

**MINUTES OF THE MAY 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 Wednesday, May 3, 2017, in Room 116, State Capitol, Des Moines, Iowa.
- Members present:** Representative Dawn Pettengill, Chair, and Senator Mark Chelgren, Vice Chair; Senators Mark Costello, Wally Horn, Pam Jochum, and Jack Whitver; Representatives Megan Jones, Rick Olson, and Guy Vander Linden were present. Representative Art Staed 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 a.m.
- Fiscal overview** Christin Mechler presented the LSA fiscal report.
- HUMAN SERVICES DEPARTMENT** Merea Bentruff and Wendy Rickman represented the department. Other interested parties included Bill Nutty on behalf of the Iowa Health Care Association.
- ARC 3016C** Proposed amendments to 75.24(3)"b" pertain to an increase in the maximum Medicaid rate for intermediate care facilities for individuals with an intellectual disability. In response to a question from Rep. Pettengill, Ms. Rickman stated that the fiscal impact is thought to be minimal and is included under the projections for the Medicaid program. Ms. Rickman will provide information to the committee about why, as stated in the fiscal report, there would be a cost to the Medicaid program and not to the state.
- ARC 3017C** No questions on proposed amendments to 75.23(3) and 75.24(3)"b" regarding a decrease in the statewide average private-pay cost of nursing facility services and of charges for institutional care.
- Mr. Nutty disputed the decrease in the statewide average costs of nursing facility services to a private-pay person and questioned the methodology used to determine the average costs and provided the committee with statistical information to show an increase, not a decrease, in costs. Mr. Nutty stated that the association is working with the department's accounting firm to understand the methodology and, in the meantime, requested a delay in the adoption of the amendments.
- Rep. Pettengill expressed interest in the methodology that was used to determine the costs. Ms. Bentruff stated that the department's methodology has not changed and that the department will review the public comment before adoption of the amendments.
- ARC 3020C** Proposed amendments to ch 142, which are related to the interstate compact on the placement of children, pertain to the use of the national electronic interstate compact enterprise (NEICE) system.
- Rep. Pettengill requested that the department ensure that the required data elements and information programmed for acceptance by the NEICE system, referred to in 142.9(2), meet the requirements of the Iowa Code.
- ARC 3040C** Proposed amendments to chs 108, 112 to 114, 116, 117, 156 and 202 pertain to alignment of rules related to foster care with the rules related to child care; contractor preservice training; and updates of terminology.
- In response to an inquiry from Rep. Jones about the impetus for the amendments, Ms. Rickman stated that a review of eligibility policy resulted in amendments that align the standards for foster care homes with the standards for child care facilities, in particular regarding safety.
- Rep. Jones pointed out several amendments which, in her opinion, seem unclear and too restrictive and which relate to the following: co-sleeping, methods for monitoring sleeping infants, medication logs, containment and disposal of animal waste, confidentiality related to social media, health reports and data protection, background checks, and foster parent training.

Human Services Department (continued)

In response, Ms. Rickman agreed to provide the committee the definition of co-sleeping; explained reasonable monitoring of sleeping infants and, in light of the prohibition on video or surveillance cameras, will review the use of webcams; stated that the medication log pertains only to the child; explained the need for a clean environment for a child; explained that the main goal is securing permission from the guardian before information about the child is posted on the Internet; explained that the general health report is collected during the home study, concerns long-term health issues, and is only available to the matching department worker, and, after data are entered in the system, paper copies are destroyed; explained that additional incidents necessitate further background checks; and explained the department's plan for making foster parent training available more regularly and conveniently.

Rep. Pettengill inquired about the prohibition on vaping, the medical form, and the use of Iowa courts online for background checks. In response, Ms. Rickman agreed to check on the recommendation of pediatricians regarding vaping and on whether the child care rules require a physician to complete the child's medical form and to apply reasonable due diligence in relying on Iowa courts online.

Rep. Jones commended the department's focus on safety but expressed the view that existing rules should be enforced. Ms. Rickman, regarding the department's ability to reasonably carry out the existing standards, assured the committee that the department will review the rules to ensure clarity and to establish in the rules the intent of reasonableness.

