

**MINUTES OF THE JUNE 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 Tuesday, June 13, 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, and Pam Jochum; Representatives Megan Jones, Rick Olson, Art Staed, and Guy Vander Linden were present. Senator Jack Whitver 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 Rep. Pettengill convened the meeting at 9:05 a.m.
- Fiscal overview** Christin Mechler presented the LSA fiscal report.
- HUMAN SERVICES DEPARTMENT** Nancy Freudenberg, Theresa Armstrong, Mikki Stier and Wendy Rickman represented the department.
- ARC 3057C No action on amendments to 22.1, 24.23 and 24.24 pertaining to autism support program eligibility and to crisis response service provider accreditation standards for organizational activities and staff.
In response to a question from Sen. Costello, Ms. Armstrong explained that the amendments reduce educational requirements and increase practical, on-the-job experience and that these changes have resulted in greater availability of staff and the accreditation of 11 providers.
- ARC 3058C No action on amendments to ch 58 concerning emergency assistance.
- ARC 3077C No questions on proposed amendments to ch 83 regarding the time frame for home- and community-based services (HCBS) waiver services eligibility.
- Committee review of emergency rule making** Pursuant to 2017 Iowa Acts, House File 653, the department presented, prior to emergency adoption, notice of its intention to propose under Notice of Intended Action and simultaneously to adopt by Emergency the rule makings listed below regarding Medicaid cost containment and requested committee review for the first five rule makings pursuant to section 32 of House File 653 and, in the interest of full disclosure and as a courtesy, the department presented the sixth rule making for review. (Note: Rule reference numbers shown were assigned by the department for purposes of review and discussion.)
- 18-013 Pursuant to division IV, section 12(15)(a)(1), of the Act, an amendment to ch 79 implements Medicaid cost containment related to primary care physician rates.
In response to a question from Sen. Jochum, Ms. Stier stated that primary care physicians will experience a 1 percent rate decrease, which is approximately a \$5 million decrease in the state budget for the Medicaid program.
- 18-015 Pursuant to division IV, section 12(15)(a)(4), of the Act, an amendment to ch 79 implements Medicaid cost containment related to diagnostic related group (DRG) costs.
In response to a question from Sen. Jochum, Ms. Stier stated that the DRG cost savings to the state is \$10 million. Ms. Stier estimated the total cost-containment savings to be \$20 million and will provide the committee with the exact figure.
- 18-017 Pursuant to division IV, section 12(15)(a)(3), of the Act, an amendment to ch 79 implements Medicaid cost containment related to a site-of-service differential for physician services in facilities.
In response to a question from Sen. Jochum, Ms. Stier stated that the cost to the state for the implementation of this cost-containment strategy will be \$2 million and that the payment for services in hospitals will be greater than that for services in clinics. In response to a question from Rep. Olson, Ms. Stier stated that based on national best practice, overhead expenses of a hospital are higher than those of a clinic and that the location where the service is provided determines payment.

Human Services Department (continued)

- In response to an inquiry from Sen. Chelgren, Ms. Stier stated the belief that state law requires a hospital to have an emergency room to be considered a hospital, that hospital overhead includes the costs of an emergency room, and that a hospital's higher overhead is subsidized by payment for emergency room services. Ms. Stier agreed to provide the committee with information and examples to illustrate the site-of-service differential.
- 18-019 Pursuant to division IV, section 12(15)(a)(5), of the Act, an amendment to ch 79 implements Medicaid cost containment related to the anesthesia conversion factor.
- 18-021 Pursuant to division IV, section 12(15)(a)(3), of the Act, amendments to chs 79 and 80 implement Medicaid cost containment related to total reimbursement for Medicare Part A and Part B crossover claims.
- 18-023 Pursuant to division XIX, section 90, of the Act, the adoption of new ch 87 implements a new state family planning program (FPP).
- In response to questions from Sen. Jochum and Reps. Staed and Pettengill, Ms. Rickman stated that regarding the program itself, the expectation of the legislation was to replicate the current family planning program that is under the waiver but to move it to a state-based program. She explained that the department's goal is a seamless transition for recipients and providers of services and that all providers must submit attestations that they do not provide abortions. In addition, Ms. Rickman confirmed that because Planned Parenthood, UnityPoint Health and the University of Iowa Hospitals and Clinics provide abortions, these entities could not provide services under the program. Regarding the financing of the program, Ms. Rickman stated that if the \$3 million appropriation is depleted, services would cease; however, she explained that based on the financial history of the program, the current program is financed appropriately. She stated that 800 providers have participated in the existing program, including pharmacies and laboratories, and that pharmacies and laboratories will be exempted from attestations under the new program. Sen. Jochum and Rep. Staed expressed concern regarding access to and the availability and cost of family planning services statewide.

