



Iowa General Assembly

2017 Committee Briefings

Legislative Services Agency – Legal Services Division <https://www.legis.iowa.gov/committees/committee?endYear=2017&groupID=705>

ADMINISTRATIVE RULES REVIEW COMMITTEE

Meeting Dates: | June 13, 2017 |

Purpose. *This compilation of briefings on legislative interim committee meetings and other meetings and topics of interest to the Iowa General Assembly, written by the Legal Services Division staff of the nonpartisan Legislative Services Agency, describes committee activities or topics. The briefings were originally distributed in the Iowa Legislative Interim Calendar and Briefing. Official minutes, reports, and other detailed information concerning the committee or topic addressed by a briefing can be obtained from the committee's Internet page listed above, from the Iowa General Assembly's Internet page at <https://www.legis.iowa.gov/>, or from the agency connected with the meeting or topic described.*

ADMINISTRATIVE RULES REVIEW COMMITTEE

June 13, 2017

Chairperson: Representative Dawn Pettengill
Vice Chairperson: Senator Mark Chelgren

EMERGENCY RULE FILING REVIEWS. Iowa Code section 17A.4(3) provides that an agency can adopt a rule without notice only with specific statutory authority or with prior approval by the Administrative Rules Review Committee. Under this procedure, the committee reviews requests by agencies to adopt rules filed without notice at its monthly meeting or at special meetings if necessary. The committee will approve such filings if the committee finds good cause that notice and public participation would be unnecessary, impracticable, or contrary to the public interest.

The committee considered two filings:

- Department of Public Health—Medical Cannabidiol Patient and Primary Caregiver Registration Card Applications and Renewals. EMERGENCY FILING APPROVED BY COMMITTEE.
- Department of Administrative Services—Capitol Complex Operations. EMERGENCY FILING APPROVED BY COMMITTEE.

HUMAN SERVICES DEPARTMENT, *Courtesy Review: Family Planning Program.*

Background. This Department of Human Services (DHS) rulemaking amends a current chapter of rules to implement a new state Family Planning Program (FPP) in accordance with section 90 of HF 653, as signed by the Governor on May 12, 2017. In general, providers of family planning services will change as entities that provide abortions can no longer participate as an FPP provider. Providers unable to participate as an FPP provider will also be unable to participate as a point-of-service agency for eligibility determinations for FPP.

While DHS is authorized to use the “emergency” rulemaking process for this rulemaking by HF 653, the agency brought these rules before the committee as a courtesy.

Commentary. Ms. Wendy Rickman, the Division Administrator of Adult Children and Family Services for DHS, spoke on behalf of the agency. One committee member asked what happens if the \$3 million allocated to this program runs out. Ms. Rickman indicated services would most likely cease. She added that in considering past usage of such programs, DHS is funded appropriately to operate the FPP. The committee member asked whether all clinics in Iowa that perform abortions are disqualified from the FPP, since about 60 percent of abortions occur at facilities other than Planned Parenthood. Ms. Rickman answered affirmatively.

A committee member asked why much of the framework for the old program is being used to create this new program. Ms. Rickman stated that HF 653 requires DHS to replicate much of the old family planning program to create the new FPP. Another member asked how far along DHS is in terms of being able to provide the services provided by the prior program. Ms. Rickman replied, “We believe this is going to be very seamless for providers and recipients.”

Another committee member asked how many providers there were under the old program. Ms. Rickman stated there were about 800 total providers. She stated that UnityPoint, University of Iowa Hospitals and Clinics, and Planned Parenthood were all point-of-service providers under the old plan but will not be participating in the new FPP. She added that DHS is working with the Department of Public Health and advocacy groups from both sides of this issue to address concerns.

Action. No action taken.