ADMINISTRATIVE SERVICES DEPARTMENT Tami Wiencek represented the department.

ARC 3041C No action on amendments to 64.10(2) pertaining to out-of-state travel by state employees.

Committee review of emergency rule making Ms. Wiencek presented to the committee a rule making for which the department seeks approval for adoption on an emergency basis. Ms. Wiencek explained that the rule making, which pertains to military leave and amends ch 63, is intended to create greater equality among employees whose shifts are greater than 16 hours with employees whose shifts are 16 hours or less. She explained that the amendment creates greater equality by limiting military leave for employees whose shifts are more than 16 hours to 30 calendar days in accordance with Iowa Code section 29A.28(1)"a" for military duty of 30 days or more, while providing 30 work days of leave for employees whose shifts are 16 hours or less. In response to a question from Rep. Pettengill, Ms. Wiencek verified that public comment would be ensured by the filing of an Adopted and Filed Emergency and a Notice of Intended Action.

Motion to approve Rep. Pettengill moved approval of an emergency filing.

Motion carried On a voice vote, the motion carried.

ATTORNEY GENERAL David Dorff and Mark Schuling represented the attorney general.

Special Review At the April 7, 2017, meeting, the committee voted to impose a 70-day delay on ARC 2979C. Committee members had expressed concern that the revised language of the eleventh right in the statement of property owner's rights appeared to provide less, not more, time for a person to vacate property that will be subject to eminent domain and had suggested that the language be clarified to reflect more closely the language of Iowa Code section 6B.54(4).

In advance of the meeting, Mr. Dorff provided revised language to the committee for review. Mr. Schuling explained that the revised text of the eleventh right mirrors Iowa Code section 6B.54(4), which Mr. Dorff read aloud for the benefit of a comparison to the revision of the eleventh right.

Rep. Pettengill expressed appreciation to Mr. Dorff and Mr. Schuling for their work on the revised language.

INSURANCE DIVISION Bob Koppin and Chance McElhaney represented the division.

ARC 3032C Proposed amendments to ch 96 pertain to synthetic guaranteed investment contracts. In response to concern expressed by Rep. Pettengill regarding the absence of a statutory basis for the amendments, Mr. Koppin and Mr. McElhaney, who explained the amendments in relationship to the National Association of Insurance Commissioners (NAIC) model rule for these contracts, will meet with Rep. Pettengill for further discussion.

ARC 3033C No questions on proposed amendments to ch 98 pertaining to internal audit function requirements. Rep. Pettengill noted that the amendments implement 2016 legislation. At the request of Rep. Pettengill, Mr. McElhaney agreed to look into the status of the promulgation of rules regarding 2016 Iowa Acts, House File 2394, related to groupwide supervision of internationally active insurance groups.

ACCOUNTANCY EXAMINING BOARD Robert Lampe represented the board. Interested parties also included Mark Wackerbarth on behalf of the Iowa Society of CPAs.

ARC 3019C Proposed amendments to chs 3 and 14 and the proposed adoption of ch 13 pertain to rules of professional ethics and conduct.

In response to a question from Rep. Pettengill, Mr. Lampe stated that candidates are required to pass an examination covering the code of ethical conduct before they are issued of a certificate as a certified public accountant.

Mr. Wackerbarth expressed support for the amendments, noting that the amendments will make more uniform the practice of accountants who practice across state borders and the administration of licensure by the board.

ARCHITECTURAL EXAMINING BOARD Jerry Purdy, vice chair of the board, and Lori SchraderBachar represented the board.

ARC 3014C No questions on proposed amendments to 7.3 regarding an update to a cross reference.

ARC 3015C Proposed amendments to 4.1 regard rules of conduct.

In response to a question from Rep. Pettengill, Ms. SchraderBachar stated that the references to "registered" and related terms will be changed to "licensed" and related terms after the enrolled bill is signed by the Governor. In addition, Ms. SchraderBachar confirmed that the term "licensed" will apply to the licensure of all architects.

ARC 3022C No action on amendments to 3.3(4) regarding the reporting of continuing education hours for reinstatement to active status.

