

**MINUTES OF THE JANUARY 2015 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, January 6, 2015, in Room 116, State Capitol, Des Moines, Iowa.

Members present: Senator Wally Horn, Chair, and Representative Dawn Pettengill, Vice Chair; Senators Mark Chelgren, Pam Jochum, and Roby Smith [by teleconference]; Representatives Lisa Heddens and Rick Olson [by teleconference], Jeff Smith, and Guy Vander Linden were present. Senator Thomas Courtney was not present.

Also present: Jack Ewing and Tim Reilly, 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 9:38 a.m.

Introduction Mr. Ewing introduced Mr. Reilly, new legal counsel to the committee.

Fiscal overview Adam Broich presented the LSA fiscal report.

HUMAN SERVICES DEPARTMENT Nancy Freudenberg represented the department.

ARC 1754C No action on amendments to chs 107, 108 and 200 regarding criminal history and child abuse record checks, postplacement reports, and home studies related to adoption. At the request of Sen. Jochum, Ms. Freudenberg stated that the department will provide the committee with the number of certified adoption investigators in Iowa and the credentials required of an investigator.

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT Margaret Thomson represented the department.

ARC 1802C No action on amendments to 64.187 pertaining to the reduction in the number of required low pathogenic avian influenza tests for commercial turkey and chicken flocks.

ECONOMIC DEVELOPMENT AUTHORITY Rita Grimm and Tim Waddell represented the authority.

ARC 1801C The adoption of ch 48 and amendments to chs 59, 68 and 173 to 175 concern the workforce housing tax incentives program, high quality jobs program, and enterprise zone program and wage thresholds and local match.

Ch 48 establishes the workforce housing tax incentives program and sets forth the rules by which the authority will administer the program. Rep. Pettengill questioned the addition of the term “greenfield site” since the term is not included in the statute. Mr. Waddell and Ms. Grimm explained that the inclusion of the term “greenfield site” is intended to clarify the meaning of and differentiate between a greenfield site, which is agricultural land that has not been built upon, and the defined terms “brownfield site” and “grayfield site.”

Discussion initiated by an inquiry from Rep. Pettengill focused on 48.7(2), which allows the authority to reallocate to other programs unused amounts of the tax credit capped at \$20 million if the authority determines that program demand is less than the amount allocated. Committee members questioned whether the allocation of unused funds to other programs or the use by a program of a greater amount of funds than originally allocated to the program is permitted by statute or is in accord with legislative intent. In response, Ms. Grimm stated that Iowa Code section 15.119(2) permits such allocations and that the rule fulfills legislative intent by providing for the efficient allocation of tax credits throughout the year. The committee and the authority differed in the interpretation of section 115.9, the statutory basis for 48.7(2).

Motion to delay Rep. Pettengill moved a session delay on 48.7(2).

Motion carried On a voice vote of 7 to 1, the motion carried. [Note: Rep. Olson was not part of the teleconference at the time of the vote.]

EDUCATION DEPARTMENT Phil Wise, Nicole Proesch, Kent Farver and Kelley Rice represented the department.

ARC 1775C No action on ch 23, adult education and literacy programs.

Education Department (continued)

- ARC 1783C No questions on proposed amendments to ch 25 pertaining to the pathways for academic career and employment (PACE) program and the gap tuition assistance program.
- ARC 1779C No action on amendments to 36.15(6)“b,” which specify that the time period for summertime camps, clinics and coaching for out-of-season sports activities is “between June 1 and the first day of fall sports practices.” In response to inquiries from Sens. Chelgren and Horn, Ms. Proesch clarified that the “first day of fall sports practices” is not the first day of school; it is the first day of fall sports practices as set by the Iowa High School Athletic Association. She explained that the amendments ensure that all schools limit these activities during the same specified time periods and that students will not be forced to choose between a summertime sport, such as baseball, and a fall sport, such as football, because training for a sport outside the season is not allowed.
- ARC 1781C No action on ch 48, statewide work-based learning intermediary network. Mr. Farver confirmed for Rep. Pettengill that according to the advisory council for the network, collaboration is expected between the network and the STEM internship program of the economic development authority.
- ARC 1778C No action on amendments to ch 56 regarding Iowa vocational rehabilitation services. In response to an inquiry from Sen. Chelgren, Ms. Rice explained that the amendments in Item 2 update the bases for nondiscrimination in 56.2 in accordance with Iowa Code chapter 216. In response to an inquiry from Rep. Pettengill, Ms. Rice stated that the language regarding medical providers that was removed from 56.13(1)“b” may be found in the online case service manual on the vocational rehabilitation services Web site at www.ivrs.iowa.gov.
- ARC 1776C No action on 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 1780C No action on amendments to ch 79 concerning standards for practitioner and administrator preparation programs.

