

**MINUTES OF THE APRIL 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, April 10, 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 Lisa Heddens, Megan Jones, and Guy Vander Linden were present. Representative Rick Olson 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 Rep. Pettengill convened the meeting at 9:02 a.m.

Fiscal overview Adam Broich presented the LSA fiscal report.

ARCHITECTURAL EXAMINING BOARD Lori SchraderBachar represented the board.

Committee review of emergency rule making Ms. SchraderBachar requested that the committee approve the emergency adoption of amendments to chs 2 and 3 to return the period for registration renewal from annual to biennial. Ms. SchraderBachar explained that the board initially anticipated that the reprogramming of the current database system to accommodate annual renewals would be fiscally and technologically feasible but determined that the cost of reprogramming is high, the staffing needs are greater than anticipated, and on-time implementation is uncertain. She stated that the boards of the professional licensing and regulation bureau instead intend to invest in a new database system. When that system is operative, the rules will be amended to change the period for renewal from biennial to annual. The emergency rule making will enable the renewal period to open in mid-May.

In response to an inquiry from Rep. Pettengill, Ms. SchraderBachar explained the methods by which licensees will be notified about the biennial renewal period.

Motion to approve Rep. Vander Linden moved approval of the emergency rule making.

Motion carried On a voice vote of 8 to 0, the motion carried.

HUMAN SERVICES DEPARTMENT Nancy Freudenberg and Wendy Rickman represented the department.

ARC 1951C No questions on proposed amendments to 75.1(39)“b”(3) regarding premiums for applicants and recipients under the Medicaid for employed people with disabilities (MEPD) program.

ARC 1952C Proposed amendments to 75.23(3) and 75.24(3)“b” pertain to an increase in the average statewide private-pay cost of nursing facility services and of charges for institutional care. In response to a question from Sen. Chelgren, Ms. Freudenberg stated that federal guidelines provide a list of items exempt from the transfer of assets, primarily property, such as a house or an automobile.

ARC 1921C Proposed amendments to 79.1(2), 85.25 and 88.62(1) regard reimbursement methodology for non-state-owned psychiatric medical institutions for children (PMICs). In response to an inquiry from Rep. Pettengill, Ms. Freudenberg clarified the difference between the basis for reimbursement for inpatient non-state-owned PMICs and state-owned PMICs. Ms. Rickman added that currently the Iowa Plan for Behavioral Health managed care contractor, Magellan, negotiates the rates for reimbursement for non-state-owned PMICs and that state-owned PMIC rates are based on cost reports. In response to a question from Sen. Jochum, Ms. Rickman stated that most of the 450 PMIC beds statewide are non-state-owned.

ARC 1933C No action on amendments to ch 110, child development homes, that pertain to safety standards, the prohibition from involvement in child care and the removal of an exception to a registration-related transition time period.

ARC 1935C No action on amendments to ch 110 that address documentation of medication administration, physical examination reports, provider qualifications and the limit on the number of coproviders on a registration certificate.

ADMINISTRATIVE SERVICES DEPARTMENT Caleb Hunter and Karin Gregor represented the department.

ARC 1936C Proposed amendments to chs 54, 61 and 63 to 65 pertain to promotional lists, grievances, appeal of disciplinary actions, educational leave, a sick leave insurance program and the application of the Hatch Act. Mr. Hunter clarified for Rep. Pettengill that the amendment in Item 6 causes the rule to mirror federal law. In response to questions from Sen. Jochum, Mr. Hunter explained that, in Item 1, equity among employees is the basis for the change from 90 days to 480 hours and that the change from “shall” to “may” in Items 2 and 3 reflects the language in Iowa Code section 8A.415. Ms. Gregor will provide Sen. Jochum with information regarding the number of state employees who are paid either wholly or in part by federal funds.

ALCOHOLIC BEVERAGES DIVISION Stephanie Strauss represented the division.

ARC 1915C No questions on a proposed amendment to ch 16, trade practices. Ms. Strauss explained that the amendment restructures ch 16 to create an arrangement similar to that of the federal regulations, maintains the language of the rules, and corrects cross references resulting from the restructuring. She stated that subsequent rule making will amend obsolete dates and rules not addressed in this rule making.

DENTAL BOARD Phil McCollum represented the board.

ARC 1941C No questions on a proposed amendment to 1.1 regarding the supervision of dental assistants.

ARC 1940C Proposed amendments to 20.2 to 20.16 pertain to expanded function procedures for and the general and public health supervision of dental assistants. In response to an inquiry from Rep. Pettengill, Mr. McCollum verified that the amendments authorize an Iowa-licensed dentist to provide public health supervision to a registered dental assistant if the services are provided in a public or private school, public health agency, hospital or the armed forces.

EDUCATIONAL EXAMINERS BOARD Joanne Tubbs represented the board.

