

**MINUTES OF THE JULY 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, July 8, 2014, at 9 a.m. in Room 22, State Capitol, Des Moines, Iowa.

Members present: Senator Wally Horn, Chair, and Representative Dawn Pettengill, Vice Chair; Senators Mark Chelgren, Thomas Courtney, Pam Jochum [by teleconference], and Roby Smith; Representatives Lisa Heddens, Rick Olson, Jeff Smith, and Guy Vander Linden were present.

Also present: Joseph A. Royce and Jack Ewing, Legal Counsel; Stephanie A. Hoff, Administrative Code Editor; Larry Johnson, Deputy Legal 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.

ADMINISTRATIVE SERVICES DEPARTMENT Caleb Hunter, Michelle Minnehan and Jay Cleveland represented the department.

ARC 1485C No action on amendments to chs 1, 117 and 118 pertaining to procurement.

ARC 1503C Proposed amendments to chs 4, 44, 52 to 54, 57, 60, 63 and 64 pertain to personnel records and to human resources concerns, including veteran preference, compliance with statute and collective bargaining agreements and clarification of practice.

Discussion pertained to Items 1, 4, 16 and 17, and 22. Ms. Minnehan clarified for Sen. Jochum that the changes in Item 1, in 4.14(6)“a”(1), allow the agency, in accordance with Iowa Code section 22.7(11), to make decisions regarding confidential records. In addition, regarding Items 16 and 17, Ms. Minnehan explained the difference between a temporary appointment (not more than 780 hours per fiscal year) and a seasonal appointment (six-month period) and that the amendments are intended to clarify that for the same employee, the two types of appointments cannot occur one after the other (i.e., stacked). In response to an inquiry from Rep. Pettengill regarding Item 4, Ms. Minnehan explained that, administratively, the qualification to receive dues deductions will be the initial minimum of 100 members, but if the number of members is fewer than 100, dues deductions can still be made.

Discussion focused primarily on Item 22, which strikes the following language (60.3(2)“c”): “An agency shall not implement a reduction in force until it has first terminated all temporary employees in the same class in the reduction in force unit, as well as those who have probationary status in the same class.”

In response to inquiries from committee members regarding the purpose for the amendment, Mr. Hunter stated that the amendment provides in rule consistency between merit-related and contract-related policy regarding the AFSCME 2013-2015 collective bargaining agreement and flexibility to the appointing authority in carrying out reductions in force. Ms. Minnehan added that while the amendment removes the requirement cited above, the decision regarding reduction in force lies with and is made at the discretion of the appointing authority based on business needs.

Members also inquired about the effect of the amendment on the status of employees. Sen. Courtney noted that based on past practice, temporary employees have been laid off before permanent employees. Ms. Minnehan stated that the merit provisions or contract rights would continue to apply, including layoff protocol and the application of bumping and recall rights. She added that a temporary employee may work only 780 hours per fiscal year and would be unlikely to be retained; however, if a temporary employee were to apply for the permanent position, the employee would be required to follow the merit application process.

Members also discussed whether merit rules should conform to contract provisions, inquired about the status of probationary employees, and questioned the rationale for retaining a temporary employee, even for a defined period, over a permanent employee.

Administrative Services Department (continued)

In response, Mr. Hunter stated that the merit system and the collective bargaining system, in Iowa Code chapter 8A, have the same general principles and that consistency between rule and contract precludes confusion for agencies and arbitrators. He stated that probationary employees have no status and reiterated that reduction in force is at the discretion of the appointing authority. In response to an inquiry from Mr. Johnson, Mr. Hunter stated that a provision in the department's rules states that an administrative rule will not overrule a contract. Mr. Hunter will provide the committee with a copy of the AFSCME negotiations and language.

Committee members requested that the department consider several suggestions and concerns. Sen. Chelgren suggested that if two employees, one permanent and one temporary, have equivalent skills and experience, the rule should stipulate the retention of the permanent employee; if the work of a temporary employee is time-limited and will be completed shortly, the rule should stipulate the retention of the temporary employee. Since the time frame for the collective bargaining agreement is July 1, 2013, through July 1, 2015, Rep. Olson suggested that for clarification, a sunset date be inserted in the rule. Because the contract has been effective for one year, Rep. Olson requested that the department provide the committee with information regarding whether agency directors have utilized the terminations of permanent employees in lieu of temporary or probationary employees within the past year. Sen. Courtney expressed concern that the rule is not fair, that it appears to alter the status of merit employees, and that it may not even be necessary and expressed the desire for further committee comment and possible action.

Special Review

Rep. Pettengill requested a special review of 40.1, offsets of debts owed state agencies. Rep. Pettengill stated that the rules do not conform to the statute regarding state collection of offsets. In response to her inquiry, Mr. Hunter stated that a review of the rules is in process and that a rule making will be completed by the end of the summer. Mr. Cleveland concurred with that time line and added that the department is working with the attorney general's office on a full review of the accounting enterprise rules. At the request of Rep. Pettengill, Mr. Hunter stated that the department will promulgate a separate rule making regarding offsets.

