

**MINUTES OF THE JUNE 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 Tuesday, June 11, 2013, 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, Thomas Courtney, Pam Jochum, and Roby Smith; Representatives Rick Olson, Jeff Smith, and Guy Vander Linden were present. Representative Dave Jacoby was not present.

Also present: Joseph A. Royce and Jack Ewing, Legal Counsel; Teresa Vander Linden, Administrative Code Assistant Editor; Brenna Findley, Administrative Rules Coordinator, and Larry Johnson, Deputy Counsel, Office of the Governor; 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. John Parker, LSA fiscal services division, clarified for Rep. Vander Linden that the increase of \$148,080 in fees for school bus inspections is based on biannual inspections of 6,170 buses at an increase of \$12 per inspection.

In response to a request from Rep. Pettengill, Mr. Broich agreed to provide a breakout of dollar amounts for increases in reimbursement to ambulance providers, waiver providers and other providers in rule 14-055 (chs 78, 79 and 83) of the department of human services’ rules under special review.

**Committee Special Review** The committee reviewed a draft of revised committee rules of procedure. The revisions reflect changes in Iowa Code chapter 17A set forth in 2013 Iowa Acts, House File 586, which becomes effective July 1, 2013. The committee requested that the rules of procedure reflect statutory language. At the July meeting, the committee will review and vote on the rules of procedure.

Sens. Courtney and Chelgren and Reps. Olson and Vander Linden volunteered to form a committee to fulfill the reporting requirements set forth in 2013 Iowa Acts, Senate File 452, section 13, which requires that the committee consider “the scope, impact, and long-term consequences of legislation requiring delegations of authority to state agencies to be construed narrowly.”

**ATTORNEY GENERAL** Eric Tabor represented the attorney general.

ARC 0751C No action on amendments to ch 33 pertaining to forfeited property.

**DENTAL BOARD** Melanie Johnson represented the board.

ARC 0768C No questions on the termination of the proposed amendment to 10.3(1) concerning delegation of expanded function duties to registered dental hygienists.

**INSURANCE DIVISION** Craig Goettsch represented the division.

ARC 0716C No questions on proposed amendments to ch 50 regarding securities regulation.

**RACING AND GAMING COMMISSION** Brian Ohorilko, Jeffrey Peterzalek, and Barbara Blake represented the commission.

ARC 0734C The 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.

Mr. Ohorilko explained that as set forth in Item 10, the commission, in response to a request from the committee, will accept requests for appeal by electronic mail and will also accept submissions by facsimile and other methods determined by the administrator. Mr. Ohorilko stated that proposed Item 21, regarding wide area progressive systems, was not adopted. He explained that the distribution of profits will require more discussion among stakeholder groups prior to further commission review.

Racing and Gaming Commission (continued)

Rep. Olson questioned the statutory authority, impetus and purpose for the addition of the abuse of discretion standard in Items 10, 17 and 18. In response, Mr. Peterzalek cited as the commission’s authority Iowa Code section 99D.7(14), which sets forth a limited circumstance within which the stewards must decide if a race is clean and whether a horse must be disqualified before the next race can begin. Mr. Peterzalek explained that the amendment resulted from a contested case proceeding regarding a horse race at Prairie Meadows. The administrative law judge overturned the stewards’ decision, the decision was appealed to the commission, and the commission decided in favor of the stewards. Mr. Peterzalek stated that the commission clarified in 4.10, in the broader context of existing rules, that the administrative review standard in these limited circumstances is the abuse of discretion. He added that the amendment to 4.10 also notifies current participants of the standard.

In response to an inquiry from Sen. Chelgren, Mr. Peterzalek explained that the amendment clarifies 4.10 and conforms with Iowa Code section 99D.7, which grants the commission the authority and enables the commission to regulate every aspect of pari-mutuel racing in the state of Iowa. Mr. Peterzalek added that the abuse of discretion standard is also clarified in two other limited circumstances in 10.4(4) which were not at issue in the contested case proceeding. In response to an inquiry from Rep. Pettengill, Mr. Peterzalek stated that the commission clarified the standard for administrative review by interpreting the existing rule and was justified in doing so. Following further inquiry, Rep. Olson asserted that since the decision of the commission is already posted on the commission’s website, current participants can be informed of the abuse of discretion standard while the rule is under a session delay.

