

**MINUTES OF THE FEBRUARY 2017 MEETING
OF THE
ADMINISTRATIVE RULES REVIEW COMMITTEE**

Date of meeting: The regular, statutory meeting of the Administrative Rules Review Committee (ARRC) was held on Friday, February 10, 2017, in Room 103, State Capitol, Des Moines, Iowa.

Members present: Representative Dawn Pettengill, Chair, and Senator Mark Chelgren, Vice Chair; Senators Mark Costello, Wally Horn, and Jack Whitver; Representatives Megan Jones, Rick Olson, Art Staed, and Guy Vander Linden were present. Senator Pam Jochum was not present.

Also present: Jack Ewing and Tim Reilly, Legal Counsel; Stephanie A. Hoff, Administrative Code Editor; Colin Smith, Administrative Rules Coordinator; fiscal staff; caucus staff; and other interested parties.

Convened Rep. Pettengill convened the meeting at 9:05 a.m.

Motions Rep. Vander Linden moved that Rep. Pettengill be elected chair of the committee, and Rep. Jones moved that Sen. Chelgren be elected vice chair of the committee.

Motions carried Rep. Pettengill and Sen. Chelgren were elected chair and vice chair, respectively.

Fiscal overview Christin Mechler presented the LSA fiscal report.

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT Margaret Thomson represented the department.

ARC 2894C Proposed amendments to 68.13 concern the adoption by reference of dairy inspection manuals for public health service requirements.

In response to a question from Sen. Chelgren, Ms. Thomson stated that the most substantive change pertains to milk laboratories, specifically, validation of new residue testing related to antibiotics.

UTILITIES DIVISION Cecil Wright and Brenda Biddle represented the division.

ARC 2910C Proposed amendments to 36.1 to 36.5 and 36.7 pertain to energy efficiency planning and reporting for non-rate-regulated gas and electric utilities. Mr. Wright stated that the amendments would be revised based on proposed 2017 legislation related to reporting requirements.

In response to a question from Rep. Pettengill, Ms. Biddle stated that a plan states the goals for the next four or five years, whereas a report presents the results of and updates to the plan goals.

ARC 2917C No action on amendments to ch 45 concerning electric interconnection of distributed generation facilities.

In response to questions from Sen. Chelgren, Ms. Biddle stated that national standards are referred to in the rules and that the amendments incorporate best practices that have been nationally adopted. In addition, she stated that extensive comment was received from stakeholders, that utilities and environmental companies filed joint comments that reflected substantial agreement on the amendments, and that the cost-based increases in fees were agreed to by stakeholders.

ECONOMIC DEVELOPMENT AUTHORITY Kristin Hanks-Bents represented the authority.

ARC 2893C Proposed amendments to ch 42 pertain to the Iowa tourism grant program. In response to questions from Rep. Pettengill, Ms. Hanks-Bents stated that tourism industry stakeholders originally agreed to the scoring criteria, including the population diversity criterion, and that stakeholders have now proposed that this criterion be removed from the scoring criteria in 42.4(1).

ENVIRONMENTAL PROTECTION COMMISSION Catharine Fitzsimmons, Christine Paulson, Matt Dvorak and Connie Dou represented the commission.

ARC 2895C Proposed amendments to 22.1(3) and 22.105(1) pertain to air quality, specifically, the permit application process.

Environmental Protection Commission (continued)

In response to questions from Rep. Pettengill, Ms. Paulson stated that these amendments pertain to submission requirements rather than to the number of days in the permitting process. Ms. Fitzsimmons added that the amendments address items that resulted from the lean business process improvement event and, though the items are not directly related to the larger goals of the event, they are important and warrant attention.

ARC 2911C No action on amendments to 61.3 regarding water quality criteria for copper.

RACING AND GAMING COMMISSION Brian Ohorilko represented the commission.

ARC 2927C No action on amendments to chs 1, 4 to 6, and 10 to 12 pertaining to persons subject to gaming board authority; medical personnel; mobile pari-mutuel wagering; partnerships; grounds for sanction; horse racing; gambling games; and accounting and cash control.

IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM Donna Mueller and Monique Zhao represented IPERS.

ARC 2892C Proposed amendments to chs 1, 3 to 6, 10 to 12, 14, 19, 20, 31, and 33 pertain to organization, the benefits advisory committee, protection occupations, employers, coverage, benefits, beneficiary designations, and rule making.

In response to a question from Sen. Chelgren, Ms. Mueller explained the voting procedures by the entire membership of the benefits advisory committee (BAC) for the employer groups and for employee groups to be represented on the BAC.

