

**MINUTES OF THE MARCH 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, March 4, 2016, at 9 a.m. in Room 116, State Capitol, Des Moines, Iowa.

Members present: Senator Wally Horn, Chair; Senators Mark Chelgren, Mark Costello, Thomas Courtney, and Pam Jochum; Representatives Megan Jones, Rick Olson, and Guy Vander Linden were present. Rep. Dawn Pettengill, Vice Chair, and Rep. Lisa Heddens were not present.

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

Convened Sen. Horn convened the meeting at 9 a.m.

**Fiscal overview** Adam Broich presented the LSA fiscal report.

**HUMAN SERVICES DEPARTMENT** Nancy Freudenberg, Deb Johnson and Rick Shults represented the department. Other interested parties included Shelly Chandler on behalf of the Iowa Association of Community Providers.

ARC 2380C Proposed amendments to chs 77 to 79 and 83 in this Amended Notice pertain to the prevocational and supported employment services under the habilitation and brain injury and intellectual disability waiver programs. Ms. Freudenberg explained that the department has made extensive changes from the Notice and that the changes include additional definitions and clarification of a variety of requirements.

Sen. Jochum questioned why an appropriation of \$750,000 set forth in 2015 Iowa Acts, Senate File 505, had not been used for prevocational and supported employment. In response, Ms. Johnson stated that she understood that Senate File 505 did not contain policy language that specified the purpose for the \$750,000 appropriation. Rep. Vander Linden expressed concern that the appropriation had not been spent for prevocational and supported employment and cautioned the department that an appropriation must be spent for the purpose indicated in the legislation. Rep. Olson requested that the department provide the committee information to verify that Senate File 505 did not contain the policy language related to the appropriation. Sen. Jochum also expressed concern that the reauthorization every 90 days for long-term job coaching support could be misinterpreted by managed care organizations (MCOs) as a short-term level of support. Ms. Johnson stated that the department would reiterate to the MCOs the policy regarding job coaching support and, at the request of Sen. Jochum, will provide the committee written assurance of the department’s reiteration of the policy to MCOs.

Ms. Chandler explained that two companion bills, 2016 Iowa Acts, Senate File 2272 and House File 2121, would fund the allocation for prevocational services. According to Ms. Chandler, the passage of these bills would provide moneys to increase supportive employment rates, and there would be no need to cut prevocational rates retroactive to January 1, 2016.

In response to an inquiry from Sen. Chelgren, Mr. Shults stated that the 2015 allocation for prevocational and supported employment was not included in an \$80 million supplemental appropriation recently passed by the Senate. Sen. Chelgren suggested that House members consider inclusion of the allocation in the House vote on the \$80 million supplemental appropriation.

ARC 2426C 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 2427C No action on amendments to 176.10 regarding requests for information related to dependent adult abuse.

**ALCOHOLIC BEVERAGES DIVISION** Stephanie Strauss represented the division.

ARC 2382C No action on 4.1 and 4.6 pertaining to the filling and selling of beer in a container other than the original container by class “C” beer permit holders.

**CHIEF INFORMATION OFFICER, OFFICE OF THE** Matt Behrens represented OCIO.

ARC 2421C Proposed chs 1 to 6 concern office organization, public records, petitions and procedures for rule making, declaratory orders and contested cases. Regarding access to confidential records and authority to release them, Sen. Jochum questioned the discretion permitted by the use of the verb “may” in 2.4 and 2.12(3) and requested that the rules be clarified by the use of “shall” when appropriate. Sen. Courtney requested that permitted agency actions be specified. In response, Mr. Behrens stated that the agency would notify interested parties if permitted to do so pursuant to Iowa Code section 22.7 and that the agency has proposed and will review these standard rules of procedure based on the comments.

**DENTAL BOARD** Jill Stuecker and Phil McCollum represented the board.

ARC 2432C Proposed 10.4(4) pertains to students enrolled in a dental hygiene program. Rep. Vander Linden inquired about dentists’ views of proposed 10.4(4). In response, Ms. Stuecker stated that proposed 10.4(4) is specific to education programs and supervision required during a course of study by students who are not yet licensed hygienists, whereas the pending bill to which Rep. Vander Linden referred pertains to already-licensed hygienists.

ARC 2423C No action on 13.4 regarding the retired volunteer license.

ARC 2431C No questions on proposed 20.17 pertaining to students enrolled in dental assisting programs.

**EDUCATIONAL EXAMINERS BOARD** Darcy Hathaway and Joanne Tubbs represented the board.

ARC 2412C No questions on proposed amendments to 13.26 regarding elementary endorsements.

ARC 2397C No action on amendments to 13.28 and 27.3 pertaining to practicum and internship hours related to the professional school counselor endorsement.

