

**MINUTES OF THE JULY 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, July 14, 2015, at 9 a.m. in Room 22, State Capitol, Des Moines, Iowa.

Members present: Representative Dawn Pettengill, Chair; Senators Mark Chelgren, Thomas Courtney, and Pam Jochum; Representatives Lisa Heddens, Megan Jones, Rick Olson, and Guy Vander Linden were present. Senators Wally Horn and Mark Costello 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.

HUMAN SERVICES DEPARTMENT Nancy Freudenberg represented the department.

ARC 2029C No action on amendments to 75.1(39)“b”(3) regarding premiums for applicants and recipients under the Medicaid for employed people with disabilities (MEPD) program.

ARC 2027C No action on amendments to 75.23(3) and 75.24(3)“b” pertaining to an increase in the average statewide private-pay cost of nursing facility services and of charges for institutional care.

ARC 2026C No action on amendments to 79.1(2), 85.25 and 88.62(1) regarding reimbursement methodology for non-state-owned psychiatric medical institutions for children (PMICs).

Committee review of emergency rule making Ms. Freudenberg stated that the department requests approval to file an emergency rule making to amend 79.1(5) in order to change from 7 days to 30 days the current threshold for inpatient hospital readmissions combined into a single claim, effective July 1, 2015. The change to a 30-day standard is the policy of the Medicare program and was incorporated into the Governor’s budget as presented to the legislature. Ms. Freudenberg stated that the change will result in cost savings that exceed the 7-day standard because the 30-day standard will combine a greater number of inpatient readmissions for the same condition with the original inpatient hospital stay.

In response to an inquiry from Sen. Chelgren, Ms. Freudenberg stated that charges by a hospital upon a patient’s readmission for the same medical condition would be denied whereas charges for a different medical condition would be reimbursed. In response to a question from Sen. Courtney, Ms. Freudenberg stated that hospitals are aware of the change from 7 days to 30 days but that she could not speak to whether any providers or provider groups objected to the change.

Motion to approve Sen. Jochum moved approval of the emergency rule making.

Motion carried On a voice vote of 6 to 1, the motion carried.

ADMINISTRATIVE SERVICES DEPARTMENT Caleb Hunter represented the department.

ARC 2036C No action on 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. In response to an inquiry from Sen. Chelgren, Mr. Hunter stated that in Item 5, the sentence added at the end of the definition of “master contract” is intended to clarify that the department is the agency with the authority to enter into master agreements pursuant to Iowa Code section 8A.311.

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT Margaret Thomson represented the department.

ARC 2041C No action on 40.16 pertaining to seed libraries.

ARC 2034C No questions on proposed amendments to chs 62 and 68 regarding registration of Iowa-foaled horses and Iowa-whelped dogs and the adoption of dairy inspection manuals.

Agriculture and Land Stewardship (continued)

- ARC 2035C No action on amendments to 90.18 concerning adjustment of inventory for operational shrink by warehouses and warehouse operators.
- ARC 2042C Proposed amendments to 92.2 pertain to fee exemptions related to participation in the grain depositors and sellers indemnity fund. In response to an inquiry from Rep. Olson, Ms. Thomson explained the statutory basis of and purpose for the grain indemnity fund.

COLLEGE STUDENT AID COMMISSION Julie Leeper represented the commission.

- ARC 2037C Proposed ch 10 and amendments to chs 8, 9, 12, 13, 17, 18, 22 to 25, 27, 32 and 36 pertain to uniform residency policies. In response to a request from Sen. Chelgren, Ms. Leeper will provide information to the committee regarding the difference between the residency policies for regent universities and those for community colleges.

EDUCATION DEPARTMENT Philip Wise and Jeremy Varner represented the department.

- ARC 2021C New 21.2(11) pertains to a technical specialty component of diploma and certificate programs, residency determinations, and tuition rates for community colleges. Mr. Varner stated that the department did not adopt proposed Item 1 pending additional study of the technical course requirements by the department and stakeholders that include the community colleges and the Iowa National Guard.
- Regarding an inquiry from Rep. Jones, Mr. Varner stated that the amendments do not change existing Iowa sister state policy that has been in place for 20 years.
- Rep. Pettengill expressed appreciation to the department for addressing the concerns of stakeholders and making changes in the rules.

