

**MINUTES OF THE DECEMBER 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 Tuesday, December 12, 2017, in Room 116, State Capitol, Des Moines, Iowa.

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

Also present: Jack Ewing and Amber Shanahan-Fricke, 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.

Fiscal overview Christin Mechler presented the LSA fiscal report. Also representing the LSA fiscal services division was fiscal analyst Jess Benson. In response to an inquiry from Sen. Chelgren regarding ARC 3459C, Mr. Benson stated that he would provide the committee with information about the population served and the calculation of the cost to the general fund. In response to a question from Rep. Pettengill, Mr. Benson stated that to his knowledge, the subject of ARC 3459C was not raised as a point of discussion during the 2017 legislative session and that the statutory authority to promulgate rules might be Iowa Code chapter 249A.

NURSING BOARD Laura Hudson represented the board.

ARC 3465C No action on amendments to 3.7 pertaining to licensure.

HUMAN SERVICES DEPARTMENT Nancy Freudenberg and Deb Johnson represented the department. Other interested parties included George Eichhorn on behalf of ChildServe.

ARC 3438C No questions on proposed amendments to 109.1 pertaining to allowable exemptions from licensing requirements for child care centers.

ARC 3441C No action on amendments to 52.1(3) and 54.3 concerning annual cost reports and the cost reimbursement methodology related to residential care facilities (RCFs). In response to a question from Rep. Pettengill, Ms. Johnson stated that since the amendments are related to state supplementary assistance, not Medicaid, they would not affect the rate paid to the managed care organizations.

ARC 3442C No action on amendments to 152.1, 156.12 and 202.9 regarding supervised apartment living (SAL) related to foster care.

ARC 3459C Proposed amendments to 81.1 and 82.1 pertain to special population nursing facility criteria, specifically, an increase in the age limit and inclusion of residents in an intermediate care facility for persons with medical complexity.

Ms. Freudenberg explained that currently Iowa does not have an appropriate system of care for young adults with complex medical conditions and that lack of an appropriate definition for a system of care for this special population has resulted in inappropriate nursing home placements and could force Medicaid members to seek out-of-state services. Ms. Freudenberg stated that the current rules are limited to residents who are 21 years of age and under but that the amendments expand the special population nursing home criteria to include young adults up to the age of 30 and also add members residing in an intermediate care facility for persons with medical complexity. She added that the amendments also increase the number of qualified providers available to meet the needs of young adults with complex medical conditions.

Discussion pertained to the authority of the department to promulgate the amendments without specific legislation, which had been suggested at the committee level during the last general assembly but had not been advanced; the funding source for these services and the calculation of the fiscal impact; and the rationale for expansion to age 30.

Human Services Department (continued)

Ms. Freudenberg explained that the affected persons receive the services under exceptions to policy at ChildServe or out of state and that incorporating the exception in rule would be preferable to exceptions to policy and allow for better monitoring of the few persons affected. Ms. Freudenberg stated that Medicaid, under exceptions to policy, is the source of funds, and Ms. Johnson explained that the fiscal analysis included the costs not only related to current recipients but also to new recipients though the department is uncertain, once the amendments are effective, of the number of new recipients not covered under exceptions to policy. Ms. Johnson explained that persons in this population do not live past the age of 30. Ms. Freudenberg apologized for not keeping the committee better informed about the proposed amendments.

Mr. Eichhorn explained that ChildServe had requested these changes because of the difficulty in finding placements for the one or two young adults who reach age 21 each year under the exception to policy and who are placed in geriatric nursing facilities that cannot provide the required level of care. He explained that for three years ChildServe had attempted without success to find other nursing facilities that could provide the necessary level of care. Mr. Eichhorn explained that Charles Palmer, former department director, had stated that the amendments would have a negligible impact on the budget, and Mr. Eichhorn stated that he was not aware of discussion about appropriations during the 2017 session.

Committee members expressed the view that the changes, though well-intended, should be made by the legislature.

ARC 3436C No questions on proposed amendments to chs 109, 110 and 120 regarding child care settings, specifically, sleep practices, professional development training, and the definition of "relative."

ARC 3439C No questions on proposed amendments to chs 77 to 79 regarding crisis response services and subacute mental health services.

ARC 3437C Proposed amendments to 109.10(17), 110.8(1)"t," and 120.8(1)"q" pertain to weapons present in child care settings. Ms. Freudenberg stated that on the advice of the Governor's office, the department has submitted a Notice of Termination regarding ARC 3437C and will work with the Governor's office and stakeholders to revise the rules.

Sen. Chelgren requested that in reviewing the rules, the department consider technology related to firearms and the rights of owners of firearms.

NATURAL RESOURCE COMMISSION Joe Larscheid represented the commission.

ARC 3443C No action on amendments to 44.2, 44.4 and 81.2 pertaining to paddlefish fishing and to catfish and bass fishing tournaments.

NATURAL RESOURCES DEPARTMENT Anne Preziosi represented the department.

ARC 3458C No questions on proposed ch 1, organization.

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

ARC 3440C No action on amendments to 22.1(3) and 22.105(1) pertaining to air quality, specifically, the permit application process.

