

**MINUTES OF THE AUGUST 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, August 6, 2013, 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 Dave Jacoby, Rick Olson, and Jeff Smith were present. Representative Guy Vander Linden was not present.

Also present: Joseph A. Royce and Jack Ewing, Legal Counsel; Stephanie A. Hoff, Administrative Code 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 9:40 a.m.

Fiscal overview Beth Lenstra presented the LSA fiscal report.

ENVIRONMENTAL PROTECTION COMMISSION Elaine Douskey represented the commission.

ARC 0836C This Amended Notice proposes to rescind 135.5(1)“e,” which was previously Adopted and Filed Emergency (see ARC 0559C, IAB 1/9/13), and to adopt a new 135.5(1)“e” to change certain leak detection and notification requirements for unstaffed facilities that operate underground storage tank (UST) systems with pressurized piping. Ms. Douskey stated that unstaffed facilities do not have an operator present on site at all times when the UST system is operating and available to dispense fuel to a customer. Proposed 135.5(1)“e,” which has been developed with input from several stakeholders, requires that unstaffed facilities employ automatic line leak detectors so that the detection of a leak leads to a shutdown of the submersible pump, a restriction of the flow of product or the triggering of an audible or visual alarm. For the latter two actions, operator notification to a Class B operator by immediate electronic communication, customer report via telephone, or a daily visit by a Class A, B, or C operator or designee is required.

Discussion pertained to customer-dependent reporting of leaks, the frequency of leaks, the cost of leak detection devices, and planning for accidents. Ms. Douskey stated that if a customer does not report a leak, a leak detection device will restrict the flow of fuel and an operator will check the facility as a result of the leak; that leaks are infrequent; and that the cost of leak detection devices ranges from \$5,000 to \$15,000 for automatic shutoff (most attended facilities currently have devices to restrict the flow). Sen. Courtney requested that the department consider a plan of action for a customer to follow in the event of an unexpected event at an unattended facility, such as an accidental detachment of hose from a nozzle.

NATURAL RESOURCE COMMISSION Willie Suchy represented the commission.

ARC 0828C Amendments to 52.1(3) pertain to waterfowl refuges. Mr. Suchy clarified for Sen. Chelgren that the delisting of two wildlife refuges and the adding of a new wildlife refuge simultaneously close and open areas of approximately 200 acres each.

ARC 0829C The amendment to 100.2(1) concerns the year-round pigeon season. In response to a request from Sen. Chelgren, Mr. Suchy will provide information to the committee about whether a permit is required to hunt pigeons.

ARC 0830C No action on amendments to 106.6(6) regarding antlerless-deer-only license quotas.

ARC 0831C Amendments to 108.7 relate to open areas, bag limits, season dates and reporting related to river otters and bobcats. In response to an inquiry from Sen. Chelgren, Mr. Suchy stated that to find the right balance among new and indigenous species, the department follows a plan to allow populations to be as natural as possible within the social and economic constraints in the state.

VETERANS AFFAIRS, IOWA DEPARTMENT OF Robert King, executive director, represented the department.

ARC 0800C No questions on proposed amendments to ch 14 regarding the veterans trust fund.

AUDITOR OF STATE Bernardo Granwehr represented the auditor of state. Other interested parties included Sandra Ragona.

Auditor of State (continued)

ARC 0849C No questions on proposed 21.2 establishing a periodic examination fee. Ms. Ragona expressed concern that there are no audit requirements for moneys held by homeowners associations. In response, Mr. Granwehr pointed out that the rule concerns only governmental entities. Committee members suggested that Ms. Ragona's concern be addressed by the legislature.

EDUCATIONAL EXAMINERS BOARD Darcy Lane and Joanne Tubbs represented the board.

ARC 0853C No action on amendments to chs 11 and 25 pertaining to the initiation of an ethics complaint by the executive director and to standards of professional conduct. Ms. Lane clarified for Sen. Jochum the circumstances that warrant the imposition of a deferred suspension and stated that the board's rules for professional conduct and ethics are found in ch 25.