EDUCATION DEPARTMENT, *Career and Technical Education, 2/15/17 IAB, ARC 2947C, ADOPTED, SPECIAL REVIEW.*

Background. This rulemaking implements 2016 Iowa Acts, House File 2392, division II, by establishing new standards relating to career and technical education, including standards for career and technical education service areas, regional secondary career and technical education planning partnerships, career academies, and regional centers.

The committee placed a session delay on these rules at its March 2017 meeting. The rules will become effective at the end of the 2018 Legislative Session. Committee members stated at the March meeting that the language of HF 2392 had unintended consequences relating to agricultural education and that this rulemaking should be delayed for further consideration of the matter by the General Assembly. A special review of these rules was scheduled for the June 2017, Administrative Rules Review Committee meeting.

Commentary. Department representatives Mr. Jeremy Varner and Mr. Thomas Mayes explained that the issue is how HF 2392 can be implemented when the related rules have been subject to a session delay. They stated that the department is implementing the bill through guidance, but that implementing it by rule would be a better approach, as rules provide greater clarity and are less subject to change. They stated that the session delay no longer serves a useful purpose now that the bill is being implemented.

Committee members questioned the department's authority to implement HF 2392 through guidance despite the committee's session delay. Members noted that legislation on this subject proposed but not enacted during the 2017 Legislative Session could still be enacted during the 2018 Legislative Session. Mr. Varner and Mr. Mayes acknowledged the limitations of departmental guidance and stated that the guidance is intended to implement HF 2392, which they stated is self-executing and can still be implemented without rules. They stated that the guidance is not implementing the session-delayed rules. Some committee members expressed disappointment with the department's decision to move forward with guidance despite the session delay while other members supported lifting the session delay. Members asked the department to provide the committee with guidance regarding how the funding at issue in HF 2392 could be used. Members also asked about the fiscal impact of moving forward with guidance, but an answer could not be determined.

Committee members asked Mr. Steve Ovel, who represents the Iowa Association of Community College Trustees, to comment on the situation. He stated the community colleges have a strong interest in seeing HF 2392 implemented and urged that the session delay be lifted. He stated that he did not see a negative impact from the department moving forward with guidance.

Action. No action taken. Additional review scheduled for the July 6 meeting.

MEDICINE BOARD, *Physician Supervision of a Physician Assistant, 5/24/17 IAB, ARC 3069C, NOTICE.*

Background. This notice of intended action seeks to amend the Board of Medicine's (BM) chapter of rules dealing with a physician's supervision of a physician assistant. BM approved the rules on April 28, 2017. The proposed rulemaking requires a physician to have a written supervisory agreement in place with each physician assistant supervised by the physician and sets forth several required provisions for those agreements.

Commentary. House File 591, passed by both chambers and signed into law by Governor Branstad on April 12, 2017, effectively terminated a 2015 joint-rulemaking directive from the Legislature to BM and the Board of Physician Assistants (BPA) regarding physician supervision of a physician assistant. Speaking on behalf of BM in support of ARC 3069C were Mr. Mark Bowden, Executive Director, and Mr. Kent Nebel, the Director of Legal Affairs. Mr. Nebel stated that while House File 591 ended an unsuccessful cooperative effort with BPA, it did not solve the problem BM identifies as a lack of clarity for its licensees in how to provide appropriate supervision to physician assistants. Mr. Bowden stated that the supervisory agreements required by this proposed rulemaking allow for flexibility in the relationships between supervising physicians and physician assistants.

The Iowa Physician Assistant Society, represented by Mr. Tom Cope, expressed strong disapproval of the proposed rulemaking. In Mr. Cope's view, House File 591 was an attempt to avoid disagreements between physicians and physician assistants. He believes this rulemaking "completely gets us back on a confrontational approach" and asked BM to withdraw the proposed rulemaking and restart its process. Mr. Cope pointed out that much of the language used in this rulemaking is taken verbatim from the proposed rule terminated by House File 591, which he argued ignores the

legislative intent of House File 591.