REAL ESTATE COMMISSION Jeff Evans represented the commission.

- ARC 3065C No questions on proposed amendments to chs 3 to 5 regarding licensure of brokers, salespersons and nonresident licensees.

SOIL CONSERVATION AND WATER QUALITY DIVISION Margaret Thomson represented the division.

- ARC 3067C No questions on proposed amendments to 60.31 pertaining to the mine site registration and renewal fee.

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

- ARC 3068C No questions on a proposed amendment to 34.1 regarding the statement of a property owner's rights. Rep. Pettengill commended the work of Mr. Dorff and Mr. Schuling on the revised language of paragraph 11.

BANKING DIVISION Zak Hingst represented the division.

- ARC 3078C No action on chs 15 and 16 pertaining to regulated loans and industrial loans.
- ARC 3079C No action on ch 17, delayed deposit services. In response to a question from Rep. Pettengill, Mr. Hingst stated that no one attended the public hearing.
- ARC 3080C No action on amendments to ch 18 pertaining to mortgage bankers, mortgage brokers, and real estate closing agents.
- ARC 3081C No action on amendments to ch 19 regarding mortgage loan originators.

ECONOMIC DEVELOPMENT AUTHORITY Kristin Hanks-Bents represented the authority.

- ARC 3064C No questions on proposed amendments to 115.4(2) regarding the deadline for submittal of an investment tax credit application.

PUBLIC HEALTH DEPARTMENT Susan Dixon and Sarah Reisetter represented the department. Other interested parties included Kate Walton on behalf of the Mercy Health Network.

- ARC 3061C No action on amendments to chs 23 and 27 to 30 related to licensee application, examination, licensure, continuing education and fees for plumbing and mechanical systems professionals.

Public Health Department (continued)

- Rep. Pettengill commended the department’s work on the “one-stop shop” that will allow contractors licensed under Iowa Code chapter 105 to apply for or renew the contractor license issued by the plumbing and mechanical systems board at the same time as applying for or renewing the contractor registration issued by the labor services division of the workforce development department.
- ARC 3062C No action on amendments to 25.1 and 25.4 concerning an update of references to the 2015 edition of the Uniform Plumbing Code within the state plumbing code.
- ARC 3074C No questions on proposed amendments to ch 42 regarding the addition of a computed tomography (CT) endorsement to the general nuclear medicine technologist permit.
- ARC 3075C No questions on proposed amendments to 134.1 to 134.3 pertaining to trauma care facility categorization and verification.
Ms. Walton expressed support for the amendments and appreciation to the department for the effort that lead to a consensus on the amendments.
- ARC 3076C No questions on proposed amendments to 137.1 to 137.4 concerning trauma education and training.

Committee review of emergency rule making Ms. Reisetter presented to the committee for review a rule making to be filed emergency pursuant to 2017 Iowa Acts, House File 524, regarding the medical cannabidiol patient and primary caregiver registration card applications and renewals. She stated that the department will concurrently submit a Notice of Intended Action so that all stakeholders and interested parties will have a formal opportunity to provide comments to the department. Ms. Reisetter explained that the rule making, which amends ch 154, will implement the expansion of the state’s existing medical cannabidiol Act in several ways, including an update of the department’s rules that were adopted under the prior medical cannabidiol Act to reflect the amendments made to the patient and primary caregiver registration card issuance process. In a summary of the updates, Ms. Reisetter highlighted the addition of a form and a quantity provision that sets the possession limit of medical cannabidiol at 32 ounces. She explained that this possession limit is consistent with the 2014 legislation and establishes a basis for regulation until the medical cannabidiol board is appointed upon whose recommendation the limit may be amended.