ARC 2411C No questions on proposed amendments to 22.2 concerning the substitute authorization.

ARC 2410C No questions on proposed amendments to 24.4(1) pertaining to the early childhood paraeducator area of concentration.

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

ARC 2388C No action on amendments to 3.2(2) and 4.1(2)“e” pertaining to the fundamentals of land surveying examination application process and board verification of education and experience of candidates for engineering licensure.

**HOMELAND SECURITY AND EMERGENCY MANAGEMENT DEPARTMENT** John Benson represented the department.

ARC 2383C No action on amendments to 100.1 pertaining to the mission and membership of the Iowa emergency response commission.

ARC 2384C No action on amendments to ch 101 regarding the membership of the commission.

ARC 2385C No action on amendments to ch 103 concerning local emergency planning committees.

ARC 2386C No action on amendments to ch 104 pertaining to required reports and records.

**INSPECTIONS AND APPEALS DEPARTMENT** Sam Langholz and David Werning represented the department. Other interested parties included Shelly Chandler of the Iowa Association of Community Providers.

ARC 2404C No questions on proposed amendments to 10.14 concerning updates in the procedures related to subpoenas in contested case proceedings. In response to an inquiry from Rep. Olson, Mr. Langholz agreed to clarify in the rule the procedure to be followed if an additional subpoena must be requested due to the rescheduling of the hearing.

ARC 2395C Proposed amendments to 57.19(3), 62.15(2) and 63.18(2) pertain to training requirements for certified medication aides and medication managers who work in residential care facilities. Mr. Werning explained that the proposed amendments eliminate the requirement that an individual first must be a certified nursing assistant (CNA) before becoming a certified medication aide (CMA) and add the requirement that a person who is employed as a medication manager successfully complete a department-approved medication aide course within 36 months.

Inspections and Appeals Department (continued)

Sen. Courtney inquired about the response at the public hearing to the proposed amendments and the likely response by the department to public comment. Mr. Werning explained that the proposed amendments were distributed for comment and no public hearing was held because the proposed amendments were not thought to be controversial by the department. However, Mr. Werning explained that facilities with fewer than 15 beds have expressed opposition to the proposed requirement that current medication managers complete a department-approved medication aide course within 36 months. Mr. Werning stated that the proposed amendments related to this requirement would likely not be adopted.

Ms. Chandler expressed concern regarding the proposed requirement for current medication managers employed by residential care facilities with fewer than 15 beds. As an alternative, she described an online training program that includes medication aide training offered at no cost to all HCBS and habilitation providers and expressed thanks to the department for its willingness to reconsider and modify the proposed amendments.

**IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM** Donna Mueller represented IPERS.

ARC 2402C No action on amendments to chs 4 to 6, 9, 11, 13, 14, 16, 17 and 26 pertaining to contribution rates, death and disability benefits, Section 125 plans, termination of employment, qualified domestic relations orders, and alternate payees.

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

ARC 2396C No action on amendments to 71.10(3), 72.13(6) and 73.8(7) pertaining to safety standards for alterations of residential elevators installed in public buildings and of escalators. In response to questions from Sen. Courtney, Ms. Uehling addressed the formerly permitted use of residential elevators in public buildings, such as churches, and inspections by qualified private contractors that are authorized by the state. She stated that liability issues related to inspections by private contractors would need to be addressed by the attorney general.

ARC 2403C No action on amendments to 90.6(1) and 91.1 regarding the adoption by reference of current industry standards related to boilers and pressure vessels.

ARC 2419C No questions on proposed amendments to 90.11, 91.9(6) and 91.20 concerning incident reporting requirements for boilers and pressure vessels.

ARC 2394C No questions on proposed amendments to 130.10(3) and 140.8(3) and the proposed rescission of 130.11, 130.12 and 140.9 pertaining to a hazardous chemical inventory.

ARC 2389C Proposed amendments to ch 160 pertain to employer requirements relating to non-English speaking employees. In response to an inquiry from Rep. Vander Linden, Ms. Uehling stated that it was not the intent of the division to alter the meaning of the existing language in the first sentence of 160.4(1) regarding the percentage of workers to whom an interpreter shall be made available and agreed that the language, which reflects that in Iowa Code section 91E.2, will not be changed.

ARC 2428C The 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. Ms. Uehling summarized the rules, which adopt by reference many nationally recognized industry standards, describe administrative functions not currently mentioned in existing rules, define terms to clarify the types of equipment regulated by the division and set forth new provisions for owners to conduct required annual inspections in limited circumstances.

Discussion pertained to the appropriateness of owners' inspections of their own air-supported amusement devices; the legal liability for such inspections; the adequacy of the current number of inspectors who, in addition to inspecting amusement devices, also inspect elevators and escalators; the air-supported amusement devices subject to inspections based on commercial use versus private use; and uncertainty regarding the entities whose standards are incorporated by reference in the rules.

