

**MINUTES OF THE APRIL 2017 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, April 7, 2017, in Room 116, State Capitol, Des Moines, Iowa.
- Members present: Representative Dawn Pettengill, Chair, and Senator Mark Chelgren, Vice Chair; Senators Mark Costello, Wally Horn, Pam Jochum, and Jack Whitver; Representatives Megan Jones, Rick Olson, Art Staed, 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; Joe Royce, former committee legal counsel; fiscal staff; caucus staff; and other interested parties.
- Convened Rep. Pettengill convened the meeting at 9:15 a.m.
- Fiscal overview** Christin Mechler presented the LSA fiscal report.

HUMAN SERVICES DEPARTMENT Nancy Freudenberg and Ryan Page represented the department.

ARC 2971C Proposed amendments to 22.1, 24.23 and 24.24 pertain to autism support program eligibility and to crisis response service provider accreditation standards for organizational activities and staff. In response to a question from Rep. Pettengill, Ms. Freudenberg explained that the changes in the definition of “eligible individual” in 22.1 were inadvertently omitted from previously adopted amendments to ch 22, which had implemented changes made in Iowa Code chapter 225D in 2016.

ARC 2972C Proposed amendments to ch 7 regard appeals and hearings. In response to questions from Rep. Jones, Ms. Freudenberg explained that the established policy regarding department failure to appear for an appeal hearing is being incorporated into the rules; how the department process for requesting repayment of overpayment of benefits is conducted; and that protected health information is determined by the Health Insurance Portability and Accountability Act (HIPAA). In response to an inquiry from Rep. Staed regarding the availability of information about the appeal process for individuals and providers, Ms. Freudenberg stated that at the time of enrollment with Medicaid or with a managed care organization (MCO), members receive a handbook that explains the process; that a notice of decision is sent when an appeal is denied; and that an explanation about appeals appears on the department’s Web site. In response to a question from Sen. Jochum, Ms. Freudenberg stated that under department management, providers could appeal a decision related to payment of a claim without the member’s consent and could appeal payment of claims, whereas currently under federal regulations, an MCO must have the member’s consent to appeal and cannot appeal payment of claims.

In response to committee members’ requests, Ms. Freudenberg will provide information regarding how often overpayment occurs; a link located on the department’s Web site that offers a comparison between the department’s and the three MCOs’ appeal processes; and links to the online handbooks for each of the three MCOs.

ARC 2973C Proposed amendments to ch 170 pertain to the fee schedule for child care assistance and to job searches for new applicants.

In response to questions from Rep. Pettengill, Ms. Page explained that because the federal rule requires 90 days for job search not only for a temporary lapse in need but also for new applicants, the job search time frame was changed from 30 days to 90 days and that no federal moneys were requested and no moneys accompanied the change. Ms. Page will provide the committee information about whether any resources were reallocated because of this change.

ARC 2997C No questions on proposed 109.10(10), 110.8(1)“s” and 120.8(1)“p” regarding the reporting of serious injuries in child care settings.

ARC 2998C No questions on proposed amendments to chs 109, 110 and 120 concerning child care and development block grant (CCDBG) reauthorization and first-aid/CPR training in child care settings.

Human Services Department (continued)

- ARC 3001C Proposed amendments to 75.1(39)“b”(3) pertain to premiums for applicants and recipients under the Medicaid for employed people with disabilities (MEPD) program.
At the request of Sen. Jochum, Ms. Freudenberg will provide the dollar amount of income that is equivalent to 1740 percent of the federal poverty level as shown in the table in 75.1(39)“b”(3).
- ARC 3005C No action on amendments to 78.9 pertaining to home health services and medical social services.
- ARC 3006C No action on 79.7, medical assistance advisory council.
- ARC 3007C No action on ch 106, certification standards for children’s residential facilities.

AGING, DEPARTMENT ON Brian Majeski represented the department.

- ARC 2967C No questions on a proposed amendment to 7.21(2)“a” regarding the eligibility assessment for home-delivered meals.
- ARC 2968C Proposed amendments to ch 15 pertain to mandatory reporter training.
In response to an inquiry from Rep. Staed, Mr. Majeski stated that the department had not received any comments from individuals or entities regarding difficulties or delays in receiving mandatory reporter training.
- ARC 2976C No action on ch 21, the service of case management.
- ARC 2977C No action on the rescission of ch 29, reduction of area agencies on aging.

BEEF INDUSTRY COUNCIL, IOWA Chris Freland represented the council.

- ARC 2999C No questions on proposed amendments to chs 1 to 5 pertaining to reinstatement of the state assessment, change in agency name and address, organization and operation, and public records and fair information practices.

BANKING DIVISION Zak Hingst and Rodney Reed represented the division.

