

**MINUTES OF THE OCTOBER 2013 MEETING
OF THE
ADMINISTRATIVE RULES REVIEW COMMITTEE**

Date of meeting: The regular, statutory meeting of the Administrative Rules Review Committee (ARRC) was held on Monday, October 7, 2013, and Tuesday, October 8, 2013, in Room 116, State Capitol, Des Moines, Iowa.

Members present: Representative Dawn Pettengill, Chair, and Senator Wally Horn, Vice Chair; Senators Mark Chelgren, Thomas Courtney, Pam Jochum, and Roby Smith; Representatives Lisa Heddens [by teleconference], Rick Olson [on October 8], Jeff Smith, and Guy Vander Linden were present.

Also present: Joseph A. Royce and Jack Ewing, Legal Counsel; Stephanie A. Hoff, Administrative Code Editor; Larry Johnson, Deputy Counsel, Office of the Governor; fiscal staff; caucus staff; and other interested parties.

Convened Rep. Pettengill convened the meeting at 9:35 a.m.

Fiscal overview Adam Broich presented the LSA fiscal report. Mr. Broich will request that the fiscal analyst for department of human services ARC 1071C and ARC 1052C verify for Rep. Pettengill the accuracy of the respective fiscal notes, which are identical. Regarding the fiscal impact of ARC 1073C, LSA fiscal analyst Beth Lenstra clarified for Rep. Vander Linden that there are no savings unless the appropriation is reduced and that this rule provides savings which will be redirected within the department of transportation.

ENGINEERING AND LAND SURVEYING EXAMINING BOARD Marlon Vogt, chair, represented the board.

ARC 1084C No action on the amendment to 8.2(6)"a"(7) pertaining to unethical or illegal conduct. Mr. Vogt stated that a task force has been formed to examine all conflict of interest rules. He explained that the board seeks to allow professionals to serve on multimember boards and, at the same time, wants to protect the public from potential conflicts of interest. In response to an inquiry from Rep. Pettengill, Mr. Vogt explained the rationale for the formulation of task forces.

ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA Megan Tooker represented the board.

ARC 1020C The proposed amendment to 4.44(1) pertains to the prohibition on campaign contributions from corporations. In response to an inquiry from Rep. Smith, Ms. Tooker will verify for the committee the number of members an LLC is allowed by law.

ARC 1019C No questions on the proposed amendment to 9.1(1) regarding the supporting documentation for a complaint.

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT Margaret Thomson represented the department.

ARC 1006C Proposed amendments to ch 43 pertain to agricultural lime sampling procedures and the fee. Ms. Thomson explained that this Notice has been terminated based on comments from the industry. In response to an inquiry from Rep. Pettengill, Ms. Thomson stated that the department will meet with industry representatives to address concerns.

ARC 1024C No action on amendments to ch 64 concerning chronic wasting disease (CWD). Discussion pertained to testing, transport and co-responsibility of the departments of agriculture and land stewardship and natural resources regarding CWD-affected deer populations on deer farms and in the wild.

PROFESSIONAL LICENSURE DIVISION Sharon Dozier represented the division.

ARC 1029C No action on amendments to chs 240 and 241 pertaining to licensure and continuing education for psychologists. Committee members expressed concern that for service on the board, a board member may receive two of six continuing education (CE) credits related to the practice of psychology, including ethics. Ms. Dozier stated that the board determined that the consideration of both complaints and disciplinary matters is related to ethics and increases understanding of the law and rules and of the American Psychological Association (APA) Ethical Principles of Psychologists and Code of Conduct regarding ethics issues not explicit in the law or rules.

Professional Licensure Division (continued)

Ms. Dozier stated that this provision will apply only to CE credits of future board members and that some board members stated that receipt of CE credit appears to be a reward for public service.

DENTAL BOARD Melanie Johnson represented the board. Other interested parties included Jenny Tyler of the Carney Law Firm on behalf of the Iowa Association of Nurse Anesthetists (IANA).

ARC 0984C No action on 13.3(3) and 15.3(17) pertaining to a temporary permit for volunteer services.

ARC 0985C No action on amendments to 20.15 regarding expanded function training approval.

ARC 1008C Proposed amendments to ch 29 pertain to sedation and nitrous oxide inhalation analgesia. Ms. Johnson summarized the proposed changes and stated that the board received and will give further consideration to a comment regarding additional safety precautions for facilities where moderate sedation is administered. Rep. Pettengill inquired about the types and levels of sedation, the issuance and renewal of permits to administer deep sedation/anesthesia, peer review of protocols and facilities, training of auxiliary personnel, reporting of adverse outcomes, and inspections. In response, Ms. Johnson explained the rationale for the amendments which collectively are intended to ensure a high standard of care. Ms. Johnson clarified for Sen. Jochum that the appeals process set forth in 11.10 will replace the process set forth in rescinded 29.12.

