

**MINUTES OF THE FEBRUARY 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 Friday, February 6, 2015, at 9 a.m. in Room 116, State Capitol, Des Moines, Iowa.
- Members present: Representative Dawn Pettengill, Chair, and Senator Wally Horn, Vice Chair; Senators Mark Chelgren, Mark Costello, Thomas Courtney, and Pam Jochum; Representatives Megan Jones and Rick Olson were present. Representatives Lisa Heddens and Guy Vander Linden were 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 9:03 a.m.
- Motion Rep. Jones moved that Rep. Pettengill be elected chair of the committee.
- Motion carried Rep. Pettengill was unanimously elected chair of the committee.
Rep. Pettengill welcomed Rep. Jones and Sen. Costello, new members of the committee.
- Fiscal overview** Adam Broich presented the LSA fiscal report.
- HUMAN SERVICES DEPARTMENT** Nancy Freudenberg, Jennifer Harbison and Wendy Rickman represented the department. Other interested parties included Jess Benson of the LSA fiscal services division and Shelly Chandler of the Iowa Association of Community Providers.
- ARC 1813C No action on amendments to 51.4(1), 51.7 and 52.1 pertaining to annual adjustments to payment levels of state supplementary assistance. In response to an inquiry from Sen. Chelgren, Ms. Freudenberg stated that the increase in payment amounts and income limits applies to each state supplementary assistance category except in-home health-related care (IHHRC) provider rates and the supplement for Medicare and Medicaid eligibles.
- ARC 1807C No action on an amendment to 77.28(4)“a” to update a cross reference related to area education agency personnel providing services under Medicaid.
- ARC 1818C A proposed amendment to 79.1(15)“b”(9) concerns staff training costs related to the home- and community-based services (HCBS) reimbursement rate. Ms. Harbison explained the amendment which stipulates that the reasonable costs of staff training, to the extent funding is appropriated, will be treated as direct costs rather than as indirect administrative costs. Ms. Harbison reported, however, that based on comments received, the amendment will be revised to remove the language regarding the extent of funding appropriated. In addition, she stated that the current Medicaid deficit is forecast to be nearly \$70 million and added that the department will work with the appropriations committee on the appropriation.
Mr. Benson clarified for Rep. Olson that, in general, supplemental appropriations have been made to fully fund Medicaid and that surpluses from one fiscal year are usually carried forward to the next fiscal year. In response to an inquiry from Sen. Costello, Mr. Benson explained that the cost incurred by this amendment will be incorporated into the Medicaid budget forecast. Rep. Pettengill emphasized that when a statute mandates a program, the rule should not state that funding is a condition for the implementation of the program.
Ms. Chandler expressed appreciation to the department for its willingness to revise the amendment so that it is not predicated on a specific appropriation. However, she explained that because the legislation passed and was intended to be implemented in fiscal year 2013 and the department recommends the amendment not go into effect until fiscal year 2016, the rules will have been out of compliance for three years at the time of implementation. Providers will not experience changes in reimbursement rates until July 1, 2016, because providers’ cost reports are retrospective.
- ARC 1806C No action on amendments to ch 81 regarding the preadmission screening and resident review process for nursing facilities.
- ARC 1809C No action on amendments to chs 109 and 110 pertaining to the record check process for employees of child care centers and child development homes.

Human Services Department (continued)

