2013 Supp. 65-1683; effective Oct. 15, 2010; amended April 15, 2011; amended Aug. 13, 2014.)

68-21-3. Waivers for electronic reports.

(a) A waiver may be granted by the board to a dispenser who does not have an automated record-keeping system capable of producing an electronic report as specified in K.A.R. 68-21-2(c) if the following conditions are met:

(1) The dispenser files a written application for a waiver on a form provided by the board.

(2) The dispenser agrees in writing to immediately begin filing a paper report on a form provided by the board for each drug of concern and each schedule II through IV drug dispensed in this state or dispensed to an address in this state.

(b) A waiver may be granted by the board to a dispenser who has an automated recordkeeping system capable of producing an electronic report as specified in K.A.R. 68-21-2(c) if both of the following conditions are met:

(1) The dispenser files a written application for a waiver on a form provided by the board.

(2)(A) A substantial hardship is created by natural disaster or other emergency beyond the dispenser's control; or

(B) the dispenser is dispensing in a controlled research project approved by a regionally accredited institution of higher education.

(c) If a medical care facility dispenses an interim supply of a drug of concern or a schedule II through IV drug to an outpatient on an emergency basis when a prescription cannot be filled as authorized by K.A.R. 68-7-11, that facility shall be exempt from the reporting requirements. The interim quantity shall not exceed a 48-hour supply and, as described in K.A.R. 68-7-11(d)(2)(B), shall be limited to an amount sufficient to supply the outpatient's needs until a prescription can be filled. (Authorized by K.S.A. 2009 Supp. 65-1692; implementing K.S.A. 2009 Supp. 65-1683; effective Oct. 15, 2010.)

68-21-4. Notice of requests for information. Each dispenser who may access information maintained by the board on each drug of concern and schedule II through IV drug dispensed to one of the dispenser's patients for the purpose of providing medical or pharmaceutical care shall notify the patient of this access to prescription monitoring information by performing either of the following:

(a) Posting an easily viewable sign at the place where prescription orders are issued or accepted for dispensing; or

(b) providing written material about the dispenser's access to prescription monitoring information. (Authorized by K.S.A. 2009 Supp. 65-1692; implementing K.S.A. 2009 Supp. 65-1685; effective Oct. 15, 2010.)

68-21-5. Access to information. All requests for, uses of, and disclosures of prescription monitoring information by authorized persons shall meet the requirements of K.S.A. 65-1685, and amendments thereto, and this article.

(a) By patients or patient's personal representative.

(1) Any patient or that patient's personal representative may obtain a report listing all program information that pertains to the patient, in accordance with this regulation and K.S.A. 65-1685 and amendments thereto.

(2) Each patient or the patient's personal representative seeking access to the information described in paragraph (a)(1) shall submit a written request for information in person to the board. The written request shall be in a format established by the board and shall include the following elements:

(A) The patient's name and, if applicable, the full name of the patient's personal representative;

(B) the patient's residential address and, if applicable, the complete residential address of the patient's personal representative;

(C) the patient's telephone number, if any, and, if applicable, the telephone number of the personal representative; and

(D) the time period for which information is being requested.

(3) The patient or the patient's personal representative shall produce two forms of valid photographic identification before obtaining access to the patient's information obtained by the program. The patient or the patient's personal representative shall allow photocopying of the identification.

(4) Before access to the patient's information obtained by the program is given, one of the following shall be produced if the requester is not the patient:

(A) For a personal representative, an official attested copy of the judicial order granting authority to gain access to the health care records of the patient;

(B) for a parent of a minor child, a certified copy of the birth certificate of the minor child or other official documents establishing legal guardianship; or

(C) for a person holding power of attorney, the original document establishing the power of attorney.

(5) The patient's personal representative shall allow the photocopying of the documents described in this subsection.

(6) The patient authorization may be verified by the board by any reasonable means before providing the information to the personal representative.

(b) By dispensers.

(1) Any dispenser may obtain any program information relating to a patient of the dispenser for the purpose of providing pharmaceutical care to that patient, in accordance with this regulation and K.S.A. 65-1685 and amendments thereto. The information shall be provided in a format established by the board, which may include delivery by electronic means, facsimile transmission, or telephone.

(2) Each dispenser who seeks access to the information described in paragraph (b)(1) shall submit a written request to the board by mail, hand delivery, or electronic means in a manner established by the board, using authentication. If the authentication is lost or missing or the security of the authentication is compromised, the dispenser shall cause the board to be notified by telephone

and in writing as soon as reasonably possible. Information regarding more than one patient may be submitted in a single request.

Each request shall be submitted in a format established by the board and shall include the following elements for each patient:

- (A) The patient's name and birth date;
- (B) if known to the dispenser, the patient's address and telephone number;
- (C) the time period for which information is being requested;
- (D) the dispenser's name;
- (E) if applicable, the name and address of the dispenser's pharmacy;
- (F) the dispenser identification number; and
- (G) the dispenser's signature.

(3) The authentication and identity of the dispenser shall be verified by the board before allowing access to any prescription monitoring information.

(c) By prescribers.

(1) Any prescriber or health care practitioner authorized by a prescriber may obtain any program information relating to a patient under the prescriber's care, in accordance with this regulation and K.S.A. 65-1685 and amendments thereto. The information shall be provided in a format established by the board, which may include delivery by electronic means, facsimile, or telephone.

(2) Each prescriber or health care practitioner authorized by a prescriber who seeks access to program information shall submit a written request to the board by mail, hand delivery, or electronic means in a manner established by the board, using authentication. If the authentication is lost or missing or the security of the authentication is compromised, the prescriber shall cause the board to be notified by telephone and in writing as soon as reasonably possible. Information regarding more than one patient may be submitted in a single request.

Each request shall be submitted in a format established by the board and shall include the following elements for each patient:

- (A) The patient's name and birth date;
- (B) if known to the prescriber, the patient's address and telephone number;
- (C) the time period for which information is being requested;
- (D) the prescriber's name;
- (E) the name and address of the prescriber's medical practice;
- (F) the prescriber identification number; and

(G) the prescriber's signature.

(3) The authentication and identity of the dispenser shall be verified before allowing access to any program information.

(d) By director or board investigator of a health professional licensing, certification, or regulatory agency or entity.

(1) Any director or board investigator of a health professional licensing, certification, or regulatory agency or entity may obtain any program information needed in carrying out that individual's business, in accordance with this regulation and K.S.A. 65-1685 and amendments thereto. The information shall be provided in a format established by the board, which may include delivery by electronic means, facsimile, or telephone.

(2) Each director or board investigator of a licensing board with jurisdiction over a dispenser or prescriber who seeks access to program information shall submit a written request by mail, facsimile, or electronic means to a location specified by the board. The written request shall contain a statement of facts from which the board can make a determination of reasonable cause for the request.

(e) By local, state, and federal law enforcement or prosecutorial officials.

(1) Any local, state, or federal law enforcement officer or prosecutorial official may obtain any program information as required for an ongoing case, in accordance with this regulation and K.S.A. 65-1685 and amendments thereto. The information shall be provided in a format established by the board, which may include delivery by electronic means, facsimile, or telephone.

(2) Each local, state, or federal law enforcement officer or prosecutorial official who seeks access to program information shall register with the board. Once registration is approved, the requester may submit a written request by mail, facsimile, or electronic means to the board. All requests for, uses of, and disclosures of prescription monitoring information by authorized persons under this subsection shall meet the requirements of K.S.A. 65-1685 (c)(4), and amendments thereto.

(f) By the Kansas health policy authority for purposes of the Kansas medicaid and state children's health insurance program (SCHIP).

(1) An authorized representative of the Kansas health policy authority may obtain any program information regarding medicaid or SCHIP program recipients, in accordance with this regulation and K.S.A. 65-1685 and amendments thereto.

The information shall be provided in a format established by the board.

(2) Each authorized representative of the Kansas health policy authority seeking program information regarding medicaid or SCHIP program recipients who seeks access to program information shall submit a request to the board.

(g) By any other state's prescription monitoring program.

(1) Any authorized representative from any other state's prescription monitoring program may obtain any program information for requests from within that state that do not violate the authentication and security provisions of the prescription monitoring program act, in accordance with this regulation and K.S.A. 65-1685 and amendments thereto. The information shall be provided in a format established by the board, which may include delivery by electronic means, facsimile, or telephone.

(2) Any authorized representative from another state's prescription monitoring program seeking access to program information shall first establish a data-sharing agreement with the board in which the states agree to share prescription monitoring information with one another. The agreement shall specify what information will be made available and to whom, how requests will be made, how quickly requests will be processed, and in which format the information will be provided.

(h) By public or private entities for statistical, research, or educational purposes.

(1) Any public or private entity may obtain program information, in accordance with this regulation and K.S.A. 65-1685(d) and amendments thereto. The information shall be provided in a format established by the board.

(2) Each public or private entity who seeks access to program information shall submit a written request by mail, facsimile, or electronic means to the board. The written request shall contain a statement of facts from which the board can make a determination of reasonable cause for the request. (Authorized by K.S.A. 2009 Supp. 65-1692; implementing K.S.A. 2009 Supp. 65-1685; effective Oct. 15, 2010.)

68-21-6. Reciprocal agreements with other states or government entities to share information. (a) Reciprocal agreements with one or more of the following entities within the United States may be entered into by the board to share

program data if the entity's prescription monitoring program is compatible with the program:

- (1) A state, commonwealth, district, or territory;
- (2) a military or veteran health system;
- (3) an Indian health system or service; or
- (4) a city, county, municipality, or township.

(b) In determining the compatibility of the entity's prescription monitoring program, the following may be considered by the board:

(1) The safeguards for privacy of patient records and the entity's success in protecting patient privacy;

(2) the persons authorized by the entity to view the data collected by the program;

(3) the schedules of controlled substances monitored by the entity;

(4) the data required by the entity to be submitted on each prescription; and

(5) the costs and benefits to the board of mutually sharing data with the entity.

(c) Any reciprocal agreement may be reviewed annually by the board to determine its continued compatibility with the program. (Authorized by K.S.A. 65-1692; implementing K.S.A. 65-1685; effective Oct. 15, 2010; amended Nov. 29, 2019.)

68-21-7. Drugs of concern. (a) Each of the following shall be classified as a drug of concern:

(1) Any product containing all three of these drugs: butalbital, acetaminophen, and caffeine;

(2) any compound, mixture, or preparation that contains any detectable quantity of ephedrine, its salts or optical isomers, or salts of optical isomers and is exempt from being reported to the statewide electronic logging system for the sale of methamphetamine precursors;

(3) any compound, mixture, or preparation that contains any detectable quantity of pseudoephedrine, its salts or optical isomers, or salts of optical isomers and is exempt from being reported to the statewide electronic logging system for the sale of methamphetamine precursors;

(4) promethazine with codeine; and

(5) any product, compound, mixture, or preparation that contains gabapentin.

(b) Each request to have a drug added to the program for monitoring shall be submitted in writing to the board.

This regulation shall take effect 90 days after publication in the Kansas register. (Authorized by K.S.A. 2016 Supp. 65-1692; implementing K.S.A. 2016 Supp. 65-1682; effective Oct. 15, 2010; amended Feb. 4, 2015; amended July 25, 2018.)

Article 22.—ELECTRONIC SUPERVISION OF MEDICAL CARE FACILITY'S PHARMACY PERSONNEL

68-22-1. Definitions. (a) "Medical care facility" shall have the meaning provided in K.S.A. 65-1626(w), and amendments thereto.

(b) "Pharmacy student" shall have the meaning provided in K.S.A. 65-1626(ee), and amendments thereto, and shall include a pharmacy intern registered with the board.

(c) "Pharmacy technician" shall have the meaning provided in K.S.A. 65-1626(ff), and amendments thereto.

(d) "Real-time," when used to describe the transmission of information through data, video, and audio links, shall mean that the transmission is sufficiently rapid that the information is available simultaneously to the electronically supervising pharmacist and the pharmacy student or pharmacy technician being electronically supervised in the medical care facility's pharmacy.

(e) "Electronic supervision" shall mean the oversight provided by a pharmacist licensed in Kansas and supervising, by means of real-time communication equipment that meets the operating requirements listed in K.A.R. 68-22-5, a registered pharmacy student or pharmacy technician who is working in a Kansas medical care facility's pharmacy. (Authorized by K.S.A. 65-1630; implementing K.S.A. 2009 Supp. 65-1626, K.S.A. 2009 Supp. 65-1642, K.S.A. 65-1648, and K.S.A. 2009 Supp. 65-1663; effective Nov. 18, 2011.)

68-22-2. Application for approval to utilize electronic supervision. The pharmacist in charge of any medical care facility's pharmacy located in Kansas and registered by the board who wants to seek approval for electronic supervision of a pharmacy student or pharmacy technician in that medical care facility pharmacy shall submit an application to the board. Each application shall be submitted on a form provided by the board and shall include the following:

(a) Identifying information concerning the applying medical care facility's pharmacy;

(b) the type and operational capabilities of the computer, video, and communication systems to be used for the electronic supervision; and

(c) a copy of the electronic supervision procedures manual and training manual approved by the pharmacist in charge of the medical care facility's pharmacy. (Authorized by K.S.A. 65-1630;

implementing K.S.A. 2009 Supp. 65-1626, K.S.A. 2009 Supp. 65-1642, K.S.A. 65-1648, and K.S.A. 2009 Supp. 65-1663; effective Nov. 18, 2011.)

68-22-3. Prior approval and training required. (a) The pharmacist in charge of a medical care facility's pharmacy shall not permit a pharmacy student or pharmacy technician to be in the pharmacy working under electronic supervision unless the pharmacy has a current approval for electronic supervision from the board.

(b) The pharmacist in charge of a medical care facility's pharmacy shall not permit a pharmacy student or pharmacy technician to be in the pharmacy working under electronic supervision before completing the pharmacy's electronic supervision training course. (Authorized by K.S.A. 65-1630; implementing K.S.A. 2009 Supp. 65-1626, K.S.A. 2009 Supp. 65-1642, K.S.A. 65-1648, and K.S.A. 2009 Supp. 65-1663; effective Nov. 18, 2011.)

68-22-4. Electronic supervision. (a) Only a pharmacist licensed by the board may electronically supervise a pharmacy student or pharmacy technician working in a medical care facility's pharmacy.

(b) A pharmacist licensed by the board may be electronically connected to multiple medical care facility pharmacies at one time for the purpose of electronically supervising.

(c) A pharmacist licensed by the board may electronically supervise no more than one pharmacy technician working in any medical care facility's pharmacy at one time.

(d) No more than one pharmacy student or pharmacy technician that is being electronically supervised may work in a medical care facility's pharmacy at one time.

(e) Electronic supervision conducted in conformance with these regulations shall constitute direct supervision. (Authorized by K.S.A. 65-1630; implementing K.S.A. 2009 Supp. 65-1626, K.S.A. 2009 Supp. 65-1642, K.S.A. 65-1648, and K.S.A. 2009 Supp. 65-1663; effective Nov. 18, 2011.)

68-22-5. Minimum operating requirements. (a) A pharmacy student or pharmacy technician may enter the pharmacy without a pharmacist present for purposes of turning on the data, video, or audio links and determining if a pharmacist is available for electronic supervision.

(b) Electronic supervision shall not be permitted if an interruption occurs in any of the data, video, or audio links. Whenever an interruption

in any of the data, video, or audio links occurs, no medication order shall be filled or dispensed using electronic supervision.

(c) Data entry may be performed by the electronically supervising pharmacist or the pharmacy student or pharmacy technician being electronically supervised. Each entry performed by an electronically supervised pharmacy student or pharmacy technician shall be verified by the electronically supervising pharmacist before the drug leaves the pharmacy.

(d) All medication orders processed by a pharmacy student or a pharmacy technician being electronically supervised shall be capable of being displayed on a computer terminal at both the location of the electronically supervising pharmacist and the medical care facility's pharmacy. The quality of the image viewed by the pharmacist shall be sufficient for the pharmacist to be able to determine the accuracy of the work of the pharmacy student or pharmacy technician.

(e) All patient demographic information shall be viewable in real time at both the location of the electronically supervising pharmacist and the medical care facility's pharmacy.

(f) Before a drug leaves the medical care facility's pharmacy, all of the following requirements shall be met:

(1) The electronically supervising pharmacist shall utilize the data, audio, and video links and review the patient profile, the original scanned

medication order, and the drug to be dispensed to ensure accuracy.

(2) The supervising pharmacist, pharmacy student, or pharmacy technician shall cause an electronic or paper image of the medication order and the drug, as seen by the electronically supervising pharmacist, to be captured and retained in the electronic or paper records of the medical care facility's pharmacy for the same time period as that required for the written medication order.

(3) The supervising pharmacist, pharmacy student, or pharmacy technician shall cause a paper or electronic record that includes the patient's name, the medication order number, the name of the pharmacy student or pharmacy technician, and the name of the electronically supervising pharmacist to be made.

(4) The pharmacist in charge of the medical care facility's pharmacy shall ensure that controls exist to protect the privacy and security of confidential records.

(5) The supervising pharmacist, pharmacy student, or pharmacy technician shall cause a permanent digital record of all duties electronically supervised and all data transmissions associated with the electronic supervision to be made. Each record shall be maintained for at least five years. (Authorized by K.S.A. 65-1630; implementing K.S.A. 2009 Supp. 65-1626, K.S.A. 2009 Supp. 65-1642, K.S.A. 65-1648, and K.S.A. 2009 Supp. 65-1663; effective Nov. 18, 2011.)

Agency 69

Kansas State Board of Cosmetology

Editor's Note:

Effective July 1, 2002, rules and regulations which establish sanitation standards are under the Kansas Department of Health and Environment. See L. 2002, ch. 187, sec. 18.

Articles

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- 69-7. *SANITARY RULES; BEAUTY SHOPS AND BEAUTY SCHOOLS. (Not in active use.)*
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- 69-14. CONTINUING EDUCATION FOR COSMETOLOGISTS AND OTHER LICENSEES.
- 69-15. TATTOOING, BODY PIERCING, AND PERMANENT COSMETICS.

Article 1.—LICENSING AND QUALIFICATIONS OF COSMETOLOGISTS

69-1-1. Application procedure. (a) Any applicant desiring to become licensed as a cosmetologist, manicurist, esthetician or electrologist in the state of Kansas shall submit a written application for examination and licensure to the board on a form approved and furnished by the board no later than the 15th of the month before the date of the examination.

(b) The application shall include the following:

(1) A statement from the licensed school that the applicant has completed the apprentice and curriculum requirements and the date of completion. An applicant for an electrology license may submit a statement from a licensed school or a salon owner that the applicant has completed the apprentice and curriculum requirements and the date of completion; and

(2) the non-refundable fee as required by K.A.R. 69-11-1. (Authorized by and implementing K.S.A. 65-1904, as amended by L. 1995, Ch. 248, Sec.

