

**MINUTES OF THE NOVEMBER 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 Monday, November 14, 2016, in Room 22, 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, Rick Olson, and Guy Vander Linden were present. Senator Thomas Courtney was 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.
- Fiscal overview** Christin Mechler presented the LSA fiscal report. Also representing the LSA fiscal services division was fiscal analyst Kent Ohms.
Rep. Pettengill requested that, in the rule summary of the fiscal impact statement for ARC 2771C, the Affordable Care Act (ACA) be changed to the Accountable Government Act (AGA). In response to a question from Sen. Costello, Mr. Ohms stated that the federal geothermal tax credit expired and that a new state tax credit enacted in 2016 will replace the federal tax credit.

HUMAN SERVICES DEPARTMENT Nancy Freudenberg represented the department.

Committee review of emergency rule making Ms. Freudenberg presented to the committee a rule making that is permitted to be filed emergency after committee review pursuant to 2016 Iowa Acts, House File 2460, section 27. Ms. Freudenberg explained that the rule making will increase the home health low utilization payment adjustment (LUPA) rates by 2.93 percent. There were no questions concerning the rule making.

Committee review of emergency rule making Ms. Freudenberg presented to the committee a rule making that is permitted to be filed emergency after committee review pursuant to 2016 Iowa Acts, House File 2460, section 27. Ms. Freudenberg explained that the rule making brings the rules into compliance with 2015 Iowa Acts, chapter 137, section 149(1)(g), as amended by 2016 Iowa Acts, House File 2460, section 7. The legislation requires the department to increase the contractual managed care rate floors and the fee-for-service rates and payment limits by 1 percent for providers of home- and community-based service (HCBS) waiver services; to increase the annual respite limit for the intellectual disability (ID) waiver; and to correct the annual limit for specialized medical equipment. There were no questions concerning the rule making.

- ARC 2742C No action on amendments to 175.21, 175.22(2) and 175.24 pertaining to abuse of children related to trafficking.
- ARC 2743C No action on amendments to chs 105, 113, 114 and 202 concerning supervision, provider liability, medical authorizations and releases, inspections and codes, and transition services related to children in foster care settings.
- ARC 2770C No questions on a proposed amendment to 11.5(1)“a”(3) pertaining to the time frame for referral of delinquent claims related to the supplemental nutrition assistance program (SNAP).
- ARC 2771C No questions on the proposed rescission of existing chs 150 and 152, the adoption of new ch 152, and amendments to chs 156, 172 and 202 regarding purchase of service, foster care contracting, and foster care rates and payments.
- ARC 2775C No questions on proposed amendments to ch 36 regarding fee assessments by intermediate care facilities for persons with an intellectual disability.
- ARC 2784C Proposed amendments to ch 86 pertain to covered services and poverty limit adjustments related to the HAWK-I program. In response to an inquiry from Sen. Chelgren, Ms. Freudenberg agreed to provide information regarding the specific occupational therapy and physical therapy services provided for children under the program.

Human Services Department (continued)

In response to a question from Rep. Jones, Ms. Freudenberg explained that, while occupational therapy services have been provided under the program’s rules, the rules regarding these services had been inadvertently removed and are being readopted. In addition, Ms. Freudenberg confirmed that chiropractic services are provided under the program.

ADMINISTRATIVE SERVICES DEPARTMENT Tami Wiencek and Karin Gregor represented the department.

ARC 2789C Proposed amendments to 64.10(2) pertain to out-of-state travel by state employees. Rep. Olson asserted, and Rep. Pettengill concurred, that the authority to authorize travel outside of the state, as expressed in 64.10(2)“d” in the phrase “authorized by the proper authority,” should be changed to “authorized by the departmental head of the agency” to ensure clarity to the public. Sen. Chelgren asked that the language of a related rule mentioned by the department be reviewed to ensure that the language of the rule conforms to that in 64.10(2). Sen. Chelgren also requested that the department provide the committee with an update on the ongoing review of the department’s rules.

ARC 2790C No questions on proposed amendments to 41.1(1) pertaining to forms and approval of claims. Rep. Jones expressed appreciation to the department for the omission of social security numbers from claim forms to safeguard confidentiality.

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

ARC 2782C No action on chs 20 and 21 pertaining to targeted service areas and project certification of broadband infrastructure.

