

**MINUTES OF THE AUGUST 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, August 4, 2017, in Room 116, State Capitol, Des Moines, Iowa.

Members present: Representative Dawn Pettengill, Chair; and Senator Mark Chelgren, Vice Chair [by teleconference]; Senators Mark Costello, Wally Horn, Pam Jochum, and Jack Whitver; Representatives Megan Jones, Bruce Hunter, Rick Olson, and Guy Vander Linden were present. Representative Art Staed was not present. Representative Pettengill welcomed Representative Bruce Hunter, substituting for Representative Staed.

Also present: Jack Ewing and Tim Reilly, Legal Counsel; Stephanie A. Hoff, Administrative Code Editor; fiscal staff; caucus staff; and other interested parties. Colin Smith, Administrative Rules Coordinator, was not present.

Convened Rep. Pettengill convened the meeting at 9:05 a.m.
Rep. Pettengill reported that a representative from the veterans affairs department was not able to appear and requested that the agenda be amended to move ARC 3147C to the “no representative requested to appear” section. Sen. Costello moved that the agenda be amended and, on a unanimous voice vote, the motion carried. The veterans affairs department rule making will be reviewed when it is Adopted and Filed.

Fiscal overview Christin Mechler presented the LSA fiscal report. Also representing the LSA fiscal services division was fiscal analyst Jess Benson, substituting for fiscal analyst Kenneth Ohms. In response to a question from Sen. Costello regarding ARC 3150C, Mr. Benson explained that to implement the budget reductions required by the FY 2018 Health and Human Services Appropriations Act, the public health department, pursuant to the authority of 2017 Iowa Acts, House File 653, allocated an additional \$300,000 from the general fund to cover the costs of the implementation of the FY 2018 medical cannabidiol Act before the program is able to generate fee revenue. Ms. Mechler will provide the committee with information about the budget reductions and transfer of funds.

PUBLIC EMPLOYMENT RELATIONS BOARD Diana Machir and Amber DeSmet represented the board. Other interested parties included Mark Hedberg on behalf of AFSCME Iowa Council 61 and Charlie Wishman on behalf of the Iowa AFL-CIO.

Committee review of emergency rule making Ms. Machir presented a rule making for which the board seeks approval for adoption on an emergency basis. She explained that the amendments are in response to and are intended to implement statutory changes made to Iowa Code chapter 20 as amended by 2017 Iowa Acts, House File 291, and made effective February 17, 2017. She stated that House File 291 introduced new concepts and requirements to and amended many aspects of preexisting Iowa Code chapter 20 processes.

Ms. Machir stated that the board sought comment based on a draft of the amendments made available on the board’s Web site and distributed to constituent groups and that comments were received at board meetings, from constituents and through internal review, resulting in revisions to the draft amendments.

Ms. Machir explained that because House File 291 requires retention and recertification elections for over 600 bargaining units between June 1 and November 1, 2017, there is insufficient time for the normal rule-making process to be followed prior to the completion date of the elections. She added that the contract with a vendor to conduct certain elections will be finalized pending approval of the emergency filing. Ms. Machir requested that the committee approve the emergency filing such that the normal effective date of the amendments, 35 days after publication, would be waived and the rules would become effective upon filing on August 10, 2017. She stated that the amendments will also be published under Notice of Intended Action, part of the double-barrel filing, to allow for public comment and that a public hearing will be scheduled for September 19, 2017.

Committee review of emergency rule making (continued)

Discussion began with comments from Mr. Hedberg and Mr. Wishman. Mr. Hedberg commended the work of the board and the changes made in response to AFSCME's concerns. However, he addressed continuing concerns. First, he questioned 5.6(1)"a," which requires an election once every five years even if the employer and the employee organization agree upon an extension of the agreement, and asserted that the Iowa Code does not state that the board must conduct recertification elections once every five years; according to Mr. Hedberg, the only limits in the Iowa Code are to the length of the contract. Second, regarding 5.6(4), Mr. Hedberg requested that the verb be changed so that the rule states the employer "shall reimburse," not "may reimburse," the employee organization for the cost of the election that the employee organization had prepaid should the employer fail to submit the required information to the agency and the agency refrain from conducting an election. Last, Mr. Hedberg discussed issues that are not addressed in the amendments, including the incorporation in the rules of a calendar for elections, the opportunity for employees to vote during work hours, and guaranteed accessibility, not only physical access in compliance with the Americans with Disabilities Act (ADA) but also access to technology, including computers and telephones.