- ARC 2991C No questions on proposed amendments to ch 19 regarding mortgage loan originators.
- ARC 2992C No questions on proposed ch 17, delayed deposit services.
- ARC 2993C No questions on proposed amendments to ch 18 pertaining to mortgage bankers, mortgage brokers, and real estate closing agents.
- ARC 2994C Proposed chs 15 and 16 pertain to regulated loans and industrial loans. In response to questions from Sen. Chelgren, Mr. Reed explained the parameters of regulated loan amounts, Iowa licensure of lenders with a presence outside Iowa, prepayment of a loan, and how the maximum annual percentage rate (APR) is determined.

REAL ESTATE APPRAISER EXAMINING BOARD Rodney Reed represented the board.

- ARC 2966C No questions on proposed amendments to 1.21, 4.1(3), 5.7(5) and 6.7 pertaining to the release of results and the time frame for submittal of criminal history checks related to application for licensure.

UTILITIES DIVISION Mary Whitman represented the division.

- ARC 3010C No action on amendments to ch 25 pertaining to the electrical safety code.
In response to a question from Rep. Pettengill, Ms. Whitman stated that all utilities subject to the National Electrical Safety Code (NESC) own copies of the NESC and that though the NESC cannot be placed online by the division because of licensing restrictions, a copy of the 2017 edition of the NESC will be available in the state law library. In response to a request from Sen. Chelgren, Ms. Whitman will check with engineers regarding the chosen colors of guy markers in 25.2(2)“d” and whether the guy markers might be subject to fading over time.

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

- ARC 2980C No action on chs 214 and 215 regarding the enhance Iowa board and the sports tourism program.
- ARC 2995C No questions on proposed amendments to chs 5, 7 to 9, 20 and 58 pertaining to career and technical skill assessment services and testing.

Economic Development Authority (continued)

ARC 2996C Proposed amendments to 59.15(3) and 68.4 pertain to enterprise zone agreements and to new investments. In response to a question from Sen. Chelgren, Ms. Klein stated that there still exists a requirement that a new investment be related to jobs created or retained by the project but that the revised language regarding the requirement mirrors a revision in the language of the Iowa Code.

ARC 3004C No action on ch 81 pertaining to the renewable chemical production tax credit program.

CHILD ADVOCACY BOARD Jim Hennessey represented the board.

ARC 2974C No questions on proposed ch 1, purpose and function.

ARC 2975C No questions on proposed ch 2, rules and operation for the state board.

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

ARC 2964C No questions on proposed 1.3 to 1.5 pertaining to agencies responsible for implementation of disaster-related assistance.

PUBLIC HEALTH DEPARTMENT Susan Dixon, Carmily Stone, Ken Young, and Melissa Bird represented the department. Other interested parties included Brad Epperly of Nyemaster Goode on behalf of the Iowa Newspaper Association.

ARC 2969C Proposed amendments to 70.2 to 70.7 and 70.10(1) pertain to lead-based paint activities.

In response to questions from Rep. Pettengill, Ms. Stone stated that the initiation of a three-year license cycle and incorporation of a new database for online license application are intended to decrease administration and increase efficiency across the programs. Mr. Young stated that in Iowa, there are approximately 3,500 certified lead professionals and 2,000 lead abatement firms, and he clarified that the rules for licensure apply to certified professionals who work on pre-1978 residential housing. Rep. Jones commended the department for the removal of social security numbers from lead professional training program rosters and for the elimination of the use of reports for tracking purposes. In addition, Mr. Young confirmed that the application for certification by lead abatement firms is Web-based.

ARC 2970C No questions on a proposed amendment to 107.7(1) regarding the length of a contract related to the board-certified behavior analyst and board-certified assistant behavior analyst (BCBA/BCaBA) grants program.

Special Review At the February 20, 2017, meeting, the committee voted to impose a 70-day delay on ARC 2933C pending passage of legislation in the Senate to address county recorders' concerns regarding the amendments to ch 95, specifically, the integrity of vital records at the county level and fraud and identity theft. The committee requested that ARC 2933C be reviewed at the April meeting.

Discussion pertained to committee members' concerns about the confidentiality and dissemination of vital records and to general public access of vital records pursuant to Iowa Code chapter 22.

Ms. Bird explained the process under current rules by which vital records may be accessed and inspected by the public and stated that the dissemination of vital records is restricted. The adopted amendments to ch 95, she continued, comply with Iowa Code chapter 144, which governs the statewide system of vital statistics, and with Iowa Code chapter 22, which allows public access to and the right to inspect all vital records in the custody of a county recorder and which specifically prohibits restriction on the dissemination of a public record in any manner a person deems appropriate. Under the adopted amendments, county recorders could respond to a request for a vital record using a variety of means, and the recipient of a vital record could then disseminate that information in a manner the recipient chooses, e.g., in lists.

