

**MINUTES OF THE JULY 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 July 9, 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 and Thomas Courtney, and Senator Pam Jochum by telephone conference; Representatives Dave Jacoby, Rick Olson, Jeff Smith, and Guy Vander Linden were present. Senator Roby Smith was not present.
- Also present: Joseph A. Royce and Jack Ewing, Legal Counsel; Stephanie A. Hoff, Administrative Code Editor; 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** Beth Lenstra presented the LSA fiscal report.
- Committee Special Review** At the June meeting, the committee reviewed proposed changes to the committee rules of procedure, and Rep. Pettengill requested that members submit any additional changes prior to the July meeting. Noting that no additional changes had been submitted, Rep. Pettengill requested a motion for approval.
- Motion to approve Rep. Vander Linden moved approval of the committee rules of procedure.
- Motion carried On a voice vote of 7 to 0, the motion carried.

**ADMINISTRATIVE SERVICES DEPARTMENT** Caleb Hunter represented the department.

- ARC 0812C The proposed amendments to 1.4 and the renumbering of chs 105 to 108 as chs 117 to 120 pertain to the general services and central procurement enterprises of the department. Mr. Hunter explained that the amendments propose the creation of the central procurement enterprise whose function was previously performed by the general services enterprise.
- In response to an inquiry from Rep. Pettengill, Mr. Hunter will provide the committee information about the management of the state historical building of Iowa by the department of cultural affairs. In addition, Mr. Hunter clarified that the chief operating officer of the proposed central procurement enterprise was formerly a bureau chief. Mr. Hunter clarified for Rep. Olson that real estate services, formerly an agency-level responsibility, will be overseen by the general services enterprise pursuant to 2011 legislation.

**AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT** Margaret Thomson represented the department.

- ARC 0786C No questions on proposed amendments to ch 77 pertaining to an exemption to the definition of “dangerous wild animal.”
- ARC 0815C No questions on proposed amendments to ch 85 regarding motor fuel standards, weights and measures, and display of liquid petroleum prices.

**EDUCATION DEPARTMENT** Mike Cormack, Thomas Mayes and Jim Donoghue represented the department.

- ARC 0814C The amendments to 41.154(4) pertain 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. In response to an inquiry from Rep. Pettengill, Mr. Mayes stated that a parent has the right to revoke the one-time consent and that school-based Medicaid claiming creates an education record that includes Medicaid claims. He added that whether a parent grants or revokes consent for school-based Medicaid claiming, the services required by the child’s individual educational plan (IEP) must be delivered; thus, IEP progress reports would document whether services have been delivered. The parent may request to review the Medicaid billing records with the option to revoke consent.
- ARC 0813C No action on ch 82 concerning standards for school administration manager programs. Mr. Cormack stated that the school administration manager program was enacted in 2012 Iowa Acts, Senate File 2284, division IV, and that ch 82 sets forth the guidelines and standards for the program.

Education Department (continued)

Discussion pertained to staffing, flexibility, licensure, training, and public comment. Mr. Cormack stated that incorporation of a school administration manager (SAM) by a school district will be a local decision based on an individual district's needs; that as stated in 82.10, the department seeks to provide flexibility to new programs in meeting the goals of the SAM program; that rules regarding licensure for school administration managers will be promulgated by the educational examiners board; that training is currently provided by the School Administrators of Iowa (SAI); and that the department has received positive comments from existing SAM programs and has learned that more school districts are considering SAM programs or sharing SAM programs with neighboring districts. In response to an inquiry from Sen. Chelgren regarding the prescriptive nature of the rules, Mr. Cormack stated that the rules reflect the current practice of existing SAMs and allow for flexibility.