ENVIRONMENTAL PROTECTION COMMISSION Christine Paulson, Russ Tell, Diane Moles and Laurie Sharp represented the commission.

- ARC 1795C Proposed amendments to chs 20, 22, 23, 25, 31 and 33 pertain to air quality. In response to an inquiry from Sen. Jochum regarding mercury emissions testing and monitoring, Ms. Paulson explained that the current emissions rule, which will sunset on April 16, 2015, sets forth requirements for periodic testing whereas the new U.S. Environmental Protection Agency (EPA) standards effective on that date are more stringent and will be administered by EPA until the commission adopts the federal standards by reference. Ms. Paulson added that EPA Region VII will be active in the enforcement of the high-profile federal standards.
- ARC 1757C A proposed amendment to 64.15(6) concerns the renewal of General Permit No. 6, which continues to authorize the discharge of wastewater associated with well construction activities and requires the monitoring of the wastewater effluent to determine compliance with the state’s water quality standards. In response to an inquiry from Rep. Pettengill, Mr. Tell explained that the rule making will be adopted and filed emergency after notice. At the request of Sen. Jochum, Mr. Ewing clarified the difference between an emergency rule making, which requires committee approval, and an emergency after notice, which does not require committee approval, and confirmed that the committee may take action within 35 days of the effective date of either type of emergency rule making. In response to an inquiry from Mr. Johnson, Mr. Tell further clarified that as long as the notice process proceeds as anticipated and in order to comply with timing deadlines, the commission intends to file an emergency after notice, which may become effective upon filing.
- ARC 1796C Proposed amendments to ch 81 pertain to the water supply and wastewater treatment operator certification, including military and veteran reciprocity. In response to an inquiry from Sen. Chelgren, Ms. Sharp stated that other commission rules already allow reciprocity related to licensure for persons, such as private contractors, who have gained experience in wastewater treatment outside the United States.

INSPECTIONS AND APPEALS DEPARTMENT David Werning represented the department.

- ARC 1751C No action on amendments to 51.18 and 51.41 related to hospital laboratory services and to employer verification of hospital employee records.
- ARC 1753C No action on ch 57, residential care facilities. In response to an inquiry from Rep. Pettengill, who pointed out that the definition of “physician extender” was proposed only in ch 57, Mr. Werning explained the department’s decision not to adopt this definition and instead to replace the term with “primary care provider” throughout the chapter. Mr. Ewing explained that because former ch 57 has been replaced, the objection imposed on 57.23(2)“b” in 1978 had been editorially removed.
- ARC 1752C No action on amendments to chs 58 and 62 to 65 regarding involuntary discharge or transfer related to nursing, residential care and intermediate care facilities. Mr. Werning stated that he would confer with department legal counsel and provide Rep. Pettengill with the rationale for the department’s addition in ch 58 of a definition for “primary care provider,” which includes advanced registered nurse practitioners and physician assistants. Rep. Pettengill noted that scope of practice will be addressed in legislation.

IOWA PUBLIC EMPLOYEES’ RETIREMENT SYSTEM Donna Mueller and David Martin represented IPERS.