Mr. Wishman thanked the board for accepting some of the AFL-CIO's suggested changes, concurred with the concerns expressed by Mr. Hedberg, and emphasized broader questions unanswered in the amendments, including the inclusion of the length and duration of the elections in rule, an employee's opportunity to vote during work hours, and voter accessibility. Mr. Wishman asked that the rule making be delayed until these concerns are addressed.

Discussion pertained to elections, including methods, notice- and ballot-related issues, fees, election intervals, and vote tallying; vendor procurement and selection; and the status of certain transit employees referred to in 1.6(13).

Ms. DeSmet stated that the number and timing of elections will determine the use of in-person, mail-in or Web-based/telephonic methods or combinations thereof. Ms. Machir explained that as is current practice, an initial notice of hearing is sent by certified mail, return receipt requested, and that subsequent notices will be distributed electronically, and Ms. DeSmet added that the two-week time frame for receipt and return of a ballot is a longstanding practice and that the posted notice to employees stipulates that if an employee has not received the ballot halfway through the two-week period, the board must provide an alternate method for voting. Ms. Machir explained the approximate vendor-related costs and related election cycles, and Ms. DeSmet elaborated on the factors involved in calculating election fees and explained how overpayments and underpayments will be handled. Ms. Machir explained the board's statutory authority for revocation of certification if timely payment of election fees is not received from the employee organization and for conducting retention and recertification elections not less than once every five years. Ms. DeSmet explained that the rules currently allow for observers of vote tallying but that additional details related to tallying will be determined when the vendor is selected. Ms. Machir and Ms. DeSmet provided information about the vendor, Everyone Counts, noting the vendor's history of providing accessibility for voters and listing several states where it operates or has operated. Ms. Machir stated that the board has received only anecdotal information but no formal notification from the U.S. Department of Transportation regarding the status of certain transit employees who are affected by House File 291. In addition, Ms. Machir and Ms. DeSmet explained that because the board does not have the authority to decide, the decision to permit voting during work hours would be up to the agency or department and that because voting methods are subject to change, the methods will be posted on the Board's Web site but are not included in rule at this time.

Rep. Olson suggested that language from House File 291, section 18, regarding transit employees be recited in 1.6(13). In addition, he suggested that based on his interpretation of 5.6(1)"a," the language should indicate that elections will be conducted not less than once every five years if the employer and the employee organization do not agree to extend the contract.

Committee review of emergency rule making (continued)

Rep. Olson also requested that the board provide the committee with the statutory or other basis for the board's interpretation of 5.6(1)"a" and the statutory language or guidance from the state of Wisconsin, suggested as a possibility by Ms. Machir, that requires retention and recertification elections. In response to additional questions from the committee, Ms. DeSmet stated that there are some five-year contracts but none of them will come up for retention and recertification elections this year.

Motion to approve Rep. Vander Linden moved approval of the emergency filing.
Motion carried On a roll call vote of 6 to 4, the motion carried.

PUBLIC HEALTH DEPARTMENT Susan Dixon and Jon Thompson represented the department.

ARC 3150C No action on amendments to ch 154 regarding the medical cannabidiol Act registration card program.

ARC 3204C No questions on proposed amendments to ch 143 concerning the automated external defibrillator program.

Rep. Jones expressed appreciation to the department for the elimination of rules, which, according to Ms. Dixon, resulted from the department's five-year rules review.

ARC 3205C No questions on the rescission of ch 112, biological agent risk assessment.

ARC 3209C No questions on proposed amendments to ch 12 pertaining to prospective private sector employee drug testing, including the addition of "hair" to the definition of "sample" and an update of references to forensic drug testing.

ARC 3210C No questions on proposed amendments to 41.6(4) regarding notification requirements for mammogram reports.

ARC 3211C No questions on proposed amendments to ch 100 concerning vital records, specifically, reporting of terminations of pregnancy.

ARC 3212C A proposed amendment to 126.3(1) pertains to an increase in the autopsy fee by the state medical examiner.

In response to an inquiry from Rep. Hunter, Ms. Dixon stated that \$500 fee increase represents a 4 percent increase for each year since the last fee increase. Rep. Pettengill added that \$500 is a 37 percent increase. Mr. Thompson explained that the fee increase will provide the medical examiner's office with financial stability, allow the office to provide 24/7 assistance to the county medical examiners, enable the office to maintain accreditation through the National Association of Medical Examiners, and allow the office to hire a fourth pathologist to help with the backlog of cases. He added that previous attempts to increase the fee by rule were denied and the decreased appropriation to the office in 2009 has remained in place and that only Polk and Johnson counties provide the same forensic pathology services as the state medical examiner's office.

