

**MINUTES OF THE DECEMBER 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 Friday, December 12, 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, and Roby Smith; Representatives Lisa Heddens [by teleconference], Rick Olson, Jeff Smith, and Guy Vander Linden were present. Senator Pam Jochum was not 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 Rep. Pettengill convened the meeting at 9:08 a.m.
- Fiscal overview** Adam Broich presented the LSA fiscal report.

HUMAN SERVICES DEPARTMENT Nancy Freudenberg represented the department.

- ARC 1729C No questions on proposed amendments to chs 78 and 88 pertaining to the updating of references to the Diagnostic and Statistical Manual of Mental Disorders (DSM-5).
- ARC 1738C No questions on proposed 110.5(1)“a” relating to emergency contact information for child development homes. Ms. Freudenberg explained that this amendment clarifies the requirements for contact information requested by the committee when it imposed a 70-day delay on ARC 1636C (IAB 10/1/14) at the October meeting.
- ARC 1739C No questions on proposed amendments to 110.5(1)“r” regarding height requirements for fences enclosing swimming pools at child development homes.
- In a separate inquiry, Rep. Pettengill asked about the status of a petition for rule making brought by community providers in 2013. Pursuant to 2013 Iowa Acts, Senate File 2452, the petition requested the promulgation of rules to stipulate that costs for training be direct costs rather than indirect costs. Rep. Pettengill questioned the reason for the delay in rule making and asked when the rules would be promulgated. Ms. Freudenberg stated that the department will provide the committee with the requested information.

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

- ARC 1742C Proposed amendments to ch 40 pertain to offset of debts owed state agencies. In response to an inquiry from Rep. Pettengill, Mr. Cleveland stated that he will provide the committee with a link to the state accounting enterprise Web site where a consolidated listing of payment sources unavailable for offset may be found.

EDUCATIONAL EXAMINERS BOARD Darcy Lane and Joanne Tubbs represented the board. Other interested parties included Brad Hudson of the Iowa State Education Association and Steve Mitchell, board staff.

- ARC 1723C No questions on proposed amendments to 13.17(4) concerning the military exchange license, including military education, training, and service credit.
- ARC 1720C No action on amendments to 22.2 pertaining to the expansion of the authority of a substitute authorization to include the elementary classroom.
- The board’s current rules provide for the issuance of a substitute authorization, which grants an individual limited authority to act as a substitute teacher in a secondary classroom for no more than 5 consecutive days and no more than 10 days in a 30-day period in one job assignment for a regularly assigned teacher. An applicant must hold a bachelor’s degree, pass a background check and complete a minimum of 15 hours of coursework in classroom management, strategies for learning, diversity and ethics. The amendments were proposed in response to reports from administrators regarding the difficulty in securing substitute teachers at the elementary level.
- Ms. Lane stated that no one attended the public hearing and that one comment in opposition to and one comment in support of the amendments had been received.

Educational Examiners Board (continued)

At the August meeting, the committee had requested more information about the demand for substitutes and the board's rationale for proposing the amendments. Ms. Tubbs reported that 165 school districts, or approximately 50 percent statewide, responded to a board survey sent in response to the committee's request for more information. At the request of Sen. Chelgren, Ms. Tubbs will make the survey results, including all comments, available to the committee. In response to inquiries from Sen. Courtney, Ms. Lane explained that the board has general authority to establish requirements for licenses, authorizations, and endorsements, and Ms. Tubbs stated that finding licensed teachers within a community who are not under contract and available to substitute teach is a challenge, especially in rural districts. In addition, Ms. Tubbs explained the current requirements for a substitute license, noting that a person with a substitute license may substitute at any level.

Based on concern about adequate training of substitutes at the elementary level, Sen. Courtney expressed his opposition to the amendments. Sen. Chelgren expressed concern regarding the dilemma faced by classroom teachers and their students when, because of a shortage of substitutes, classroom teachers are assigned on short notice to substitute teach.

Mr. Hudson expressed opposition to the amendments, noting the differences between the skills required of substitutes at the high school level and at the elementary level, and stated that more appropriate alternatives should be explored.

ARC 1719C No action on an amendment to 22.3(6) that makes the school business official authorization valid for two years from the date of issuance rather than from the date of employment.

ARC 1721C No action on amendments to ch 22 regarding the native language teaching authorization. Sen. Chelgren inquired about whether a non-native speaker of a foreign language who is fluent in that language could be considered as a candidate for this authorization and whether English fluency is also a requirement for the authorization. In response, Ms. Tubbs stated that based on fluency in a foreign language, a person could be granted the preliminary native language teaching authorization, which is valid for five years while the candidate completes basic pedagogy courses that require a command of English. After five years, the candidate must convert the preliminary authorization to the native language teaching authorization.