- ARC 1800C Proposed amendments to chs 4, 8, 9, 11 to 14, 16 and 17 pertain to contribution rates; protected occupations; service purchases; benefits, including death and disability; overpayments; reporting; domestic relations orders; and records. Ms. Mueller summarized the substantive amendments, which include allowing the purchase of service only at retirement. In response to an inquiry from Rep. Pettengill, Mr. Martin stated that in Item 32, the stricken sentence does not apply to 12.8(3) and in fact is found elsewhere in 12.8. He clarified that a retired member who is reemployed in covered employment after retirement and who later retires has the option to receive a lump sum of the member’s and employer’s contributions or an increase in the member’s annuity.

LABOR SERVICES DIVISION Kathleen Uehling represented the division.

- ARC 1782C No action on amendments to 4.2 and 4.3 relating to first reports of injury and to recording and reporting regulations.
- ARC 1803C No action on 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.
- ARC 1797C No questions on a proposed amendment to 26.1 regarding federal occupational safety and health standards related to crane safety.
- ARC 1766C No action on amendments to chs 71 to 73 pertaining to the adoption by reference of the national electrical code and portions of the ASME safety code for elevators and escalators.
- ARC 1771C No questions on proposed amendments to 72.10 and 73.1 regarding adoption by reference of ASME A17.3 (2011) with certain exceptions for elevators. Rep. Pettengill thanked Ms. Uehling for providing a list of the ten counties that will be most impacted by the elevator upgrades set forth in ASME A17.3 (2011) and requested a list of all other counties that will be impacted by the upgrades.
- ARC 1798C No questions on proposed amendments to chs 90 and 91 pertaining to boilers and pressure vessels.

MEDICINE BOARD Mark Bowden represented the board. Other interested parties included Libby Coyte of the Iowa Physician Assistant Society and Dennis Tibben of the Iowa Medical Society.

- ARC 1769C Proposed 13.11 establishes standards for the practice of medicine using telemedicine, which includes electronic communication, information technology or other means of interaction between a physician in one location and a patient in another location with or without an intervening health care provider. Mr. Bowden summarized the process by which the board developed the rule and explained the essential elements of telemedicine, including Iowa licensure and practice standards that are the same as those for in-person medical care.

Medicine Board (continued)

Committee members inquired about the following: the effect of 13.11(9) on ongoing practice, such as telestroke care in rural hospitals; the medications that could be administered through telemedicine; the difference between 13.11 and 13.10, regarding telemedicine abortion, and whether promulgation of this rule is appropriate due to the stay on 13.10; and the effect of the rule on the practice of nonphysician health care providers.

In response, Mr. Bowden stated that in 13.11(9), the board seeks to prevent inappropriate delegation of duties by a physician to a nonphysician health care provider in order to protect the patient. He explained that at this time, the medical abortion medication is the only medication that must be administered in person by a physician. He stated that 13.11 repeats the expectation that if a protocol requires a physician to be present, the procedure cannot be performed through telemedicine and that 13.11 does not contradict or supersede 13.10. He explained that scope of practice requirements for nonphysician health care providers would govern the providers' activities and that the rules in ch 9 set forth the requirements for situations in which an Iowa license is not required, such as in emergency situations.

Sen. Chelgren requested that though ch 9 addresses situations when physicians or nonphysician health care providers could take action in an emergency, the board consider whether these providers could jeopardize their licenses by acting in emergency situations.

Ms. Coyte stated that in 13.11(9), physician assistants (PAs) should be exempted from the definition of nonphysician health care providers because PAs are already appropriately supervised by supervising physicians and, in her written comments, Ms. Coyte provided sample language that might be incorporated into the rule. Mr. Tibben requested that 13.11(9) be made more workable by addressing emergencies and consultations. He stated that although accountability and uniformity are important, expecting a physician in these types of situations to be familiar with the credentials of nonphysician health care providers is not practical.

