

**MINUTES OF THE AUGUST 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, August 5, 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 Costello, Thomas Courtney, and Pam Jochum; Representatives Bruce Hunter, Megan Jones, and Guy Vander Linden were present. Senator Mark Chelgren and Representative Lisa Heddens were not 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. Sen. Horn announced that Rep. Bruce Hunter has joined the committee. Rep. Hunter will serve in place of Rep. Rick Olson on a temporary basis.
- Fiscal overview** Adam Broich presented the LSA fiscal report.
- HUMAN SERVICES DEPARTMENT** Nancy Freudenberg, Catherine Stack and Janee Harvey represented the department.
- ARC 2605C No action on 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 2604C No action on amendments to 119.1 and 119.2(1) pertaining 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. In response to questions from Sens. Jochum and Costello, Ms. Stack explained the record check evaluation process. In addition, she stated that the amount of time required for evaluation depends on the type of crime and other information recovered in the process and that the department keeps the applicant apprised of the progress of the evaluation. In response to an inquiry from Rep. Hunter, Ms. Freudenberg stated that the rule making is intended to clarify that a deferred judgment may appear on an applicant’s record. In response to an inquiry from Rep. Pettengill, Ms. Freudenberg explained that the record check evaluation affects a prospective nurse’s and nurse aide’s training and employment.
- ARC 2637C No action on amendments to ch 25 pertaining 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.
- ARC 2652C Proposed amendments to chs 105, 113, 114 and 202 concern supervision, provider liability, medical authorizations and releases, inspections and codes, and transition services related to children in foster care settings. In response to an inquiry from Rep. Pettengill, Ms. Harvey described an online visual tool related to the reasonable and prudent parent standard for use by foster parents and by designated officials for child care institutions. Ms. Harvey also discussed liability related to foster parents and biological parents. At the request of Rep. Pettengill, Ms. Harvey will provide the committee with a link to the online visual tool.
- ARC 2651C No questions on proposed amendments to 175.21, 175.22(2) and 175.24 pertaining to abuse of children related to trafficking.
- ARC 2646C No action on amendments to ch 109 pertaining to child care centers.
- ARC 2647C No action on ch 110, child development homes.
- ARC 2648C No action on ch 120, child care homes.
- ARC 2649C No action on amendments to 170.4 regarding child care assistance eligibility related to in-home care and nonregistered providers.

ECONOMIC DEVELOPMENT AUTHORITY Kristin Hanks-Bents and James Engle represented the authority.

ARC 2653C Proposed amendments to ch 39 pertain to the main street Iowa program. In response to an inquiry from Rep. Pettengill, Ms. Hanks-Bents agreed to research whether the changes in the National Main Street Center's program may necessitate changes to the Iowa Code. In response to a question from Sen. Horn, Mr. Engle stated that the authority encourages the development of financial incentives for communities to include sprinkler systems in program projects.

EDUCATION DEPARTMENT Phil Wise and Nicole Proesch represented the department.

ARC 2609C Proposed amendments to 17.3, 17.8(2), 17.10(1) and 17.12 pertain to open enrollment, specifically, eligibility for participation in athletic contests and competitions. Mr. Wise summarized the legislative history leading to an additional exception in Iowa Code section 282.14(11) and in 17.8(2), which is that the 90-school-day restriction on participation in athletic activity in the receiving district does not apply to a student who open enrolls from a resident district where the student was previously subject to a founded incident of harassment or bullying. Rep. Vander Linden stated that the rule follows the law. However, he expressed concern that despite the best intentions in allowing an open enrolled student who has been bullied or harassed to continue to participate in athletics in the receiving district, an unintended consequence of the law and rule will follow: students in the receiving district will know that the open enrolled student was formerly bullied or harassed and the student will be vulnerable to bullying or harassment in the receiving district. Sen. Courtney concurred with this concern. Rep. Vander Linden expressed the hope that the department and school districts, aware of this possibility, will provide support for these students. In response, Ms. Proesch explained that students enroll in different schools through open enrollment or by transfer for a variety of reasons that other students are not aware of and that school climate and safety, not only athletic eligibility, are a constant topic of conversation of the board and school districts statewide. In response to a question from Sen. Costello regarding Item 1, Ms. Proesch stated that the existing requirement from the open enrollment handbook that a parent submit a request for open enrollment to the resident district and to the receiving district is being incorporated in rule.