UTILITIES DIVISION Matt Oetker and Cecil Wright represented the division.

ARC 3453C No action on amendments to ch 19 pertaining to service supplied by gas utilities.

In response to a question from Sen. Chelgren related to the cost of debt for capital improvements, Mr. Wright explained the rationale for the board's development of a feasibility model and its operation.

ARC 3456C Proposed amendments to ch 33 concern nonutility activities, specifically, record keeping and cost allocations.

In response to a question from Rep. Jones, Mr. Wright stated that vacation or sick leave would be examples of "nonproductive work time," a term defined in 33.2.

Utilities Division (continued)

- ARC 3457C A proposed amendment to 34.4 concerns nonutility services.
In response to a question from Sen. Chelgren, Mr. Oetker stated that appliance repair is an example of a nonutility service provided by a utility company, and Mr. Wright added that the statute was enacted to address competition among utilities in providing nonutility services.
- ARC 3469C No action on ch 30, renewable energy percentage verification.

ECONOMIC DEVELOPMENT AUTHORITY Jennifer Klein and Christine Cavil represented the authority.

- ARC 3463C No action on amendments to ch 7 pertaining to the Iowa jobs training program.
Rep. Pettengill inquired about the reason for the difference between the new definition of “program services,” specifically, “training of employees” in 7.3 and stricken “pre-employment training for prospective employees” in 7.9(2)“j.” In response, Ms. Cavil stated that an employee must be on the job to participate in training, and Ms. Klein added that Iowa Code chapter 260F confirms that requirement. At the request of Rep. Pettengill, Ms. Klein agreed to research and provide the committee with the history of 7.9(2)“j” to explain the reason for the inclusion in the rule of pre-employment training for prospective employees.

RACING AND GAMING COMMISSION Brian Ohorilko represented the commission.

- ARC 3434C Proposed amendments to chs 3, 5, 6, 8, and 10 to 12 pertain to confidential records, gambling structures, new hires, minimum payoff on wagers, horse racing, gambling games, and accounting and cash control.
In response to a question from Rep. Jones, Mr. Ohorilko explained that the amendment to 12.4(3) reflects that an alarm system is no longer used in the cashier’s cage. In response to a question from Sen. Chelgren, Mr. Ohorilko stated that promotional material is not permitted on race horses.
- ARC 3446C No action on amendments to 5.4(12) and 10.7(1)“k” regarding problem gambling policies and procedures and racehorse medications.

PROFESSIONAL LICENSURE DIVISION Tony Alden, Judy Manning and Susan Reynolds represented the division.

- ARC 3433C Proposed amendments to chs 280 to 282 pertain to licensure, continuing education, practice, and discipline of social workers.
In response to a question from Rep. Pettengill, Mr. Alden stated that, in 280.6, the only change in the 110-hour requirement for supervision of professional practice is the reduction from two in-person meetings to one in-person meeting between the supervisor and supervisee.
- ARC 3435C Proposed 201.3 and 208.3 pertain to telehealth visits by physical therapists and physical therapist assistants and occupational therapists and occupational therapy assistants.
In response to a question from Rep. Pettengill, Ms. Manning explained that, to provide physical therapy or occupational therapy services using telehealth, a physical therapist assistant or occupational therapy assistant would assist the patient in one location under the observation of a physical therapist or occupational therapist in another location via secure and HIPAA-compliant technology.
- ARC 3444C No action on amendments to ch 22 regarding infection control at barbershops and barber schools.
- ARC 3445C No action on amendments to chs 200 and 206 regarding licensure of physical therapists and physical therapist assistants and occupational therapists and occupational therapy assistants.
- ARC 3455C Proposed 327.8 pertains to the sharing of information about complaints related to physician assistant practice.
Rep. Pettengill commended the rule, which mirrors statute. In response to an inquiry from Rep. Pettengill, Ms. Reynolds stated that the board determined that the legislation regarding delivery of a statement of charges does not require rule making.

MEDICINE BOARD Natalie Sipes represented the board.

- ARC 3464C No action on amendments to ch 8 pertaining to fees.

PUBLIC SAFETY DEPARTMENT Barb Edmondson represented the department.

- ARC 3466C No action on amendments to 504.1 pertaining to the adoption by reference of the 2017 National Electrical Code (NEC), the standards for electrical installations.
- Rep. Pettengill inquired about rule making by the department related to another subject, carbon monoxide alarms. In response, Ms. Edmondson summarized stakeholder input and stated that the rule making would be submitted for publication in the 1/3/18 IAB.

TRANSPORTATION DEPARTMENT Mike Harvey, Andrew Lewis and Sara Siedsma represented the department.

- ARC 3448C No action on amendments to ch 180 pertaining to the public improvement quotation process for governmental entities.
- Rep. Pettengill thanked the department for mirroring the Iowa Code definitions through links within the definitions in 180.3, which, as Mr. Harvey explained, are hyperlinked to the Iowa Code on the department's website.
- ARC 3449C No questions on proposed amendments to ch 400 pertaining to the electronic application for vehicle title and registration.
- ARC 3452C No action amendments to ch 635 regarding an update of Iowa Code references related to motorcycle rider education.
- ARC 3451C No action on amendments to chs 601, 605, and 630 concerning application for a driver's license or permit or a nonoperator's identification card.
- ARC 3450C No action on amendments to 401.20 and the adoption of ch 411 pertaining to persons with disabilities special registration plates and parking permits.
- Mr. Lewis confirmed for Rep. Pettengill that a person with disabilities placard should be displayed only when the vehicle is parked.