Motion to delay Rep. Olson moved a session delay on the abuse of discretion standard addition in Items 10, 17 and 18 [4.10, 10.4(4)“a”(6), and 10.4(4) “d”(3) “1”].

Motion carried On a roll call vote of 8 to 0, the motion carried.

**REVENUE DEPARTMENT** Julie Roisen represented the department. Other interested parties included Bruce Hovden, Floyd County assessor and president of the Iowa State Association of Assessors (ISAA); Deb McWhirter, Butler County assessor; Dave Kubik, Dubuque County assessor; Neil Morgan, Ringgold County assessor; Kathy Croker, Buena Vista County assessor; and Leon Wernimont.

ARC 0770C The amendments to 71.3(1) pertain to valuation of agricultural real estate and, pursuant to Iowa Code section 421.17, are intended to provide uniformity in the distribution of agricultural productivity value at a parcel level across the state. Ms. Roisen summarized public comment and stated that no changes were made to the adopted amendments, which comprise the recommendations of the Executive Order 80 stakeholder committee.

Mr. Hovden expressed opposition to the interim adjustments to the assessment on non-cropland and stated that a deadline of January 1, 2017, would be a more reasonable time frame for compliance by every county. Ms. McWhirter stated that the cost of and time frame for compliance are unreasonable. Mr. Kubik expressed support for land use adjustments but asserted that the geo-processing of an entire county is necessary before interim adjustments can accurately be completed. Mr. Morgan expressed concern about the cost of and time frame for compliance, in particular, the interim adjustment. Ms. Croker requested that sufficient time be allowed for implementation of adjustments. Mr. Wernimont stated that the amendment is a step toward establishing a fair, reasonable method for uniform valuation of agricultural property statewide.

During the public comment period, committee members affirmed the timely, uniform, equitable application of the rule but expressed concern about the way to achieve that objective, specifically regarding the interim adjustment provision; the costs of and time frame for compliance, in particular, for counties without established electronic tools such as GIS; and the enforcement of and remedies for taxpayers regarding interim adjustments.

Revenue Department (continued)

Ms. Roisen acknowledged the concern regarding interim adjustments and stated that the interim adjustment provision was part of a compromise based on a consensus of the majority of the stakeholder committee. Ms. Roisen noted that the cost of compliance varies depending on the tools that a county already has in place and explained that the department has acquired the 2008 Farm Service Agency (FSA) digital land use layer that will be provided free to counties upon request. Ms. Roisen also explained that the rule allows a taxpayer to apply to the county for an interim adjustment to non-cropland beginning with the 2014 assessment and continuing until the county’s full implementation of the rule. Ms. Roisen noted that the rule allows a deadline for implementation for the 2017 assessment year and provides a hardship waiver to extend the implementation deadline to the 2019 assessment year. She stated that if a county is not able to implement the interim adjustments, the best option for a taxpayer would be direct appeal to the local board of review and then to the Iowa property assessment appeal board (PAAB) or district court. According to Ms. Roisen, the administrator of IOWAccess grants encourages counties in need of financial assistance to submit a single contract bid for IOWAccess grant funds. Significant funds are available, although 100 percent of the costs would not be covered. Ms. Roisen asserted that any level of implementation and increased uniformity are preferable to the status quo.

The committee further discussed the time frame and costs of and funding for implementation of interim adjustments.

Motion to delay Following discussion, Sen. Jochum moved a 70-day delay on the interim application provision, 71.3(1)“c.”

Motion failed On a roll call vote of 6 to 2, the motion failed. [Note: A 70-day delay requires 7 votes.]

Ms. Findley offered assistance to the departments of administrative services and revenue in providing interested counties with information regarding IOWAccess grants.

**ENVIRONMENTAL PROTECTION COMMISSION** Christine Paulson represented the commission. Interested parties included Julie Smith on behalf of the Iowa Association of Municipal Utilities (IAMU).