ARC 0880C Proposed amendments to 13.3 and 13.17(1) concern the requirement that an out-of-state applicant provide a valid or expired license with an application for Iowa licensure. In response to inquiries from Sen. Courtney and Sen. Smith, Ms. Tubbs stated that an applicant must meet all Iowa licensure requirements, including completion of recent credits, if the out-of-state license has been expired for five years or more. In response to a request from Rep. Olson, Ms. Lane stated that in the application for licensure, the out-of-state applicant could be required to provide the reason for the expiration of the license.

ARC 0867C No action on amendments to 13.3 pertaining to licensure of out-of-state applicants who have attained national board certification.

ARC 0865C No action on amendments to chs 13, 22 and 23 relating to license expiration at the end of a holder's birth month. Ms. Tubbs confirmed for Sen. Chelgren that extensions for completion of license renewal requirements are available and may be requested by license holders with midyear birth dates.

ARC 0868C No action on 13.17(4) regarding the military exchange license. Ms. Lane confirmed for Sen. Courtney that after three years, holders of this license could be granted more time to fulfill the requirements for a standard license. In response to an inquiry from Sen. Horn, Ms. Tubbs stated that the processing of a military exchange license would be given high priority and could be completed in a few days.

ARC 0879C The proposed amendment to 13.28(17)"i" corrects the grade level of the all science endorsement. Ms. Tubbs clarified for Sen. Chelgren the types of science endorsements, including biology, chemistry, physics and earth science, and the all-science endorsement, which includes the coursework for each of these areas and the competencies of the Iowa core.

ARC 0866C No action on amendments to 13.28(29) and 22.1 pertaining to concussion training required for a coaching endorsement and authorization. In response to an inquiry from Sen. Horn, Ms. Tubbs summarized the requirements for a coaching authorization.

ARC 0875C No action on 13.28(30) regarding the content specialist endorsement.

ARC 0872C No action on amendments to 18.9 and 18.10 relating to the alignment of content and competencies for administrator Class B licensure.

ARC 0874C No action on 18.12 pertaining to specific requirements for a Class E license.

ARC 0873C No action on amendments to 19.7 regarding evaluator training certification as a condition of the issuance or renewal of an administrator license. Ms. Lane clarified for Sen. Chelgren that an extension option to complete requirements for license issuance or renewal is available and could be granted to military personnel.

ARC 0878C No questions on proposed amendments to 22.2 pertaining to the length of time a licensee with a substitute authorization may serve in one classroom or assignment.

ARC 0869C No action on amendments to 22.3(7) relating to the renewal of the school business official authorization.

ARC 0877C No questions on proposed 22.6 pertaining to the school administration manager authorization.

IOWA FINANCE AUTHORITY Mark Thompson and Deborah Howe represented the authority.

ARC 0826C No action on amendments to 9.7(10) pertaining to title plant certification.

ARC 0827C The amendments to 27.3(2) concern home purchase financing under the military service member home ownership assistance program.

Iowa Finance Authority (continued)

This program provides per eligible service member a one-time assistance grant of up to \$5,000 that may be used toward down payment or closing costs or both in the purchase of a qualified home. The amendments remove a provision that allowed a qualified service member to use alternative financing if the cost was lower than that of one of the authority’s home buyer mortgage programs, and the amendments allow a service member who does not qualify for one of the authority’s home buyer mortgage programs to choose alternative financing.

Ms. Howe explained that market circumstances have changed, prompting the striking of earlier provisions, and that the authority’s programs provide better terms overall, including no fees and lower costs and interest rates, without the profit motive of other investors. She stated that the authority’s mission is to serve clients by providing the most affordable loans and to ensure that the service member receives the grant. Sen. Smith asserted that a qualified service member should be allowed to choose the financing that provides the best cost and requested that the rule be revised to allow this choice.

- Motion to delay Sen. Smith moved a 70-day delay on 27.3(2).
- Motion carried On a roll call vote of 9 to 0, the motion carried.

PHARMACY BOARD Terry Witkowski represented the board.