HUMAN SERVICES DEPARTMENT Nancy Freudenberg and Jennifer Harbison represented the department.

ARC 1515C No questions on proposed amendments to 7.1 and 7.6(6) pertaining to appeals, including the definition of "aggrieved person" and an appeal of a proposed decision by the department.

ARC 1478C No action on amendments to chs 7, 40 and 41 related to an ineligibility period for FIP participants who access benefits at a prohibited location and to the acceptance of insurance. In response to an inquiry from Rep. Pettengill regarding Item 5, Ms. Freudenberg stated that documentation of citizenship or alien status is required at the time of application for FIP benefits.

ARC 1482C No action on amendments to 75.1(39)"b"(3) concerning premiums for applicants and recipients under Medicaid for employed people with disabilities.

ARC 1484C No action on amendments to 75.23(3) and 75.24(3)"b" pertaining to an increase in the average statewide private-pay cost of nursing facility services and of charges for institutional care.

ARC 1483C No action on an amendment to 75.24(3)"b"(2) concerning a decrease in the statewide maximum Medicaid rate for ICF/IDs.

ARC 1510C Proposed amendments to chs 78 and 79 concern a legal representative as a paid provider of funded services to a Medicaid member. In response to inquiries from Sen. Courtney and Sen. Chelgren, Ms. Harbison stated that the level of care is based on the member's needs and that a provider's rate of pay is commensurate with the member's required level of care.

ARC 1481C No action on amendments to 79.1(8) regarding the Medicaid pharmacy professional dispensing fee.

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT Margaret Thomson represented the department.

ARC 1508C No action on amendments to 45.30 regarding restricted use pesticide classifications. In response to a request from Sen. Courtney, Ms. Thomson will provide information about a weed recently discussed in news reports that has the potential to affect corn production in Iowa. In response to an inquiry from Sen. Horn, Ms. Thomson stated that the environmental protection commission incorporates provisions in its rules regarding the effect of pesticides on wildlife.

ARC 1513C No questions on proposed amendments to ch 62 pertaining to the elimination of the ownership requirement for a stallion's eligibility as an Iowa-registered stallion.

ECONOMIC DEVELOPMENT AUTHORITY Kristin Hanks represented the authority.

ARC 1493C No action on ch 42, Iowa tourism grant program. In response to an inquiry from Sen. Horn, Ms. Hanks explained that the rule making was Filed Emergency After Notice so that the rules could be effective at the time of the deadline for grant applications.

PUBLIC EMPLOYMENT RELATIONS BOARD Ann Smisek and Diana Machir represented the board.

ARC 1507C Proposed ch 16 and amendments to chs 1 to 3, 6, 7 and 9 to 11 pertain to an electronic document management system. In response to an inquiry from Sen. Chelgren, Ms. Smisek itemized the costs of the implementation and ongoing monitoring and maintenance of the system and stated that monitoring the system ensures that it performs its functions adequately and serves its purpose. Rep. Olson commended the board for its prompt promulgation of rules shortly after the passage of 2014 Iowa Acts, House File 2172, and suggested that other agencies model the board's efficiency in rule making. Mr. Johnson concurred and noted that the idea of electronic document management originated with the board and suggested that other administrative-law-related agencies also consider potential efficiency and savings through the use of technology.

PUBLIC HEALTH DEPARTMENT Barb Nervig and Jill France represented the department.

ARC 1477C No action on amendments to ch 7 pertaining to the addition of vision screening to the health screening information in the immunization registry.

ARC 1479C No action on ch 37 and amendments to chs 38 to 40 regarding the physical protection of category 1 and category 2 quantities of radioactive material.

ARC 1494C No action on ch 61, state mechanical code.

ARC 1480C No action on ch 108, medical residency training state matching grants program.

Special Review Rep. Pettengill requested a special review of 95.6, fees related to vital records. Rep. Pettengill inquired about the extent and cost of a search of a vital record at the county level, specifically, whether the issuance of and payment for an official no-record letter are required when the search for a record is not extensive and the customer does not seek paper verification.

Ms. France described the extent of and process for a search for a vital record and cited examples to illustrate that a search resulting in a no-record letter is often extensive. She stated that the fees, which are based on an average administrative cost, support the entire operation of the vital records office. She explained that a customer who requests a record at a county recorder's office should receive a certified copy which states that no record was found and that the customer should seek other sources to secure the record.

In response to an inquiry from Sen. Chelgren regarding a less exhaustive, less expensive method for a search, Ms. France clarified that because every record in a county office is a public record, a person may examine any record; however, the records held by the state registrar are restricted, and documentation must be provided to verify the customer's right to the record.

REVENUE DEPARTMENT Brad Hopkins represented the department.

ARC 1496C No action on an amendment to 71.21(6) pertaining to the timing of filing of a property assessment appeal.

STATE PUBLIC DEFENDER Sam Langholz represented the office of the state public defender.