ARC 1804C No action on ch 18, military service and veteran reciprocity. Mr. Bowden provided the committee with copies of a letter from the board to the chairs and ranking members of the Veterans Affairs committees of the House and Senate recommending that the provisions of 2014 Iowa Acts, chapter 1116, be expanded to include the spouses of military veterans.

PHARMACY BOARD Terry Witkowski represented the board.

ARC 1785C No action on amendments to ch 3 regarding the removal of references to "uncertified pharmacy technician" and to the extended deadline for national certification.

ARC 1791C No questions on proposed amendments to chs 3, 6, and 7; the rescission of chs 13 and 20; and the adoption of ch 20 pertaining to compounding practices.

ARC 1786C No action on amendments to 4.6(2) and 8.33 regarding vaccine administration by authorized pharmacist-interns.

ARC 1793C No questions on proposed amendments to chs 6 to 9, 15, 18, 19, 22 and 23 concerning the assignment of responsibility for pharmacy activities and functions.

ARC 1792C No questions on proposed amendments to 8.35(6) pertaining to written notification identifying the temporary pharmacist in charge.

ARC 1787C No action on 10.16 and 10.38(4) to 10.38(6) pertaining to controlled substances, including the report of theft or loss and a temporary designation. Ms. Witkowski summarized public comments objecting to the proposed temporary scheduling of tramadol and hydrocodone-containing products, and she described a change from the Notice clarifying that reporting is required within 14 calendar days of discovery of theft or loss. In response to an inquiry from Sen. Chelgren, Ms. Witkowski explained that when federal and state laws differ regarding controlled substances schedules, the more stringent scheduling action prevails. On a related subject, Ms. Witkowski stated that pharmacists providing and practitioners prescribing controlled substances must comply with the more stringent scheduling action to avoid jeopardizing their Drug Enforcement Administration (DEA) registrations and their participation in any federally funded reimbursement program such as Medicaid or Medicare.

ARC 1788C No action on amendments to 19.2 relating to nonresident pharmacy practice.

ARC 1789C No action on ch 33, military service and veteran reciprocity.

Pharmacy Board (continued)

ARC 1790C No questions on proposed amendments to 36.1(4) regarding grounds for discipline.

PUBLIC EMPLOYMENT RELATIONS BOARD Diana Machir represented the board.

ARC 1773C No action on amendments to chs 2 and 3 pertaining to hearings, prohibited practice proceedings, and taxed costs.

PUBLIC HEALTH DEPARTMENT Kala Shipley and Bob Kerksieck represented the department.

ARC 1747C No action on amendments to ch 4 pertaining 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.

ARC 1745C Proposed ch 155 pertains to licensure standards for substance-related disorder and problem gambling treatment programs. In response to an inquiry from Sen. Horn, Mr. Kerksieck explained that treatment programs for problem gambling and substance-related disorders have been grouped together in ch 155 because they are categorized together in the current edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM), published by the American Psychiatric Association. In response to an inquiry from Sen. Chelgren, Mr. Kerksieck stated that ch 155 does not address the role of government in restricting access to drugs, alcohol and gambling by persons who have substance-related disorders or are affected by problem gambling.

ARC 1750C No action on amendments to ch 176 regarding the second review process, public notice of available funds, appeals, and the time period for issuance of a decision and order related to criteria for awards and grants.

ARC 1749C No action on ch 196, military service and veteran reciprocity.

ARC 1748C No action on amendments to ch 202 and the rescission of ch 204 pertaining to the certificate of need program and to uniform reporting requirements.

RACING AND GAMING COMMISSION Brian Ohorilko represented the commission.

ARC 1770C Proposed amendments to chs 5, 8 and 10 to 12 pertain to clarifications and updates of practices, network security, and wide area progressive systems. In response to an inquiry from Sen. Jochum, Mr. Ohorilko explained that in Item 5, the use of “shall” in 8.2(13)“g” is not statutory and that “shall” was changed to “may” to allow the racetrack the flexibility to hold a trifecta race if a full field of horses is not available. Mr. Ohorilko also noted that “may” is used in the provisions regarding the other types of multi-wager races set forth in 8.2(13).