Rep. Pettengill thanked Ms. Bird for her work on the legislation pending in the Senate and requested that Ms. Bird explain its intent. Ms. Bird stated that the legislation pending in the Senate proposes to remove the language requiring that vital records be inspected as a right under Iowa Code chapter 22 and instead to insert language requiring that the records may be inspected as authorized by the state registrar.

Public Health Department (continued)

Ms. Bird explained that as a result of the legislation, the state registrar would be provided the authority to write rules to govern vital records that are in the physical custody of county recorders. Ms. Bird explained that the legislation would allow the department to write rules more restrictive than allowed under Iowa Code chapter 22 and that, if the legislation passes, the department would work with stakeholders to write appropriate rules governing vital records in the custody of county recorders to protect the right of individuals to access their vital records, i.e., records of birth, marriage, death and fetal death, and to allow appropriate access to the public, e.g., newspapers and genealogists.

Ms. Bird stated the department's position, which is that the existing rules need to be enforced because the department cannot currently operate outside Iowa Code chapter 22 and that the purpose of the adopted amendments is to allow one system of registration for vital records and, unless the legislation passes, not to restrict the publication of vital records.

In response to questions from committee members during the course of discussion, Ms. Bird discussed the processes related to requests for vital records, the types and treatment of vital records as public records or confidential records, issues related to certified and uncertified copies of vital records, and the dissemination of vital records.

Mr. Epperly expressed opposition to the removal of the right to public access to vital records pursuant to Iowa Code chapter 22, which are published by newspapers to inform the public, and opposition to restrictions on how and for whom the information may be published. To address the concern regarding the protection of confidential information, he pointed out that in accordance with the adopted amendment to 95.7(1), public access and the right to inspect all vital records in the custody of the county recorder are allowed only after the vital records are purged of confidential information. He observed that restricting access to public records will not prevent persons from misusing the information in the records. In conclusion, he stated that the right of the public to access the information must be protected.

PROFESSIONAL LICENSURE DIVISION Susan Reynolds represented the division.

ARC 3000C No questions on proposed amendments to chs 100 to 104 regarding licensure, practice, continuing education, and discipline for funeral directors, funeral establishments, and cremation establishments.

REVENUE DEPARTMENT Victoria Daniels and Julie Roisen represented the department. Other interested parties included Randy Ripperger, Polk County assessor, on behalf of the Iowa State Association of Assessors.

ARC 2990C The proposed amendment to 71.5 pertains to valuation of commercial real estate. In response to a question from Rep. Staed, Ms. Roisen stated that the amendment is intended to clarify longstanding practice regarding the valuation of owner-occupied commercial property.

Mr. Ripperger expressed opposition to the amendment because he believes that the department is, without statutory authority, creating new law through rule making and that the amendment conflicts with and would supersede longstanding case law that allows an assessor to consider the use of the property as a going concern when the property is valued. He also stated that the amendment creates ambiguity for property owners, assessors and the property assessment appeal board regarding the use of the property not being taken into account as a going concern in the valuing of the property.

In response to committee members' questions, Mr. Ripperger stated that all valuations are based on use and noted three approaches to property valuation: income, sales comparison and cost. Mr. Ripperger stated that, according to his interpretation of the amendment, using an income approach, the assessor could not consider the use as a going concern in assessing an owner-occupied property but could consider the use as a going concern of a non-owner-occupied property.

Revenue Department (continued)

Ms. Roisen stated that, in her understanding of case law, a vacant, empty building cannot be used as a comparable for a fully occupied property and that the income approach is based on rental information, or net rents. The amendment, she explained, is intended to clarify that when an income approach to assessment is used, the assessor is not valuing the business in the building but instead is assessing the ability of the building itself to generate a net rent.

Mr. Ripperger stated that in his opinion, the amendment does not allow revenue or expenses to be considered in the valuation of owner-occupied commercial property; whereas Ms. Roisen stated that in her opinion, the amendment clarifies that the assessor would not use the business operation of an owner-occupied commercial property in the development of the rental comparables. Ms. Roisen, at the suggestion of Rep. Olson, agreed that to address the ambiguity Mr. Ripperger identified, an example should be added to the rule.

Rep. Vander Linden expressed support for the amendment.

ARC 3008C No action on 42.56 and 52.49 regarding the renewable chemical production tax credit program.

LABOR SERVICES DIVISION Kathleen Uehling represented the division.

ARC 2965C No questions on proposed amendments to 150.4 and 150.6(3) pertaining to construction contractor registration.

ATTORNEY GENERAL Mark Schuling and David Dorff represented the attorney general.

ARC 2979C Amendments to 34.1 pertain to a statement of a property owner's rights.