ARC 0740C The proposed amendment to 23.1(4) pertains to the adoption by reference of federal National Emission Standards for Hazardous Air Pollutants (NESHAP) for reciprocating internal combustion engines (RICE). Ms. Paulson summarized the history of the rescission of the RICE NESHAP by Executive Order 72 in 2010. She explained that subsequent reconsideration of and update to the RICE NESHAP by EPA resulted from the Governor’s and other stakeholders’ concerns regarding operation and maintenance costs for small utilities and customer electricity rates. The amendment proposes to adopt the updated RICE NESHAP.

In response to an inquiry from Sen. Chelgren, Ms. Paulson stated that emergency use of a backup generator is unlimited and up to 100 hours of use per year are allowed for all nonemergency purposes, including maintenance and testing. She also clarified for Sen. Chelgren that the adoption of the RICE NESHAP by reference will delegate authority to the department for the enforcement of the RICE NESHAP.

In response to a request from Rep. Pettengill, Ms. Paulson agreed to provide the committee with a list of utilities that have requested extensions.

Ms. Smith expressed support for the rules and commended the department, the Governor’s office and the legislature for advocating for EPA’s update of the RICE NESHAP.

**NATURAL RESOURCE COMMISSION** Willie Suchy represented the commission.

ARC 0720C No questions on proposed amendments to 52.1(3) pertaining to waterfowl refuges.

ARC 0721C No questions on proposed amendments to ch 91 regarding waterfowl and coot hunting seasons.

ARC 0719C No questions on the proposed amendment to 100.2(1) concerning the year-round pigeon season.

Natural Resource Commission (continued)

- ARC 0717C Proposed amendments to 106.6(6) pertain to antlerless-deer-only license quotas. Discussion pertained to age requirements for hunting licenses and deer numbers and quotas. Mr. Suchy stated that the quotas target areas in which deer numbers are down and are adjusted to keep the deer population stable. Additional control of the deer population is afforded by a two-pronged approach that includes the depredation program and designated hunts near cities. In response to a request from Sen. Smith, Mr. Suchy agreed to provide the committee information about whether the hunting and fishing license requirement for an adult who assists a child under 16 is set forth in statute or rule.
- ARC 0718C Proposed amendments to 108.7 concern open areas, bag limits, season dates and reporting related to river otters and bobcats. Mr. Suchy clarified for Sen. Courtney that the amendments remove statewide quotas for bobcats and provide for a seasonal limit for each trapper.

**INSPECTIONS AND APPEALS DEPARTMENT** David Werning represented the department.

- ARC 0766C No action on amendments to chs 22, 50, 54, 57, 58 and 65 pertaining to the change in terminology to “intellectually disabled.”
- ARC 0776C No questions on proposed amendments to chs 50, 57, 58 and 62 to 65 concerning background checks related to health care facilities and certified nurse aide training programs.
- ARC 0761C No action on the amendment to 59.2 regarding tuberculosis screening of health care workers and volunteers.
- ARC 0763C No action on ch 61 relating to minimum physical standards for nursing facilities.
- ARC 0765C No action on amendments to ch 63 concerning the change in terminology to “intellectually disabled” in rules related to residential care facilities for intellectually disabled persons.
- ARC 0764C No action on amendments to ch 65 concerning the change in terminology to “intellectually disabled” in rules related to intermediate care facilities for intellectually disabled persons.

**IOWA PUBLIC INFORMATION BOARD** Bill Monroe, board chair; Keith Luchtel, executive director; and Julie Pottorff, deputy attorney general, represented the board.

- ARC 0741C No action on chs 1 to 7 pertaining to organization and administration, complaint investigation and resolution, declaratory orders, contested cases, rule making, and fair information practices. Mr. Monroe introduced Keith Luchtel, who reported that the office of the board will be operational by August 1. In response to a request by the committee, Ms. Pottorff stated that the board revised 4.5(2) to give preference to assigning an administrative law judge at the request of a party in a contested case proceeding and increased from one or more to two or more the number of reasons necessary for the denial of the request.