1; 65-1905, 65-1912, as amended by L. 1995, Ch. 120, Sec. 6; effective Jan. 1, 1966; amended, E-70-24, July 1, 1970; amended Jan. 1, 1971; amended May 1, 1981; amended May 1, 1982; amended May 1, 1984; amended March 22, 1996.)

69-1-2. Applicant required to appear for next regular examination unless unable.

(a) An applicant who is unable to appear due to extenuating circumstances, shall provide written explanation and return the examination admission notice to the board. For good cause shown and upon approval by the board, the applicant shall then be granted a one time privilege to take the next regularly scheduled examination without the payment of an additional fee.

(b) "Extenuating circumstances" means conditions caused by unexpected events beyond the person's control which are sufficiently extreme in nature to result in the inability or inadvisability to begin and complete the exam. (Authorized by and implementing K.S.A. 65-1904, as amended by L. 1995, Ch. 248, Sec. 1, 65-1905; effective Jan. 1, 1966; amended May 1, 1981; amended March 22, 1996.)

69-1-3. (Authorized by and implementing K.S.A. 65-1905; effective Jan. 1, 1966; amended May 1, 1981; modified, L. 1982, ch. 449, May 1, 1982; revoked March 22, 1996.)

69-1-4. Grades necessary to pass licensure examinations; development and administration of licensure examinations. (a) Each applicant taking the state board of cosmetology examinations shall be granted a license authorizing the practice of cosmetology, nail technology, esthetics, or electrolysis if the applicant attains the following examination scores:

(1) An average of at least 75 percent on the practical examination sections; and

(2) at least 75 percent on the written examination.

(b) Each applicant for licensure as an instructor shall be required to attain a score of at least 75 percent on the written examination for instructors, in addition to meeting the applicable requirements specified in K.S.A. 65-1903, and amendments thereto.

(c) The licensure examinations shall be developed and administered by the board or by a board-approved examination provider. (Authorized by and implementing K.S.A. 65-1905; effective Jan. 1, 1966; amended May 1, 1981; amended Feb. 21, 1994; amended March 22, 1996; amended, T-69-12-29-04, Dec. 29, 2004; amended April 15, 2005; amended Nov. 12, 2021.)

69-1-5 and 69-1-6. (Authorized by K.S.A. 65-1905; effective Jan. 1, 1966; revoked May 1, 1981.)

69-1-7. (Authorized by and implementing K.S.A. 65-1903, 65-1905; effective Jan. 1, 1966; amended, E-70-24, July 1, 1970; amended Jan. 1, 1971; amended May 1, 1981; revoked March 22, 1996.)

69-1-8. Failure of examination. An applicant who fails the written or demonstration and oral examination may re-take that examination upon payment of the examination fee. If the applicant retakes the examination within six months of the original date of application a doctor's statement is not required.

If the applicant fails the written or demonstration and oral examination, the temporary permit previously issued to the applicant shall expire and shall not be renewed. (Authorized by and implementing K.S.A. 65-1905; effective Jan. 1, 1966; amended, E-70-24, July 1, 1970; amend-

ed Jan. 1, 1971; amended Jan. 1, 1973; amended March 22, 1996.)

69-1-9. (Authorized by K.S.A. 65-1903; effective Jan. 1, 1973; revoked May 1, 1981.)

69-1-10. Potentially disqualifying civil and criminal records; advisory opinion; fee. (a) Conviction of any felony may disqualify an applicant from receiving a license.

(b) Civil records that may disqualify an applicant from receiving a license shall be any records of any court judgment or settlement in which the applicant admitted or was found to have engaged in conduct that would constitute a violation of any practice act under the jurisdiction of the board or any of the board's regulations. Those records shall not be used to disqualify an applicant for more than five years after the applicant satisfied any judgment or restitution ordered by the court or agreed to in the settlement.

(c) Any individual with a criminal or civil record described in this regulation may submit a petition to the board for an informal, advisory opinion concerning whether the individual's civil or criminal record may disqualify the individual from licensure. Each petition shall include the following:

(1) The details of the individual's civil or criminal record, including a copy of court records or the settlement agreement;

(2) an explanation of the circumstances that resulted in the civil or criminal record; and

(3) a check or money order in the amount of \$50.00. (Authorized by K.S.A. 74-120 and 74-2702a; implementing K.S.A. 65-1908, 74-120, and 74-5806; effective Feb. 15, 2019.)

Article 2.—OUT-OF-STATE COSMETOLOGISTS AND MANICURISTS

69-2-1. (Authorized by and implementing K.S.A. 1981 Supp. 65-1904b; effective Jan. 1, 1966; amended, E-70-24, July 1, 1970; amended Jan. 1, 1971; amended Jan. 1, 1973; amended May 1, 1981; amended May 1, 1982; revoked March 22, 1996.)

69-2-2. (Authorized by K.S.A. 65-1904b; effective Jan. 1, 1966; amended, E-70-24, July 1, 1970; amended Jan. 1, 1971; revoked May 1, 1981.)

69-2-3. (Authorized by K.S.A. 65-1905; effective Jan. 1, 1966; revoked May 1, 1981.)

69-2-4. (Authorized by K.S.A. 65-1904b; effective Jan. 1, 1966; revoked May 1, 1981.)

Article 3.—SCHOOLS

69-3-1. Application procedure. An applicant for a license to conduct a school of cosmetology, esthetics, electrology or manicuring shall submit the following to the board at least 60 days before the proposed date of operation:

(a) A written application upon a form approved and furnished by the board;

(b) a descriptive floor plan to scale which demonstrates compliance with K.A.R. 69-3-3;

(c) a curriculum which demonstrates compliance with K.A.R. 69-3-8;

(d) a daily class schedule for full time and part time students;

(e) an inventory of all instructional equipment to be provided and used in the operation of the school; and

(f) a copy of the written enrollment agreement between the school and the student including the refund policy and the rules and regulations of the school. (Authorized by and implementing K.S.A. Supp. 65-1903, as amended by L. 1995, Ch. 120, Sec. 3; effective Jan. 1, 1966; amended, T-85-44, Dec. 19, 1984; amended May 1, 1985; amended March 22, 1996.)

69-3-2. (Authorized by and implementing K.S.A. 65-1903; effective Jan. 1, 1966; amended, E-70-24, July 1, 1970; amended Jan. 1, 1971; amended May 1, 1981; amended Dec. 28, 1992; revoked March 22, 1996.)

69-3-3. Facility requirements. (a) A school of cosmetology shall have a minimum of 50 square feet of floor space per student present on the school premises, but not less than a total of 2,500 square feet of floor space.

(b) A school of electrology, manicuring or esthetics shall have a minimum of 35 square feet of floor space per student present on school premises, but not less than a total of 1,500 square feet.

(c) A school of cosmetology shall have adequate equipment in the clinic practice area in relationship to the number of students present including a minimum of:

(1) 10 work stations;

(2) six shampoo bowls and chairs;

(3) six hairdryers;

(4) one facial chair; and

(5) one manicure table and chair.

(d) A school of manicuring shall have the following:

(1) At least 12 manicuring tables and chairs; and

(2) a hand washing sink in the clinic area.

(e) A school of esthetics shall have the following:

(1) At least six reclining facial chairs; and

(2) a hand washing sink in the clinic area.

(f) A school of electrology shall have the following:

(1) charts showing the muscles, nerves and circulatory systems of the face, head and neck and the hair shaft, follicle, root and other relevant components of hair;

(2) one F.C.C. approved electrolysis machine, operator stool, and one lamp for each two students enrolled. This equipment shall be spaced at least four feet apart; and

(3) a hand washing sink in the clinic area.

(g) All schools shall have the following:

(1) A lecture and demonstration room;

(2) a clinic practice area;

(3) a library with resources which support the curriculum and prepare a student for the practice of cosmetology, manicuring, esthetics or electrology;

(4) adequate storage area for student's personal belongings;

(5) a reception area;

(6) two rest rooms; and

(7) a dispensary or supply room which includes a sink with hot and cold running water. (Authorized by and implementing K.S.A. 65-1903, as amended by L. 1995, Ch. 120, Sec. 3; effective Jan. 1, 1966; amended, E-67-9, June 16, 1967; amended May 1, 1981; amended, T-85-44, Dec. 19, 1984; amended May 1, 1985; amended March 22, 1996.)

69-3-4. Number of instructors necessary.

(a) A school of cosmetology shall maintain a ratio of instructors to students of not less than one to 25 in the classroom and one to 18 in the clinic practice area.

(b) A school of nail technology or esthetics shall maintain a ratio of instructors to students of not less than one to 25 in the classroom and one to 20 in the clinic practice area. (Authorized by and implementing K.S.A. 1995 Supp. 65-1903; effective Jan. 1, 1966; amended March 22, 1996.)

69-3-5. (Authorized by and implementing K.S.A. 65-1903; effective Jan. 1, 1966; amended May 1, 1981; revoked March 22, 1996.)

69-3-6. Instructor limitation. A licensed instructor shall not provide cosmetology services to the patrons of the school where the instruc-

tor is employed for the profit of the school or instructor. (Authorized by and implementing K.S.A. 65-1903, as amended by L. 1995, Ch. 119, Sec. 3; effective Jan. 1, 1966; amended May 1, 1981; amended, T-85-44, Dec. 19, 1984; amended May 1, 1985; amended March 22, 1996.)

69-3-7. Student records. (a) Each school shall maintain a daily student record which verifies attendance and practice services completed, and a final student record which verifies curriculum requirements and hours successfully completed by the student.

(b) The school shall maintain the student's record in the school, on a form approved by the board for a reasonable period of time.

(c) Subject to any contract between the school and the student, a licensed school shall provide a copy of the student's record to:

(1) the board upon application by a student for a license or as part of an investigation;

(2) another school upon the student's transfer; or

(3) the student upon request. (Authorized by and implementing K.S.A. 65-1903, as amended by L. 1995, Ch. 119, Sec. 3; effective Jan. 1, 1966; amended May 1, 1981; amended March 22, 1996.)

69-3-8. Curricula and credits. (a) The document titled "cosmetology school course curricula," as approved by the board on July 24, 2020, is hereby adopted by reference.

(b) Among other teaching tools used to provide a course of training, each cosmetology school shall use a textbook that substantially covers the curriculum areas.

(c) Any instructional classroom may be a place where theory instruction is provided in a traditional classroom setting or in a distance education format.

(d) Any cosmetology school may submit for approval of the board duplicate hours obtained by a student during the completion of manicuring training or esthetics training for credit toward completion of a course of cosmetology training. (Authorized by and implementing K.S.A. 65-1903; effective Jan. 1, 1966; amended, E-67-9, June 16, 1967; amended, E-69-19, Aug. 26, 1969; amended, E-70-12, Jan. 1, 1970; amended Jan. 1, 1971; amended May 1, 1981; amended May 1, 1982; amended, T-85-44, Dec. 19, 1984; amended May 1, 1985; amended June 7, 1996; amended, T-69-9-17-20, Sept. 17, 2020; amended Jan. 8, 2021.)

69-3-9. Student services sign. Each school shall display a sign visible in the clinic practice area of the school stating that "ALL SERVICES IN THIS SCHOOL ARE PERFORMED BY STUDENTS." (Authorized by and implementing K.S.A. 65-1903, as amended by L. 1995, Ch. 120, Sec. 3; effective Jan. 1, 1966; amended March 22, 1996.)

69-3-10. (Authorized by and implementing K.S.A. 65-1905; effective Jan. 1, 1966; amended Jan. 1, 1973; amended May 1, 1981; revoked March 22, 1996.)

69-3-11. (Authorized by and implementing K.S.A. 65-1903; effective Jan. 1, 1966; amended May 1, 1981; amended Dec. 28, 1992; revoked March 22, 1996.)

69-3-12 to 69-3-16. (Authorized by K.S.A. 65-1903; effective Jan. 1, 1966; revoked May 1, 1981.)

69-3-17. (Authorized by K.S.A. 1970 Supp. 65-1903; effective Jan. 1, 1966; amended, E-70-24, July 1, 1970; amended Jan. 1, 1971; revoked March 22, 1996.)

69-3-18. (Authorized by K.S.A. 65-1903; effective Jan. 1, 1966; revoked May 1, 1982.)

69-3-19. (Authorized by and implementing K.S.A. 65-1903; effective Jan. 1, 1966; amended May 1, 1981; revoked March 22, 1996.)

69-3-20 and 69-3-21. (Authorized by K.S.A. 65-1903; effective Jan. 1, 1966; revoked May 1, 1981.)

69-3-22. (Authorized by K.S.A. 1965 Supp. 65-1903; effective Jan. 1, 1966; revoked March 22, 1996.)

69-3-23. (Authorized by and implementing K.S.A. 65-1903; as amended by L. 1987, Ch. 238, Sec. 3; effective, T-88-60, Dec. 28, 1987; effective May 1, 1988; revoked March 22, 1996.)

69-3-24. (Authorized by and implementing K.S.A. 65-1903; as amended by L. 1987, Ch. 238, Sec. 3; effective, T-88-60, Dec. 28, 1987; effective May 1, 1988; revoked March 22, 1996.)

69-3-25. (Authorized by and implementing K.S.A. 65-1903; as amended by L. 1987, Ch. 238, Sec. 3; effective, T-88-60, Dec. 28, 1987; effective May 1, 1988; revoked March 22, 1996.)

69-3-26. Transfer students. (a) Within 30 days after enrollment of a transfer student, a school shall obtain verification of the student's prior course of training including subjects, the number of hours, and practice services completed by the student.

(b) A school shall obtain verification on a form approved and provided by the board from the state board or school in the state or jurisdiction where the transfer student completed the training.

(c) The school shall determine the subjects, hours and practice services of the transfer student's prior course of training which conforms to the curriculum requirements in K.A.R. 69-3-8 and shall give the students credit for those subjects, hours and practice services. (Authorized by and implementing K.S.A. 65-1903; as amended by L. 1995, Ch. 20, Sec. 3; effective March 22, 1996.)

69-3-27. Disenrolled students. On or before the 10th day of each month, each school administrator shall submit to the board, on a form provided by the board, a list of each student who has been disenrolled in the previous month. The list shall include the following information for each disenrolled student:

- (a) The name;
- (b) the apprentice license number;
- (c) the date of birth;
- (d) the total number of hours earned; and
- (e) the social security number, to be used for administrative purposes as authorized by K.S.A. 74-148 and amendments thereto. (Authorized by K.S.A. 2012 Supp. 65-1903 and K.S.A. 74-2702a; implementing K.S.A. 2012 Supp. 65-1903; effective March 22, 1996; amended Feb. 14, 2014.)

69-3-28. Enrollment agreement and refund policy. (a) Within 45 days after the effective date of this regulation, each licensed school of cosmetology, esthetics, electrology or manicuring shall submit to the board a copy of its enrollment agreement between the school and the student including the refund policy and the rules and regulations of the school.

(b) The licensee shall submit to the board any modification to these agreements within 30 days after the modification. (Authorized by and implementing K.S.A. 65-1903, as amended by L. 1995, Ch. 120, Sec. 3; effective March 22, 1996.)

69-3-29. Monthly reporting of student hours. Each school administrator shall submit

to the board a record of the number of hours earned in the previous month and the total number of hours accumulated through the previous month by each student, on a form approved by the board. The record shall include each student's name, address, and apprentice license number and shall be submitted no later than the 10th day of each month. (Authorized by K.S.A. 2012 Supp. 65-1903 and K.S.A. 74-2702a; implementing K.S.A. 2012 Supp. 65-1903; effective Feb. 14, 2014.)

Article 4.—STUDENTS

69-4-1. (Authorized by K.S.A. 65-1902, 65-1903, 65-1905; effective Jan. 1, 1966; amended, E-70-24, July 1, 1970; amended Jan. 1, 1971; revoked May 1, 1981.)

69-4-2. Student equipment and uniform. A school shall ensure that each student has a uniform and the equipment needed to complete the course of training for which the student is enrolled. A school may provide the equipment and uniform at its own expense or at the student's expense. (Authorized by and implementing K.S.A. 65-1903, as amended by L. 1995, Ch. 20, Sec. 3; effective Jan. 1, 1966; amended May 1, 1981; amended, T-85-44, Dec. 19, 1984; amended May 1, 1985; amended March 22, 1996.)

69-4-3. (Authorized by K.S.A. 65-1903; effective Jan. 1, 1966; revoked May 1, 1981.)

69-4-4. (Authorized by K.S.A. 1970 Supp. 65-1903; effective Jan. 1, 1966; revoked, E-70-12, Jan. 1, 1970; revoked Jan. 1, 1971.)

69-4-5. (Authorized by K.S.A. 65-1903; effective Jan. 1, 1966; revoked May 1, 1982.)

69-4-6. (Authorized by and implementing K.S.A. 65-1903; effective Jan. 1, 1966; amended May 1, 1981; revoked March 22, 1996.)

69-4-7. (Authorized by K.S.A. 65-1903; effective Jan. 1, 1966; revoked May 1, 1981.)

69-4-8. (Authorized by K.S.A. 65-1903; effective Jan. 1, 1966; amended, E-70-12, Jan. 1, 1970; amended Jan. 1, 1971; revoked May 1, 1982.)

69-4-9. Students; requirements for working on public. (a) A cosmetology student shall not work on the public until the student has completed 320 hours of training.

(b) A manicuring student shall not work on the public until the student has completed 70 hours of training.

(c) An esthetics student shall not work on the public until the student has completed 130 hours of training.

(d) An electrolysis student shall not work on the public until the student has completed 100 hours of training. (Authorized by and implementing K.S.A. 65-1903, as amended by L. 1995, Ch. 20, Sec. 3; effective Jan. 1, 1966; amended, E-70-12, Jan. 1, 1970; amended Jan. 1, 1971; amended May 1, 1981; amended March 22, 1996.)

69-4-10. (Authorized by K.S.A. 65-1903; effective Jan. 1, 1966; revoked May 1, 1981.)

69-4-11. (Authorized by and implementing K.S.A. 65-1903; effective Jan. 1, 1966; amended May 1, 1981; revoked March 22, 1996.)

69-4-12. Additional training license required to remain in school. Any student who wishes to practice as an apprentice for more than the minimum training period, may make application and pay the fee for an additional training license. (Authorized by and implementing K.S.A. 65-1903, as amended by L. 1995, Ch. 20, Sec. 3; effective Jan. 1, 1966; amended, E-70-12, Jan. 1, 1970; amended Jan. 1, 1971; amended, E-76-44, Sept. 5, 1975; amended Feb. 15, 1977; amended March 22, 1996.)