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

ARC 0785C Proposed amendments to chs 22 and 28 pertain to air quality. Ms. Paulson explained that the amendments mirror changes to the national ambient air quality standards (NAAQS) in regard to fine particulate matter (PM<sub>2.5</sub>), lead, and sulfur dioxide (SO<sub>2</sub>) for air construction permits and for Title V insignificant activities. Ms. Paulson noted that the amendments will set appropriate thresholds for new or modified equipment emitting lower levels of PM<sub>2.5</sub> or lead to be exempt from construction permitting and will update emissions thresholds for PM<sub>2.5</sub> and lead for Title V insignificant activities. She stated that the amendments impact any owner or operator of a facility with new or modified equipment that emits PM<sub>2.5</sub> or lead if that owner or operator wishes to use the exemptions or insignificant activities provisions.

Discussion pertained to the effect of the amendments on smaller facilities and residential property, state adoption of federal standards, the cost and jobs impacts, and federal payment for state implementation.

Ms. Paulson stated that the amendments regarding emission thresholds were developed with input from a variety of stakeholders that include small facilities. Mr. McGraw stated that most residential sources of emissions have been exempt from construction permitting requirements and most are not required to have operating permits that govern emissions. Ms. Paulson stated that the state adoption of federal standards ensures that facilities that use the exemptions will not violate those standards and added that most facilities are appreciative of working with the department rather than with the EPA. Ms. Paulson explained that any potential cost impact or jobs impact will be less than the impacts associated with preparing a construction permit application or Title V permit application or with paying annual Title V fees. Regarding federal payment for implementation, Mr. McGraw explained that federal Clean Air Act Section 105 grant money and matching state funds pay for the implementation of the program for minor sources; there are no permit fees for minor sources and no costs for exemptions.

ARC 0783C No action on amendments to 33.1 and 33.9 concerning plantwide applicability limitations (PALs) related to air quality.

**INSPECTIONS AND APPEALS DEPARTMENT** Deborah Svec-Carstens represented the department.

ARC 0809C No questions on proposed amendments to 67.1, 67.5 and 67.9 pertaining to nurse delegation in elder group homes, assisted living programs and adult day services programs.

ARC 0808C No questions on proposed 67.19 and amendments to 67.9 regarding criminal, dependent adult abuse, and child abuse record checks of prospective employees of elder group homes, assisted living programs and adult day services programs.

**INSURANCE DIVISION** Angel Robinson represented the division. Other interested parties included Kent Hartwig of Advocacy Strategies on behalf of the Multiple Sclerosis Society of Iowa, the Brain Injury Alliance of Iowa and the Epilepsy Foundation of Iowa; Charlie Wishman of the Iowa Federation of Labor, AFL-CIO; Jen Schulte of the American Cancer Society Action Network; Jeneane Moody of the Iowa Public Health Association; and Kelli Soyer of the National Association of Social Workers.

## Insurance Division (continued)

ARC 0816C Proposed ch 85 pertains to regulation of navigators. Ms. Robinson stated that navigators are individuals or entities that are regulated by the division and, in accordance with the federal Patient Protection and Affordable Care Act, will be selected and granted funds by the U.S. Department of Health and Human Services to provide assistance to Iowa consumers who are eligible to purchase coverage through a health insurance marketplace. The purpose of ch 85 is to provide, pursuant to Iowa Code chapter 522D, the licensing, training, application requirements and other minimum practice standards for entities and individuals acting as navigators.

Discussion pertained to the definition of navigator and who may apply to be a navigator, how training is funded, how grants are awarded, and navigators' financial responsibility.

Ms. Robinson stated that an individual or entity, through application to and selection by the federal government, may become a navigator, subject to division approval. Federal grants will fund training and compensation for navigators, who may provide guidance but may not encourage persons seeking health insurance coverage to select a specific health plan. Ms. Robinson noted that the division will have no control over performance measures; however, the rules allow the division to review service to consumers should the navigator not fulfill the navigator's duties. Navigators must also secure and maintain evidence of financial responsibility in the form of surety bonds or other financial instruments that protect against wrongful acts, misrepresentations, errors, omissions or negligence or other violation of insurance law.