Rep. Pettengill stated that based on her research, additional funds are needed but the increase falls on taxpayers in the counties. She requested to meet with the department before the Notice is Adopted and Filed to determine the amount of funds needed now and pledged to work on this issue during the next legislative session. Rep. Jones indicated that the department should have been more forthcoming in earlier conversations with her regarding the scheduling of this rule making in the summer rather than in the fall.

ARC 3213C No questions on a proposed amendment to 186.2, which updates the definition of "local board of health."

ARC 3214C No questions on the proposed rescission of ch 201, organized delivery systems.

ARC 3239C No action on amendments to ch 42 regarding the addition of a computed tomography (CT) endorsement to the general nuclear medicine technologist permit.

ARC 3240C No action on amendments to 134.1 to 134.3 pertaining to trauma care facility categorization and verification.

ARC 3241C No action on amendments to 137.1 to 137.4 concerning trauma education and training.

ADMINISTRATIVE SERVICES DEPARTMENT Tami Wiencek and Dave Heuton represented the department. Other interested parties included Mark Hedberg on behalf of AFSCME Iowa Council 61 and Charlie Wishman on behalf of the Iowa AFL-CIO.

ARC 3231C No action on an amendment to 63.9 pertaining to military leave.

Administrative Services Department (continued)

ARC 3179C No action on amendments to 100.1 and 100.2 regarding capitol complex operations.
ARC 3215C No action on amendments to chs 4, 53, 54, 59 to 64 and 70 pertaining to human resources procedures.

Ms. Wiencek stated that the rule making addresses human resources procedures, extends the application of these rules to ensure equal treatment of all employees covered by these rules, and further clarifies existing rules to align the rules with current procedures. She stated that written and oral comments regarding the amendments were received.

Discussion began with comments from Mr. Hedberg, who expressed opposition to the change in overtime pay rates from “over 40 hours in a workweek” to “in accordance with the federal Fair Labor Standards Act [FLSA],” which, according to Mr. Hedberg, will result in the loss of overtime protection for 3,000 state employees and increased litigation and associated costs to the state. Mr. Hedberg also opposed a change in grievance proceedings in which an employee is assisted by a peer, not represented by an elected or appointed union representative, which, according to Mr. Hedberg, is a violation of Iowa Code section 20.8(2) and of U.S. Supreme Court case *NLRB v. Weingarten, Inc. (Weingarten)* regarding representation during a management inquiry that an employee reasonably believes may result in discipline. Mr. Hedberg also stated that the department did not address ten of the comments submitted by AFSCME.

Mr. Wishman elaborated on Mr. Hedberg’s comments that the requirement for assistance by a peer in a grievance proceeding is a violation of *Weingarten* and that employees have a right to engage in concerted activities for the purpose of mutual aid and protection pursuant to Iowa Code section 20.8(3).

Discussion that followed pertained to base wages, overtime pay rates, an employee’s rights under *Weingarten*, peer assistance in grievance proceedings, the criteria for job performance, the removal of references to community-based corrections, and the department’s response to comments by AFSCME.

Mr. Heuton explained that pay grades are wages but not base wages and that 2017 Iowa Acts, House File 291, limits the negotiability of wages to base wages. Mr. Heuton explained that the changes regarding overtime comport with FLSA standards; that nothing in Iowa statute addresses who is eligible for, exempt from or covered by overtime; and that under House File 291, overtime is no longer subject to collective bargaining. He also stated that the department will grant waivers to the overtime rules for specific positions if waivers are warranted by the job market and added that the change in overtime will mean \$5 million in savings to the state. Mr. Heuton stated his understanding that *Weingarten* addresses an employee’s right to representation during an investigation, not necessarily during a grievance proceeding. Regarding an employee’s representation in a grievance proceeding, Mr. Heuton stated that nothing would preclude or prohibit an employee from selecting a representative or peer who is or who has been a union steward as long as the employee is a member of the same bargaining unit as the representative. Mr. Heuton discussed job performance criteria, which are in place, and explained that employees of community-based corrections have always been merit-exempt employees. He stated that the department received comments by AFSCME but had chosen not to address the concerns by revising the rules.