Ms. Tyler expressed support for the amendments and requested that the board consider requiring capnography and pulse oximetry whenever nitrous oxide inhalation is used. She also asked that advanced cardiac life support (ACLS) certification be required of dentists using and auxiliary personnel monitoring the use of nitrous oxide at any time and for all deep sedation/general anesthesia. In response to an inquiry from Sen. Jochum, Ms. Johnson stated that the board will consider the comments by IANA.

ECONOMIC DEVELOPMENT AUTHORITY Tim Whipple represented the authority.

ARC 1021C Proposed ch 56 pertains to the employee stock ownership plan (ESOP) formation assistance. In response to an inquiry from Rep. Pettengill, Mr. Whipple described eligibility requirements and explained that the program assists business owners with the cost of establishing ESOPs for their employees.

EDUCATIONAL EXAMINERS BOARD Duane Magee and Darcy Lane represented the board.

ARC 0987C No questions on proposed amendments to 13.8 pertaining to the requirement that for a master educator's license, the applicant's degree must be granted by a regionally accredited college or university.

ARC 0986C Amendments to 13.28 pertain to teaching endorsements for health, music and physical education. Discussion pertained to the requirement that prospective K-12 music teachers take methods courses in general, choral, and instrumental music. Committee members inquired about the effects of the requirement, including the possible extension of a student's college tenure and the lowering of teaching standards.

Mr. Magee stated that the committee of educators and representatives from professional organizations and institutions of higher education recommended the amendments to balance instruction in choral and instrumental methods, to allow flexibility in research-based licensure and to set realistic standards to serve the needs of schools statewide. He stated that no public comments were received in opposition or support; however, Sen. Jochum cited comments in opposition from a music professor from the University of Northern Iowa.

Motion to delay Following discussion, Sen. Jochum moved a 70-day delay on Item 2 [13.28(13)].

Motion failed On a roll call vote of 6 to 3, the motion failed. [Note: A 70-day delay requires 7 affirmative votes.]

ARC 0993C Proposed amendments to chs 13 and 17 concern engineering and STEM endorsements. Mr. Magee clarified for Sen. Chelgren the role of a STEM specialist.

Educational Examiners Board (continued)

- ARC 0988C Proposed amendments to 18.10 regard demonstration of required experience by a superintendent/AEA administrator. Discussion pertained to the impetus for the rule. Mr. Magee explained that the board seeks to maintain high standards regarding administrative experience and at the same time to provide flexibility to prospective candidates who may have varied types of administrative experience. Rep. Vander Linden suggested that demonstrated administrative experience by persons in fields outside education be included in the rule.
- ARC 1010C No questions on the termination of proposed amendments to 25.3(1) pertaining to prohibited relationships between licensees and former students.
- ARC 0992C Proposed amendments to 25.3(1) pertain to prohibited relationships between licensees and former students. Mr. Magee stated that based on committee comment at the April meeting regarding an earlier Notice of Intended Action (see ARC 0678C, IAB 4/3/13), the board is proposing to prohibit a relationship between a practitioner and a former student within 90 days of the end of a student's enrollment if the student had been taught by the licensee or had been supervised by the licensee in any school activity. Mr. Magee stated that pursuant to the criminal code, such relationships are prohibited within 30 days of the end of a student's enrollment in a school district; such relationships occurring during days 31 to 90 of the proposed 90-day period would constitute an ethics violation, not a criminal violation.
- Rep. Smith inquired about the rationale for the rule itself and, specifically, for the reduction from 180 to 90 days, and Rep. Vander Linden questioned the regulation of relationships between consenting adults and the board's jurisdiction over such relationships. Sen. Jochum recognized the board's concern regarding students aged 16 and 17.
- In response, Mr. Magee stated that inappropriate relationships between licensed practitioners and students are the most common basis for ethics complaints received by the board and that the board carefully considered the proposed amendments to protect students from exploitation by licensees. In response to an inquiry from Mr. Johnson, Ms. Lane stated that for some professions, the time line is more restrictive; for example, relationships between mental health counselors and clients or the clients' family members are prohibited for five years after the last professional contact, and for chiropractic physicians, a client-physician relationship is prohibited. She added that the board is concerned about the potential for exploitation based on the practitioner's previous supervisory relationship with the student.

ENVIRONMENTAL PROTECTION COMMISSION Wendy Walker, Jim McGraw and Christine Paulson represented the commission.

- ARC 1016C Proposed amendments to chs 20, 22, 31 and 33 regarding air quality pertain to nonattainment areas. Ms. Walker explained that two areas in Iowa are in nonattainment with national ambient air quality standards (NAAQS). She stated that nonattainment, in turn, requires the adoption of nonattainment new source review rules that would apply if an increase in emissions occurs, by pollutant, at the lowest achievable emission rate. Based on the department's knowledge of upcoming projects, Ms. Walker stated that it is unlikely that either area would trigger the increase requiring the application of the rules. In response to an inquiry from Sen. Chelgren, Mr. McGraw stated that department analyses showed that there were no out-of-state sources of pollutants in either Iowa nonattainment area.
- ARC 1013C No action on amendments to chs 22 and 28 pertaining to air quality.
- ARC 1014C No action on the amendment to 23.1(4) pertaining to the adoption by reference of federal RICE NESHAP standards.

