

**MINUTES OF THE OCTOBER 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, October 10, 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, Amy Nielsen, and Guy Vander Linden were present. Representative Rick Olson was not present.

Also present: Jack Ewing, 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 a.m. Rep. Pettengill welcomed Rep. Amy Nielsen to the committee.

Fiscal overview Christin Mechler presented the LSA fiscal report. Also representing the LSA fiscal services division was fiscal analyst Jeff Robinson. In response to questions from Rep. Pettengill and Sens. Horn and Costello regarding ARC 3325C, Mr. Robinson explained that the estimated \$1.6 million in penalties will be collected from 3,200 businesses that are not currently identifying as employers and filing reports; that casinos may have concerns about regulations in addition to those of the workforce development department; and that the rules do not specify the type of notice to filers regarding the penalties.

HUMAN SERVICES DEPARTMENT Nancy Freudenberg represented the department.

ARC 3321C No questions on proposed amendments to chs 77 to 80 regarding qualified Medicare beneficiary (QMB) providers and health insurance premium payment (HIPP) providers under Medicaid.

ARC 3322C No questions on proposed amendments to ch 155, child abuse prevention program.

ARC 3323C Proposed 75.21 concerns the HIPP program. In response to a question from Sen. Costello, Ms. Freudenberg stated that she could not yet say whether the costs would be higher or lower because the contract with the managed care organizations is still in process.

VETERANS AFFAIRS, IOWA DEPARTMENT OF Melissa Miller represented the department.

ARC 3341C No action on amendments to chs 2 to 4, 6, 11 and 14 to 16 concerning an update of department contact information.

AGING, DEPARTMENT ON Brian Majeski represented the department.

ARC 3324C A proposed amendment to 22.5 concerns the staffing ratio for substitute decision makers. Mr. Majeski stated that the need for services is increasing and discussed the amendment in reference to the number of substitute decision makers in several other states.

In response to questions from Sens. Jochum and Costello and Rep. Nielsen, Mr. Majeski stated that there is one designated substitute decision maker at the state level but more than the ten substitute decision makers pursuant to the rule; explained the process by which the state office assists a person in a care facility to receive substitute decision-making services; and described pilot projects to provide substitute decision-making services in communities through the area agencies on aging.

ATTORNEY GENERAL Jessica Whitney represented the attorney general.

ARC 3308C No questions on a proposed amendment to 22.6(1) pertaining to an increase in the fee for a late charge for creditors and debt collectors.

INSURANCE DIVISION Chance McElhaney represented the division.

Iowa stopgap measure Mr. McElhaney explained that the division had originally planned to present for review additional emergency rules regarding the Iowa stopgap measure but had decided to promulgate additional rules after receiving information regarding cost-sharing credits from the Centers for Medicaid and Medicare Services (CMS).

Insurance Division (continued)

In response to questions from Rep. Pettengill, Mr. McElhaney explained the process by which applicants will verify their eligibility and purchase insurance coverage on the stopgap.iowa.gov Web site, which has been tested and is ready for the open enrollment period to begin on November 1 after approval of the waiver is received from CMS. In response to a question from Sen. Jochum based on an article in the Washington Post, Mr. McElhaney stated that Mr. Ommen, the insurance commissioner, and his staff and the staff of Governor Reynolds have been in contact with CMS and with the White House regarding approval of the waiver, though Mr. McElhaney declined to speculate about whether President Trump had changed his reported position about denying Iowa's waiver.

ARC 3318C No questions on proposed amendments to 15.5 pertaining to reciprocal protections for seniors moving between a Medicare supplement policy and a Medicare Part C policy. Mr. McElhaney stated that the division determined that stakeholder input on the amendment was needed and, as a result, submitted a Notice of Termination on October 6, 2017.

UTILITIES DIVISION Cecil Wright and Matt Oetker represented the division.

ARC 3316C No action on amendments to 16.6 and 16.7 pertaining to accounting.

ARC 3317C No action on amendments to ch 32 concerning reorganization of public utilities. Mr. Wright stated that the board concurred with public comment and did not adopt proposed 32.10 pertaining to water, sanitary sewage, and storm water drainage utilities. Rep. Pettengill thanked the board for its responsiveness to public comment.

