

**MINUTES OF THE MAY 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 Tuesday, May 10, 2016, at 9 a.m. in Room 116, State Capitol, Des Moines, Iowa.
- Members present: Senator Wally Horn, Chair, and Representative Dawn Pettengill, 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 Sen. Horn convened the meeting at 9 a.m.
- Fiscal overview** Adam Broich presented the LSA fiscal report.

HUMAN SERVICES DEPARTMENT Director Charles Palmer, Nancy Freudenberg, Deb Johnson and Wendy Rickman represented the department. Other interested parties included Toya Johnson of Iowa Citizens for Justice; and June Rumelhart.

ARC 2471C Amendments to chs 77 to 79 and 83 relate to prevocational and supported employment services under the habilitation and brain injury and intellectual disability waiver programs. The proposed amendments were published under Notice of Intended Action (IAB 8/19/15) and Amended Notice of Intended Action (IAB 2/3/16). At the March meeting, when the Amended Notice was reviewed, committee members learned that 2015 Iowa Acts, Senate File 505, section 12, did not contain policy language specifying that supported employment was the intended purpose for a \$750,000 appropriation. The Adopted and Filed amendments (IAB 3/30/16) were reviewed at the April meeting, at which the committee again discussed the appropriation and requested that the person who had approved using the appropriation for purposes other than supported employment appear at the May meeting.

Committee members directed questions to Mr. Palmer, who had approved use of the appropriation for the Medicaid shortfall. Committee members inquired about the director’s decision making regarding the appropriation; the effect of reduced supported employment funding on federal matching funds; whether a similar appropriation was addressed in 2016 legislation; the movement away from prevocational services to a greater emphasis on employment services; the responsibility for supported employment by managed care organizations (MCOs); independent audits of the department; and legislative intent.

Mr. Palmer stated that he first discovered at the time Senate File 505 was signed the omission of policy language indicating legislative intent. He acknowledged receipt of a letter from Rep. Heaton and Sen. Ragan, joint appropriations subcommittee co-chairs, in which they explained the omission of policy language from Senate File 505 and urged that the \$750,000 be used for supported employment. Mr. Palmer, however, explained that without policy language, knowledge of legislative intent was not sufficient to approve the appropriation. In addition, he had questioned how to implement the budget-neutral appropriation and stated that he was also aware of the expectation that the department not deficit spend. With examples, Mr. Palmer explained that federal matching funds were not lost. Further discussion revealed that funding for supported employment was not included in 2016 legislation. Mr. Palmer also addressed federal movement away from prevocational services (e.g., sheltered workshops) to a greater emphasis on employment services. Mr. Palmer stated that the MCOs are responsible for supported employment. Regarding audits, Mr. Palmer stated that outside audits are not conducted but that the state auditor conducts an annual audit and that the federal government performs audits of department records regularly. In reference to legislative intent, Mr. Palmer stated that a director makes decisions based on the language that is enacted by the legislature.

Human Services Department (continued)

Sen. Jochum asserted that the committee must ensure that the rules implement the Americans with Disabilities Act (ADA) and the Olmstead decision by enforcing integration of persons with disabilities into the workforce. Sen. Chelgren challenged the legislature to ensure that legislative intent is clear and that, as a result, agencies have a clear understanding of that intent.

Sen. Jochum requested that the department provide the committee with information regarding the home- and community-based services (HCBS) waiver providers of prevocational and supported employment services that are enrolled with each MCO, specifically, the number of providers and their names and locations.

ARC 2505C No questions on proposed amendments to 75.23(3) and 75.24(3)“b” regarding an increase in the average statewide private-pay cost of nursing facility services and of charges for institutional care.

ARC 2504C Proposed amendments to 119.1 and 119.2(1) pertain to deferred judgments considered in record check evaluations for personnel employed by health care facilities and for students in educational training programs for nurses and nurse aides. Ms. Freudenberg stated that a definition of “deferred judgment” is proposed to incorporate current practice in rule and to assist attorneys in advising clients of the effects of a deferred judgment. She explained that the department considers deferred judgments to be convictions.

In response to questions from Sen. Courtney, Ms. Freudenberg explained the factors that are considered in an evaluation of a deferred judgment, including the type and severity of the crime and the time that has elapsed since the crime was committed, and stated that the process for the evaluation is set forth in rule. In response to an inquiry from Rep. Olson, Ms. Freudenberg explained that the amendments establish in rule the evaluation of deferred judgments related to record checks and that the presence of certain felonies on a person’s record would result in an automatic record check failure. At the request of Rep. Olson, Ms. Rickman will provide the administrative rule that sets forth the criteria for record check evaluations and related information.

