

**MINUTES OF THE JUNE 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, June 14, 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, and Pam Jochum; Representatives Lisa Heddens, Megan Jones, and Guy Vander Linden were present. Senator Thomas Courtney and Representative Rick Olson were not present.

Also present: Jack Ewing and Tim Reilly, Legal Counsel; Stephanie A. Hoff, Administrative Code Editor; Larry Johnson, Legal Counsel, Office of the Governor; 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. In response to an inquiry from Sen. Chelgren regarding the fiscal impact of ARC 2541C, Mr. Broich stated that the expectation of future revenue or growth from the investments is not usually calculated in the fiscal analysis process and agreed to request additional information from the department.

HUMAN SERVICES DEPARTMENT Nancy Freudenberg; Patrick Schmitz, chair, mental health and disability services (MHDS) commission; Theresa Armstrong; Rick Shults; and Ryan Page represented the department. Other interested parties included Kelly Yeggy, the mental health advocate for Polk, Jasper and Marion Counties; Libby Reekers, the mental health advocate for Tama County; Doug Struyk on behalf of the Iowa Council of Health Care Centers; Leslie Stonehocker of Iowa Child Care Resource & Referral (Iowa CCR&R); and Amy Bruner and Amy Karaidos, co-chairs of the state child care advisory committee (SCCAC).

ARC 2438C Amendments to ch 25 pertain to mental health advocates. Following discussion of this rule making at the April meeting, the committee voted to impose a 70-day delay on 25.106, regarding data collection, and requested that the rule making be further reviewed at the June meeting, including an update on the department’s progress in addressing the committee’s concerns. The committee had questioned the purpose, cost and need for the type of data collection set forth in 25.106, in particular, commitment information. The remainder of ch 25, division X, became effective May 1, 2016.

Mr. Schmitz reported that since the April meeting, the department and the commission have met with stakeholders, including the Iowa State Association of Counties (ISAC), and will address in a new rule making the concerns regarding data collection raised by the committee and stakeholders. Ms. Armstrong stated that amendments to the rule will provide for aggregate data collection, reduced costs, and a revised reporting date of December 2017.

At the request of Rep. Pettengill, Ms. Armstrong provided an approximate time frame for the new rule making. To allow sufficient time for a new rule making, Rep. Pettengill discussed the imposition of a session delay, which, she noted, could be lifted by the committee when the new rule making has been adopted.

Motion to delay Rep. Pettengill moved a session delay on 25.106.

Motion carried On a voice vote of seven to zero, the motion carried.

Ms. Yeggy and Ms. Reekers, both members of the original rule-making work group, explained that accountability had been the purpose of data collection when mental advocates were employees of the court system and that the department should consult with advocates regarding what the work of advocates entails, including the types of data that may be collected. Ms. Yeggy requested that, in addition to ISAC’s participation, the department allow direct participation by mental health advocates in the stakeholder group. Ms. Reekers expressed appreciation for ISAC’s assistance to advocates and for the department’s work and added that there has been some positive progress.

Human Services Department (continued)

In response to an inquiry from Sen. Horn, Mr. Shults stated that the commission ensures public comment regarding all of its activities and that the department will ensure broad, inclusive discussions. Rep. Pettengill expressed appreciation to the department for its collaboration with stakeholders regarding data collection. She also requested that the department ensure the direct inclusion of the mental health advocates in the stakeholder group.

ARC 2550C

Proposed amendments to ch 25 pertain to the process for department approval of subacute mental health care facility licensing applications to the department of inspections and appeals (DIA), which is responsible for the licensing of subacute care facilities. Ms. Freudenberg explained that pursuant to Iowa Code chapter 135G, the department must approve a licensing application based on the established process, which must identify the most qualified providers and geographically distribute no more than 75 beds. Ms. Freudenberg also explained that subacute services are one of the additional core services to be provided by mental health and disability services (MHDS) regions when public funds become available and that some MHDS regions and providers are interested in developing subacute services provided in a subacute care facility.