ARC 1919C Proposed amendments to chs 12 and 20 pertain to fees and renewal requirements. In response to a question from Rep. Pettengill, Ms. Tubbs stated that references to Class C and D licenses are stricken from 12.6(1) because these licenses are no longer issued.

ARC 1918C No questions on proposed amendments to chs 13, 14, 18, 19 and 27 regarding issuance of licenses and endorsements. Ms. Tubbs summarized the amendments and stated that public comment received by the board regarding the approval of requirements for the teacher intern preparation program will be addressed by the department of education in a future rule making amending ch 77 of the department’s rules.

ARC 1917C No questions on the proposed adoption of 13.28(33) and 22.9 and the rescission of ch 17 concerning the career and technical secondary authorization and the multioccupations endorsement.

ARC 1920C No questions on a proposed amendment to 23.1 pertaining to classroom instruction related to the behind-the-wheel driving instructor authorization.
In response to a general inquiry from Sen. Horn, Ms. Tubbs stated that the board is actively addressing issues relating to licensure amid the variety of changes in education, including home schooling and online instruction.

ENVIRONMENTAL PROTECTION COMMISSION Director Chuck Gipp, Christine Paulson, Jon Tack, Wendy Hieb and Laurie Sharp represented the commission.

ARC 1913C No action on amendments to chs 20, 22, 23, 25, 31 and 33 pertaining to air quality.

ARC 1914C Proposed amendments to 50.2, 52.4(3), 52.9(3) and 53.7 relate to withdrawal of water from the Cambrian-Ordovician (Jordan) aquifer. Mr. Tack explained that the Jordan aquifer is vital to the state and heavily relied upon and that, in the proposed amendments, the department is taking a proactive stance in revising the conditions of the issuance and allocation of water use permits for the Jordan aquifer to avoid water shortages and emergencies for Iowa communities and businesses. Mr. Tack explained that an Executive Order (EO) 80 stakeholder group was tasked with evaluating the current rules to better manage the aquifer.

Environmental Protection Commission (continued)

To that end, the stakeholder group recommended that the department propose the following changes: add a three-tier classification system for existing and future Jordan aquifer wells, extend water allocation permit cycles from five years to ten years, and require that a water allocation permit be obtained before department issuance of a water well construction permit. He added that existing limits will be retained, such as the current gallons-per-minute restrictions for specified uses. Mr. Tack reported that public comments have requested clarification that may lead to some changes in the language of the amendments. Mr. Gipp explained that the amendments reflect the department’s intention to prevent the premature drawing down of groundwater from the Jordan aquifer.

Mr. Tack and Mr. Gipp responded to committee members’ inquiries regarding the movement and replacement (recharging) of groundwater; the flow rate and volume parameters, including the concentration of wells permitted in one area; variances for emergencies; areas with protected sources; permitting parameters; the reasons for drawdown in certain areas, including increased concentration of population and industry; and the composition of and advisors to the EO 80 stakeholder group.

Mr. Johnson clarified for the committee the purpose, composition and operation of EO 80 stakeholder groups. At the request of Rep. Pettengill, Mr. Tack will provide information to the committee regarding whether 52.4(3)“c” is applicable to existing geothermal systems.

ARC 1912C No action on an amendment to 64.15(6) concerning 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. Ms. Hieb explained that the Filed Emergency After Notice filing will prevent a lapse in the coverage of General Permit No. 6.

ARC 1911C No action on amendments to ch 81 pertaining to the water supply and wastewater treatment operator certification, including military and veteran reciprocity. In response to an inquiry from Sen. Horn, Ms. Sharp explained that in addition to bringing the rules into compliance with the home base Iowa Act, the rule-making process has led veterans to seek employment in the industry.

INSPECTIONS AND APPEALS DEPARTMENT David Werning and Sam Langholz represented the department.

ARC 1934C Proposed amendments to chs 10 and 11 pertain to contested case proceedings. In response to a question from Rep. Pettengill, Mr. Langholz explained that in the course of the hearing process, the unsuccessful delivery of a document by e-mail would be discovered and remedied. Rep. Pettengill expressed a preference for a mechanism that would confirm that a party received and read the e-mailed document.

ARC 1928C No action on amendments to 31.1 and 31.2(9) regarding inspection standards for food establishments and food processing plants.

ARC 1939C Proposed amendments to 56.14(3)“b” concern the removal of a facility’s option to request surveyor worksheets for the citation(s) being disputed at an informal conference. Mr. Werning stated that a Notice of Termination has been submitted in order that the department might seek additional input from stakeholders.

ARC 1938C No questions on proposed amendments to 58.8(4) regarding the appointment of a provisional administrator at a nursing facility.

ARC 1942C No questions on the proposed rescission in 67.1 of the definition of “applicant or certificate holder,” which has become obsolete (see also ARC 1927C).

