

**MINUTES OF THE NOVEMBER 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, November 18, 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, and Pam Jochum [by teleconference]; Representatives Lisa Heddens, 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; Brenna Findley, Administrative Rules Coordinator, and Larry Johnson, Deputy Legal Counsel, Office of the Governor; fiscal staff; caucus staff; and other interested parties.
- Convened Sen. Horn convened the meeting at 9:05 a.m.
- Fiscal overview** Adam Broich presented the LSA fiscal report.

REVENUE DEPARTMENT Jim McNulty and Victoria Daniels represented the department.

- ARC 1682C Proposed 10.2(34) pertains to the interest rate for calendar year 2015. In response to an inquiry from Sen. Horn, Mr. McNulty stated that 5 percent is a fair rate and that, unlike some other states, Iowa has consistently maintained the same interest rate on interest-bearing taxes and on refunds.
- ARC 1665C No action on amendments to chs 12, 38, 40 to 43, 46, 49, 52, 58 and 70 concerning the biodiesel production fund; individual income, corporation income and franchise taxes; and the renewable energy tax credit for replacement tax.
- ARC 1666C No action on amendments to 42.48, 52.44 and 58.22 pertaining to the solar energy system tax credit for individual income, corporation income and franchise taxes.
- ARC 1681C Proposed amendments to chs 67 to 69 relate to compressed natural gas, liquefied natural gas, and motor fuel tax rates. In response to an inquiry from Sen. Horn, Ms. Daniels stated that the amendments standardize definitions and measures in conformance with federal guidelines.
- ARC 1664C No action on 231.4(2) pertaining to candy subject to sales and use tax.

HUMAN SERVICES DEPARTMENT Jennifer Harbison and Wendy Rickman represented the department.

- ARC 1694C Amendments to chs 7, 41 and 93 pertain to the continuation of benefits pending the outcome of an appeal, implementation of a limited benefit plan (LBP) or family investment program (FIP) ineligibility period, PROMISE JOBS record retention, and the update of references to the GED.
- Sen. Chelgren expressed concern regarding the reduction of the required time period for retention of PROMISE JOBS records from five years to three years. He stated a preference for retention of records for five years in order to create greater transparency, to ensure accountability by public officials who are elected for four-year terms, and to establish long-term stability throughout a succession of administrations. In response to inquiries from Sens. Chelgren and Courtney, Ms. Rickman stated that the department releases records to the public only in aggregate form and that specific client records cannot be released to the public without the client's permission.
- Ms. Rickman stated that she will research the federal records retention requirement to determine whether PROMISE JOBS records must be retained for only three years or for at least three years and agreed to convey to the department the expressed preference for retention of PROMISE JOBS records for five years.
- ARC 1660C No action on amendments to ch 24 regarding standards for crisis services.
- ARC 1671C No action on amendments to ch 25 pertaining to the standards for submission of county mental health and disability services data to calculate Medicaid offset for each county.
- ARC 1698C No action on amendments to chs 74 and 77 relating to the Iowa health and wellness plan and to the standards for accountable care organizations to become Medicaid providers.

Human Services Department (continued)

- ARC 1707C No questions on a proposed amendment to 77.28(4)“a” to update a cross reference related to area education agency personnel providing services under Medicaid.
- ARC 1696C No action on 78.28(11) regarding prior authorization for high-technology radiology procedures.
- ARC 1699C No action on amendments to 79.1(2) and 79.1(7)“c” concerning the reimbursement rate for primary care services.
- ARC 1697C No action on amendments to 79.1(5) regarding disproportionate share payments to hospitals.
- ARC 1695C No action on amendments to 79.2, 79.3(2)“c” and 79.14(3) pertaining to sanctions and program integrity related to the medical assistance program. Ms. Harbison clarified for Rep. Pettengill the basis for the disenrollment of a paid provider.
- ARC 1683C No questions on proposed amendments to ch 81 regarding the preadmission screening and resident review process for nursing facilities.
- ARC 1705C No questions on proposed amendments to chs 109 and 110 pertaining to the record check process for employees of child care centers and child development homes.
- ARC 1706C No questions on proposed amendments to ch 117 regarding foster and adoptive parent preservice training.
- ARC 1636C At its October meeting, the committee reviewed this filed rule making (published in the 10/1/14 IAB), which pertains to emergency contact records for child development homes. Committee members had expressed concern regarding two issues: the potential for the imposition of a deficiency rating on a provider who did not fulfill the requirement to program all emergency numbers into the provider’s mobile telephone; and privacy issues related to searches of mobile devices.
Ms. Rickman explained that a proposed revision of 110.5(1)“a” will require that emergency numbers for police, fire, ambulance, and the poison information center be posted and that the number for each child’s parent, for the responsible person who can be reached when the parent cannot be reached, and for the child’s physician be written on paper and readily accessible near the telephone and in all travel vehicles.
Sen. Chelgren requested that in addition to the paper copy, the provider be permitted to program the telephone numbers in a mobile telephone. Rep. Vander Linden expressed appreciation to the department for its responsiveness to the committee’s concerns.