Sen. Chelgren expressed concern that the rule excludes fluent non-native speakers of a foreign language from qualifying for the authorization. Rep. Olson concurred and suggested that the board review the statement in 22.6(1) that "[t]he native language teaching authorization allows an individual to teach the individual's native language." Rep. Olson asserted that this statement appears to exclude fluent non-native speakers of a foreign language from qualifying for the authorization.

ARC 1717C No questions on the termination of proposed 22.9 concerning a Montessori authorization. Ms. Tubbs explained that the board voted to terminate the Notice based on concerns expressed by the committee at the September meeting.

ARC 1718C No action on 22.10 pertaining to the activities administration authorization.

Sen. Courtney inquired about the authority of the board to create the authorization and the need for it and the possibility that the authorization could allow the supervision of a licensed teacher by an unlicensed activities director. In response, Ms. Lane explained that the board's authority allows the licensing of practitioners for different specialties and functions in order to provide programming assistance to students and that the board provides for certain subsets of certification for persons who are not traditionally prepared teachers. Ms. Tubbs explained that the need for qualified activities directors has been expressed by rural and urban school districts and that licensed teachers will not be supervised by activities directors. Sen. Courtney expressed concern that the rule allows the standard for employing licensed professionals to be diminished. At the request of Sen. Chelgren, Ms. Tubbs will provide the committee with a list of all categories of school employees and the authority with oversight of each category, whether the authority is the board or another entity.

Educational Examiners Board (continued)

Mr. Hudson expressed opposition to the rule and stated that persons licensed or certified in a specific area, such as mock trial, debate or choral activities, are best suited to supervise these activities. Mr. Mitchell stated that athletic directors requested the authorization in an effort to gain more support for their profession and that turnover among athletic coaches is not only a rural issue.

EDUCATION DEPARTMENT Phil Wise, Nicole Proesch and Max Christensen represented the department. Other interested parties included Kim Snook from the department of transportation.

ARC 1661C

Rule 43.15 required school bus drivers to undergo a biennial physical examination performed by a licensed physician or surgeon, osteopathic physician or surgeon, osteopath, qualified doctor of chiropractic, licensed physician assistant or advanced registered nurse practitioner. The amendments to 43.15 require that a school bus driver's biennial physical examination be conducted by a certified medical examiner who is listed on the National Registry of Certified Medical Examiners.

At the November meeting, the committee imposed a 70-day delay on this Adopted and Filed rule making (IAB 10/15/14) to allow the department to provide more information about the federal regulation, including but not limited to the need for a medical professional to have national certification to perform a physical examination, whether the requirement is mandatory, and the consequences for noncompliance.

Ms. Proesch stated that the department and the department of transportation (DOT) had met to discuss and respond to the questions raised by the committee. She explained that pursuant to the federal regulation, school bus drivers who are employed by school districts and who drive buses owned by those school districts are exempt from the federal medical standards; school bus drivers who are employed by private contractors are exempt from the federal medical standards except when these drivers cross state lines to transport students for curricular or extracurricular activities. Ms. Proesch then addressed the requirements of state law, noting that the Federal Motor Carrier Safety Administration (FMCSA) recommends that states adopt federal medical standards for drivers who are exempt from federal standards. Ms. Proesch explained that Iowa Code section 321.375(1)"d," which sets forth the requirements for physical examinations for school bus drivers in Iowa, follows the FMCSA recommendation and stated that the statute has been interpreted by the DOT to require the medical professional who conducts physical examinations of school bus drivers to be "identified by federal and state law as authorized to perform physical examinations." Mr. Wise stated that based on discussion with the DOT, which had sought an opinion regarding the statute from the attorney general who represents the DOT, it is the position of the department that Iowa Code section 321.375(1)"d" requires compliance with federal and state law. Mr. Christensen explained that since 2003, school bus drivers have been undergoing physical examinations that meet the requirements of Iowa Code section 321.375(1)"d" and clarified that pursuant to a federal regulation that became effective May 21, 2014, the amendments require that the examination be conducted by a certified medical examiner who is listed on the National Registry. Ms. Proesch concluded by stating that the department believes the statute requires that medical professionals be qualified under federal and state law; that the consistent, uniform application of federal medical standards provides greater safety for students; and that the same standards should be applied to the physical examinations of all school bus drivers.