In response to a question from Rep. Pettengill, Ms. Reisetter confirmed that the definitions in ch 154 mirror those in the legislation. In response to questions from Sen. Jochum, Ms. Reisetter stated that the department is actively working on applications for the medical cannabidiol board, that the new legislation is silent on the medical cannabidiol possession limit, and that the medical cannabidiol board will make a recommendation to the board of medicine regarding the possession limit to be adopted in rule. At the request of Sen. Chelgren, Ms. Reisetter stated that the department will keep the committee informed of developments related to ch 154, in particular, the distribution and duration of the possession limit set by the medical cannabidiol board.

- Motion to approve Sen. Chelgren moved approval of the emergency rule making.
- Motion carried On a voice vote, the motion carried.

EDUCATION DEPARTMENT Thomas Mayes and Jeremy Varner represented the department. Other interested parties included Steve Ovel on behalf of the Iowa Association of Community College Trustees (IACCT).

- Special Review Amendments that rescinded chs 46 and 47 and adopted new ch 46 were Adopted and Filed and published in the 2/15/17 IAB as ARC 2947C. Ch 46, which is intended to implement 2016 Iowa Acts, House File 2392, division II, establishes new standards for career and technical education (CTE), including requirements for CTE service areas, regional secondary CTE planning partnerships, career academies and regional centers.
The language of House File 2392 had unintended consequences related to agriculture education, specifically, the statutory allocation of funds under the program.

Education Department (continued)

At the March 10, 2017, meeting, the committee voted to impose a session delay on ARC 2947C in light of legislation then in process that was intended to address agriculture teachers' concerns by allowing funds to be carried forward and by allowing partnerships to expend funds on consumables as had been done prior to changes in the program. The 2017 legislation passed in the House but not in the Senate and could still be enacted during the 2018 legislative session. The rules will become effective at the adjournment of the 2018 legislative session.

Discussion pertained to the department's authority for implementation of the statute through guidance while the rules are session-delayed; to whether the funding issue underlying the session delay continues; and to the consequences if the delay is not lifted.

In response, Mr. Varner asserted that the department must implement the statute and that implementation can be and has been accomplished through guidance, which follows the contours of the statute. He described how the new CTE standards have been carried out thus far and stated that the primary need for administrative rules is to provide greater clarity, specificity and certainty about the expectations of the program and that administrative rules are less subject to change. He added that the session delay no longer serves a useful purpose in that all of the major provisions of CTE are found in statute. Regarding the 2017 legislation, he stated that adjustments could be considered during the 2018 session. In addition, Mr. Mayes stated that the department is aware that the rules are on session delay and understands that guidance can never expand upon or subsume statute. He explained, however, that the department is receiving inquiries about the statute and requests for guidance about implementation of the statute, but that guidance is not to be used in lieu of statute. Mr. Varner stated that the department is not implementing the session-delayed rules but instead, the law itself, which is self-executing.

While Rep. Staed favored lifting the delay, Rep. Pettengill expressed disappointment that, in her view, the department implemented the statute through guidance despite the session delay on the rules and stated that the committee should maintain the session delay.

Following discussion, Rep. Staed made a motion to lift the delay, stating that until the legislature acts, the rules could be put in place. Sen. Chelgren expressed concern about the allocation of funding and requested that before the delay is lifted, the department provide in a timely fashion additional clarification regarding funding streams to CTE programs. Rep. Staed withdrew his motion pending the receipt from the department of additional information about funding for the program.

Mr. Ovel, who spoke to the committee at the request of Sen. Horn, expressed support for the rules and requested that the session delay be lifted. In addition, he stated that the previously perceived issue with funding does not seem to be borne out in practice.

The rule making will be placed on the July agenda for special review.

EDUCATIONAL EXAMINERS BOARD Joanne Tubbs represented the board. Other interested parties included Katie Greiving on behalf of Decoding Dyslexia Iowa (DDI).

ARC 3047C Proposed amendments to chs 13 and 24 pertain to PK-3, elementary education, multioccupations, career and technical education (CTE) endorsements and to the addition of autism spectrum disorders to paraeducators' areas of concentration.

In response to a question from Rep. Staed, Ms. Tubbs stated that students entering teacher preparation programs would be subject to the new requirements but that current licensees would continue to be subject to existing requirements.

Ms. Greiving commended the board and Deborah Reed of the Iowa Reading Research Center for working with DDI on the amendments and expressed support for the amendments, in particular, the addition of the five components of reading. Ms. Greiving expressed concern regarding the accountability of colleges and universities and of current licensees related to addressing dyslexia in reading instruction.