INSURANCE DIVISION Doug Ommen represented the division.

- ARC 3461C No questions on the proposed rescission of ch 82, Iowa stopgap measure.
- In response to a question from Sen. Costello, Mr. Ommen summarized the expectations for the Iowa stopgap measure and stated that he is open to discussions with the committee and with the legislature to provide detail about the status of the individual insurance market in Iowa.
- ARC 3462C No questions on the termination of proposed 82.7 to 82.14 pertaining to the Iowa stopgap measure.

PUBLIC HEALTH DEPARTMENT Susan Dixon and Sarah Reisetter represented the department. Other interested parties included Lucas Nelson on behalf of MedPharm Iowa (MedPharm).

- ARC 3460C No questions on the proposed rescission of ch 85, local substitute medical decision-making boards.
- ARC 3420C Proposed amendments to ch 154 pertain to the medical cannabidiol program.
- Ms. Reisetter discussed the proposed rules regarding the manufacture and dispensing of medical cannabidiol products. She summarized public comment from MedPharm, the company awarded the license to manufacture medical cannabidiol in Iowa, and explained in detail some of MedPharm's concerns related to security, including badges and cameras; marketing and advertising; product take back, including the statutory restriction that provides an affirmative defense only to the manufacturer for transportation; and disposal of waste product through composting. She explained that the department awaits MedPharm's proposal and further discussion with MedPharm, which may result in revision of the adopted rules.
- Mr. Nelson expressed appreciation to the department for its collaboration on the amendments. He emphasized MedPharm's perspective on several issues that may require easing of restrictions in the rules: marketing and advertising, including providing educational materials for patients, physicians, law enforcement and community members; a more clearly defined process for petitions to add medical conditions to the approved list; the consideration of more cost-effective disposal methods, such as deactivation with solvents; further consideration regarding enforcement of transportation of waste product for disposal by the manufacturer; and reconciliation of inventory biweekly rather than daily.

Public Health Department (continued)

Discussion pertained to the intent-to-apply letters submitted; alternatives to disposal of waste product, such as through a law enforcement agency; and whether MedPharm's suggestions would hinder potential manufacturers from applying in the future.

Ms. Reisetter stated that the department received nine intent-to-apply letters and one completed application and that applicants cited the following as reasons for not completing the application process: high fees; a short timeline, primarily to find a physical location and to meet security requirements; and an option to apply for a license in another state with a larger population. Ms. Reisetter agreed to find out if disposing of waste product by law enforcement is possible and, if so, whether such disposal is a viable option for deactivation of the product. Mr. Nelson stated that MedPharm's suggestions, especially those regarding security and marketing and advertising, would increase interest among potential manufacturers.

SECRETARY OF STATE Carol Olson and Eric Gookin represented the secretary of state. Other interested parties included Doug Struyk on behalf of the Iowa State Bar Association.

ARC 3467C No action on amendments to chs 2, 30 and 40 pertaining to fee increases to fund the technology modernization fund.

In response to a question from Rep. Nielsen, Ms. Olson stated that the associations that represent the businesses affected by the amendments expressed support for the rule making.

Mr. Struyk expressed appreciation for the changes to the Notice made by the secretary of state and for the filing of a new Notice by the secretary of state to harmonize the rules of account services with those of ARC 3467C regarding fee increases with a sunset and limiting provisions.

ARC 3468C No action on amendments to ch 22 regarding the polling place technology revolving loan fund and electronic poll books.

ARC 3447C No action on amendments to chs 21, 22, 26 and 28 concerning election administration, voting, and voter identification and registration.

In response to questions from Rep. Nielsen, Ms. Olson explained the time elapsed since proof, such as a document with signature, was generated in 21.3(6)“b”; clarified that 21.7(4) pertains only to provisional ballots cast on election day; explained, with regard to 21.3, that the statute states that a voter cannot be charged for a voter identification card; and, related to 21.307, clarified how a voter's updated signature is procured.

VOTER REGISTRATION COMMISSION Carol Olson represented the commission.

ARC 3454C No action on amendments to chs 2, 3, 5 and 7 pertaining to voter registration status, lists of registered voters, and election registers.

Rep. Pettengill requested that Ms. Olson express appreciation to the secretary of state on behalf of the committee for responding to the questions and concerns regarding the amendments.

Committee business The minutes of the November 14, 2017, meeting were approved.

The next meeting was scheduled for Friday, January 5, 2018, at 9 a.m.

Mr. Ewing presented a summary of his analysis of rule making related to 2017 enacted bills.

Adjourned The meeting was adjourned at 12:10 p.m.

Respectfully submitted,


Stephanie A. Hoff

APPROVED:


Chair Dawn Pettengill


Vice Chair Mark Chelgren