- ARC 0884C No questions on the proposed amendment to 2.9 concerning licensure by license transfer.
- ARC 0883C No questions on proposed 8.33 pertaining to vaccine and immunization administration by pharmacists.
- ARC 0882C No questions on proposed amendments to 8.40(3) regarding the extension or renewal of time related to pilot and demonstration research projects.

REGENTS BOARD Keith Bystrom represented the board.

- ARC 0818C Proposed amendments to ch 13 pertain to facilities and grounds, contracting authority, and an update of titles and contact information at Iowa State University. Mr. Bystrom clarified for Rep. Olson that the amendments related to camping on campus grounds apply to organizations and groups sponsoring one-time events appropriate to the location, such as students in support of the homeless. Rep. Pettengill requested that in 13.6, the names of forms not be stricken.

WORKERS’ COMPENSATION DIVISION James Elliott represented the division.

- ARC 0835C No action on amendments to 8.8 relating to updates of references to the tables which determine payroll taxes.

HUMAN SERVICES DEPARTMENT Nancy Freudenberg, Jennifer Vermeer and Theresa Armstrong represented the department. Other interested parties included Gayla Harken of the Iowa Association of Community Providers; David VanNingen and Bonnie Buckingham on behalf of Hope Haven; Lynn Ferrell of Polk County Health Services; Linda Hinton of the Iowa State Association of Counties (ISAC); and Morgan Miller of AFSCME Iowa Council 61.

- ARC 0819C No action on amendments to ch 7 pertaining to appeals and hearings.
- ARC 0885C Proposed amendments to ch 25 concern the mental health and disability regional core services.

In response to an inquiry from Sen. Horn, Ms. Vermeer explained that mental health and disability services are grouped together based on the provision of services and supports, not by policy. Ms. Armstrong clarified for Rep. Pettengill that the core services set forth in ch 25 mirror those in statute. However, in response to an inquiry from Sen. Jochum, Mr. Ferrell explained that in 25.2, the listed services are not equivalent to the broader statutory “core service domains” set forth in 2012 Iowa Acts, chapter 1120, section 15. Sen. Jochum stated that employment services were considered during the drafting of the regional core services legislation and suggested that the addition of employment services as a core service be revisited by the legislature. Rep. Jacoby suggested that the language of the federal Workforce Development Act related to supported employment be mirrored in state statute.

Ms. Harken recommended that the language of the rule definitively state that no person shall be denied services, or placed at risk, based on arbitrary funding decisions.

Human Services Department (continued)

