

**MINUTES OF THE FEBRUARY 2016 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 5, 2016, 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, Rick Olson, and Guy Vander Linden were present.

Also present: Jack Ewing and Tim Reilly, Legal Counsel; Stephanie A. Hoff, Administrative Code Editor; Colin Smith, Administrative Rules Coordinator; fiscal staff; caucus staff; and other interested parties.

Convened Rep. Pettengill convened the meeting at 9:02 a.m.

Motions Rep. Pettengill moved that Sen. Horn be elected chair of the committee, and Rep. Jones moved that Rep. Pettengill be elected vice chair of the committee.

Motions carried Sen. Horn and Rep. Pettengill were elected chair and vice chair, respectively.

**Fiscal overview** Adam Broich presented the LSA fiscal report. Also representing the LSA fiscal services division were fiscal analysts Jess Benson and Tim Crellin.

Regarding ARC 2358C: In response to an inquiry from Rep. Pettengill, Mr. Benson clarified that the revised LSA estimate of managed care savings, that is, \$43 million in savings for six months, reflects the delay in implementation. Mr. Benson confirmed for Sen. Courtney that the figures are estimates based on former and current estimates of savings and that a delay in implementation will result in a lower estimate of savings. At the request of Rep. Heddens, Mr. Benson will provide the committee with documentation from the human services department of the department’s estimate of savings and an associated time line.

Regarding ARC 2343C: In response to committee members’ questions about the intensive summer reading program, Mr. Crellin explained the basis for the cost estimates, which are between \$6.4 and \$9.6 million, to be borne by school districts; the projected number of student participants; changes in the cost estimates that may occur because of variations in the number of student participants; the reduction in the required hours of participation; and other factors.

**COLLEGE STUDENT AID COMMISSION** Todd Brown represented the commission.

ARC 2336C No action on the rescission of ch 27, Iowa grant program.

ARC 2338C No questions on a proposed amendment to 36.1(2) regarding eligibility for the Governor Terry E. Branstad Iowa state fair scholarship.

**PROFESSIONAL LICENSURE DIVISION** Judy Manning and Sarah Reisetter represented the division. Other interested parties included Susan Koehler on behalf of the physician assistant board and Mark Bowden on behalf of the medicine board.

ARC 2368C Proposed 200.4(5) pertains to disability-related accommodation for licensure examinations of physical therapists and physical therapist assistants. In response to an inquiry from Sen. Chelgren, Ms. Manning stated that the Americans with Disabilities Act is the source for the definitions of “physical impairment” and “mental impairment.”

Special Review A special review was requested regarding 327.4(2), which pertains to on-site visits of physician assistants by supervising physicians. Amendments to 327.4(2) were Adopted and Filed and published in the 3/18/15 IAB as ARC 1909C. The amendments removed the requirement that every two weeks, a supervising physician visit a practicing physician assistant (PA) at a remote medical site.

At a special meeting held on April 20, 2015, the committee voted to impose a session delay on ARC 1909C, which delayed the April 22, 2015, effective date of the amendments to 327.4(2) until the adjournment of the 2016 General Assembly.

Professional Licensure Division (continued)

In 2015 Iowa Acts, Senate File 505, division XXXI, section 113, the General Assembly directed the boards of medicine and physician assistants to jointly adopt rules pursuant to Iowa Code chapter 17A to establish specific minimum standards or a definition of supervision for appropriate supervision of physician assistants by physicians. The boards were to jointly file Notices of Intended Action pursuant to Iowa Code section 17A.4(1)“a” on or before February 1, 2016, for adoption of such rules.

Discussion pertained to the conflict between session-delayed 327.4(2) and the rules jointly proposed by the boards related to supervision of physician assistants, specifically, the potential for 327.4(2) to go into effect (upon adjournment of the 2016 General Assembly) before the jointly Noticed rules by both boards are Adopted and Filed.

At the request of the committee, Mr. Bowden and Ms. Koehler discussed the time line for development of the joint rules by their respective boards. Mr. Bowden stated that the medicine board’s rule had been published (see ARC 2372C herein), and Ms. Koehler stated that the board’s joint rule had been submitted and would be published in the 2/17/16 IAB. At the request of Rep. Pettengill, Ms. Koehler explained stakeholders’ concerns, which relate to the impact on jobs, the need for clarification of some of the language in the rule, and evidenced-based documentation. Mr. Bowden and Ms. Koehler stated that comments from stakeholders about the proposed joint rules would be considered, and further adjustments may be made before the joint rules are adopted in May, most likely after the general assembly adjourns.