ARC 3326C No questions on proposed amendments to ch 3 pertaining to rule making.

ARC 3340C No action on amendments to ch1 regarding organization and operation.

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

ARC 3338C No action on amendments to 12.1(2) and 12.2(2) pertaining to low-income housing tax credits.

In response to a question from Rep. Pettengill, Mr. Thompson stated that the insertion of the date on which the amendments were adopted by the board, September 6, 2017, was the only change from the proposed amendments.

ENVIRONMENTAL PROTECTION COMMISSION Joe Griffin, Jon Tack and Dan Olson represented the commission.

ARC 3309C Proposed amendments to 64.15 pertain to the reissuance of NPDES General Permit Nos. 1, 2, and 3 for discharge from storm water.

In response to questions from Reps. Jones and Pettengill regarding the timeliness of the permit renewals, Mr. Griffin explained that the rule-making process, which began more than a year ago, had not been completed before the permit expires because more steps were required and more stakeholder input was received prior to the publication of the Notice. In addition, he explained that the permits are extended administratively until the new permit is reissued and that there was extensive public comment on amendments to NPDES General Permit No. 2 regarding construction permits.

Regarding the administrative extension of all types of individual permits, Mr. Tack added that, pursuant to Iowa Code chapter 17A, if a permittee applies on time, the permit is extended administratively until a decision is made. In addition, he stated that because this provision has been included in the general permits, permittees are aware that as long as they comply with the requirements, a delay by the department will not delay the extension of the permit. Rep. Jones stated that she would prefer that the permits be in place on time but expressed appreciation for the inclusion of the provision in the general permit.

ARC 3310C No questions on proposed amendments to 64.15(4) regarding the reissuance of NPDES General Permit No. 4 for discharge from private sewage disposal systems.

NURSING BOARD Kathy Weinberg and Laura Hudson represented the board.

ARC 3311C No action on ch 5, continuing education.

PHARMACY BOARD Andrew Funk and Sue Mears represented the board.

- ARC 3329C The proposed rescission of chs 9 and 21 and adoption of new ch 21 pertain to automated medication distribution systems and telepharmacy services and to electronic data and automated systems in pharmacy practice.
In response to a question from Sen. Chelgren, Mr. Funk explained that InstyMeds automated medication dispensing systems are categorized under the purview of the dispensing practitioner, require a pharmacy license for practitioner dispensing for purposes of billing third-party insurance, and are reviewed by compliance officers though there is not a limitation on physicians' buy-in to these systems.
- ARC 3330C No questions on proposed amendments to ch 6 regarding general pharmacy practice.
- ARC 3344C No action on ch 35, contested cases, and ch 36, discipline.
In response to a question from Rep. Pettengill, Mr. Funk explained the process by which a complaint against a licensee is investigated and, that if grounds for discipline are established and a statement of charges is issued, the board action becomes public through the posting of the action on the board's Web site.
- ARC 3345C No action on amendments to chs 7, 8, 21, 23 and 100 and adoption of ch 10 pertaining to controlled substances.
- ARC 3346C No action on the rescission of ch 24, pharmacy Internet sites, and amendments to chs 25 to 27, 29 and 31 pertaining to updates of name and contact information for the board and to citations.
- ARC 3347C No action on amendments to ch 34 concerning waivers and variances.
In response to a question from Rep. Pettengill, Mr. Funk stated that waivers are listed on a license and are generated and posted daily on the board's Web site. Mr. Ewing added that all waivers of administrative rules are accessible on LSA's Web site.

REVENUE DEPARTMENT Julie Roisen represented the department.

- ARC 3312C No action on an amendment to 71.20(1)"a" regarding the occupations of members of a county board of review.
- ARC 3313C No action on the rescission of 72.2(6) pertaining to the assessor or deputy assessor examination, specifically, the removal of the right to review.
- ARC 3314C No action on amendments to 80.13 regarding the addition of a statutory sunset date associated with wind energy conversion property.
- ARC 3315C No action on an amendment to 80.49(2)"b" clarifying the reporting requirement related to filing a claim for the commercial and industrial property tax replacement.
In response to a question from Rep. Nielsen, Ms. Roisen explained there is no transfer of funds in this submission; as part of the process of filing a claim, county auditors need to submit their actual department of management published consolidated levy rates to verify the rates used in their calculation of the business property tax credit.