- Mr. VanNingen requested that employment services be one of the core services. Ms. Buckingham commended the services provided to her son at Hope Haven and requested that the work activity center remain open. Mr. Ferrell stated that greater cohesion and consistency are needed to implement redesign and raised questions regarding the interpretation of the statutory term “domain” versus “services,” the absence of the statutory caveat of providing services with funds available, service requirements that are beyond a region’s control, home and vehicle modification, and strengths-based case management.
- ARC 0820C No action on 75.1(39)“b” regarding premiums for Medicaid for employed people with disabilities.
- ARC 0821C No action on amendments to ch 75 pertaining to a decrease in the average statewide cost of nursing facility services and charges for nursing facility care. Ms. Freudenberg clarified for Sen. Jochum that the reduction in the statewide average cost lengthens the time during which clients could be ineligible for payment for nursing facility care, and clients would, as a result, negotiate with the nursing facility an agreement for payment.
- ARC 0822C No action on amendments to ch 75 concerning the update of average statewide charges for institutional care.
- ARC 0848C Amendments to chs 77 to 79 and 88 pertain to the administration, case management and method of reimbursement for habilitation services. Mr. Ferrell stated that some persons with mental illness will continue to have targeted case management even with the advent of integrated health homes.
- ARC 0888C Proposed amendments to ch 77 concern the transition from individual providers under the consumer-directed attendant care (CDAC) option to agency-provided personal care services or the retention of the consumer choice option (CCO). Ms. Vermeer will provide information to the committee in response to inquiries from Sen. Jochum and Sen. Courtney about whether unionized individual providers who become employees of agency providers will continue to be unionized and how that status will be determined. Ms. Miller stated that AFSCME represents CDAC employees, expressed concern regarding the continuation of their unionized status and requested that the department’s action on the proposed amendments be postponed pending a resolution. Rep. Pettengill requested that Ms. Miller provide the committee with AFSCME’s views about the issue. Sen. Courtney stated that the issue needs to be resolved and requested that this rule making be placed on the September agenda.
- ARC 0887C Proposed amendments to chs 77 to 79 relate to the HCBS transportation services rate. Mr. Ferrell expressed concern regarding the amendment to 78.41(11), which prohibits transportation from being reimbursed simultaneously with HCBS intellectual disability waiver supported community living service. He asserted that this amendment rolls all transportation costs into the per diem of the facility, making transportation impractical and infeasible to provide and causing consumers greater isolation and decreased employment. In response to an inquiry from Rep. Olson, Ms. Vermeer agreed to provide the committee with information about the purpose for the amendment to 78.41(11). Rep. Olson requested that this rule making be placed on the September agenda.
- ARC 0838C Amendments to chs 77 to 79 concern integrated health home (IHH) services for members with serious mental illness (SMI) or serious emotional disturbance (SED). In response to an inquiry from Rep. Pettengill, Ms. Vermeer explained that the goal of the IHH is to coordinate the physical and mental health care of members with SMI or SED to more proactively and consistently meet their needs.
- ARC 0846C No action on 78.1(1)“h” pertaining to the elimination of reimbursement for elective, non-medically necessary cesarean sections. In response to an inquiry from Sen. Chelgren, Ms. Vermeer will provide the committee information regarding the average cost of a cesarean section and of a vaginal delivery.
- ARC 0844C Amendments to 78.3(16) relate to required prior authorization for skilled nursing care in a hospital swing bed. Ms. Vermeer stated that based on comments received, the department on August 5, 2013, reached an agreement with and issued an informational letter to hospitals stating that prior authorization will not be required for a swing-bed stay of less than 14 days.

Human Services Department (continued)

- The language of the agreement will be incorporated into the rules after approval by hospitals. In response to an inquiry from Rep. Pettengill, Ms. Vermeer stated that the current swing-bed stays of less than 14 days are being approved. Ms. Vermeer clarified for Sen. Chelgren that federal requirements allow only hospitals with fewer than 100 beds to have swing beds and explained the methodology for the cost of a swing-bed stay. She clarified for Rep. Olson that a swing bed is licensed for a lower level of care. Rep. Pettengill commended the department for working with hospitals to reach an agreement.
- ARC 0823C No action on amendments to chs 78 and 79 regarding reclassification of and coverage for certain devices and equipment under Medicaid.
- ARC 0842C No action on amendments to chs 78, 79 and 83 related to Medicaid provider reimbursement rate increases.
- ARC 0840C Amendments to ch 79 pertain to the reimbursement methodology for case management services under the Medicaid state plan, habilitation, home- and community-based services for individuals with a brain injury and for the elderly. Ms. Freudenberg explained that case management is currently cost-based reimbursed and added that since fiscal year (FY) 2012 and annualized for FY 2013, the reimbursement rate has increased by 15.8 percent. She reported that in an earlier draft of the rule making, reviewed at the June committee meeting, a methodology had been proposed to incorporate cost containment strategies required by the legislation. However, based on comment by providers and other interested parties, the department has incorporated an alternative methodology in this rule making to limit administrative costs to 23 percent of direct service costs for FY 2014 and to work with stakeholders to determine the rate methodology for FY 2015.
- Discussion pertained to the cost containment methodology and its effects. Committee members expressed concern that the methodology may cut cost-based reimbursement or services and that it may adversely impact a provider’s rate of reimbursement.
- In response, Ms. Vermeer explained that the methodology aligns targeted case management with the limits, caps or global cap imposed by other cost-based methods, does not cut services, is fairer to providers, and is consistent with legislative intent. She also explained that the calculation of the rate is based on 100 percent of providers’ costs and that the reimbursement for providers’ administrative costs will be limited to 23 percent. Ms. Vermeer stated that the department, in calculating the necessary limit on administrative costs, determined that the limit generates the savings required by the legislation and is consistent with the limit imposed in other cost-based programs.
- Ms. Hinton expressed concern regarding increased costs for and the financial sustainability of case management programs; the availability of services to persons with mental illness through not-yet-operational health homes; and if the health home model is unworkable, the availability of targeted case management for persons with developmental disabilities, intellectual disability or brain injury. Mr. Ferrell expressed concern regarding the cost escalation resulting from the frequent redefinition of a billable unit of service and the shift of costs from the administrative cost category to the indirect/administrative cost category. Mr. Ferrell also inquired about the status of the department’s development of the supports intensity scale, which will rate a consumer’s needs to indicate the appropriate level of service.
- In response to an inquiry from Sen. Jochum, Ms. Vermeer stated that the supports intensity scale is near completion and that the case management rule making has its own savings in the budget separate from the supports intensity scale and added that the 15-minute billable unit is a federal requirement.
- ARC 0864C No action on amendments to ch 79 concerning the payment methodology for home health services and private duty nursing and personal care.
- ARC 0824C No action on amendments to 79.16 regarding the electronic health record incentive program.
- ARC 0837C No action on amendments to ch 86 concerning eligibility, application and verification of income related to the HAWK-I program.
- ARC 0862C Amendments to ch 92 pertain to the suspension of IowaCare enrollment beginning July 1, 2013.