NATURAL RESOURCE COMMISSION David Downing and Willie Suchy represented the commission.

- ARC 1022C No questions on proposed amendments to chs 28 and 47 pertaining to the snowmobile and all-terrain vehicle registration revenue cost-share programs.
- ARC 1003C No action on amendments to ch 91 relating to waterfowl and coot hunting seasons. In response to an inquiry from Rep. Pettengill regarding the Filed Emergency After Notice rule making, Mr. Suchy explained that the final Fish and Wildlife Service data were received too late in the summer to follow the normal rule-making process.

REVENUE DEPARTMENT Victoria Daniels, Alana Stamas, Julie Roisen and Jim McNulty represented the department.

ARC 1002C Proposed amendments to chs 40 and 86 pertain to inheritance tax. In response to an inquiry from Sen. Jochum, Ms. Stamas stated that "stepgrandchild" has been added based on questions from affected parties. Ms. Stamas added that stepgrandchild is not one of the types of descendants exempt under Iowa Code section 450.7 and is not currently defined in the Iowa Code or in the Iowa Administrative Code but perhaps should be defined.

ARC 0998C No questions on proposed amendments to chs 41, 42, 46, 52 and 58 concerning historic preservation and cultural and entertainment district, agricultural assets transfer, custom farming contract, from farm to food donation, targeted jobs and endow Iowa tax credits.

ARC 1028C No questions on proposed 80.49, county claims related to commercial and industrial property tax replacement.

ARC 1042C Proposed amendments to 71.1(3) pertain to algae cultivation and production related to the valuation of agricultural real estate. Ms. Roisen clarified for Sen. Chelgren the applicability and inapplicability of the rule to the use of structures such as storage sheds and greenhouses.

INSPECTIONS AND APPEALS DEPARTMENT David Werning, Steven Mandernach and Deborah Svec-Carstens represented the department. Other interested parties included Susan Cameron of the Iowa Health Care Association and the Iowa Center for Assisted Living and Dean Lerner.

ARC 1026C and ARC 1025C Mr. Mandernach presented proposed chs 30 and 31 concurrently. Ch 30 pertains to food and consumer safety, and ch 31 relates to food establishment and food processing plant inspections.

Sen. Jochum noted that in 30.3, definition of "food establishment," paragraph 10, the term "boarding houses" should be changed to "boarding homes." Mr. Mandernach will clarify for Sen. Jochum the stipulations relating to field-dressed game in 31.1(4). Mr. Mandernach clarified for Rep. Pettengill the rationale for the training and record keeping related to morel mushroom identification. In response to an inquiry from Sen. Chelgren, Mr. Mandernach clarified stipulations related to shipping across state lines and the preparation of for-profit versus donated baked goods.

ARC 0989C No action on the rescission of ch 36, egg handlers.

ARC 1082C No questions on proposed amendments to chs 54, 57, 58 and 62 to 65 regarding the removal of references to resident advocate committees and the addition of the certified volunteer long-term care ombudsman program related to nursing facilities and residential and intermediate care facilities.

ARC 1047C Amendments to 56.14(3) and 56.15 pertain to informal conferences for contested citations related to health care facilities. Mr. Werning explained that the rule making changes the review process so that an independent reviewer conducts the informal conference rather than a department representative. The facility's procedure for requesting an informal conference at which the facility may present evidentiary material to refute a department finding is also clarified. Mr. Werning stated that an informal conference is not a formal contested case and therefore is not subject to the provisions of Iowa Code chapter 17A.

Committee members inquired about department appeal of a decision by an independent reviewer, whether the Centers for Medicare and Medicaid Services (CMS) is bound by a decision by an independent reviewer, the classifications of violations, and the informal conference process. Mr. Werning stated that at an informal conference, the department may address the issue refuted by the facility. Ms. Svec-Carstens stated that the statute provides a facility the right to appeal an adverse decision by an independent reviewer but is silent on whether the department has the same right. She added that an informal conference would be held concurrently with any informal dispute resolution pursuant to federal regulations for facilities certified by CMS and that the department may appeal decisions made at the federal level.

Ms. Cameron expressed support for the amendments. She stated that they establish a fair process for review of citations imposed on facilities and that there would be no due process if the department decision were final in every case.

Inspections and Appeals Department (continued)

Mr. Lerner stated that independent reviewers are not bound by the code of judicial conduct, that the absence of the department's right to appeal denies the department due process and that the rule creates a conflict between state and federal law, which under Iowa Code section 17A.2 is illegal. He also questioned the department's authority to promulgate the rule.

In response to an inquiry from Mr. Johnson, Mr. Werning stated that the rule does not violate federal law. In response to an inquiry from Sen. Chelgren, Mr. Werning stated that the department is authorized to conduct informal conferences pursuant to Iowa Code chapter 135C. At the request of Rep. Pettengill, Mr. Werning agreed to provide the committee with information related to CMS regulations for informal conferences.