Ms. Johnson stated that considering deferred judgments as convictions punishes a person for a past offense for which the person has been rehabilitated. Ms. Johnson and Ms. Rumelhart urged that the law regarding deferred judgments be changed.

Sen. Chelgren asserted that changes in the criminal justice system are needed to encourage rehabilitation of persons convicted of crimes and, at the same time, to protect Iowa’s most vulnerable citizens. Sen. Courtney concurred and asserted that a person who commits a crime needs to understand the consequences of a deferred judgment.

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT Margaret Thomson represented the department.

ARC 2486C No questions on proposed amendments to ch 50 concerning the women, infants, and children/farmers’ market nutrition program and the senior farmers’ market nutrition program.

ARC 2495C No questions on the proposed rescission of ch 51, remediation of agrichemical sites.

ARC 2517C No questions on a proposed amendment to 64.11 pertaining to a method for disposal of deceased animals affected by glanders.

ECONOMIC DEVELOPMENT AUTHORITY Kristin Hanks-Bents represented the authority.

ARC 2501C No action on amendments to ch 102 pertaining to the entrepreneur investment awards program.

EDUCATION DEPARTMENT Nicole Proesch, Larry Bice and Jeff Berger represented the department. Other interested parties included Carol Earnhardt, Scott County supervisor, and Deb Gustafson on behalf of Child Care and Family Services of the Scott County Family YMCA.

ARC 2509C Proposed amendments to ch 77 pertain to standards for teacher intern preparation programs.

In response to questions from committee members, Mr. Bice explained that Iowa Code chapter 256 does not allow for waivers of any rules and that no teacher preparation program may request a waiver of requirements.

Education Department (continued)

Mr. Bice explained that the intern preparation program is an alternative to a traditional practitioner preparation program for prospective teachers at the secondary level and allows a candidate who already has a bachelor’s degree to complete required coursework and competencies and, with mentoring and other support from a school district, to be employed by the school district as a teacher. He stated that the department provides an annual report of high-need content areas statewide as required by the U.S. Department of Education. Mr. Bice explained that the intern preparation program is designed to serve candidates who seek teaching positions in high-need content areas but may also serve candidates who seek teaching positions in non-high-need content areas. Mr. Bice stated that the board directed the department to revise the teacher intern preparation program rules, and he assured the committee that the revised rules will increase rigor and ensure accountability.

Special Review

Rep. Pettengill stated that Sen. Smith had requested a special review of 16.3(10), 98.76(2) and 98.76(3) regarding materials and permitted uses of funds for the statewide voluntary preschool program. Specifically, Rep. Pettengill explained that the requirements of the program standards and Iowa Early Learning Standards necessitate expenditures for items that are not considered appropriate uses of the regular education preschool fund.

Mr. Berger explained that the department makes funding decisions based on categorical funding methodology, the statutes and generally accepted accounting principles (GAAP) and that the department uses these sources to determine direct program costs across all programs. He also explained that according to Dillon’s Rule, an expense that is not specifically stated is an ineligible expense. Mr. Berger stated that changes to categorical funding would require legislative action.

Ms. Earnhardt introduced Ms. Gustafson, who stated that preschools, unlike elementary schools, educate younger children who have more specific needs, e.g., assistance in toileting, blowing their noses, and washing hands. Ms. Gustafson explained that program expenses incurred for items directly related to the assistance of preschool children, such as toilet paper, facial tissue, soap, paper towels and gloves, are required by the preschool program standards. Ms. Gustafson explained that these items must be claimed as administrative expenses, of which only 10 percent is allowed overall. Ms. Gustafson asserted that these items are instead direct program supplies and should be permitted to be considered as direct program expenses.

Mr. Berger confirmed that the department considers the costs referred to by Ms. Gustafson to be administrative expenses but would be willing to continue discussion on the issue.

Rep. Pettengill encouraged the department to clarify appropriate and inappropriate uses of funds. Sen. Chelgren suggested that a sentence be added to 98.76(2) to reference 16.3(10) and to indicate other specific uses of funds that may be appropriate.

LIBRARIES AND INFORMATION SERVICES DIVISION Michael Scott represented the division.

ARC 2510C No questions on proposed amendments to ch 1 regarding updates related to organization and operation.

ARC 2511C No questions on a proposed amendment to 2.3(1) pertaining to a change of address.