EDUCATIONAL EXAMINERS BOARD Darcy Lane and Joanne Tubbs represented the board.

- ARC 2017C No action on amendments to chs 12 and 20 pertaining to fees and renewal requirements. In response to an inquiry from Rep. Pettengill, Ms. Tubbs stated that because paraeducator positions are typically paid by the hour at minimum wage, the board allows reduced fees, specifically \$25, for the addition of an endorsement to a paraeducator certificate.
- ARC 2016C No action on amendments to chs 13, 14, 18, 19 and 27 regarding issuance of licenses and endorsements.
- ARC 2015C No action on the 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 2025C Proposed amendments to 20.5 and 20.6 pertain to the issuance of renewal units for licensees serving as cooperating teachers. In response to an inquiry from Sen. Chelgren, Ms. Tubbs stated that a system is in place to consistently convert a college's semester, quarter or trimester credit hours to a renewal credit earned by a licensee who serves as a cooperating teacher.
- ARC 2024C Proposed 22.11 pertains to a one-year, nonrenewable extension of an authorization. In response to an inquiry from Rep. Pettengill, Ms. Tubbs stated that to provide flexibility to the executive director, the extenuating circumstances for which an extension might be granted are not contained in the rule but most likely would include circumstances beyond a licensee's control, such as an extended illness or the cancellation of a university class required for licensure.
- ARC 2018C No action on an amendment to 23.1 pertaining to classroom instruction related to the behind-the-wheel driving instructor authorization. Ms. Tubbs clarified the rationale for the rule, and in response, Rep. Olson suggested that the board consider promulgating a rule that addresses all instances in which a licensee may teach on an expired license. Ms. Tubbs described for Rep. Heddens the training required for providing behind-the-wheel instruction.

DENTAL BOARD Jill Stuecker represented the board.

- ARC 2030C No action on an amendment to 1.1 regarding the general supervision of dental assistants.
- ARC 2043C No questions on proposed amendments to 10.3 and 10.5 pertaining to authorized practice, expanded function procedures, and education and training for dental hygienists and to an update of the bureau name.

Dental Board (continued)

- ARC 2028C No action on amendments to 20.2 to 20.16 concerning expanded function procedures for and the general and public health supervision of dental assistants.
- Discussion pertained to the supervision of dental hygienists and dental assistants, including the number of hygienists and assistants one dentist may supervise in a public health setting or in private practice; the three levels of direct supervision; the adequacy of dental care for all persons in the state; and dental practice by telemedicine.
- Sen. Courtney requested that the board revisit the provision which allows a dentist to supervise an unlimited number of dental hygienists and dental assistants. Sen. Chelgren asked that the board provide to the committee the rules regarding telemedicine that may be developed following the board's preliminary meeting about the topic on August 8, 2015. Mr. Johnson commended the board for its focus on public safety when increasing or decreasing regulation.

ECONOMIC DEVELOPMENT AUTHORITY Tim Whipple and Nicole Hansen represented the authority.

- ARC 2038C No action on amendments to chs 23, 173 and 174 concerning the community development block grant (CDBG) program. Ms. Hansen distributed information to explain the annual federal and state CDBG program process.

ENGINEERING AND LAND SURVEYING EXAMINING BOARD Robert Lampe represented the board.

- ARC 2022C No action on amendments to 7.3(2) and 9.3 pertaining to professional development hours and grounds for discipline.

IOWA PUBLIC INFORMATION BOARD Charlie Smithson represented the board.

- ARC 2040C Proposed amendments to 2.2 to 2.4 pertain to the complaint investigation and resolution process. In response to a question from Rep. Olson, Mr. Smithson stated that an administrative law judge (ALJ) may be requested by either party in a contested case and that the next level of appeal is district court.
- ARC 2039C No questions on proposed ch 9, waivers or variances from administrative rules.

LABOR SERVICES DIVISION Kathleen Uehling represented the division.

- ARC 2023C A proposed amendment to 26.1 pertains to the adoption by reference of federal occupational safety and health standards related to confined spaces in the construction industry. In response to a question from Sen. Chelgren, Ms. Uehling stated that this OSHA regulation applies to employees, not to independent contractors.