- Motion to refer Following discussion, Sen. Courtney moved a general referral on ARC 1047C.
 Motion failed On a roll call vote of 5 to 4, the motion failed. [Note: A general referral requires 6 affirmative votes.]
- ARC 1050C No action on amendments to chs 57, 58, 62, 63, 65 and 67 concerning administration of immunizations by pharmacists. Mr. Werning stated that the amendments have been changed to include physician assistants among the health care professionals permitted by law to administer immunizations.
- ARC 1083C No questions on proposed amendments to chs 57, 58 and 62 to 65 pertaining to changes to Iowa Code references in rules that address dependent adult abuse related to nursing facilities and residential and intermediate care facilities.
- ARC 1048C No action on amendments to 58.14(8) concerning the evaluation of nursing facility residents by a physician assistant after the initial comprehensive visit by a physician.
- ARC 1055C No action on amendments to ch 67 pertaining to informal conferences for contested citations related to assisted living programs and to elder group homes and adult day services.

Mr. Lerner expressed opposition to the rules related to assisted living programs and stated that 2013 Iowa Acts, Senate File 394, does not authorize the department by rule to abrogate its right under Iowa Code chapter 17A to appeal to an administrative law judge (ALJ) and then to have the case heard before the district court.

MEDICINE BOARD Kent Nebel and Mark Bowden represented the board. Other interested parties included Jeanine Freeman on behalf of the Iowa Medical Society and Sharon Malheiro of the Davis Brown Law Firm on behalf of Planned Parenthood of the Heartland and its medical director, Jill Meadows, M.D.

- ARC 1033C No action on the rescission of 13.3 pertaining to supervision of pharmacists who administer adult immunizations.
- ARC 1034C Rule 13.10 pertains to the establishment of standards of practice for physicians who prescribe or administer abortion-inducing drugs. Mr. Bowden stated that 28 presentations were made at the public hearing on August 28, 2013, and that 244 written comments had been received.

Sen. Courtney questioned the board's focus on, the rule-making process for, and the standards of practice for physicians related to the telemedicine delivery system. He stated that the rule is arbitrary and that the board should examine standards of practice for all areas in which telemedicine is used in Iowa. Rep. Pettengill stated that the FDA protocols for abortion-inducing medications had not been followed. Sen. Chelgren expressed concern about the factors relating to decision making by pre-teen patients who seek telemedicine abortions and stated that while he agreed that the standards of practice for telemedicine should be examined, the *Roe vs. Wade* decision states that, as with any other medical procedure, maximum safety of the patient should be ensured by the physician, staff and facility.

Mr. Nebel responded that the rule was promulgated pursuant to Iowa Code chapter 17A in response to a petition for rule making. He agreed that telemedicine is used in other areas of practice but that general standards of practice for telemedicine at the national level have not been determined for all areas of practice. Mr. Nebel concurred with Sen. Courtney that all areas in which telemedicine is used in Iowa should be examined by the board. Mr. Bowden stated that the standards of practice for telemedicine are the same as those required for in-person consultations and are based on an established patient-physician relationship.

Medicine Board (continued)

Ms. Freeman asserted that the board is a disciplinary board, not a professional standard-setting board, and is empowered by statute to ensure that medical services are provided safely, effectively, and competently. She explained that the board did not itself provide evidence for or develop this disciplinary rule nor did the board study, analyze or seek external professional input on the rule as it relates to standards of medical care and patient health and safety. Ms. Freeman stated that the rule is not credible and asked that it not be permitted to proceed. Ms. Malheiro stated that no evidence was submitted to the board that Planned Parenthood of the Heartland's telemedicine delivery system is unsafe and that in fact the evidence is to the contrary. In addition, she stated that the rule will cause harm to Iowa women should circumstances of time, distance and clinic staffing not allow access to the telemedicine delivery system pursuant to the rule, thus necessitating a surgical procedure. Ms. Malheiro requested a delay of the rule pending a judicial determination so that Planned Parenthood of the Heartland and its physicians may maintain the status quo for their patients.

Motion to delay

Sen. Courtney moved a session delay on 13.10.

Motion failed

On a roll call vote of 4 yes and 5 no, the motion failed. [Note: A session delay requires 7 affirmative votes.]

TUESDAY, OCTOBER 8, 2013

TRANSPORTATION DEPARTMENT Director Paul Trombino, Steve Gent, Brooks Glasnapp, and Mark Lowe represented the department. Other interested parties included Dustin Miller of the Iowa League of Cities; Mike St. Clair on behalf of GATSO USA; Justin Vondrak of the City of Sioux City; Melvin Williams of the Sioux City Police Department; Larry Murphy, Gary Grant and Mark Buzynski on behalf of the Iowa Police Chiefs Association (IPCA); Greg Reeder and Ralph O'Donnell on behalf of the City of Council Bluffs; Marty Ryan of Faulkes-Lee and Ryan; and Tom Stanberry of the Davis Brown Law Firm on behalf of the Iowa Insurance Institute.