69-4-13. (Authorized by and implementing K.S.A. 65-1903; effective Jan. 1, 1966; amended, E-70-24, July 1, 1970; amended Jan. 1, 1971; amended May 1, 1981; revoked May 1, 1982.)

Article 5.—SHOP APPRENTICES

69-5-1. (Authorized by K.S.A. 65-1902, 65-1905; effective Jan. 1, 1966; revoked May 1, 1981.)

69-5-2. (Authorized by and implementing K.S.A. 65-1905; effective Jan. 1, 1966; amended May 1, 1981; revoked March 22, 1996.)

69-5-3. (Authorized by K.S.A. 65-1902; effective Jan. 1, 1966; amended, E-70-24, July 1, 1970; amended Jan. 1, 1971; revoked May 1, 1981.)

69-5-4. (Authorized by K.S.A. 65-1903; effective Jan. 1, 1966; revoked May 1, 1981.)

69-5-5. (Authorized by K.S.A. 65-1907; effective Jan. 1, 1966; revoked May 1, 1981.)

69-5-6. Curriculum and practical requirements. (a) An electrolysis shop apprentice:

(1) shall be under the direct supervision of the instructor at all times; and

(2) shall not work on the public until completion of 200 hours of instruction and training.

(b) An electrolysis shop instructor shall instruct and train the student apprentice in compliance with the curriculum requirements of K.A.R. 69-3-8 (a)(4).

(c) An electrolysis shop instructor shall have available the following:

(1) charts showing the muscles, nerves and circulatory systems of the face, head and neck and the hair shaft, follicle, root and other relevant components of hair;

(2) one F.C.C. approved electrolysis machine;

(3) an operator stool; and

(4) a magnifying lamp. (Authorized by K.S.A. 74-2702a, as amended by L. 1995, Ch. 119, Sec. 3; implementing K.S.A. 65-1912, as amended by L. 1995, Ch. 120, Sec. 6; effective Jan. 1, 1966; amended May 1, 1981; amended March 22, 1996.)

69-5-7. (Authorized by K.S.A. 65-1902; effective Jan. 1, 1966; revoked May 1, 1981.)

69-5-8 and 69-5-9. (Authorized by K.S.A. 65-1903; effective Jan. 1, 1966; revoked May 1, 1981.)

69-5-10. (Authorized by K.S.A. 65-1902; effective Jan. 1, 1966; revoked March 22, 1996.)

69-5-11 and 69-5-12. (Authorized by K.S.A. 65-1902; effective Jan. 1, 1966; revoked May 1, 1981.)

69-5-13. (Authorized by K.S.A. 65-1902; effective Jan. 1, 1966; revoked March 22, 1996.)

69-5-14. Application procedure. An applicant for a license to instruct electrolysis in a shop shall submit the following to the board at least 10 days before beginning instruction and training: (a) A written application upon a form approved and furnished by the board,

(b) a curriculum which demonstrates compliance with K.A.R. 69-3-8(a)(4),

(c) a daily class schedule for a full time or a part time student, and

(d) an inventory of all instructional equipment to be provided and used in the instruction and training. (Authorized by K.S.A. 65-1907; imple-

menting K.S.A. 65-1903 and 65-1907, as amended by L. 1995, Ch. 120, Sec. 3; effective March 22, 1996.)

69-5-15. Student records. (a) Each electrology shop instructor shall maintain the following:

(1) a daily student record which verifies attendance and practice services completed; and

(2) a final student record which verifies curriculum requirements and hours successfully completed by the student.

(b) The instructor shall maintain the student record for a reasonable period of time, on a form approved by the board.

(c) Subject to any contract between the instructor and the student, the instructor shall provide a copy of the student's record to:

(1) the board upon the student's application for a license or as part of an investigation;

(2) a school or another electrology shop instructor upon the student's transfer; or

(3) the student upon request. (Authorized by K.S.A. 65-1907; implementing K.S.A. 65-1903, as amended by L. 1995, Ch. 120, Sec. 3; 65-1907; effective March 22, 1996.)

69-5-16. Identification of student. An electrology shop student apprentice shall wear identification which clearly indicates to the public that the person is in electrology training. (Authorized by K.S.A. 74-2702a, as amended by L. 1995, Ch. 119, Sec. 3; implementing K.S.A. 65-1903, as amended by L. 1995, Ch. 120, Sec. 3; effective March 22, 1996.)

Article 6.—BEAUTY SHOPS

69-6-1. (Authorized by K.S.A. 65-1906; effective Jan. 1, 1966; amended May 1, 1978; revoked March 22, 1996.)

69-6-2. Sale or change of ownership. Each establishment license shall be valid only for the premises named in the license. Each licensee shall notify the board, in writing, within 15 days of a sale or other change of ownership of the establishment. (Authorized by K.S.A. 74-2702a; implementing K.S.A. 65-1904a; effective Jan. 1, 1966; amended May 1, 1978; amended March 22, 1996; amended Nov. 12, 2021.)

69-6-3. Care of invalids. A cosmetologist, apprentice or manicurist license shall be used only in a licensed beauty shop except that a licensed cosmetologist may perform cosmetology service

in a licensed hospital, nursing home, rest home or at an invalid's home. (Authorized by K.S.A. 1977 Supp. 65-1904a; effective Jan. 1, 1966; amended May 1, 1978.)

69-6-4. (Authorized by K.S.A. 1977 Supp. 65-1904a; effective Jan. 1, 1966; revoked May 1, 1978.)

69-6-5. Display of sign. Each establishment shall display a sign, conspicuously posted as provided by the board, stating that any complaints concerning the establishment or its practitioners may be directed to the board. The sign shall include the current address and phone number of the board. (Authorized by K.S.A. 74-2702a, as amended by L. 1995, Ch. 119, Sec. 3; implementing K.S.A. 65-1903; as amended by L. 1995, Ch. 20, Sec. 3; and 65-1904a; effective Jan. 1, 1966; amended Dec. 28, 1992; amended March 22, 1996.)

69-6-6. (Authorized by K.S.A. 1977 Supp. 65-1903; effective Jan. 1, 1966; amended May 1, 1978; revoked March 22, 1996.)

69-6-7. Establishment closing. When any establishment is permanently closed, the holder of the establishment license shall notify the board in writing, and surrender the establishment license within 10 days of closing. (Authorized by K.S.A. 74-2702a, as amended by L. 1995, Ch. 19, Sec. 3; implementing K.S.A. 65-1904a; effective Jan. 1, 1966; amended March 22, 1996.)

Article 7.—SANITARY RULES; BEAUTY SHOPS AND BEAUTY SCHOOLS

69-7-1. (Authorized by K.S.A. 65-1908; effective Jan. 1, 1966; amended Jan. 1, 1973; revoked Jan. 4, 1993.)

69-7-2. (Authorized by K.S.A. 1977 Supp. 65-1904a; effective Jan. 1, 1966; amended May 1, 1978; revoked Jan. 4, 1993.)

69-7-3. (Authorized by K.S.A. 65-1904a; effective Jan. 1, 1966; revoked Jan. 4, 1993.)

69-7-4. (Authorized by K.S.A. 65-1904a; effective Jan. 1, 1966; revoked Jan. 4, 1993.)

69-7-5. (Authorized by K.S.A. 1977 Supp. 65-1904a; effective Jan. 1, 1966; amended May 1, 1978; revoked Jan. 4, 1993.)

69-7-6. (Authorized by K.S.A. 1977 Supp. 65-1904a; effective Jan. 1, 1966; revoked May 1, 1978.)

69-7-7. (Authorized by K.S.A. 1977 Supp. 65-1904a; effective Jan. 1, 1966; amended, E-70-12, Jan. 1, 1970; amended Jan. 1, 1971; amended May 1, 1978; revoked Jan. 4, 1993.)

69-7-8 to 69-7-13. (Authorized by K.S.A. 1977 Supp. 65-1904a; effective Jan. 1, 1966; revoked May 1, 1978.)

69-7-14. (Authorized by K.S.A. 1977 Supp. 65-1904a; effective Jan. 1, 1966; amended May 1, 1978; revoked Jan. 4, 1993.)

69-7-15. (Authorized by K.S.A. 1977 Supp. 65-1904a; effective Jan. 1, 1966; revoked May 1, 1978.)

69-7-16. (Authorized by K.S.A. 1977 Supp. 65-1904a; effective Jan. 1, 1966; amended May 1, 1978; revoked Jan. 4, 1993.)

69-7-17 to 69-7-21. (Authorized by K.S.A. 1977 Supp. 65-1904a; effective Jan. 1, 1966; revoked May 1, 1978.)

69-7-22. (Authorized by K.S.A. 65-1904a; effective Jan. 1, 1966; revoked Jan. 4, 1993.)

69-7-23. (Authorized by K.S.A. 1977 Supp. 65-1904a; effective Jan. 1, 1966; amended May 1, 1978; revoked Jan. 4, 1993.)

69-7-24. (Authorized by K.S.A. 65-1904a; effective Jan. 1, 1966; amended May 1, 1978; revoked May 1, 1981.)

69-7-25. (Authorized by K.S.A. 1977 Supp. 65-1904a; effective Jan. 1, 1966; amended May 1, 1978; revoked Jan. 4, 1993.)

69-7-26. (Authorized by K.S.A. 65-1904a; effective Jan. 1, 1966; revoked Jan. 4, 1993.)

69-7-27. (Authorized by K.S.A. 1977 Supp. 65-1904a; effective Jan. 1, 1966; amended May 1, 1978; revoked Jan. 4, 1993.)

69-7-28 and 69-7-29. (Authorized by K.S.A. 1977 Supp. 65-1904a; effective Jan. 1, 1966; revoked May 1, 1978.)

Article 8.—REGISTRATION OF MANICURISTS

69-8-1. (Authorized by K.S.A. 65-1903, 65-1905; effective Jan. 1, 1966; amended, E-70-24,

July 1, 1970; amended Jan. 1, 1971; revoked May 1, 1981.)

69-8-2. (Authorized by and implementing K.S.A. 1984 Supp. 65-1905; effective Jan. 1, 1966; amended, T-85-44, Dec. 19, 1984; amended May 1, 1985; revoked March 22, 1996.)

69-8-3. (Authorized by K.S.A. 1965 Supp. 65-1903, 65-1905; effective Jan. 1, 1966; revoked March 22, 1996.)

69-8-4. (Authorized by K.S.A. 1965 Supp. 65-1905; effective Jan. 1, 1966; revoked March 22, 1996.)

69-8-5. (Authorized by K.S.A. 65-1905; effective Jan. 1, 1966; revoked May 1, 1981.)

69-8-6. (Authorized by and implementing K.S.A. 65-1903, 65-1905; effective Jan. 1, 1966; amended, E-70-24, July 1, 1970; amended Jan. 1, 1971; amended May 1, 1981; revoked March 22, 1996.)

Article 9.—REVOCATION; CERTIFICATES OF REGISTRATION, LICENSES

69-9-1. (Authorized by K.S.A. 65-1909; effective Jan. 1, 1966; revoked May 1, 1981.)

69-9-2 to 69-9-4. (Authorized by K.S.A. 65-1903; effective Jan. 1, 1966; amended, E-70-24, July 1, 1970; amended Jan. 1, 1971; revoked May 1, 1981.)

Article 10.—REGISTRATION OF COSMETOLOGY TECHNICIANS

69-10-1. (Authorized by K.S.A. 65-1902, 65-1903; effective Jan. 1, 1973; revoked May 1, 1981.)

Article 11.—FEES

69-11-1. Fees. The following fees shall be charged:

Cosmetologist examination fee	\$75.00
Cosmetologist license application fee	60.00
Cosmetologist license renewal fee.....	50.00
Delinquent cosmetologist renewal fee.....	25.00
Cosmetology technician license renewal fee.....	45.00
Delinquent cosmetology technician renewal fee	25.00
Electrologist examination fee	75.00
Electrologist license application fee.....	60.00
Electrologist license renewal fee.....	50.00

Delinquent electrologist renewal fee	25.00
Manicurist examination fee.....	75.00
Manicurist license application fee	60.00
Manicurist license renewal fee	50.00
Delinquent manicurist renewal fee.....	25.00
Esthetician examination fee.....	75.00
Esthetician license application fee	60.00
Esthetician license renewal fee	50.00
Delinquent esthetician renewal fee.....	25.00
Instructor-in-training permit fee	15.00
Instructor examination fee.....	75.00
Instructor license application fee	75.00
Instructor license renewal fee	50.00
Delinquent instructor renewal fee	25.00
Any apprentice license application fee.....	15.00
New school license application fee.....	150.00
School license renewal fee	75.00
Delinquent school license fee.....	30.00
New salon or clinic application fee.....	60.00
Salon or clinic renewal fee	50.00
Delinquent salon or clinic renewal fee.....	30.00
Reciprocity application fee	75.00
Verification of licensure fee	20.00
Fee for any duplicate license	25.00
Temporary permit fee	15.00

(Authorized by K.S.A. 2015 Supp. 65-1904 and K.S.A. 74-2702a; implementing K.S.A. 2015 Supp. 65-1904; effective, E-76-44, Sept. 5, 1975; effective Feb. 15, 1977; amended May 1, 1978; amended May 1, 1981; amended May 1, 1982; amended, T-83-21, July 21, 1982; amended May 1, 1983; amended May 1, 1984; amended, T-88-60, Dec. 28, 1987; amended May 1, 1988; amended Jan. 1, 1993; amended Dec. 13, 1993; amended March 22, 1996; amended Nov. 6, 1998; amended April 3, 2009; amended Feb. 14, 2014; amended Sept. 18, 2015; amended Jan. 6, 2017.)

69-11-2. Expiration dates for practitioner licenses. Each cosmetologist license, esthetician license, electrologist license, and manicurist license shall expire two years from the last day of the month in which the license was issued. (Authorized by K.S.A. 2012 Supp. 65-1904 and K.S.A. 74-2702a; implementing K.S.A. 2012 Supp. 65-1904; effective, T-83-21, July 21, 1982; effective May 1, 1983; amended March 22, 1996; amended Feb. 14, 2014.)

Article 12.—TANNING FACILITIES

69-12-1. Definitions. (a) “FDA” means the United States food and drug administration.

(b) “Consumer” means any member of the public who is provided access to a tanning facility in exchange for a fee or other compensation, or

any individual who, in exchange for a fee or other compensation, is afforded use of a tanning facility as a condition or benefit of membership or access.

(c) “Tanning device operator” means an individual who controls operation of the tanning device and instructs and assists the consumer in the proper operation of the tanning device.

(d) “Tanning facility operator” means the person who is licensed to operate a tanning facility.

(f) “Person” means an individual, association, corporation or other legal entity. (Authorized by and implementing K.S.A. 65-1925; effective Dec. 13, 1993.)

69-12-2. Licenses. (a) Prior to operating a tanning facility, a person shall make application, on forms provided by the board, to the Kansas state board of cosmetology for a tanning facility license. The application shall be accompanied by the applicable tanning facility license fee.

(b) Prior to the issuance of a tanning facility license, the tanning facility and tanning devices shall be inspected by an authorized agent of the board for compliance with article 12 and K.S.A. 65-1920 *et seq.*, and amendments thereto. (Authorized by K.S.A. 65-1925 and implementing K.S.A. 65-1926; effective Dec. 13, 1993.)

69-12-3. Expiration of licenses; renewals; reinstatements. (a) Each tanning facility license shall expire one year from the last day of the month of its issuance unless renewed by payment of the annual renewal fee.

(1) Each application for renewal of a tanning facility license shall be postmarked on or before the expiration date of the current license.

(2) Each application for renewal of a tanning facility license shall be submitted on forms approved by the board and shall be accompanied by the applicable fee.

(b) Any tanning facility operator may renew the tanning facility license within 60 days after the expiration date of the prior license upon payment of the delinquent renewal fee.

(c) Any tanning facility operator may reinstate a tanning facility license within one year of the expiration date of the prior license upon payment of the reinstatement fee. (Authorized by K.S.A. 65-1925; implementing K.S.A. 2011 Supp. 65-1926; effective Dec. 13, 1993; amended Nov. 9, 2012.)

69-12-4. Licenses on closed facilities returned to board. When a tanning facility is permanently closed, the tanning facility operator

shall immediately mail the tanning facility license to the Kansas state board of cosmetology. (Authorized by K.S.A. 65-1925 and implementing K.S.A. 65-1926; effective Dec. 13, 1993.)

69-12-5. Fees. The following fees shall be charged:

New tanning facility license fee	\$100.00
Annual renewal fee.....	\$75.00
Delinquent renewal fee	\$100.00
Reinstatement fee	\$200.00

(Authorized by K.S.A. 2012 Supp. 65-1926 and K.S.A. 74-2702a; implementing K.S.A. 2012 Supp. 65-1926; effective Dec. 13, 1993; amended Feb. 14, 2014.)

69-12-6. (Authorized by and implementing K.S.A. 65-1925; effective Dec. 13, 1993; revoked Oct. 5, 2007.)

69-12-7. Tanning device operators. (a) A tanning device operator shall be present when a tanning device is operated.

(b) A tanning facility operator shall maintain verification of training for each tanning device operator. Training shall include knowledge in the following areas:

- (1) the requirements of these regulations;
- (2) procedures for correct operation of the facility;
- (3) recognition of injury or overexposure;
- (4) manufacturer's procedures for operation and maintenance of tanning equipment; and
- (5) emergency procedures in case of injury.

(c) A tanning facility operator shall maintain a list of tanning device operators, trained in accordance with this section, which shall be available at the tanning facility. (Authorized by K.S.A. 65-1925 and implementing K.S.A. 65-1924; effective Dec. 13, 1993.)

69-12-8. Warnings. (a) The tanning facility operator shall post warning signs as specified in subsections (a) and (b) of K.S.A. 65-1922.

(b) The tanning facility operator shall have available for inspection, written warning statements that are in compliance with K.S.A. 65-1921. The tanning device operator shall read the required information to any illiterate or visually handicapped consumer, in the presence of a witness. (Authorized by K.S.A. 65-1925; implementing K.S.A. 65-1921 and K.S.A. 65-1922; effective Dec. 13, 1993.)

69-12-9. Report of injuries. (a) The tanning facility operator shall forward to the board of cosmetology, a written report of any injury, within five working days of its occurrence or knowledge thereof. The report shall include:

- (1) the name of the affected individual;
- (2) the name and location of the tanning facility involved;
- (3) the nature of the injury; and
- (4) any other information considered relevant to the situation. (Authorized by and implementing K.S.A. 65-1925; effective Dec. 13, 1993.)

69-12-10. Exposure schedule. (a) The recommended exposure schedule for each tanning device shall be displayed in a conspicuous place near the device.

