

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

- Date of meeting: The regular, statutory meeting of the Administrative Rules Review Committee (ARRC) was held on Friday, March 8, 2013, in Room 116, State Capitol, Des Moines, Iowa.
- Members present: Representative Dawn Pettengill, Chair, and Senator Wally Horn, Vice Chair; Senators Mark Chelgren, Pam Jochum, and Roby Smith; Representatives Dave Jacoby, Rick Olson, Jeff Smith and Guy Vander Linden were present. Senator Thomas Courtney participated by telephone in the review of ARC 0616C.
- Also present: Joseph A. Royce and Jack Ewing, Legal Counsel; Stephanie A. Hoff, Administrative Code Editor; Brenna Findley, Administrative Rules Coordinator; fiscal staff; caucus staff; and other interested parties.
- Convened Rep. Pettengill convened the meeting at 8:35 a.m.
- Fiscal overview** Adam Broich presented the LSA fiscal report. In response to an inquiry from Sen. Chelgren, Jennifer Acton of the LSA fiscal services division clarified the percentage decrease in the IPERS contribution rate for protection occupations and stated that the basis for calculation of fiscal impact is \$100,000 or more in one year.

ECONOMIC DEVELOPMENT AUTHORITY Kristin Hanks and Tim Whipple represented the authority.

- ARC 0612C No action on amendments to ch 20 relating to the accelerated career education (ACE) program.
- ARC 0613C No action on amendments to 47.3(3) pertaining to amounts of endow Iowa tax credits available in 2012.
- ARC 0611C No action on amendments to chs 101, 103 to 105, 107, 109, 111 and 114; the adoption of chs 102, 106, and 108; and the rescission of ch 112 concerning innovation and commercialization activities.

INSPECTIONS AND APPEALS DEPARTMENT David Werning represented the department.

- Special Review The amendment to 51.24(3) and ch 59 (ARC 0484C, IAB 12/12/12) pertain to tuberculosis (TB) screening for health care workers in health care facilities and hospitals and for residents of health care facilities regulated by the department. This rule making was reviewed by the committee at its January 8, 2013, meeting. During that review, Mr. Werning explained that the department had been addressing stakeholders' concerns regarding the screening of volunteers and the inclusion of "volunteer" in the definition of "health care worker." The committee imposed a 70-day delay to allow time for these concerns to be resolved.
- Mr. Werning reported that since the imposition of the delay, the department had met with the Iowa Health Care Association, LeadingAge Iowa, and a number of individual providers and had reached consensus regarding an amendment to the definition of "health care worker." Mr. Werning stated that the amendment would be Adopted and Filed Emergency and proposed under Notice of Intended Action (double-barreled) and become effective on March 26, 2013, the effective date of delayed ARC 0484C.

IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM Donna Mueller represented IPERS.

- ARC 0598C The proposed amendments to chs 4, 5, 11 to 13, 15 and 16 pertain to contribution rates and to the distribution of the favorable experience dividend (FED). In response to an inquiry from Rep. Pettengill, Ms. Mueller stated that this rule making sets forth the method for FED distribution if the reserve account is not sufficiently funded. In response to an inquiry from Sen. Horn, Ms. Mueller explained that studies of alternatives to the FED, including cost-of-living adjustments (COLAs), have shown the alternatives to be unaffordable.

PUBLIC HEALTH DEPARTMENT Barb Nervig represented the department.

- ARC 0586C No action on a corrective amendment to a footnote in the table of immunization requirements in 7.4(1).

Public Health Department (continued)