Rep. Pettengill stated that the revised language of the eleventh right in the statement of property owner's rights appears to provide less, not more, time for a person to vacate property that will be subject to eminent domain. Rep. Jones concurred and suggested that the language be clarified to more closely reflect that of Iowa Code section 6B.54(4). In response, Mr. Schuling and Mr. Dorff stated that the intent was not to reduce the amount of time for a person to vacate the property and agreed that the language of the eleventh right could be revised to more closely reflect the language of the statute.

Motion to delay Rep. Jones moved a 70-day delay on ARC 2979C.

Motion carried On a voice vote, the motion carried.

The rule making will be reviewed again at the June meeting.

PUBLIC EMPLOYMENT RELATIONS BOARD Diana Machir represented the board.

ARC 2988C No action on 7.8 to 7.10 regarding bargaining and impasse procedures and on binding arbitration. Ms. Machir stated that based on the requirements of 2017 Iowa Acts, House File 291, the board promulgated the rules on a schedule compressed to 26 days from 120 days.

Rep. Staed inquired about the data used to analyze the rule making's impact on jobs and, regarding 7.10(5)"c"(2), the effect of variations in the consumer price index (CPI) on the determination of dates for arbitration. In response, Ms. Machir explained that at the time of the promulgation of emergency rules, the board did not foresee an impact on jobs and that on the board's Web site are posted CPI instructional guidance, the incorporation of House File 291 into the existing statute, and the emergency rules. She added that the dates for arbitration must be mutually agreed upon by both parties. Sen. Chelgren stated that based on his interpretation of the jobs impact statement, the board had not yet found an impact on jobs at the point when the jobs impact was stated in the rule making.

Rep. Vander Linden commended the board for establishing the rules on a shorter deadline as required by House File 291.

TRANSPORTATION DEPARTMENT Craig Markley, Tim Crouch, Tim Allen and Christopher Little represented the department.

ARC 2983C No action on amendments to 28.1 to 28.3 pertaining to the Iowa transportation map.

ARC 2984C No action on amendments to 143.1 and 143.4(1) regarding the addition of an adaptive signal control system to the types of coordinated traffic signal systems.

Transportation Department (continued)

ARC 2985C No action on amendments to chs 400, 401, 425, 602 and 604 concerning autocycles. In response to an inquiry from Sen. Chelgren, Mr. Allen supposed that no front license plate is required for an autocycle because of the way autocycles are manufactured. In response to a question from Rep. Pettengill, Mr. Allen provided an example of a brand of autocycle, Polaris, and explained the differences between an autocycle and a motorcycle.

ARC 2986C No action on amendments to 520.1(1), 529.1 and 607.10(1)“c” regarding the adoption by reference of federal motor carrier safety and hazardous materials regulations. In response to a question from Rep. Pettengill, Mr. Little stated that the federal regulations may be accessed by the public through an online search or at a computer terminal in the state law library.

ARC 2989C No questions on proposed amendments to chs 405 and 450 related to salvage and motor vehicle equipment.

ARC 2987C No action on ch 540, transportation network companies.
Mr. Little offered to provide a link to the department’s Web page, where questions and answers regarding transportation network companies are posted. Rep. Pettengill expressed appreciation to the department for its work on the rules.

Committee business The minutes of the March 10, 2017, meeting were approved.
The next meeting was scheduled for Wednesday, May 3, 2017, at 9 a.m.
Mr. Ewing provided an updated summary (as of April 3, 2017) of the LSA analysis of rule makings that implement bills enacted during the 2016 General Assembly. In response to a question from Rep. Jones, Mr. Ewing clarified that he removes the names of agencies from the list when letters of notification are sent and that the absence of a rule making by the agency might indicate that the agency may not agree that rule making is required by the statute.
Sen. Chelgren had asked that Mr. Royce be invited to speak to the committee about issues related to administrative rules.
Mr. Royce discussed the advantages of the committee as it has evolved over time. He stated that the committee has become a forum for discussion of rule making for the legislature through the committee, for the executive branch agencies through their representatives, and for the public; for the Governor’s office, through the administrative rules coordinator, as an ex officio member of the committee, to oversee the rule-making process; and for committee members who, during four-year terms, develop expertise in the rule-making process and create consistency over time. Mr. Royce also discussed waivers of rules and the powers of the committee, including the legislative veto of rules, approved by voters in 1984, which legitimized the operation of the committee. In response to questions from Sen. Chelgren, Mr. Royce urged caution regarding legitimizing the committee in the Constitution and affirmed the imposition of a delay upon another delay (e.g., a 70-day delay followed by a session delay) in situations in which the rules may require further review by the committee, the agency and the public.
Rep. Pettengill commended Iowa’s rule-making process and, with Sen. Chelgren, expressed appreciation to Mr. Royce for his service to the legislature and for appearing before the committee.

Adjourned The meeting was adjourned at 12:10 p.m.

Respectfully submitted,

Stephanie A. Hoff

APPROVED:

Chair Dawn Pettengill

Vice Chair Mark Chelgren