INTERIOR DESIGN EXAMINING BOARD Jay Reyhons, board chair, and Lori SchraderBachar represented the board.

ARC 3024C No action on amendments to chs 1 and 5 to 7 concerning a description of board organization; disciplinary authority; investigations and proceedings; and grounds for discipline.

In response to questions from Rep. Jones, Rep. Pettengill and Sen. Chelgren, Ms. SchraderBachar stated that the board uses a modified version of Robert's Rules of Order for the conduct of meetings; explained that the number of board members on the disciplinary committee was reduced to be less than a quorum of the board as is true for the other licensing boards; and explained that the only instance of discipline by the board concerned the completion of required continuing education by a licensee who was allowed an extension of time for completion.

ARC 3025C No action on amendments to chs 2 and 3 and the rescission of ch 8 pertaining to registration; continuing education; and renewal and reinstatement.

In response to a question from Rep. Jones, Ms. SchraderBachar explained that satisfactory evidence for the granting of registration by reciprocity is the same as that required of Iowa registrants and includes a current certificate issued by the National Council for Interior Design Qualification (NCIDQ). In response to a question from Sen. Chelgren, Mr. Reyhons stated that because Iowa Code chapter 544C is a title Act, not a professional practice Act, designers are not required to have professional insurance although most designers do have it and are not required to be bonded. Mr. Reyhons stated that the registration of interior designers, which requires the knowledge of life, fire and safety codes, enables the public to know that registrants meet the requirements.

EARLY CHILDHOOD IOWA STATE BOARD Shanell Wagler represented the board.

- ARC 3011C Proposed amendments to ch 1 pertain to the early childhood Iowa initiative.
In response to an inquiry from Rep. Pettengill, Ms. Wagler stated that the board is in the process of transitioning from the levels of excellence process to a new process pursuant to 2016 legislation.

EDUCATION DEPARTMENT Phil Wise and Nicole Proesch represented the department.

- ARC 3030C No questions on the proposed rescission of ch 94, administrative advancement and recruitment program.
- ARC 3031C No questions on proposed amendments that, pursuant to 2016 Iowa Acts, chapter 1036 (House File 2336), make technical corrections to 17.10 and 17.11 related to open enrollment, specifically, method of finance and special education students.
- ARC 3042C No action on ch 65, programs for at-risk early elementary students.

EDUCATIONAL EXAMINERS BOARD Darcy Hathaway and Joanne Tubbs represented the board.

- ARC 3012C No questions on proposed amendments to chs 1, 11 to 13, 18, 20 and 22, which resulted from a comprehensive review of rules and which pertain to the executive director; complaints; fees; licenses and endorsements; renewals; and authorizations.

NATURAL RESOURCE COMMISSION Chris Ensminger represented the commission.

- ARC 3013C Proposed amendments to 106.6(7), 106.7 and 106.10(5) pertain to deer hunting by residents.
- Sen. Chelgren expressed concern regarding required adherence to the list of approved cartridges and calibers given the change in the statute that allows straight wall cartridge rifles as an approved method of take. He stated that if a range of approved cartridges and calibers were allowed in lieu of the list, more hunters who may already own a firearm that does not comply with the requirements of the list could participate in this type of hunting. In response, Mr. Ensminger stated that, historically, the department has provided a list of commonly used cartridges to avoid year-to-year fluctuation in the list; however, he stated that further discussion by the commission is anticipated regarding the provision of a range of approved cartridges and calibers. Sen. Chelgren requested that his concerns be conveyed to the commission by Mr. Ensminger.
- In response to an inquiry from Sen. Costello, Mr. Ensminger described the indices by which the department monitors the deer population; explained that the department is raising the quotas in the northeast to reduce the herd and slow the spread of chronic wasting disease (CWD) (i.e., disease management) and is reducing the quotas in the southwest and along the southern border to stabilize the herd affected by epizootic hemorrhagic disease (EHD) (i.e., population management); described the fairly widespread outbreak of EHD in the southeast; and explained that the department anticipates the sale of more tags this year though about 2,000 fewer tags will be available.

PROFESSIONAL LICENSURE DIVISION Susan Reynolds represented the division.