PUBLIC HEALTH DEPARTMENT Susan Dixon, Carmily Stone, Jennifer Hart, Angela Leek, Rebecca Curtiss, Diane Williams, Ken Sharp, Kimberly Piper and Randy Mayer represented the department.

ARC 2900C Proposed amendments to 25.1 and 25.4 concern an update of references to the 2015 edition of the Uniform Plumbing Code within the state plumbing code.

In response to an inquiry from Rep. Vander Linden, Ms. Hart explained that the Uniform Plumbing Code (UPC) is required by Iowa Code chapter 105 to be adopted by reference as the state plumbing code in department rules. She explained that amendments to the UPC adopted by the department are available on the department Web site and in state amendment books available free of charge to licensees and organizations. Ms. Hart stated that the UPC is searchable and is also available free of charge to the public in its entirety on the UPC Web site.

ARC 2901C Proposed amendments to 41.1 pertain to handheld x-ray equipment for intraoral radiography.

In response to a question from Sen. Chelgren, Ms. Leek stated that the amendments apply only to devices used for diagnostic purposes in dental facilities.

ARC 2902C Proposed amendments to ch 136 concern the trauma registry.

Rep. Jones inquired about the definition of "reportable patient data," specifically, department authority to determine reportable data and the privacy and security of patient data; technical issues related to the online Iowa Trauma Patient Data Dictionary; the time frames and sources for patient data reports in 136.2(2)"b"; whether 136.2(4) refers to reportable patient data; and the approval of variances from the rules by the director and the meaning of "undue hardships" in 136.2(6)"c."

In response, Ms. Curtiss stated that because the time frames for patient data reports by individual hospitals have been sporadic and inconsistent, the amendments will require specific time frames based on federal standards. Ms. Williams stated that hospitals' trauma-specific data submitted through the trauma registry and the verification process are confidential and explained that the draft online data dictionary had been intended only for comment. Mr. Sharp explained the requirements for and process by which a variance related to undue hardships may be granted pursuant to ch 178.

Rep. Jones stated that for clarification, the online 2005 data dictionary still in force needs to be made available until these amendments are filed and in effect; that the data referred to in 136.2(4) and the language regarding undue hardships in 136.2(6)"c" should be made more specific; and that the amendments should be reviewed overall for completeness.

Public Health Department (continued)

Regarding the data dictionary, Rep. Pettengill commented on the statement that the department and its programs are exempted from the provisions of the federal Health Insurance Portability and Accountability Act (HIPAA) and reported that hospitals within her district are wondering about the security of patient data that the hospitals are required to report to the department. She also questioned the applicability of the categories of patient data that are required to be reported to the department.

In response, Mr. Sharp assured the committee that the department must comply with extensive, strict confidentiality provisions under both state and federal law. He explained the exemption of the department and its programs from HIPAA regulations that apply specifically to patient data collection by hospitals. He further explained that an accurate, comprehensive analysis of the patient data related to traumatic events enables the department to work with hospitals' quality improvement systems to reduce the incidence and consequences of trauma by examining the causes of past trauma events and ways to prevent future trauma events.

Rep. Pettengill expressed concern about issues related to patient data, including the applicability and necessity of some categories of patient data and the security of state computer systems. She suggested that an identification number other than a person's social security number be used and that a comprehensive review of data collection be conducted to assure persons of HIPAA protection. Rep. Pettengill stated that the state should be cautious not only about the data disseminated but also about the data collected.

ARC 2903C No questions on proposed amendments to chs 23 and 27 to 30 related to licensee application, examination, licensure, continuing education and fees for plumbing and mechanical systems professionals.

ARC 2929C No action on amendments to 4.3 and 4.11 pertaining to the Iowa newborn screening program. Rep. Jones commended the rules and suggested that, for clarification in Item 4, the word "informed" should be added to the phrase "parental consent" in 4.3(8)"b"(4) and to the phrase "written consent" in 4.3(8)"c." Ms. Piper confirmed for Rep. Jones that residual newborn screening specimens are stored for five years and then destroyed. Sen. Chelgren suggested that the term "informed consent" be further explained or defined. Rep. Pettengill also commended the rules.

ARC 2931C No action on amendments to ch 186 relating to the governmental public health advisory council.

ARC 2933C Amendments to 95.2, 95.7 and 95.10 pertain to vital records.
Rep. Pettengill explained that a bill sponsored by the chairperson of the House committee on local government is in process to address the concerns of the county recorders regarding the amendments. Rep. Pettengill explained that a 70-day delay would allow the legislature to address the concerns and, if the legislature takes no action, the amendments will become effective upon adjournment of the general assembly.