ARC 1037C

Proposed ch 144 pertains to automated traffic enforcement on the primary road system. Mr. Trombino stated that the department establishes in the rules the requirements, procedures and responsibilities for the use of automated traffic enforcement systems, for fixed and mobile automated enforcement, on the primary road system to ensure consistency statewide for the use of these systems. Mr. Trombino stated that the rules apply only to local jurisdictions, which must obtain approval from the department prior to the use of automated traffic enforcement on the primary road system. He explained that the department does not have the authority to own, operate or receive compensation for any automated traffic enforcement system; rather, the department is responsible for the overall safety of the system and for the establishment of a process that is used by local jurisdictions to identify safety issues through standard engineering practices and that brings clarity and accountability to the implementation of the automated enforcement system.

During and following public comment, discussion pertained to the authority of the department versus that of local jurisdictions to regulate automated traffic enforcement; the standards for the approval and location of the automated devices; contracts with vendors; the fiscal impact on local jurisdictions; the costs to, due process for, privacy of, and effect on the behavior of drivers; and the systems as revenue-raising devices.

Mr. Miller questioned the statutory authority for the rules and the vagueness of the standards, noted that local jurisdictions and the department hold concurrent jurisdiction on primary highways, and suggested that the committee request a regulatory analysis on the rule making. Mr. St. Clair suggested that the rules should provide specific solutions and other criteria. Mr. Vondrak, summarizing the history of automated traffic enforcement in Sioux City, stated that the large decrease in the number of accidents and in red-light running has resulted in greater public safety. Mr. Williams stated that the legislature has delegated traffic enforcement and the level of safety to local jurisdictions, that automated traffic enforcement consistently changes driver behavior, and that the vague rules provide the department with a way to remove automated traffic enforcement from primary highways.

Transportation Department (continued)

Mr. Murphy suggested that the committee request a regulatory analysis and questioned whether the department should regulate traffic enforcement issues in local jurisdictions. Mr. Buzynski stated that from an operations standpoint automated traffic enforcement is an effective tool to improve the safety of the public and of law enforcement officers. Mr. Reeder stated that cameras are effective tools to reduce red-light violations and to modify driver behavior, and Mr. O'Donnell added that technology assists law enforcement to ensure public safety. Mr. Ryan suggested that the rules, which he supports, could be improved by providing that mobile units not be placed on inclines and by revising language regarding "law enforcement" since traffic violations are civil, not criminal, matters. Mr. Stanberry, referring only to red-light cameras, stated that the cameras have a behavioral impact on drivers and on public safety and that guidelines for annual review of the use of red-light cameras should be incorporated in the rules.

Committee members requested that the city of Sioux City provide documentation of the revenue from 2007 to the present resulting from violations photographed by traffic speed cameras and mobile units, the tax relief applied during the same period, the number of rear-end accidents before and after the installation of red-light cameras, and the number of red-light cameras on primary and secondary roads; that the city of Des Moines provide documentation of the total amount of revenue that has been received; and that the city of Cedar Rapids provide documentation of the cost of a ticket. Sen. Jochum requested that the department provide the committee with all of the public comment received.

ARC 1018C Proposed amendments to ch 119 concern tourist-oriented directional signing. In response to committee members' questions, Mr. Glasnapp stated that the number of miles to the business will be included on the signs and that the cost to a business is \$350 per sign with an annual renewal fee of \$50.

ARC 1017C No questions on proposed amendments to ch 120 regarding private directional signing.

ARC 1073C No action on amendments to chs 601, 604, 605 and 630 relating to the vision screen or report and eligibility associated with electronic renewal of driver's licenses and nonoperator's ID cards. Mr. Lowe clarified for Rep. Vander Linden the sources for the anticipated savings in resource management and production costs afforded by online renewal. Mr. Lowe addressed an inquiry from Sen. Jochum regarding the effect of online renewal on the intervals between vision screens.

INSURANCE DIVISION Dennis Britson represented the division.

ARC 1004C The proposed rescission of ch 18 and adoption of ch 140 pertain to burial sites and cemeteries. In response to questions from committee members, Mr. Britson explained the distribution of capital gains, citing the division's rule-making authority for the distribution set forth in Iowa Code section 523I.811(2), and the reorganization of chapters related to cemeteries.

ARC 1076C No action on amendments to ch 50 pertaining to securities regulation.

IOWA FINANCE AUTHORITY Mark Thompson represented the authority. Other interested parties included Bert Dalmer of the Ombudsman's office.

ARC 0997C No questions on proposed amendments to ch 39 relating to the HOME investment partnerships program.

ARC 0827C The amendments to 27.3(2) concern home purchase financing under the military service member home ownership assistance program. At the August meeting, the committee voted to impose a 70-day delay on 27.3(2). At the September meeting, Mr. Thompson reported discussions with Sen. Smith, and the rule making was placed on the October agenda.

