

**MINUTES OF THE JANUARY 2016 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, January 8, 2016, at 9 a.m. in Room 116, State Capitol, Des Moines, Iowa.
- Members present: Representative Dawn Pettengill, Chair, and Senator Wally Horn, Vice Chair; Senators Mark Chelgren, Mark Costello, Thomas Courtney, and Pam Jochum; Representatives Lisa Heddens, Megan Jones, Rick Olson, and Guy Vander Linden were present.
- Also present: Jack Ewing, 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** Adam Broich presented the LSA fiscal report. Also representing the LSA fiscal services division were fiscal analysts Tim Crellin and Angel Bates-Adams.
- Regarding ARC 2312C: In response to an inquiry from Sen. Chelgren, Mr. Crellin stated that the department does not yet have an estimate of the cost of the science assessment. Sen. Chelgren stated that he would ask for updated information from the department later in the meeting.
- Regarding ARC 2272C: In response to an inquiry from Sen. Chelgren, Ms. Bates-Adams explained that the increase in FIP benefits will result from a steady increase in member enrollment estimated to reach a maximum of 88 families in 2018.

HUMAN SERVICES DEPARTMENT Nancy Freudenberg represented the department.

- ARC 2272C No action on amendments to chs 41 and 46, related to the family investment program (FIP) hardship exemption, concerning the removal of an exclusion for families with qualified children and a nonqualified alien adult member.
- In response to a question from Sen. Chelgren, Ms. Freudenberg stated that a parent who is a citizen would also continue to receive FIP benefits under a hardship exemption. In addition, Ms. Freudenberg stated that other states provide for this exemption. In response to an inquiry from Rep. Pettengill, Ms. Freudenberg stated that based on the number of participant families, the department projected that a maximum of 88 families will meet the criteria for the exemption.

ECONOMIC DEVELOPMENT AUTHORITY Kristin Hanks-Bents represented the authority.

- ARC 2316C No action on amendments to ch 104 and new ch 110 pertaining to the STEM (science, technology, engineering, and mathematics) and innovative businesses internship programs.

INSPECTIONS AND APPEALS DEPARTMENT David Werning represented the department.

- ARC 2321C No questions on proposed amendments to 10.14 concerning updates in the procedures related to subpoenas in contested case proceedings.
- ARC 2302C Proposed amendments to ch 51 pertain to hospital licensure and regulation. Mr. Werning will refer to the department a request from Rep. Pettengill that in Item 15, “creed” not be stricken and a question about whether skin is considered an organ permitted for donation by federal regulations. Rep. Jones stated that beyond this rule, the legislature should have a broader discussion about the issue of organ donation.
- ARC 2273C No action on 57.11(7) regarding implementation of orders for medications and treatments by qualified personnel in residential care facilities.
- ARC 2303C No questions on proposed 58.19(1)“n”(8) and 58.24 pertaining to dietary services in nursing facilities.

IOWA PUBLIC EMPLOYEES’ RETIREMENT SYSTEM Donna Mueller represented IPERS.

- ARC 2331C Proposed amendments to chs 4 to 6, 9, 11, 13, 14, 16, 17 and 26 pertain to contribution rates, death and disability benefits, Section 125 plans, termination of employment, qualified domestic relations orders, and alternate payees.

Iowa Public Employees' Retirement System (continued)

In response to an inquiry from Rep. Pettengill, Ms. Mueller stated that the amendment in Item 7 requires that the employer, not IPERS, certify to the Internal Revenue Service (IRS) that the Section 125 plan is operated in compliance with IRS regulations.

RACING AND GAMING COMMISSION Brian Ohorilko represented the commission.

ARC 2320C Proposed amendments to chs 5, 6 and 10 pertain to qualifying agreements, occupational licenses, licensing of jockeys, and thoroughbred and quarter horse racing.

In response to an inquiry from Sen. Courtney, Mr. Ohorilko stated that the top two finishers in every race are tested for prohibited substances after the race and that, if warranted, the board of stewards may after any race order random testing of additional horses for prohibited substances. In response to an inquiry from Sen. Horn, Mr. Ohorilko stated that Iowa Code chapters 99D and 99F provide the commission with broad discretion regarding the issuance of gaming licenses and that the commission carries out its responsibilities within the parameters of those chapters. Rep. Olson commended the rules and the work of Mr. Ohorilko and Ms. Barbara Blake.