Motion to delay Rep. Jones moved a 70-day delay on ARC 2933C.

Motion carried On a voice vote, the motion carried.

Rep. Pettengill concurred with a suggestion by Mr. Ewing that, for a status check, the rule making be placed on the April agenda for special review.

ARC 2934C No action on amendments to ch 11 concerning HIV infection and AIDS. In response to an inquiry from Rep. Pettengill, Mr. Mayer stated that Iowa Code section 141A.9 addresses confidentiality of HIV-related data separately from all other reportable diseases and that social security numbers are not collected and included in that data. At the request of Rep. Pettengill, Mr. Mayer agreed to provide to her and to Rep. Jones a list of the HIV patient data that is collected.

ARC 2935C No action on amendments to ch 1 regarding the reporting of communicable and infectious diseases, poisonings, and conditions.

In response to a question from Rep. Vander Linden about a health matter unrelated to the rule making, Mr. Sharp stated that infestations of bed bugs and head lice are not a public health risk in terms of disease transmission and that bed bug and head lice data are not required to be reported and collected pursuant to ch 1.

Public Health Department (continued)

Mr. Sharp explained that from resource and disease transmission perspectives, these infestations are not feasible to report; however, he stated that the department provides telephone consultation to the public about how to deal with bed bugs and head lice. He added that a statutory provision would be needed to clarify the inclusion of these nuisances in rule. In response to a question from Sen. Costello, Mr. Sharp explained that in addition to telephone consultations, the department provides informational material to the public and that rules of the department of inspections and appeals address infestations in hotels and motels. He stated that there is no regulatory structure in place to address bed bugs and head lice and that the telephone consultations have worked effectively. In response to an inquiry from Sen. Chelgren, Mr. Sharp stated that the department would want to discuss the expectations set forth in legislation, specifically, data collection and analysis and public notification versus the one or two current daily telephone consultations regarding infestations of bed bugs and head lice.

Special Review

Rep. Pettengill, who requested a special review of 41.6(4)"b" and "d" pertaining to x-ray machines for mammography, explained that legislation requiring that breast density be communicated in a mammogram report has been requested by interested parties. Rep. Pettengill stated that the existing provisions in rule would seem to provide for reporting breast density in an explanation of clinical findings, if any, and in the communication of the results to the patient. She concluded that because the rules require that findings be communicated, legislation does not appear to be needed.

In response, Ms. Leek explained that under Iowa Code chapter 136C, the department regulates the installation and use of radiation machines but that a mammogram report by the interpreting physician is not necessarily related to the regulation of radiation machines. The rules under discussion, she continued, are based on the department's agreement with the federal Food and Drug Administration (FDA) to administer mammography quality standards on behalf of the FDA for all Iowa facilities. Ms. Leek explained that as part of that agreement, the department must remain compliant with the FDA's interpretation of the rules and that the department must enforce the rules under review, which match the requirements of the federal Mammography Quality Standards Act (MQSA). She stated that at present, MQSA does not include breast density as part of the communication in an interpreting physician's report to a physician or to the patient in a letter from the patient's physician. Ms. Leek stated that the U.S. Congress has not amended MQSA to require the inclusion of breast density in reports by interpreting physicians and that legislation would be needed for the department to include breast density in rules regarding mammogram reports.

Mr. Sharp added that breast density is not sufficiently defined and that several physicians who view the same image may interpret it differently. Based on the possibility of variations among interpretations, Mr. Sharp explained that, as a public health agency, the department is opposed to dictating physician-patient communication about the designation of breast density. Mr. Sharp stated that the department would need legislative guidance to provide verification of that designation.

In response to questions from Rep. Vander Linden, Ms. Leek explained how the department's rules may be more stringent than and, at the same time, be in compliance with MQSA and that if the department enforced the rules differently from MQSA, the FDA could repeal the department's approval and directly regulate all Iowa facilities.

Sen. Chelgren requested that the department provide the federal definition of "incomplete" and suggested that further defining the term "incomplete," found in 41.6(4)"b"(8)"6," to include breast density might preclude the need for legislation. Rep. Olson requested that the department consult with its assistant attorneys general to inquire about a state's discretion in interpreting federal regulations differently. Ms. Leek, explaining that the department needs to maintain a strong basis for enforcement of the rules, will provide the committee with the information requested by Sen. Chelgren and Rep. Olson.

DENTAL BOARD Phil McCollum represented the board.