MEDICINE BOARD Mark Bowden and Kent Nebel represented the board. Other interested parties included Tom Cope on behalf of the Iowa Physician Assistant Society, Sandi Conlin on behalf of the Iowa Medical Society, and David Adelman on behalf of UnityPoint Health.

ARC 3069C

Proposed amendments to ch 21 pertain to physician supervision of a physician assistant, specifically, a new requirement that a physician is ineligible to supervise a physician assistant if the physician does not have a written supervisory agreement in place with each physician assistant supervised by the physician.

As noted during discussion, 2017 Iowa Acts, House File 591, terminated the joint rule making by the boards of medicine and physician assistants that, as set forth by 2015 legislation, had directed the establishment of specific minimum standards or a definition of supervision for appropriate supervision of physician assistants and terminated the associated rule making by both boards. Mr. Nebel stated the belief that House File 591 terminated an unsuccessful joint rule-making process, including both boards' associated rule making, but did not solve the problem of unclear guidance about the supervision of a physician assistant, as evidenced by inquiries and complaints received by the board of medicine from supervising physicians. He stated that the supervisory agreement, in addition to providing clearer guidance, will provide the board of medicine with more defined standards through which to take disciplinary action when appropriate. In addition, Mr. Nebel explained that the rules incorporate a supervisory agreement rather than minimum standards to allow physician assistants and supervising physicians flexibility in defining their relationships. He added that supervisory agreements are in place in more than 40 states. Mr. Bowden agreed that the rules clarify the expectations of supervising physicians and physician assistants.

Mr. Cope expressed opposition to the rules. He stated the opinion that unlike the confrontational approach that followed the 2015 legislation, the 2017 legislation provides a means for collaboration in addressing concerns about supervision. He disagreed with the board of medicine regarding the inadequacy of supervision, citing a lack of disciplinary actions taken against supervising physicians for inadequate supervision, and requested empirical evidence underlying the medical community's belief that supervision is inadequate. Contending that the proposed rule contains essentially the same language as the medicine board rule that was terminated by House File 591, Mr. Cope requested that the medicine board withdraw the rule and begin again with a collaborative approach that, in his opinion, was established in House File 591.

Rep. Pettengill stated that the 2017 legislation provides certainty for the public that the physician is the supervisor and that the supervisory agreement, in setting forth expectations for the supervising physician and the physician assistant, increases the collaboration between the two parties. She observed that the language of the terminated rule and that of the proposed rule may be similar, but their premises are different: the former, minimum standards; the latter, a two-party agreement. Rep. Pettengill concluded that the rule enhances collaboration between the two professions and will help ensure public and patient safety. In response to questions from Rep. Pettengill, Mr. Nebel agreed to suggest to the board that in 21.4(4), "patient complaints" be added to the second sentence, and regarding the meaning of "unusual circumstances" in 21.4(7), Mr. Nebel explained that the interpretation of the phrase would be determined on a case-by-case basis and pointed to the role of the board regarding waiver and variance provisions in the same subrule.

Rep. Staed expressed the hope that House File 591 could lead to resolution of issues between the boards and dismay that the legislation was about who would make decisions and that the rules appear not to resolve the conflict but instead reenact provisions that were rescinded by the legislation. Rep. Staed and Sen. Jochum expressed concern about the quality of and access to patient care, and Rep. Jones stated that for her constituents, she wants access to good medical care. In response, Mr. Bowden stated that the rules should not only clarify the expectations for supervision but also increase the quality of care. He noted that the American Academy of Physician Assistants and the American Academy of Family Physicians endorse supervisory agreements and support written practice agreements for clarity of information, especially concerning the delegation of medical services.

Medicine Board (continued)

Sen. Chelgren inquired about the interpretation of the last sentence in 21.4(3), specifically, whether the statement places a limitation on the physician assistant, who may or may not yet possess the education, training, skills, and relevant experience of the supervising physician. In response, Mr. Bowden, explaining that the physician assistant is an extension of the supervising physician's practice, quoted from 327.1(1) of the rules of the physician assistant board, which reads in part that "the physician assistant shall possess the knowledge, skills and abilities necessary to provide services appropriate to the practice" and further states that "diagnostic and therapeutic tasks for which the supervising physician has sufficient training or experience may be delegated to the physician assistant after the supervising physician determines the physician assistant's proficiency and competency." Sen. Chelgren encouraged the medicine board to be flexible and willing to work with the board of physician assistants.