ARC 2608C Proposed amendments to 36.15(4) and 36.16 pertain to open enrollment related to extracurricular interscholastic competition. In response to a question from Sen. Horn, Mr. Wise clarified that open enrollment is from district to district, not within districts and not to nonpublic schools. Ms. Proesch added that transfers apply within districts or from nonpublic schools to public schools. In response to questions from Sens. Costello and Courtney, Ms. Proesch stated that the March 1 open enrollment date is statutory, explained exceptions to that deadline, and stated that a resident district and a receiving district may agree to waive the March 1 date.

ARC 2620C No action on ch 49, individual career and academic plan.

ARC 2606C No action on amendments to ch 77 pertaining to standards for teacher intern preparation programs.

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

ARC 2618C No action on amendments to 7.4(4) concerning baseline and professional development training for local emergency management coordinators.

INSPECTIONS AND APPEALS DEPARTMENT David Werning represented the department. Other interested parties included Doug Struyk on behalf of the Iowa Council of Health Care Centers (ICHCC).

ARC 2643C 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. Struyk explained that the requirements, as set forth in the adopted amendments to ch 57, for a certified medication aide (CMA) employed in a residential care facility are different from the requirements, as set forth in 58.21(6), for a CMA employed in a nursing facility and expressed concern about the effect of the differing requirements on nursing facilities.

Inspections and Appeals Department (continued)

In response, Mr. Werning explained that the certification of certified nurse aides (CNAs) can be verified and that the discrepancy between the requirements for CMAs employed in residential care facilities and in nursing facilities is under review by the department’s health facilities administrator. Sen. Jochum also expressed concern about the effect of the discrepancy in CMA requirements on nursing facilities. She suggested that time be provided for further review and that the rule making be reviewed again in September. Rep. Jones concurred.

Motion to delay

Rep. Jones moved a 70-day delay on ARC 2643C.

Motion carried

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

INSURANCE DIVISION Chance McElhaney, Rosanne Mead and Dennis Britson represented the division.

ARC 2664C

No questions on proposed amendments to ch 21 pertaining to requirements for surplus lines, risk retention groups and purchasing groups.

ARC 2665C

No questions on the proposed rescission of ch 23 and adoption of ch 104 in lieu thereof regarding motor vehicle service contracts.

ARC 2668C

Proposed amendments to 50.60, 50.70 and 50.90 concern the regulation of securities offerings and those who engage in the securities business. In response to an inquiry from Rep. Pettengill, Ms. Mead addressed oversight at the state and federal levels related to crowdfunding.

ARC 2666C

No questions on the proposed rescission of ch 54 and adoption of ch 103 in lieu thereof pertaining to residential service contracts.

ARC 2667C

Proposed amendments to 100.1, 100.15(1), 100.19 and 100.33(1)“f” concern sales of cemetery merchandise, funeral merchandise and funeral services. Mr. Britson explained master trust accounts and the availability of sales agent lists for verification at any time.

In response to an inquiry from Sen. Jochum, Mr. Britson stated that there have been no large-scale problems with master trusts. In response to an inquiry from Rep. Hunter related to reporting of master trusts, Mr. Britson stated that annual reports are required, including new transactions or changes in existing accounts, and that an electronic filing system has been instituted.

IOWA FINANCE AUTHORITY Mark Thompson represented the authority.

ARC 2659C

No questions on proposed amendments to 12.1 and 12.2 regarding low-income housing tax credits.

LABOR SERVICES DIVISION Kathleen Uehling represented the division.

ARC 2615C

No questions on proposed amendments to 4.3 related to the adoption by reference of federal occupational safety and health standards regarding record keeping and reporting.

ARC 2603C

No action on amendments to chs 71 and 72 concerning material lift elevators.

ARC 2607C

Adopted 71.11(2)“a,” 72.28 and 73.28 pertain to elevators in broadcast towers. In response to a question from Rep. Hunter, Ms. Uehling stated that “periodic,” as it is used in 71.11(2)“a”(3), means annually and explained that, depending on the type of equipment, “periodic” may also mean quarterly. She added that “periodic” is defined in separate regulations based on the type of equipment to which it refers.

LOTTERY AUTHORITY, IOWA Terry Rich represented the authority.

ARC 2660C

Proposed amendments to chs 12 and 18 to 20 pertain to “scratchless” instant tickets. In response to a question from Sen. Courtney, Mr. Rich stated that from lottery ticket sales, a \$2.5 million flat fee is paid annually to the veterans trust fund. In response to an inquiry from Sen. Jochum, Mr. Rich stated that the paper used for scratchless instant tickets is free based on the agreement with the vendor, whereas the latex-coated scratch tickets cost 1 cent to 2 cents each, and that sales of scratch tickets yield \$220 million per year.