TRANSPORTATION DEPARTMENT Donna Buchwald represented the department.

ARC 2319C Proposed amendments to chs 160, 161, 170, 172 to 174, and 178, in regard to counties and cities, concern programs and funds for bridge and road construction and repair; instructional memorandums; and budgets, reports, and highway-related services and supplies.

In response to an inquiry from Sen. Horn, Ms. Buchwald stated that an engineer from outside Iowa must be Iowa-licensed to work as a consultant on Iowa projects. In addition, she explained the process by which project contracts are determined and consultants chosen.

MEDICINE BOARD Mark Bowden represented the board. Other interested parties included Doug Struyk on behalf of the Iowa Physical Therapy Association and on behalf of the Iowa Athletic Trainers Society.

ARC 2298C Proposed amendments to ch 17 pertain to the licensure of acupuncturists. Mr. Bowden stated that this Notice has been terminated and that the Notice of Termination was published in the 1/6/16 IAB.

Mr. Struyk expressed the opinion that the board does not have the statutory authority to change the definitions of "acupuncture" and "practice of acupuncture" set forth in Iowa Code section 148E.1. He added that the changes in the definitions significantly increase the scope of practice for acupuncturists and encroach on the practice of other professions whose licensing provisions allow some of these techniques, e.g., dry needling. Mr. Struyk stated that physical therapists and athletic trainers are not seeking to perform acupuncture.

In response to an inquiry from Rep. Heddens, Mr. Bowden explained the process through which the termination of this Notice and the submission of a subsequent Notice have transpired. In response to an inquiry from Sen. Horn, Mr. Bowden explained the qualifications for physicians who practice acupuncture and stated that the board is only empowered to regulate licensees who are under the purview of the board of medicine. Mr. Bowden also explained the concept of dry needling. In response to a question from Sen. Courtney, Mr. Bowden clarified the difference between dry needling and wet needling. Mr. Struyk added that acupuncture requires an oriental medical diagnosis followed by the use of a dry needle to trigger a muscle response locally instead of distally.

NATURAL RESOURCE COMMISSION Alex Cross represented the commission.

ARC 2300C No questions on proposed 15.26 pertaining to special nonresident deer and turkey licenses.

PHARMACY BOARD Terry Witkowski and Jennifer O'Toole represented the board.

ARC 2301C No questions on a proposed amendment to 4.6(1) relating to acceptance of an individual tax identification number of a pharmacist-intern on an application for registration.

Pharmacy Board (continued)

- ARC 2285C No questions on proposed amendments to chs 6 to 8, 10, 17 and 23 regarding the authorization of registrants to administer a controlled substances collection program.
- ARC 2288C Proposed amendments to 6.10(1) and 8.19 authorize the prescribing of epinephrine auto-injectors in the name of a facility, school district or accredited nonpublic school.
- In response to an inquiry from Rep. Pettengill, Ms. Witkowski stated that unlike the rules of the education department, these amendments concern pharmacy-related requirements, such as labeling and record keeping. In response to an inquiry from Sen. Chelgren, Ms. O'Toole explained the size and use of an epinephrine auto-injector junior, which would be prescribed for and used by students in schools.
- ARC 2286C No questions on proposed amendments to 7.12(3) pertaining to authorization to dispense up to a 72-hour supply of prescription drugs to hospital emergency department patients.
- ARC 2307C No questions on a proposed amendment to 8.26(5) relating to the reporting of a continuous quality improvement (CQI) program event.
- ARC 2287C No questions on proposed 10.38 concerning temporary designation of controlled substances.
- ARC 2289C No questions on proposed amendments to 22.5(8) pertaining to patient med pak record keeping.

PROFESSIONAL LICENSURE DIVISION Sarah Reisetter represented the division.

- ARC 2323C No action on amendments to chs 261 to 263 and 265 pertaining to the licensure, practice, discipline, and continuing education of polysomnographic technologists and respiratory care and polysomnography practitioners.

PUBLIC EMPLOYMENT RELATIONS BOARD Diana Machir represented the board.