(b) The tanning device operator shall ensure that consumers do not exceed the tan time indicated by the manufacturer. (Authorized by K.S.A. 65-1925 and implementing K.S.A. 65-1924; effective Dec. 13, 1993.)

69-12-11. Timer. Each tanning device shall have a timer which complies with the requirements of 21 CFR Part 1040, Section 1040.20(c)(2) as in effect on September 6, 1985. The maximum timer interval shall not exceed the manufacturer's maximum recommended exposure time. No timer interval shall have an error greater than $\pm 10\%$ of the maximum timer interval for the product. (Authorized by K.S.A. 65-1925 and implementing K.S.A. 65-1924; effective Dec. 13, 1993.)

69-12-12. Control device. Each tanning device shall have a control that allows the consumer to turn off the device at any time. (Authorized by and implementing K.S.A. 65-1925; effective Dec. 13, 1993.)

69-12-13. (Authorized by K.S.A. 65-1925 and implementing 65-1924; effective Dec. 13, 1993; revoked Oct. 5, 2007.)

69-12-14. Protective barriers. There shall be physical barriers to protect consumers from injury induced by touching or breaking the lamps. (Authorized by and implementing K.S.A. 65-1925; effective Dec. 13, 1993.)

69-12-15. Stand-up booths. (a) For stand-up booths, there shall be physical barriers or other means such as handrails or floor markings to indicate the proper exposure distance between ultraviolet lamps and the consumer's skin.

(b) The construction of each booth shall be such that it will withstand the stress of use and the impact of a falling person.

(c) The entrance to each booth shall be of rigid construction. Doors shall open outwardly. Handrails and non-slip floors shall be provided. (Authorized by and implementing K.S.A. 65-1925; effective Dec. 13, 1993.)

69-12-16. Lamps. (a) Each tanning facility shall use only tanning devices manufactured in accordance with the specifications set forth in 21 CFR Part 1040, Section 1040.20, as in effect on September 6, 1985, "Sunlamp products and ultraviolet lamps intended for use in sunlamp products."

(b) Each sunlamp product or ultraviolet lamp used in these facilities shall not emit any measurable *Ultraviolet C* radiation.

(c) Each ultraviolet lamp contained within the sunlamp product shall be shielded to avoid contact with the consumer.

(d) Services and repair shall be carried out by a competent person in accordance with the information supplied with the device.

(e) Defective or burned out tanning lamps or bulbs shall be replaced with a type intended for use in that device and shall be of the same ultraviolet range, A or B, as the manufacturer specifies, and shall be the original lamp type as specified by the manufacturer, or an equivalent lamp approved by the FDA. (Authorized by and implementing K.S.A. 65-1925; effective Dec. 13, 1993.)

69-12-17. Enforcement. (a) A tanning facility operator shall be responsible for implementing and maintaining the tanning facility and tanning device in compliance with all applicable regulations and statutes both individually and jointly with all tanning device operators employed by or working in the tanning facility.

(b) Refusal to permit, or interference with, an inspection by an authorized representative of the board of cosmetology during any time the facility is operating shall constitute cause for the board to revoke, cancel, suspend, or place the license on probation. (Authorized by and implementing K.S.A. 65-1925; effective Dec. 13, 1993.)

69-12-18. Access to tanning devices. Each tanning facility operator shall verify that each consumer accessing any tanning device in the tanning facility is at least 18 years of age. Verification shall be obtained by viewing a current state or U.S.

government-issued photo identification that includes the consumer's date of birth. (Authorized by and implementing K.S.A. 2016 Supp. 65-1931; effective Jan. 6, 2017.)

Article 13.—INSPECTIONS

69-13-1. Definitions. (a) "Board" means the Kansas state board of cosmetology.

(b) "Act" means Article 19 of Chapter 65 of the "Kansas Statutes Annotated," entitled "Examination and Registration of Cosmetologists and Beauty Shops."

(c) "Establishment" means any place where cosmetology, manicuring, esthetics or electrology is taught or practiced. (Authorized by and implementing K.S.A. 74-2702a, as amended by L. 1995, Ch. 119, Sec. 3; effective Jan. 17, 1995; amended March 22, 1996.)

69-13-2. Inspections of establishments.

(a) Each establishment shall be subject to routine inspections, by the board or designated agents or employees of the board, to determine compliance with the act and all sanitary rules and regulations, at least once every two years.

(b) An establishment may be subject to additional inspections if the establishment:

- (1) Had a violation in a previous inspection;
- (2) changed ownership in the previous year; or
- (3) did not timely renew the license.

(c) Inspections shall be made between the hours of 8:00 a.m. and 6:00 p.m., or anytime the instruction or practice of cosmetology, manicuring, or electrology is being conducted, unless otherwise agreed by all interested persons or entities.

(d) Inspections shall be made by board members, the executive director, employees, representatives or agents of the board.

(e) Inspections of establishments may be authorized by the board or its executive director.

(f) The authorized inspection may be conducted without notice to the licensee. (Authorized by K.S.A. 65-1907, as amended by L. 1995, Ch. 120, Sec. 5; implementing K.S.A. 65-1907, as amended by L. 1995, Ch. 20, Sec. 5; and K.S.A. 74-2702; effective Jan. 17, 1995; amended March 22, 1996.)

69-13-3. Inspection generated by a complaint. (a) Each establishment shall be subject to inspection by the board or its designee, to investigate a specific complaint filed with the board, for violation of sanitary rules and regulations or other violations of the act.

(b) Any inspection generated by a complaint may be authorized by the board or its executive director at any time, but shall be limited as follows.

(1) Inspections shall be made only between the hours of 8:00 a.m. and 6:00 p.m. or anytime the practice or instruction of cosmetology, manicuring, or electrology is being conducted, unless agreed by all interested persons or entities.

(2) Inspections may be conducted by board members, the executive director of the board, or employees of the board. (Authorized by K.S.A. 65-1907; implementing K.S.A. 65-1907 and K.S.A. 74-2702; effective Jan. 17, 1995.)

69-13-4. Refusal to allow inspection. Refusal to allow, or interference with, any inspection by the board or its designees shall constitute a cause for disciplinary action. (Authorized by K.S.A. 74-2702a; implementing K.S.A. 65-1907; effective Nov. 9, 2012.)

Article 14.—CONTINUING EDUCATION FOR COSMETOLOGISTS AND OTHER LICENSEES

69-14-1. Definitions. (a) “Approval” means the act of determining that an application to be a cosmetology continuing education provider meets applicable standards based on review of the total program proposed by the applying provider.

(b) “Approved provider” means a person, organization, or institution approved by the board, that is responsible for the development, administration and presentation of the offering.

(c) “Certificate” means a document which is proof of completion of one or more contact hours.

(d) “Contact hour” means 50 minutes of participation in a learning experience organized by an approved provider.

(e) “Cosmetology continuing education” (CCE) means an organized and systematic education experience beyond the basic preparation which is designed to increase knowledge, improve skills or enhance the practice of cosmetology or improve protection of the public health and welfare. CCE shall not include any of the following:

- (1) In-service education;
- (2) on-the-job training;
- (3) job orientation; or
- (4) education designed for the general public.

(f) “Dual licensee” means a person who is licensed in two or more professions regulated by the state board of cosmetology.

(g) “Independent study” means CCE designed for individual study and monitored by an approved provider.

(h) “Inservice education and on-the-job training” means planned learning activities in the work setting designed to assist the individual in fulfilling job responsibilities.

(i) “Instructor credit” means contact hours awarded to the individual who prepares and presents the CCE by an approved provider. A 50 minute presentation shall equal two contact hours of instructor credit.

(j) “Offering” means a single CCE learning experience which consists of at least one contact hour.

(k) “Orientation” means formal or informal instruction designed to acquaint new employees with the salon, school, or the position.

(l) “Partial credit” means the actual number of contact hours awarded by an approved provider when an individual attends only part of a CCE offering.

(m) “Program” means an organized effort to achieve overall continuing education goals. (Authorized by and implementing K.S.A. 1995 Supp. 65-1904; effective July 5, 1996.)

69-14-2. License renewal. (a) Each individual renewing an active license shall register with the board’s designee and pay to the designee the fee required in K.A.R. 69-14-5.

(b)(1) Each licensee shall complete the required 20 contact hours of approved CCE during the 2 years ending on the date on which the license expires.

(2) Each licensee whose license has expired shall complete the required 20 contact hours of approved CCE during the 2 years ending on the date of renewal.

(c) Each licensee shall complete as a part of the requirement of K.A.R. 69-14-2(b) at least five contact hours which are devoted to the following during each licensing period:

- (1) Chemical control;
- (2) public safety;
- (3) product safety; or
- (4) infection control.

(d) A licensee shall not be granted credit for attendance at identical offerings within one renewal period.

(e) For the purpose of accumulating required contact hours for licensure renewal, a licensee may:

- (1) Acquire five contact hours of CCE from independent study; or

(2) request that all or part of the required 20 hours of CCE for license renewal be completed through independent study if:

(A) The individual resides in a foreign country for the entire two-year renewal period; or

(B) the individual demonstrates a need due to extenuating circumstances.

(f) An individual may accumulate 10 contact hours of the required CCE from instructor credit. Each presenter shall receive instructor credit only once for preparation and presentation of any particular offering. (Authorized by and implementing K.S.A. 1995 Supp. 65-1904; effective July 5, 1996.)

69-14-3. Approval of cosmetology continuing education. (a) Offerings of approved providers shall be recognized by the board.

(b) At least 60 days before the next regularly scheduled board meeting, a CCE provider applicant shall submit an application, on forms supplied by the board and accompanied by the designated, non-refundable fee, for approval to present CCE offerings.

(c) The application shall include a syllabus of up to two proposed offerings.

(d) To qualify as an "approved provider" in one or more areas governed by the board, the CCE provider shall offer programs which meet the following standards:

(1) The program shall constitute an organized systematic program of CCE as defined in K.A.R. 69-14-1(e);

(2) the program shall be presented by individuals who are qualified by reason of education or experience in the field being taught;

(3) the program shall be accompanied by a written outline which substantially describes the substance of the program; and

(4) the CCE provider shall provide documentation of completion to each individual participant in the program who completes the program and shall provide the names and license numbers of the attendees to the continuing education tracking designee of the board.

(e) Each approved provider shall submit an annual report and fee before June 30 of each year. The annual report shall contain the following:

(1) A statistical summary report indicating the following:

(A) The name of each offering conducted;

(B) the date and location of the offering;

(C) the number of licensees in attendance; and

(D) the number of contact hours of each offering; and

(2) a syllabus from at least one offering.

(f) Each approved provider shall prominently display on all promotional material this statement: "(Name of provider) is approved as a provider of cosmetology continuing education by the Kansas State Board of Cosmetology. This course offering is approved for (number) contact hours applicable for re-licensure. Kansas State Board of Cosmetology Approved Provider Number: _____." The approved provider shall identify any independent study.

(g) Each participant shall sign a roster at the completion of each CCE offering.

(h) An approved provider may award partial credit to a CCE participant, but not less than one contact hour.

(i) The approved provider shall award certificates of attendance to participants after completion of each CCE offering. Each certificate shall contain the following information:

(1) The provider's name, address and provider number;

(2) the title of the course;

(3) the date or dates of attendance;

(4) the number of CCE contact hours awarded;

(5) the name of the presenter of the CCE offering;

(6) the name and license number of the participant; and

(7) clear identification of any independent study or instructor contact hours awarded.

(j) Each approved provider shall maintain a list of individuals who have satisfactorily completed a CCE offering. Each approved provider shall supply a true and correct copy of the list to the board's CCE tracking designee. The list shall contain the following information:

(1) The provider's name, address and provider number;

(2) the title of the course;

(3) the date of attendance;

(4) an alphabetized list of names, license numbers and the number of CCE contact hours awarded to each licensee in attendance;

(5) the name of the presenter for the CCE; and

(6) identification of any independent study or instructor credit, if applicable. (Authorized by and implementing K.S.A. 1995 Supp. 65-1904; effective July 5, 1996.)

69-14-4. Dual licensees. A dual licensee shall earn at least 20 contact hours per renewal pe-

riod. If the licensee is licensed as an instructor, then the contact hours shall be related to the teaching of the practice of cosmetology, manicuring, esthetics, or electrology. (Authorized by and implementing K.S.A. 1995 Supp. 65-1904; effective July 5, 1996.)

69-14-5. Fees. The following fees shall be paid by the individual or organization to whom applicable:

- (a) CCE program application (provider approval)..... \$25.00;
- (b) CCE program approval fee (annual)..... 25.00; and
- (c) CCE annual registration fee (individual licensee)..... 15.00.

(Authorized by and implementing K.S.A. 1995 Supp. 65-1904; effective July 5, 1996.)

Article 15.—TATTOOING, BODY PIERCING, AND PERMANENT COSMETICS

69-15-1. Definitions. Each of the following terms, as used in this article, shall have the meaning specified in this regulation:

- (a) “Antiseptic” means a chemical germicide used on skin and tissue to stop or inhibit the growth of bacteria.
- (b) “Clean” means washed with soap or detergent to remove all soil and dirt.
- (c) “Closed-book” means without aid from or availability of written material, including materials stored or accessed on an electronic device.
- (d) “Completed procedure” means, for the purposes of determining qualification for licensure, a tattoo or piercing that has been finished, including any touchups or additional work following initial healing, with the client released from service.
- (e) “Conch,” when used to describe an ear piercing, means the piercing of the concha, which is the deep, bowl-shaped central shell of the ear.
- (f) “Disinfectant” means an agent used on inanimate surfaces that is intended to destroy or irreversibly inactivate specific viruses, bacteria, or pathogenic fungi.
- (g) “Enclosed storage area” means a separate room, closet, cupboard, or cabinet.
- (h) “Establishment” means tattoo establishment, body piercing establishment, or cosmetic tattooing establishment.
- (i) “Equivalent” means comparable but not identical, and covering the same subject matter.

(j) “Gross incompetence” means a demonstrated lack of ability, knowledge, or fitness to effectively or safely perform services for which one is licensed.

(k) “Infectious or contagious disease” means any disease that is diagnosed by a licensed health care professional as being contagious or transmissible, as designated in K.A.R. 28-1-2, and that could be transmitted during the performance of cosmetic tattooing, tattooing, or body piercing. Blood-borne diseases, including acquired immune deficiency syndrome or any causative agent thereof, hepatitis B, hepatitis C, and any other disease not transmitted by casual contact, shall not constitute infectious or contagious diseases for the purpose of this article.

(l) “Instruments” means needles, probes, forceps, hemostats, or tweezers.

(m) “Labret,” when used to describe a piercing, means the piercing of the lips or the area immediately around the lips.

(n) “Linens” means cloths or towels used for draping or protecting a table or similar functions.

(o) “Lower labret,” when used to describe a piercing, means the piercing of the lower lip or the area immediately around the lower lip.

(p) “Needle” has the meaning specified in K.S.A. 65-1940, and amendments thereto.

(q) “Needle bar” means the metal device used to attach the needle to a tattoo machine.

(r) “Official transcript” means a document certified by a school accredited by the Kansas board of regents or equivalent regulatory institution in another state or jurisdiction, indicating the hours and types of coursework, examinations, and scores that were completed by a student.

(s) “Piercing gun” means a hand-held tool manufactured exclusively for piercing the earlobe, into which studs and clutches are placed and inserted into the earlobe by a hand-squeezed or spring-loaded action to create a permanent hole. The tool shall be made of plastic, stainless steel, or a disposable material.

(t) “Place or places of business” means each name, mailing address, and location, not a post office box, where the licensee or applicant for license performs services.

(u) “Protective gloves” means gloves made of nitrile or latex.

(v) “Public view” means open to view and easy for the public to see.

(w) “Repigmentation” means any of the following:

- (1) Recoloration of the skin as a result of any of the following:

(A) Dermabrasion, chemical peels, removal or resolution of birthmarks, vitiligo, or other skin conditions that result in the loss of melanin to the skin;

(B) scars resulting from surgical procedures, including face-lifts, mole or wart removal, or cauterization; or

(C) burn grafts and other skin irregularities resulting from burns or photo damage;

(2) recreation of an areola or nipple, following mastectomy; or

(3) use of cheek blush or other blending of pigments into skin in order to camouflage blotchy or irregularly pigmented skin.

(x) "Rook," when used to describe an ear piercing, means the piercing of the upper portion of the antihelix.

(y) "Sanitization" means effective bactericidal treatment by a process that reduces the bacterial count, including pathogens, to a safe level on equipment.

(z) "Sharps" means any object that can penetrate the skin, including needles, scalpel blades, lancets, glass tubes that could be broken during handling, razors, and syringes that have been removed from their original, sterile containers.

(aa) "Sharps container" means a puncture-resistant, leakproof container that can be closed for handling, storage, transportation, and disposal. The container shall be red and shall be labeled with the "biohazard" symbol.

(bb) "Single-use," when used to describe products or items, means that the products or items, including cotton swabs or balls, tissues or paper products, paper or plastic cups, gauze, and sanitary coverings, are disposed of after each use.

(cc) "Snug," when used to describe an ear piercing, means the horizontal piercing of the vertical portion of the antihelix.

(dd) "Sterilization" means destruction of all forms of microbiotic life, including spores.

(ee) "Universal precautions" means a method of infection control approved by the United States centers for disease control and prevention (CDC), in which all human blood and certain bodily fluids are handled as if the blood and bodily fluids were known to be infected with a blood-borne pathogen. (Authorized by K.S.A. 2014 Supp. 65-1946 and K.S.A. 74-2702a; implementing K.S.A. 2014 Supp. 65-1946 and 65-1949; effective Aug. 22, 1997; amended June 6, 2014; amended Sept. 18, 2015.)

69-15-2. Approved course of study. (a) (1)

To be approved by the board, a permanent color technician or tattoo artist training program shall include at least 600 hours of theory and practical experience that include 50 completed procedures, if completed in an approved school, or 1200 hours of theory and practical experience that include 50 completed procedures, if completed under the supervision of an approved trainer. A training program directly supervised by an approved trainer shall be limited to one trainee.

(2) Each program of permanent cosmetics and tattooing shall include the following percentage of hours in its theory and practical experience:

Subject	Percentage of hours
Needles	7
Tattoo machines, equipment and supplies	20
Safety, sanitation, sterilization, and blood-borne pathogens	15
Basic color theory and pigments	7
Placement of design	7
Skin: Diseases, disorders, and conditions	9
Client handling	2
Business operations and Kansas statutes and regulations pertaining to permanent cosmetics and tattooing	3
Clinical practice	30
Total hours	600 (In School) 1200 (Under a trainer)

(b)(1) To be approved by the board, a basic body piercing technician training program shall include at least 600 hours of theory and practical experience that include 50 completed procedures, if completed in an approved school, or 1200 hours of theory and practical experience that include 50 completed procedures, if completed under the supervision of an approved trainer. In the basic body piercing training, the 50 completed procedures shall consist of at least five completed procedures for each of the following seven basic piercings in these areas:

- (A) Ears;
- (B) nose;
- (C) tongue;
- (D) nipple;
- (E) eyebrow;
- (F) navel; and

(G) labrets (lips or around the mouth).

