

**MINUTES OF THE JUNE 2014 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 10, 2014, at 9 a.m. in Room 116, State Capitol, Des Moines, Iowa.
- Members present: Senator Wally Horn, Chair, and Representative Dawn Pettengill, Vice Chair; Senators Mark Chelgren, Thomas Courtney, Pam Jochum, and Roby Smith; Representatives Lisa Heddens, Rick Olson, Jeff Smith [by teleconference], and Guy Vander Linden were present.
- Also present: Joseph A. Royce and Jack Ewing, Legal Counsel; Teresa Vander Linden, Administrative Code Assistant Editor; Larry Johnson, Deputy Counsel, Office of the Governor; fiscal staff; caucus staff; and other interested parties.
- Convened Sen. Horn convened the meeting at 9:04 a.m.
- Fiscal overview** Adam Broich presented the LSA fiscal report.

**ENVIRONMENTAL PROTECTION COMMISSION** Christine Paulson represented the commission.

- ARC 1458C Proposed amendments to 22.10(3) and 23.1(4) pertain to best management practices for grain elevators and to federal air toxics standards for chemical manufacturing plants and prepared feeds manufacturing.
- In response to inquiries from Rep. Pettengill, Ms. Paulson explained that two facilities subject to the 6V NESHAP are either proposed to be constructed or have not yet completed construction and that of the 80 facilities subject to the 7D NESHAP, 60 will be subject to best management practices and up to 20 will need to perform cyclone control, record keeping and monitoring. Rep. Pettengill requested that Ms. Paulson provide the committee with a list of the facilities that are subject to the 7D NESHAP.
- Rep. Pettengill commended the department for working with stakeholders to provide regulatory relief.

**PROFESSIONAL LICENSURE DIVISION** Tony Alden represented the division.

- ARC 1453C No action on 265.5 and amendments to 262.3(2) pertaining to the practice of and continuing education for respiratory care practitioners. Mr. Alden stated that based on public comment, the board removed from 265.5“3” the reference to sleep-related (polysomnography) testing as a respiratory service.

**NATURAL RESOURCE COMMISSION** Director Chuck Gipp and Tamara McIntosh represented the commission.

- ARC 1475C Proposed amendments to ch 106 relate to deer hunting licenses. Mr. Gipp cited and summarized the history related to the number of deer licenses and stated that based on those numbers, the amendments eliminate the January antlerless-deer-only season, reduce antlerless deer quota numbers in 72 counties by 10,000 from the number of licenses sold in 2013, and restrict hunters in 27 counties to taking only antlered deer during the early muzzleloader and first shotgun seasons. He stated that deer depredation licenses and shooting permits are still available and that the department seeks to balance the needs of hunters with those of the general public.
- Discussion pertained to chronic wasting disease (CWD), including testing, and episodic hemorrhagic disease (EHD); urban deer hunts; the deer depredation program; depredation and shooting permits; and the Help Us Stop Hunger (HUSH) program.
- Mr. Gipp differentiated between CWD and EHD and stated that to determine if the wild deer herd has been infected with CWD, the department performs testing of deer taken during the hunting season and in shooting preserves. He explained that game farms, unlike shooting preserves, are under the jurisdiction of the department of agriculture and land stewardship. Ms. McIntosh described the method for and statistical analysis related to CWD testing and stated that the department is confident that the wild deer herd is free of CWD.

Natural Resource Commission (continued)

Mr. Gipp added that a healthy white tail deer herd is an economic asset, noting that the sale of 6,000 nonresident deer hunting licenses is permitted. He stated that because deer herd populations in cities are increasing, cities may invite the department to organize urban deer hunts. He also explained the deer depredation program, including the issuance of deer depredation permits, and shooting permits. He noted that a surcharge of one dollar per hunting license is used to defer the cost of processing venison for the HUSH program.

In response to a request from Sen. Courtney, the department will provide the committee with information about whether urban deer herds are counted in the total number of deer in the state. In response to a request from Sen. Chelgren, the department will provide information about whether the deer harvested in the depredation program are the property of the landowner or of the taxpayer.

**HOMELAND SECURITY AND EMERGENCY MANAGEMENT DEPARTMENT** John Benson represented the department.

ARC 1463C Proposed amendments to ch 10 pertain to enhanced 911 (E911) telephone systems and to department organization. Mr. Benson stated that no comments have been received thus far regarding the Notice, which was vetted by interested parties before it was proposed. In response to an inquiry from Rep. Pettengill, Mr. Benson will provide the committee with a roster of the E911 council members.

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

ARC 1472C Proposed amendments to chs 67 and 70 regarding elder group homes, assisted living programs, and adult day services pertain to verification of conviction or record of founded abuse and of dementia training and to admission and retention in an adult day services program. Mr. Werning clarified that the rescission of 67.23 does not eliminate all training regarding dementia; the purpose of the rescission is to remove a rule that had conformed with a now-repealed statutory requirement related to the department on aging.