Mr. Struyk expressed concern about whether facilities would be required to accept difficult or dangerous high-risk individuals and to have psychiatrists on staff at all times to administer medications on an as-needed basis and whether facilities would receive higher reimbursement for accepting high-risk individuals. In response, Mr. Shults explained that DIA is responsible for the licensing of the facilities and for setting the standards for service delivery at the facilities and indicated that the process is similar to the certificate of need process.

In response to related questions from committee members, Mr. Shults stated that reimbursement rates are established through Medicaid or, for non-Medicaid eligible individuals, through negotiation with the MHDS regions; in addition, he explained that a facility is ultimately responsible for safely serving high-risk individuals and would not admit an individual who requires a higher level of care than the facility could safely provide. Mr. Shults stated that no subacute care facilities are currently available in Iowa and that patients who require subacute care are placed in other facilities. Mr. Shults explained the application process, the qualifications of staff, department oversight and access standards, and the role of the regions in the development of networks of service delivery. In reference to 25.118(6), Mr. Shults explained the rationale for the 21-day comment period and the stipulation that qualifications for facilities could not be established outside the provisions of statute or rule.

Rep. Jones expressed appreciation to the department for its effort in promulgating these rules and requested that the department consider committee and stakeholder comments. Sen. Chelgren expressed the expectation that the department would inform the legislature and stakeholders if any Iowa citizens are not being served because there is not proper reimbursement for those citizens' services.

ARC 2554C

Proposed amendments to ch 109 pertain to child care centers.

Ms. Freudenberg stated that the amendments in this rule making and in ARC 2553C, ARC 2552C and ARC 2551C implement changes to the federal Child Care and Development Block Grant (CCDBG), which was reauthorized in November 2014. She explained that as a result of the changes to CCDBG, there are new federal laws outlining state requirements for child care providers that receive child care assistance dollars.

Specific to this rule making, Ms. Freudenberg summarized changes in federal and state requirements regarding health- and safety-related training for staff, emergency planning, fees, criteria for safe sleeping of infants, and confidentiality. In response to questions from Rep. Pettengill, Ms. Freudenberg stated that all training and providers of training must be approved by the department, and Ms. Page explained that the training will be required for new staff and phased in for existing staff and will be provided online at no cost in a 12-hour module that can be taken in separate sessions.

Human Services Department (continued)

Rep. Jones suggested that the language of 109.7(3) be changed to clarify that staff of summer-only programs are also required to complete the training; that in 109.7(1), automated external defibrillator (AED) training be added to first-aid and CPR training; that 109.12(5)“e”(3) be revised to clarify the language regarding items not designed for infant sleeping; and that the language in 109.12(5)“f” be revised to prohibit crib railings that move. Rep. Pettengill requested that the department provide information to the committee about whether the 12-hour training is required of staff in the statewide voluntary preschool program who work in facilities not licensed by the department as child care centers.

ARC 2553C
ARC 2552C

No questions on proposed ch 110, child development homes.
Proposed ch 120 pertains to child care homes. Ms. Freudenberg summarized the requirements for child care homes, for which registration with the department is not required. In response to questions from Rep. Pettengill, Ms. Page stated that training for child care home providers and workers is free. Ms. Page also explained that the rules do not exceed federal requirements but instead are a combination of existing state requirements, some of which have been reduced, and new federal requirements regarding health and safety. She stated that the department is not pressing child care homes to become registered. In response to a question from Sen. Costello, Ms. Page explained that child care home providers must meet minimum standards to qualify for federal CCDBG funds. In response to questions from Sen. Chelgren, Ms. Page also explained the requirements set forth in 120.8 for generally safe conditions in a child care home. Rep. Pettengill asked that enforcing the requirements for child care homes be balanced with maintaining sufficient numbers of child care providers. Sen. Chelgren expressed the hope that the new requirements will not cause providers to leave the system.