- ARC 2919C Proposed amendments to 27.1 and 27.10 pertain to principles of professional ethics and to retirement from or discontinuance of practice.
- In response to questions from Rep. Olson, Mr. McCollum explained that the national dental and dental hygiene codes of ethics are the basis for determinations made by the board at the state level and that no positive or negative feedback regarding the amendments had yet been received. Rep. Pettengill requested that the board include in its rules the Web site or other location where the national dental and dental hygiene codes of ethics may be made accessible to practitioners and to the public.
- ARC 2923C No questions on proposed amendments to 22.5 regarding dental assistant radiology qualification examinations.

PHARMACY BOARD Terry Witkowski and Sue Mears represented the board.

- ARC 2904C Proposed amendments to ch 11 pertain to drugs in emergency medical service programs.
- In response to a question from Sen. Chelgren, Ms. Mears stated that all of the board's rules require that records be kept for two years. She explained that some drugs have an expiration date that extends beyond two years but that service programs and pharmacies are required to store drugs at proper temperatures in controlled environments to maintain drug potency within the manufacturer's expiration date and that pharmacies and service programs have policies and procedures to ensure proper handling, storage and maintenance of drugs.
- In response to a question from Rep. Olson on a matter unrelated to the rule making, Ms. Witkowski stated that the board's rules identify unethical conduct but that the board has not established a code of ethics for pharmacists.
- ARC 2905C No questions on proposed amendments to ch 37 regarding the Iowa prescription monitoring program.

REVENUE DEPARTMENT Victoria Daniels represented the department.

- ARC 2896C No questions on proposed amendments to chs 12, 42 and 52 and the proposed adoption of ch 250 regarding renewable fuels tax credits and rebates.
- ARC 2915C No action on amendments to ch 8 regarding forms and communications.
- ARC 2925C No action on amendments to chs 42 and 52 regarding the solar energy system tax credit.
- ARC 2928C No action on amendments to chs 42 and 52 pertaining to the historic preservation and cultural and entertainment district tax credit.
- In response to a question from Sen. Horn on an unrelated matter, Ms. Daniels stated that the department is aware of the difficulty the public has encountered in reaching the department by telephone and that the new telephone system is being modified, a chat function has been added, and e-mail correspondence is available.

TRANSPORTATION DEPARTMENT Craig Markley, Timothy Allen, Sara Siedsma, Jeff Sundholm and Christopher Little represented the department.

- ARC 2906C Proposed amendments to 28.1 to 28.3 pertain to the Iowa transportation map.
- In response to an inquiry from Sen. Chelgren, Mr. Markley explained that navigation is the primary use of the Iowa transportation map and that approximately 1.6 million maps are printed biannually and distributed to a variety of public places, including public offices, DOT offices, court houses, rest areas and welcome centers, and are sent in response to telephone requests. In response to a question from Rep. Jones, Mr. Markley stated that approximately 250,000 bicycle maps are printed biannually. Rep. Jones suggested that based on her experience, people are seeking transportation maps, not bicycle maps. Sen. Chelgren requested that the department provide information regarding the percentages of distribution and the types of transportation maps distributed.
- ARC 2908C Proposed amendments to chs 400, 401, 425, 602 and 604 regard autocycles.
- In response to an inquiry from Sen. Chelgren, Mr. Markley stated that, like motorcycles, autocycles are configured to have one small rear license plate. Sen. Chelgren questioned why autocycles would be treated differently from automobiles for which a front and a rear license plate are required, unless the statute so stipulates, and requested that the department examine the issue.

Transportation Department (continued)