The committee discussed actions by which the conflict between session-delayed 327.4(2) and the proposed joint rules could be resolved. The resolution would need to ensure that 327.4(2) not go into effect before the joint rules are adopted and that the former supervision requirements be reinstated in 327.4(2). After discussion, a two-part solution was determined: an extension of the session delay by 70 days and the authorization for the physician assistant board to initiate emergency rule making to restore the prior language of 327.4(2).

Motion to delay Rep. Pettengill moved to extend the existing session delay 70 days beyond the adjournment of the 2016 general assembly and to authorize emergency rule making by the physician assistant board to restore verbatim the language of 327.4(2) that was in effect prior to the adoption of ARC 1909C (IAB 3/18/15).

Motion carried On a unanimous voice vote, the motion carried.

Ms. Reisetter stated that she would encourage the board of physician assistants to initiate emergency rule making to restore the supervision requirements in 327.4(2). Ms. Koehler assured the committee that the physician assistant board has participated in the rule-making process in good faith.

**HUMAN SERVICES DEPARTMENT** Nancy Freudenberg, Teresa Armstrong, Mikki Stier and Deb Johnson represented the department. Other interested parties included Kelly Yeggy, the mental health advocate for Marion, Polk and Jasper Counties; Libby Reekers, the mental health advocate for Tama County; and Tom Brown of Community NeuroRehab of Iowa.

ARC 2350C Proposed amendments to ch 25 pertain to mental health advocates. Ms. Freudenberg stated that prior to July 1, 2015, mental health advocates were appointed by the judicial branch and paid by the counties. She also explained that prior to July 1, 2015, procedures varied from judicial region to judicial region and from county to county. 2015 Iowa Acts, House File 468, amended Iowa Code chapter 229 to make mental health advocates county employees, effective July 1, 2015. She stated that the proposed amendments are intended to provide consistency in requirements for hiring advocates and for performance standards.

Ms. Yeggy stated that the rules do not meet legislative intent, specifically regarding conflict of interest and workforce coverage for an advocate during an advocate’s absence, e.g., vacation, illness. In addition, Ms. Yeggy, who was been a member of the workgroup that made recommendations about the amendments to the department, expressed disappointment that the department did not incorporate in the proposed amendments several of the recommendations unanimously approved by the workgroup.

## Human Services Department (continued)

- Ms. Reekers expressed concern about the definition of “conflict of interest” and about workforce coverage for an absent advocate by a person other than an advocate. Addressing the department, Sen. Jochum inquired about the advocates’ stated concerns and encouraged the department to consider revisions agreed upon by all parties in order to ensure that Iowans who have been involuntarily committed by the court receive the representation they need. In response, Ms. Freudenberg stated that the department will review and discuss the public comments with the state commission.
- In response to inquiries from Rep. Pettengill and Rep. Olson regarding the coverage by advocates, Ms. Armstrong explained that the statute does not require counties to report coverage by advocates to the department; however, the department looks into coverage issues when a county or a court reports such issues to the department. Ms. Armstrong explained that if a person is under a court-ordered commitment, the person may also be committed for outpatient services and would still have a mental health advocate. Ms. Yeggy clarified that a mental health advocate is appointed at the time of court action and that the appointment continues until the court terminates the involuntary commitment.
- Sen. Courtney stated that there should be a mechanism for the reporting of coverage issues to the department. Rep. Pettengill requested that the department immediately provide the committee information regarding current coverage by mental health advocates in southeast Iowa counties, as mentioned by Ms. Yeggy.
- ARC 2363C No action on 52.1(1) and 52.1(3)“a”(2) regarding an increase in the personal needs allowance for state supplementary assistance.
- ARC 2341C No questions on proposed amendments to chs 77 to 79 concerning community-based neurobehavioral rehabilitation residential and intermittent services.
- Mr. Brown commended the department for participating with his company in a public-private partnership to provide community-based neurobehavioral rehabilitation services.
- ARC 2340C No action on 78.37(18) regarding the assisted living service related to HCBS elderly waiver services.
- ARC 2342C No action on amendments to 150.3(5)“p” and 202.9(4)“e” regarding the reimbursement rate increase for resource family recruitment and retention contractors, child welfare emergency service contractors, and supervised apartment living foster care providers.
- ARC 2357C Proposed amendments to ch 151 pertain to juvenile court services directed programs. Ms. Freudenberg stated that the chief juvenile court officers are willing to appear before the committee to discuss the amendments in greater detail. In response, Sen. Courtney requested that two of the chief officers appear at the meeting when the adopted amendments are under review.
- ARC 2351C No questions on proposed amendments to 176.10 regarding requests for information related to dependent adult abuse.
- ARC 2361C Amendments to chs 36, 74, 75, 77 to 79, 81 to 83, 85 and 90 and the rescission of ch 92 pertain to the implementation of the Medicaid modernization initiative. Ms. Freudenberg explained that the rule making relates to implementation of the modernization initiative by removing references to current practice, changing the fee-for-service model, referencing the new managed care system and making related technical corrections.
- Sen. Jochum inquired about the determination of and time line for provider payment in 36.1 and the status of the negotiations regarding the rate floor, and noted that in 78.57(3), the phrase “board-certified therapists” should be included in the last sentence, as agreed to by the department. In response, Ms. Johnson explained that the provider payment is included in the capitated payment and that distinguishing the capitated fee from the provider payment would require an actuarial determination. She added that the department is revisiting the calculation of the rate floor and stated that the change in 78.57(3) would require a new rule making.