- ARC 1819C Proposed amendments to chs 110 and 170 concern notifications, provider agreements, sanctions and recoupment related to child development homes and child care assistance. In response to an inquiry from Sen. Chelgren, Ms. Freudenberg stated that the 50/50 repayment of an overpayment by the provider and by the client applies if both are responsible for repayment, that the department of inspections and appeals will work with a client to establish a repayment agreement based on the client's income and circumstances, and that the repayment will not be taken from the client's benefits. In response to a related inquiry from Sen. Jochum, Ms. Freudenberg stated that after informing the department of a job search, a client may receive child care funding for a limited period of time during the job search. Regarding 170.5(1)"h," Sen. Jochum expressed the hope that the department would allow flexibility and leniency when an unanticipated early release from school for weather causes more children to be in the provider's care at one time than is allowed for the provider type. In response, Ms. Freudenberg requested that the department be allowed to follow up with the provider to whom Sen. Jochum referred whose license was lost because of an early release situation. Ms. Freudenberg clarified that an early release situation does not constitute a consistent and repeated pattern of violation. In response to an inquiry from Rep. Jones regarding the absence of a time frame for department action in 110.7(7)"b," Ms. Freudenberg and Ms. Rickman stated that the department does not have control over the time frame for completion of background checks for new assistants, substitutes and coproviders but that background checks are completed as expeditiously as possible through a formal process.
- Ms. Rickman will provide the committee with information regarding the time required for the department to act on changes reported in a child care home. In addition, in response to a request from Rep. Olson, Ms. Rickman will provide information regarding a definition of "criminal conviction," including the types of crimes; whether a deferred judgment is considered a criminal conviction; and whether a person is considered to be convicted of a crime if the person has pled guilty but has yet to be sentenced.
- ARC 1808C No action on amendments to chs 117 and 200 regarding foster and adoptive parent preservice training.
- ARC 1817C Proposed amendments to ch 187 pertain to eligibility for aftercare services and the preparation for adult living (PAL) stipend. Ms. Freudenberg explained that youth between 17½ and 18 years of age who are exiting from the Iowa state training school or from a court-ordered Iowa juvenile detention center are eligible for the Iowa aftercare services program. In addition, youth who were in either placement when they reached the age of 18 but have not reached the age of 21 are eligible for the PAL program component.
- In response to an inquiry from Rep. Pettengill, Ms. Rickman stated that regarding 187.4(5), the department will fund the expansion of aftercare services for delinquent children from the child welfare budget regardless of an appropriation and that the funds will not come from the appropriation to the juvenile court's budget. Ms. Rickman added that should the program require expansion, the department and the chief juvenile court officers will together determine the most prudent allocation of funds for the program and that the language in 187.4(5) will be changed accordingly. In response to an inquiry from Rep. Olson, Ms. Rickman agreed to provide the committee with the definition of "month of service" in regard to eligibility for aftercare services. In response to an inquiry from Sen. Chelgren, Ms. Rickman reaffirmed that the allocation of funds for the program and its possible expansion will be discussed and jointly determined by the department and the chief juvenile court officers.

CREDIT UNION DIVISION JoAnn Johnson and Jan Johnson represented the division.

- ARC 1816C Proposed ch 16 pertains to mergers. Committee members expressed concern regarding issues related to voting and to retention of membership in a credit union at the time of a spin-off, the intention of and the delay in implementing the 2013 legislation regarding spin-offs, and the purpose for spin-offs.

Credit Union Division (continued)

In response, Ms. JoAnn Johnson stated that the credit union review board would clarify voting, retention of membership and related issues in the filed rules; explained that the rules support the intent of the legislation and that a particular credit union's request to file a plan for a spin-off was the impetus for the belated promulgation of the rules; and stated that the rules provide an option for a partial merger not previously available to credit unions, but the option is not intended to be a mechanism used by a credit union to purchase a field of membership of another credit union. Ms. Jan Johnson added that to be as inclusive as possible in determining who will be voting on a spin-off, the division would carefully analyze membership and other records from the credit union.

ECONOMIC DEVELOPMENT AUTHORITY Tim Whipple and Kristin Hanks-Bents represented the authority. Other interested parties included Jason Shanks on behalf of the Central Iowa Apprenticeship Coordinators, Bob Rafferty on behalf of Newbury Living, and Steven Dust on behalf of the Greater Cedar Valley Alliance and Chamber.

ARC 1826C No action on ch 12, apprenticeship training program.

Mr. Shanks expressed support for the rules and appreciation to the authority for allowing the apprenticeship coordinators to work with the authority on the rules.

ARC 1822C No action on amendments to 31.1 and 31.13 regarding corrections to previously published amendments to these rules related to economic development region initiatives. Rep. Pettengill thanked the authority for its work on the corrections.

ARC 1820C No questions on proposed amendments to ch 42 pertaining to eligibility, application scoring and administration related to the Iowa tourism grant program. Ms. Hanks-Bents stated that the board requested that the proposed amendments be redrafted and that a Notice of Termination of the proposed amendments has been submitted for publication in the 2/18/15 IAB.