- ARC 0577C No action on ch 42 and amendments to chs 38 and 41 pertaining to radiation. Ms. Nervig stated that most of the public comment pertained to the approval process for continuing education credit hours. She explained that this process will be conducted by department-approved entities rather than by the department. She noted that this method for approval, not uncommon among other licensing boards, will streamline the permit process and allow more options for continuing education.
- ARC 0578C No action on amendments to ch 113 relating to public health response teams. Ms. Nervig stated that federal grants funding for the response teams will be unaffected by federal sequestration and will be in place for at least the next year.
- Special Review The rescission of chs 95, 96, and 98 to 107 and the adoption of chs 95 to 100 (ARC 0483C, IAB 12/12/12) pertain to vital records. This rule making was reviewed by the committee at its January 8, 2013, meeting. During that review, the Iowa Funeral Directors Association (IFDA) stated that based on the then-existing rules, contract negotiations were in process for an electronic vital records system, including an electronic vital death registration system, i.e., electronic death certificates. Since the vendor could delay or even curtail negotiations because of the adoption of new rules, IFDA requested that the new rules be delayed and the contract completed before the new rules became effective. The committee imposed a session delay.
- Ms. Nervig reported that after a department-requested review of the new rules, the vendor concluded that the new rules could be accommodated with standard, commercial off-the-shelf software and indicated that Iowa's process for handling vital records is comparable to that of other states. Ms. Nervig requested that based on the vendor's response, the delay be lifted.
- Motion Rep. Vander Linden moved that the session delay be lifted.
- Motion carried On a voice vote of 7 to 0, the motion carried.

RACING AND GAMING COMMISSION Brian Ohorilko represented the commission.

- ARC 0604C Proposed amendments to chs 1 to 5, 10 and 11; the adoption of ch 8; and the rescission of ch 9 pertain to the standard of review for appeal of stewards' decisions, wagering and simulcasting, harness racing, gambling games, and the commission's change of address. In response to an inquiry from Rep. Olson, Mr. Ohorilko agreed to request that the commission allow the e-mailing of appeals within 72 hours of service of a decision and consider whether abuse of discretion as a standard of review is statutory.

HUMAN SERVICES DEPARTMENT Nancy Freudenberg and Rick Shults represented the department. Other interested parties included Jess Benson of the LSA fiscal services division, Linda Hinton of the Iowa State Association of Counties (ISAC) and Karen Walters Crammond of Polk County Health Services.

- ARC 0583C No action on amendments to chs 7 and 88 regarding consent for a state fair hearing related to managed care.
- ARC 0573C No action on ch 23, mental health and disability services redesign transition fund.
- ARC 0576C Amendments to ch 25 pertain to the exemption of counties from joining into regions to administer mental health and disability services.
- When this rule making was reviewed at the January 8, 2013, meeting prior to adoption, interested parties expressed concern that a county seeking exemption from a region must already meet required standards and must already provide the required core services. Rep. Pettengill inquired about whether these concerns had been addressed in the adopted rules. In response, Mr. Shults stated that counties seeking exemption must be able to provide the core services, including access to and delivery of those core services using evidence-based practices, and must demonstrate provision of services at least as cost-effective and outcomes at least as good as those of the rest of the state. Mr. Shults added that the department expects that counties with significant resources and available services will be exempted from forming regions and that currently four counties are seeking exemption from forming regions.

Human Services Department (continued)

As part of the discussion pertaining to the proximity of inpatient psychiatric hospitals to individuals' residences and the availability of, access to, and priority of services, Mr. Shults stated that a hospital must be within 100 miles or two hours' driving distance from an individual's residence. He noted that the department's contract agreement with a hospital does not guarantee available beds and stated that a study is proposed in current legislation to determine whether a database could be developed to track real-time availability of psychiatric beds. Mr. Shults stated that services are provided on a first-come, first-served basis. He also observed that as the regions are developed through the department, the screening of individuals will help to determine the level of care and to prioritize delivery of services. He noted that in addition to expanding availability of inpatient psychiatric beds as part of mental health and disability redesign, an assessment of the need for sub-acute beds and a pilot program on crisis services are in process for individuals who require services but do not need inpatient hospitalization.

Mr. Shults agreed to provide Rep. Olson with information through the department of inspections and appeals regarding the process and turn-around time required for a hospital to change the designation of use for facility beds (e.g., from obstetrics to psychiatric) and to provide Rep. Pettengill with information regarding estimated prevalence rates and the number of individuals who receive publicly funded mental health services, including Medicaid- and county-funded services.

Ms. Hinton stated that the Association's concerns regarding the required service capacity and the source of the data to determine that capacity were not addressed in the adopted rules and the adopted rules require that a county seeking exemption must already provide the required core services. Ms. Crammond concurred with Ms. Hinton's opinion and requested that the department allow flexibility in system expectations and development. Ms. Crammond also stated that Polk County has submitted its application for an exemption and requested that the committee not take action that could slow the exemption approval process.