Mr. Hartwig stated that nonprofit consumer advocacy groups seek clarification through additional language in rule regarding certified application counselors and the advocacy groups' role in the process of assisting their clients without violating federal and state laws and rules. Mr. Wishman inquired about whether a negotiator of a labor contract would be in violation of the rules if assisting in the selection of a qualified health plan and how the rules relate to collective bargaining. Ms. Schulte expressed concern that because Iowa did not choose to conduct consumer public assistance, state rules may be preempted by federal law. Ms. Moody expressed concern regarding exclusion of coverage of mental and behavioral health services; the fact that the rules address only navigators among the four types of consumer assistance set forth in the Act; the short training schedule for completion of significant requirements; and the lack of clarity about whether navigator-like positions will be held harmless. Ms. Soyer expressed concern that the rules do not address certified application counselors and that the costs and short time frame are obstacles to the implementation of the rules.

Rep. Pettengill requested that Ms. Moody provide her written comments to the committee.

**LAW ENFORCEMENT ACADEMY** Arlen Ciechanowski and Russell Rigdon represented the academy.

ARC 0782C Proposed amendments to chs 8 and 10 pertain to mandatory mental health training and to the firearms training program. Mr. Ciechanowski stated that the amendments update the description of the firearms training requirements, describe the current training program more accurately and, in compliance with 2012 Iowa Acts, Senate File 2312, set forth additional requirements for mandatory mental health training. In response to committee members, Mr. Ciechanowski explained the content of continuing mental health training and stated that the academy requires as much training as possible, within the work schedules and other restrictions on officers' time, to provide officers the tools to handle a wide range of situations.

**PROFESSIONAL LICENSURE DIVISION** Judy Manning and Sharon Dozier represented the division.

ARC 0777C No action on amendments to chs 31 and 33 pertaining to licensure and discipline for marital and family therapists and mental health counselors.

ARC 0792C Proposed amendments to chs 121 to 124 concern hearing aid dispensers. Ms. Dozier clarified for Sen. Chelgren that the removal of the online option from independent study allows the licensee to study independent of a proctor and that the board intends to reexamine the area of continuing education.

ARC 0797C No action on amendments to chs 141 and 144 regarding provisional licensure for nursing home administrators.

**PUBLIC HEALTH DEPARTMENT** Ken Sharp and John Kelly represented the department.

ARC 0811C No questions on proposed amendments to ch 25 pertaining to the plumbing code, specifically, plumbing materials and methods for buildings and premises in Iowa.

**PUBLIC SAFETY DEPARTMENT** Roxann Ryan represented the department.

ARC 0791C Proposed amendments to 551.2 and 552.1 pertain to electrical installations on farms. Ms. Ryan summarized the history of rule making related to electrical installations on farms. The electrical examining board's rules, promulgated in 2009, required permits and inspections for electrical installations on farm property. Gov. Branstad filed an objection to the then-existing rules on January 23, 2012, and the rules were challenged in a judicial review action by two individual farmers in 2012. In July 2012, the commissioner suspended any inspections of farm structures. A decision by the district court in Carroll County on January 16, 2013, concluded that the rules were not consistent with the statute because some but not all farm structures would qualify as commercial structures. The amendments, proposed in order to comply with the district court's ruling, would include inspections of residences, commercial structures, and industrial structures but not farm structures.

Ms. Ryan reported that 300 public comments by e-mail have been received thus far, 297 in support of the amendments and 3 in opposition. Ms. Ryan clarified for Rep. Jacoby that the three comments in opposition were from electricians; the comments in support, from farmers. She clarified for Rep. Olson the definition of "farm."

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

ARC 0804C No action on amendments to 2.3 regarding the fee for notice of action involving small claims and nonresidents.

ARC 0801C No action on amendments to ch 22 pertaining to certification of two new voting systems.

ARC 0805C No action on the rescission of ch 31, registration of postsecondary schools. Because of a statutory change, the secretary of state no longer collects the fee for registration.

ARC 0803C No action on amendments to 40.9 relating to the e-mail address required with an online filing by the registered agent of any business organization.

ARC 0802C No action on amendments to ch 42 pertaining to athlete agent registration.

ARC 0806C No action on amendments to 43.1 to 43.6 regarding notarial acts.