ARC 1827C No action on amendments to ch 65 pertaining to the redevelopment tax credits program for brownfield and grayfield sites. Sen. Chelgren inquired about whether a grandfather clause might apply to a previously abandoned school that was in the process of restoration prior to the effective date of the legislation. In response, Mr. Whipple explained that the law does not reach backward in time and already-incurred expenses for restoration could not be reimbursed. However, he stated that if the project has not applied before, the program would allow continued redevelopment at the project site and noted that the project might apply under a different program.

Mr. Rafferty expressed appreciation to the authority for the rules and encouraged their adoption.

ARC 1825C No action on ch 118 concerning the strategic infrastructure program.

Mr. Dust expressed support for the rules and stated that the alliance is looking forward to being among the first to submit an application for the program.

ENVIRONMENTAL PROTECTION COMMISSION Theresa Stiner represented the commission.

ARC 1823C Proposed amendments to ch 107 and the proposed rescissions of chs 110, 112, 210, and 218 pertain to beverage container deposits; hydrogeologic investigation and monitoring requirements; sanitary landfills; biosolids monofills; the beautification grant program; and the waste tire stockpile abatement program.

Sens. Courtney, Jochum and Chelgren inquired about issues related to the rescission of the waste tire stockpile abatement program, including what constitutes a large stockpile; safety issues; funding from the legislature that might include an extension of the vehicle title surcharge or an alternative; and the types of stockpiled tires.

In response to committee members' concerns, Ms. Stiner stated that the regulation of waste tire stockpiles is addressed in other rules, such as those regulating illegal dumping and registration for tire haulers. She stated that there is no current department proposal before the legislature to extend the vehicle title surcharge or to request funding for waste tire stockpile abatement. As requested by Sen. Courtney, Ms. Stiner agreed to provide the committee with the current types and numbers of stockpiled tires and their locations and the reason that additional funding has not been requested by the department.

Environmental Protection Commission (continued)

Rep. Jones explained that though the rescission of ch 118 removes the surcharge on vehicle titles that funded the program, the problem of waste tire stockpiles is being discussed by a House committee. Sen. Chelgren stated that the funding should come from the industries creating the problem. Rep. Pettengill commended the department for following through with the statutory five-year review of its rules and, with Sens. Jochum and Courtney, suggested that the department request funding from the legislature to address the waste tire stockpile issue.

NURSING BOARD Kathy Weinberg and Lynn Linder represented the board.

ARC 1815C No action on amendments to ch 3 pertaining to the licensure of registered nurses, licensed practical nurses and advanced registered nurse practitioners.

Discussion pertained to the reason for and the effects of the change from “criminal conviction” to “criminal history,” including how deferred judgments are reviewed. Rep. Pettengill expressed concern that a person who, in the past, pled guilty and accepted a deferred judgment with the understanding that the record had been expunged may not have known that the board, in the future, could consider the deferred judgment in taking action on the person’s nursing license. In a related inquiry, Mr. Johnson inquired about the criteria for the board’s revocation of a license.

In response to Rep. Pettengill’s inquiry, Ms. Weinberg stated that the term “criminal history” is broader and more inclusive. Ms. Linder added that the board has always reviewed deferred judgments and that licensees would consider the amendment to be a reflection of current practice. Ms. Weinberg stated that the criminal history of an applicant for licensure is reviewed and that a license may be denied, suspended or revoked when a conviction is related to the practice of nursing or to protection of the public. She added that a background check on applicants for licensure is also conducted. She emphasized that the board reviews every aspect of each case individually. In response to Mr. Johnson’s inquiry, Ms. Weinberg stated that the person’s license would not be revoked when the person’s record shows a deferred judgment or that an arrest was dropped or charges that did not reach the level of conviction were dropped.

In response to an inquiry from Rep. Olson, Ms. Linder agreed to provide the committee with the number of suspensions and revocations of nursing licenses over the past five years and whether the basis for the suspension or revocation was a deferred judgment or a conviction.

PUBLIC HEALTH DEPARTMENT Kala Shipley and Melissa Ellis represented the department. Other interested parties included Threase Harms on behalf of Prevent Blindness Iowa.