In response to an inquiry from Rep. Pettengill, Mr. Behrens will provide, from a legal perspective, an explanation of the difference between “offers” and “facilitates” as these terms are used in the definition of “date of completion” in 20.1. He also agreed to meet with Rep. Pettengill to discuss the accuracy of the Iowa broadband targeted service areas for Benton County and Iowa County. Rep. Jones cautioned that when legislation is not funded, agencies should not, as a result, delay the promulgation of rules that implement the legislation.

REVENUE DEPARTMENT JJ Severson, Matt Bishop and Ben Clough represented the department. Other interested parties included Paula Dierenfeld on behalf of the Iowa Geothermal Association.

ARC 2786C No action on amendments to 80.31 concerning the property tax exemption for broadband infrastructure.

ARC 2768C No action on amendments to chs 15, 18 and 230 pertaining to tax exemptions related to manufacturing. Mr. Bishop summarized the changes from the Notice, which were based on public comment and focused primarily on exemptions and record keeping.

In response to a question from Sen. Chelgren, Mr. Bishop stated that the words “directly and primarily” from the statute are relied upon to determine the percentage of usage that allows for a tax write-off when, for example, a machine is used primarily for production.

ARC 2772C No action on amendments to 42.28 and 52.27 regarding tax credits for purchasers and producers of renewable energy.

ARC 2776C Proposed amendments to 42.47 pertain to geothermal tax credits. In response to a question from Rep. Pettengill, Mr. Clough stated that the department had received comments in support of the amendments from the Iowa Geothermal Association. In response to a question from Sen. Chelgren, Mr. Clough stated that any credit in excess of the taxpayer’s tax liability is nonrefundable.

Ms. Dierenfeld expressed appreciation for the prompt action by the department to promulgate rules implementing the legislation.

BANKING DIVISION Rodney Reed and Zak Hingst represented the division.

ARC 2773C No questions on proposed ch 25, appraisal management companies.

INSURANCE DIVISION Dennis Britson and Chance McElhaney represented the division. Other interested parties included Paula Dierenfeld on behalf of the Federation of Iowa Insurers.

ARC 2787C Proposed amendments to ch 50 pertain to business continuity and succession plans related to the regulation of securities offerings and to those who engage in the securities business. In response to a question from Rep. Pettengill, Mr. Britson stated that a January 25, 2017, effective date and a July 1, 2017, compliance date for investment advisors will allow sufficient flexibility for the advisors' compliance with the Securities and Exchange Commission (SEC) rules should the SEC rules become effective within that time frame. At the request of Rep. Pettengill, Mr. Britson will provide the number of financial advisors who, based on the amount of assets under the advisors' management, would be affected by the amendments, and he will provide the amount of assets under management statewide. Rep. Pettengill expressed appreciation to the division for its work on the rules.

ARC 2788C Proposed 90.4(4) pertains to when an annual privacy notice to customers is required. In response to a question from Rep. Pettengill, Mr. McElhaney will provide clarification regarding public versus nonpublic personal information referred to in 90.4(4).

Ms. Dierenfeld stated that the National Association of Insurance Commissioners (NAIC) developed the same privacy form and that the Iowa insurance commissioner is appropriately putting policy in place through rule making rather than through a division bulletin, which, according to Ms. Dierenfeld, would be unenforceable under state law.

PROFESSIONAL LICENSING AND REGULATION BUREAU Lori SchraderBachar represented the bureau.

ARC 2754C No action on amendments to chs 1, 3, 5, 7 to 10 and 13 pertaining to bureau organization and operation, vendor appeals, waivers, contested cases, license denial, suspension or revocation, rule making, declaratory orders, and public records. In response to an inquiry from Sen. Chelgren, Ms. SchraderBachar stated that the newsletter has been prepared in-house and distributed electronically without advertising since 2013. Sen. Chelgren commended the elimination of advertising from the newsletter and advised that because advertising might be interpreted as a tacit endorsement by the state, no state-related newsletter should contain advertising.

ECONOMIC DEVELOPMENT AUTHORITY Kristin Hanks-Bents, Jim Engle and Jennifer Klein represented the authority.

ARC 2748C No action on amendments to ch 39 pertaining to the main street Iowa program. In response to an inquiry from Sen. Chelgren, Mr. Engle stated that while the authority might be open to allowing an exemption from the required application workshop, the authority recommends that a large contingency from a community attend the workshop to learn about the program. Ms. Hanks-Bents added that the authority's waiver rules are set forth in ch 199. In response to a question from Sen. Horn, Mr. Engle stated that the staff design consultants endorse sprinkler systems and that grant programs for sprinkler systems are available.