UTILITIES DIVISION Gary Stump represented the division.

ARC 1768C No questions on proposed amendments to 20.11 pertaining to peak alert notification.

REVENUE DEPARTMENT Victoria Daniels and Julie Roisen represented the department.

ARC 1767C No action on 10.2(34) pertaining to the interest rate for calendar year 2015.

ARC 1765C No action on amendments to ch 71 relating to the multiresidential property tax classification. Ms. Daniels described the rule-making process and noted that public comment was provided primarily by local governments whose budgets will be impacted by the new property classification. She noted that the rule making would affect a small number of properties statewide and that some cities might be affected significantly. She stated that the department has attempted to implement 2013 Iowa Acts, Senate File 295, as intended and as written. She stated that though the department would not initiate legislation, the department, as the legislature desires, would provide information and guidance to interested parties that may choose to pursue legislation.

Rep. Heddens and Sen. Jochum, noting that they had understood Senate File 295 to require each portion of a multiresidential property to be taxed according to its use, questioned the equity, and even the constitutionality, of taxation based on the primary use of the entire property. Sen. Chelgren inquired about how primary use is made consistent statewide and about an owner’s recourse if there is disagreement on primary use. In response, Ms. Roisen explained that the multiresidential property tax classification is an attempt to treat dwelling-type properties in a similar manner for property tax purposes based on primary use; that the department believes the legislation requires the approach based on primary use as set forth in the rules; and that the definition of primary use in the rules is intended to provide consistency in the determination of primary use statewide.

Revenue Department (continued)

In addition, Ms. Roisen stated that to challenge the primary use ascribed to the owner's property, an owner may follow an appeal process, which would begin with the local board of review, then the property assessment appeal board and finally the district court. Committee members and the department agreed that the issue would need to be resolved by the legislature.

DENTAL BOARD Phil McCollum represented the board. Other interested parties included Rachael Patterson-Rahn, Sue Winker, and Katie McBurney, I-Smile oral health coordinators for the public health department; and Bruce Cochrane, president of the Iowa Dental Association.

Special Review In response to concern from a member of the public, Rep. Pettengill requested a special review regarding a possible change in the interpretation of 20.3(2) and 20.13, which are related to the scope of practice for dental assistants. Specifically, a dentist may not delegate to a dental assistant the placement of sealants.

Mr. McCollum explained that at its April 2014 meeting, the board received from I-Smile program coordinators and directors working in public health settings a request that dental assistants be allowed to assist dental hygienists in providing services in public health settings. Mr. McCollum stated that the board forwarded the request to board committees for consideration, and at the October meeting, the board voted to draft language that would allow dental assistants to work under public health supervision in these settings.

The basis for the special review was a concern that arose when an employee of the public health department attended the October board meeting and afterwards summarized in a letter to the board the person's view that the rules had been reinterpreted in a way that would jeopardize the jobs of dental assistants who work in public health settings. Mr. McCollum explained that the statement in the letter was incorrect and that the board had not reinterpreted or made any changes to the rules. Mr. McCollum stated that the board will in the near future submit a Notice of Intended Action to allow dental assistants in public health settings to assist dental hygienists with sealants.

Ms. Patterson-Rahn clarified that dental assistants assist hygienists but do not apply sealants, even in school-based settings, and emphasized the importance of cost-effective, quality services and evidence-based practices. Ms. Winker explained the differences between the education, training and scope of practice of dental assistants and dental hygienists and expressed concern that dental hygienists and dental assistants are governed by the dental board rather than by their own board. Ms. McBurney stated that allowing dental assistants to assist hygienists will make available quality, evidence-based services to many children who have no dental care. Dr. Cochrane expressed support for permitting dental hygienists to utilize the assistance of dental assistants as long as supervision by a dentist is provided.