Rep. Olson urged the department to pursue reciprocity with bordering states and other avenues of providing mental health services to Iowans and encouraged the counties seeking exemption from forming a region to inquire about the appeals process. Mr. Shults stated that expanding reciprocity with facilities in bordering states, particularly for Medicaid services, is possible.

- ARC 0579C No action on amendments to ch 75 regarding income attributable to social security cost-of-living adjustments related to Medicaid eligibility.
- ARC 0615C Proposed amendments to chs 77 to 79 and 83 pertain to a name change and to case management related to the home- and community-based services (HCBS) ill and handicapped waiver. Sen. Chelgren commended the department for changing "ill and handicapped waiver" to "health and disability waiver." Mr. Benson clarified for Rep. Pettengill that the minimal fiscal impact of this rule making is attributed to the production of forms that incorporate the change in the name of the waiver.
- ARC 0580C No action on amendments to chs 77 to 79 concerning Iowa Medicaid enterprise compliance with the Patient Protection and Affordable Care Act.
- ARC 0589C No questions on proposed amendments to ch 78 regarding standardization of units of service and of service definitions related to HCBS waiver services.
- ARC 0581C No action on amendments to ch 79 pertaining to rate caps and units of service related to home- and community-based habilitation services.
- ARC 0585C No action on amendments to ch 79 relating to payment for primary care services furnished in 2013 or 2014.
- ARC 0588C No questions on proposed amendments to ch 79 regarding billing codes, units of service and service rates related to HCBS waiver and habilitation services.
- ARC 0590C Proposed 81.10(5)"e"(4) pertains to allowed supplementation for a private room in a nursing facility. Ms. Freudenberg outlined for Rep. Pettengill the conditions under which supplementation for provision of a private room is not permitted.
- ARC 0582C No action on amendments to ch 82 pertaining to the updating of terminology to "intellectual disability."

ENVIRONMENTAL PROTECTION COMMISSION Jim McGraw and Kelli Book represented the commission. Other interested parties included Kevin Condon of the Iowa Association of Business and Industry (ABI).

ARC 0594C Ch 17 pertains to compliance and enforcement procedures. Mr. McGraw stated that the purpose of ch 17 is to affirm the variety of compliance and enforcement communications and documents that the department may consider in responding to possible violations of environmental statutes, rules, permits, licenses, certifications, and plans. He added that the department has used these procedures or similar ones for many years, and this chapter formalizes department practice.

Mr. McGraw reported that of the 909 public comments received, most were in opposition to the rules, which were thought to weaken the department's enforcement of environmental requirements, including rules applicable to animal feeding operations. He noted that the comments in support of the rules stated that the rules would allow the department to use a wider range of communication options for notification of noncompliance issues and would allow the department to exercise discretion in a wide variety of circumstances in several different areas of environmental protection.

Discussion pertained to the purpose and effect of the rules. Mr. McGraw stated that opponents mistakenly thought that the rules allow stakeholders and affected industries to determine applicable enforcement actions. Ms. Book confirmed that the rules do not relinquish the department's authority to enforce the rules and that the rules specify the procedures to address compliance with and enforcement of the rules. Mr. McGraw added that consistency and transparency in enforcement will be the greatest benefit of the rules.

Mr. Condon expressed support for the rules, noted the thorough review afforded to interested parties, and stated that the rules inform regulated entities of the enforcement actions available to the department.

SECRETARY OF STATE Charlie Smithson and Sarah Reisetter represented the secretary of state. Other interested parties included Joe Enriquez Henry and Mitch Henry on behalf of the League of United Latin American Citizens of Iowa (LULAC); Nancy Stillians; Bonnie Pitz on behalf of the League of Women Voters of Iowa; Linda Murken of the League of Women Voters of Ames; Joe Fagan; Carla Becker, county auditor and commissioner of elections, Delaware County; Cherie Mortice of Iowa Citizens for Community Improvement (CCI); Rita Bettis on behalf of the American Civil Liberties Union of Iowa (ACLU) et al.; John Strathman; and Sharon Demers.

ARC 0616C The rescission of 21.100 and the adoption of 28.5 pertain to complaints concerning violations of Iowa Code chapters 39 to 53 and the noncitizen registered voter identification and removal process.