Mr. Thompson stated that Sen. Smith and the Ombudsman's office had pointed out that omitted from the amended subrule was a key feature regarding the eligibility of service members who participate in the program to use a mortgage loan from a lender who does not participate in the authority's other home buyer programs. Mr. Thompson presented an amendment to 27.3(2) that the authority believes would be in full compliance with the statute and observed that the rules review process revealed a deficiency in the rule that will be rectified.

Iowa Finance Authority (continued)

Sen. Smith commended the authority for proposing the amendment and noted that legislation will be needed to ease the restriction against allowing assistance under the program in conjunction with loans made by participating lenders but not made under one of the authority's other home buyer programs. Rep. Pettengill also commended the authority.

Mr. Dalmer expressed concern about the requirement that the loan offered by a nonparticipating lender approved by the authority have an APR that is lower by at least 25 basis points than the APR offered under the authority's other home buyer programs and about the effect of that criterion on the overall rate of the loan. In response to Sen. Jochum, Mr. Thompson stated that the 25 basis point requirement ensures a better APR for the service member and that the closing costs are factored into the APR.

Committee review of emergency rule making Mr. Thompson requested approval of an emergency rule making to amend 27.3(2), noting that a Notice of Intended Action would be submitted simultaneously with the Adopted and Filed Emergency rule making (a double barrel). Mr. Thompson confirmed for Sen. Jochum that no substantive changes would be made to the proposed amendment to 27.3(2).

Motion to approve Sen. Smith moved approval of the emergency rule making.

Motion carried On a voice vote of 7 to 1, the motion carried.

LABOR SERVICES DIVISION Kathleen Uehling represented the division.

ARC 1009C Proposed amendments to 71.16 pertain to fees related to the conveyance safety program.

Discussion pertained to the rationale for the fee increases and notification of interested parties. Ms. Uehling stated that no comments had been received. She explained that the fees, last increased in 2005, are no longer adequate to support the cost of the program and that the new fee structure should be sustainable for five years. She explained that interested parties are notified through the division's Web page and the IAB.

Rep. Pettengill requested that the board explore a low-cost, efficient method to notify interested parties of proposed rule makings.

ARC 1015C No questions on proposed amendments to 90.6(2) relating to the boiler inspection schedule.

ARC 1011C No action on amendments to 91.1(6) pertaining to the adoption by reference of the control and safety device code for boilers.

ARC 1049C No action on amendments to 26.1 regarding federal occupational safety and health standards adopted by reference for digger derricks.

PHARMACY BOARD Lloyd Jessen and Terry Witkowski represented the board. Other interested parties included Dale Todd on behalf of the Iowa Epilepsy Foundation and the Iowa Epilepsy Patient Safety and Education Task Force; Roxanne Cogil on behalf of the Epilepsy Foundation of North/Central Illinois, Iowa, Nebraska; Angela Davis on behalf of the Iowa Pharmacy Association; and Teresa Harms on behalf of the Epilepsy Foundation.

ARC 1031C No action on amendments to 2.9 concerning licensure by license transfer.

ARC 1030C No action on 8.33 pertaining to vaccine and immunization administration by pharmacists. Ms. Witkowski clarified for Rep. Pettengill that the rule was Adopted and Filed Emergency After Notice so that pharmacists could establish protocols in a timely manner for the safety and treatment of patients during the flu season.

ARC 1032C No action on amendments to 8.40(3) regarding the extension or renewal of time related to pilot and demonstration research projects. Ms. Witkowski clarified for Sen. Chelgren that 2013 Iowa Acts, Senate File 446, section 128, allowed for approval of an extension or renewal of a pilot or demonstration research project initially approved for a period not to exceed 18 months.

ARC 1040C No questions on proposed amendments to chs 6 and 7 regarding procedures required during the absence of the pharmacist.

Pharmacy Board (continued)

ARC 1041C Proposed 6.11 and amendments to 6.9(8)"b" pertain to drug product selection. Mr. Jessen stated that the amendments clarify the drug product selection statute, which has been in effect for 27 years. Mr. Jessen explained that 6.11 sets forth five ways for a prescriber to indicate that no drug product selection shall be made or that only a specified drug product may be dispensed. He noted that the generic or lower-cost drug shall be selected if the cost or any part of the cost of a prescription is paid for by public funds under Iowa Code chapter 249A. In addition, 6.11 requires consultation between the pharmacist and prescriber when a drug specifically authorized by a prescriber is not available and provides direction in an emergency situation. Mr. Jessen stated that several public comments have been received and that the board will hold a public hearing to receive further comment.