NATURAL RESOURCE COMMISSION Willie Suchy and Tamara McIntosh represented the commission. Other interested parties included Marty Ryan of Fawkes-Lee and Ryan, Inc. on behalf of the Lead Is Poison Coalition (LIP-C).

- ARC 2033C No questions on proposed amendments to 91.1, 91.3 and 91.6 pertaining to season dates for waterfowl and coot hunting.

- ARC 2032C Proposed amendments to 97.1 to 97.3 and 97.6 concern possession limits for common snipe, Virginia rail and sora, woodcock, ruffed grouse and dove hunting. Discussion pertained to the avian flu and to the Eurasian collared-dove that is included in 97.6, dove season.

In response to questions from Rep. Pettengill regarding avian flu, Mr. Suchy explained that ongoing testing and sampling by the department, which will continue this summer and fall, have shown that very few wild waterfowl have avian flu but that avian flu could recur when migrating waterfowl return. He added that the department will, through communication with the public, suggest that persons who have access to production facilities take precautions.

Mr. Ryan expressed opposition to the inclusion of the Eurasian collared-dove in 97.6. In addition to the comments that Mr. Ryan submitted to the committee prior to the meeting, he stated that the department has no statutory authority to include the Eurasian collared-dove in administrative rule or to set bag and possession limits and season dates for the species; that in 2011 Iowa Acts, Senate File 464, the legislature

Natural Resource Commission (continued)

granted the department authority to allow only the hunting of mourning doves and that hunting the Eurasian collared-dove is therefore not permitted and should not be included in rule; and that the department should remove the Eurasian collared-dove from 97.6. He stated that the issue is not a matter of practicality but of legality.

Recalling her opposition in 2011 to the addition of the Eurasian collared-dove to 97.6, Rep. Pettengill concurred with Mr. Ryan's statements. When Sen. Courtney requested a response from the department regarding Mr. Ryan's statements, Mr. Suchy stated that the use of "such as" in the language of Iowa Code section 481A.1(21)"e" makes the provision inclusive; that the Eurasian collared-dove, whose appearance is similar to that of the mourning dove, was not anticipated by the department to establish itself in Iowa; and that perhaps the department could request that the legislature define 481A.1(21)"e" more clearly. Sen. Courtney suggested that the department remove the Eurasian collared-dove from 97.6 because it is not specified in 2011 Iowa Acts, Senate File 464. Rep. Pettengill concurred and stated that the statute does not require further clarification. In response, Mr. Suchy stated that the department could remove the Eurasian collared-dove from the rule. In response to a question from Sen. Chelgren about whether a nonnative species may be hunted, Mr. Suchy stated that a nonprotected game bird not specifically identified in the Iowa Code may be hunted and would not be subject to a bag limit.

Based on an online search, Sen. Courtney expressed the opinion that a hunter could discern the difference between a mourning dove and a Eurasian collared-dove. Rep. Pettengill requested that the department consider the removal of the Eurasian collared-dove from 97.6.

ARC 2031C

Proposed amendments to ch 106 regard quotas, permitted broadhead type, and certification of disability related to deer hunting by residents.

Discussion pertained to statutory requirements related to a permit to carry by an individual operating an ATV versus a vehicle on a highway. In response to an inquiry from Rep. Pettengill, Mr. Suchy explained that a person shall not operate an ATV or a snowmobile while in possession of a firearm unless the firearm is not loaded and is enclosed in a carrying case. In response to an inquiry from Rep. Vander Linden, Ms. McIntosh stated that a person who has a valid permit to carry and is operating a vehicle on a highway is not restricted to carrying a firearm unloaded and in a carrying case. Ms. McIntosh will follow up to verify for the committee the statutory provisions regarding a permit to carry.

Rep. Pettengill requested that the department review the provisions regarding a permit to carry by an individual operating an ATV or snowmobile.

RACING AND GAMING COMMISSION Barbara Blake represented the commission.

ARC 2045C

Proposed 7.15 pertains to the Iowa greyhound pari-mutuel racing fund. Rep. Olson requested that the committee be allowed to review the proposed self-documenting application form and expressed the opinion that the form should be submitted by participants under penalty of perjury or be notarized since the commission has the sole discretion in determining the eligibility of the documentation.