(2) The following is the minimum course of study for basic body piercing:

Subject	Percentage of hours
Health and safety	50
Sanitation, sterilization, and blood-borne pathogens	
Skin: Diseases, disorders, and conditions	
Anatomy	
Universal precautions	
First aid, C.P.R.	
Clinical/Practical	50
Needles, equipment and supplies	
Jewelry and placement	
Business operations and laws	
Client relations	

(c)(1) An advanced training program for body piercing shall include, in addition to the hours required for the basic body piercing, 50 completed procedures within the advanced areas.

(2) The advanced piercings shall include the following areas:

- (A) Male genitals;
- (B) female genitals;
- (C) multiple piercings in the same area; and
- (D) unusual piercings, including earl, which is surface-to-surface piercing located across the bridge of the nose, and madison, which is surface-to-surface piercing located near the clavical. (Authorized by K.S.A. 1996 Supp. 74-2702a and implementing K.S.A. 1996 Supp. 65-1943 and 65-1949; effective Aug. 22, 1997.)

69-15-3. Cosmetic tattoo artist trainer, tattoo artist trainer, and body piercing trainer.

(a) Each applicant for licensure as a cosmetic tattoo artist trainer, tattoo artist trainer, or body piercing trainer shall apply on forms provided by the board and accompanied by the following:

- (1) The nonrefundable trainer license fee;
- (2) a valid Kansas cosmetic tattoo artist, body piercer, or tattoo artist license number;
- (3) documentation outlining the proposed training syllabus, which shall meet the requirements of K.A.R. 69-15-2(a), (b), or (c);
- (4) the name and address of the licensed establishment where training will be provided; and
- (5) verification of five years of full-time, active practice, consisting of at least 1,500 hours per

year, as a licensed cosmetic tattoo artist, tattoo artist, or body piercer in any state.

(b) In addition to meeting the requirements in subsection (a), each applicant seeking approval as an advanced body piercing trainer shall be licensed as an advanced body piercer. (Authorized by K.S.A. 74-2702a; implementing K.S.A. 2012 Supp. 65-1943, 65-1948, and 65-1950; effective Aug. 22, 1997; amended Feb. 14, 2014.)

69-15-4. Out-of-state equivalent course of study.

Each applicant who has completed a training program in another state or jurisdiction shall show that all of the following conditions are met, for that training program to be approved by the board:

(a) During the applicant's participation in the training program, the trainer was licensed and in good standing as a cosmetic tattoo artist, tattoo artist, or body piercer in the state or jurisdiction where the training occurred.

(b) The applicant completed the training program under the direct supervision of the trainer or in a school.

(c) The training program covered the areas of theory and practical experience specified in K.A.R. 69-15-2. If the training program completed in another state or jurisdiction included hours allotted to studying the laws and regulations of that state or jurisdiction, those hours may count toward the required number of hours allotted to studying Kansas statutes and regulations.

(d) The training program included the total number of hours of theory and practical experience and the number of completed procedures specified in K.A.R. 69-15-2. (Authorized by K.S.A. 2012 Supp. 65-1949 and K.S.A. 74-2702a; implementing K.S.A. 2012 Supp. 65-1948 and 65-1949; effective Aug. 22, 1997; amended Feb. 14, 2014.)

69-15-5. Application for licensure by examination.

(a) Before issuance of a license, each applicant for tattoo, cosmetic tattoo, or body piercing licensure shall have passed an examination as specified in K.A.R. 69-15-7.

(b) Each applicant for the tattoo, cosmetic tattoo, or body piercing examination shall apply on forms provided by the board and accompanied by the following:

- (1) The nonrefundable examination application fee, the written examination fee, and the practical examination fee;
- (2) verification of the applicant's date of birth,

including a copy of a valid driver's license, passport, or birth certificate;

(3) verification of the applicant's graduation from an accredited high school or completion of equivalent education, which shall mean any of the following:

(A) A general education development (GED) credential;

(B) proof of program completion and hours of instruction at a nonaccredited private secondary school registered with the state board of education of Kansas, or of the state in which instruction was completed;

(C) proof of a score in at least the 50th percentile on either the American college test (ACT) or the scholastic aptitude test (SAT); or

(D) proof of admission to a postsecondary state educational institution accredited by the Kansas state board of regents or by another accrediting body having minimum admission standards at least as stringent as those of the Kansas state board of regents;

(4) verification of the applicant's completion of eight hours of continuing education in infection control and blood-borne pathogens within the previous 12-month period, in addition to the infection control requirements of the training program; and

(5) an official transcript from a school of cosmetic tattooing, tattooing, or body piercing, or a final operating report from a licensed trainer providing direct supervision of the applicant, documenting the applicant's completion of a training program equivalent to the requirements of K.A.R. 69-15-2. (Authorized by K.S.A. 74-2702a; implementing K.S.A. 2012 Supp. 65-1943 and 65-1948; effective Aug. 22, 1997; amended Feb. 14, 2014.)

69-15-6. Application completion and deadlines. (a) Applications for examination shall be received at least 30 calendar days before the next scheduled examination.

(b) Any application submitted during the 30-day period immediately prior to the examination shall be reviewed, and if the applicant satisfies the requirements, that person shall be scheduled for the subsequent examination.

(c) Applicants who fail to submit sufficient fees, complete documentation, and verification of training or experience, or both, shall be considered disqualified, and their application shall be closed. Examination fees may be carried forward one time to the next scheduled examination.

(d) Any candidate for examination who fails to complete the examination process within the following time limits shall be required to submit a new application, documentation, and fees, according to this schedule:

(1) One year from receipt of application, if the applicant does not meet the qualifications for examinations; or

(2) one year from the date that the last section of the examination was attempted.

(e) Any candidate who meets the requirements of the examination and is scheduled for the next examination may work in a licensed facility under the direct supervision of a licensed permanent cosmetic technician, tattoo artist, or body piercing technician until the candidate successfully passes the examination. (Authorized by and implementing L. 1996, Ch. 138, Sec. 4; effective Aug. 22, 1997.)

69-15-7. Examination for cosmetic tattoo artists, tattoo artists, or body piercers. (a) The examinations for tattoo, cosmetic tattoo, and body piercing shall consist of both a written examination and a practical examination on safety, sanitation, and standards of practice.

(b) The examinations shall test the applicant's knowledge of the following areas:

(1) Basic principles of safety, sanitation, and sterilization;

(2) Kansas laws and regulations;

(3) chemical use and storage;

(4) diseases and disorders including skin disease, HIV, hepatitis B, and infectious or contagious diseases;

(5) equipment, supplies, tools, and implements;

(6) practice standards;

(7) establishment standards; and

(8) definitions.

(c) The written examination shall consist of no more than 150 multiple-choice questions and shall not exceed two hours in duration. The examination shall be closed-book and shall be presented and conducted in English. The examination shall consist of two sections, with one section composed entirely of questions related to Kansas law.

(d) To test the applicant's knowledge of infection-control practices and practice standards, the practical examination shall evaluate the following:

(1) A setup for an actual procedure;

(2) a mock demonstration of a procedure; and

(3) a demonstration of the clean-up process for a procedure.

(e) To be eligible for licensure, each applicant shall attain a score of at least 75 percent on each section of the written examination and a score of at least 75 percent on the practical examination. (Authorized by K.S.A. 2012 Supp. 65-1943 and 65-1948 and K.S.A. 74-2702a; implementing K.S.A. 2012 Supp. 65-1943 and 65-1948; effective Aug. 22, 1997; amended Feb. 14, 2014.)

69-15-8. Examination behavior. (a) Taking notes, textbooks, or notebooks into the examination room shall be prohibited.

(b) An applicant shall be immediately disqualified during or after the examination for conduct that interferes with the examination. Such conduct may include the following behavior:

(1) Giving or receiving aid, directly or indirectly during the examination process;

(2) obtaining help or information from notes, books, or other individuals to answer questions;

(3) removing or attempting to remove any secure, examination-related information or materials from the examination site;

(4) failing to follow directions relative to the conduct of the examination; and

(5) exhibiting behavior that impedes the normal progress of the examination.

(c) Disqualification shall invalidate the examination and result in forfeiture of the examination and fee. The applicant shall be required to reapply, submit an additional examination fee, and schedule another examination at the date and time determined by the executive director. Re-examination shall be conducted at the board office. (Authorized by K.S.A. 1996 Supp. 74-2702a and implementing K.S.A. 1996 Supp. 65-1948; effective Aug. 22, 1997.)

69-15-9. Issuance and renewal of licenses. (a) Each individual license shall expire on the last day of the licensee's birth month. License fees shall be prorated at the rate of $\frac{1}{12}$ th of the license fee for each month of the original license.

(b) A notice of renewal shall be mailed by the board to the last known address of the license holder.

(c) The applicant shall apply for renewal in advance of the license expiration date of the prior license.

(d) Renewal payments received in the board office or postmarked after the expiration date but within one year of expiration shall be assessed a late fee in addition to the annual renewal fee.

(e) A license that has been expired for more than one year but less than three shall be deemed suspended and may be reactivated by payment of the following:

(1) A suspended renewal fee for each year expired;

(2) a reactivation fee; and

(3) a renewal fee.

(f) Any individual who fails to renew or reactivate a license within three years from the date of expiration shall reapply to take the exams, submit the examination fee and one-year licensee fee, and successfully pass all sections of the examination before a license is reissued. (Authorized by and implementing L. 1996, Ch. 138, Sec. 6; effective Aug. 22, 1997.)

69-15-10. Display of license and inspection certificate. (a) The practitioner shall post in public view in the lobby or waiting area of the place of business the current practitioner and facility license and a copy of the latest inspection certificate.

(b) A licensee shall not post a reproduction of any license unless the board has issued and marked it "Duplicate."

(c) A licensee shall not post a pocket identification card in lieu of a license. (Authorized by and implementing L. 1996, Ch. 138, Sec. 5(a); effective Aug. 22, 1997.)

69-15-11. Inspections generated by a complaint. (a) Each establishment shall be subject to inspection by the board or its designee, in order to investigate a specific complaint filed with the board, or to investigate any suspected violation of sanitary rules and regulations or other violations of the act.

(b) An inspection generated by a complaint shall be authorized by the board or its executive director at any time, subject to the following limitations:

(1) Inspections shall be made only between the hours of 8:00 a.m. and 6:00 p.m. or anytime the practice or instruction of permanent color, tattooing, or body piercing is being conducted, unless agreed otherwise by all interested persons or entities.

(2) Inspections shall be conducted by the board members, the executive director, employees, or agents of the board. (Authorized by and implementing L. 1996, Ch. 138, Sec. 9(i); effective Aug. 22, 1997.)

69-15-12. Continuing education for license renewal. Each licensed cosmetic tattoo artist, tattoo artist, and body piercer shall partici-

pate in continuing education according to the following requirements:

(a) Each individual shall biennially complete five clock-hours, either as one unit or a combination of units, not less than one hour each. Each individual who fails to renew the license before its expiration shall meet the additional continuing education requirements pursuant to K.S.A. 65-1943, and amendments thereto.

(b) Continuing education courses shall be of the same subject matter relating to the practice as the required curricula for training as a cosmetic tattoo artist, tattoo artist, and body piercer and shall consist of either of the following:

(1) Participation in or attendance at an instructional program approved by the board; or

(2) attendance at a meeting of the board, comprising up to one hour of the total requirement, which shall not include the public comment portion of the meeting.

(c) Each licensee seeking credit for attendance at or participation in an educational program that was not previously approved by the board shall submit to the board a request for credit, which shall include the following information:

(1) The location of the program;

(2) the date of the program;

(3) the start and end times of the program;

(4) a detailed description of the subject covered;

(5) the name of each instructor and the instructor's qualifications; and

(6) a sign-in sheet or certificate of attendance, which shall include the date, the program title, and the signature of the instructor.

(d) A license shall not be renewed without the board's receipt and approval of the individual's continuing education as required by K.A.R. 69-15-13. (Authorized by K.S.A. 2012 Supp. 65-1945 and K.S.A. 74-2702a; implementing K.S.A. 2012 Supp. 65-1943 and 65-1945; effective Aug. 22, 1997; amended Feb. 14, 2014.)

69-15-13. Reporting continuing education. (a) Each tattoo licensee, cosmetic tattoo licensee, and body piercing licensee shall submit to the board the renewal application, renewal fee, and proof of five clock-hours of the required continuing education as a condition of renewal biennially. Proof of completion of the required continuing education shall consist of either of the following:

(1) Submission to the board of evidence documenting attendance at a meeting of the board; or

(2) submission to the board of a certificate of completion or verification, issued by the sponsoring organization or person, of attendance in a course, program, seminar, or lecture and showing the name of the sponsor, the title of the presentation, a description of its content, the name of the instructor or presenter, the date, the duration of the presentation in clock-hours, and any supplemental documentation to support that the sponsor and subject matter meet the requirements and relate to the practice as stated in K.A.R. 69-15-2.

(b)(1) The five clock-hours of continuing education shall be accumulated only in the most recent renewal period. The licensee shall retain the proof of continuing education until submitting the proof to the board at the time of renewal.

(2) Hours of continuing education in excess of the requirement for renewal shall not be carried forward. (Authorized by K.S.A. 74-2702a; implementing K.S.A. 2012 Supp. 65-1943 and 65-1945; effective Aug. 22, 1997; amended Feb. 14, 2014.)

69-15-14. Cosmetic tattoo, tattoo, and body piercing establishment licensing and renewal. (a) Each applicant for an establishment license shall meet the following requirements before opening the establishment for business:

(1) Apply on a form approved by the board and pay the nonrefundable establishment license fee;

(2) comply with all applicable regulations of the board;

(3) certify that the application information is correct; and

(4) provide a map or directions for locating the establishment, if the establishment is in a rural or an isolated area.

(b) Each establishment license shall expire one year from the last day of the month in which the license was issued.

(c) Each establishment license holder shall be responsible for the cleanliness and sanitation of any common area of separately licensed establishments on the premises. Each violation found in the common area shall be cited against all establishment licenses issued and posted on the premises.

(d) Each establishment license holder shall meet the following requirements:

(1) Allow a board inspector to inspect the establishment when it is open for business;

(2) not impede the normal progress of the inspection; and

(3) prevent employees from impeding the normal progress of the inspection.

(e) Establishment licenses shall not be transferable to a new location.

(f) The ownership of establishment licenses shall not be transferred. A partial change in the ownership of any establishment license may be allowed if at least one original owner remains.

(g) Each establishment licensee shall notify the board in writing and surrender the establishment license within 10 days of closure of the establishment.

(h)(1) Each applicant wanting to renew the establishment license shall submit an application and the establishment renewal fee before the expiration date of the current establishment license.

(2) Any establishment licensee may renew the establishment license within 60 days after the expiration date of the prior establishment license upon submission of an application and payment of the establishment renewal fee and the delinquent establishment fee. (Authorized by K.S.A. 74-2702a; implementing K.S.A. 2014 Supp. 65-1944, 65-1948, and 65-1950; effective Aug. 22, 1997; amended Feb. 14, 2014; amended Sept. 18, 2015.)

69-15-15. Cosmetic tattoo artist, tattoo artist, and body piercer practice standards; restrictions. (a) Cosmetic tattoo artists, tattoo artists, and body piercers shall not practice at any location other than a licensed establishment.

(b) Each licensee shall keep an individual record of each client for at least five years. Each record shall include the name and address of the client, the date and duration of each service, the type of identification presented, and the type of services provided.

(c) Each licensee shall give preservice information in written form to the client to advise of possible reactions, side effects, potential complications of the tattooing process, and any special instructions relating to the client's medical or skin conditions, including the following:

- (1) Diabetes;
- (2) allergies;
- (3) cold sores and fever blisters;
- (4) epilepsy;
- (5) heart conditions;
- (6) hemophilia;
- (7) hepatitis;
- (8) HIV or AIDS;
- (9) medication that thins the blood;
- (10) moles or freckles at the site of service;
- (11) psoriasis or eczema;
- (12) pregnant or nursing women;
- (13) scarring; and

(14) any other medical or skin conditions.

(d) Each licensee shall give aftercare instructions to the client, both verbally and in writing after every service.

(e) Each licensee providing tattoo or cosmetic tattoo services for corrective procedures shall take photographs before and after service. These photographs shall be maintained according to subsection (b).

(f) Each licensee shall purchase ink, dyes, or pigments from a supplier or manufacturer. No licensee shall use products banned or restricted by the United States food and drug administration (FDA) for use in tattooing and permanent color.

(g) A licensee shall not perform tattooing or body piercing for any of the following individuals:

- (1) A person who is inebriated or appears to be incapacitated by the use of alcohol or drugs;
- (2) any person who shows signs of recent intravenous drug use;
- (3) a person with sunburn or other skin diseases or disorders, including open lesions, rashes, wounds, or puncture marks; or
- (4) any person with psoriasis or eczema present in the treatment area.

(h) Use of the piercing gun to pierce shall be prohibited on all parts of the body, except the ear lobe.

(i) Use of personal client jewelry or any apparatus or device presented by the client for use during the initial body piercing shall be prohibited. Each establishment shall provide presterilized jewelry, apparatuses, or devices, which shall have metallic content recognized as compatible with piercing services.

(j) No licensee afflicted with an infectious or contagious disease, as defined in K.A.R. 69-15-1, shall be permitted to work or train in a school or an establishment.

(k) No school or establishment shall knowingly require or permit a student or licensee to provide tattooing, cosmetic tattooing, or body piercing services for a person who has any infectious or contagious disease, as defined in K.A.R. 69-15-1. (Authorized by K.S.A. 2012 Supp. 65-1946 and K.S.A. 74-2702a; implementing K.S.A. 2012 Supp. 65-1946; effective Aug. 22, 1997; amended Feb. 14, 2014.)

69-15-16. Facility standards. All facilities shall meet the following criteria.

- (a) All areas shall be kept clean and in good repair.
- (b) All surfaces, including counters, tables, equipment, client chairs, or recliners, that are in

treatment and sterilization areas shall be made of smooth, nonabsorbent, and nonporous material.

(c) Surfaces or blood spills shall be cleaned using an EPA-registered, hospital-grade disinfectant.

(d) The water and plumbing fixtures in the facility shall include easy access to a sink with hot and cold running water, as part of the surrounding premises or adjacent to the facility but separate from a public restroom.