**PUBLIC HEALTH DEPARTMENT** Barb Nervig represented the department.

- ARC 0754C No action on the amendment to 1.4(1) pertaining to the exemption from duplicate reporting of laboratory results.
- ARC 0755C No action on amendments to 11.84 to 11.93 pertaining to the AIDS drug assistance program (ADAP).
- ARC 0775C No questions on proposed amendments to 133.1 and 133.3 regarding the white flashing light authorization.
- ARC 0772C No questions on proposed amendments to 134.1 and 134.2(3) pertaining to trauma care facilities.
- ARC 0774C No questions on proposed amendments to 135.1 and 135.2(1) concerning out-of-hospital trauma triage destination protocols.
- ARC 0773C No questions on proposed amendments to 137.1 to 137.3 pertaining to initial and continuing trauma education and training.
- ARC 0756C No action on amendments to 140.1 and 140.4 relating to EMS system development grants.

**SECRETARY OF STATE** Charlie Smithson represented the secretary of state.

- ARC 0736C No action on amendments to 22.9(6) and 22.12 pertaining to accessibility testing of voting systems by interested parties.
- ARC 0729C No questions on proposed amendments to 2.3 regarding the fee for notice of action involving small claims and nonresidents.
- ARC 0695C Proposed amendments to ch 22 pertain to certification of two new voting systems. In response to a request from Sen. Chelgren, Mr. Smithson will provide the committee information about the Dominion Democracy Suite and the reason for its addition to existing systems.
- ARC 0728C No questions on the proposed rescission of ch 31. Because of a statutory change, the secretary of state no longer collects the fee for registration of postsecondary schools.
- ARC 0730C No questions on proposed amendments to 40.9 relating to the e-mail address required with an online filing by the registered agent of any business organization.
- ARC 0731C Proposed amendments to ch 42 pertain to athlete agent registration. In response to an inquiry from Sen. Jochum, Mr. Smithson stated that the registration fees are directed to the general fund.
- ARC 0727C No questions on proposed amendments to 43.1 to 43.6 regarding notarial acts.

**HUMAN SERVICES DEPARTMENT** Nancy Freudenberg, Rick Shults, Anita Smith and Jennifer Vermeer represented the department. Other interested parties included Linda Kemp of the Iowa State Association of Counties, Lynn Ferrell and Karen Walters Crammond of Polk County Health Services, Marissa Eyanson of Easter Seals Iowa, and Shelly Chandler of the Iowa Association of Community Providers.

- ARC 0735C Amendments to ch 25 pertain to the exemption of counties from joining into regions to administer mental health and disability services. Ms. Freudenberg reported that of the three counties applying for exemptions, Polk was approved, Carroll was not approved, and Jefferson is pending.  
In response to an inquiry from Rep. Pettengill, Mr. Shults stated that Carroll County did not meet half of the criteria for an exemption or demonstrate that its services are as cost-effective as and outcomes are at least equal to those provided by a region. Mr. Shults clarified for Sen. Chelgren that the criteria for the granting of an exemption were set forth in 2012 Iowa Acts, Senate File 2315.
- ARC 0746C Proposed amendments to 75.1(41)“a” pertain to Medicaid eligibility for family planning services. Ms. Freudenberg clarified for Rep. Pettengill that the Iowa Family Planning Network provides a variety of services and that the program is the payor of last resort.
- ARC 0757C No action on amendments to chs 77 to 79 and 83 pertaining to a name change and to case management related to the home- and community-based services (HCBS) ill and handicapped waiver.
- ARC 0747C Proposed amendments to ch 86 pertain to eligibility, application and verification of income related to the HAWK-I program. In response to an inquiry from Sen. Smith regarding 86.2(7), Ms. Freudenberg described the program eligibility criteria, and Ms. Smith clarified that “alien” has been changed to “immigrant” for consistency with the terminology in Medicaid regulations. Ms. Freudenberg agreed to provide Sen. Chelgren with a copy of the Medicaid eligibility criteria in 75.11(2), which are referenced 86.2(7).
- ARC 0758C No action on amendments to 88.84(1)“a” clarifying policy on the treatment of income and resources for certain institutionalized spouses who apply for programs of all-inclusive care for the elderly (PACE).
- ARC 0760C No action on amendments to 92.1 and 92.8 regarding inclusion of Indian health care providers in the IowaCare network.
- ARC 0759C No action on amendments to 92.7(1)“a” relating to IowaCare premiums.
- ARC 0691C No questions on proposed amendments to ch 75 pertaining to a decrease in the average statewide cost of nursing facility services and charges for nursing facility care.
- ARC 0690C No questions on proposed amendments to 75.24(3)“b” regarding the update of average statewide charges for institutional care.