ARC 2774C No questions on proposed ch 48, historic preservation and cultural and entertainment district tax credits.

EDUCATION DEPARTMENT Phil Wise, Nicole Proesch, Amy Williamson, Larry Bice and Kelley Rice represented the department. Other interested parties included Katie Greiving on behalf of Decoding Dyslexia Iowa.

ARC 2746C No action on amendments to 17.3, 17.8(2), 17.10(1) and 17.12 pertaining to open enrollment, specifically, eligibility for participation in athletic contests and competitions. In response to a question from Sen. Chelgren, Mr. Wise stated that these amendments are not related to the required five-year review of the department's rules.

ARC 2747C No action on amendments to 36.15(4) and 36.16 concerning open enrollment related to extracurricular interscholastic competition.

Education Department (continued)

- ARC 2749C No action on ch 49, individual career and academic plan. In response to an inquiry from Rep. Pettengill, Mr. Wise stated that the plan is being implemented statewide during the current school year. Ms. Williamson explained the three-tiered accountability system by which school districts' compliance will be assessed and added that the accountability system models that of the accountability systems for all K-12 education programs.
- ARC 2760C No questions on proposed amendments to 15.11 pertaining to waivers related to Iowa learning online (ILO) coursework.
- ARC 2761C Proposed amendments to ch 79 pertain to standards for practitioner and administrator preparation programs. Ms. Proesch stated that public comment focused on requests for the inclusion in the rules of requirements related to dyslexia and that this topic is more appropriately included in guidance related to curricular requirements rather than in rules regarding the accreditation of teacher preparation programs.
- Ms. Greiving asserted that the rules in ch 79 need to address dyslexia, specifically, structured literacy, which, according to Ms. Greiving, benefits all students. Ms. Greiving cited the results of one reading proficiency assessment of Iowa fourth graders, asserted that reading instruction needs to be addressed by institutions of higher education and stated that some other states have incorporated dyslexia instruction in statute.
- Discussion pertained to Ms. Greiving's public comments. In response to an inquiry from Rep. Pettengill, Mr. Wise explained that the scope of the rule making is limited to and the amendments reflect the requirements of 2016 Iowa Acts, Senate File 2196. Mr. Bice further explained that ch 79 relates to standards and program requirements for teacher preparation programs, not to curricular requirements. Mr. Bice added that the requirements for reading endorsements are found in the rules of the board of educational examiners and that training regarding dyslexia is being made available to teacher preparation programs through the Iowa reading research center. In response to an inquiry from Rep. Vander Linden regarding the reading proficiency of Iowa fourth graders, Mr. Wise assured the committee that the improvement in proficiency in reading is a top priority of the department. Rep. Vander Linden stated that he would support legislation regarding adequate reading instruction. Ms. Proesch agreed to meet with Rep. Jones to discuss administrative rules versus policy guidance.
- ARC 2762C No questions on proposed amendments to ch 62 regarding state standards for progression in reading.
- ARC 2763C Proposed amendments to ch 56 pertain to Iowa vocational rehabilitation services. In response to an inquiry from Rep. Pettengill, Ms. Rice agreed that the phrase "one-stop center," which is referred to in the definition of "applicant," should be changed to "local workforce development office" or defined separately.

STATE PUBLIC DEFENDER Kurt Swaim represented the state public defender.

- ARC 2783C No action on amendments to 12.2(1) pertaining to the submission of attorney fee claims through an online system.

IOWA PUBLIC INFORMATION BOARD Charlie Smithson represented the board.

- ARC 2758C Proposed amendments to ch 2 pertain to administrative resolutions to complaints. In response to a question from Sen. Chelgren, Mr. Smithson explained that an administrative resolution is similar to the current informal or mediation process but will allow for an expedited resolution. In response to an inquiry from Rep. Pettengill, Mr. Smithson stated that an administrative resolution will allow the board to resolve a matter earlier in the process and that the resolution would be posted on the board's meeting agenda and Web site.
- ARC 2759C No questions on a proposed amendment to 2.1(1) and proposed ch 10 regarding injunction request procedures related to complaints.

ENVIRONMENTAL PROTECTION COMMISSION Leslie Goldsmith, Matt Dvorak, Connie Dou and Ken Bouma represented the commission.

- ARC 2756C No action on amendments to chs 100, 101 and 111 pertaining to solid waste management and disposal.