- ARC 3021C Proposed amendments to ch 22 pertain to infection control at barbershops and barber schools.
- Rep. Pettengill inquired about the use of disinfectants and questioned the requirement that a dispensary be located in a barbershop or school. Rep. Olson asked about the method by which barbers are notified of amendments to the rules.
- In response, Ms. Reynolds stated that the agenda for board meetings is posted on the board's Web site and is sent to persons who have requested to be included on a distribution list. Ms. Reynolds agreed that the board would review the dispensary requirement, accept additional public comment on this rule making, and consider distributing administrative rule-related information to all licensed barbers.

PHARMACY BOARD Andrew Funk and Terry Witkowski represented the board. Other interested parties included Charlotte Eby on behalf of TelePharm via the Summit Group.

- ARC 3037C A proposed amendment to 8.35(2) and the proposed adoption of ch 13 concern telepharmacy practice.

Pharmacy Board (continued)

In response to a question from Sen. Chelgren, Mr. Funk stated that these rules would not apply to dispensing by a physician under the physician's license as a practitioner. In response to questions from Rep. Pettengill, Mr. Funk clarified the requirements in these rules regarding prescription volume and distance between the telepharmacy and the managing pharmacy.

Ms. Eby expressed support for the rules.

On an issue not directly related to these rules, Sen. Chelgren expressed concern regarding dispensing by a pharmacist versus dispensing by a physician, for example, via kiosks, including incentives for profit, oversight and patient safety.

ARC 3038C

No questions on proposed amendments to ch 20 and proposed ch 41 pertaining to compounding practices and outsourcing facilities.

ARC 3039C

No questions on proposed ch 19, nonresident pharmacy practice.

REVENUE DEPARTMENT Victoria Daniels and Amy Harris represented the department. Other interested parties included Monte Shaw of the Iowa Renewable Fuels Association and Jeff Robinson of the LSA fiscal services division.

ARC 3036C

Proposed amendments to 68.2(1) pertain to the excise tax rate on motor fuels.

Ms. Daniels explained that Iowa Code section 452A.3 provides that excise tax rates for motor fuel, that is, gasoline and ethanol blended fuel classified as E10 or higher, are based on an ethanol distribution percentage and that section 452A.3 provides that tax rates applicable in each fiscal year are determined by the distribution percentage for the previous complete calendar year. She explained that in July 2017, motor fuel excise tax rates will change as a result of a change in the ethanol distribution percentage calculated for calendar year 2016.

Regarding the original fiscal impact statement, Ms. Daniels stated that the department determined that the ethanol tax rate would remain the same and that the regular gasoline tax rate would decrease. Ms. Daniels explained that, in calculating that change, the department found that a revision of the fiscal impact statement was required.

Ms. Harris added that when the original fiscal impact statement was prepared in March, the percent of refunds as a share of tax revenue was in line with the forecast for 2016 and that the same methodology was used to forecast taxable gallons to be sold in fiscal year 2018. Ms. Harris explained that it was after a review of February and March 2017 tax refunds claimed as a share of taxable revenue that the department determined that the forecasting methodology was inaccurate and that a revised fiscal statement was needed.

Ms. Harris stated that gross fuel excise tax collections, estimated to be \$5.9 million in the original fiscal impact statement, are estimated instead to be \$1.2 million and, at the same time, a drop in refunds of \$0.8 million is estimated to partially offset the decrease resulting in \$0.4 million in revenue for the road use tax fund. The estimated reduction, she explained, is based on historical data about the various purposes for which a refund may be claimed, including transport diversions, and the impact of the rate change on the expected refunds paid under each of those purposes. She emphasized that the methodology for forecasting purposes changed, but the methodology for setting the rate did not change.

Discussion pertained to the revision of the original fiscal impact statement. In response to questions from committee members, Ms. Harris explained that having current data, including that of February and March 2017 distributors' reports, enabled the department to estimate gasoline sales and tax refunds for the next fiscal year but that the rate was not impacted; that tax is being paid on fuel purchased and used in Iowa; and that the reduction in the estimated tax and in refunds may be related to transport diversions' becoming a larger part of refunds. In addition, Mr. Robinson explained the LSA fiscal analysis in which the decrease in revenue mirrors that of the department's revised fiscal impact statement.