Human Services Department (continued)

Regarding Item 5, Rep. Heddens asked why the definition of “accountable care organization” has been rescinded. In response, Ms. Johnson explained that the department will no longer be contracting with accountable care organizations (ACOs) and that some of the managed care organizations (MCOs) are contracting with ACOs. At the request of Rep. Heddens, Ms. Stier will provide the committee a list of ACOs that are contracting with MCOs.

Sen. Jochum stated that the rules should not go forward for a program that has not yet been approved by the Centers for Medicare and Medicaid Services (CMS).

Motion to suspend Sen. Jochum moved a session suspension on ARC 2361C.

Sen. Chelgren, Rep. Pettengill and Rep. Jones expressed opposition to the motion.

Motion failed On a roll call vote of five to five, the motion failed.

ARC 2358C Amendments to ch 88 and new ch 73 concern managed care. Ms. Freudenberg explained that ch 73 provides a single set of rules for managed care. She stated that the rules contain requirements regarding MCO participation in a contract with the department; enrollment and disenrollment procedures; identification of covered services; provisions regarding access to services and consumer choice of providers; responsibilities for incident reporting, discharge planning, and annual reviews; appeal and grievance processes; records management and documentation; the process for payment to an MCO; payment of claims; quality assurance and program integrity; and technical changes. Ms. Freudenberg also explained that the amendments to ch 88 reorganize the chapter and remove existing language not related to managed care.

In response to questions from Sen. Jochum, Ms. Johnson stated that the department will provide MCOs additional guidance regarding cost reporting for a partial year and incident reporting. In response to questions from Rep. Pettengill, Ms. Johnson will provide the committee with clarification regarding preauthorizations for home health and for nursing homes, including time frames and payment for service. In addition, Ms. Johnson stated that the department will clarify for the MCOs the resident screening process for hospitals.

**AGING, DEPARTMENT ON** Brian Majeski represented the department.

ARC 2365C No questions on proposed amendments to ch 6 concerning the public hearing process and procedures, options counseling services, and contact information for area agencies on aging.

**ECONOMIC DEVELOPMENT AUTHORITY** Kristin Hanks-Bents represented the authority.

ARC 2374C No questions on proposed amendments to ch 102 pertaining to the entrepreneur investment awards program.

ARC 2373C No questions on proposed amendments to ch 115 regarding tax credits for investments in qualifying businesses and community-based seed capital funds.

**INSURANCE DIVISION** Angela Burke Boston represented the division.

ARC 2348C No action on ch 79, prior authorization for prescription drug benefits.

**IOWA PUBLIC INFORMATION BOARD** Charlie Smithson represented the board.

ARC 2364C Proposed amendments to 1.4(2) pertain to procedures related to a conflict of interest. In response to an inquiry from Sen. Courtney, Mr. Smithson stated that there has been no feedback from the public on the amendments.

**LABOR SERVICES DIVISION** Kathleen Uehling represented the division.

ARC 2334C No questions on the termination of the proposed rescission of chs 61 and 62 and adoption of chs 61 to 63 pertaining to standards for amusement rides and devices, concession booths, and bungee jump operations. A new Notice of Intended Action is proposed in ARC 2354C.

ARC 2354C The proposed rescission of chs 61 and 62 and adoption of chs 61 to 63 pertain to standards for amusement rides and devices, concession booths, and bungee jump operations. In response to an inquiry from Rep. Olson, Ms. Uehling summarized the annual inspection procedures for traveling carnival shows/rides and stated that the state fair board, county fair boards and other stakeholders have been informed about the proposed new rules regarding amusement rides and devices.