ARC 1927C No action on amendments to chs 68 to 70 related to change of ownership or program manager and application for certification for elder group homes, assisted living programs and adult day services.

ARC 1929C No action on amendments to ch 103 pertaining to bingo.

ARC 1930C No action on amendments to chs 104 and 105 regarding amusement devices. In response to an inquiry from Sen. Horn, Mr. Werning stated that the increase in the maximum prize limit from \$5 to \$50 is statutory.

INSURANCE DIVISION Doug Ommen represented the division.

ARC 1943C No questions on proposed amendments to chs 20, 30, 35, 39 and 40 regarding delivery and receipt of notices of cancellation, suspension, forfeiture, nonrenewal and termination. Rep. Pettengill expressed appreciation to the division for proposing the amendments, which provide consumers with notices by U.S. mail.

NATURAL RESOURCE COMMISSION Sherry Amtzen represented the commission.

ARC 1937C No questions on proposed amendments to 61.5(1) and 61.15 pertaining to cabins and open shelters in state parks and recreation areas.

PUBLIC HEALTH DEPARTMENT Kala Shipley, Mindy Uhle and Ken Sharp represented the department. Other interested parties included Sara Allen and Jennifer Nutt of the Iowa Hospital Association, Kim Johnston of Clive, Iowa, and Rep. Rod Taylor.

ARC 1950C Proposed amendments to 21.1 to 21.6 pertain to a central registry for brain and spinal cord injuries. In response to an inquiry from Rep. Jones, Ms. Shipley stated that the registry is an opt-in program and that an individual listed on the registry may request that his or her name be removed from the registry.

Ms. Allen and Ms. Nutt expressed the opinion that T-36-T-50 through T76.92XA in the International Classification of Diseases (ICD), 10th Revision, are outside the purview of the originating legislation and offered to work with the department in making appropriate changes to the amendments.

ARC 1932C No action on amendments to ch 24 regarding the grants to counties program for testing, reconstructing and plugging private water wells. In response to an inquiry from Rep. Pettengill, Ms. Uhle stated that the increases in costs for well plugging, reconstruction and training were the result of a compromise between the department and the county boards of health that were surveyed about the costs. Ms. Uhle added that the costs had not been revised in at least five years.

ARC 1931C No action on an amendment to 42.9(2)“e”(3) pertaining to the limited radiologic technologist examination fee.

ARC 1924C No action on ch 52, concerning vision screening for children. In response to a question from Rep. Pettengill, Mr. Sharp stated that the vision screening records will be retained in the same database and under the same confidentiality provisions as immunization records. Mr. Sharp added that the information disclosed to the public will contain no personal identifiers.

ARC 1925C No action on ch 80 regarding local public health services.

ARC 1926C No action on ch 155 pertaining to licensure standards for substance use disorder and problem gambling treatment programs.

Special Review Rep. Pettengill, on behalf of Rep. Rod Taylor, initiated a special review regarding a request by his constituent, Kim Johnston, of Clive, Iowa, to give swimming lessons in her residential pool for up to 207 hours in a calendar month. This number exceeds the number of hours listed in 15.3(1), definition of “residential swimming pool,” which allows no more than 60 hours in a calendar month. Mr. Sharp reported that proposed legislation related to this issue has not advanced. He explained that the department does not oppose the request for waiver of the 60-hour restriction and that the department has been working with Ms. Johnston on a waiver to allow the expanded number of hours. For the purpose of private swimming instruction, he stated that the conditions of the waiver include the maintenance of water quality standards and basic health and safety provisions.

In addition, Mr. Sharp reported that because of Ms. Johnston’s request for a waiver that brought the arbitrary 60-hour restriction to the attention of the department and because of changes to the Model Aquatic Health Code, the department will conduct a complete review of ch 15, which is expected to be 6- to 12-month process. Rep. Pettengill requested that the number of hours set forth in the definition of “residential swimming pool” be written to include the word “or,” that is, the minimum number of hours recommended by the department or the number allowed by local ordinance, whichever is greater. Rep. Taylor concurred and commended the department for its responsiveness to the restricted-hours issue.

Public Health Department (continued)

In response to an inquiry from Sen. Courtney, Ms. Johnston stated that the 60-hour state-imposed restriction that had been prompted by changes in the city’s ordinance came to her attention during the reapplication process with the city of Clive. Ms. Johnston added that, in her instruction, she maintains a ratio of two teachers to four students and stated that neighbors’ concerns regarding an increase in traffic are not an issue. Rep. Taylor noted that Ms. Johnston has provided swimming instruction for more than 20 years.

REGENTS BOARD Diana Gonzalez represented the board.

ARC 1916C No questions on proposed amendments to ch 1 regarding criteria for admission to state universities. Ms. Gonzalez explained that an alternative formula for admission, i.e., the alternative regent admission index, will be used for admission of prospective undergraduate students whose high schools do not provide class rank.