Mr. Smithson stated that the rule is a restriction on the process used by the secretary of state's office in communicating with persons who have previously identified themselves as noncitizens when they obtained driver's licenses and the rule informs noncitizens that it is a felony for a noncitizen to register and to vote in an election. He stated that the rule clarifies the responsibility of persons who are citizens to update their voting records to reflect attainment of citizenship.

Ms. Reisetter summarized the procedural history of the rule making and explained the changes proposed in an Amended Notice of Intended Action that resulted from public comment, including the rescission of the complaint rule and modifications to and clarification of the notification process and the match criteria. Ms. Reisetter also addressed concerns that have been raised regarding the accuracy of the data available from the Systematic Alien Verification for Entitlements (SAVE) program. Ms. Reisetter reiterated that pursuant to Iowa Code sections 48A.14 through 48A.16, only at the local level may the name of a person who is ineligible to vote be removed from the voter registration roll. In response to an inquiry from Sen. Jochum, Ms. Reisetter stated that the litigation regarding the rule is stayed pending final adoption of the amended rule making.

Secretary of State (continued)

The committee requested that public comment be heard first. Mr. Enriquez Henry expressed opposition to the rule, which he described as a means of voter suppression. Mr. Henry, in expressing opposition to the rule, asserted that according to the federal Department of Homeland Security (DHS), SAVE is intended to be used for verification of eligibility for benefits such as food assistance but cannot provide comprehensive data on all eligible voters and should not be used to maintain voter registration rolls. Ms. Stillians encouraged civil discussion and careful, nonpartisan decision making regarding voting. Ms. Pitz stated that the rule is a means to intimidate voters rather than a means to protect the integrity of an already viable voting process and requested that the committee either delay or object to the rule. Ms. Murken expressed appreciation to the committee and others for devoting time to ensure the constitutional right of every citizen to vote and questioned the comprehensiveness of SAVE and the additional costs to verify voter registration rolls. Mr. Fagan stated that the rule is an attempt to use fear to prevent people who are registered to vote from voting. Ms. Becker expressed the opinion that the rule affords a method of cross-matching to prevent noncitizens from voting, thereby maintaining reliable voter registration rolls. Ms. Mortice expressed opposition to the rule and questioned the accuracy of SAVE and the use of tax dollars to improve a voting process that already works well. Ms. Bettis stated that unlike the cross-matching authorized by statute regarding persons who have died, have been declared incompetent, have registered to vote in another state, or have been judged to be felons, this rule is not authorized by statute, and she suggested that the secretary of state propose legislation to authorize maintenance of voter registration rolls. Mr. Strathman expressed support for the rule to ensure the accuracy of voter registration rolls. Ms. Demers, in supporting the rule, stated that it preserves and protects the integrity of the voting process.

Discussion during and after public comment pertained to the process of cross-matching lists, the use of driver's license records and of SAVE, and the accuracy of and authority to maintain voter registration rolls.

In response to public comment, Sen. Chelgren explored the possibility of issuing different driver's licenses to citizens and noncitizens; Rep. Vander Linden clarified that a driver's license has no relationship to and is not required for voter registration; Rep. Jacoby stated the opinion that county auditors are charged with the duty to enforce the law regarding voting and voting rights; and Sen. Jochum asserted that the law gives the legislature exclusive authority regarding the method for maintaining voter registration rolls and the executive branch promulgates rules to implement the law.

Motion to object Following discussion, Sen. Jochum moved an objection on ARC 0616C on the grounds that the agency exceeded its statutory authority in promulgating the rule.

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

TRANSPORTATION DEPARTMENT Mark Lowe represented the department.

ARC 0591C No questions on proposed amendments to 520.1(1) concerning the federal motor carrier safety and hazardous materials regulations.

ARC 0592C No action on amendments to 615.22 pertaining to the elimination of the department's authority to determine whether a person has the ability to pay a criminal penalty, fine, surcharge or court costs before the department suspends the person's driver's license for failure to pay.

Committee business The minutes of the February 8, 2013, meeting were approved. The next meeting was scheduled for Friday, April 12, 2013, at 8:30 a.m. The committee tabled the discussion of proposed changes to the committee's rules of procedure until the legislative session concludes.

March 8, 2013

Adjourned

The meeting was adjourned at 11:40 a.m.

Respectfully submitted,

Stephanie A. Hoff

APPROVED:

Chair Dawn Pettengill

Vice Chair Wally Horn