ARC 2515C No questions on the proposed rescission of ch 4, ICN classroom policy.

ARC 2514C Proposed amendments to ch 7 concern Internet use policy. In response to an inquiry from Rep. Pettengill, Mr. Scott explained that the American Library Association (ALA) provides guidelines for determining what material is considered obscene for or harmful to minors but that local libraries and their boards make their own determinations. Mr. Scott agreed to provide the committee with the ALA guidelines.

ARC 2513C No questions on the proposed rescission of chs 8 and 9 pertaining to the Iowa regional library system and the library service area boards of trustees.

IOWA FINANCE AUTHORITY Mark Thompson and Tara Lawrence represented the authority. Other interested parties included Andrew Nordstrom of the Iowa Land Title Association (ILTA).

Iowa Finance Authority (continued)

ARC 2506C

The amendment to ch 9 pertains to the title guaranty division. The amendment strikes 9.1 to 9.22 and adopts 9.1 to 9.11 to reorganize and update the rules, to align the rules with statute and current practice, and to streamline the process for obtaining a waiver of the 40-year title plant requirement.

Mr. Thompson summarized the history of the title guaranty division, explaining that title guaranty is a substitute for title insurance, which is illegal in Iowa but legal in all other states. He also summarized the history of the 40-year title plant requirements and of the statutory criteria for permitting a waiver of the requirements, which were the focus of a supreme court decision in 2009 referred to as the Hendricks case. Mr. Thompson explained that the adopted rules reflect the division's interpretation of the ruling in the Hendricks case. He added that in 2014, the division placed a moratorium on all title plant waivers in response to questions about the waiver process. Mr. Thompson stated that in spring 2015, the division created a workgroup that included the Iowa Bar Association and ILTA to provide input on the revision of ch 9, which resulted in the publication of a Notice of Intended Action (IAB 9/2/15). In response to a request by ILTA, which disagreed with the division's interpretation of the Hendricks case, the division issued a regulatory analysis, which was published in the 11/25/16 IAB.

Discussion began with specific questions from Rep. Pettengill. In response, Mr. Thompson explained the definition of "abstractor," which references "person," including a corporation, as defined in Iowa Code section 4.1(20), and stated that every abstractor in Iowa is a corporate entity, not an individual; agreed to consider the use of "may" in lieu of "must" in the second sentence of 9.7(1)"d"; explained that 9.7(1)"d"(4)"3" is intended to ensure that a clerical error by the division would not preclude action related to notices of application; and explained the use of "minimal" in 9.7(1)"d"(5)"3." Regarding 9.7(2), Ms. Lawrence explained the absence of a conflict of interest for attorneys providing both abstracting and legal opinions.

Committee members then discussed the definition of "hardship" related to creating a title plant and to title plant waivers, the financial value of title plants, changes in lending practices as they relate to title plants, and the standards for granting waivers. Mr. Thompson expressed a willingness to consider changes regarding waivers but explained that the Hendricks case places limits on the definition of "hardship." Mr. Thompson stated that the division believes that a 40-year title plant is preferable but must address the related issues in relationship to the Hendricks case and to statute.

Mr. Nordstrom praised the division for allowing ILTA to participate in the rule-making process and for clarifying specific rules. However, he expressed concern about the inclusion of corporate entities in the definition of "abstractor" and about the standards for waivers. Mr. Nordstrom also expressed disagreement with the division's interpretation of the Hendricks case in regard to the hardship and public interest requirements and suggested that the standards for waivers be clarified.

Motion to delay

Sen. Courtney moved a session delay on ARC 2506C.

Motion carried

On a roll call vote of nine to one, the motion carried.

LABOR SERVICES DIVISION Kathleen Uehling represented the division.

ARC 2516C

No questions on proposed amendments to 10.20 and 26.1 pertaining to adoption by reference of federal occupational safety and health standards related to respirable crystalline silica, eye and face protection, and work performed near electrical equipment.

ARC 2488C

No action on amendments to 130.10(3) and 140.8(3) and the rescission of 130.11, 130.12 and 140.9 pertaining to a hazardous chemical inventory.

ARC 2489C

No action on amendments to ch 160 regarding employer requirements relating to non-English speaking employees.

PHARMACY BOARD Jennifer Tiffany represented the board.

ARC 2498C

No questions on a proposed amendment to 21.8(4) concerning the electronic transmission of a prescription.

PROFESSIONAL LICENSURE DIVISION Tony Alden and Judy Manning represented the division.