**VOTER REGISTRATION COMMISSION** Charlie Smithson represented the commission. Other interested parties included Rita Bettis of the American Civil Liberties Union (ACLU) of Iowa.

ARC 0807C Rule 2.16 relates to the official Iowa voter registration application form.

The ACLU of Iowa had submitted comments related to the application and explained three reasons for which the application is problematic: the application (1) implies that a felony conviction—regardless of restoration of rights—is disqualifying; (2) implies that either a current Iowa driver's license or nonoperator ID is required in addition to a social security number; and (3) improperly excludes some Iowa voters who may lack permanent stable housing. The ACLU requested a rescission of the rule or, in the alternative, amendment of the rule to address the problems. In response to the comments, Mr. Smithson stated that the three proposed changes to the application have merit and do not violate the statute or the intent of the application. Mr. Smithson explained that his guidance to the commission and to staff will be to initiate proper rule making to implement the three changes. He described a proposed rule-making process by which the application will be amended in collaboration with the commission and stakeholders and become effective in a timely manner.

In response to an inquiry from Sen. Chelgren, Mr. Smithson stated that the potential problem that might be caused by removal of question #3 of the voter registration application can be remedied to respond to the concerns of the ACLU and to ensure clarity to prospective voters.

Ms. Bettis noted the ACLU had distributed written comments to the rules committee prior to the meeting, and she expressed appreciation to the commission for the plan to amend the rule based on those comments.

**UTILITIES DIVISION** Cecil Wright represented the division.

ARC 0781C No action on an amendment to 15.5(2) pertaining to the correction of an internal reference.

Utilities Division (continued)

ARC 0784C No questions on proposed amendments to 25.4 concerning pole attachment procedures.

**VETERANS AFFAIRS, IOWA DEPARTMENT OF** ARC 0800C was excused from review at this meeting and will be reviewed at the August meeting.

**Committee Approval of Emergency Rule Makings** Pursuant to 2013 Iowa Acts, House File 586, section 1, committee approval is required for emergency rule making that is not provided for in the implementing statute. Mr. Royce will e-mail the agency official notification of committee approval for emergency rule making.

**PHARMACY BOARD** Terry Witkowski represented the board. Other interested parties included Jan Rozga of Indianola and Steve Lukan of the Governor’s Office of Drug Control Policy.

Ms. Witkowski presented an emergency rule making that amends 10.38(1) to temporarily classify as Schedule I controlled substances three synthetic cannabinoids in conformance with recent control of these same substances by the federal Drug Enforcement Administration (DEA). The substances, UR-144, XLR11, and AKB48, have a high potential for abuse, have no currently accepted medical use in treatment in the United States, and lack accepted safety for use under medical supervision. Ms. Witkowski stated that state conformance with federal law is a benefit to the public and to law enforcement. She added that these substances are of state and national concern because of the proclivity for their abuse and misuse. The rule making would be a temporary measure until the legislature considers the inclusion of these substances in the controlled substances Act during the next legislative session.

In response to inquiries from Sen. Chelgren, Ms. Witkowski stated that if no legislative action is taken within 60 days of the beginning of the session, the rules would become null and void; Mr. Lukan stated that prosecutors prefer that controlled substances be named in statute. Rep. Jacoby expressed support for this emergency rule making.

Ms. Rozga expressed support for the rule making and stated that the action is a protective measure and necessary to stay ahead of the proliferation of such substances while the legislature is not in session. Mr. Lukan expressed appreciation to the pharmacy board for its action on these substances and support for the rule making. He noted that these substances have dominated the 500 submissions to the Iowa division of criminal investigation (DCI) criminalistics laboratory in the first half of 2013 and stated that the rule making will provide for the safety of the public.

Motion to approve Rep. Jacoby moved approval of the emergency rule making.

Motion carried On a voice vote of 9 to 0, the motion carried.

Mr. Johnson suggested that the committee consider a general referral of the rule making to the appropriate standing committees given the 60-day period for legislative action after the next session of the general assembly begins.