WORKFORCE DEVELOPMENT DEPARTMENT David Steen and Emily Chafa represented the department.

- ARC 3325C Proposed amendments to chs 22 and 23 pertain to employer records, reports, contribution and charges, specifically, to fees and the collection of covered unemployment compensation.
Mr. Steen explained that a consequence is needed for employers who do not register as employers and that the department proposes the addition of a penalty of \$500 for noncompliance with employer registration and a penalty of \$200 for noncompliance with electronic filing. He explained that the penalty is an impetus for registration by a business to ensure compliance and to maintain the unemployment system.
Committee members inquired about how notification of employers is conducted, when the penalty is triggered, and how the penalty or penalties are imposed; the authority to impose the penalty; the use of the penalty and interest fund; and whether the penalty should be legislated.
Mr. Steen explained that the prospective employer would learn about registration through the employer's attorney or accountant or through the secretary of state or the department; that the penalty is triggered from the moment an employer engages an employee; and that the penalty is incurred after the 30-day registration period ends.

Workforce Development Department (continued)

He stated that the authority to impose the penalty lies with the director of the department and that the director is authorized to expend funds from the penalty and interest fund. Mr. Steen stated that legislation related to the imposition of the penalty would be helpful. He also stated that the department needs to have an efficient process for registration to perform at the same level as the other states in Region V.

Committee members suggested that the notification process, including steps for employers to follow and the date by which the employer must register, should be stated in the rule. At the request of the committee, Mr. Steen agreed to provide specific information about the director's authority to impose the penalty and to disburse moneys from the penalty and interest fund; to provide more specific information about notification of employers; and to further review and revise the rule pursuant to the committee members' direction.

ARC 3342C No action on amendments to ch 23 regarding procedures for department interaction with employers and claimants and to updates related to technology.

ARC 3343C No action on amendments to ch 26 concerning the unemployment appeal process.

TRANSPORTATION DEPARTMENT Melissa Spiegel represented the department. Other interested parties included Stephanie Fawkes-Lee of Fawkes-Lee and Ryan.

ARC 3304C Proposed amendments to 401.20 and the adoption of ch 411 pertain to persons with disabilities special registration plates and parking permits. Ms. Spiegel explained statutory changes regarding permanent (nonexpiring) parking placards for persons with disabilities and for veterans who provide acceptable certification of a veteran's disability from the U.S. Department of Veterans Affairs.

Ms. Fawkes-Lee objected to the department's interpretation of the statute, which is that a permanent, nonexpiring persons with disabilities placard that is lost, stolen or damaged must be replaced with a five-year placard. She asserted that this interpretation is contrary to the language of noncodified Section 3 of 2016 Iowa Acts, House File 588, which states that "the Act does not affect the validity of nonexpiring persons with disabilities placards issued prior to January 1, 2017." In addition, she stated that this law was enacted to prevent improper use of persons with disabilities placards by persons without disabilities but will result in hurting persons with disabilities.

Ms. Spiegel stated that the department contends that if a nonexpiring persons with disabilities placard issued before January 1, 2017, is lost, stolen or damaged, the legislation clarifies that the lost, stolen or damaged placard must be invalidated because that is the process required by Iowa Code chapter 321L. The lost, stolen or damaged placard is invalidated, she continued, and a new standard five-year placard is issued in its place because the department no longer issues nonexpiring placards.

Sen. Chelgren concurred with the department, noting that the grandfathering provision, that is, the nonexpiration of placards issued prior to January 1, 2017, would seem to apply to the placard, not to the person with a disability who uses the placard; otherwise, he stated, the grandfathering provision would create two classes of persons with disabilities who use the placards and who would be treated differently under Iowa law: persons who were diagnosed with a disability prior to January 1, 2017, and persons who were diagnosed with a disability after that date. Rep. Vander Linden concurred and stated that the purpose of the legislation was to limit the abuse of permanent persons with disabilities placards, that the rules comply with the law, and that Ms. Fawkes-Lee's concerns would need to be addressed through legislation.