ARC 2551C

No questions on proposed amendments to 170.4 pertaining to child care assistance eligibility related to in-home care and nonregistered providers.
Ms. Stonehocker, Ms. Bruner and Ms. Karaidos commended the department for soliciting input from and listening to providers regarding the rules and for incorporating changes where possible. In addition, Ms. Karaidos expressed appreciation for free online training for providers and workers, and Ms. Stonehocker asked that the department focus on the needs of high-risk children and of rural communities.

CHIEF INFORMATION OFFICER, OFFICE OF THE Matt Behrens and Bob von Wolffradt represented OCIO.

ARC 2542C

No action on chs 1 to 6 concerning office organization, public records, petitions and procedures for rule making, declaratory orders, and contested cases.
Rep. Jones expressed concern regarding 2.10(2), complaints to public officials, specifically, that in a letter or e-mail from the subject of a confidential record to a public official, the subject may not intend that the subject’s confidential information be disclosed. In response, Mr. Behrens stated that OCIO will consult with the attorney general regarding the issue. Sen. Jochum expressed appreciation to OCIO for revising the rules regarding confidentiality of records in response to the committee’s concerns.

AGING, DEPARTMENT ON Brian Majeski represented the department.

ARC 2522C

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

HOMELAND SECURITY AND EMERGENCY MANAGEMENT DEPARTMENT John Benson represented the department. Other interested parties included Threase Harms on behalf of the Iowa Emergency Management Association.

ARC 2534C

No questions on proposed amendments to 7.4(4) concerning baseline and professional development training for local emergency management coordinators. Ms. Harms expressed support for the amendments and requested that, when classes are changed, the association be included in the class selection process.

REGENTS BOARD Joe Murphy and Paula De Angelo represented the board.

ARC 2540C Proposed amendments to 13.8 pertain to the delegation of contracting authority for Iowa State University. In response to an inquiry from Sen. Chelgren, Ms. De Angelo stated that the amendments will cause the rule governing the signing of contracts at Iowa State University to mirror that of the University of Iowa and that the amendments focus on changes in the titles of persons who may sign contracts for Iowa State University, not on the expansion of the number of persons who may sign contracts. Mr. Murphy agreed to inquire whether the University of Northern Iowa has in place or may consider a similar policy regarding the signing of contracts.

PROFESSIONAL LICENSURE DIVISION Sarah Reisetter represented the division.

ARC 2531C Proposed 327.8 pertains to specific minimum standards for appropriate supervision of a physician assistant by a physician. Ms. Reisetter explained that this Amended Notice of Intended Action was intended by the board of physician assistants to provide further opportunity for public comment and an additional public hearing and stated that public comment was received from several stakeholders. Ms. Reisetter explained that stakeholders in opposition to the Amended Notice expressed concern related to the negative impact of the rule on access to care, especially in rural Iowa, and related to the financial impact of the rule and that only the Iowa Medical Society expressed support for the Amended Notice. Ms. Reisetter summarized the amendments to the joint rule, which had been agreed to by the board of physician assistants and the board of medicine (see ARC 2532C herein).

Rep. Pettengill inquired about the consequences if the board of physician assistants does not adopt the jointly agreed-upon rule. Mr. Ewing stated that board of medicine rule 21.4 would be in effect, except for the provisions in 21.4(3) and 21.4(4), which allow amendment and waivers, because those provisions would require approval by both boards. Rep. Vander Linden expressed concern regarding the unwillingness of the board of physician assistants to adopt the joint rule and urged the board of physician assistants to do so.

MEDICINE BOARD Mark Bowden represented the board.