In response to inquiries from Rep. Pettengill, Mr. Werning stated that direct care workers required to take the training include housekeepers, that the registered nurse verifies online or onsite training for employees, and that if training is not conducted, a citation would be imposed on the facility, not on the license of the registered nurse in charge. In response to an inquiry from Sen. Chelgren, Mr. Werning stated that training is required of persons who are involved in direct daily care of and contact with clients, including custodians and contract employees.

**INSURANCE DIVISION** Rosanne Mead represented the division.

ARC 1466C No action on amendments to ch 59 pertaining to pharmacy benefits managers (PBMs).

**IOWA FINANCE AUTHORITY** Mark Thompson represented the authority.

ARC 1459C Proposed amendments to ch 41 concern the shelter assistance fund. In response to an inquiry from Rep. Pettengill, Mr. Thompson will provide the committee information to explain who evaluates homeless services, given the amendment to 41.1, which adds "evaluation of services for the homeless" to the purposes for the program.

**LABOR SERVICES DIVISION** Kathleen Uehling represented the division.

ARC 1461C No questions on proposed amendments to 10.20 and 26.1 regarding adoption by reference of changes to occupational safety and health standards related to electrical protective equipment and electrical power generation, distribution and transmission.

**LOTTERY AUTHORITY, IOWA** Mary Neubauer and Steve Bogle represented the authority.

ARC 1462C Amendments to 12.12(4) pertain to the suspension of retailers for ticket sales to underage persons. Ms. Neubauer summarized the process involved in this rule making, and Mr. Bogle explained that the amendments, which change the word "shall" to "may" to be consistent with statute, are intended to provide the authority with the discretion to waive suspension of a retailer who reports that an employee has sold a lottery ticket(s) to a minor. In response to an inquiry from Sen. Chelgren, Mr. Bogle stated that given the experience of the authority and of law enforcement, the change in policy should not cause unforeseen issues, and he explained the penalties for second and third offenses.

## Lottery Authority, Iowa (continued)

In response to an inquiry from Rep. Olson, Mr. Bogle stated that the license of the retailer whose case was the impetus for the amendments has been reinstated after suspension and that the retailer did not appeal. Sen. Chelgren commended the changes in the rule.

**PUBLIC HEALTH DEPARTMENT** Barb Nervig and Kim Piper represented the department.

- ARC 1471C Proposed amendments to ch 4 pertain to newborn hearing and critical congenital heart disease screening, newborn screening data and specimens, and a sliding fee scale for the neuromuscular and related disorders program. In response to inquiries from Rep. Pettengill, Ms. Piper stated that the amended term “newborn blood spot screening” is broadened to be more inclusive, but the test itself will not be changed; explained that residual specimens are those not used for initial testing; clarified that parents may either refuse or consent to screening; and stated that parents who consent to screening may give informed consent for the use of residual specimens for anonymized research or identified research. In response to an inquiry from Sen. Jochum, Ms. Piper stated that 4.3(6)“b”(3) is stricken because the age at diagnosis is not required to be reported and that the substance of stricken 4.3(8)“c”(3) is included in the proposed language in the introductory paragraph of 4.3(8)“c.”
- ARC 1470C No questions on proposed amendments to chs 38 to 41 and 45 concerning radiation. Ms. Nervig stated that the department awaits comments on the rules by the U.S. Nuclear Regulatory Commission (USNRC). When comments are received from the USNRC, the department will make any requested changes and proceed with adoption.

**REVENUE DEPARTMENT** Jim McNulty represented the department.

- ARC 1469C No questions on proposed amendments to chs 5, 7, 8, 10, 42, 52 and 86 to 89 regarding the research activities credit and the applicability dates of and the elimination of references to the estate tax and the generation skipping transfer tax.

**SECRETARY OF STATE** Sarah Reisetter represented the secretary of state.

- ARC 1473C Proposed amendments to ch 21 pertain to absentee ballots and special elections. In response to an inquiry from Sen. Courtney, Ms. Reisetter stated that the estimated statewide savings in the fiscal report will result from a decrease in postage and a reduction in the required number of absentee ballot envelopes.
- ARC 1474C No questions on proposed amendments to ch 22 regarding digital ballot images, the Unisyn OpenElect OVCS central count tabulator and reports related to voting systems.

**TREASURER OF STATE** Stefanie Devin represented the treasurer of state.

- ARC 1464C Amendments to ch 15 pertain to required public funds custodial agreement provisions. Ms. Devin stated that the Iowa Association of School Boards had expressed concern about the effect of the filed amendments. Ms. Devin stated that the treasurer of state acknowledges the validity of the concerns and requested that time be granted for appropriate changes to be made.
- Motion to delay Rep. Pettengill moved a 70-day delay on 15.1 to 15.3 and 15.5.
- Motion carried On a voice vote of 9 to 0, the motion carried.

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

- ARC 1460C Proposed amendments to chs 2, 10, 19 to 21 and 25 pertain to competitive natural gas providers and natural gas vehicle fuel providers and to the method for contacting a duty officer. In response to an inquiry from Rep. Pettengill, Mr. Wright stated that the board will retain its oversight of the certification process for competitive natural gas providers (CNGPs) while addressing changes in the industry and providing more flexibility to CNGPs through the use of electronic forms.