Rep. Pettengill, in response to a question by Rep. Hunter, stated that the public employment relations board (PERB) should make the decision about what is considered a base wage and that the department should secure that decision and provide it to the committee. Rep. Vander Linden expressed concern about employees who, in common thinking, would expect to be paid for overtime and requested that the department give careful consideration to that expectation. Sen. Jochum requested that, taking into account the stricken language regarding union representation in 61.1(4)“b,” the department clarify that a union steward is permitted to be considered a peer who can represent an employee in a grievance proceeding.

REGENTS BOARD Aimee Claeys and Tim Cook represented the board. Other interested parties included Mark Hedberg on behalf of AFSCME Iowa Council 61.

Regents Board (continued)

ARC 3229C No action on amendments to 3.39 and 3.129 pertaining to promotional and lead worker pay and to grievance procedures. Ms. Claeys stated that written comments regarding the amendments were received and that the board proceeded with adoption of the amendments without any changes.

Discussion pertained to the amendments related to grievance procedures, including the requirement that an employee in a grievance proceeding be represented by a coworker; the revisions to the steps in the grievance process; and, in general, whether the amendments are in violation of statute and of *NLRB v. Weingarten, Inc. (Weingarten)*.

Mr. Hedberg asserted that the changes to the grievance process, especially interference in representation, are in violation of *Weingarten* and of statute, specifically Iowa Code section 20.8, and explained that a staff representative or union steward has training in grievance procedures but that a coworker or peer of the aggrieved employee may be reluctant to represent that employee in a grievance proceeding due to lack of specific training and potential discipline by the employer.

In response, Ms. Claeys stated that in a grievance proceeding, a representative of the employee's choosing who must be a coworker is not precluded from being a union steward, and, according to Mr. Cook, "coworker" is defined as a person who is employed by the institution. Ms. Claeys and Mr. Cook asserted that the change to the term "coworker" comports with 2017 Iowa Acts, House File 291, and with existing statute. Mr. Cook asserted that *Weingarten* applies to investigations that may lead to discipline but does not apply to grievance proceedings, which were removed from the collective bargaining process pursuant to House File 291. Ms. Claeys and Mr. Cook explained the removal of Step 2 in the grievance procedures, noting that the informal process outlined in Step 1 of the grievance procedures covers employee-supervisor discussion and creates efficiency and that the revised rules apply to all employees, whereas previously the rules covered only employees who were not covered by a collective bargaining agreement.

Sen. Jochum stated the opinion that House File 291 did not make Iowa Code section 20.8 inoperative, that section 20.8 is still in play, and that the rules need to reflect the law.

INSURANCE DIVISION Dennis Britson and Doug Ommen represented the division.

ARC 3200C No questions on proposed amendments to 50.66, 50.91 and 50.92 pertaining to regulation of securities offerings and those who engage in the securities business.

Committee review of emergency rule making Mr. Ommen presented to the committee a rule making for which the department seeks approval for adoption on an emergency basis. Mr. Ommen explained that the rule making would adopt new ch 82, Iowa Stopgap Measure, which is designed to provide an innovative solution to temporarily stabilize Iowa's individual health insurance market. Mr. Ommen, who distributed a fact sheet to illustrate Iowa's health coverage, explained that the adoption of the rules is required by the Centers for Medicaid and Medicare Services (CMS) as a part of a waiver application by the state of Iowa under Section 1332 of the Patient Protection and Affordable Care Act (ACA).

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

Motion carried On a unanimous roll call vote, the motion carried.

ACCOUNTANCY EXAMINING BOARD Robert Lampe represented the board.

ARC 3230C No action on amendments to chs 3 and 14 and the adoption of ch 13 pertaining to rules of professional ethics and conduct.

Rep. Pettengill commended the language of 13.1(1), particularly the phrase "the obligation to maintain independence of thought and action and a continued commitment to learning and professional improvement."

ARC 3224C No questions on proposed amendments to chs 1, 6 to 8, 10, 13, 14, 20 and 21 concerning attest services, CPA firm licensure, the definition of "state," and review of rules.

ARCHITECTURAL EXAMINING BOARD Lori SchraderBachar and Linda Alfson Schemmel, board chair, represented the board.

ARC 3169C No questions on proposed amendments to 1.1 and 1.4 regarding an update of terminology related to the description of the board.

ARC 3170C No questions on proposed amendments to ch 2 pertaining to an update of terminology related to registration.