ARC 2532C No action on 21.4 pertaining to specific minimum standards for appropriate supervision of a physician assistant by a physician. Mr. Bowden summarized the joint rule-making process by the board of medicine and the board of physician assistants. He stated that the board of medicine does not anticipate that the rule will have any fiscal impact and opposes the waiver of the rule. Mr. Bowden noted that the subcommittees of each board agreed to the provisions of the joint rule, which mirror existing supervision rules, and to advocate for adoption. Mr. Bowden stated that the board of medicine finds itself advocating for supervision rules that mirror existing ones while the board of physician assistants appears to oppose its own rules. Mr. Bowden explained that 21.4 can become effective, except for the provisions in 21.4(3) and 21.4(4), which allow for amendment and waivers. He explained that the purpose of the caveat regarding the effective date of each of these subrules (i.e., the subrules become effective on June 15, 2016, or when the board of physician assistants adopts identical subrules, whichever is later) prevents the board of medicine from adopting rules that the board of medicine itself could not amend without approval by the board of physician assistants. In conclusion, he stated that the board of medicine is not interested in further discussion of these rules.

Rep. Pettengill commended Mr. Bowden for his patience during this process and for adoption of a final rule. In response to an inquiry from Rep. Pettengill, Mr. Bowden explained that whether or not the board of physician assistants adopts its joint rule, the board of medicine has adopted specific minimum standards for supervision. With this adoption, he stated the opinion that there are joint rules, which are under the control of each board. In response to an inquiry from Rep. Vander Linden, Mr. Ewing stated that if the board of physician assistants does not adopt the agreed-upon rule, the existing supervision rules of the board of physician assistants would be in effect as would the rule of the board of medicine, except for 21.4(3) and 21.4(4). In response to a request from Sen. Chelgren, Mr. Ewing will compare the existing board of physician assistant rules with the adopted board of medicine rule and report to the committee whether the boards' rules are in compliance with 2015 Iowa Acts, Senate File 505, section 113.

Medicine Board (continued)

- In addition, Sen. Chelgren requested that the attorney general also present an opinion should the results of the comparison be inconclusive. Sen. Chelgren stated that further study could possibly lead to the dissolution of the physician assistant board, to which Rep. Vander Linden had alluded earlier in the discussion.
- ARC 2524C No action on amendments to ch 9 regarding permanent physician licensure.
- ARC 2523C No action on amendments to chs 9 and 11 pertaining to administrative medicine licensure.
- ARC 2535C No questions on proposed amendments to 13.2(8) concerning recommended pain management resources.

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

- ARC 2538C No action on ch 6 pertaining to the safe at home program. In response to inquiries from Rep. Jones, Mr. Gookin stated that initial work on the program was promotional and that the administration of the program has been based on statute, and Ms. Olson explained the rationale for limiting disclosure of enrollment numbers and will provide the enrollment information to the committee.

VOTER REGISTRATION COMMISSION Carol Olson represented the commission.

- ARC 2548C A proposed amendment to 2.16 pertains to revision of the official Iowa voter registration application. Ms. Olson explained that the term “gender” on the current application will be changed to “sex” to reflect the term that appears on the department of transportation online voter registration form and the term set forth in Iowa Code section 48A.11(1)“g.” In response to a question from Sen. Chelgren, Ms. Olson explained that the term “sex” means “male” or “female.”
- ARC 2521C No action on amendments to 3.2 regarding the definition of “political purposes” related to requests for voter registration lists.

TRANSPORTATION DEPARTMENT Brooks Glasnapp and Mark Lowe represented the department.

- ARC 2543C No questions on proposed amendments to chs 117 and 118 pertaining to outdoor advertising and logo signing.
- ARC 2525C No action on amendments to 520.1(1) regarding the adoption by reference of federal motor carrier safety and hazardous materials regulations.
- ARC 2544C Proposed amendments to ch 602 pertain to classes of driver’s licenses. In response to an inquiry from Sen. Chelgren, Mr. Lowe stated that there is no statutory authority for an intermediate license for persons over 18 years of age and that the testing of knowledge and driving skills is the only mechanism to determine the readiness of persons in this age range. Rep. Pettengill expressed appreciation to the department for the addition of a multiple residence provision to the minor’s school license.
- ARC 2530C No action on amendments to ch 607 regarding commercial driver licensing.