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

- ARC 1468C No questions on proposed amendments to 76.2 pertaining to the adoption by reference of federal Wholesome Meat Act regulations.

**VETERINARY MEDICINE BOARD** Margaret Thomson represented the board.

ARC 1465C No action on amendments to chs 1 and 12 regarding veterinary standards of practice. In response to an inquiry from Rep. Pettengill, Ms. Thomson stated that the state veterinarian has determined that the amendments will not affect the scope of practice. In response to an inquiry from Rep. Olson, Ms. Thomson stated that disputes over billing were the impetus for the stipulation that a telephonic or electronic communication is not in itself sufficient to establish a veterinarian/client/patient relationship and that the Veterinary Medicine Association was involved in the development of the amendments.

**WORKERS COMPENSATION DIVISION**

**Committee review of emergency rule making** The division files an annual amendment to 8.8 to conform the rule to the federal update to the payroll tax tables effective July 1. The committee reviewed the emergency rule making.

Motion to approve Rep. Vander Linden 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 and Jennifer Harbison represented the department. Other interested parties included Jason Velinsky of Caretech, Inc. and Angela Davis of Wasker, Wimmer & Marcouiller, PC, on behalf of Caretech, Inc.

ARC 1445C Amendments to chs 77 and 83 pertain to brain injury (BI) waivers, including online training for BI waiver providers, removal of services from monthly cost limits for certain waivers, and removal of the age limit for the BI waiver.

This rule making was held over from the May meeting for further review regarding training for BI waiver providers. Ms. Harbison summarized the process for the development of the training and explained that no comments were received regarding the Notice of Intended Action; however, comments from provider agencies and other groups had been received after publication of the filed rules. She stated that in response to comments, the department has proposed to amend the rules as follows: the new training will apply to providers who begin work after January 1, 2015; employees new to BI waiver work will have 60 days from the time of employment to complete the required training, and providers enrolled to provide services prior to December 31, 2014, will be exempt from the training requirement; and the training may also be offered through a PDF paper download in addition to online.

Rep. Pettengill and Rep. Vander Linden commended the department for making changes in the rules.

Mr. Velinsky expressed appreciation to the committee for acknowledging his concerns and commended the department for modifying the rules, which will assist agencies that provide in-home care.

**Committee review of emergency rule making** Pursuant to 2014 Iowa Acts, House File 2463, the department presented notice of its intention to propose under Notice of Intended Action and simultaneously to adopt by Emergency the rule makings listed below and requested committee review prior to emergency adoption. (Note: Rule reference numbers shown were assigned by the department for purposes of review and discussion.)

15-010 Pursuant to division XV, section 96, of the Act, amendments to ch 170 expand child care assistance eligibility to allow a parent to work part-time and to attend school part-time for at least 28 hours in the aggregate. In response to an inquiry from Sen. Chelgren, Ms. Freudenberg stated that a school determines the definition of "school time" and that "school time" does not include study time.

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

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

15-012 Pursuant to sections 43 and 45 of the Act, amendments to ch 156 add minimum foster group care payment rates.

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

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

15-014 Pursuant to sections 61 and 62 of the Act, amendments ch 79 change methodology for the community mental health center (CMHC) reimbursement.

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

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

Human Services Department (continued)

15-016 Pursuant to sections 41 and 45 of the Act, amendments to ch 79 increase the emergency medical service provider reimbursement rate.

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

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

As a courtesy, the department also presented for committee review the Notice of Intended Action described below prior to its Emergency After Notice adoption, which does not require committee approval.

15-018 Pursuant to 2014 Iowa Acts, Senate File 2320, the department proposes to amend chs 78 and 79 to allow a legal representative to be a paid provider when providing services to members receiving individual consumer-directed attendant care (CDAC) services or as an employee in the consumer choices option (CCO) program.

In response to an inquiry from Sen. Chelgren, Ms. Freudenberg stated that the criteria for paying more than the state average would perhaps be set forth as an exception to policy. In response to an inquiry from Rep. Pettengill, Ms. Freudenberg stated that the wage range would be based on the needs of the person and that the department can provide that range to the committee.

Ms. Davis expressed concern that as a result of changing “CDAC agency” to “personal care services,” confusion might be caused regarding reimbursement for nonmedical services, and she stated that the criteria for services and reimbursement should not be changed to mirror the change in the name. Sen. Jochum added that it was not the intent of the legislation to exclude from the HCBS Medicaid waiver program workers who perform nonmedical services. In response, Ms. Harbison stated that the department recognizes the potential for confusion about the name and that the rules will not change any of the current service components of CDAC service; however, she stated that the service name and the use of the required CDAC forms will change. She added that the department will consider suggestions by interested parties in the drafting of changes to the rules.

**Committee business** The minutes of the May 13, 2014, meeting were approved.

The next meeting was scheduled for Tuesday, July 8, 2014, at 9 a.m.

Adjourned The meeting was adjourned at 12:04 p.m.

Respectfully submitted,

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Stephanie A. Hoff

APPROVED:

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Chair Wally Horn

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Vice Chair Dawn Pettengill