ARC 3171C No questions on proposed amendments to ch 3 concerning an update of terminology related to continuing education.

ARC 3172C No questions on proposed amendments to 5.2 regarding an update of terminology related to exceptions.

ARC 3173C No questions on proposed amendments to ch 6 pertaining to an update of terminology related to disciplinary action against licensees.

ARC 3174C No questions on proposed amendments to 4.1 concerning an update of terminology related to rules of conduct.

ARC 3175C No questions on proposed amendments to 7.3 regarding an update of terminology related to disciplinary action for unlicensed practice.

REAL ESTATE COMMISSION Lori SchraderBachar and commission board member Michael Telford represented the commission.

ARC 3154C No questions on proposed amendments to chs 7, 16, and 17 regarding branch offices, licensure, prelicense and continuing education, and courses and attendance certificates.

ARC 3242C No action on amendments to chs 3 to 5 regarding licensure of brokers, salespersons and nonresident licensees.

UTILITIES DIVISION Cecil Wright represented the division.

ARC 3246C No action on amendments to 36.1 to 36.5 and 36.7 pertaining to energy efficiency planning and reporting for non-rate-regulated gas and electric utilities.

Mr. Wright explained that in 36.5(1), pursuant to 2017 Iowa Acts, Senate File 331, the term “customer class” is used except in “d,” in which “customer” was inadvertently used, and stated that the term will be corrected in a future rule making.

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT Margaret Thomson represented the department.

ARC 3152C No questions on a proposed amendment to 40.15 that updates a federal code reference for agricultural seeds.

ARC 3232C No action on amendments to chs 36, 45, 63 and 68 regarding licensure of egg handlers, milk haulers, milk graders, bulk milk tankers, can milk truck bodies and pesticide dealers.

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

ARC 3243C No action on amendments to chs 1 to 3, 10 to 12, 20 to 22, 30, 40, 50 and 60 concerning the state soil and water quality committee, including a change of committee name, the definition of “edge-of-field practice,” and the mineral mining license renewal and fee.

ARC 3244C No action on amendments to ch 12 pertaining to water protection practices funds.

ARC 3216C No action on amendments to 60.31 pertaining to the mine site registration renewal and fee.

LABOR SERVICES DIVISION Kathleen Uehling represented the division.

ARC 3220C No questions on proposed amendments to 32.2(2)“a” requiring proof of age for the obtaining of a child labor permit.

ECONOMIC DEVELOPMENT AUTHORITY Jennifer Klein represented the authority.

ARC 3155C No questions on a proposed amendment to 110.4(1) pertaining to the maximum employer award amount under the STEM internship program.

ARC 3195C No action on amendments to ch 106 concerning the small business innovation research and small business technology transfer outreach (SBIR/STTR) programs.

Economic Development Authority (continued)

In response to a question from Rep. Hunter, Ms. Klein explained that the maximum award that may be granted to an employer under the STEM internship program is being reduced from \$100,000 to \$50,000 to increase participation by more employers, whereas pursuant to statute, the maximum award for SBIR/STTR programs is being raised from \$25,000 to \$100,000 to encourage businesses to apply and that the federal awards are granted for which state assistance is used by the applicant to be successful in securing the award.

IOWA FINANCE AUTHORITY Mark Thompson and Dave Vaske represented the authority.

ARC 3225C Proposed amendments to 12.1(2) and 12.2(2) pertain to low-income housing tax credits.

In response to a question from Sen. Horn, Mr. Vaske stated that the project in Iowa City to which Sen. Horn referred is funded by the National Housing Trust Fund and that the stand-alone requirements for the \$3 million per state grant by the Trust Fund do not allow resources from the low-income housing tax credit program to be combined with those of the Trust Fund.

EDUCATION DEPARTMENT Phil Wise, Dave Tilly and Thomas Cooley represented the department.

ARC 3148C Proposed amendments to 61.3 pertain to the voluntary implementation of the intensive summer literacy program.

In response to an inquiry from Rep. Pettengill, Mr. Tilly stated that even though the intensive summer reading program is no longer mandatory, the department is committed to implementing the remaining statutory provisions, including early identification and a universal screening assessment of each student three times annually. He also stated that school districts will consider offering voluntary implementation of an intensive summer reading program based on financial and staffing considerations. In response to a question from Sen. Costello, Mr. Tilly described the universal screening assessment process and stated that supplementary instruction and interventions are available for all students.