- ARC 2308C No action on amendments to 6.1 and 6.3 to 6.5 regarding negotiations and negotiability disputes.

PUBLIC HEALTH DEPARTMENT Paul Watson, Kimberly Piper, Melissa Bird and Kala Shipley represented the department.

- ARC 2291C No action on amendments to ch 1 pertaining to reportable diseases, poisonings and conditions and to quarantine and isolation.

- ARC 2290C No action on amendments to ch 3 concerning early hearing detection and intervention.

In response to questions from Rep. Jones, Ms. Piper explained that the focus of the hearing screening is the health of the baby and that the parents and the parents' designated health care provider receive the results; that other than the form itself, there are no other means for parental refusal of the hearing screening; and that hearing screening data are used to monitor trends in hearing loss and to develop interventions. Rep. Jones questioned the transmittal of results directly to an area education agency (AEA) rather than to the department and suggested that such transmittal may not be compliant with the Health Insurance Portability and Accountability Act (HIPAA). Rep. Pettengill suggested that hearing screening data be initially transmitted to the department and then to other providers. In response to questions from Rep. Heddens, Ms. Piper stated that the hearing screening is conducted in association with Early Access, which is operated through AEA's, and that the hearing screening results are sent to the audiologist at an AEA.

- ARC 2305C Proposed amendments to 4.3, 4.7(6)“e,” and 4.11 pertain to informed consent for storage and release of residual newborn screening specimens.

In response to questions from Rep. Jones, Ms. Piper addressed the screening process, the storage of newborn screening specimens, informed consent, and the process for the use of specimens in research. In response to questions from Sen. Chelgren, Ms. Piper explained the parameters of and purposes for research. In addition, she clarified that newborn screening specimens are not made available for commercial purposes and that the department does not charge for the use of specimens.

Public Health Department (continued)

- In response to questions from Rep. Pettengill, Ms. Piper described the statutory membership of the Congenital and Inherited Disorders Advisory Committee (CIDAC), clarified that a parent may refuse storage of a newborn screening specimen, and explained the process for approval of research and the department's authority to approve research.
- Rep. Jones suggested that the department follow up on the disposition of the research results to ensure that the results are not used for commercial purposes.
- ARC 2306C No questions on proposed amendments to 7.1 and 7.12(5) regarding the implementation of refugee health screening in the immunization registry information system (IRIS).
- ARC 2279C No action on amendments to ch 15 clarifying the use of residential swimming pools for commercial purposes and correcting an existing underwater lighting requirement.
- ARC 2317C No questions on proposed amendments to ch 25 regarding the adoption by reference of the 2015 edition of the Uniform Plumbing Code in the state plumbing code.
- ARC 2274C No questions on proposed amendments to 61.2 concerning the update of references in the state mechanical code.
- ARC 2275C No action on amendments to ch 95 regarding fees, access, searches and issuance of certified copies, and confidentiality related to vital records. In response to an inquiry from Rep. Pettengill, Ms. Bird explained that an incorrect record, e.g., related to a legal change of name, is sealed by the county or destroyed, and the correct record is issued. The original record is placed in a docket file at the state archives. In response to an inquiry from Sen. Chelgren, Ms. Bird stated that biometrics associated with vital records are being discussed at the federal level and that the state is monitoring the discussions. Rep. Jones stated that it is illegal for the department to make photocopies of certified records for in-house, administrative use and that she will continue to work on this issue.
- ARC 2276C No action on amendments to ch 97 pertaining to an electronic statewide vital records system for the registration of deaths.
- In response to an inquiry from Rep. Pettengill, Ms. Bird explained that certificates of death are prepared using an electronic statewide vital records system, whereas certificates of fetal deaths are official paper copies issued by the state registrar. In addition, Ms. Bird stated that statistics regarding fetal death records could be compiled based on gestational weeks but would not include whether the fetal death was natural or intended. In response to a question from Sen. Chelgren, Ms. Bird explained the terms fetal death, i.e., 20 weeks' gestation or 350 grams, and non-fetal death set forth by the National Center for Health Statistics (NCHS). In response to an inquiry from Sen. Costello, Ms. Bird stated that a fetal death record, including a record of stillbirth, is created but that the family may decide whether to request the record. Sen. Chelgren stated that it is incumbent on the legislature to address the ambiguity regarding the definition of fetus, i.e., 20 weeks versus 24 weeks.
- ARC 2277C No questions on an amendment to 131.3(3)"b" pertaining to the adoption by reference of the April 2015 edition of scope of practice for Iowa EMS providers.
- ARC 2278C No action on an amendment to 132.2(4)"b" regarding the adoption by reference of the April 2015 edition of scope of practice for Iowa EMS providers.
- ARC 2304C No questions on proposed amendments to 132.8(1) concerning a driving policy and documented training for EMS providers.
- ARC 2280C No action on ch 145, Iowa physician orders for scope of treatment.
- ARC 2297C No action on amendments to ch 203 concerning the rescission of excluded and unused standards related to the certificate of need review process for a new or changed institutional health service. In response to an inquiry from Sen. Horn, Ms. Shipley explained that the purpose for the rule making is a periodic review of the department's rules, noted that Iowa Code section 135.64 outlines 18 criteria to be followed by the council in decision making, and explained that the certificate of need program, at one time a federal program, became a state program.
- IOWA PUBLIC INFORMATION BOARD** Charlie Smithson represented the board.
- ARC 2271C No action on amendments to 1.1 pertaining to election of a vice chair of the board.