Finally, Mr. Shaw, in response to questions from committee members, addressed fuel distribution at terminals, stated that the excise tax rate is set by statute, and expressed the opinion that the difference in the original and current fiscal impact statements appears to be related to the methodology for the forecast of sales and of refunds as a share of revenue.

Revenue Department (continued)

- ARC 3043C No action on amendments to chs 12, 42 and 52 and the adoption of ch 250 regarding renewable fuels tax credits and rebates. Ms. Daniels stated that as noted in a public comment, the amount of 4.5 cents cited in 52.31(2), example 3, should be 3.5 cents and will be corrected in a future filing.
- At the request of Rep. Jones, Ms. Daniels will research five 2016 bills for which rule making has not yet been initiated.

TRANSPORTATION DEPARTMENT Jeff Sundholm, Sara Siedsma, Kristin Haar and Mark Holm represented the department.

- ARC 3026C No action on amendments to 4.4(2)“b” and 4.9 regarding public records and fair information practices.
- ARC 3027C No action on amendments to 615.37 pertaining to service of notices.
- ARC 3034C No questions on proposed amendments to chs 920, 921 and 924 regarding public transit system funding.
- ARC 3035C Proposed amendments to 111.1 pertain to the adoption by reference of section II of the uniform manual related to real property acquisition and relocation assistance. In response to a question from Rep. Pettengill, Mr. Holm clarified that the reduction from 180-day occupancy to 90-day occupancy is a benefit to the public because the number of days during which a homeowner would be required to occupy a residence before qualifying for benefits is reduced.

LABOR SERVICES DIVISION Kathleen Uehling represented the division.

- ARC 3029C Proposed amendments to 10.20 and 26.1 concern the adoption by reference of federal occupational safety and health administration (OSHA) standards related to beryllium and beryllium compounds.
- In response to an inquiry from Sen. Chelgren, Ms. Uehling will find out whether there are any manufacturing facilities in Iowa that use beryllium and whether registration of manufacturers is required.

WORKFORCE DEVELOPMENT DEPARTMENT David Steen represented the department.

- ARC 3028C Proposed amendments to chs 22, 24 and 25 pertain to employer records and reports and to overpayment recovery.
- In response to a question from Rep. Jones, Mr. Steen stated that the department is in the process of updating its rules, including the removal of obsolete language, e.g., references to microfilm.
- At the request of Rep. Jones, Mr. Steen will look into the status of the promulgation of rules regarding 2016 Iowa Acts, Senate File 2313.

Committee business The minutes of the April 7, 2017, meeting were approved.

The next meeting was scheduled for Tuesday, June 13, 2017, at 9 a.m.

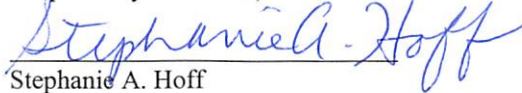
Mr. Ewing provided an updated summary (as of April 17, 2017) of the LSA analysis of rule makings that implement bills enacted during the 2016 General Assembly and stated that a similar analysis will be initiated regarding 2017 legislation. In response to a question from Rep. Pettengill, Mr. Ewing stated that the color-coded table differentiates between bills that involve updates to existing language and bills that involve new, substantive rule-making requirements.

Rep. Pettengill summarized the main points of 2017 Iowa Acts, Senate File 1, which codifies Executive Order 71 regarding jobs impact statements. Mr. Smith explained how analysis of agencies' jobs impact information is conducted. Rep. Pettengill asked that Mr. Smith ensure that agencies follow through on the jobs impact analysis. Sen. Chelgren requested that the jobs impact analysis not only report the number of private-sector jobs but also the pay scale and that the analysis provide greater detail regarding the flow of jobs from one area of the state to another. Mr. Smith stated that Senate File 1 has not yet been signed by Governor Branstad.

Adjourned

The meeting was adjourned at 11:35 a.m.

Respectfully submitted,


Stephanie A. Hoff

APPROVED:


Chair Dawn Pettengill


Vice Chair Mark Chelgren