MEDICINE BOARD Mark Bowden represented the board.

ARC 2610C

No questions on proposed amendments to 25.18(1) regarding the composition of a panel that hears disciplinary proceedings.

PHARMACY BOARD Sue Mears represented the board.

- ARC 2638C No questions on the termination of proposed amendments to 7.12(3) pertaining to authorization to dispense up to a 72-hour supply of prescription drugs to hospital emergency department patients.
- ARC 2639C No action on an amendment to 21.8(4) concerning the electronic transmission of a prescription. In response to a question from Sen. Horn, Ms. Mears stated that a care facility could refuse delivery of previously ordered medications for a patient who dies before the medications are delivered and that, based on the type of packaging, delivered medications could be returned to the pharmacy. In response to a question from Sen. Jochum, Ms. Mears stated that the Drug Enforcement Administration (DEA) requires pharmacies to meet strict standards related to electronic prescribing of controlled substances and that a pharmacy is legally allowed but not required to receive an electronically transmitted prescription and instead may require that a paper prescription be presented in person.
- ARC 2662C No questions on proposed ch 30, Iowa monitoring program for pharmacy professionals.

PUBLIC HEALTH DEPARTMENT Martha Gelhaus, Sherry Frizell, Tim Wickam, Maggie Ferguson and Carmily Stone represented the department. Other interested parties included Tom Brown of the advisory council on brain injuries, Steve Barjonah of Crossroads Tattoo, J.R. Wilson of Neon Dragon Tattoo and Piercing, Jacob Helm of True Vision Tattoos and Fine Arts, and Earl Ramey of Sacred Diamond Tattoos.

- ARC 2614C No action on amendments to 25.5 pertaining to an update of the census date and the Uniform Plumbing Code edition date.
- ARC 2634C Proposed ch 122 concerns the anatomical gift public awareness and transplantation fund. Ms. Frizell explained that the fund was established in 1996 and organ donation is initiated solely through the department of transportation (DOT) driver's license renewal process. She stated that information about the fund is distributed through the University of Iowa, the Mayo Clinic in Rochester, Minnesota, and the Iowa Donor Network. In response to a question from Rep. Pettengill, Ms. Frizell stated that skin can be added to the list of organs to be donated. Sen. Courtney encouraged the department to request that the DOT emphasize the program more prominently in driver's license renewal material.
- ARC 2628C No questions on proposed amendments to chs 131 and 132 regarding the adoption by reference of the scope of practice for Iowa EMS providers and the critical care paramedic curriculum.
- ARC 2655C No action on amendments to ch 21 regarding the central registry for brain and spinal cord injuries.
- ARC 2654C No action on amendments to ch 177 regarding collection of and access to health data. Ms. Gelhaus explained that the amendments allow the department to collect patient names in order to implement programs such as the brain and spinal cord injury registry. Reps. Pettengill, Hunter and Jones expressed concern about a patient's inability to opt out of collection of health data by the Iowa Hospital Association as explained by Mr. Wickam. Ms. Ferguson explained that the addition of a patient's name to the registry is diagnosis-based and that in response to an informational department letter, the patient may opt in to receive services or opt out to decline services. Mr. Brown explained that the department has managed data sets well and that the registry has provided necessary support to persons with brain injuries. Reps. Pettengill and Jones expressed the need for a patient's consent to the gathering and use of the patient's personal information.
- ARC 2656C No action on amendments to ch 22 pertaining to the practice of tattooing. Ms. Gelhaus summarized the changes from the Notice, based on public comment, which are related to requirements for guest tattoo artists; forms of identification for proof of age; glove types; and the definition of disinfectant.

Public Health Department (continued)

Mr. Barjonah, in expressing support for the rules, advocated for a safe, regulated environment within which to serve clients and stated that he would like to provide suggestions for future rule making. Mr. Wilson agreed that regulation for safety and sanitation is essential. Mr. Helm advocated for a program to provide felons, upon release from the correctional system, an avenue for gainful employment in the tattoo industry. Mr. Ramey advocated for the removal of the conviction of a felony from the rule and of the requirement for a high school diploma or its equivalent and suggested that a two-year apprenticeship program under the supervision of a licensed tattoo artist or comparable experience in another state be considered as qualifications for a tattoo permit. All commenters expressed the need for adequate regulation and stated the opinion that, in Iowa, body piercing, which is not currently regulated, should be regulated to the same degree as tattooing.