ARC 3149C No questions on proposed amendments to ch 62 regarding state standards for progression in reading. Mr. Wise stated that the statute requires that students who are persistently at risk in reading at the end of third grade remain entitled to intensive reading instruction.

ARC 3180C No action on the rescission of ch 94, administrative advancement and recruitment program.

ARC 3181C No action on amendments that make technical corrections to 17.10 and 17.11 regarding open enrollment, specifically, method of finance and special education students.

EDUCATIONAL EXAMINERS BOARD Joanne Tubbs represented the board.

ARC 3196C No action on amendments to chs 1, 11 to 13, 18, 20 and 22, which resulted from a comprehensive review of rules and which pertain to the executive director, complaints, fees, licenses and endorsements, renewals, and authorizations.

ARC 3197C No action on amendments to chs 13 and 24 pertaining 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.

INSPECTIONS AND APPEALS DEPARTMENT David Werning and Sam Langholz represented the department.

ARC 3217C No action on amendments to ch 11 pertaining to the award of attorney fees and court costs.

Mr. Langholz explained that sheriffs had requested that the department amend rule 11.11 to award contested case costs in a similar manner to that used for attorney fees and court costs but that the department determined that it lacked statutory authority to amend the rule to provide for the award of contested case costs because the statute provides only for the award of reasonable attorney fees and court costs.

Inspections and Appeals Department (continued)

- Mr. Langholz stated that after evaluating its existing rules and practices in response to the sheriffs' concerns, the department made one change from the Notice of Intended Action to modify 11.11(3) to remove the obligation of sheriffs to pay contested case costs and to provide that the department will charge for its costs only for cases arising out of decisions of the commissioner of public safety, as the department does for all other state agencies.
- Rep. Pettengill commended the department's creative thinking in finding a solution.
- ARC 3187C No action on amendments to ch 30 regarding food and consumer safety.
- ARC 3188C No action on amendments to ch 31 pertaining to food establishment and food processing plant inspections.
- ARC 3189C No action on amendments to ch 34 concerning home bakeries.
- ARC 3190C No action on the rescission of ch 102, social gambling.
- ARC 3191C No questions on the termination of proposed amendments to chs 104 and 105 pertaining to amusement devices.
- ARC 3192C No action on the rescission of ch 107, game nights.
- ARC 3222C Proposed amendments to 56.7 and 56.10 pertain to factors determining the imposition of citations and fines.
- In response to an inquiry from Sen. Horn, Mr. Werning stated that two-thirds of fines are imposed by the federal government and one-third by state government and that the funds to pay fines come from the facility's general operating budget. Mr. Werning will provide the committee information about the impact of fines on facilities.
- ARC 3235C No action on amendments to 52.1 regarding the addition of personal degradation as a form of dependent adult abuse in facilities and programs.

ENVIRONMENTAL PROTECTION COMMISSION Matt Dvorak represented the commission.

- ARC 3202C No questions on proposed amendments to 61.2(4), 61.3 and 62.8 pertaining to bacteria water quality criteria and the Iowa wasteload allocation (WLA) procedure.

PROFESSIONAL LICENSURE DIVISION

- ARCs 3221C and 3223C Reps. Pettengill and Vander Linden determined that these rule makings should be placed on the September agenda because no representative appeared.

DENTAL BOARD Jill Stuecker and Christel Braness represented the board.

- ARC 3156C Proposed amendments to ch 15 pertain to fees.
- Rep. Pettengill expressed concern that the board proposes not to refund overpayments of less than \$10 and asked that the board revise the amendment. In response, Ms. Stuecker explained that the amendment in 15.2 to the definition of "fee" makes the definition consistent with that of "overpayment" in ch 1. Ms. Braness added that a refund of overpayment is rare, that the administrative cost of returning overpayments of less than \$10 exceeds that amount and that typically a check with an incorrect amount is returned to the licensee with a request for a check with the correct amount. Rep. Hunter concurred with Rep. Pettengill's concern and asked that the definition of "fee" reflect current practice.
- ARC 3157C Proposed amendments to chs 14 and 20 and proposed ch 25 pertain to licensure and registration, specifically, renewal, reinstatement, dental assisting and continuing education.
- In response to a question from Rep. Pettengill regarding renewal notices to be sent only by e-mail, Ms. Stuecker explained that the board has 97 percent of licensees' e-mail addresses and plans to secure the remaining 3 percent. Ms. Braness added that the board has also notified dental offices that the licenses of dental hygienists and dental assistants will be up for renewal this year.