In response to an inquiry from Rep. Jones, Ms. Spiegel addressed the time frame for rule making regarding persons with disabilities placards and the requirements for attestation by veterans of a disability through certification by the U.S. Department of Veterans Affairs.

ARC 3305C No questions on proposed amendments to ch 635 regarding an update of Iowa Code references related to motorcycle rider education.

ARC 3306C No questions on proposed amendments to ch 400 pertaining to the electronic application for vehicle title and registration.

ARC 3307C No questions on proposed amendments to chs 601, 605, and 630 concerning application for a driver's license or permit or nonoperator's identification card.

SECRETARY OF STATE Carol Olson, Eric Gookin and Mark Snell represented the secretary of state. Other interested parties included Jessica Harder on behalf of the Association of Business and Industry, Matt Everson on behalf of the National Federation of Independent Business, and Doug Struyk on behalf of the Iowa State Bar Association.

ARC 3319C Proposed amendments to ch 22 pertain to the polling place technology revolving loan fund and to electronic poll books.

In response to an inquiry from Sen. Chelgren, Ms. Olson explained that counties can fund e-poll books on a loan basis through the revolving loan fund and that the funds in the revolving loan fund are appropriated from the general fund to the elections division. In response to an inquiry from Rep. Nielsen, Ms. Olson explained that a panel which is not required by statute has been created to maintain financial accountability and that its membership, i.e., the commissioner of elections, the state auditor and the director of the department of management, reflects that purpose; that the panel will meet when loan applications require review; that all e-poll books are required to meet operational standards but that the secretary of state does not certify e-poll books; and that the I-voter system is not obsolete.

ARC 3320C Proposed amendments to chs 2, 30 and 40 pertain to fee increases to fund the technology modernization fund. Mr. Snell stated that the purpose of the fund, created in 2017 Iowa Acts, Senate File 516, section 23, is to update business services or business services technology. He explained that in response to concerns expressed by interested individuals and groups about the continuation of fee adjustments when the technology modernization fund is repealed, the secretary of state will amend the proposed rule to state that upon expiration of the technology modernization fund as created by 2017 Iowa Acts, Senate File 516, section 23, the fees will revert back to the amounts authorized prior to July 1, 2017.

Committee members commended the amendment to the proposed rules to include a sunset in the rule. However, because Senate File 516 states that the fund is appropriated for the purpose of modernizing technology and could be interpreted more broadly or differently in the future, committee members expressed the opinion that the rule should specify that the funds be used for business services or business services technology.

Ms. Harder, Mr. Everson and Mr. Struyk also commended the secretary of state for proposing to add a sunset to the rule and expressed appreciation for the word of the secretary of state that the funds would be used only for business services or business services technology. However, they expressed concern that the rule does not specify that use of the funds and requested that language to specify the use of the funds be added to the rule.

Mr. Snell emphasized that the secretary of state will not use the funds for other than their intended purpose: to support business services and technology and related updates for business services activity. In addition, Mr. Snell expressed concern about a delay in the rule-making process if a change were made. Committee members assured Mr. Snell that the addition of the language to specify the use of the funds for business services or business services technology would not delay the rule-making process but that, should the language not be added, there might be difficulty with the rule. Mr. Snell stated the belief that under those circumstances, the secretary of state would be willing to accept the suggestion.

Committee business The minutes of the September 12, 2017, meeting were approved.

The next meeting was scheduled for Tuesday, November 14, 2017, at 9 a.m.

Mr. Ewing stated that Mr. Tim Reilly, who had also been legal counsel to the committee, has accepted a position in the revenue department and that a new legal counsel may be appointed by the November meeting.

Rep. Pettengill inquired about petitions for rule making and the tracking of 2017 bills that require rule making. Mr. Ewing stated that agencies have 60 days to respond to a petition for rule making and that some agencies report their responses to petitions. Rep. Pettengill requested that Mr. Ewing follow up on recently reported petitions for rule making. Mr. Ewing stated that a report of rule making resulting from 2017 bills is in process and will be available in December.

October 10, 2017

Adjourned

The meeting was adjourned at 11:50 a.m.

Respectfully submitted,

Stephanie A. Hoff

APPROVED:

Chair Dawn Pettengill

Vice Chair Mark Chelgren