Environmental Protection Commission (continued)

ARC 2757C Proposed amendments to 61.3 regard water quality criteria for copper. Mr. Dvorak stated that the proposed amendments allow for the use of the biotic ligand model (BLM) or the water-effect ratio (WER) to determine the criteria for copper for wastewater discharges to surface waters. He explained that the amendments provide alternatives to the current criteria for copper in Iowa's water quality standard but will not replace the current standard. Instead, the amendments are protective of water quality while allowing facilities the flexibility to use BLM or WER to generate copper criteria that reflect site-specific water chemistry characteristics.

In response to questions from Rep. Pettengill, Ms. Dou stated that some of the facilities unable to comply with the current criteria for copper would have been represented by the facilities' consulting engineers at stakeholder and technical advisory committee meetings held prior to publication of the Notice. Mr. Dvorak stated that 7 to 10 of the 21 or 22 facilities unable to comply with the current criteria for copper would likely be able to comply with the proposed BLM- or WER-based criteria for copper. Ms. Dou further explained that facilities in compliance with the current criteria for copper are not required to comply with the new BLM- or WER-based criteria for copper and that facilities not in compliance with the current criteria for copper will have the flexibility to use the BLM or the WER to generate criteria for copper that are site-specific.

In response to questions from Sen. Chelgren, Ms. Dou explained that the state of Oregon is rescinding the current criteria for copper and proposing to adopt the new criteria for copper statewide, based on default water chemistry criteria, but that in Iowa, the current criteria for copper, as proposed, will continue to apply to facilities already in compliance and the proposed BLM or WER will be options for facilities not in compliance. Discussing the chemistry of Iowa waters, Ms. Dou explained why the new criteria for copper will be less stringent but not less protective than the current criteria for copper. In addition, Ms. Dou explained why aquatic life is more susceptible to the toxicity of copper than human beings are.

Sen. Chelgren requested that the department inform the committee if the proposed criteria for copper deviate statistically and substantively from the current criteria.

ARC 2764C No action on amendments to chs 70 to 72 that pertain to flood plains, including construction criteria for bridges, embankments and culverts; permit requirements; waivers and variances; and technical updates.

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

ARC 2741C No action on amendments to 10.3 and 10.9(3) that relate to Enhanced 911 telephone systems.

PUBLIC HEALTH DEPARTMENT Susan Dixon represented the department.

ARC 2765C No action on ch 107, board-certified behavior analyst and board-certified assistant behavior analyst (BCBA/BCaBA) grants program.

ARC 2766C No action on ch 122, anatomical gift public awareness and transplantation fund.

ARC 2767C No action on 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.

PROFESSIONAL LICENSURE DIVISION Judy Manning represented the division.

ARC 2744C No action on amendments to 361.1 to 361.4 and 362.2 regarding licensure and continuing education of sign language interpreters and transliterators.

ARC 2778C No action on amendments to chs 131 and 133 pertaining to licensure and continuing education of massage therapists.

TRANSPORTATION DEPARTMENT Shawn Majors, Diane Mccauley, Timothy Allen and Tracy George represented the department.

ARC 2745C No action on ch 162, surface transportation block grant program.

ARC 2751C No questions on proposed amendments to ch 821 regarding the highway-railroad grade crossing surface repair fund.

ARC 2755C No action on amendments to chs 424, 430 and 451 pertaining to the authorized emergency vehicle certificate of designation and an update of the office address.

Transportation Department (continued)

ARC 2779C No questions on proposed amendments to chs 1, 10 to 12, 112, and 115 regarding department organization and an update of division names.

ARC 2780C Proposed amendments to 400.58(1), 410.1(3) and 410.2 pertain to the maximum speed of a motorized bicycle and an update of cross references and office name. In response to a question from Sen. Horn, Mr. Allen explained that this type of bicycle is termed “motorized” even though the bicycle is propelled by an engine rather than by a motor.

TREASURER OF STATE Adam Phillips and Karen Austin represented the treasurer of state.

ARC 2791C No questions on proposed amendments to ch 16 pertaining to the Iowa educational savings plan trust.

Committee business The minutes of the October 11, 2016, meeting were approved.
The next meeting was scheduled for Tuesday, December 13, 2016, at 9 a.m.
Mr. Ewing reported that an analysis of rule makings that promulgate rules based on 2016 legislation will soon be completed and will be made available to the committee in December.

Adjourned The meeting was adjourned at 12:05 p.m.

Respectfully submitted,

Stephanie A. Hoff

APPROVED:

Chair Wally Horn

Vice Chair Dawn Pettengill