REVENUE DEPARTMENT Jessica Braunschweig-Norris represented the department.

ARC 2047C

No questions on proposed ch 126 and related amendments to 71.21 pertaining to the property assessment appeal board.

CORRECTIONS DEPARTMENT Dan Clark and Michael Savala represented the department.

ARC 1990C

Proposed amendments to ch 37 pertain to Iowa state industries. At the request of the committee, this Notice of Intended Action was held over from the June meeting for further review. Mr. Clark reported that changes had been made to the Notice based on additional public comment received in the meantime. He stated that the changes include the addition of conditions in 37.2(5) that allow Iowa prison industries (IPI) to sell goods to private contractors when requested by a public entity and the retention of language regarding prevailing wages and the addition of a definition for "wage range."

Corrections Department (continued)

Mr. Clark reported, however, that the amendments adopted by the board were not the amendments filed for publication. Instead, different amendments had been filed in error and were published in the 7/8/15 IAB, effective 8/12/15. Mr. Clark apologized for the error and distributed copies of the amendments that should have been Adopted and Filed and published in the 7/8/15 IAB.

Discussion pertained to (1) the Adopted and Filed amendments filed in error, including the statutory authority for the sale of goods to private contractors when requested by a public entity, procurement guidelines, and the makeup of the IPI advisory board; and (2) the amendments that should have been filed, including the differences from the published amendments, insufficient time for the committee review of the amendments that should have been filed, and a solution to rectify the filing error.

Regarding the Adopted and Filed amendments, Mr. Clark stated that the statute sets forth both implicitly and explicitly the entities to which IPI may sell goods, and Mr. Savala explained how payment for the goods is received, transmitted through the contractor, and reviewed by the board and further reviewed by the public. Mr. Clark explained the update of and IPI compliance with state procurement guidelines and described the makeup and gender-equity and political-party balance of the seven-member IPI advisory board.

Regarding the amendments that should have been filed, Sen. Courtney expressed disappointment about the handling of the rule making and requested that the committee have more time to review these amendments. Mr. Savala apologized for the filing error and stated that he would work with Mr. Johnson, Mr. Ewing and the administrative code office to correct the error. Reps. Vander Linden and Olson and Sens. Jochum and Chelgren strongly recommended that the department start the rule-making process again with a new Notice of Intended Action to allow the committee to review the correct amendments.

Following discussion, Mr. Johnson suggested that the department could correct the erroneous filing of the Adopted and Filed amendments by rescinding the amendments through an emergency rule making approved by the committee and restoring verbatim the text of ch 37 in effect prior to 7/8/15. After restoration of the text, the department could then submit a new Notice of Intended Action.

Motion to approve Rep. Vander Linden moved approval of an Adopted and Filed Emergency rule making followed by a new Notice of Intended Action as explained in Mr. Johnson's proposal.

Motion carried The motion carried unanimously.

Rep. Pettengill expressed appreciation to Mr. Johnson.

Committee business The committee discussed additional changes to its rules of procedure, specifically, restoring the procedure that permits committee members to vote on committee matters by telephone. Sen. Courtney moved that members be permitted to vote on committee matters by telephone. Following discussion, the motion carried.

Mr. Ewing reported that he and Mr. Reilly and the staff of the computer services division of LSA have discussed the development of a semiautomated function for tracking the implementation of legislation by rule. Mr. Ewing explained that the first stage of development would involve electronically tagging legislation that references rule making. However, tagging legislation that does not reference rule making is a more complex issue, and he suggested some methods for addressing the issue. He stated that development will take time and expressed the hope that the tracking system would be operational for the 2016 legislative session. He will continue to provide updates to the committee on the progress of the project.

July 14, 2015

Committee business (continued)

The minutes of the June 9, 2015, meeting were approved.

The next meeting was scheduled for Tuesday, August 11, 2015, at 9 a.m.

Adjourned

The meeting was adjourned at 11:25 a.m.

Respectfully submitted,

Stephanie A. Hoff

APPROVED:

Chair Dawn Pettengill

Vice Chair Wally Horn