Rep. Pettengill pointed out that multiple licensing boards consider records of felonies and deferred judgments in licensing-related decisions and that the correctional system does offer a variety of apprenticeship programs. In response to an inquiry from Rep. Hunter, Ms. Stone stated that a record of a felony is considered but is not an automatic disqualification for a tattoo permit. In response to an inquiry from Rep. Pettengill, Ms. Stone explained that “shall” was changed to “may” in 22.16(2) in order to allow the department more flexibility in proceeding through the steps relating to enforcement. In response to a question from Sen. Horn, Ms. Stone stated that the board of medicine regulates the removal of tattoos. Rep. Pettengill and Sen. Courtney expressed appreciation for the public comment.

ARC 2621C No questions on proposed ch 107 in this Amended Notice concerning the board-certified behavior analyst and board-certified assistant behavior analyst (BCBA/BCaBA) grants program.

PUBLIC SAFETY DEPARTMENT Barb Edmondson represented the department.

ARC 2658C No questions on proposed amendments to ch 226 pertaining to public fueling of motor vehicles with liquid petroleum gas.

SECRETARY OF STATE Eric Gookin and Dawn Williams represented the secretary of state.

ARC 2663C No action on amendments to ch 21 regarding Intelligent Mail barcode (IMb) Tracing related to absentee voting.

VOLUNTEER SERVICE, IOWA COMMISSION ON Adam Lounsbury represented the commission.

ARC 2613C No questions on proposed ch 12, RefugeeRISE AmeriCorps program.

REVENUE DEPARTMENT Victoria Daniels represented the department. Other interested parties included Nicole Crain on behalf of the Iowa Association of Business and Industry (ABI).

ARC 2617C No questions on proposed 40.81 and 86.5(16) pertaining to the Iowa ABLE savings plan trust. Rep. Jones commended the state for leading the way among other states in establishing this trust and the department for the promulgation of the rules.

ARC 2632C No questions on proposed amendments to chs 42, 52 and 58 regarding tax credits for investments in qualifying businesses and community-based seed capital funds.

ARC 2616C No questions on proposed amendments to 46.3(3) regarding the verified summary of payments report and electronic filing of W-2 and 1099 forms related to withholding.

ARC 2619C Proposed amendments to 68.2(1) pertain to the excise tax rate on motor fuels. In response to a question from Rep. Pettengill, Ms. Daniels stated that regardless of the source of the information used as the basis for required reports, the formula in the statute, intended to calculate the differential according to the amount of ethanol consumption, creates the disparity in price between two types of fuel.

ARC 2633C No action on amendments to ch 86 regarding inheritance tax.

ARC 2657C No action on the rescission of chs 1 and 2 and 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 of the department.

ARC 2661C No action on amendments to 89.8(8)“g” related to fiduciary income tax, specifically, the deduction for administrative expenses not allowed on a federal tax return.

Revenue Department (continued)

ARC 2636C No questions on proposed amendments to chs 15, 18 and 230 pertaining to tax exemptions related to manufacturing.
Ms. Crain commended the rules, while noting two areas to be clarified, including whether in 230.15(4)“b,” Example B, the patterns and the components that develop the patterns are exempt from sales tax and, in 230.14(4), the meaning of “detailed records.”

TRANSPORTATION DEPARTMENT Brooks Glasnapp, Andy Lewis and Sara Siedsma represented the department.

ARC 2645C No action on amendments to chs 117 and 118 pertaining to outdoor advertising and logo signing.

ARC 2640C No questions on proposed amendments to chs 424, 430 and 451 regarding the authorized emergency vehicle certificate of designation and update of the office address.

ARC 2644C No action on amendments to ch 602 pertaining to classes of driver’s licenses.

ENVIRONMENTAL PROTECTION COMMISSION Ken Bouma and Leslie Goldsmith represented the commission. Other interested parties included Doug Struyk on behalf of the Iowa Drainage Ditch Association.

ARC 2629C Proposed amendments to chs 70 to 72 pertain to flood plains, including construction criteria for bridges, embankments and culverts; permit requirements; waivers and variances; and technical updates. Discussion pertained to Item 7, the exemption related to excavations for conservation practices. Mr. Bouma assured Sen. Jochum that the department would address the concerns of the Iowa Drainage Ditch Association, which, as Mr. Struyk explained in his comments, pertain to the disposition of spoilage. Rep. Jones encouraged the department to clarify the language in Item 7.