(e) Toilet facilities shall be kept clean and in good working order at all times. Each toilet shall have a hand-washing sink and a soap dispenser with disposable towels or an air dryer for hands.

(f) The facility shall be equipped with adequate and sufficient artificial or natural lighting, providing at least 10 foot-candles of light at the work station or table, used at all times during which business is being conducted.

(g) The facility shall be well ventilated with natural or mechanical methods that remove or exhaust fumes, vapors, or dust in order to prevent hazardous conditions from occurring or to allow the free flow of air in a room in proportion to the size of the room and the capacity of the room.

(h) A proprietor or person in charge of the facility may designate the entire area as a nonsmoking area. A designated smoking area means any area set aside by a proprietor or person in charge of a public place where tobacco smoking is permitted and where a sign indicates the same. No person shall smoke or carry any lighted smoking device in a public place except in designated smoking areas. No facility shall be designated in its entirety as a smoking area. "Public place" means any enclosed indoor area open to and frequented by the public. "Open to and frequented by the public" means any area where the public can freely enter or move without special invitation.

(i) If a room used for residential purposes is the same room or adjacent to a room used for the practice of permanent color, tattooing, or body piercing, then a solid partition shall separate the premises used for residential purposes from the tattooing and piercing area. The partition may contain a door, provided it remains closed, except for entering and leaving.

(j) If a room used for any business purposes other than permanent color, tattooing, or body piercing is the same room or is adjacent to a room used for the practice of permanent color, tattooing, or body piercing, then the board may require that one or more of the following requirements

be satisfied if there are conditions that the board considers a possible threat to the health of the employees, the customers, or the public:

(1) A solid partition shall separate the premises used for other business purposes from the permanent color, tattooing, or body piercing area. The partition may contain a door, provided it remains closed except for entering and leaving.

(2) A separate outside entrance shall be provided for the facility.

(k) Pets or other animals shall not be permitted in the business facility. This prohibition shall not apply to registered therapy animals; trained guide animals for the disabled, sightless, or hearing impaired; or fish in aquariums. (Authorized by K.S.A. 1996 Supp. 74-2702a and implementing K.S.A. 1996 Supp. 65-1946 and 65-1949; effective Aug. 22, 1997.)

69-15-17. Required equipment. (a) Each cosmetic tattoo artist or tattoo artist shall maintain the following equipment at the establishment:

(1) A tattoo machine or hand pieces of nonporous material that can be sanitized;

(2) stainless steel or carbon needles and needle bars;

(3) stainless steel, brass, or medical-grade plastic tubes that can be sterilized;

(4) sterilization bags with color strip indicators, if the establishment does not use disposable implements;

(5) single-use protective gloves;

(6) single-use razors or straight razors;

(7) single-use towels, tissues, or paper products;

(8) a sharps container and biohazard waste bags;

(9) approved inks, dyes, and pigments, as required by K.A.R. 69-15-15;

(10) approved equipment for cleaning and sterilizing instruments at the establishment, as required by K.A.R. 69-15-18 and 69-15-20;

(11) spore tests, as required by K.A.R. 69-15-20; and

(12) body arts industry-accepted ointment or lubricant.

(b) Each body piercer shall maintain the following equipment at the establishment:

(1) Single-use stainless steel needles;

(2) sterilization bags with color strip indicators, if the establishment does not use disposable implements;

(3) single-use protective gloves;

(4) single-use towels, tissues, or paper products;

(5) a sharps container and biohazard waste bags;

(6) approved equipment for cleaning and sterilizing instruments, as required by K.A.R. 69-15-18 and 69-15-20;

(7) a piercing table or chair of nonporous material that can be sanitized;

(8) a covered trash receptacle;

(9) spore tests, as required by K.A.R. 69-15-20;

(10) forceps that can be sterilized;

(11) pliers of various sizes, made of material that can be sterilized;

(12) bleach or hard-surface disinfectants;

(13) antibacterial hand soap;

(14) jewelry disinfectant; and

(15) body arts industry-accepted ointment or lubricant. (Authorized by K.S.A. 2012 Supp. 65-1946 and K.S.A. 74-2702a; implementing K.S.A. 2012 Supp. 65-1946; effective Aug. 22, 1997; amended Feb. 14, 2014.)

69-15-18. Cleaning methods prior to sterilization. (a) Each practitioner shall clean all nonelectrical instruments prior to sterilizing by brushing or swabbing to remove foreign material or debris, rinsing, and then performing either of the following steps:

(1) Immersing them in detergent and water in an ultrasonic unit that operates at 40 to 60 hertz, followed by a thorough rinsing and wiping; or

(2) submerging and soaking them in a protein-dissolving detergent or enzyme cleaner, followed by a thorough rinsing and wiping.

(b) For all electrical instruments, each practitioner shall perform the following:

(1) First remove all foreign matter; and

(2) disinfect with an EPA-registered disinfectant with demonstrated bactericidal, fungicidal, and virucidal activity used according to manufacturer's instructions. (Authorized by K.S.A. 1996 Supp. 74-2702a and implementing K.S.A. 1996 Supp. 65-1946 and 65-1949; effective Aug. 22, 1997.)

69-15-19. Instrument sterilization standards. (a) The practitioner shall place cleaned instruments used in the practice of tattooing or piercing in sterile bags, with color strip indicators, and shall sterilize the instruments by exposure to one cycle of an approved sterilizer, in accordance with K.A.R. 69-15-20.

(b) The provisions of this regulation shall not apply to electrical instruments. (Authorized by K.S.A. 1996 Supp. 74-2702a and implementing K.S.A. 1996 Supp. 65-1946 and 65-1949; effective Aug. 22, 1997.)

69-15-20. Approved sterilization modes.

(a) Instruments used in the practice of permanent color, tattoo artist services, or body piercing shall be sterilized, using one of the following methods:

(1) In a steam or chemical autoclave sterilizer, registered and listed with the federal food and drug administration, and used, cleaned, and maintained according to manufacturer's directions; or

(2) with single-use, prepackaged, sterilized equipment obtained from reputable suppliers or manufacturers.

(b) Practitioners shall sterilize all piercing instruments that have or may come in direct contact with a client's skin or be exposed to blood or body fluids. Piercing needles shall not be reused. All piercing needles shall be single use.

(c) All sterilizing devices shall be tested on a regular basis for functionality and thorough sterilization by use of the following means:

(1) Chemical indicators that change color, to assure sufficient temperature and proper functioning of equipment during the sterilization cycle; and

(2) a biological monitoring system using commercially prepared spores, to assure that all microorganisms have been destroyed and sterilization has been achieved. This testing shall be performed every three months for tattoo and body piercing facilities.

(d) Chemical and biological indicator test results shall be made available at the facility at all times for inspection by the board compliance officers.

(e) Practicing permanent color, tattoo, and body piercing facilities shall submit to an inspection at least once every year, in order to determine compliance with requirements of the statute and with sanitation and sterilization practices. (Authorized by K.S.A. 1996 Supp. 74-2702a and implementing K.S.A. 1996 Supp. 65-1946, 65-1948, and 65-1949; effective Aug. 22, 1997.)

69-15-21. Handwashing and protective gloves.

(a) Prior to and immediately following administering services to a client, all licensees and individuals being trained by licensed permanent color technicians, tattoo artists, and body piercing technicians shall thoroughly wash their hands and nails in hot, running water with soap and rinse them in clear, warm water.

(b) All licensees and individuals being trained by licensed permanent color technicians, tattoo artists, and body piercing technicians shall wear protective gloves during services. Protective gloves shall be disposed of immediately follow-

ing service. (Authorized by and implementing L. 1996, Ch. 138, Sec. 7; effective Aug. 22, 1997.)

69-15-22. Linens. (a) Each practitioner shall use clean linens for each client.

(b) A common towel shall be prohibited.

(c) Air blowers may be substituted for hand towels.

(d) Each practitioner shall store clean linens, tissues, or single-use paper products in a clean, enclosed storage area until needed for immediate use.

(e) Each practitioner shall dispose of or store used linens in a closed or covered container until laundered.

(f) Each practitioner shall launder used linens either by a regular, commercial laundering or by a noncommercial laundering process that includes immersion in water at 160 degrees Fahrenheit for not less than 15 minutes during the washing and rinsing operations. (Authorized by and implementing L. 1996, Ch. 138, Sec. 7; effective Aug. 22, 1997.)

69-15-23. Clean instruments and products storage. (a) Before use, disposable products that come in contact with the areas to be treated shall be stored in clean containers that can be closed between treatments.

(b) Clean, sterilized reusable instruments that come in contact with the areas to be treated shall be stored in clean, sterilized containers.

(c) Clean, sterilized reusable transfer instruments, including forceps, trays, and tweezers, shall be stored in a clean, dry, sterilized container. (Authorized by and implementing L. 1996, Ch. 138, Sec. 7; effective Aug. 22, 1997.)

69-15-24. Chemical storage. Each practitioner shall store chemicals in labeled, closed containers in an enclosed storage area. All bottles containing poisonous or caustic substances shall be additionally and distinctly marked as such and shall be stored in an area not open to the public. (Authorized by and implementing L. 1996, Ch. 138, Sec. 7; effective Aug. 22, 1997.)

69-15-25. Handling disposable materials. (a) Each practitioner shall dispose of disposable materials coming into contact with blood, body fluids, or both, in a sealable plastic bag that is separate from sealable trash or garbage liners or in a manner that protects not only the licensee and the client, but also others who may come into contact with the material, including sanitation workers.

(b) Disposable, sharp objects that come in contact with blood or body fluids shall be disposed of in a sealable, rigid, puncture-proof container that is strong enough to protect the licensee, client, and others from accidental cuts or puncture wounds that could happen during the disposal process.

(c) Licensees shall have either sealable plastic bags or sealable rigid containers available at the facility.

(d) Each practitioner shall follow universal precautions in all cases. (Authorized by and implementing L. 1996, Ch. 138, Sec. 7; effective Aug. 22, 1997.)

69-15-26. Waste receptacles. (a) The practitioner shall deposit all waste material related to treatment in a covered container, following service for each client.

(b) Waste disposed in a reception area and restrooms shall be limited only to materials that are not used in providing services to the client or are practice related.

(c) Waste disposal containers shall be kept clean. (Authorized by and implementing L. 1996, Ch. 138, Sec. 7; effective Aug. 22, 1997.)

69-15-27. Permanent color and tattoo procedures. (a) Permanent color technicians and tattoo artists shall dispense all substances from containers in a manner that prevents contamination of the unused portion. A spray bottle to apply liquid to skin may be used. Single-use tubes or containers and applicators shall be discarded following the tattoo service.

(b) Paper stencils and skin scribes shall be single use and shall be disposed of immediately following service.

(c) The practitioner shall remove the tip of each body pencil used during a tattoo service, shall disinfect the body and tip of the pen, and shall sharpen the tip to remove the exposed edge.

(d) The plastic or acetate stencil used to transfer the design to the client's skin shall be thoroughly cleansed and rinsed in an EPA-approved germicidal solution, according to the manufacturer's instructions, and then dried with a clean, single-use paper product.

(e) Individual portions of inks, dyes, or pigments in clean, single-use containers shall be used for each client. Any remaining unused dye or pigments shall be discarded immediately following service.

(f) Excess ink, dye, or pigment applied to the client's skin shall be removed with a clean, single-use paper product obtained from a self-dispensing container.

(g) Use of styptic pencils or alum solids to check any blood flow shall be prohibited.

(h) Upon completion of tattooing, the practitioner shall cleanse the skin, excluding the area surrounding the eyes, with a clean, single-use paper product saturated with an EPA-approved germicidal solution.

(i) A sanitary covering shall be placed over designs and adhered to the skin with suitable skin tape.

(j) Each practitioner shall provide aftercare, which shall consist of both verbal and written instructions concerning proper care of the tattooed skin. Instructions shall specify the following information:

(1) Care following service;

(2) possible side effects; and

(3) restrictions. (Authorized by and implementing L. 1996, Ch. 138, Sec. 7; effective Aug. 22, 1997.)

69-15-28. Preparation and aftercare of treatment area on client.

(a) Permanent color technicians and tattoo artists shall cleanse the client's skin, excluding the areas surrounding the eyes, by washing with an EPA-approved germicidal solution applied with a clean, single-use paper product, before placing the design on the client's skin or beginning tattooing work.

(b) If the area is to be shaved, the licensee shall use a single-use, disposable safety razor or sterilized straight-edged razor, and then rewash the client's skin.

(c) Substances applied to the client's skin to transfer the design from stencil or paper shall be single use.

(d) Aftercare shall be administered to each client following service, as stated in K.A.R. 69-15-27. (Authorized by and implementing L. 1996, Ch. 138, Sec. 7; effective Aug. 22, 1997.)

69-15-29. Body piercing procedures.

Body piercing technicians shall be responsible for adhering to the following standards while serving clients in the facility.

(a) Each technician shall observe and follow thorough hand-washing procedures with soap and water or an equivalent hand-washing product before and after serving each client and as needed to prevent cross contamination or transmission

of body fluids, infections or exposure to service-related wastes or chemicals.

(b) Each technician shall cleanse the client's skin, excluding the areas surrounding the eyes, by washing it with an FDA-registered antiseptic solution applied with a clean, single-use paper product before and after piercing the client's skin.

(c) All substances shall be dispensed from containers in a manner to prevent contamination of the unused portion. Single-use tubes or containers and applicators shall be discarded following the piercing service.

(d) Any type of marking pen used by the technician shall be applied on cleansed skin only or shall be a surgical marking pen sanitized by design, including alcohol-based ink pens. The technician shall remove the tip of each body pencil used during a piercing, shall disinfect the body and the tip of the pencil, and shall sharpen the tip to remove the exposed edge.

(e) Use of styptic pencils or alum solids to control blood flow shall be prohibited.

(f) Aftercare shall be administered to each client following service. Aftercare shall consist of both verbal and written instructions concerning proper care of the pierced area. Instructions shall specify the following information:

(1) Care following service;

(2) possible side effects; and

(3) restrictions.

(g) Technicians who have open sores or bleeding lesions on their hands shall not have client contact until the lesions have healed to the scab phase. Each technician shall cover them with protective gloves or impervious bandages prior to contact with clients.

(h) Technicians shall wear eye goggles, shields, or masks if spattering is likely to occur while providing services. (Authorized by and implementing L. 1996, Ch. 138, Sec. 7; effective Aug. 22, 1997.)

69-15-30. Fees. The following fees shall be charged:

Examination fees	
Examination application.....	\$50.00
Written examination	75.00
Practical examination.....	75.00
Practitioner fees	
Apprentice license	15.00
Initial license application.....	50.00
License renewal.....	50.00
Trainer license.....	15.00
Delinquent license.....	25.00

Renewal application.....	100.00
Duplicate license	25.00
Establishment license fees	
Establishment license application.....	50.00
Establishment license renewal.....	50.00
Delinquent establishment.....	30.00
Duplicate license	25.00

(Authorized by K.S.A. 2014 Supp. 65-1950 and K.S.A. 74-2702a; implementing K.S.A. 2014 Supp. 65-1943 and 65-1950; effective Aug. 22, 1997; amended June 6, 2014; amended Sept. 18, 2015.)

69-15-31. Potentially disqualifying civil and criminal records; advisory opinion; fee. (a) Conviction of any felony or class A misdemeanor listed in K.S.A. 65-1942, and amendments thereto, may disqualify an applicant from receiving a license.

(b) Civil records that may disqualify an applicant from receiving a license shall be any records of any court judgment or settlement in which the applicant admitted or was found to have engaged

in conduct that would constitute a violation of any practice act under the jurisdiction of the board or any of the board's regulations. Those records shall not be used to disqualify an applicant for more than five years after the applicant satisfied any judgment or restitution ordered by the court or agreed to in the settlement.

(c) Any individual with a criminal or civil record described in this regulation may submit a petition to the board for an informal, advisory opinion concerning whether the individual's civil or criminal record may disqualify the individual from licensure. Each petition shall include the following:

(1) The details of the individual's civil or criminal record, including a copy of court records or the settlement agreement;

(2) an explanation of the circumstances that resulted in the civil or criminal record; and

(3) a check or money order in the amount of \$50.00. (Authorized by K.S.A. 74-120 and 74-2702a; implementing K.S.A. 65-1942, 65-1947, and 74-120; effective Nov. 12, 2021.)

Agency 70

State Board of Veterinary Examiners

Editor's Note:

2014 Senate Bill 278 established the State Board of Veterinary Examiners within the Animal Health Division of the Kansas Department of Agriculture for a two-year period beginning July 1, 2014 through June 30, 2016. See L. 2014, Ch. 12.

Articles

- 70-1. DEFINITIONS.
- 70-2. MEETINGS. (*Not in active use.*)
- 70-3. EXAMINATIONS.
- 70-4. APPLICATIONS.
- 70-5. FEES.
- 70-6. MINIMUM STANDARDS FOR VETERINARY PREMISES SANITARY CONDITIONS AND PHYSICAL PLANT.
- 70-7. STANDARDS OF VETERINARY PRACTICE.
- 70-8. UNPROFESSIONAL CONDUCT.
- 70-9. IMPAIRMENT.
- 70-10. FINES.

Article 1.—DEFINITIONS

70-1-1. Continuing education. “Continuing education course” means a program or activity designed to enhance the veterinarian’s level of knowledge, skill, or abilities to practice veterinary medicine. (Authorized by and implementing K.S.A. 47-829(b); effective Jan. 1, 1974; amended Feb. 21, 1997.)

70-1-2. Attendance at meeting. Attendance at a state or national veterinary association meeting shall be defined as the registration and attendance of the licensee for at least one day of activity at such meetings. (Authorized by K.S.A. 47-829(b); effective Jan. 1, 1974.)

70-1-3. (Authorized by K.S.A. 47-830(n); effective Jan. 1, 1974; revoked, T-85-4, Feb. 2, 1984; revoked, T-88-31, Sept. 17, 1987; revoked May 1, 1988.)

70-1-4. “Mobile veterinary clinic” means a vehicular veterinary premises capable of moving from one location to another. (Authorized by and implementing K.S.A. 47-821(a)(10); effective Dec. 27, 1994.)

70-1-5. “Dental operation” means the following. (a) The application or use of any instru-

ment or device to any portion of an animal’s tooth, gum, or any related tissue for the prevention, cure or relief of any wound, fracture, injury or disease of an animal’s tooth, gum or related tissue; and

(b) Preventative dental procedures including, but not limited to, the removal of calculous, soft deposits, plaque, stains or the smoothing, filing or polishing of tooth surfaces. (Authorized by and implementing K.S.A. 47-821(a)(10); effective Dec. 27, 1994.)