PHARMACY BOARD Terry Witkowski represented the board. Other interested parties included Stephanie Fawkes-Lee of Fawkes-Lee and Ryan.

- ARC 1653C No questions on proposed amendments to ch 3 pertaining to the extended deadline for national certification and to removal of references to “uncertified pharmacy technician.”
- ARC 1652C No questions on proposed amendments to 4.6(2) and 8.33 regarding vaccine administration by authorized pharmacist-interns.
- ARC 1647C Proposed 10.16 and 10.38 pertain to controlled substances, including the report of theft or loss and a temporary designation. Ms. Witkowski summarized the amendments that change the classifications of certain controlled substances. In response to an inquiry from Rep. Olson, she stated that the amendments are proposed in response to the rescheduling of controlled substances by the Drug Enforcement Administration (DEA).
Ms. Fawkes-Lee stated that the rescheduling of controlled substances, such as the pain-relieving drugs addressed in the rule making, makes acquisition of these drugs more difficult for the elderly and the disabled, who use the drugs responsibly to relieve chronic pain. In addition, she asserted that the elderly and disabled should not be subjected to the additional obstacles caused by rescheduling.
In response to an inquiry from Sen. Chelgren, Ms. Fawkes-Lee stated that it is appropriate that the Food and Drug Administration (FDA) evaluate drugs and asserted that the scheduling of drugs by the DEA has failed to address the treatment and prevention of drug addiction and abuse. In response to Ms. Witkowski’s statement that the DEA makes decisions for scheduling based on FDA recommendations, Ms. Fawkes-Lee stated the opinion that scheduling decisions for these pain-relieving drugs are more politically than scientifically based.

Pharmacy Board (continued)

- ARC 1651C No questions on proposed amendments to 19.2 and 19.3(3) relating to nonresident pharmacy practice.
- ARC 1641C No questions on proposed ch 33, military service and veteran reciprocity.
- EDUCATION DEPARTMENT** Phil Wise, Nicole Proesch, Jeremy Varner, Alex Harris and Kelly Rice represented the department.
- ARC 1663C No action on amendments to 12.5(4)“1” pertaining to secondary credit granted for a course taken by students in a grade that precedes ninth grade. Rep. Pettengill thanked the department for making a correction in the preamble in response to committee concerns.
- ARC 1672C Proposed ch 23 concerns adult education and literacy programs.
In response to an inquiry from Rep. Pettengill, Mr. Varner explained that the new chapter, developed in collaboration with stakeholders, differs from the existing chapter in the funding of the program, in the expectations of the legislature for the use of state funds, and in the policies related to eligibility, allowable uses of funds, qualifications of staff, and expectations for professional development. Mr. Varner also explained that the federal Adult Education and Family Literacy Act is cited in 23.3(5) to ensure that funds are used for adult education and literacy programs as set forth in the Act. In response to an inquiry from Sen. Chelgren, Mr. Harris stated that “adult” in the context of adult education is a person 16 years of age or older who has been separated from the K-12 school system.
At the request of Sen. Chelgren, Mr. Varner will provide the committee with a list of the stakeholders that collaborated with the department in the development of the rules.
- ARC 1662C No action on ch 27, workforce training and economic development funds.
- ARC 1673C No questions on proposed amendments to 36.15(6)“b” relating to a specified time period for summertime coaching activities.
- ARC 1661C The amendments to 43.15 require that an applicant for a school bus driver’s authorization undergo a biennial physical examination by a certified medical examiner who is listed on the National Registry of Certified Medical Examiners. Mr. Wise explained that the amendments conform 43.15 to new federal regulation 49 CFR Section 381.43 (2014). Mr. Wise stated that no public comments were received at the public hearing and that no changes had been made to the noticed amendments.
Committee members questioned the federal regulation that requires a medical professional to have national certification to perform a physical, whether the federal regulation is suggested or mandated, the penalty for noncompliance, the availability of a waiver, and whether other states have opted out of compliance with the federal regulation.
- Motion to delay Following discussion, Rep. Vander Linden moved a 70-day delay on 43.15.
Motion carried On a roll call vote of 7 to 2, the motion carried.
In response to an inquiry from Sen. Chelgren, Ms. Proesch stated that in 30 days the department would be prepared to answer the committee members’ questions regarding the federal regulation. The committee requested that the rule making be placed on the agenda for the December meeting.
The committee directed additional requests to the department. Rep. Olson suggested that in the future, the department and the other agencies provide within a rule making a citation to the federal Web site where the federal regulation to be implemented can be found. On behalf of Sen. Courtney, Mr. Wise will request that Max Christensen, who oversees school bus-related issues for the department, communicate with the committee regarding the use of seatbelts in school buses.
- ARC 1676C No questions on proposed amendments to ch 56 regarding Iowa vocational rehabilitation services.
- ARC 1675C No questions on proposed amendments to 60.2 and 60.3 pertaining to research-based educational and instructional models for students of limited English proficiency and to professional development.
- ARC 1674C No questions on proposed amendments to ch 79 concerning standards for practitioner and administrator preparation programs.