Committee members inquired about the consequences for noncompliance, the number of school bus drivers affected by 43.15 and by the federal requirement for school bus drivers who cross state lines, and the department's and the DOT's interpretation of Iowa Code section 321.375(1)"d." Ms. Snook stated that \$37 million in federal highway funding could be placed in jeopardy if school bus drivers who transport students across state lines for curricular or extracurricular activities are not in compliance with the federal regulation. Mr. Christensen was uncertain about the number of school bus drivers who would be affected by the state law or federal regulation. Ms. Proesch reiterated that the department concurs with the DOT interpretation of the statute.

Education Department (continued)

Committee members requested that more time be allowed to address several concerns, including the interpretation and application of Iowa Code section 321.375(1)“d.”

Motion to delay Sen. Chelgren moved a session delay on 43.15.

Motion carried On a voice vote of 8 to 1, the motion carried.

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

ARC 1712C No action on ch 15, mass notification and emergency messaging system. In response to an inquiry from Rep. Pettengill, Mr. Benson stated that the local entity will determine the appropriate method or methods of mass notification.

INSPECTIONS AND APPEALS DEPARTMENT David Werning represented the department.

ARC 1727C No questions on the proposed rescission of ch 9, indigent defense claims processing.

ARC 1740C No action on ch 71, subacute mental health care facilities.

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

ARC 1724C Proposed amendments to 10.2 and 10.4 pertain to fees charged for the issuance of mortgage credit certificates. Mr. Thompson explained that for first-time homebuyers and low-income homebuyers, the program provides a tax credit certificate that allows a homebuyer to claim a tax credit of \$2,000 per year for the life of a home mortgage, up to 30 years. Ms. Haugh noted that a waiver of fees is under consideration for the borrowers who use one of the authority’s loan products for a first mortgage. Mr. Thompson stated that federal law requires that the fees cover only the actual costs for the administration of the program and that the amendments, which remove the fees from the rule, will allow the authority to adjust the fee schedule in order for the program to pay for itself. He added that the fees will be posted on the authority’s Web site.

Sen. Courtney and Rep. Pettengill questioned the removal of the fees from the rule and the concurrent removal of legislative oversight. Rep. Smith pointed out that participation by borrowers and lenders is voluntary; that the fee is part of a commercial program, not a regulatory program, and is therefore not required for participation; and that the authority needs the flexibility to amend the fees based on market-driven changes in mortgage rates.

PROFESSIONAL LICENSURE DIVISION Sharon Dozier and Tony Alden represented the division.

Other interested parties included Sandy Jaques of the Iowa Medical Society; Brandon Geib on behalf of the Iowa Osteopathic Medical Association, the Iowa Academy of Family Physicians, and the Cedar Rapids Physician Hospital Organization; Mark Bowden on behalf of the board of medicine; Ed Friedmann, PA, of the Iowa Association of Rural Health Clinics; and Susan Koehler, PA, of the board of physician assistants.

ARC 1730C No questions on proposed amendments to chs 5, 240 and 241 concerning provisional licensure for psychologists.

ARC 1728C No questions on proposed amendments to chs 81 and 83 regarding updates to organization names and terminology related to dietitians.

ARC 1741C Proposed amendments to 327.4(2) pertain to onsite visits with physician assistants by supervising physicians. Mr. Alden stated that the amendments remove the requirement that a physician assistant (PA) who is practicing in a remote medical site have a supervising physician physically visit and practice at the remote medical site at least every two weeks.

Mr. Alden reported that the board of physician assistants met with a committee of the medicine board to discuss the rules relating to remote-site practice. He explained that prior to submission of the Notice, the board of physician assistants received input regarding the amendments from the Iowa Association of Rural Health Clinics and from the Iowa Physician Assistant Society and that the amendments have the support of these groups and of the American Academy of Physician Assistants. Mr. Alden stated that the Polk County Medical Society expressed opposition to the amendments in their current form and would prefer that an additional written agreement be required.

Professional Licensure Division (continued)

Discussion pertained to the rationale for the removal of the federal requirement for biweekly onsite visits by a supervising physician, the use of technology for communication between the supervising physician and PA, safeguards to maintain supervising physician/PA accountability and quality care, and liability issues. In response, Mr. Alden stated that removal of the federal requirement allows local practitioners to set parameters suited to their practices; that the use of audio and video technology, including electronic medical records, is encouraged; that the rules regarding supervision will remain in place; and that both the supervising physician and the PA are responsible for quality and accountability in their practice.