Human Services Department (continued)

In response to an inquiry from Sen. Jochum, Ms. Vermeer stated that during the transition from IowaCare to the Iowa Health and Wellness Plan, clients will be covered under programs available to persons without insurance, including hospital uncompensated care and sliding fee scale programs. Ms. Vermeer explained that because of increasing enrollment and fewer providers, the department applied to CMS for a waiver of the IowaCare 1115 program to cap enrollment and that the budget request and state appropriation for the 2013-2014 state fiscal year were based on the cap. Sen. Jochum requested that in the future, the legislature's budget and policy committee chairs for the department have input in changes in policy such as the waiver of the enrollment cap for IowaCare.

- ARC 0886C No questions on proposed amendments to ch 92 regarding the payment methodology for federally qualified health centers and the elimination of the funding pool for laboratory and radiology services.
- ARC 0860C No action on amendments to 150.9(5)“p” pertaining to the elimination of purchase of service to set supervised apartment living rates and an increase in child welfare emergency services juvenile shelter care reimbursement rates.
- ARC 0858C No action on amendments to 156.6 concerning an increase in the foster family daily reimbursement and adoption subsidy daily maintenance rates.
- ARC 0856C No action on amendments to 156.8(2) and 156.12(1) regarding an increase in the monthly maintenance rate and initial allowance for supervised apartment living.
- ARC 0825C No action on amendments to 170.4(2)“a” concerning the child care assistance sliding fee schedule.
- ARC 0854C No action on amendments to 170.4(7)“a” pertaining to the child care assistance provider rate ceiling increase.
- ARC 0851C No action on an amendment to 187.12(2) related to an increase in the youth stipend and provider rates for the preparation for adult living (PAL) program.

REAL ESTATE APPRAISER EXAMINING BOARD Toni Bright represented the board.

- ARC 0881C No action on amendments to ch 15 pertaining to supervisory appraisers.

MEDICINE BOARD Mark Bowden and Kent Nebel represented the board. Other interested parties included Robert Shaw, Thomas Ross and Erin Davison-Rippey on behalf of Planned Parenthood of the Heartland; Kelly Larsen of InnerVisions Healthcare; Sue Thayer; and Mary Purtle.