INSPECTIONS AND APPEALS DEPARTMENT David Werning represented the department.

ARC 1701C No action on amendments to ch 67 that establish, for elder group homes and adult day services programs, an informal conference process to contest the department's final findings.

ARC 1667C No action on 69.39 pertaining to respite care services that may be provided by an assisted living program.

INSURANCE DIVISION Angel Robinson represented the division.

ARC 1710C No action on 85.9(4) pertaining to notification of the termination of a relationship between a navigator entity and an individual navigator.

IOWA FINANCE AUTHORITY Carolann Jensen represented the authority.

ARC 1700C No action on amendments to ch 12 concerning the qualified allocation plans (QAPs) for the low-income housing tax credit program.

PROFESSIONAL LICENSURE DIVISION Sharon Dozier, Susan Reynolds and Judy Manning represented the division.

ARC 1668C No questions on proposed ch 20, military service and veteran reciprocity.

ARC 1680C No action on amendments to chs 21 and 23 pertaining to barbering, including licensure and a mentoring program.

ARC 1659C No action on amendments to chs 200, 203 and 207 regarding licensure and continuing education for physical and occupational therapists.

PUBLIC EMPLOYMENT RELATIONS BOARD Diana Machir represented the board.

ARC 1670C No questions on proposed amendments to chs 2 and 3 pertaining to hearings, prohibited practice proceedings, and taxed costs.

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT Margaret Thomson represented the department.

ARC 1704C No questions on proposed amendments to 64.187 regarding the reduction in the number of required low pathogenic avian influenza tests for turkey and chicken flocks.

ECONOMIC DEVELOPMENT AUTHORITY Tim Whipple and Kristin Hanks represented the authority.

ARC 1692C No questions on proposed ch 12, apprenticeship training program.

ARC 1693C No questions on proposed amendments to ch 65 pertaining to the redevelopment tax credits program for brownfield and grayfield sites.

ARC 1691C Proposed ch 118 concerns the strategic infrastructure program. In response to an inquiry from Rep. Pettengill, Mr. Whipple described two projects that are in process to explain the operation of this project-specific program.

ARC 1626C At its October meeting, the committee reviewed this filed rule making (published in the 9/17/14 IAB), which pertains to ch 31, economic development region initiatives. Ms. Hanks explained that pursuant to the committee's review, the authority did not have the statutory authority to change "shall" to "may" in Items 2 and 12. Ms. Hanks stated that she has drafted a Notice of Intended Action setting forth corrective amendments to Items 2 and 12 that bring the rules into conformity with the statute. She added that she intends to present the amendments to the board for approval at its meeting on November 21. Ms. Hanks requested that the committee lift the 70-day delay to allow the authority to make grant awards under the program.

Rep. Pettengill, after requesting procedural advice from Mr. Royce, asserted that the change had been substantive, expressed concern about lifting the delay, and requested input from committee members. Rep. Smith, who concurred that the change had been substantive, expressed appreciation for and approval of the proposed remedy and stated that the delay should be lifted. Sen. Chelgren stated that he trusts the authority to fulfill its commitment to make a correction that has resulted from committee concern and that the delay should be lifted.