70-1-6. “Anesthetized” means in a condition of general anesthesia, caused by the administration of a drug or combination of drugs in sufficient quantity to produce a state of unconsciousness or dissociation and blocked response to a given pain or alarming stimulus. At a minimum, each anesthetized patient shall be under continuous observation until the swallowing reflex has returned. (Authorized by and implementing K.S.A. 47-816; effective April 4, 1997.)

70-1-7. “Companion animal”; definition. The term “companion animal” shall have the meaning specified in K.S.A. 47-816, and amendments thereto. (Authorized by K.S.A. 2016 Supp. 47-821; implementing K.S.A. 2016 Supp. 47-816; effective Dec. 22, 2017.)

Article 2.—MEETINGS

70-2-1 through 70-2-3. (Authorized by K.S.A. 47-821(i); effective Jan. 1, 1974; revoked Feb. 21, 1997.)

Article 3.—EXAMINATIONS

70-3-1. General requirements. Each examination shall be given in the English language. The preparation, administration, and grading of all examinations shall be performed according to the protocol of the international council for veterinary assessment selected by the board for the examinations. (Authorized by and implementing K.S.A. 2016 Supp. 47-825; effective Jan. 1, 1974; amended March 13, 1995; amended Dec. 22, 2017.)

70-3-2. Standard to pass. Each successful examinee shall achieve the following: (a) A scaled score of at least 70 on each of the national tests; and

(b) a score of at least 90 percent on the state jurisprudence examination. (Authorized by and implementing K.S.A. 2016 Supp. 47-825; effective Jan. 1, 1974; amended March 13, 1995; amended Dec. 22, 2017.)

70-3-3. Cheating. Any applicant detected giving or obtaining aid during any examination will be dismissed instantly and will not be permitted to continue the examination. (Authorized by K.S.A. 47-825(b); effective Jan. 1, 1974.)

70-3-4. (Authorized by K.S.A. 47-825(c); effective Jan. 1, 1974; revoked March 13, 1995.)

70-3-5. Failing any examination. A candidate for licensure shall not be admitted to take any examination more than five times. No applicant may retake any examination more than five years after that individual's initial attempt, except that the fourth and fifth attempts shall be at least one year after the previous attempt. (Authorized by and implementing K.S.A. 2016 Supp. 47-825; effective Jan. 1, 1974; amended Dec. 22, 2017.)

Article 4.—APPLICATIONS

70-4-1 through 70-4-4. (Authorized by K.S.A. 47-821(i); effective Jan. 1, 1974; revoked Feb. 21, 1997.)

70-4-5. (Authorized by K.S.A. 47-821; effective Jan. 1, 1974; revoked Feb. 21, 1997.)

70-4-6 through 70-4-7. (Authorized by K.S.A. 47-821(i); effective Jan. 1, 1974; revoked Feb. 21, 1997.)

70-4-8. Applications for licensure. (a) Each applicant for a license shall request a license application form from the board office.

(b) Each applicant for a license shall submit application materials to the board and complete the application procedures in this regulation and the Kansas veterinary practice act, K.S.A. 47-814 *et seq.* As part of the application process, each applicant shall complete the following steps:

- (1) submit the completed application form;
- (2) submit the full licensure application fee as provided in K.A.R. 70-5-1(a); and

(3) arrange for the applicant's scores on national board and clinical competency exams to be sent directly from the interstate reporting service to the board office.

(c) Recognized and approved colleges. The following colleges of veterinary medicine are recognized and approved by the board as conforming to the standards required for accreditation by the American veterinary medical association, as provided in K.S.A. 47-816:

(1) Kansas State University, College of Veterinary Medicine, Manhattan, Kansas;

(2) University of Missouri, School of Veterinary Medicine, Columbia, Missouri;

(3) Iowa State University, College of Veterinary Medicine, Ames, Iowa;

(4) Oklahoma State University, College of Veterinary Medicine, Stillwater, Oklahoma;

(5) Colorado State University, College of Veterinary Medicine and Biomedical Sciences, Fort Collins, Colorado;

(6) Texas A & M University, College of Veterinary Medicine, College Station, Texas;

(7) University of Illinois, School of Veterinary Medicine, Urbana, Illinois;

(8) The Ohio State University, College of Veterinary Medicine, Columbus, Ohio;

(9) Auburn University, School of Veterinary Medicine, Auburn, Alabama;

(10) Cornell University, New York State Veterinary College, Ithaca, New York;

(11) Purdue University, School of Veterinary Medicine, West Lafayette, Indiana;

(12) Tuskegee Institute, School of Veterinary Medicine, Tuskegee, Alabama;

(13) Tufts University, School of Veterinary Medicine, Boston, Massachusetts;

- (14) University of California, Davis, School of Veterinary Medicine, Davis, California;
- (15) Michigan State University, College of Veterinary Medicine, East Lansing, Michigan;
- (16) University of Minnesota, College of Veterinary Medicine, St. Paul, Minnesota;
- (17) University of Wisconsin-Madison, School of Veterinary Medicine, Madison, Wisconsin;
- (18) University of Pennsylvania, School of Veterinary Medicine, Philadelphia, Pennsylvania;
- (19) Washington State University, College of Veterinary Medicine, Pullman, Washington;
- (20) Oregon State University, School of Veterinary Medicine, Corvallis, Oregon;
- (21) Mississippi State University, College of Veterinary Medicine, Starkville, Mississippi;
- (22) Louisiana State University, School of Veterinary Medicine, Baton Rouge, Louisiana;
- (23) University of Florida, College of Veterinary Medicine, Gainesville, Florida;
- (24) University of Tennessee, College of Veterinary Medicine, Knoxville, Tennessee;
- (25) University of Georgia, College of Veterinary Medicine, Athens, Georgia;
- (26) North Carolina State University, School of Veterinary Medicine, Raleigh, North Carolina;
- (27) Virginia Tech and University of Maryland, Virginia-Maryland Regional College of Veterinary Medicine, Blacksburg, Virginia;
- (28) University of Guelph, Ontario Veterinary College, Guelph, Ontario, Canada;
- (29) Université de Montréal, École de Médecine Vétérinaire, Saint-Hyacinthe, Québec, Canada;
- (30) University of Saskatchewan, Western College of Veterinary Medicine, Saskatoon, Canada;
- (31) University of Prince Edward Island, Atlantic Veterinary College, Charlotte Town, Prince Edward Island, Canada; and
- (32) Rijksuniversiteit te Utrecht, Faculteit der Diergeneeskunde, Utrecht, Netherlands.
- (d) Each applicant who graduated from a school of veterinary medicine that is not recognized by the board shall be determined to meet the education requirement of K.S.A. 47-826 upon submitting a certificate of program completion from the educational commission for foreign veterinary graduates.
- (e) Recognized national specialty boards or colleges. The following list of national specialty boards and colleges are recognized by the board as provided in K.S.A. 47-826:
- (1) American College of Veterinary Anesthesiologists;
 - (2) American College of Veterinary Behaviorists;
 - (3) American College of Veterinary Clinical Pharmacology;
 - (4) American Veterinary Dental College;
 - (5) American College of Veterinary Dermatology;
 - (6) American College of Veterinary Emergency and Critical Care;
 - (7) American College of Veterinary Internal Medicine;
 - (8) American College of Laboratory Animal Medicine;
 - (9) American College of Microbiologists;
 - (10) American College of Veterinary Nutrition;
 - (11) American College of Veterinary Ophthalmologists;
 - (12) American College of Veterinary Pathologists;
 - (13) American College of Poultry Veterinarians;
 - (14) American Board of Veterinary Practitioners;
 - (15) American College of Veterinary Preventive Medicine;
 - (16) American College of Veterinary Radiology;
 - (17) American College of Veterinary Surgeons;
 - (18) American College of Theriogenologists;
 - (19) American Board of Veterinary Toxicology; and
 - (20) American College of Zoological Medicine.
- (f) Each applicant applying for licensure under a specialty status as provided in K.S.A. 47-826 shall provide the board with a copy of a diplomate status certification from a specialty academy or college recognized by the board in subsection (e).
- (g) Each applicant shall also provide the following identifying information on the application form provided by the board:
- (1) the applicant's full name as the applicant wishes the name to appear on the license. Maiden names shall be provided for use in office records only;
 - (2) the applicant's complete and current address at the time of the application;
 - (3) the applicant's telephone number;
 - (4) the applicant's social security number, which may be used by this agency and by the professional examination service for identification only, except that it may be provided to the Kansas division of taxation upon request of the division. An applicant may legally decline to disclose this number;
 - (5) a copy of the applicant's graduate diploma from a college identified in subsection (c), or a letter from the dean's office confirming successful completion of five or more semesters of education in a school of veterinary medicine identified in subsection (c);

(6) the applicant's height, weight, color of hair and eyes, and a description of any distinguishing scars or marks and their location;

(7) a list of other licenses, registrations, or permits related to veterinary science that are held by the applicant, including the issuing state, the date issued, the status, and the number of each;

(8) a list of any drug enforcement agency (D.E.A.) numbers held by the applicant, including the issuing state, the date issued, the status, and the number of each;

(9) a list of any United States department of agriculture (U.S.D.A.) accreditations held by the applicant, including the issuing state, the date issued, the status, and the number of each;

(10) a list of previous experiences or employment related to veterinary science, beginning with the most recent experience; and

(11) a passport photograph, which shall have a frontal face image that is a minimum of 1 square inch and an overall photo size that does not exceed 3 × 4 inches. The photo may be rejected if it is of a poor quality, if it is a snapshot or group picture, or if a cap, hat, or glasses obscure parts of the face.

(h) Signed affidavit. Each applicant shall read and sign an affidavit as to the truth, correctness, and completeness of the application.

(i) Letters of good standing. Each applicant shall submit a letter from each jurisdiction in which the applicant is now or has ever been licensed to practice as a veterinarian indicating the status of that license.

(j) Each applicant shall answer the following questions truthfully and completely under penalty of law. The applicant shall enclose, on a separate sheet of paper, a complete explanation for a "yes" answer to any of the questions below:

(1) Is the applicant currently enrolled in an E.C.F.V.G. program or the holder of an E.C.F.V.G. certificate?

(2) Is the applicant or has the applicant ever been registered or licensed in any other health-related profession?

(3) Has the applicant ever been denied licensure to practice veterinary medicine in any state, United States territory, or country for any reason other than failure of an examination?

(4) Has a license to practice veterinary medicine issued to the applicant by any state ever been subject to any disciplinary action or is any such action now pending? If "yes," the applicant shall supply details of the action.

(5) Has the applicant ever been convicted of any felony or misdemeanor, excluding minor traffic or juvenile offenses?

(6) Has the applicant ever been convicted of a charge of cruelty to animals?

(7) Has the applicant within the past year received treatment for alcohol or other substance abuse?

(8) Has the federal drug enforcement administration ever taken action against or warned the applicant about any matter pertaining to the applicant's D.E.A. number or withdrawn a D.E.A. number assigned to the applicant?

(9) Has there ever been any action taken against or warning issued to an applicant in relation to any U.S.D.A. accreditation held by the applicant?

(10) Has the applicant ever been a defendant or a respondent in any malpractice action?

(11) Has the applicant ever voluntarily relinquished or intentionally allowed to lapse any license, accreditation, D.E.A. number or other certificate in relation to the practice of veterinary medicine?

(12) Is the applicant now or has the applicant been registered or licensed with any state racing commission? If "yes," the applicant shall supply details of the registration or license.

(13) Is the applicant a diplomate of any specialty in veterinary medicine?

(14) Is the applicant now using a different name other than the name used on any educational or professional documents in the applicant's past?

(k) Upon notification that the board has received the application, the applicant shall arrange to take the Kansas veterinary legal practice examination required by K.S.A. 47-826.

(l) Any application may be suspended for a period not to exceed one year for lack of qualifications or as the result of an incomplete application. If the applicant has not met the qualifications or has not submitted a complete application prior to the end of the one-year period, the application shall expire. Upon expiration, the applicant may reapply by submitting a new application, the required fees, and all supporting documents. (Authorized by and implementing K.S.A. 47-824, 47-825, and 47-826; effective April 4, 1997.)

70-4-9. License renewal applications.

(a) Each licensee who is on active military duty during a time of national emergency shall not be required to pay any license renewal fee due at that time.

(b) The annual continuing education requirement shall be waived for any licensee who is either on active military duty during a time of national emergency or impaired, as defined by K.S.A. 47-846(c) and amendments thereto. (Authorized by and implementing K.S.A. 47-821 and 47-829; effective April 4, 1997.)

70-4-10. Examination applications. Each applicant for examination shall be enrolled in or be a graduate of a college of veterinary medicine identified in K.A.R. 70-4-8(c) or shall be enrolled in or have graduated from the American veterinary medical association’s educational commission for foreign veterinary graduate program. (Authorized by and implementing K.S.A. 47-824, 47-825, and 47-826; effective April 4, 1997.)

Article 5.—FEES

70-5-1. Fees. The following fees shall be charged:

- (a) Veterinary medicine license; application..... \$125.00
- (b) Veterinary medicine license; annual renewal..... \$100.00
- (c) Veterinary medicine license; renewal if renewal is for an initial license that was issued after April 30 of the preceding license year..... \$20.00
- (d) Veterinary medicine license; late renewal penalty \$100.00
- (e) Veterinary premises registration; application..... \$75.00
- (f) Veterinary premises registration; renewal..... \$50.00
- (g) Veterinary premises registration; late renewal penalty \$50.00
- (h) Veterinary premises; inspection \$75.00
- (i) Veterinary premises; audit and compliance inspections \$100.00
- (j) Veterinary technician registration; application \$50.00
- (k) Veterinary technician registration; renewal \$25.00
- (l) Institutional license; application..... \$50.00
- (m) Institutional license; annual renewal \$25.00
- (n) Mobile clinic; records audit..... \$75.00

(Authorized by K.S.A. 2019 Supp. 47-821 and 47-822; implementing K.S.A. 2019 Supp. 47-822, 47-

829, and 47-840; effective May 1, 1985; amended, T-70-6-13-88, June 13, 1988; amended July 3, 1989; amended May 23, 1994; amended Feb. 21, 1997; amended April 9, 2004; amended Dec. 21, 2007; amended May 27, 2016; amended March 10, 2017; amended Dec. 18, 2020.)

Article 6.—MINIMUM STANDARDS FOR VETERINARY PREMISES SANITARY CONDITIONS AND PHYSICAL PLANT

70-6-1. Veterinary premises and mobile veterinary clinic; minimum requirements.

Each veterinary premises, including mobile veterinary clinics (MVCs) except as specified in this regulation, shall meet all of the following minimum requirements: (a) General. All areas of the veterinary premises, and all instruments, apparatus, and apparel used in connection with the practice of veterinary medicine, shall be maintained in a clean and sanitary condition at all times. Cleaning agents capable of killing viruses and bacteria shall be used to disinfect the veterinary premises. All public areas of the veterinary premises shall be maintained in a safe condition for each client and patient.

(b) Exterior and grounds.

(1) The exterior structure shall exhibit evidence of regular maintenance. All windows shall be kept clean. If windows are open for ventilation, screens shall be required. All signs shall be kept in good repair.

The grounds shall exhibit evidence of regular maintenance. Parking lots shall be large enough for both staff and clientele. Parking lots and sidewalks shall be kept in good repair and free of debris.

(2) The loading and unloading structures of the facility shall be of sufficient strength to ensure the safety and containment of each patient being loaded or unloaded and shall be in good repair. The requirements of this paragraph shall not apply to MVCs.

(3) Companion animals housed outside shall have shelter constructed and maintained to ensure the safety and comfort of the companion animals being housed. Shelter shall be adequate based on the species and health status of each companion animal housed. The requirements of this paragraph shall not apply to MVCs.

(c) Holding facilities. The size and design of all holding facilities shall ensure the animals’ safety and well-being. The area shall contain provisions for food and water when necessary.

(d) Interior.

(1) Space sufficient to safeguard each patient shall be available.

Hot and cold running water shall be available.

Sanitary storage sufficient for the reasonable and customary operation of the veterinary premises shall be available.

Restraint devices shall be of a design that conforms to standards commonly accepted by the veterinary profession, clean, and in good working order to ensure the safety of the animals and personnel.

Indoor lighting for the halls, wards, reception areas, and examining and surgical rooms shall conform to the standards accepted as reasonable and customary by the veterinary profession for the intended purpose.

Ventilation and cleaning shall be provided to keep odors from lingering in the rooms.

(2) A resource center providing access to current veterinary information, written or electronic, shall be provided.

(3) Heating, cooling, and ventilation necessary to maintain the safety and comfort of the patients, clients, and staff shall be provided.

(e) Reception room. Seating designed for that purpose shall be provided for the clientele. A clean lavatory shall be available to the clients, unless the facility is an MVC. A current premises registration certificate issued by the board of veterinary examiners shall be conspicuously displayed.

(f) Examination room or rooms. An examination room or rooms shall be available for the complete physical examination of patients by a veterinarian. Each examination room shall be of sufficient size to accommodate the doctor, assistant, patient, and client comfortably. The exam table surface shall be disinfected between patients. All diagnostic equipment needed for the physical examination shall be readily available.

(g) Wards. Each veterinary premises, except an MVC, where any animals are retained overnight shall meet all of the following requirements:

(1) Exercise shall be provided for animals having to stay in an overnight facility. Walking the animal shall meet this requirement.

(2) The floors shall be smooth, waterproof, non-absorbent, capable of being disinfected, and in good repair. The walls shall be smooth and free of cracks or gaps large enough to interfere with effective cleaning.

(3) The temperature shall be maintained in a range that is comfortable and safe for all patients.

(4) A separate compartment shall be available for each animal. Caging or housing shall be designed with each animal's physical comfort as the primary consideration.

(A) Physical comfort ensuring that each animal is dry and clean shall be provided.

(B) Sufficient space shall be provided to ensure each animal's freedom of movement and normal postural adjustments with convenient access to food and water.

(5) All cages, runs, stalls, pens, and other animal compartments shall be kept in good repair to prevent injury to the animal and to promote physical comfort.

(A) Sharp corners and edges, broken wires, and any dangerous surfaces shall not be present.

(B) Cages made of metal other than stainless steel shall be kept in good repair by regular painting or other maintenance as required.

(6) The compartments shall be disinfected between occupants. The floors and walls shall be regularly disinfected. All waste cans shall be metal or plastic, be leakproof, and have tightfitting lids.

(7) The drains shall be constructed so that they facilitate disinfection between runways. To maintain proper sanitation, the runways shall be cleaned between uses.

(8) Bulk food shall be stored in a verminproof container. Opened canned food shall be refrigerated until used.

(9) Water and feed dishes, if not disposable, shall be disinfected.

(10) Daily feedings suitable for each animal with a wholesome, nutritional, palatable food and daily fresh water suitable for each animal, within easy reach of each animal, shall be provided, unless medically contraindicated.