INSPECTIONS AND APPEALS DEPARTMENT David Werning, Steve Mandernach and Sam Langholz represented the department. Other interested parties included Susan Cameron on behalf of the Iowa State Sheriffs' and Deputies' Association and Richard Rogers on behalf of the Iowa Firearms Coalition.

- ARC 3048C No questions on the proposed rescission of ch 102, social gambling.
- ARC 3049C No questions on the proposed rescission of ch 107, game nights.
- ARC 3050C Proposed amendments to chs 104 and 105 pertain to amusement devices. Mr. Werning stated that because of public comment, the department has submitted a Notice of Termination regarding ARC 3050C to allow for additional time for interested parties and the department to discuss the rule making.
In response to a question from Rep. Jones, Mr. Mandernach explained that the delay in implementing 2015 legislation resulted from reduced staff and other resources. Rep. Pettengill reminded the department that it may submit a report to the committee regarding rule-making delays.
- ARC 3051C Proposed amendments to ch 34 pertain to home bakeries.
In response to a question from Sen. Horn, Mr. Mandernach stated that the department inspects all licensed home bakeries with annual gross sales under \$35,000.
- ARC 3052C No questions on proposed amendments to ch 30 regarding food and consumer safety.
- ARC 3053C No questions on proposed amendments to ch 31 pertaining to food establishment and food processing plant inspections.
- ARC 3073C Proposed amendments to ch 11 pertain to the award of attorney fees and court costs. After summarizing the rule making, Mr. Langholz stated that the department believes that the rule making allows recovery of attorney fees but that the department does not have the statutory authority to allow recovery of court costs in a contested case because contested cases are administrative proceedings, not court proceedings.
Ms. Cameron stated that the amendments do not reflect the intent of the legislation, which is that the losing party in an appeal of a weapons permit ruling pays court costs. Ms. Cameron expressed the opinion that "court costs" referred to in statute may be interpreted as court costs in a contested case because the proceedings under discussion are contested cases and are largely handled through the department under the administrative law judge (ALJ) process. Because of the omission of contested case costs from the rules, she continued, the sheriff, not the losing party, will still pay the court costs, which is contrary to the statute. Ms. Cameron suggested that either the rule be changed to reflect the intent of the statute or the statute itself be amended.
Mr. Rogers expressed agreement that the intent of the statute is that the appellant that loses the case would pay court costs just as in a court.
Rep. Pettengill commended the department for its decision not to exceed statutory authority and suggested that the statute be amended. In response to questions from Rep. Olson, Mr. Langholz stated that there are approximately 12 appeals per year, the cost of which in 2016 totaled \$2,600, including the hourly rate charge for the ALJ and overhead. Ms. Cameron added that Linn County and Johnson County reported 3 to 5 appeals per year and 2 to 5 appeals per year, respectively.

NATURAL RESOURCE COMMISSION Chris Ensminger represented the commission. Other interested parties included Marty Ryan of Fawkes-Lee and Ryan, Inc.

ARC 3060C No action on amendments to chs 91, 97 and 102 regarding waterfowl, coot and dove hunting, and falconry.

Mr. Ryan expressed opposition to the inclusion of the Eurasian collared-dove in the rules. He explained that 2011 Iowa Acts, Senate File 464 (Iowa Code section 481A.8(1)), added an open season only for the mourning dove. He asserted that the similarity between a mourning dove and a Eurasian collared-dove in flight does not justify the inclusion of the latter in the rule and that an executive branch agency cannot add related species to the rules without statutory authority. He requested that the natural resource commission introduce legislation to include the Eurasian collared-dove in the statute, to change the reference from mourning dove hunting to dove hunting, and to make appropriate clarifying changes in Iowa Code section 481A.1(21)“e.”

Discussion pertained to the legislative and rule history of the mourning dove season and the advantages and disadvantages of the inclusion of a season for the Eurasian collared-dove. Mr. Ensminger stated that allowing some protection for an invasive species is better than to allow too great a risk for a protected species.

ARC 3098C No action on amendments to 106.6(7), 106.7 and 106.10(5) (IAB 6/7/17) pertaining to deer hunting by residents.