- ARC 2921C Proposed amendments to 615.37 pertain to service of notices.
In response to a question from Rep. Olson, Ms. Siedsma explained the mailing and signoff processes supervised by the mail unit supervisor. At the request of Rep. Olson, Ms. Siedsma will clarify whether mailing of the notice means when the department sends the notice to the vendor who delivers it to the post office or when the vendor delivers the notice to the post office. Rep. Olson expressed the opinion that the person who delivers the notice to the post office would sign the proof of service.
- ARC 2922C No questions on proposed amendments to 4.4(2)"b" and 4.9 regarding public records and fair information practices.
- ARC 2907C No questions on proposed ch 540, transportation network companies.
- HUMAN SERVICES DEPARTMENT** Nancy Freudenberg, Debbie Johnson, Mikki Stier and Wendy Rickman represented the department. Other interested parties included Shelly Chandler on behalf of the Iowa Association of Community Providers.
- ARC 2897C Proposed amendments to ch 78 pertain to home health services and medical social services. Regarding the time frame for review of the treatment plan for home health services, Sen. Chelgren stated that the existing 62-day review interval provides a window, whereas the proposed 60-day review interval does not.
- ARC 2898C Proposed amendments to ch 58 concern emergency assistance.
In response to a request from Rep. Pettengill, Ms. Freudenberg stated that the department will provide information regarding what is meant by the phrase "a sufficient surety bond" in 58.23(2)"b." Rep. Pettengill requested that regarding the rule-making process, the department be aware of a bill that would allow the department to contract with a statewide agency and local entities for emergency assistance.
- ARC 2899C No questions on proposed 79.7, medical assistance advisory council.
- ARC 2912C No action on amendments to ch 86 pertaining to covered services and poverty limit adjustments related to the HAWK-I program. In response to a question from Rep. Staed, Ms. Freudenberg explained that occupational therapy services are covered but that rehabilitation services are not specified in the statute.
- ARC 2920C No questions on proposed amendments to chs 77, 78 and 79 regarding Medicaid waiver services, including assessment tools, case management and a definition of "brain injury."
- ARC 2930C No action on amendments to chs 77 to 79 pertaining to reimbursement for drugs and reimbursement to Indian health facility services.
- ARC 2932C No action on an amendment to 79.1(2) regarding a rate increase for the home health low utilization payment adjustment (LUPA).
- ARC 2936C No action on amendments to chs 78, 79 and 83 pertaining to rate increases and the annual limit for home- and community-based service (HCBS) and intellectual disability (ID) waiver services and specialized medical equipment.
Ms. Chandler explained that the department had not prior to the implementation of managed care conducted a complete rebasing process, which should have included in the calculation weighted averages for managed care, and she expressed concern about the effect of the incomplete rebasing process on Medicaid members who may have been eligible for the rebased rate and on HCBS providers for whom the 1 percent increase may be less than it should have been. Ms. Chandler added that at the time rebasing occurred in 2015, every provider was on fee for service because managed care had not yet been implemented and that the department's exemption after the fact of providers who went into managed care is punitive to those providers. In response, Ms. Freudenberg stated she understood that the department rebased the rates for persons on fee for service and that rebasing would not have applied to managed care organizations (MCOs) because rate increases are contractual issues to be negotiated between the MCOs and providers.
Rep. Staed expressed concern regarding the exclusion from new rates of providers who have contracts with MCOs, the providers' costs exceeding the rate base and the inability of providers to continue to provide services because of low rate floors.

Human Services Department (continued)

In response, Ms. Stier explained the setting of rate floors, which is the starting point for the negotiation process between providers and MCOs, and the incentive of MCOs to raise rates based on the providers' justification for the care of Medicaid members. Noting that rate floors for MCOs were based on fiscal year 2014 claims and were set in 2015, Ms. Johnson explained that the department is in the process of going back and resetting the rate floors based on claims paid, not rates set, for 2015 and 2016, to examine what has happened with rate floors. She also reiterated that the rates can never go below the floor that is set but that the rates can go above the floor through negotiation between the providers and the MCOs.

Ms. Chandler stated that the calculation made by the department to determine weighted averages from fiscal year 2014 is outdated and that the association has requested that the department recalculate the weighted averages based on actual claims paid in the year before managed care went into place. She added that the association is not asking for more money but rather that, for all providers, the rates be based on current information.

After raising the possibility of a session delay, which, according to Ms. Chandler, would in effect remove the 1 percent increase, Rep. Vander Linden concluded that there is no action the committee can take except to take Ms. Chandler's concerns under advisement through other channels.

ARC 2918C

Proposed ch 106 pertains to certification standards for children's residential facilities. In response to questions from Rep. Pettengill, Ms. Rickman noted that the departments of public safety, human services, education, inspections and appeals and natural resources were involved in the development of the rules and that the department received input from current facilities, including Scattergood Friends School.

Committee business

The minutes of the January 6, 2017, meeting were approved.

The next meeting was scheduled for Friday, March 10, 2017, at 9:15 a.m.

Mr. Ewing discussed an updated summary of the LSA analysis of rule makings that implement bills enacted during the 2016 legislative session. At the request of Sen. Chelgren at the January meeting, the summary distinguishes between bills involving technical updates to existing rules and bills involving promulgation of new, substantive rules. Mr. Ewing stated that the summary will continue to be updated. In response to a question from Sen. Chelgren, Mr. Ewing stated that an analysis of bills prior to 2016 may be completed on a case-by-case basis.

Mr. Ewing reported that former committee legal counsel Joe Royce may be present at the March or April meeting to address questions from the committee regarding issues related to administrative rules.

Adjourned

The meeting was adjourned at 12:15 p.m.

Respectfully submitted,


Stephanie A. Hoff

APPROVED:


Chair Dawn Pettengill


Vice Chair Mark Chelgren