**Labor Services Division (continued)**

- ARC 2355C No questions on proposed amendments to chs 71 and 72 concerning material lift elevators.
- ARC 2333C Amendments to 71.9(6) pertain to alteration permits for elevators. In response to an inquiry from Sen. Courtney, Ms. Uehling stated that an inspection certificate should be posted in an elevator at all times and that the absence of a certificate should be reported to the division.
- ARC 2356C Proposed 72.26 and 73.27 pertain to child safety measures for residential elevators that are operated in public buildings. Rep. Pettengill thanked the division for modifying the rules to minimize the costs of compliance, in particular, for churches that have older residential elevators. In response to an inquiry from Sen. Horn, Ms. Uehling stated that the building code section of the public safety department would address the inspection of stairwells in public buildings.

**NURSING BOARD** Kathy Weinberg and Doug Bartels represented the board.

- ARC 2339C No action on amendments to ch 4 and new ch 20 pertaining to discipline and contested case procedures.
- ARC 2345C No questions on proposed 7.1 and 7.3 relating to prescribing epinephrine auto-injectors in the name of a facility.

**PUBLIC HEALTH DEPARTMENT** Paul Watson represented the department.

- ARC 2367C No questions on proposed amendments to ch 113 regarding public health response teams.
- ARC 2366C No questions on proposed amendments to ch 141 pertaining to love our kids grants.

**PUBLIC SAFETY DEPARTMENT** Barb Edmondson represented the department. Other interested parties included Mark Lowe of the Iowa department of transportation.

- ARC 2335C Ch 87 pertains to the wireless communications service provider database. In response to an inquiry from Sen. Chelgren, Ms. Edmondson clarified that the term "law enforcement agency" is limited to policing authority and does not include regulatory authority. In response to an inquiry from Rep. Jones, Ms. Edmondson clarified the purpose of the rules, which is to establish a database of contact information for wireless communications service providers to be accessed only by law enforcement agencies in emergencies. Mr. Lowe concurred with Ms. Edmondson's response.

**TRANSPORTATION DEPARTMENT** Mark Lowe and Paul Steier represented the department.

- ARC 2337C No action on amendments to chs 602, 604, 605 and 607 pertaining to licensing and to the adoption by reference of federal motor carrier safety regulations.
- ARC 2344C No questions on proposed 615.41 regarding investigation of convictions based on fraud.

**ENVIRONMENTAL PROTECTION COMMISSION** Catharine Fitzsimmons, Jim McGraw, Courtney Cswerko and Jon Tack represented the commission.

- ARC 2352C No action on amendments to chs 20, 22, 23, 31, and 33 and the adoption of ch 30 pertaining to application fees for construction and operation of air pollution emitting equipment and fees for asbestos notifications.
- ARC 2353C Proposed amendments to chs 60, 62 to 64 and 67 concern NPDES and Iowa operation permits for wastewater. In response to an inquiry from Sen. Horn, Ms. Cswerko stated that agricultural stormwater runoff is specifically exempted from the NPDES wastewater operation permit requirement. Mr. Tack added that the amendments do not change any practice or rule of the department regarding discharging systems and whether or not drainage systems would be regulated under the federal requirements.

**MEDICINE BOARD** Mark Bowden represented the board.

- ARC 2360C No questions on proposed amendments to ch 9 regarding permanent physician licensure.

Medicine Board (continued)

- ARC 2346C No action on amendments to ch 9 pertaining to relinquishment of a license to practice. In response to an inquiry from Sen. Horn, Mr. Bowden stated that the amendments are related to the status of a physician's license but not to malpractice insurance-related issues. Mr. Bowden described a program under the public health department regarding malpractice-related insurance and added that a retired physician is required to have an active license.
- ARC 2359C Proposed amendments to chs 9 and 11 pertain to administrative medicine licensure. In response to inquiries from Sen. Horn and Sen. Courtney, Mr. Bowden discussed the extension of the Good Samaritan provisions in the law and the consequences for a physician with an administrative medicine license who might assist in a medical emergency.
- ARC 2347C The termination of proposed amendments to ch 17 pertains to the licensure of acupuncturists. Mr. Bowden reported that the board is reviewing and will submit in the spring a revised Notice of Intended Action regarding the licensure of acupuncturists. In response to inquiries from Sen. Horn and Sen. Chelgren, Mr. Bowden addressed the need for clarification of the rules relating to acupuncturists who are under the purview of the board.
- ARC 2372C Proposed 21.4 pertains to minimum standards for appropriate supervision of a physician assistant by a physician. Mr. Bowden stated that the language of this proposed rule is identical to that of a proposed rule drafted by the board of physician assistants (see ARC 2417C, IAB 2/17/16) to establish specific minimum standards or a definition of supervision for appropriate supervision of physician assistants by physicians (see also the Special Review under Professional Licensure Division herein).
- Referring to detailed information that he distributed to the committee, Mr. Bowden stated that the proposed rule by the medicine board is a composite of existing rules regarding the elements of the supervision of a physician assistant by a physician and that the joint rules do not increase the burden on physicians or on physician assistants related to supervision. He stated that, for example, the joint rules reduce from 26 to 1 the required number of remote-site visits per year by a physician who supervises a physician assistant practicing at a remote site. He cited the following two positive results of the joint rules: the joint rules have been developed and will be administered by both boards and that a joint effort by both boards will be required to change the rules; and the joint rules set forth for the public the expectations for supervision of physician assistants who provide medical care under the supervision of a physician. He added that because the rule of the medicine board affirms the expectations of existing rules, the medicine board has determined that the rule will not have an economic or jobs impact. Mr. Bowden also stated that the medicine board would like to add an amendment that recognizes the Good Samaritan provisions in the law.
- In response to inquiries from Sen. Chelgren, Mr. Bowden stated that assistive technology may be used for in-person supervision, including the quarterly review, and that one of the twice-annual face-to-face meetings is required to be held at the remote site. In response to an inquiry from Rep. Pettengill, Mr. Bowden discussed the positive fiscal impact of the rule.