Motion to lift delay Rep. Smith moved that the 70-day delay be lifted.

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

VOTER REGISTRATION COMMISSION Charlie Smithson and Sarah Reisetter represented the commission.

ARC 1679C Proposed amendments to 2.4, 2.8(2), 8.1 and 11.6 pertain to the use of an electronic signature on online voter registration transactions through the department of transportation (DOT) Web site.

Mr. Smithson stated that the amendments provide an enhancement to, not a replacement of, the current voter registration process for the 94 percent of Iowans who already have driver's licenses or nonoperator's identification cards. The amendments will allow a person to update the person's voter registration or register to vote electronically using the DOT system. Mr. Smithson stressed that the commission views the proposed amendments as a first step in the use of a state-issued form of identification to perform online voter registration and noted that the use of the existing DOT system will require no additional financial burden on the public or the state. Ms. Reisetter added that when a person registers to vote using online registration through the DOT Web site, the last signature on file with the DOT will be the signature used on the voter registration application. She stated that of the 24 states currently providing online voter registration, 17 states require the applicant to use a driver's license number or nonoperator's identification card number to begin the voter registration process.

Sen. Chelgren inquired about cross-checks on the authenticity of and discrepancies among multiple signatures by the same person and about the acceptability and use of other state-issued forms of identification, such as a passport or a permit to carry firearms. In response, Ms. Reisetter explained that the commission is proposing that voter registration transactions be integrated into the DOT's existing online renewal system because the DOT already processes online license renewals. Ms. Reisetter stated that to initiate the transaction, an applicant must provide the applicant's driver's license or nonoperator's identification card, which contains the driver's license number or nonoperator's identification card number and the document discriminator number. Mr. Smithson added that safeguards are already in place in the DOT system on which the online voter registration process will depend. In addition, the system can be built with little impact on the process that currently allows for secure transfer of data between the secretary of state's office and the DOT. Mr. Smithson and Ms. Reisetter emphasized that in the future, systems for online voter transactions that allow the use of other state-issued forms of identification may be developed.

Sen. Chelgren suggested that the system have a cross-check mechanism to confirm the accuracy of signatures and expressed the hope that additional state-issued forms of identification may be used in future online voter registration systems.

LABOR SERVICES DIVISION Kathleen Uehling represented the division.

ARC 1677C No questions on proposed amendments to 4.3 relating to recording and reporting regulations.

ARC 1687C No questions on proposed amendments to 10.20 and 26.1 regarding corrections to federal occupational safety and health standards, previously adopted by reference, for electrical protective equipment and electrical power generation, distribution and transmission.

MEDICINE BOARD Mark Bowden represented the board.

ARC 1708C Proposed amendments to 13.2 pertain to a discussion between a physician and a patient about the safe operation of a vehicle in light of the patient's medical condition and medication.

Mr. Bowden explained that proposed 13.2(8) addresses a National Transportation Safety Board (NTSB) recommendation that states adopt guidance for physician-patient discussion regarding the effects of a patient's medications and medical conditions on the patient's ability to safely operate a vehicle in any mode of transportation. Mr. Bowden distributed copies of the NTSB's study regarding drug use trends in aviation and its safety recommendation for Iowa. Mr. Bowden explained that the board formerly issued policy statements but has been advised by the attorney general's office that policy should be adopted in rule.

Medicine Board (continued)

Reps. Pettengill, Olson, and Vander Linden expressed concern about the reliability of the study and about the imposition of another obligation on physicians, including liability if the patient is involved in an accident, and possible malpractice lawsuits. Mr. Bowden stated that a requirement in 13.2 imposes liability and that it is not unusual for a physician to give an additional directive to the patient. Mr. Bowden explained that 13.2(8) addresses a patient’s medical condition and medication, the combination of which can cause greater impairment. Mr. Bowden assured the committee that the board would thoroughly review the public comments already received and those presented at the public hearing.

Committee business

The minutes of the October 14, 2014, meeting were approved. The next meeting was scheduled for Friday, December 12, 2014, at 9 a.m. Mr. Royce summarized a report regarding narrow construction of rule-making delegations written by Mr. Royce and Mr. Ewing. Following a motion by Rep. Vander Linden, the committee voted unanimously to discuss the report at the December meeting.

Adjourned

The meeting was adjourned at 12:07 p.m.

Respectfully submitted,

Stephanie A. Hoff

APPROVED:

Chair Wally Horn

Vice Chair Dawn Pettengill