Human Services Department (continued)

Special Review

In compliance with 2013 Iowa Acts, Senate File 446, division V, section 30, the department presented notice to the committee of the department's intention to adopt by Emergency (and under Notice of Intended Action) 12 rule makings related to Medicaid provider rate increases and cost containment strategies and 1 rule making related to the suspension of enrollment in the IowaCare program. (Note: Rule reference numbers shown were assigned by the department for purposes of review and discussion.)

Child Welfare

1. 14-029: No questions on foster family daily reimbursement rate and adoption subsidy daily maintenance rates (ch 156).
2. 14-031: No questions on child care assistance provider rate ceilings (ch 170).
3. 14-033: No questions on the monthly maintenance rate and initial allowance for youth placed in the supervised apartment living (SAL) program (ch 156).
4. 14-035: No questions on how the SAL rates are established or on the child welfare emergency services (CWES) juvenile shelter care rates (ch 150).
5. 14-037: No questions on increases in the youth stipend and provider rates for the preparation for adult living (PAL) program (ch 187).

Medicaid Cost Containment

6. 14-041: No questions on exclusion of coverage of and payment for elective, non-medically necessary C-sections (ch 78).
7. 14-043: This rule making pertains to prior authorization (PA) for initial admission to or continued stay in a certified hospital swing bed under specified conditions (ch 78). In response to an inquiry from Sen. Jochum, Ms. Vermeer stated that the cost per day for a swing bed and a nursing facility are \$1800 and \$150, respectively, and that the 30-mile radius for placement allows the client to be near home and family.
8. 14-047: This rule making relates to the revised reimbursement method for case management services under the Medicaid state plan, habilitation, and home- and community-based services (HCBS) for the elderly and individuals with a brain injury (ch 79). Ms. Vermeer explained that because the legislation requires cost containment strategies, the department is implementing a static fee for service based on cost settled rates for fiscal year (FY) 2012 plus an inflation factor of 4.7 percent for FY 2014. She added that the department will work with stakeholders in FY 2014 to determine a rate methodology for FY 2015.

In response to an inquiry from Sen. Jochum, Ms. Vermeer stated that the previous change in methodology required no caps or limits and resulted in increased costs and that it is unknown whether the increase in rates has improved outcomes.

Ms. Kemp expressed opposition to the use of FY 2012 as the basis for reimbursement. Mr. Ferrell expressed opposition to the methodology for reimbursement, including the rationale for the rate increase, the elimination of cost settlement, and the unfairness of the short notice for required implementation. Citing outcomes data from 2007 to 2012 related to the current structure of costs and delivery of services, Ms. Eyanson stated that the methodology will create poor outcomes for the individuals to be served and requested that the methodology be revised. Ms. Crammond asserted that the methodology is predicated on an artificially low rate based on providers' current business methods. Ms. Vermeer stated that based on these comments and those from case managers, the department will consider changes in the methodology.

In response to an inquiry from Rep. Pettengill, Ms. Vermeer stated that the department's intention in this rule making was to achieve the cost containment goal defined in Senate File 446 and then to convene providers to examine fundamental changes in methodology in the longer term.