- ARC 0889C The proposed amendment to 1.3(3) pertains to a one-year term limit for the board chairperson. In response to an inquiry from Sen. Courtney, Mr. Nebel stated that the board would like each board member to have an opportunity to serve as chairperson to bring new ideas to the board each year.
- ARC 0871C No action on amendments to chs 8, 9 and 11 concerning exemptions to the permanent licensure renewal fee and the continuing education requirements for physicians on full-time active duty in the U.S. armed forces, reserves or national guard.
- ARC 0890C No questions on the proposed rescission of 13.3 pertaining to supervision of pharmacists who administer adult immunizations.
- ARC 0870C No action on the amendment to 21.4(2) regarding physician supervision of physician assistants. In response to an inquiry from Rep. Olson, Mr. Nebel addressed the definition of supervision as found in the rules of the board of physician assistants and described the supervision of a physician assistant by a licensee. Mr. Bowden added that the medicine board has ensured that licensees understand the expectations governing the supervision of physician assistants.
- ARC 0891C Proposed 13.10 pertains to the establishment of standards of practice for physicians who prescribe or administer abortion-inducing drugs.
Mr. Nebel introduced the rule, which provides that a physician shall not induce an abortion by providing an abortion-inducing drug unless the physician has first performed a physical examination of the woman to determine, and document in the woman's medical record, the gestational age and intrauterine location of the pregnancy; requires a physician to be physically present with a woman when providing an abortion-inducing drug to the woman; requires a physician who provides an abortion-inducing drug to a woman to schedule a follow-up appointment with the woman at the same facility where the abortion-inducing drug was provided;

Medicine Board (continued)

and provides that a physician shall not induce an abortion by providing an abortion-inducing drug to a pregnant minor prior to compliance with Iowa Code chapter 135L and public health department rules 89.12 and 89.21 regarding parental notification.

Representatives of Planned Parenthood expressed opposition to the rule. Mr. Shaw stated that the telemedicine delivery system, which was implemented to expand health care to rural areas, is safe, effective and highly acceptable among women; that patient satisfaction rates remain high and complication rates remain low; and that no complaints have been made by women who have used the telemedicine delivery system. Mr. Ross stated that patient safety is the first priority and summarized the required training and education of staff. Mr. Ross described the telemedicine delivery system procedure and stated that the only difference between an in-person medical abortion and a telemedicine abortion is whether the doctor physically hands a pill to the patient. Both physicians cited a 2010 board investigation of the telemedicine delivery system that was dismissed without action. They summarized the history of telemedicine in Iowa, for abortion and for various other medical uses, and noted that other forms of telemedicine had not been prohibited. They asserted that arguments in opposition to the procedure have not been based on scientific evidence and factual information and concluded that the rule would in effect prohibit abortion via telemedicine. Ms. Davison-Rippey pointed out that the legislature did not advance proposed legislation to prohibit telemedicine abortion in 2011 or in 2013, questioned the time frame within which the rule making was promulgated and requested that the committee require the board to take more time for research and investigation before taking further action on the rule.

Other interested parties expressed support for the rule. Ms. Larsen, a registered nurse, cited potentially severe side effects from the procedure and described telephone calls from women who reported side effects and whom Ms. Larsen referred elsewhere for assistance; asserted that follow-up care is important; and concluded that providers should meet the standard of medical care. Ms. Thayer expressed concern regarding the safety of the procedure, the adequacy of staff training, and the absence of a waiting period to allow a patient sufficient time for decision making. Ms. Purtle expressed concern regarding the safety of the procedure and the possibility of complications and stated that a physician should perform a follow-up examination to ensure that the abortion is complete.

Discussion during and following public comment pertained to the telemedicine delivery system process and procedure, including the physical examination, the education and training of medical personnel, patient education and satisfaction, and medical research and practice, and to the rule-making process.

- Motion to suspend Following discussion, Sen. Jochum moved to suspend action on ARC 0891C for 70 days.
- Motion failed On a roll call vote of 4 to 4, the motion failed.
- Committee business** The minutes of the July 9, 2013, meeting were approved.
- Adjourned The next meeting was scheduled for Tuesday, September 10, 2013, at 9:30 a.m.
- The meeting was adjourned at 3:40 p.m.

Respectfully submitted,

Stephanie A. Hoff

APPROVED:

Chair Dawn Pettengill

Vice Chair Wally Horn