NURSING BOARD Kathy Weinberg represented the board.

ARC 3046C Proposed amendments to 3.5 and 3.7 and proposed ch 5 pertain to licensure and continuing education. Ms. Weinberg summarized the changes to the rules, including an increase in the minutes comprising a contact hour and in the actual number of contact hours of continuing education.

Rep. Vander Linden questioned the rationale for the increase from 12 hours to 36 hours of continuing education for the reactivation of a license. Rep. Olson inquired about the reason for increasing a contact hour of continuing education from 50 minutes to 60 minutes. Rep. Jones asked about the difference between the requirements for continuous renewal of a license and those for reactivation of a lapsed license.

Ms. Weinberg agreed to take the questions back to the board for consideration and to provide more specific information to the committee in response to the questions.

REGENTS BOARD Aimee Claeys and Tim Cook represented the board. Other interested parties included Morgan Miller on behalf of AFSCME Iowa.

ARC 3071C Proposed amendments to 3.39 and 3.129 pertain to promotional and lead worker pay and to grievance procedures.

Discussion pertained to the grievance procedures, specifically, changes in the steps in the grievance process and in an employee’s representation in the grievance process.

In regard to questions from Rep. Staed about the steps in the grievance process, Mr. Cook explained that as a result of the amendments to Step 1 and the elimination of Step 2, which are intended for clarity and efficiency, if the employee and the employee’s immediate supervisor cannot come to a resolution informally, the grievance will move to the next level with the employee’s filing of a written grievance with the department head or designee instead of with the employee’s immediate supervisor as was formerly the procedure. He also explained that an employee would be permitted to be represented by an attorney if the grievance would go to arbitration. Ms. Claeys added that the requirement for the employee to file a formal grievance with the employee’s immediate supervisor is removed since the informal discussion would already have taken place. Rep. Staed expressed concern that rather than resolving the grievance at the lowest level, which, according to Mr. Cook, is assisted by Step 1, the amendments would immediately move the grievance to the next level.

Regents Board (continued)

In regard to questions from Sen. Jochum and Rep. Staed about the change from representation of the employee by “one or two persons” and “a representative” to representation by a “coworker,” Mr. Cook stated that unlike a “person” or “representative,” who could be someone from outside the institution and who is unfamiliar with the institution’s rules, policies and procedures, a coworker would be a peer of the employee who is familiar with the institution, have the same understanding of the institution’s rules, policies and procedures, and be able to represent the employee throughout the grievance process. Sen. Jochum expressed concern about whether the employee would receive fair representation, whether a coworker would have the knowledge needed to act as a representative, and whether the amendments correspond to court decisions regarding grievance procedures. Rep. Staed expressed concern about whether representation by a coworker would diminish the representation of the employee from the beginning of the process and perhaps violate the individual rights of the employee, and whether, for a variety of reasons, a coworker of an employee would feel uncomfortable being involved in the grievance process.

In response to an inquiry from Rep. Pettengill, Mr. Cook clarified the time frame for an employer’s response to a grievance and representation of an employee by a coworker. In response to a request from Rep. Olson, Ms. Claeys will provide the committee with a historical record of representation in grievance procedures other than by coworkers pursuant to 3.129.

Ms. Miller expressed opposition to the amendments regarding grievance procedures. She stated that because only coworkers could represent an employee in a grievance meeting, a union representative would be precluded from providing representation, and, according to Ms. Miller, this change would ensure that no union representative would be able to represent an employee in a grievance meeting. She also expressed concern regarding the elimination of Step 2 of the grievance process. Ms. Miller cited court decisions that permit a public employee to request union representation at an employer’s investigation interview that could result in disciplinary action and that Iowa Code section 20.8, which sets forth the right of public sector employees to engage in concerted activity for the purpose of mutual aid and protection, protects the right of the person to have a union representative in a grievance hearing.

REVENUE DEPARTMENT Ben Clough represented the department.

- ARC 3066C No questions on proposed amendments to 39.12 pertaining to an extension of the Iowa income tax filing deadline for certain military and civilian support personnel.
- ARC 3085C No action on amendments to chs 12, 32, 39, 40, 46, 52 to 54, 80 and 241 and new ch 242 pertaining to facilitating business rapid response to state-declared disasters.

TRANSPORTATION DEPARTMENT Alex Jansen represented the department.