Human Services Department (continued)

9. 14-049: No questions on transition of services provided by individual providers of personal care under the consumer-directed attendant care (CDAC) option to agency-provided personal care services (ch 77).
10. 14-051: No questions on the transfer of administrative responsibility for Medicaid habilitation to the contractor for the Iowa Plan for Behavioral Health (chs 77 to 79).
11. 14-053: No questions on changes in the payment methodology for home health services to the Medicare low utilization payment amount (LUPA) methodology with state geographic wage adjustments (ch 79).
12. 14-055: This rule making pertains to the implementation of Medicaid provider reimbursement rate increases (chs 78, 79, 83). Ms. Chandler expressed appreciation to the legislature for the 3 percent increase for HCBS waiver providers and to the department for quick development of rules to implement the increase by July 1. However, she requested that the department reconsider the methodology so that, pursuant to legislative intent, the rate increase for salaries and benefits for direct care workers and non-administrative staff may be effective July 1. In response to an inquiry from Rep. Pettengill, Jess Benson, LSA fiscal services division, stated that the 3 percent increase for HCBS waiver providers is equivalent to \$7.3 million of the \$11.9 overall increase in Medicaid provider reimbursement rate increases.

Other Medicaid rules

13. 14-057: This rule making suspends enrollment in the IowaCare program (ch 92). In response to an inquiry from Sen. Smith, Ms. Vermeer corrected an earlier department statement by clarifying that all of the items under discussion except 14-057 were specifically addressed in Senate File 446. Sen. Smith stated that some committee members did not vote for the DHS budget.

**EDUCATION DEPARTMENT** Mike Cormack, Jeff Berger and Thomas Mayes represented the department. Other interested parties included Owen Freese on behalf of the Iowa Pupil Transportation Association; and Daniel Schultz and Danny Thede, directors of transportation for Southeast Polk Community Schools and Indianola Community Schools, respectively.

ARC 0767C

The amendment to 43.30 pertains to the school bus inspection fee paid by school districts. Mr. Cormack stated that the fee increase from \$28 to \$40 will fund the addition of a third inspector. He reported that no written or oral public comments had been received. Mr. Berger summarized the financial basis for the fee increase and stated that the increase will ensure the financial stability of the inspection program. He explained that statutory requirements are being fulfilled by two inspectors but that an additional inspector would allow for follow-up inspections.

Some committee members expressed concern about the necessity of a fee increase, the additional financial burden to school districts, and the cost-effectiveness and efficiency of the current program and suggested that a session delay would allow the legislature to examine alternative inspection methods. Other committee members expressed support for the fee increase and the inspection program in general, noting that the program is favored by school districts and the public and provides consistent, uniform inspections through state oversight.

In response, Mr. Berger stated that a delay would not prevent bus inspections but that without the fee increase, a third inspector could not be hired. He described the inspection process, noting that the inspectors are field-based and are assisted by local school district personnel to perform thorough inspections. Mr. Cormack and Mr. Berger emphasized that no school district has expressed opposition to the fee increase and that state oversight of school bus inspections has provided consistency and uniformity in maintaining safety.

Mr. Freese, Mr. Schultz and Mr. Thede expressed support for the fee increase. They noted that inspectors work year-round and complete inspections with assistance from school district personnel; that the additional inspector will ensure timely correction of out-of-service deficiencies; and that the safety of children will be ensured in a cost-effective, efficient manner.

Education Department (continued)

- Motion to delay      Sen. Horn moved a session delay on the bus inspection fee increase in 43.30.
- Motion failed      On a roll call vote of 4 to 4, the motion failed. [Note: A session delay requires 7 votes.]
- ARC 0693C      No questions on proposed amendments to 41.154(4) pertaining to the federal requirement for one-time consent and written notification for schools to access Medicaid and other public insurance benefits and for annual notification thereafter.
- ARC 0694C      Proposed ch 82 pertains to standards for school administration manager programs. Mr. Cormack clarified for Sen. Horn that the school administration manager will assist teachers.
- Committee business**      The minutes of the May 16, 2013, meeting were approved.  
The next meeting was scheduled for Tuesday, July 9, 2013, at 9 a.m.
- Adjourned      The meeting was adjourned at 3:45 p.m.

Respectfully submitted,

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Stephanie A. Hoff

APPROVED:

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Chair Dawn Pettengill

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Vice Chair Wally Horn