INSURANCE DIVISION Kim Cross and Angela Burke Boston represented the division. Other interested parties included Paula Dierenfeld and Scott Sundstrom on behalf of the Federation of Iowa Insurers, Jen Schulte on behalf of the American Cancer Society Cancer Action Network (ACS CAN), and Roxanne Cogil on behalf of the Epilepsy Foundation.

ARC 1794C Proposed amendments to 43.3(5) pertain to the delayed effective date for using the 2012 IAR mortality table in individual annuity and pure endowment contracts. Ms. Cross reported that public comment was supportive and that one comment opposed the flexibility provided by the delayed effective date. She added that as a result of public comment, a clarifying change will be made to the amendments.

Ms. Dierenfeld expressed support for the rule and for the division's decision to provide flexibility.

ARC 1784C Proposed amendments to ch 45 regard insurance holding company systems. Ms. Cross reported that the division has received support for the amendments and that the division has addressed a comment by one trade association regarding the enterprise risk management portion of the rules.

Mr. Sundstrom expressed support for the rules and appreciation to the division for working with the federation.

Insurance Division (continued)

ARC 1772C

Proposed ch 79 concerns prior authorization related to prescription drug benefits. 2014 Iowa Acts, House File 2463, section 98, requires the commissioner to adopt rules to provide for a single prior authorization form and a prior authorization process for approval of prescription drug benefits by health carriers and pharmacy benefits managers. Ms. Burke Boston explained that the time frames for response to prior authorization requests in House File 2463 were item-vetoed by the Governor.

Ms. Burke Boston reported that in response to the proposed rules, 40 written comments and seven telephone calls had been received and that the comments focused on the time frames in the rules for response to prior authorization requests. As proposed in the rules, prior authorization requests for urgent claims are to be approved or denied as soon as possible, but in no case later than 72 hours after receipt of the request; for nonurgent claims, in no case later than 15 days after receipt of the request. Ms. Burke Boston stated that the division proposed these time frames to maintain consistency with specific federal requirements in health plans subject to the Employee Retirement Income Security Act (ERISA).

Rep. Pettengill inquired about stakeholder participation and input regarding the rules, asked for clarification of external review and the differences among health plans, inquired about the appeal process, and requested that the requirements set forth in House File 2463 be incorporated into the rules. Sen. Jochum stated that an agreement regarding the time frames was reached before the legislation passed. Rep. Smith requested that the division and interested parties work to resolve the time frame issue, and Rep. Pettengill encouraged the renegotiation of the time frames during the legislative session.

Ms. Schulte stated that the negotiations regarding the time frames in House File 2463 had led to an agreement and that the rules do not provide protection for consumers. Ms. Cogil recommended a 24-hour time frame for urgent claims and up to 72 hours for nonurgent claims, consistent with Centers for Medicare and Medicaid Services (CMS) regulations. Mr. Sundstrom expressed support for the rules as written and stated that the rules achieve consistency in the claim forms required by House File 2463. He added that an agreement regarding the time frames had not been reached before the legislation passed and that the time frames in the rules are consistent with plans under ERISA and with plans under the Patient Protection and Affordable Care Act.

Committee business

The minutes of the December 12, 2014, meeting were approved.

The next meeting was scheduled for Friday, February 6, 2015, at 9 a.m.

Discussion pertained to a more definite schedule for meetings during the legislative session; a protocol for public comment by significant numbers of commenters; evaluation of the practice of voting by teleconference; and a proposal by Sen. Chelgren for a resolution (proposed 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” and its purpose.

Following discussion, the general consensus was that the chair will establish a protocol for public comment rather than the committee’s prescribing the protocol in the rules of procedure. At the February meeting, Mr. Ewing will present a draft of amendments to the committee’s rules of procedure regarding the schedule for meetings during the legislative session and for voting.

Rep. Smith, who did not seek reelection to the legislature, was recognized by Rep. Pettengill for his service to the committee.

Adjourned

The meeting was adjourned at 3:47 p.m.

Respectfully submitted,

Stephanie A. Hoff

APPROVED:

Chair Wally Horn

Vice Chair Dawn Pettengill