ARC 1840C No questions on proposed amendments to ch 24 regarding the grants to counties program for testing, reconstructing and plugging private water wells.

ARC 1841C No questions on a proposed amendment to 42.9(2)“e”(3) pertaining to the limited radiologic technologist examination fee.

ARC 1838C Proposed ch 52 concerns vision screening for children. In response to an inquiry from Rep. Jones regarding referrals for screening, Ms. Ellis stated that through local schools, parents or guardians may be referred for free and low-cost screenings to Lion’s Club volunteers through Iowa KidSight and to school nurses who perform screenings in many schools in the state; in addition, parents or guardians will also be given a list of local optometrists and ophthalmologists.

In response to an inquiry from Rep. Pettengill regarding 52.9(4)“a”(2) and (4) to (6), Ms. Ellis agreed to identify the persons or entities that have access to the database module information and the information to which they have access.

Ms. Harms expressed appreciation for being included in the work group that assisted the department in drafting ch 52 and suggested, among a few minor changes, that a definition of “community organization” and a complete list of vision screening tools be added.

ARC 1839C Proposed ch 80 pertains to local public health services. Rep. Jones pointed out that in 80.2, definition of “local board of health,” the words “city” and “county” appear in the reverse of their order in the same definition in Iowa Code section 137.102. In response to an inquiry from Rep. Jones regarding 80.5(4), first sentence, Ms. Shipley will provide information about how the department would determine when the consumer actually receives the department’s decision.

HISTORICAL DIVISION Steve King and Adam Humes represented the division. Other interested parties included David Adelman on behalf of the Smart Growth Coalition and Teri Goodmann on behalf of the City of Dubuque.

ARC 1836C Proposed amendments to ch 48 pertain to historic preservation and cultural and entertainment district tax credits.

Mr. King stated that with input from the Governor's stakeholder group, the department undertook the task of rewriting the state's historic preservation and cultural and entertainment district tax credit program law, 2014 Iowa Acts, House File 2453. Mr. King explained that the shared objectives for rewriting the statute were to increase the predictability of the awarding of tax credits and to increase the effectiveness of the tax credit. He added that under the previous statute, the tax credit reservations were left largely to a fair but unpredictable lottery system, whereas in the revised statute, a project's readiness to proceed is factored into the consideration of the tax credit award through preapplication meetings held to help potential program users identify the appropriate rehabilitation treatments for their historic buildings and understand the requirements of the statute.

Mr. King stated that the proposed rules are intended to clarify the statute and address how the statute will be administered by the department of cultural affairs (DCA) with the assistance of the revenue department. Mr. King explained that the application process has been moved online, which will simplify and speed up internal administrative functions and provide real-time tracking and communication between the department and program users. He noted that since July 1, 2014, the department has recaptured more than \$30 million in previously reserved but unused historic preservation tax credits and will distribute those tax credits with the successful adoption of the proposed rules.

Sen. Horn inquired about whether sprinkler systems are required in the restoration of historic buildings located on main streets and town squares. In response, Mr. King stated that as part of the registration process, the applicant is required to respond to a question concerning this issue and that, generally, projects overseen by the program include sprinklers as determined by the building's use. In response to an inquiry from Sen. Jochum regarding which grants are eligible for basis for income tax purposes, Mr. Humes stated that this topic, which is cross-referenced in the rules of the revenue department, can be made clearer in the proposed DCA rules. He explained that DCA will address all qualitative issues, and the revenue department will assist DCA in construing the federal tax requirements. In addition, Mr. Humes stated that during the review of ARC 1837C, the revenue department would address questions regarding federal guidance related to the determination of basis. In response to an inquiry from Rep. Jones, Mr. King stated that the inconsistency in the use of "SHPO" and "state historic preservation office" in this Notice and in revenue department Notice ARC 1837C reflects the inconsistency in the use of these terms in the statute.

