

**MINUTES OF THE MAY 2015 MEETING
OF THE**

ADMINISTRATIVE RULES REVIEW COMMITTEE

- Date of meeting: An unofficial meeting of the Administrative Rules Review Committee (ARRC) was held on Friday, May 8, 2015, at 9 a.m. in Room 116, State Capitol, Des Moines, Iowa. Representative Dawn Pettengill, Chair, stated that the committee could not take any official action at the meeting because a quorum consisting of three senators and three representatives was not present.
- Members present: Representative Dawn Pettengill, Chair; Senators Mark Chelgren and Mark Costello; Representatives Lisa Heddens, Megan Jones, Rick Olson, and Guy Vander Linden were present. Senators Wally Horn, Thomas Courtney and Pam Jochum were not present.
- Also present: Jack Ewing and Tim Reilly, Legal Counsel; Stephanie A. Hoff, Administrative Code Editor; Larry Johnson, Administrative Rules Coordinator; fiscal staff; caucus staff; and other interested parties.
- Convened Rep. Pettengill convened the meeting at 9:05 a.m.
- Fiscal overview** Adam Broich presented the LSA fiscal report.
- Kenyan Delegation** In 2010, Kenya established a bicameral parliament under the nation's new constitution and held elections pursuant to the constitution in 2013. Rep. Pettengill introduced members of the delegation from Kenya comprised of six senate staff members who work for the National Parliament and, during their visit to the United States, are learning about the functioning of bicameral legislatures. Rep. Pettengill and Sen. Chelgren presented a gift to each member of the delegation on behalf of the committee.

HUMAN SERVICES DEPARTMENT Nancy Freudenberg and Jennifer Harbison represented the department. Other interested parties included Shelly Chandler on behalf of the Iowa Association of Community Providers (IACP).

ARC 1976C No questions on adopted amendments to 78.13(3) relating to the nonemergency medical transportation (NEMT) program under Medicaid.

ARC 1982C No questions on proposed amendments to chs 78 and 83 regarding transportation and supported community living services under the home- and community-based services (HCBS), brain injury, and intellectual disability waivers.

ARC 1977C The amendment adopting 79.1(15)"b"(9) concerns staff training costs related to the HCBS reimbursement rate. Ms. Freudenberg explained that historically, staff training costs have been considered to be indirect administrative costs for cost-reporting purposes. However, 2013 Iowa Acts, Senate File 452, required that the reasonable costs of staff training be treated as direct costs rather than indirect administrative costs, which would have increased the annual state share of provider reimbursement. Ms. Freudenberg explained that the \$300,000 appropriation for the six-month period from January to June 2014 was used for the annual online training; however, because the appropriation for the fiscal year beginning July 1, 2014, did not include any additional funds for treatment of staff training costs as direct costs, the department did not then amend the rules. In October 2014, after receiving a petition for rule making to implement 2013 Iowa Acts, Senate File 452, the department proposed to adopt 79.1(15)"b"(9), dependent on the availability of funding. Ms. Freudenberg reported that all public comment opposed the amendment, and based on public comment, the department revised the adopted amendment to remove the language regarding availability of funding.

Discussion pertained to timely promulgation of rules after a statute becomes effective; the department's process for tracking the promulgation of its rules and for communication with the legislature about insufficient funding; the prospect of a request by the department that the committee delay a rule's effective date due to insufficient funding; and a process by which the committee might monitor the timely promulgation of rules.

Ms. Freudenberg stated that in this case, the rule-making process was not timely and explained that the divisions of the department and the rules coordinator are responsible for tracking the promulgation of rules. Ms. Harbison stated that the department should have promulgated the rule in a timely fashion and communicated to the legislature any previously unidentified fiscal impact. She assured the committee that the department would do so in the future.

Human Services Department (continued)

Ms. Chandler expressed appreciation for the conversation about future department action. However, she asserted that an appropriation had been made despite the department's assertion that the amount of the appropriation was insufficient for the training of all providers. She noted that three years later, as a result of a petition for rule making, a rule that will be effective July 1, 2015, for fiscal year 2016 has been promulgated. She explained that even though the rule will be in place, the Medicaid system will be moved to managed care in fiscal year 2016, and as a result, there will no longer be cost reporting and no opportunity for providers to receive the training.

Sen. Chelgren recommended that the committee consider a method to monitor whether rules that implement statutes from a given legislative session are promulgated before the next legislative session begins. Mr. Ewing will follow up on Sen. Chelgren's recommendation.

ARC 1978C No questions on adopted amendments to 170.4(2)"a" pertaining to the child care assistance fee schedule.

ADMINISTRATIVE SERVICES DEPARTMENT Caleb Hunter represented the department.

ARC 1969C No questions on proposed amendments to chs 1, 117, 118 and 120 pertaining to the central procurement and fleet services enterprise; procurement of goods and services; emergency procurements; duration of service contracts; waivers; and limitation of vendor liability.

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT Margaret Thomson represented the department.

ARC 1980C Proposed 40.16 pertains to seed libraries. In response to a question from Sen. Chelgren, Ms. Thomson stated that this rule addresses seeds for lawns and home décor. At Sen. Chelgren's request, Ms. Thomson will provide information to the committee about whether current law allows the sale of packages labeled as miscellaneous weed seeds to be used in the creation of a natural landscape.

ARC 1965C Proposed amendments to 90.18 concern adjustment of inventory for operational shrink by warehouses and warehouse operators. In response to a question from Rep. Pettengill, Ms. Thomson stated that the industry has been informed of the rule making through outreach by the department.