ARC 2503C Proposed amendments to chs 131 and 133 pertain to licensure and continuing education of massage therapists. In response to an inquiry from Rep. Jones, Mr. Alden stated that the providers of continuing education courses will adjust to the new per-course hours and that the removal of categories A and B will increase availability of in-state continuing education courses.

ARC 2481C No action on 200.4(5) pertaining to disability-related accommodation for licensure examinations of physical therapists and physical therapist assistants.

PUBLIC SAFETY DEPARTMENT Barbara Edmondson represented the department.

ARC 2494C No action on amendments to chs 200 to 202 and 210 pertaining to the adoption by reference of fire code provisions.

ARC 2492C No action on amendments to chs 300 to 302 and 315 concerning the adoption by reference in the state building code of certain provisions of the 2015 International Building Code (IBC).

ARC 2493C No action on the adoption by reference in 350.1 of the International Existing Building Code in the state historic building code.

REVENUE DEPARTMENT Victoria Daniels represented the department.

ARC 2519C No questions on the proposed rescission of chs 1 and 2 and proposed amendments to chs 6, 7, 10, 11, 67, 71, 73, 76, 77, 81, 85 and 103 pertaining to the dissolution of the state board of tax review; appeals; and the duties of the director and the department.

ARC 2512C No action on amendments to 46.1(1)“e” and 231.9 pertaining to withholding or exemption from taxation related to bingo prizes and raffle tickets.

ARC 2520C No questions on proposed amendments to 71.20(3)“c” and 71.20(4)“a” regarding notice to taxpayers and the date for filing a protest related to property tax assessments and equalization.

ARC 2507C No action on amendments to 80.1(3) pertaining to the disabled veteran tax credit. In response to an inquiry from Sen. Horn, Ms. Daniels stated that the department worked with Col. Robert King of the department of veterans affairs on the passage of the legislation and that the department utilized Col. King’s communication channels at the county level and through communication with county assessors to provide veterans with information about the tax credit.

ARC 2508C No action on amendments to 80.30 regarding the business property tax credit.

SECRETARY OF STATE Carol Olson and Eric Gookin represented the secretary of state.

ARC 2490C No action on amendments to 23.3 to 23.6 and 23.10 pertaining to national voter registration Act compliance related to voter registration in state agencies.

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

ARC 2497C No action on amendments to 2.13(2) regarding confidential records, specifically, an exception relating to security procedures or emergency preparedness.

TRANSPORTATION DEPARTMENT Robert Younie represented the department.

ARC 2487C Proposed 121.4(3) pertains to sponsor compliance with nondiscrimination laws related to the adopt-a-highway program. In response to an inquiry from Sen. Chelgren, Mr. Younie stated that nothing in 121.4(3) would oppose the beliefs of a religious organization that participates in the program. In response to a question from Sen. Costello, Mr. Younie stated that department attorneys suggested that the language of 121.4(3) is appropriate to the rule and does not prohibit the association of members of a group.

UTILITIES DIVISION Cecil Wright represented the division.

ARC 2499C Proposed amendments to chs 10, 19, 20 and 25 concern updates and corrections to the natural gas and electric safety standards. In response to a question from Rep. Pettengill, Mr. Wright stated that three comments in support of and no comments in opposition to the rules had been received.

INSURANCE DIVISION Rosanne Mead represented the division.

ARC 2518C No action on amendments to ch 59 pertaining to pharmacy benefits managers.

ENVIRONMENTAL PROTECTION COMMISSION Jon Tack, Courtney Cswerko, Gene Tinker and Kelly Book represented the commission.

ARC 2482C No action on amendments to chs 60, 62 to 64 and 67 concerning NPDES and Iowa operation permits for wastewater.

ARC 2496C No questions on proposed amendments to ch 65 pertaining to animal feeding operations.

Committee business The minutes of the April 8, 2016, meeting were approved.

Mr. Ewing introduced Rep. Jones' request that rule drafter information be included in rule makings, and Rep. Jones further explained her request.

Mr. Ewing requested that the committee provide guidance on agencies' reports regarding the five-year review of rules required by Iowa Code section 17A.7(2). The committee asked that the subject be placed on the July agenda. Rep. Pettengill reminded the committee that the five-year review is intended for updates and corrective changes, not for substantive changes in policy.

The next meeting was scheduled for Tuesday, June 14, 2016, at 9 a.m.

Adjourned The meeting was adjourned at 12:30 p.m.

Respectfully submitted,

Stephanie A. Hoff

APPROVED:

Chair Wally Horn

Vice Chair Dawn Pettengill