(11) An animal identification system shall be used.

(12) The veterinary premises shall allow for the effective separation of contagious and noncontagious patients.

(h) Operating room. If other than minor surgical procedures are to be performed, an operating room for major surgical procedures shall be provided and shall meet the following requirements:

(1) The floors shall be made of terrazzo, sealed cement, linoleum, or any other impervious materials.

(2) A setup for intravenous fluid administration shall be available. Emergency drugs shall be readily available.

(3) The surgery table shall be constructed of impervious material that is easily disinfected. Instruments and equipment accepted as reasonable

and customary by the veterinary profession for the type of surgical services shall be provided.

(i) Sterilization. All articles to be used in surgery shall be sterilized by either gas sterilization or steam sterilization. Chemical sterilization shall be acceptable under field situations and in emergency situations. Surgical packs shall be dated to indicate the last time sterilized. A sterile monitor shall be included within each surgical pack to detect proper sterilization. Caps, masks, and gowns and sterile drapes, towels, and gloves shall be available.

(j) Oxygen. A mechanism for oxygen administration shall be available. This subsections shall not apply to MVCs.

(k) Pharmacy. The veterinarian shall ensure the storage, safekeeping, and preparation of all drugs.

(l) Radiology. If radiology services are not available in the facility, clients shall be referred to a facility that does provide those services when these services are indicated. Permanent identification of the radiograph shall occur at the time of exposure or just before development. Leaded aprons, thyroid shields, and either gloves or mitts shall be available for anyone helping to restrain or position patients during radiography.

(m) Laboratory. The clinical pathology services shall be available either on the veterinary premises or in a medical facility. All test results shall be made available within a time frame accepted as reasonable and customary by the veterinary profession.

(n) Waste disposal.

(1) The prompt and sanitary disposal of all dead animals and animal tissues shall be required. All animal tissues and dead companion animals weighing up to 150 pounds shall be contained in plastic bags and kept in an area away from the public before being picked up for disposal. Each dead companion animal weighing up to 150 pounds held overnight for pickup shall be contained in one or more plastic bags and placed in a refrigerator or freezer.

(2) Needles and syringes shall be destroyed or adequately disposed of in a safe manner. (Authorized by K.S.A. 2016 Supp.47-821; implementing K.S.A. 2016 Supp. 47-821 and 47-840; effective Dec. 27, 1994; amended Dec. 22, 2017.)

Article 7.—STANDARDS OF VETERINARY PRACTICE

70-7-1. The practice of veterinary medicine. Each veterinarian shall meet the following minimum standards in the practice of veterinary

medicine: (a) Storage compartments. Each veterinarian shall maintain clean, orderly, and protective storage compartments for drugs, supplies, and equipment. Refrigeration shall be available for drugs that require it.

(b) Field sterilization. Each veterinarian shall provide a means of sterilizing instruments when practicing veterinary medicine away from a veterinary premises.

(c) Conflict of interest. When representing conflicting interests, including representation of both the buyer and the seller of an animal to be inspected for soundness, the veterinarian shall make full disclosure of the dual relationship and shall obtain documented consent from all parties to the transaction.

(d) Certificates of veterinary inspection. A veterinarian shall not issue a certificate of veterinary inspection unless the veterinarian has personal knowledge, obtained through actual inspection and appropriate tests of the animal, that the animal meets the requirements of the certificate.

(e) Patient acceptance. Each veterinarian shall decide which medical cases will be accepted in the veterinarian's professional capacity and what course of treatment will be followed once a patient has been accepted. The veterinarian shall be responsible for advising the client as to the treatment to be provided.

(f) Control of services. A veterinarian shall not allow any professional services to be controlled or exploited by any lay entity, personal or corporate, that intervenes between the client and the veterinarian. A veterinarian shall not allow a non-licensed person or entity to interfere with or intervene in the veterinarian's practice of veterinary medicine. Each veterinarian shall be responsible for the veterinarian's own actions and shall be directly responsible to the client for the care and treatment of the patient.

(g) Anesthesia and anesthetic equipment. Each veterinarian shall provide anesthesia services as needed. Each anesthetic agent shall be administered only by a veterinarian or a person trained in its administration under the direct supervision of a licensed veterinarian. Each veterinarian shall use disinfectants capable of eliminating harmful viruses and bacteria for cleaning anesthetic equipment.

(h) Patient records.

(1) Length of maintenance. Each veterinarian shall maintain a patient record for three years from the date of the last visit.

(2) Necessary elements. Each veterinarian shall ensure that all patient records are legible and made contemporaneously with treatment or services rendered. All records shall include the following elements:

(A) Patient identification. Patient identification shall include the patient's name, species, breed, age or date of birth, sex, color, and markings;

(B) client identification. Client identification shall include the owner's name, home address, and telephone number;

(C) a vaccination record; and

(D) a complete record of the physical examination findings and treatment or services rendered.

(3) Manner of maintenance. Each veterinarian shall maintain records in a manner that will permit any authorized veterinarian to proceed with the care and treatment of the animal, if required, by reading the medical record of that particular patient.

(i) Medication records. The veterinarian shall ensure that each dose of a medication administered is properly recorded on the patient's medical record. All drugs shall be administered and dispensed only upon the order of a licensed veterinarian.

(j) Controlled drugs. The veterinarian shall ensure that a separate written ledger that includes the current quantity on hand is maintained when a controlled drug is administered or dispensed.

(k) Locked area. If controlled drugs are used, the veterinarian shall ensure that a locked area for the storage of controlled substances is provided.

(l) Dispensation of medications for companion animals.

(1) All prescription drugs to be dispensed for use by a companion animal may be dispensed only on the order of a licensed veterinarian who has an existing veterinary-client-patient relationship as defined by the Kansas veterinary practice act. The veterinarian shall ensure that labels will be affixed to any unlabeled container containing any medication dispensed and to each factory-labeled container that contains prescription drugs or controlled substances dispensed for companion animals. The label shall be affixed to the immediate container and shall include the following information:

(A) The name and address of the veterinarian and, if the drug is a controlled substance, the veterinarian's telephone number;

(B) the date of delivery or dispensing;

(C) the name of the patient, the client's name,

and, if the drug is a controlled substance, the client's address;

(D) the species of the animal;

(E) the name, active ingredient, strength, and quantity of the drug dispensed;

(F) directions for use specified by the practitioner, including dosage, frequency, route of administration, and duration of therapy; and

(G) any cautionary statements required by law, including statements indicating that the drug is not for human consumption, is poisonous, or has withdrawal periods associated with the drug. If the size of the immediate container is insufficient to be labeled, the container shall be enclosed within another container large enough to be labeled.

(2) Upon request of a client, each licensed veterinarian shall provide a written prescription for a prescription drug to the client instead of dispensing the prescription drug.

(m) Dispensation of medications for food or commercial animals. All prescription drugs to be dispensed for food used by a food animal or used by a commercial animal may be dispensed only on a written order of a licensed veterinarian with an existing veterinary-client-patient relationship as defined by the Kansas veterinary practice act. That veterinarian shall maintain the original written order on file in the veterinarian's office. A copy of the written order shall be on file with the distributor, and a second copy shall be maintained on the premises of the patient-client. The written order shall include the following information:

(1) The name and address of the veterinarian and, if the drug is a controlled substance, the veterinarian's telephone number;

(2) the date of delivery or dispensing;

(3) the name of the patient, the client's name, and, if the drug is a controlled substance, the client's address;

(4) the species or breed, or both, of the animal;

(5)(A) The established name or active ingredient of each drug or, if formulated from more than one ingredient, the established name of each ingredient; and

(B) the strength and quantity of each drug dispensed; and

(6) directions for use specified by the practitioner, including the following:

(A) The class or species of the animal or animals receiving the drug or some other identification of the animals; and

(B) the dosage, the frequency and route of administration, and duration of therapy; and

(C) any cautionary statements required by law, including statements indicating whether the drug is not for human consumption or is poisonous or whether there are withdrawal periods associated with the drug.

(n) Supervision.

(1) Each veterinarian shall provide direct supervision of any employee or associate of the veterinarian who participates in the practice of veterinary medicine, except that a veterinarian may provide indirect supervision to any person who meets either of the following conditions:

(A) Is following the written instructions for treatment of the animal patient on the veterinary premises; or

(B) has completed three or more years of study in a school of veterinary medicine.

(2) A veterinarian may delegate to an employee or associate of the veterinarian only those activities within the practice of veterinary medicine that are consistent with that person's training, experience, and professional competence. A veterinarian shall not delegate any of the following:

(A) The activities of diagnosis;

(B) performance of any surgical procedure; or

(C) prescription of any drug, medicine, biologic, apparatus, application, anesthesia, or other therapeutic or diagnostic substance or technique.

(o) Pain management. Each veterinarian shall use appropriate and humane methods of anesthesia, analgesia, and sedation to minimize pain and distress during any procedures on companion animals. (Authorized by and implementing K.S.A.2016 Supp. 47-821; effective Feb 21, 1997; amended Jan. 20, 2012; amended Dec. 22, 2017.)

Article 8.—UNPROFESSIONAL CONDUCT

70-8-1. Acts of unprofessional conduct.

Each of the following acts by a Kansas licensed veterinarian shall be considered unprofessional conduct and shall constitute grounds for disciplinary action against the licensee:

(a) Failing to meet the minimum standards for either veterinary premises or veterinary practice;

(b) engaging in conduct likely to deceive, defraud, or harm the public or demonstrating a willful or careless disregard for the health, welfare, or safety of a patient;

(c) claiming to have performed or charging for an act or treatment that was not performed or given;

(d) stating or implying that the veterinarian is

a certified or recognized specialist unless the veterinarian is certified in the specialty by the board, as recognized by the American veterinary medical association;

(e) stating or implying any claims of professional superiority in the practice of veterinary medicine that cannot be substantiated by education, training, or experience, or using any certificate, diploma, or degree to which the person is not entitled;

(f) practicing veterinary medicine under a false or assumed name or impersonating another practitioner;

(g) practicing under an expired, revoked, or suspended Kansas veterinary license;

(h) failing to provide a written response, within 30 days, to a written request made by the board pursuant to an investigation by or on behalf of the board;

(i) failing to comply with an order issued by the board;

(j) promoting, aiding, abetting, or permitting the practice of veterinary medicine by an unlicensed person, except as provided by the Kansas veterinary practice act or the implementing regulations;

(k) allowing an unlicensed person to issue pre-signed animal health certificates with the veterinarian's signature affixed to the certificate, or to inoculate or treat animals unless the inoculation or treatment is done under the direct supervision of the licensed veterinarian;

(l) failing to establish a valid veterinarian, client, and patient relationship;

(m) prescribing, providing, obtaining, ordering, administering, dispensing, giving, or delivering controlled drugs to or for an animal solely for training, show, or racing purposes and not for a medically sound reason;

(n) performing surgery to conceal genetic or congenital defects, in any species, with the knowledge that the surgery has been requested to deceive a third party;

(o) refusing the board or its agent the right to inspect a veterinary facility at reasonable hours, pursuant to an investigation by or on behalf of the board;

(p) representing conflicting interests unless the veterinarian's dual relationship is fully disclosed and all parties to the transaction consent;

(q) failing to report to the proper authorities cruel or inhumane treatment to animals, if the veterinarian has direct knowledge of the cruel or inhumane treatment;

(r) fraudulently issuing or using any of the following documents:

- (1) A certificate of veterinary inspection;
- (2) a test chart;
- (3) a vaccination report; or
- (4) any other official form used in the practice of veterinary medicine to prevent the following:
 - (A) The dissemination of animal disease;
 - (B) the transportation of diseased animals; or
 - (C) the sale of edible products of animal origin for human consumption;

(s) issuing a certificate of veterinary inspection for an animal unless the veterinarian performs the inspection and the appropriate tests as required to the best of the veterinarian's knowledge;

(t) issuing a certificate of veterinary inspection that has been falsified or is incomplete;

(u) having a United States department of agriculture accreditation removed for cause by federal authority;

(v) using a corporate or assumed name for a veterinary practice that would be false, deceptive, or misleading to the public;

(w) extending the practice of veterinary medicine to the care of humans, except that any veterinarian may render first aid or emergency care, without expectation of compensation, in an emergency or disaster situation;

(x) guaranteeing a cure or specific results or creating an unjustified or inflated expectation of a cure or specific result;

(y) obtaining any of the following information through theft, unauthorized copying, duplicating, or other means:

- (1) Client lists;
- (2) mailing lists;
- (3) medical records;
- (4) computer records; or
- (5) any other records that are the property of another veterinarian, veterinary partnership, or professional veterinary corporation;

(z) failing to report to the board within 90 days any disciplinary action taken against the veterinary license issued to the veterinarian by any other licensing jurisdiction, professional veterinary association, veterinary specialty board, or government or regulatory agency;

(aa) failing to refer a client if additional expertise is advisable, a second opinion is desirable, or the client requests a referral;

(bb) making a false, deceptive, or misleading claim or statement;

(cc) failing to provide the public with necessary label warnings on dispensed veterinary products;

(dd) failing to provide a client with a verbal or written estimated fee range for veterinary services offered when requested by the client;

(ee) acting in a manner that is likely to injure the professional reputation, standing, prospect of practice, or employment of another member of the profession and that could be deemed malicious, false, or misleading;

(ff) failing to obtain the client's consent before placing an animal under anesthesia, performing any surgical procedure, or transporting the animal to another facility, except in emergency situations;

(gg) violating the confidential relationship between the licensed veterinarian and the client;

(hh) delegating activities within the practice of veterinary medicine in violation of K.A.R. 70-7-1; and

(ii) using prescription drugs in either of the following ways:

(1) Prescribing or dispensing, delivering, or ordering any prescription drug without first having established a veterinary-client-patient relationship and determining that the prescription drug is therapeutically indicated for the health or well-being of the animal or animals; or

(2) prescribing, providing, ordering, administering, possessing, dispensing, giving, or delivering prescription drugs to or for any person under either of the following circumstances:

(A) The drugs are not necessary or required for the medical care of animals; or

(B) the use or possession of the drugs would promote addiction.

For purposes of this subsection, the term "prescription drugs" shall include all controlled substances placed in schedules I through V pursuant to 21 U.S.C. 812, any drug that bears on the label the federal legend indicating that the use of the drug is restricted to, by, or on the order of a licensed veterinarian, and any other drug designated as prescription-only by any Kansas law or regulation. (Authorized by and implementing K.S.A. 2016 Supp. 47-830; effective Feb. 21, 1997; amended Dec. 22, 2017.)

Article 9.—IMPAIRMENT

70-9-1. Waiver of continuing education requirement for license renewal under impairment status. Each applicant for license re-

newal who wishes to have the required 20 hours of continuing education waived due to impairment of the applicant, as defined in K.S.A. 47-846(c), during the prior license year shall submit a written request to the board. (a) An assessment or assessments of the licensee's degree of impairment shall be submitted to the board. The assessment shall be made by a designee of the board or by one or more appropriate, qualified professionals chosen by the licensee and approved by the board. The assessment shall establish the nature of, the prognosis for, and the duration of the licensee's impairment. Based on this assessment, the continuing education requirement may be waived by the board. The licensee may also be subject to restrictions and appropriate conditions established by the board.

(b) If the waiver is issued, the licensee shall sign an affidavit acknowledging that individual's impairment, and shall agree not to engage in the practice of veterinary medicine beyond the restrictions and conditions placed on the licensee by the board. If the licensee does engage in the practice of veterinary medicine beyond the restrictions and conditions of the board, such action shall be grounds for disciplinary action against the licensee.

(c) The degree of impairment shall be monitored by a designee of the board. Whenever recovery from the impairment is assessed and documented by a designee of the board or by the appropriate, qualified professional chosen by the licensee and approved by the board, the licensee may seek to have the license reinstated, subject to the statutory procedure for reinstatement of a license as stated in K.S.A. 47-832. Such reinstatement shall be subject to completion of all of the continuing education hours waived during the impairment period. (Authorized by K.S.A. 47-821(a)(3) and 47-829(b); implementing K.S.A. 47-829(b) and 47-848; effective Aug. 22, 1997.)

Article 10.—FINES

70-10-1. Fines. (a) Each citation issued pursuant to K.S.A. 47-843(b) which includes an assessment of a civil penalty shall be classified according to the nature of the violation as set out below. The citation shall indicate the classification on its face.

(1) A Class "A" violation shall be a violation which the executive officer of the board has determined meets the following criteria:

(A) the violation meets the criteria for a class "B" violation; and

(B) the violation was committed by a person who has been issued two or more prior citations for a class "B" violation within a 24-month period immediately preceding the act serving as the basis for the citation, without regard to whether the actions to enforce the previous citations have become final.

However, the increase in the civil penalty required by this paragraph shall not be due and payable unless and until the previous actions have been terminated in favor of the board. A class "A" violation shall be subject to a civil penalty in an amount not less than \$1,001.00 and not exceeding \$2,000.00 for each citation.

(2) A Class "B" violation shall be a violation which the executive officer has determined meets the following criteria:

(A) the violation involves a person who, while engaged in the practice of veterinary medicine, has violated a statute or regulation relating to the practice of veterinary medicine; and

(B)(i) the violation caused bodily injury to an animal which is not significant and substantial in nature;

(ii) the violation presents a substantial probability that death or serious harm would result; or

(iii) the violation meets the criteria for a class "C" violation and was committed by a person who has two or more prior citations for a class "C" violation within the 24-month period immediately preceding the act serving as the basis for the citation, without regard to whether the actions to enforce the previous citations have become final.

However, the increase in the civil penalty required by this paragraph shall not be due and payable unless and until the previous actions have been terminated in favor of the board. A class "B" violation shall be subject to a civil penalty in an amount not less than \$501.00 and not exceeding \$1,000.00 for each citation.

(3) A Class "C" violation shall be a violation which the executive officer has determined involves the following:

(A) a violation committed by a person while engaged in the practice of veterinary medicine; and

(B) a violation that has not caused either death or bodily injury to a patient and which does not present a substantial probability that death or serious harm to an animal patient would result therefrom.

A class "C" violation shall be subject to a civil penalty in an amount not less than \$50.00 and not exceeding \$500.00 for each citation.

(b) In assessing a civil penalty, the following criteria shall be considered by the executive director:

(1) the good or bad faith exhibited by the cited person;

(2) the nature and severity of the violation;

(3) evidence that the violation was willful;

(4) any history of violations of the same or a similar nature;

(5) the extent to which the cited person has cooperated with the board's investigations;

(6) the extent to which the cited person has mitigated or attempted to mitigate any damage or injury caused by the violation; and

(7) such other matters as justice may require. (Authorized by and implementing K.S.A. 47-843(a); effective Feb. 21, 1997.)