PHARMACY BOARD Terry Witkowski represented the board.

- ARC 3228C No questions on proposed amendments to 16.1 to 16.4, 16.6 and 16.8 regarding nuclear pharmacy practice.
- ARC 3236C No action on an amendment to 8.35(2) and the adoption of ch 13 concerning telepharmacy practice.

Pharmacy Board (continued)

In response to a question from Rep. Pettengill, Ms. Witkowski stated that telepharmacy pilot programs, for which an automated medication distribution system is required, are currently operating. She explained that because these systems are expensive, pharmacies have not acted upon this option and that the telepharmacy solutions now available are much more economical and feasible for operation in areas near small towns.

ARC 3237C

No action on ch 19, nonresident pharmacy practice.

ARC 3238C

No action on amendments to ch 20 and the adoption of ch 41 pertaining to compounding practices and outsourcing facilities.

PUBLIC SAFETY DEPARTMENT Barb Edmondson represented the department.

ARC 3153C

Proposed amendments to 504.1 pertain to the adoption by reference of the 2017 National Electrical Code (NEC), the standards for electrical installations. Ms. Edmondson addressed questions from Rep. Vander Linden regarding the department's adoption by reference of rules such as those in the NEC and the availability of those rules to the persons who must comply with the rules. Mr. Ewing noted that Iowa Code section 103.6(1) requires the electrical examining board to adopt rules that shall be governed by the minimum standards set forth in the NEC and in amendments to the NEC and that the NEC and amendments to it shall be filed in the offices of the state law library and shall be a public record.

At the request of Rep. Pettengill, Ms. Edmondson will ensure that the current NEC is available in the state law library.

REVENUE DEPARTMENT Julie Roisen and Ben Clough represented the department.

ARC 3203C

No questions on a proposed amendment to 71.20(1)"a" regarding the occupations of members of a county board of review.

ARC 3206C

No questions on the proposed rescission of 72.2(6) pertaining to the assessor or deputy assessor examination, specifically, the removal of the right to review.

ARC 3207C

No questions on a proposed amendment to 80.49(2)"b" clarifying the reporting requirement related to filing a claim for the commercial and industrial property tax replacement.

ARC 3208C

No questions on proposed amendments to 80.13 regarding the addition of a statutory sunset date associated with wind energy conversion property.

ARC 3218C

No action on amendments to 39.12 pertaining to an extension of the Iowa income tax filing deadline for certain military and civilian support personnel.

TRANSPORTATION DEPARTMENT Alex Jansen, Kristin Haar, Tammy Nicholson, Tom Reis and Marty Sankey represented the department.

ARC 3193C

No action on amendments to ch 511 and the rescission of ch 513 pertaining 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 stated that the permit fee increases coincide with those in statute.

ARC 3194C

No action on amendments to chs 920, 921 and 924 regarding public transit system funding.

ARC 3201C

No questions on the proposed rescission of ch 110, highway project planning.

ARC 3219C

The rescission of ch 125, general requirements and covenants for highway and bridge construction, is proposed.

In response to an inquiry from Sen. Horn, Mr. Reis explained the process by which the review of plans and specifications and the bidding and letting of highway projects in Iowa are conducted by the department and stated that a firm may be headquartered out of state but have an Iowa presence and be familiar with the design criteria and specifications for highway construction in Iowa.

ARC 3245C

No action on amendments to 111.1 pertaining to the adoption by reference of section II of the uniform manual related to real property acquisition and relocation assistance.

WORKFORCE DEVELOPMENT DEPARTMENT David Steen represented the department.

- ARC 3178C No questions on proposed amendments to chs 22 to 25 pertaining to procedures for department interaction with employers and claimants and to updates related to technology.
- ARC 3226C No questions on proposed amendments to ch 23 regarding procedures for department interaction with employers and claimants and to updates related to technology.
- ARC 3227C No questions on proposed amendments to ch 26 concerning the unemployment appeal process.
- ARC 3247C No action on amendments to chs 21 to 25 regarding the unemployment insurance services division; employer records, reports, contributions and charges; claims; benefits; and benefit payment control.
- ARC 3248C No action on amendments to chs 22, 24 and 25 pertaining to employer reports, claims, benefits, and benefit payment control.

HUMAN SERVICES DEPARTMENT Nancy Freudenberg and Wendy Rickman represented the department.