Motion to refer Sen. Courtney moved a general referral of the rule making.

Motion carried On a voice vote of 9 to 0, the motion carried.

**HISTORICAL DIVISION** Mary Cownie represented the division.

Ms. Cownie presented an emergency rule making that amends ch 48. Ms. Cownie summarized the amendments, including an increase in qualified rehabilitation costs and an extension of the filing window for tax credit applications. In response to an inquiry from Sen. Chelgren, Ms. Cownie explained that an emergency rule making is necessary because the amendments extend the filing window for tax credit applications from July 1, 2013, to July 31, 2013, to prevent delays in the commencement of projects. In response to an inquiry from Rep. Olson, Ms. Cownie explained that because the economic downturn affected the completion of three projects, an additional 12 months will be added to the 60-month project completion deadline as long as more than 50 percent of the qualified rehabilitation costs were incurred within 60 months of the date on which the project application was approved. Rep. Olson suggested that the board deny future requests for additional extensions of time for completion of these three projects.

Motion to approve Sen. Chelgren moved approval of the emergency rule making.

Motion carried On a voice vote of 9 to 0, the motion carried.

**HUMAN SERVICES DEPARTMENT** Nancy Freudenberg, Jennifer Vermeer and Rick Shults represented the department. Other interested parties included Dean Lerner; John Hale on behalf of the Iowa Caregivers Association; Susan Cameron and Jeff Steggerda on behalf of the Iowa Health Care Association (IHCA); Greg Boattenhamer of the Iowa Hospital Association; Joanna Shade of Marengo Memorial Hospital; Lee Demmitt and Sandy Stever on behalf of Jefferson County; and Linda Hinton of the Iowa State Association of Counties (ISAC).

ARC 0790C No questions on proposed amendments to ch 54 pertaining to case records, financial and statistical reports and cost reports related to residential care facilities.

ARC 0789C Proposed amendments to chs 78, 79 and 81 concern reimbursement, cost reports, and recoupment of debts owed Medicaid related to nursing facilities.

Discussion pertained to Item 14, which sets forth the allowable and unallowable expenses shown on line item 14 of a cost report.

Mr. Lerner stated that the cost reports address Medicaid reimbursement to nursing facilities and show how the state spends Medicaid funds and cited as an example the 2011 cost report in which \$18 million in unspecified expenses appeared in line item 14. He commended the department for initiating public discussion of cost reporting but expressed concern regarding a single cost report line item for allowable Medicaid expenses, including legal fees, which are not itemized and may not be directly related to residents' care. Mr. Hale expressed appreciation to the department for the proposed amendments, which initiate positive changes, and suggested further revision for the purposes of transparency and clarity, including itemization and categorization of fees and other allowable expenses; definitions of terms such as "reasonable"; and analysis of cost data related to outcomes for residents in nursing facilities.

Ms. Cameron expressed support for the amendments, which set forth the allowable expenses and unallowable expenses on cost reports. Mr. Steggerda stated that the amendments enhance the transparency and quantity of information contained in cost reports.

In response to an inquiry from Rep. Olson, Ms. Vermeer explained that a cost report is used to develop the overall Medicaid rate for a facility and that the complexity of the cost report is difficult to make transparent. Rep. Olson requested that during the review of public comment, the department consider methods to make cost reports accessible and transparent to the public. Sen. Jochum and Rep. Pettengill concurred with Rep. Olson's comments regarding the need for transparency. Ms. Vermeer clarified for Sen. Chelgren that the reimbursement of legal fees is subject to broad federal guidance that is subject to state discretion and that the legislature could exclude legal fees from Medicaid reimbursement. Ms. Vermeer, in response to an inquiry from Rep. Pettengill, stated that the department will review comments regarding itemizing the expenses on line item 14 on a cost report (in Item 14) but could not state the department's position at present.

ARC 0788C No questions on proposed amendments to 82.5 regarding financial and statistical reports for intermediate care facilities for persons with an intellectual disability.

ARC 0787C No questions on proposed amendments to chs 109 and 110 regarding provider immunization and health care requirements and provider files related to child care centers and child development homes (CDHs).