REVENUE DEPARTMENT Ben Clough, Jane Severson and Jessica Braunschweig-Norris represented the department. Other interested parties included Kevin Condon on behalf of the Iowa Communications Alliance.

- ARC 2547C No questions on proposed amendments to 42.22, 52.21 and 58.11 concerning tax credits for investments in qualifying businesses and community-based seed capital funds.
- ARC 2546C No questions on proposed amendments to ch 86 regarding inheritance tax.
- ARC 2537C No questions on proposed amendments to 89.8(8)“g” related to fiduciary income tax, specifically, the deduction for administrative expenses not allowed on a federal tax return.
- ARC 2545C No action on amendments to ch 126 pertaining to the property assessment appeal board.
- ARC 2549C No action on 80.31 pertaining to the broadband infrastructure property tax exemption. Mr. Condon stated that the incentive in 2015 Iowa Acts, House File 655, has not materialized for rural communications providers and that providers are hesitant to include the incentive in their network expansion plans.

NATURAL RESOURCE COMMISSION Orrin Jones, Tamara McIntosh and Andrew Norton represented the commission.

ARC 2526C No action on amendments to 91.1, 91.3 and 91.6 regarding waterfowl and coot hunting seasons. In response to an inquiry from Sen. Chelgren, Mr. Jones explained the decision-making process by which the federal Fish and Wildlife Service and the department regulate the hunting of waterfowl. In response to a question from Sen. Horn, Ms. McIntosh stated that because waterfowl hunting season is governed by the federal Migratory Bird Treaty Act, a severe penalty, such as denial of federal funding, could be imposed if the state of its own volition extended the waterfowl hunting season.

ARC 2533C A proposed amendment to 106.6(6) pertains to antlerless-deer-only license quotas for 2016. In response to an inquiry from Sen. Chelgren, Mr. Norton addressed antlerless deer quotas as the mechanism by which the deer harvest is controlled, the fair-chase requirements, and the ethics of baiting deer. In response to an inquiry from Sen. Costello, Mr. Norton explained the basis for and the recovery from former levels of epizootic hemorrhagic disease (EHD) in the deer herd, the goals related to elimination of the January rifle season, and the involvement of the representatives from the department of transportation and the insurance industry in the deer study advisory group.

ENVIRONMENTAL PROTECTION COMMISSION Theresa Stiner represented the commission.

ARC 2539C Proposed amendments to 105.1 and 113.8(1)“b”(13) pertain to yard waste, specifically, disposal at landfills and separate collection by municipalities. In response to an inquiry from Rep. Jones, Ms. Stiner stated that one exemption from the 2014 legislation has been granted. Rep. Jones encouraged more timely promulgation of rules that implement legislation.

PUBLIC HEALTH DEPARTMENT Paul Watson and Carmily Stone represented the department.

Committee review of emergency rule making Mr. Watson explained that the board had previously adopted the 2015 edition of the Uniform Plumbing Code (UPC) but, in 25.5, had overlooked updates to additional references to the UPC and a reference to the most recent census date. In response to an inquiry from Rep. Jones, Ms. Stone accepted responsibility for overlooking the necessary updates.

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

Motion carried On a voice vote of eight to zero, the motion carried.

WORKERS’ COMPENSATION DIVISION Heather Palmer represented the division.

Committee review of emergency rule making Ms. Palmer explained that the division files an annual amendment to 8.8 to conform the rule to the federal update to the payroll tax tables effective July 1. Because the division must wait until the IRS and the Iowa department of revenue determine whether changes will be made in their publications as of July 1, an emergency filing is necessary to conform the rule to the statute by the July 1 deadline.

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

Motion carried On a voice vote of eight to zero, the motion carried.

Committee business The minutes of the May 10, 2016, meeting were approved.

The next meeting was scheduled for Tuesday, July 12, 2016, at 9 a.m.

Adjourned The meeting was adjourned at 12:24 p.m.

Respectfully submitted,

Stephanie A. Hoff

APPROVED:

Chair Wally Horn

Vice Chair Dawn Pettengill