ARCHITECTURAL EXAMINING BOARD Lori SchraderBachar represented the board.

ARC 1985C No questions on adopted amendments to chs 2 and 3 to return the period for registration renewal from annual to biennial. Rep. Pettengill noted that the Iowa chapter of the American Institute of Architects (AIA) supports the amendments.

EDUCATION DEPARTMENT Nicole Proesch represented the department.

ARC 1966C No questions on adopted ch 80 pertaining to standards for paraeducator preparation programs.

ARC 1967C No questions on adopted amendments to ch 98 concerning financial management of categorical funding.

ENVIRONMENTAL PROTECTION COMMISSION Theresa Stiner represented the commission.

ARC 1956C The adopted amendments to ch 107 and the 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. In response to a question from Rep. Pettengill, Ms. Stiner clarified that the rescission of ch 210 does not remove rules that prohibit illegal dumping but instead removes an education program related to the prevention of illegal dumping.

PHARMACY BOARD Terry Witkowski represented the board.

ARC 1960C No questions on the termination of proposed amendments to chs 3, 6, and 7; the rescission of chs 13 and 20; and the adoption of new ch 20 pertaining to compounding practices. Ms. Witkowski explained that the board's decision to terminate this Notice was based on comments received from members of the public, health care professional organizations, and the pharmaceutical industry. She stated that based on that comment, the board incorporated changes and clarifications in a new Notice (see ARC 1979C).

Pharmacy Board (continued)

- ARC 1979C No questions on proposed amendments to chs 3, 6, and 7; the rescission of chs 13 and 20; and the adoption of new ch 20 pertaining to compounding practices.
- ARC 1961C Adopted amendments to chs 6 to 9, 15, 18, 19, 22 and 23 concern the assignment of responsibility for pharmacy activities and functions. In response to an inquiry from Rep. Pettengill, Ms. Witkowski clarified the difference between and the responsibilities of a pharmacist in charge and a staff pharmacist.
- ARC 1962C No questions on adopted amendments to 8.35(6) pertaining to written notification identifying the temporary pharmacist in charge.
- ARC 1963C No questions on adopted amendments to 36.1(4) regarding grounds for discipline.

TRANSPORTATION DEPARTMENT Annette Dunn represented the department.

- ARC 1974C Proposed amendments to 4.1, 4.3, 4.4, 4.6 and 4.9 pertain to open records and confidential records. In response to an inquiry from Rep. Pettengill, Ms. Dunn explained the process for redaction of confidential information from records and retention of nonconfidential information in records.

UTILITIES DIVISION Gary Stump, Cecil Wright and Jennifer Johnson represented the division.

- ARC 1953C No questions on adopted amendments to 20.11 pertaining to peak alert notification.
- ARC 1959C The adopted amendments to 21.4 pertain to the disconnection of public water utility service for failure to pay sewer, wastewater, or storm drainage bills. Mr. Wright stated that the rules apply to Iowa American Water, the only public water utility service in Iowa. In response to an inquiry from Rep. Pettengill, Mr. Wright stated that the three cities served by Iowa American Water are Clinton, Davenport and Bettendorf.
- ARC 1957C No questions on proposed amendments to chs 22 and 26 regarding telephone service regulations.

MEDICINE BOARD Mark Bowden represented the board.

- ARC 1983C No questions on adopted 13.11, which establishes standards for the practice of medicine using telemedicine, including 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. Rep. Pettengill thanked the board for alleviating the concerns of Reps. Linda Miller and David Heaton regarding the rule.

HISTORICAL DIVISION Steve King represented the division. Other interested parties included David Adelman of the Smart Growth Coalition.

- ARC 1970C Adopted amendments to ch 48 pertain to historic preservation and cultural and entertainment district tax credit projects. Mr. King reported that 20 of 23 projects, located in 11 counties, that applied for the tax credits have been registered; that \$38.4 million in previously awarded but unused or underutilized tax credits that have been returned are equivalent to \$164 million in construction activity; that the division is meeting with each of the 20 registered projects for the signing of agreements; and that the division has reviewed 140 pages of public comment.
- In response to an inquiry from Rep. Heddens, Mr. King stated that the concern expressed in the public comments was primarily related to clarification of the division's interpretation of the federal guidelines for the program.
- Mr. Adelman applauded the changes the division made to the rules and expressed support for the rules.

REVENUE DEPARTMENT Victoria Daniels represented the department. Other interested parties included David Adelman of the Smart Growth Coalition.

- ARC 1968C The adopted amendments to chs 42, 52 and 58 pertain to the historic preservation and cultural and entertainment district tax credits. Ms. Daniels summarized the rule-making process and the most significant changes from the Notice. In addition, she reported that the department is in the process of seeking a private letter ruling from the Internal Revenue Service (IRS) that would provide greater clarity in administering the program.
- Mr. Adelman applauded the changes the department made to the rules and expressed support for the rules.

Revenue Department (continued)

Rep. Pettengill expressed appreciation to the department for keeping her apprised of the progress of the rule making and commended the department and the cultural affairs department for addressing concerns related to the rules. She also expressed interest in reviewing the private letter ruling from the IRS.

Committee business The next meeting was scheduled for Tuesday, June 9, 2015, at 9 a.m.

Adjourned The meeting was adjourned at 10:38 a.m.

Respectfully submitted,

Stephanie A. Hoff

APPROVED:

Chair Dawn Pettengill

Vice Chair Wally Horn