ARC 1512C No action on amendments to chs 1, 4, 7 and 12 to 14 pertaining to claims for services. In response to an inquiry from Rep. Pettengill, Mr. Langholz stated that though at present the attorneys' itemization forms may vary, the required information is standardized and that when the online claim submission system is in operation, the forms and information will be standardized statewide.

Rep. Pettengill expressed appreciation for the agency's work in developing and implementing the online claim submission system.

ARC 1514C No action on amendments to ch 11 regarding contracts and attorney qualifications. Mr. Langholz clarified for Rep. Pettengill that an attorney who has not met all of the requirements of 11.3(4) may be approved for contracting at the sole discretion of the state public defender. In response to an inquiry from Sen. Horn, Mr. Langholz stated that the agency engaged in an almost year-long process of developing the rule making with input from stakeholders, including the Iowa Bar Association, the Iowa Association for Justice, prosecutors, and law professors. He also stated that the securing of counsel for a case in a rural area, for example, does not appear to be an issue and that the court, in its role in the appointment process, is persuasive in securing counsel for cases.

EDUCATION DEPARTMENT Phil Wise and Nicole Proesch represented the department. Other interested parties included Rep. Scott Ourth.

ARC 1498C No questions on proposed 6.23 pertaining to appeal procedures for federal programs.

ARC 1489C No action on amendments to ch 44 regarding school buses.

ARC 1488C No action on amendments to ch 64 concerning the child development coordinating council.

ARC 1487C No action on amendments to ch 67 pertaining to educational support programs for parents of at-risk children.

ARC 1486C No action on amendments to ch 97 regarding whole-grade sharing and operational services related to supplementary weighting. Rep. Pettengill expressed appreciation to the department for its support of and assistance in the successful rule-making process.

Special Review Rep. Pettengill requested a special review of eligibility for athletic activities for a student who transfers to a different school district as a result of bullying.

Rep. Ourth explained that he brought to the attention of Rep. Pettengill the experience of a constituent who was a student wrestler and was bullied on a daily basis. Rep. Ourth explained that when the school district of origin stated that it could not guarantee the student's safety, the student open enrolled in another district. Rep. Ourth asserted that every student has the right not only to seek redress but also refuge and safety.

Mr. Wise stated that in 2014, legislation was introduced but was not passed by the Senate or the House of Representatives to explicitly allow immediate eligibility for athletic activities to students who transfer because of bullying. Mr. Wise stated that the department has explored whether an exception allowing immediate eligibility could be made in rule. However, Ms. Proesch explained that the department must operate under Iowa Code section 282.18(11), which sets forth specific reasons for exceptions that preclude a transferring student's participation in athletic activities for 90 days. These exceptions do not include bullying. She added that the department would support a change in statute and would promulgate rules accordingly.

Rep. Vander Linden and Sen. Courtney questioned the relaxation of athletic eligibility stipulations as a resolution to bullying, and Rep. Vander Linden added that the reason for a transfer could become known at the new school and perpetuate the bullying. Committee members determined that the issue could only be addressed by the legislature.

Ms. Proesch agreed to provide the committee with information about the rules of nonathletic associations (e.g., band, choir) regarding eligibility and transfers.

ENVIRONMENTAL PROTECTION COMMISSION Christine Schwake represented the commission.

ARC 1495C No action on an amendment to 61.2(2)“g” pertaining to water quality certification for reissued regional permit 7 and for other nationwide and regional permits.

RACING AND GAMING COMMISSION Brian Ohorilko represented the commission.

ARC 1506C No action on amendments to chs 1 and 5 pertaining to the organization and operation of the commission, forms, and the provisions for a first-aid room. In response to an inquiry from Rep. Olson, Mr. Ohorilko stated that, regarding Item 1, the commission members wished to convey to the committee that changing the term of the board chair from not more than two to not more than four consecutive one-year terms will allow the current chair to represent the commission in ongoing litigation and that when the litigation is concluded, the commission had no issue with reinstating the term of not more than two consecutive one-year terms. Rep. Pettengill expressed appreciation to the commission for the timing of the filing of this rule making.

INSPECTIONS AND APPEALS DEPARTMENT David Werning represented the department.

ARC 1502C No questions on amendments to 50.9 and 50.10(7) regarding time lines for verification of convictions or records of founded abuse and for plans of correction by health care facilities and CNA training programs.

ARC 1476C No action on 57.7 regarding the establishment of a special classification for memory care within a residential care facility.

ARC 1511C No questions on proposed 69.39 pertaining to respite care services that may be provided by an assisted living program.

Committee business The minutes of the June 10, 2014, meeting were approved. The next meeting was scheduled for Tuesday, August 12, 2014, at 9 a.m. [Note: Subsequently, the next meeting was scheduled for Tuesday, August 5, 2014.]

Adjourned The meeting was adjourned at 11:45 a.m.

Respectfully submitted,

Stephanie A. Hoff

APPROVED:

Chair Wally Horn

Vice Chair Dawn Pettengill