Mr. Todd expressed support for the amendments and stated that they will improve patient safety and outcomes and save money. Ms. Cogil commended the board for its action and expressed support for the amendments. Ms. Davis expressed concern regarding the difficulty created for a pharmacy when there is a cost differential between the dispensed as written (DAW) product and the amount reimbursed by the pharmacy benefit manager (PBM) and stated that third-party reimbursement needs to be addressed in the rule to protect pharmacies and patients. Ms. Harms stated that recommendations in the 2013 legislation, including regulation of out-of-state pharmacies, clarification of DAW, and financial agreements between insurance companies and pharmacies, did not move forward and need to be addressed in legislation, in rule, and in pharmacy-insurance company contracts, respectively.

Sen. Jochum expressed concern about mandatory generic or least expensive drug selection for persons covered under Medicaid. Ms. Davis confirmed for Sen. Jochum that pharmacists are bound by contracts with PBMs. In response to an inquiry from Mr. Johnson, Mr. Jessen stated that the statute should address generic-to-generic drug product selection and the two-tier system created by Iowa Code chapter 249A.

ARC 1039C No questions on proposed amendments to 11.20(1) regarding the use of the automated medication distribution system (AMDS) by EMS programs.

ARC 1038C No questions on proposed amendments to 22.1(1) and 22.5 pertaining to strip pack dispensing of drugs.

PUBLIC HEALTH DEPARTMENT George Walton, Carmily Stone, Diana Nicholls Blomme, Jill France and Joe Ferrell represented the department.

ARC 1044C Proposed ch 11 pertains to human immunodeficiency virus (HIV) infection and acquired immune deficiency syndrome (AIDS). In response to an inquiry from Rep. Heddens, Mr. Walton stated that the rules are consistent with statute regarding partner notification.

ARC 1077C No questions on the termination of proposed amendments to 28.1 pertaining to licensure fees.

ARC 1036C No questions on proposed amendments to ch 93 that make review and approval of mandatory reporter training curricula a duty of the department.

ARC 1074C Amendments to 95.6 pertain to time-limited fee increases for specific vital records. Discussion pertained to overpayments and to the time-limited fee increases. In response to an inquiry from Sen. Smith, Ms. France explained that because the board adopted the amendments at the same time she was presenting the Notice of Intended Action to the committee, she was not able convey to the board Sen. Smith's concern regarding overpayments. Ms. France confirmed for Sen. Jochum that the Vital Events System provides access to vital records statewide.

Discussion turned to possible committee actions. In response to an inquiry from Rep. Olson, Ms. France stated that a delay of the implementation of the rules would affect the progress of the Vital Events System. Rep. Pettengill expressed concern about the fee increases. Sen. Smith requested that Ms. France convey to the board his concerns regarding overpayments and the need to amend 95.6(2) accordingly.

Motion to delay Rep. Pettengill moved a 70-day delay on ARC 1074C.

Motion failed On a roll call vote of 5 to 4, the motion failed.

Motion to delay Sen. Smith moved a 70-day delay on Item 2 [95.6(2)].

Motion carried On a roll call vote of 9 to 0, the motion carried.

Public Health Department (continued)

- ARC 1075C No action on amendments to chs 96 and 99 pertaining to the establishment of parentage on birth certificates and to vital records modifications.
- ARC 1079C No action on amendments to 134.1 and 134.2(3) regarding trauma care facilities.
- ARC 1080C No action on amendments to 135.1 and 135.2(1) concerning out-of-hospital trauma triage destination protocols.
- ARC 1081C No action on amendments to 137.1 to 137.3 pertaining to initial and continuing trauma education and training.
- ARC 1043C No questions on the proposed rescission of ch 138, trauma system evaluation quality improvement committee.
- ARC 0901C No action on amendments to 133.1 and 133.3 relating to white flashing light authorization. This rule making had been held over from the September meeting.

REGENTS BOARD Keith Bystrom represented the board.

- ARC 1078C No action on amendments to ch 13 pertaining to facilities and grounds, contracting authority, and an update of titles and contact information at Iowa State University.

HUMAN SERVICES DEPARTMENT Nancy Freudenberg, Jennifer Vermeer, and Wendy Rickman represented the department. Other interested parties included Dean Lerner.