**EDUCATION DEPARTMENT** Phil Wise and Dave Tilly represented the department. Other interested parties included Margaret Buckton on behalf of the Urban Education Network (UEN) and on behalf of the Rural School Advocates of Iowa (RSAI) and Katie Greiving on behalf of Decoding Dyslexia Iowa.

- ARC 2343C Proposed amendments to 61.3 concern the intensive summer literacy program. Mr. Wise summarized public comment and reviewed the changes from the Notice of Intended Action. He explained that the number of students not deemed to be proficient was based on the 2015 assessment and is not in any way related to the prospective Smarter Balanced Assessment Consortium (SBAC) assessment. He also stated that these rules are promulgated pursuant to 2012 legislation that requires statewide implementation of the program and that the cost of the program is separate from the legislative directive. Mr. Tilly presented background on the development of the criteria for the program, the purpose of which is summer reading acceleration.

Education Department (continued)

In response to an inquiry from Sen. Chelgren regarding 61.3(1)“i,” Mr. Wise explained that the use of the verb “shall” resulted from public comment from parents willing to pay for private reading instruction. In addition, Mr. Tilly described the option to use private instruction. In response to a question from Sen. Horn, Mr. Tilly stated that school districts have the statutory responsibility for the program and that area education agencies are engaged in facilitating but not providing intensive summer reading instruction.

On behalf of UEN, Ms. Buckton commended the department for revising the requirements, including the decrease to 85 percent attendance and 70 hours of instruction, but expressed concern regarding the process-oriented, restrictive requirements and the cost of the program to school districts. On behalf of RSAI, Ms. Buckton expressed concern about the cost of transportation and asserted that greater flexibility is needed to meet students’ needs. Ms. Greving stated that the rules should go forward but expressed concern about the success of the program unless prospective teachers are trained by Iowa universities and colleges to teach reading to children with dyslexia.

In response to public comment, Sen. Chelgren suggested that the legislature unite to support parents who are providing private reading instruction for their children. Rep. Olson inquired about after-school reading instruction. In response to an inquiry from Sen. Costello, Mr. Wise commended the 32 teacher preparation programs in Iowa and stated that legislation pending in the senate and the house addresses the preparation of reading teachers. Mr. Wise will provide the committee with information regarding the legislation.

**REVENUE DEPARTMENT** Victoria Daniels and Julie Roisen represented the department.

ARC 2370C Proposed amendments to 80.1(3) pertain to the disabled veteran tax credit. In response to an inquiry from Sen. Horn, Ms. Roisen explained the qualifications for the disabled veteran tax credit, which are based on federal requirements.

ARC 2371C No questions on proposed amendments to 80.30 regarding the business property tax credit.

ARC 2349C No action on amendments to chs 15, 18, 219 and 230 pertaining to qualification for a manufacturing exemption.

**Committee business** The minutes of the January 8, 2016, meeting were approved. The next meeting was scheduled for Friday, March 4, 2016, at 9 a.m. Mr. Ewing stated that as discussed by the committee at the June 9, 2015, meeting, the development of a system for tracking the implementation of legislation by rule making continues to be in process and that the computer services division of LSA projects that a system should be ready in the summer or fall of 2016.

Adjourned The meeting was adjourned at 2:50 p.m.

Respectfully submitted,

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Stephanie A. Hoff

APPROVED:

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Chair Wally Horn

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Vice Chair Dawn Pettengill