ARC 2630C Proposed amendments to chs 100, 101 and 111 pertain to solid waste management and disposal. In response to questions from Rep. Pettengill, Ms. Goldsmith named the stakeholders that vetted the rules, including the comprehensive solid waste planning areas and other solid waste-related groups, and explained the various configurations of planning areas.

NATURAL RESOURCE COMMISSION Todd Coffelt represented the commission.

ARC 2612C Proposed 61.7(2)“e” pertains to an alcoholic liquor, beer, and wine ban at beaches in Lake Macbride State Park and Pleasant Creek State Recreation Area. Mr. Coffelt stated that based on department citation records and incident reports, alcohol consumption on these beaches presents a legitimate safety risk to the public and to department personnel.

In response to a question from Sen. Jochum, Mr. Coffelt stated that alcohol is not currently banned in any other state park or recreation area. In response to an inquiry from Rep. Pettengill, Mr. Coffelt stated that the number of people visiting the Lake Macbride State Park beach may have increased because of alcohol bans in nearby county parks. In response to questions from Sen. Horn, Mr. Coffelt stated that control is a challenge and that local and county officers and the highway patrol have strengthened law enforcement. Mr. Coffelt added that alcohol infractions at these two sites far exceed those of any other park or recreation area. In response to an inquiry from Rep. Hunter, Mr. Coffelt explained the statistics underlying the decision and stated that the 6 p.m. closing time has been helpful. Sen. Horn expressed opposition to the amendment and stated the opinion, with which Rep. Hunter concurred, that more staff are needed.

FAIR BOARD Gary Slater represented the board. Other interested parties included Richard Rogers of the Iowa Firearms Coalition (IFC); Lars Pearson; Tim Lane; John Domini; and Amber Gustafson of Moms Demand Action.

Special Review Rep. Pettengill stated that in response to a request by a constituent who had pointed out a disparity between the statute and the rule, she requested a special review of 4.5, weapons, specifically, the prohibition of possession of handguns and other weapons at the state fair. She added that the review will serve to advise the public of the rule regarding weapons before the start of the state fair.

Fair Board (continued)

Mr. Slater explained that the rule has been in place since 1980 and was reviewed in 2012. In response to a later question from Sen. Horn, Mr. Slater explained that a person with a permit to carry who is found in possession of a firearm on the fairgrounds would be escorted from the fairgrounds and not charged and that state laws would apply when a person without a permit is found in possession of a weapon at the fair.

Mr. Rogers distributed and read a written statement in which he explained that the IFC questions the statutory authority of the fair board to attempt such a prohibition and the assumption that the rule increases public safety. He requested that the fair board grant permission for those who possess a permit to carry weapons to do so at the fair and stated that IFC would seek a more permanent solution through the legislative process.

Mr. Pearson, Mr. Lane, Mr. Domini and Ms. Gustafson expressed opposition to any change to the rule, explaining that the presence of guns on the fairgrounds would make the state fair less safe.

Rep. Hunter expressed doubt that public safety could be maintained, citing the large numbers of people who attend the state fair and the presence of alcohol. Rep. Pettengill summarized the review by stating that the committee cannot change the rule, that the rule will be in place for the state fair, and that the discrepancy between the statute and the rule would more appropriately require legislative action.

Committee business

The minutes of the July 12, 2016, meeting were approved. Ms. Hoff explained LSA’s new process for distributing the meeting minutes to the committee.

The next meeting was scheduled for Tuesday, September 13, 2016, at 9 a.m.

Following up on discussion at the July meeting at which he had explained the time frame and requirements for the agencies’ comprehensive reviews and summaries of their rules, to be provided to the administrative rules coordinator and to the committee, Mr. Ewing provided a suggested format for the review and summary, which the committee then approved for distribution to executive branch agencies.

Mr. Ewing discussed 2016 Iowa Acts, House File 2449, pertaining to time frames for promulgation of rules following the passage of legislation. The committee approved Mr. Ewing’s proposal to prepare written guidance related to House File 2449 for distribution to executive branch agencies.

Adjourned

The meeting was adjourned at 2:10 p.m.

Respectfully submitted,

Stephanie A. Hoff

APPROVED:

Chair Wally Horn

Vice Chair Dawn Pettengill