- ARC 3159C No action on amendments to 79.1(22) and 80.2(2)“h” pertaining to Medicaid reimbursement for Medicare Part A and Part B crossover claims.
- ARC 3158C No action on amendments to 79.1(2) and the adoption of 79.1(7)“d” regarding the Medicaid anesthesia conversion factor.
- ARC 3162C No action on the adoption of 79.1(7)“b” concerning the Medicaid site of service differential for physician services in facilities.
- ARC 3161C No action on an amendment to 79.1(5)“f”(3) pertaining to Medicaid diagnostic related group (DRG) costs.
- ARC 3160C No action on amendments to 79.1(7)“c” regarding Medicaid primary care physician rates.
- ARC 3182C No action on amendments to 75.24(3)“b” concerning an increase in the maximum Medicaid rate for intermediate care facilities for individuals with an intellectual disability.
- ARC 3183C No action on amendments to 75.23(3) and 75.24(3)“b” pertaining to a change in the statewide average private-pay cost of nursing facility services and of charges for institutional care.
- In response to a question from Sen. Costello, Ms. Freudenberg stated that the reason for the increase in the average private-pay cost of nursing facilities, not a decrease as originally proposed, resulted from an issue in the conducting of the survey.
- ARC 3184C No action on amendments to chs 77, 78 and 83 regarding Medicaid waiver services, including assessment tools, case management, and a definition of “brain injury.”
- ARC 3186C No action on amendments to ch 142 pertaining to the interstate compact on the placement of children, specifically, the use of the national electronic interstate compact enterprise (NEICE) system.
- ARC 3234C No action on amendments to ch 83 regarding the time frame for home- and community-based services (HCBS) waiver services eligibility.
- ARC 3185C No action on amendments to chs 108, 112 to 114, 116, 117, 156 and 202 pertaining to alignment of rules related to foster care with the rules related to child care; contractor preservice training; and updates of terminology.
- Discussion pertained to storage for weapons, firearms and ammunition and to more direct recruitment of foster parents.
- In response to committee members’ questions, Ms. Rickman explained that children are less likely to make the connection between a key and storage unit if there are separate keys for weapons storage units and for ammunition storage units. She and Ms. Freudenberg offered to consider the addition of fingerprints as keys. Ms. Rickman stated that the clarifications in the revised rules regarding foster parenting and adoption may be helpful to prospective foster and adoptive parents in assessing whether they meet the requirements.
- Rep. Jones commended the department for changes in the adopted amendments regarding baby monitors.
- ARC 3199C No action on amendments to ch 7 and the adoption of ch 87, family planning program.

Human Services Department (continued)

In response to an inquiry from Rep. Pettengill regarding a rule making about Medicaid retroactivity previously reviewed by the committee, Ms. Freudenberg stated that the adoption is in process and will be filed by the end of August. Ms. Rickman added that the rule making has an October effective date.

Committee business

The minutes of the July 6, 2017, meeting were approved.

The next meeting was scheduled for Tuesday, September 12, 2017, at 9 a.m.

In response to a request from Rep. Pettengill at the July meeting, Mr. Ewing and Mr. Reilly analyzed the statutory factors affecting an agency’s authority to implement a statute through guidance and prepared a memorandum detailing their findings, which Mr. Ewing presented to the committee. Mr. Ewing summarized the content of the memorandum with specific focus on the term “guidance” as it is referred to in the memorandum and on the statutory provisions that can affect whether an agency might implement a bill through guidance prior to or in lieu of the rule-making process. Mr. Ewing elaborated on the types of statutory provisions.

In response to committee members’ questions, Mr. Ewing addressed the reasons for which an agency might incorporate both statutory language and supplemental rule language in a rule so that the regulatory provisions are all in one place and the effect a delay may have on the statute/rule language; the issue of guidance, including the absence of a definition of guidance in statute and the consequences for the public; and a potential conflict between statute and rule and the effect of a delay given that conflict, as illustrated by session-delayed education department ch 47, career and technical education (ARC 2947C, IAB 2/15/17).

Sen. Jochum requested that Mr. Ewing provide the committee with information about whether other states define guidance and how they deal with guidance. Rep. Pettengill commended the memorandum and urged committee members to share the information with their colleagues in the house and senate.

Adjourned

The meeting was adjourned at 3:35 p.m.

Respectfully submitted,

Stephanie A. Hoff

APPROVED:

Chair Dawn Pettengill

Vice Chair Mark Chelgren