Mr. Adelman stated that his main concerns relate to the interpretation of Internal Revenue Code (IRC) Section 47 by the revenue department and the attorney general's office and to the registration and financial overview that developers are required to provide to DCA. He suggested that a more appropriate application form would alleviate the latter concern. Ms. Goodmann expressed appreciation to DCA for identifying the readiness factors that have improved the program and expressed concern regarding cost overruns, potential complications caused by the inclusion of language in the rules to define allowable rehabilitation expenses, and issues related to the application/agreement process and time frames for the stipulation of funding sources.

REVENUE DEPARTMENT Victoria Daniels and Alana Stamas represented the department. Other interested parties included Steve King of the department of cultural affairs (DCA), David Adelman on behalf of the Smart Growth Coalition, James Beal of McGladrey, Tim Whipple of the Economic Development Authority, Brad Epperly of the Iowa Chamber Alliance and Sen. Bill Dotzler.

ARC 1837C Proposed amendments to chs 42, 52 and 58 pertain to the historic preservation and cultural and entertainment district tax credit projects.

Revenue Department (continued)

Ms. Daniels summarized how the tax credit works, including the transition to the new program (2014 Iowa Acts, House File 2453) that has been put in place to bring predictability, effectiveness, accountability and transparency. She explained that the tax credit is 25 percent of qualified rehabilitation expenditures (QREs) and that QREs must be properly included in the basis for income tax and to the extent that QREs are actually expended by the taxpayer. QREs do not include expenditures financed by federal, state or local government grants or forgivable loans unless otherwise allowed under Internal Revenue Code (IRC) Section 47.

Ms. Daniels noted that the tax credit can be claimed for the tax year for which the project is completed or the certificate issued or for the year in which the project was reserved under the old system, whichever was later. In lieu of the application of the tax credit to the liability, the tax credit may also be refundable or applied to the next year. For transferees that receive the credit, the tax credit applies to the same year to which it would have applied if the original taxpayer were receiving the credit. If a transferee receives a credit in excess of the transferee's liability, that amount is not refundable to the transferee. In addition, any credits less than \$1000 cannot be transferred.

Ms. Daniels stated that the department requires information related to transfers because of the program requirements related to transparency. She explained that the department has a responsibility to report to the legislature how tax dollars are being used and the actual return on investment of public funds. Thus, the department requests and maintains information regarding transfers for tracking and reporting purposes.

Discussion pertained to the purpose of the legislation; legislative intent; the department's interpretation of the definition of QREs and how the definition relates to IRC Section 47; the establishment of the basis of the eligible property for income tax purposes; and the treatment of QREs under federal law and under state law as QREs pertain to multiple intermediary entities and transactions.

Mr. Adelman stated the opinion that the reference to IRC Section 47 was intended to be consistent with the federal historic tax credit definition of QREs and to maintain the alignment of federal QREs with Iowa QREs. In addition, he addressed related issues, including taxpayer eligibility, the application form, notification to applicants regarding incomplete information, and the addition of scoring preferences given to statewide economic priorities, vacant properties, preservation of rural resources and other criteria. He asserted that the department has misinterpreted legislative intent and has written rules that exceed its authority in setting policy and in changing the administration of the program. Mr. Beal stated that there is no federal law that would allow under any circumstances a reduction in basis of the eligible property for income tax purposes and that basis should be defined in a manner similar to federal law. Mr. Epperly stated that a statute expanding a successful program but providing for a reduction in credits would be unusual and concurred with the position of Mr. Adelman and the Smart Growth Coalition. Sen. Dotzler explained that the main focus of the legislation was to address the inherent problems with the lottery system and that the agreed-upon legislation did not include a different interpretation of federal law. Mr. Whipple addressed a method the economic development authority has incorporated to ensure that taxpayer dollars, whether grants or loans or other types of funding, do not exceed 100 percent.

In response, Mr. King reiterated the DCA's emphasis on the importance of planning and assured the committee that DCA is receiving the expected private investment. He added that the rewritten statute attempted to increase the clarity of the connection between the state program and IRC Section 47. Ms. Stamas stated that the addition of the public funding sources in the definition of QRE was intended to clarify issues related to the structure of the funding agreements and explained that the department is requesting this information to have a more accurate picture of the use of funds. She explained that faced with questions regarding more complex situations not addressed by federal guidance, the revenue department has requested from stakeholders private letter rulings or audits from the IRS to confirm approval of the structures of the funding agreements and to allow the dollars to be counted toward tax credits.