- ARC 1000C No questions on proposed amendments to ch 7 pertaining to appeals based on the competitive procurement bid process.
- ARC 0999C No questions on proposed amendments to 41.24(8) and 93.13 concerning a limited benefit plan (LBP) related to the PROMISE JOBS program.
- ARC 1001C Proposed amendments to chs 41, 46 and 60 prohibit the use of an electronic access card at certain locations. In response to committee members' questions, Ms. Freudenberg clarified that the amendments mirror federal rules as a stipulation for a federal grant related to cash assistance.
- ARC 0991C No action on amendments to ch 54 pertaining to case records, financial and statistical reports and cost reports related to residential care facilities.
- ARC 0990C No action on 75.1(41)"a" regarding Medicaid eligibility for family planning services.
- ARC 1027C No questions on the termination of proposed amendments to ch 77 concerning the transition from individual providers under the consumer-directed attendant care (CDAC) option to agency-provided personal care services or the retention of the consumer choice option (CCO).
- ARC 0994C No action on amendments to chs 78, 79 and 81 concerning reimbursement, cost reports, and recoupment of debts owed Medicaid related to nursing facilities. Ms. Freudenberg summarized the changes made by the department in response to public comment. In response to an inquiry from Rep. Heddens, Ms. Vermeer stated that providers have been included in discussion about the changes to cost reports and will receive notice regarding the amendments from the department and from provider associations.
- Mr. Lerner stated that pursuant to Iowa Code section 249A.2, Medicaid funds are intended for the care of and services for beneficiaries and that the amendments do not sufficiently address accountability for the disbursement of Medicaid funds for provider training, association dues, accounting, and attorney fees. He requested that the committee delay the rule to further examine these issues.
- ARC 0995C No action on amendments to 82.5 regarding financial and statistical reports for intermediate care facilities for persons with an intellectual disability.
- ARC 1007C Proposed amendments to chs 109 and 110 pertain to licensure status and notifications related to child care centers and child development homes (CDHs). Ms. Rickman clarified for Sen. Jochum that the provisional license must be posted in a child care center in which a corrective action plan is underway.
- ARC 0996C No action on amendments to chs 109 and 110 pertaining to provider immunization and health care requirements and provider files related to child care centers and CDHs.
- ARC 1045C No questions on proposed amendments to chs 9 and 97 relating to confidentiality of support payment records.
- ARC 1069C No action on ch 76 pertaining to Medicaid enrollment and reenrollment.
- ARC 1051C No action on amendments to chs 77 to 79 and 88 concerning the administration, case management and method of reimbursement for habilitation services.

Human Services Department (continued)

- ARC 1071C No action on amendments to chs 77 to 79 relating to the HCBS transportation services rate.
- ARC 1052C No action on 78.1(1)"h" pertaining to the elimination of reimbursement for elective, non-medically necessary cesarean sections.
- ARC 1054C No action on amendments to 78.3(16) relating to required prior authorization for skilled nursing care in a hospital swing bed.
- ARC 1056C No action on amendments to chs 78, 79 and 83 related to Medicaid provider reimbursement rate increases.
- ARC 1057C No action on amendments to ch 79 pertaining to the reimbursement methodology for case management services under the Medicaid state plan, habilitation, home- and community-based waiver services for individuals with a brain injury and for the elderly.
- ARC 1058C No action on amendments to ch 79 concerning the payment methodology for home health services and private duty nursing and personal care.
- ARC 1070C No action on 80.7 regarding the health care data match program.
- ARC 1059C Amendments to ch 92 pertain to the suspension of IowaCare enrollment beginning July 1, 2013. In response to an inquiry from Rep. Pettengill, Ms. Freudenberg stated that there are no provisions for persons who wish to enroll in the current system between October 1, 2013, and January 1, 2014.
- ARC 1072C No action on amendments to ch 92 regarding the payment methodology for federally qualified health centers and the elimination of the funding pool for laboratory and radiology services.
- ARC 1046C No questions on proposed amendments to 119.1 to 119.5 pertaining to conditional employment for certain employees and conditional participation in training programs pending completion of record check evaluations.
- ARC 1060C No action on amendments to 150.9(5)"p" pertaining to the elimination of purchase of service to set supervised apartment living rates and an increase in child welfare emergency services juvenile shelter care reimbursement rates.
- ARC 1061C No action on amendments to 156.6 concerning an increase in the foster family daily reimbursement and adoption subsidy daily maintenance rates.
- ARC 1062C No action on amendments to 156.8(2) and 156.12(1) regarding an increase in the monthly maintenance rate and initial allowance for supervised apartment living.
- ARC 1063C No action on amendments to 170.4(7)"a" pertaining to the child care assistance provider rate ceiling increase.
- ARC 1064C No action on an amendment to 187.12(2) related to an increase in the youth stipend and provider rates for the preparation for adult living (PAL) program.

Committee business

The minutes of the September 10 and 11, 2013, meeting were approved.

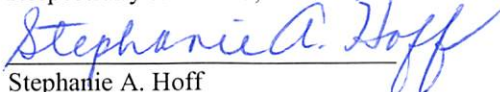
The next meeting was scheduled for Friday, November 8, 2013, at 9:30 a.m.

Glen Dickinson, director of the Legislative Services Agency (LSA), explained a draft document presenting new tools currently in development to enable the public to follow the rule-making process more easily: a rules tracker, a view of prepublication emergency rule-making documents, a combined index to the Iowa Code and the Iowa Administrative Code, and a document comparison result. Rep. Pettengill requested that the rules tracker also provide a link to the rule as it appeared before Notice and before adoption.

Adjourned

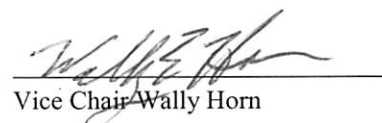
The meeting was adjourned at 3:25 p.m.

Respectfully submitted,


Stephanie A. Hoff

APPROVED:


Chair Dawn Pettengill


Vice Chair Wally Horn