Sen. Courtney expressed concern regarding the safety of air-supported amusement devices that are not inspected by state inspectors or their designees. Rep. Jones questioned the discrepancy in the inspection policy for stationary versus air-supported amusement devices.

Motion to delay Sen. Courtney moved a 70-day delay on 61.4(1)"a" and 61.5(2).

Motion carried On a voice vote of 7 to 1, the motion carried.

Labor Services Division (continued)

- Motion to delay After further discussion, Rep. Vander Linden moved a 70-day delay on ARC 2428C.
- Motion carried On a voice vote of 8 to 0, the motion carried. The latter motion superseded the former.
- The committee requested that ARC 2428C be placed on special review at the April meeting. Sen. Jochum requested that during the special review, Ms. Uehling address the state's liability if owners are allowed to conduct their own inspections and to provide the number of inspectors necessary to reduce the state's exposure to liability. Ms. Uehling will also provide the committee information regarding the entities whose standards are incorporated by reference in the rules.
- ARC 2422C Proposed 71.11(2)“a,” 72.28 and 73.28 pertain to elevators in broadcast towers. In response to an inquiry from Sen. Jochum, Ms. Uehling stated that in Item 1, “periodic inspection” means “annual inspection.” In response to an inquiry from Rep. Olson, Ms. Uehling stated that the acronym “ASME” stands for the American Society of Mechanical Engineers and that ASME standards are adopted by reference in the rules governing elevators.

**NATURAL RESOURCE COMMISSION** Bruce Troutman represented the commission. Other interested parties included Jack Dahlsten.

- ARC 2398C No action on 15.26 pertaining to special nonresident deer and turkey licenses.
- ARC 2409C Proposed amendments to 91.1, 91.3 and 91.6 regard waterfowl and coot hunting seasons.
- Rep. Vander Linden questioned the difference between Iowa's season dates and those of neighboring states. In response, Mr. Troutman explained that two factors related to season dates are the variations in the peak migration and the results of the hunter survey.
- Mr. Dahlsten summarized the chronology of his actions in advocating for later season dates for ducks and dark geese in the south zone of Iowa, including the circulation of a petition to the natural resources department from 375 hunters who support later season dates. He expressed a related concern regarding the need for better communication from the department about the dates and times for public meetings where interested parties may provide comment about season dates and other matters.
- Sen. Courtney requested that the department examine its methods for communication to the public and that the public hearings be well-publicized. Sen. Chelgren concurred and asked that, in general, the department ensure that information related to public meetings be made as accessible as possible through electronic or other means. Rep. Jones suggested that the department provide interested parties updates about public meetings and other information by e-mail subscription through the department's Web site.

**NATURAL RESOURCES DEPARTMENT** Bruce Troutman represented the department.

- ARC 2379C No action on amendments to ch 12 pertaining to special deer and turkey hunting licenses for nonresident disabled veterans or disabled members of the armed forces.

**PHARMACY BOARD** Andrew Funk represented the board.

- ARC 2405C No action on an amendment to 4.6(1) relating to acceptance of an individual tax identification number of a pharmacist-intern on an application for registration.
- ARC 2408C No action on amendments to chs 6 to 8, 10, 17 and 23 regarding the authorization of registrants to administer a controlled substances collection program.
- ARC 2414C No action on amendments to 6.10(1) and 8.19 authorizing the prescribing of epinephrine auto-injectors in the name of a facility, school district or accredited nonpublic school.
- ARC 2413C No action on an amendment to 8.26(5) relating to the reporting of a continuous quality improvement (CQI) program event.
- ARC 2407C No action on 10.38 concerning temporary designation of controlled substances.
- ARC 2418C No questions on proposed amendments to 20.2 and 20.15 pertaining to the definition of “office use” as it relates to compounded drug products.
- ARC 2406C No action on amendments to 22.5(8) pertaining to patient med pak record keeping.

**REVENUE DEPARTMENT** Victoria Daniels represented the department.

- ARC 2393C No action on amendments to 38.15 regarding innocent spouse relief from income tax liability.
- ARC 2434C No questions on proposed amendments to 46.1(1)“e” and 231.9 pertaining to withholding or exemption from taxation related to bingo prizes and raffle tickets.

**STATE PUBLIC DEFENDER** Kurt Swaim represented the state public defender.

- ARC 2378C No action on amendments to chs 1 and 11 to 13 pertaining to claims of contract attorneys and other professionals. In response to a comment from Rep. Olson, Mr. Swaim will address in 12.2(3)“f”(5) the repetition of language related to the public defender’s sole discretion.

**TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION, IOWA** Mark Johnson represented the commission.

- ARC 2381C No questions on proposed amendments to 2.13(2) regarding confidential records, specifically, an exception relating to security procedures or emergency preparedness. Mr. Johnson stated that the commission may file the amendments emergency after notice.

**TRANSPORTATION DEPARTMENT** Stuart Anderson, Paul Steier and Donna Buchwald represented the department.

- ARC 2392C No action on amendments to 101.3(1) and 101.4 pertaining to the farm-to-market review board.
- ARC 2401C No questions on proposed amendments to 520.1(1) regarding the adoption by reference of federal motor carrier safety and hazardous materials regulations.
- ARC 2425C No action on amendments to chs 160, 161, 170, 172 to 174, and 178, related to counties and cities, pertaining to programs and funds for bridge and road construction and repair; instructional memorandums; and budgets, reports, and highway-related services and supplies.
- ARC 2424C No action on 615.41 regarding investigation of convictions based on fraud.

**VETERANS AFFAIRS, IOWA DEPARTMENT OF** Robert King represented the department.

- ARC 2399C A proposed amendment to 14.4(11) pertains to honor guard services. Mr. King explained that the amendment would increase from \$500 to \$1000 the amount of annual reimbursement that a specific veterans service organization may receive. He explained that the moneys for these services come from the veterans trust fund.  
Sen. Courtney expressed the hope that the individuals who provide honor guard services receive some remuneration, such as for mileage. In response, Mr. King stated that the participants want to provide honor guard services and do not expect remuneration. In addition, he explained that the amendment will double the annual amount that a specific service organization may receive for providing honor guard services.

**INSURANCE DIVISION** Doug Ommen, Bob Koppin, Rosanne Mead and Mark Crandall represented the division. Other interested parties included Angela Davis on behalf of the Iowa Pharmacy Association and HyVee and David Adelman on behalf of the Independent Pharmacy Cooperative.

- ARC 2415C No action on amendments to chs 4, 20, 30, 35, 39 and 40 pertaining to authorized methods for delivery of notices of cancellation, nonrenewal or termination.
- ARC 2377C No action on ch 111, corporate governance annual disclosure.
- ARC 2429C No questions on a proposed amendment to ch 15 to update the telephone number and add a Web site address for the hotline referenced in Appendix II.
- ARC 2430C No questions on proposed amendments to ch 76 pertaining to an update of the division address and of Iowa Code references.
- ARC 2433C No questions on proposed amendments to ch 59 pertaining to pharmacy benefits managers. Ms. Mead explained the ongoing litigation concerning 2015 legislation as detailed in the preamble of the rule making.  
Ms. Davis stated that the parties she represents have worked with the division to bring transparency to pharmacy benefits manager practices. Mr. Adelman stated that he appreciates the division’s work on the rules.

**SECRETARY OF STATE** Eric Gookin and Christy Johnson represented the secretary of state.

ARC 2416C Proposed ch 6 pertains to the safe at home program.

Rep. Jones expressed concern that the delay in the implementation of 2015 legislation and the need for correction of the legislation during the current legislative session could adversely affect the participants in the program.

**VOTER REGISTRATION COMMISSION** Eric Gookin represented the commission.

ARC 2376C No action on amendments to chs 2, 8 and 11 pertaining to online voter registration.

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

ARC 2417C Proposed 327.8 pertains to minimum standards for appropriate supervision of a physician assistant by a physician. Ms. Reisetter named the interested parties that had commented on the rule, noted that a public hearing would be held on March 9, 2016, and distributed and summarized the survey of Iowa hospital CEOs, Iowa physician practice groups, licensed Iowa physicians, and licensed Iowa physician assistants conducted by the board.

Mr. Bowden stated that the medicine board has worked with the physician assistant board regarding joint rules, as required by 2015 legislation; that the physician assistant board has found the joint rules, which consist of existing rules, to be burdensome; and that the medicine board is uncertain about the outcome of the joint adoption of rules. He stated that at issue is the delegation of medical services. He agreed to provide the committee with information regarding the independent physician assistant boards in Utah, Rhode Island and Arizona.

In response to an inquiry from Rep. Olson, Ms. Koehler stated that physician assistants are supervised by physicians and have no intention of becoming independent practitioners. She added that the physician assistant board's intention is to refine the rules in order to improve medical care. She explained that the impetus for changes to the rules regarding supervision of physician assistants is technological change, which provides new methods for conducting supervision, including telemedicine and electronic means of communication.

**Committee business** The minutes of the February 5, 2016, meeting were approved.

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

The committee discussed the need for timely promulgation of rules by executive branch agencies and prudent imposition of 70-day and session delays by the committee.

Adjourned The meeting was adjourned at 1:45 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