Iowa Public Information Board (continued)

ARC 2315C No action on 8.2, closed session. On behalf of Rep. Pettengill, Mr. Smithson agreed to look into the legality of the exclusion of a city council member from a city council meeting.

REGENTS BOARD Diana Gonzalez represented the board.

ARC 2332C No action on amendments to 1.4(2)“b” pertaining to resident classification of veterans, qualified military persons and other qualified individuals.

REVENUE DEPARTMENT Victoria Daniels represented the department.

ARC 2299C No questions on proposed amendments to 38.15 regarding innocent spouse relief from income tax liability.

TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION, IOWA Mark Johnson represented the commission.

Committee review of emergency rule making Mr. Johnson presented a request to adopt by emergency new 2.13(2)“1” pertaining to the addition of an exception for the availability of certain records related to security procedures or emergency preparedness consistent with Iowa Code section 22.7(50).

In response to an inquiry from Rep. Heddens, Mr. Johnson explained the reason for requesting an emergency filing and described the types of information that would be kept confidential, including incident response and network outage plans and proprietary vendor information. In response to an inquiry from Sen. Horn, Mr. Johnson discussed the utilization of agency staff and private-sector vendors to stay abreast of security needs. At the request of Rep. Pettengill, Mr. Johnson consented to file a double barrel if an emergency filing is approved. Rep. Heddens and Rep. Olson questioned the need for an emergency filing. The committee took no action.

EDUCATION DEPARTMENT Nicole Proesch, Melissa Walker, Dave Tilly and Shanlyn Seivert represented the department. Other interested parties included Michele Crystal; Heather Stancil; Mark Felderman of the Professional Educators of Iowa (PEI); and Phil Jeneary of the Iowa Association of School Boards (IASB).

ARC 2311C No action on ch 14 pertaining to school health services, specifically, school district and accredited nonpublic school stock epinephrine auto-injector voluntary supply. In response to questions from Sen. Chelgren, Ms. Walker explained the issuance by a physician or other qualified health care provider of a prescription for epinephrine auto-injectors to a school district, the storage of injectors by the school district, the administration of epinephrine by a school nurse, and the training of additional school personnel. Ms. Proesch added that the department will provide continued guidance to school districts. In response to an inquiry from Sen. Jochum, Ms. Walker confirmed that students with prescription epinephrine auto-injectors will continue to be permitted to use them. Sen. Courtney thanked the department for its work on this issue.

ARC 2313C No action on 15.8 regarding open enrollment of students to the two receiving school districts that offer online coursework: Cumberland-Anita-Massena (CAM) Community School District and Clayton Ridge Community School District. At the request of Sen. Chelgren, Ms. Proesch will provide the cap on the number and percentage of students who may attend school through online learning in the two designated districts. In addition, Ms. Proesch explained the statutory restriction on participation in the extracurricular activities of another school district by students enrolled in either online school.