Revenue Department (continued)

In conclusion, she stated that the parties agree that when a grant is taxable, it may be counted toward tax credits, and when a grant is nontaxable, it is not counted toward tax credits under federal law. The difference of opinion concerns how the use of intermediary entities between the grantor and the applicant affects the outcome, and the department believes that if a grant remains nontaxable, it should not be counted toward a tax credit.

In response to an inquiry from Sen. Chelgren, Mr. King stated that a delay in the implementation of the rules would make registration more difficult to complete and may jeopardize the awarding of \$20 million before June 30, 2015, because there is a one-year fiscal window to expend those funds under the previous statute. To illustrate the difference between the parties' interpretations of IRC Section 47, Sen. Jochum requested that the department provide the committee a breakdown of all dollars, grant dollars, qualifying expenditures and other information for a particular project under both the current rules and the proposed rules. Rep. Pettengill stated that she is not convinced of overreach by the revenue department and requested that the parties provide information regarding overreach after the public hearing or before the next committee meeting. Committee members encouraged the parties to reach an agreement.

On an unrelated matter, Ms. Daniels will research for Sen. Chelgren information that he will provide related to overpayment of unemployment benefits.

ARC 1805C No action on amendments to chs 67 to 69 relating to compressed natural gas, liquefied natural gas, and motor fuel tax rates. Ms. Stamas verified for Rep. Pettengill that the differential between gasoline and ethanol is two cents.

SECRETARY OF STATE Carol Olson and Dawn Williams represented the secretary of state.

ARC 1831C No questions on amendments to ch 21 regarding cross-reference updates for election forms and instructions.

ARC 1828C No questions on proposed amendments to 22.50 regarding network security of voting systems.

TRANSPORTATION DEPARTMENT Brooks Glasnapp represented the department.

ARC 1832C Proposed amendments to 116.1 to 116.3 concern the extension of junkyard control to the national highway system. Mr. Glasnapp explained that prior to the revisions to the Iowa Code in 2014, state control over the visibility of junkyards applied only to the interstate system. 2014 Iowa Acts, chapter 1123, extended this control to all routes on the national highway system. He stated that the national highway system now includes the interstates, most of the major state highways and a few principal arterial and connector routes under municipal or county jurisdiction.

In response to an inquiry from Sen. Chelgren, Mr. Glasnapp explained how the grandfathering in of existing junkyards pursuant to 2014 Iowa Acts, chapter 1123, sections 2 to 5, will be applied. Mr. Glasnapp, in response to a question from Sen. Horn, stated that the use of the defined term "junkyard" is required to maintain compliance with the federal Highway Beautification Act. Rep. Olson pointed out that the legislature in Iowa Code section 306C.5 does not appear to grant the department the option to determine whether the federal share of funds for screening or removal of junkyards is adequate, whereas the department, in the language of 116.3(1), states that the federal government defers to the state to determine if the federal share of funds is adequate for the screening or removal of junkyards. In response, Mr. Glasnapp explained that according to advice on the Federal Highway Administration Web site, the federal government defers to a state to determine if the federal share of funds is adequate and agreed to research for Rep. Olson the apparent difference between the statute and the rule. In addition, based on information from the administration of the department, Mr. Glasnapp will provide the committee the amount of the federal share of funds that would be adequate.

Committee business The minutes of the January 6, 2015, meeting were approved.

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

The committee discussed a draft of requested changes to the committee rules of procedure related to voting by telephone, the dates for regular committee meetings, and the handling of oral public comments.

Committee business (continued)

The committee determined that voting by telephone will be prohibited; three members from each chamber must be present to constitute a quorum; the regular monthly meeting will be held on the second Tuesday of each month in the interim and on the Friday immediately preceding the second Tuesday of the month during session; and in the rule regarding oral public comments, the mention of action by the chair or vice chair will be omitted.

The committee will vote on a final draft of the changes to the committee rules of procedure at the March meeting.

Adjourned

The meeting was adjourned at 1:03 p.m.

Respectfully submitted,

Stephanie A. Hoff

APPROVED:

Chair Dawn Pettengill

Vice Chair Wally Horn