Ms. Jaques stated that a biweekly onsite visit is not an undue travel or financial burden on a supervising physician and that onsite visits provide an essential element of in-person collaboration between health care professionals. Mr. Geib stated that biweekly visits by a supervising physician are not an undue burden to ensure that a PA provides a high standard of care. Mr. Bowden expressed the opinion that if the biweekly supervision requirement is removed, some other monitoring requirement should be put in its place in order to ensure supervision of PAs because value is gained through practice monitoring. Mr. Friedmann stated that the goal of providing quality care is attained through the supervising physician/PA team approach, noted that patient safety is ensured by the oversight of two regulatory boards, and requested that PAs be granted the same independence from biweekly supervision as that of advanced registered nurse practitioners (ARNPs). Ms. Koehler stated that the rules regarding the supervision of PAs will not change the quality of care or the level of supervision. She explained that the goal of the amendments is to give supervising physician/PA teams the ability to decide the appropriate level of supervision and to provide more flexibility and efficiency to supervising physician/PA teams in order to increase access to quality care for Iowans.

In response to an inquiry from Rep. Pettengill, Ms. Koehler stated that the vote by the board of physician assistants to promulgate the amendments was unanimous. Rep. Pettengill requested that the committee be provided with the percentage of the 1,100 PAs statewide who provide care in rural areas. Sen. Chelgren requested from Ms. Jaques a recommendation from the Iowa Medical Society regarding required hours of supervision of PAs.

PUBLIC SAFETY DEPARTMENT Roxann Ryan represented the department.

- ARC 1722C No questions on proposed amendments to ch 226 regarding liquefied petroleum gas standards related to fire safety.
- ARC 1715C No action on amendments to 504.1 pertaining to the adoption by reference of the 2014 edition of the National Electrical Code with specified exceptions.
- ARC 1725C No questions on proposed ch 506, military service and veteran reciprocity.

REAL ESTATE APPRAISER EXAMINING BOARD Toni Bright represented the board.

- ARC 1731C No action on amendments to chs 3 to 6 pertaining to uniform appraisal standards and appraiser certification requirements.
- ARC 1732C No action on amendments to chs 9, 11 and 15 regarding certification and registration renewal, reactivation and reinstatement, continuing education, and supervisory appraiser qualifications.

REVENUE DEPARTMENT Jim McNulty represented the department.

- ARC 1744C No action on amendments to chs 12, 42, 46, 52 and 58 pertaining to individual income, corporation income and franchise tax and to the workforce housing tax incentives program.
- ARC 1726C No questions on proposed amendments to 49.5(1) regarding the removal of the requirement that the department mail a preaddressed estimate tax form to all resident taxpayers who filed an estimate tax form in the prior year.

ECONOMIC DEVELOPMENT AUTHORITY Kristin Hanks represented the authority.

Committee review of emergency rule making At the October meeting, the committee imposed a 70-day delay on amendments to ch 31 (ARC 1626C, IAB 9/17/14), which pertained to economic development region initiatives, with a focus in particular on Items 2 and 12 (31.1 and 31.13).

Economic Development Authority (continued)

At the November meeting, Ms. Hanks explained that pursuant to the committee's October review, the authority did not have the statutory authority to change "shall" to "may" in Items 2 and 12 and that she had drafted corrective amendments to bring the rules into conformity with the statute. Based on that report, the committee lifted the 70-day delay.

Ms. Hanks requested that the committee approve the emergency adoption of the corrective amendments relating to the economic development region initiatives so that the rules might be brought into conformity with the statute as soon as possible.

Motion to approve
Motion carried

Rep. Vander Linden moved approval of the emergency rule making.
On a voice vote of 8 to 0, the motion carried.

Committee business

The minutes of the November 18, 2014, meeting were approved.

The next meeting was scheduled for Tuesday, January 6, 2015, at 9:30 a.m.

Following a motion by Rep. Vander Linden, the committee voted to approve the report by Mr. Royce and Mr. Ewing regarding narrow construction of rule-making delegations. Mr. Ewing will send the report to the leadership in the Senate and in the House of Representatives no later than the first day of the 2015 Session of the General Assembly.

At the January meeting, Sen. Chelgren will present for committee discussion a resolution (to be debated in the 2015 General Assembly) regarding an amendment that would add to the Iowa Constitution a definition of "administrative rules review committee."

Adjourned

The meeting was adjourned at 12:05 p.m.

Respectfully submitted,

Stephanie A. Hoff

APPROVED:

Chair Wally Horn

Vice Chair Dawn Pettengill