Special Review 14-043 A special review of the following two rule makings was requested by Rep. Pettengill. This rule making amends 78.3(16) and, prior to its emergency filing, was reviewed by the committee at the June meeting under file number 14-043. The amendments pertain to prior authorization (PA) for initial admission to or continued stay in a certified hospital swing bed under specified conditions.

Ms. Vermeer stated that the department's primary concern is the cost of placement in a swing bed beyond the two-week average stay (\$1,800 per day) and the appropriateness of that placement given the required level of care. Based on the number of public comments received, she stated that the department will seek a compromise that achieves cost containment and is less administratively burdensome for hospitals.

## Human Services Department (continued)

Mr. Boattenhamer stated that swing-bed placement requires an intermediate level of care that includes skilled nursing services, the continuation of which would be necessary after the patient's transfer to a nursing facility and expressed concern that the transfer from a swing bed to a nursing facility would affect the continuity and delivery of care. He stated that the Iowa Hospital Association would work with the department on a proposed compromise that includes preauthorization of extended swing-bed placement beyond the average two-week length of stay.

Ms. Shade requested that skilled care be maintained in rural communities and expressed concern that the rules could harm Medicaid members who need skilled services that a nursing facility does not provide and for whom monthly authorization for swing-bed placement causes uncertainty.

ARC 0735C

This rule making, which amends ch 25, was Adopted and Filed and published in the 5/15/13 IAB, effective 8/1/13. The amendments pertain to the exemption of counties from joining into regions to administer mental health and disability services. Ms. Freudenberg summarized the immediate history of the rule making. She reported that by the June meeting, the department had acted on all applications for exemption except that of Jefferson County and that department authority to accept applications for an exemption was repealed as of July 1, 2013. Jefferson County's application has since been denied.

Discussion pertained to the denial of Jefferson County's application for exemption from forming a region and to possible alternatives. Mr. Shults reported that of the three counties applying for exemption, Polk County was approved and Carroll County and Jefferson County were denied. Mr. Shults reviewed the statutory criteria for exemption and the development of the rules that implement the criteria by which the department measured and assessed whether a county would be granted an exemption from forming a region. In an assessment that includes 29 factors, Jefferson County met 14 factors and did not meet 15 factors, and based on that evaluation, the department denied Jefferson County's application for an exemption from forming a region. Mr. Shults stated that Jefferson County has the right to appeal the decision and could also consider joining a region and added that the department is willing to assist Jefferson County in joining a region.

Mr. Demmitt described Jefferson County's application and review process and the resulting denial of an exemption and expressed the opinion that the criteria and time frame for counties seeking an exemption were unfair. He asserted that counties seeking an exemption should be granted the same time frame to fulfill the requirements of the mental health redesign as that of multicounty regions, that is, no later than July 1, 2014. He concluded by pointing out that none of the multicounty regions have necessarily met the criteria set forth in statute and are allowed a year to do so. Ms. Hinton suggested that the criteria set forth in the rules exceed those in statute.

Committee members inquired about time frames, criteria, and alternatives for counties, whether counties are seeking exemptions from forming a region or are forming regions. In response, Mr. Shults stated that pursuant to the statute, counties exempted from forming regions must have been able, at the time of approval, to provide services that are equal to or better than those of the rest of the state; counties forming regions will be held to the same standards as counties exempted from forming regions and will be operational no later than July 1, 2014. Mr. Shults stated that the department has adopted a quality improvement framework to assist regions that do not at first meet required outcomes. According to Mr. Shults, in rare cases when improvement is not achieved, the statute allows for reduction in funding.

Rep. Pettengill and Sen. Chelgren stated that they will introduce legislation regarding the exemption process, including clarification of the time frames and criteria.

July 9, 2013

**Committee business** The minutes of the June 11, 2013, meeting were approved.  
The next meeting was scheduled for Tuesday, August 6, 2013, at 9:30 a.m.

Adjourned The meeting was adjourned at 1:45 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