REVENUE DEPARTMENT Victoria Daniels represented the department.

ARC 1949C No action on amendments to 42.41 and 52.39 pertaining to the redevelopment tax credit program for brownfield and grayfield sites.

TRANSPORTATION DEPARTMENT Brooks Glassnap and David Lorenzen represented the department.

ARC 1923C No action on amendments to 116.1 to 116.3 concerning the extension of junkyard control to the national highway system.

ARC 1922C No questions on proposed amendments to ch 520, which adopt by reference federal regulations applicable to carriers.

PROFESSIONAL LICENSURE DIVISION Tony Alden represented the division. Other interested parties included Susan Koehler, PA, of the board of physician assistants; Ed Friedmann, PA, of the Iowa Association of Rural Health Clinics; and Dennis Tibben of the Iowa Medical Society.

ARC 1909C Amendments to 327.4(2) remove the requirement that every two weeks, a supervising physician visit a physician assistant (PA) practicing at a remote medical site. Mr. Alden stated that the board determined that the supervision requirements of 326.8(4) and 327.1(1) clearly set forth the expectations for supervision of PAs by supervising physicians.

Mr. Alden reported that comments in support of the rule making, received from the Iowa Physician Assistant Society, the American Academy of Physician Assistants, Iowa Specialty Hospital, individual PAs and a physician, noted that the federal requirement for on-site visits every two weeks had been removed; that by comparison with the practices of PAs in surrounding states, including Minnesota, Wisconsin, Illinois and South Dakota, Iowa’s on-site supervision requirement is the most restrictive; that technology, including cell phones, fax and real-time audiovisual interaction via electronic means, has advanced sufficiently to allow for appropriate supervision and consultation; and that removal of the one-size-fits-all requirement would allow the supervising physician-PA teams greater flexibility to meet health care needs of Iowans. Mr. Alden stated that comments in opposition, received from the Polk County Medical Society, the Iowa Board of Medicine, the Iowa Academy of Family Physicians, the Iowa Osteopathic Medical Association, the Cedar Rapids Hospital Organization and the Iowa Medical Society, noted that one visit every two weeks is an absolute minimum; that telehealth methods alone are insufficient to ensure a PA’s competency and to provide appropriate oversight; that an on-site visit does not create a financial burden for physicians; and that the rule making does not set clear expectations to assure the public that supervision is occurring.

Discussion pertained to the above-mentioned topics; opposition to the on-site visit requirement by the board of physician assistants and supervised PAs; the education and training of PAs; the nature and frequency of communication in supervising physician-PA teams; and a possible legislative solution.

Ms. Koehler emphasized that state physician organizations and management, not supervising physicians in remote or underserved areas, oppose the amendments. Regarding alternatives to the current rule, Mr. Alden explained that a specific time frame is difficult to set because of variations in training and experience among supervising physician-PA teams and that the board could not determine a one-size-fits-all alternative. Ms. Koehler added that the supervision requirements in 326.8(4) and 327.1(1) will not change.

Professional Licensure Division (continued)

Ms. Koehler clarified that the financial burden referred to in the preamble results from the supervising physician’s absence from the physician’s own practice. She described the medical model for PA training and outlined the certification and continuing education requirements for PAs. Mr. Friedmann explained that the time frame and nature of on-site visits vary with the supervising physician-PA team and that the time set aside for the on-site visit should be sufficient to complete the task of supervision, adding that daily communication is not uncommon given the available technology.

Mr. Friedmann distributed documentation of support for flexible regulation by national physician groups and of the number and distribution of rural health clinics in Iowa and stated that the flexibility allowed by the amendments will help maintain health care in rural areas. Mr. Friedmann explained that the Centers for Medicare and Medicaid Services (CMS) requirement for an on-site visit every two weeks, which was removed as of July 11, 2014, may result in savings of \$75 million per year nationwide.

Mr. Tibben expressed opposition to the amendments and stated that the required on-site visit every two weeks is a minimum expectation; that the benefits outweigh the cost to supervising physicians, who do not view the on-site visit as a burden; and that collaboration every two weeks is an added benefit that leads to higher quality health care.

The committee expressed appreciation for the role and work of PAs and concern that no agreement had been reached regarding supervising physician-PA on-site visits and generally agreed that the issue should be addressed through the legislative process.

The committee agreed to hold a special meeting to further review this rule making prior to the April 22, 2015, effective date of the amendments.

Committee business

The minutes of the March 6, 2015, meeting were approved.

The next meeting was scheduled for Friday, May 8, 2015, at 9 a.m.

Adjourned

The meeting was adjourned at 1:50 p.m.

Respectfully submitted,

Stephanie A. Hoff

APPROVED:

Chair Dawn Pettengill

Vice Chair Wally Horn