- ARC 3045C Proposed amendments to ch 511 and the proposed rescission of ch 513 pertain to special permits for operation and movement of vehicles and loads of excess size and weight and to compacted rubbish vehicle permits.
In response to a question from Rep. Pettengill, Mr. Jansen explained that although the amendments themselves do not have a fiscal impact, the legislation implemented by the amendments does have a fiscal impact. Rep. Jones pointed out the delay in the promulgation of these amendments and suggested that the department promulgate rules to implement legislation in a more timely fashion.

WORKFORCE DEVELOPMENT DEPARTMENT David Steen represented the department. Other interested parties included Jessica Harder on behalf of the Iowa Association of Business and Industry (ABI).

- ARC 3070C No questions on proposed amendments to chs 21 to 25 regarding the unemployment insurance services division; employer records, reports, contributions and charges; claims; benefits; and benefit payment control.
Ms. Harder expressed support for the amendments, in particular, amendments to 23.31(2) related to qualifying wages for the establishment of a second benefit year, and to 25.8(1) related to overpayment of benefits.
In response to an inquiry by the committee at the May meeting, Mr. Steen reported that amendments related to 2016 Iowa Acts, Senate File 2313, will be forthcoming.

ADMINISTRATIVE SERVICES DEPARTMENT Director Janet Phipps and Tami Wiencek represented the department. Other interested parties included Morgan Miller on behalf of AFSCME Iowa.

ARC 3072C Proposed amendments to chs 4, 53, 54, 59 to 64 and 70 pertain to human resources procedures.

Rep. Pettengill, Sen. Jochum and Rep. Staed inquired about employee performance ratings in 53.7(2), the change in the time frame for an attempt by the immediate supervisor to resolve a grievance initiated by an employee in 61.1(1), negotiation of pay grade changes in 53.6(5), the elimination of length of service for certified teachers in 53.7(4), overtime pay in 53.11(2), and the elimination of an employee group from eligibility for the all-applicant list in 54.2(4)“b”(5).

In response, Ms. Phipps explained how the performance rating for each category and the overall performance rating are determined; stated that the change from 7 to 14 days is a more reasonable time frame for the immediate supervisor to attempt to resolve a grievance; explained that the change from “shall” to “may” regarding pay grade changes is related to the type of bargaining unit; that “length of service” is supported by credentials and that it is likely service can be time in grade, not necessarily service in a profession; explained that certain classifications have always been designated as exempt from overtime pay under the Fair Labor Standards Act (FLSA), that the employee will not be paid overtime if the employee is in a classification that is FLSA-exempt, and that the employee could be granted a more flexible work schedule if the employee is working extra hours; and that community-based correction employees are not eligible for the all-applicant list because they are merit-covered employees by statute.

Ms. Miller expressed opposition to and explained in detail the consequences of the amendments that concern negotiation of pay grade changes, within-grade increases, lead worker pay, overtime, application for eligible lists, and grievance meetings, including employee representation.

Sen. Chelgren expressed support for the view that an employee should be permitted to be represented, not assisted, in a grievance procedure by anyone who is qualified to do so, including a union representative or competent legal counsel, and stated that the rules of the regents board and the department regarding representation in a grievance procedure should be consistent with each other.

Committee review of emergency rule making Ms. Wiencek presented to the committee a rule making for which the department seeks approval for adoption on an emergency basis. Ms. Wiencek explained that the rule making pertains to the possession of pistols and revolvers and the use of fireworks on the capitol complex in relation to 2017 Iowa Acts, House File 517 and Senate File 489.

Motion to approve Rep. Vander Linden moved approval of the emergency rule making.

Motion carried On a voice vote, the motion carried.

Committee business The minutes of the May 3, 2017, meeting were approved. The next meeting was scheduled for Thursday, July 6, 2017, at 9 a.m.

Mr. Ewing stated that the five-year review of rules to be conducted pursuant to Iowa Code section 17A.7(2) that began on July 1, 2012, will conclude on June 30, 2017. He added that he will continue to forward the agencies’ summaries of the review results to the administrative rules coordinator and to the committee.

Adjourned The meeting was adjourned at 2:50 p.m.

Respectfully submitted,

Stephanie A. Hoff

APPROVED:

Chair Dawn Pettengill

Vice Chair Mark Chelgren