ARC 2309C No action on amendments to 25.21 concerning eligibility and priority for assistance related to the gap tuition assistance program.

ARC 2310C No action on amendments to ch 98 pertaining to categorical funding related to the statewide voluntary preschool program, at-risk formula weighting, the returning dropout and dropout prevention program, the management fund, and the physical plant and equipment levy.

ARC 2312C Paragraph 12.8(1)“h” pertains to the selected districtwide assessment related to accountability for student achievement. Ms. Proesch reported on all public comment received and explained that since publication of the Notice, for clarification, the term “SBAC” (Smarter Balanced Assessment Consortium) has been changed to “SBAC assessment.”

Education Department (continued)

Discussion pertained to the SBAC assessment, including the cost, the sufficiency of technical support, the development of the science component of the SBAC assessment, and the request for proposal (RFP) process, and about the statutory authority of the board to approve the SBAC assessment.

Mr. Tilly explained that the SBAC assessment is an open-sourced product, wholly owned by the states in the consortium, including Iowa, and that the board will issue a request for proposal (RFP) to prospective vendors. Mr. Tilly summarized the SBAC assessment components. He explained that the science standards have been determined and a request for information (RFI) regarding a science assessment that aligns with these standards has been issued to all vendors. Mr. Tilly added that the cost of the science assessment is currently unknown but that the board should be able to recommend an assessment by the second or third week of the current legislative session. Sen. Chelgren requested that the board inform the committee of the cost of the science assessment, in a range from lowest to highest. He expressed approval of the SBAC assessment but voiced concern about its cost and about the precedent that might be set regarding the selection and approval processes that have been used. Rep. Jones expressed concern regarding the disadvantage for small schools, both in the cost and technology readiness.

Regarding the authority of the board to approve an assessment, Rep. Pettengill expressed the view that contrary to information presented by the department during the previous review of this rule making, the board, pursuant to Iowa Code section 256.7(21)“b”(4), is directed to recommend an assessment for adoption by the general assembly, not to adopt an assessment. Rep. Vander Linden stated that the general assembly must take action on the recommendation by the board before the rule that adopts the assessment can become effective. He concurred with Sen. Chelgren that the assessment is probably the appropriate one but asserted that the adoption of the assessment is the purview of the general assembly. Ms. Proesch explained that the board has the responsibility for providing an assessment that meets the statutory requirements and expressed concern that the board may not be able to fulfill its responsibility if the assessment is not implemented. In response to a question from Rep. Olson, Ms. Proesch expressed the opinion that the language regarding the board’s authority to adopt an assessment could have been written more clearly. Regarding the adoption of the assessment, Mr. Tilly added that the authority and responsibility of the board to ensure that the state has a system of accountability for student learning are set forth in Iowa Code section 256.7(21) and that, historically, the board has determined the accountability system, including the statewide assessment, most recently in 2002.

Ms. Crystal expressed opposition to the SBAC assessment and cited concerns, including increased costs and the loss of local control. Ms. Stancil expressed opposition to the SBAC assessment and enumerated cost- and technology-related concerns. Mr. Felderman expressed opposition to the assessment and listed concerns, including the length of the assessment, privacy of student data, adequacy of technology, and cost. Mr. Jeneary expressed support for the assessment, noted the 20 to 1 support of the assessment by members of the task force, and described the strengths of the assessment.

Sen. Jochum commended the work of the task force and inquired about the effect of a session delay on the implementation of the SBAC assessment. In response, Mr. Tilly explained that a session delay would impact three areas: the RFP process; technology readiness, i.e., computers and bandwidth; and professional instruction for teachers, students and parents. He also stated that the SBAC assessment must be implemented by May of 2017.

Motion to delay
Motion carried

Rep. Vander Linden moved a session delay on 12.8(1)“h.”
The motion carried unanimously.

Sen. Chelgren requested that the department ensure that the mathematics and science portions of the assessment correspond with each other.

Committee business The minutes of the December 8, 2015, meeting were approved.
The next meeting was scheduled for Friday, February 5, 2016, at 9 a.m.
Adjourned The meeting was adjourned at 2:25 p.m.

Respectfully submitted,

Stephanie A. Hoff

APPROVED:

Chair Dawn Pettengill

Vice Chair Wally Horn