While one committee member expressed concern that the rules appear to be “heavy-handed” on the side of physicians, two members spoke at length in support of BM. One member pointed out that the purpose of House File 591 was not to encourage cooperation between the two groups but rather to provide certainty to the public that physicians are in fact supervising physician assistants. The member also stated that while some of the language may be repurposed, the intent of this rulemaking is to require an agreement between a physician assistant and supervising physician. The member noted that the joint rulemaking process demonstrated that a “you’re-not-the-boss-of-me mindset” was “running rampant” among physician assistants and House File 591 was the result of good work to ensure physicians are in charge of rules regarding supervision of physician assistants.

Mr. Cope challenged BM’s authority to adopt rules relating to this subject due to provisions in Iowa Code chapter 148C, regulating physician assistants. The Iowa Physician Assistant Society, according to Mr. Cope, disagrees that a problem exists under current supervision rules and argues that there is no evidence supporting BM’s position that a problem exists.

A committee member asked Mr. Bowden whether he thinks this rulemaking will improve patient care and increase patient access to care. Mr. Bowden stated that it will because it will bring clarity to the expectations to physicians and physician assistants. He noted that the American Academy of Family Physicians and the American Academy of Physician Assistants support supervisory agreements between supervising physicians and physician assistants. Mr. Nebel pointed out that over 40 states require such agreements.

Ms. Sandie Conlin spoke on behalf of the Iowa Medical Society in favor of this rulemaking, stating that its members desire greater clarity in the rules. Mr. David Adelman, representing UnityPoint Clinics, which employs about 90 physician assistants, expressed support for the rulemaking, but added he will look to work with Mr. Bowden on a few points.

Action. No action taken.

INSPECTIONS AND APPEALS DEPARTMENT, *Award of Attorney Fees and Court Costs*, 5/24/17 IAB, ARC 3073C, NOTICE.

Background. This notice of intended action seeks to amend Department of Inspections and Appeals (DIA) rules relating to procedures for contested cases involving permits to carry weapons and acquire firearms. DIA seeks to implement changes made to Iowa Code section 724.21A as amended by House File 517, signed by the Governor on April 13, 2017.

Commentary. Mr. Sam Langholz, Chief Administrative Law Judge and Administrator for DIA, spoke on behalf of the agency. He explained that this rulemaking allows for recovery of attorney fees but not “court costs” in contested case proceedings, since contested cases are administrative proceedings and do not occur in court.

Ms. Susan Cameron, on behalf of the Iowa State Sheriffs’ and Deputies’ Association, expressed concern that DIA is not following the spirit of House File 517, which was to require the costs of all appeals to be paid by the loser of the appeal. Ms. Cameron did not think the phrase “contested case” needed to be included in the bill to include them in the change to the law. She acknowledged that if DIA does not alter its proposed rulemaking, further legislative action will be necessary next session to address the association’s concern.

A committee member asked how much money is at issue. Mr. Langholz indicated that DIA billed just over \$2,000 last year for costs of administrative hearings.

Mr. Richard Rodgers of the Iowa Firearms Coalition seconded the concern of Ms. Cameron that the loser of an appeal of this nature at the contested case stage should have to pay just like the loser of an appeal to a court.

Action. No action taken.

Next Meeting. The next committee meeting will be held in Room 116, Statehouse, on Thursday, July 6, 2017, beginning at 9:00 a.m.

BOARD OF REGENTS, *Promotional and Lead Worker Pay; Grievance Procedure*, 5/24/17 IAB, ARC 3071C, NOTICE.

Background. This rulemaking makes changes to the board’s rules relating to human resources. The rulemaking modifies certain procedures relating to pay increases for employees who are promoted or designated as lead workers. The rulemaking also modifies certain procedures relating to the grievance process, including striking step 2 of the grievance process, which provides for an appeal to an employee’s department head, and limiting the persons permitted to represent an employee in a grievance to the employee’s coworkers.

Commentary. Committee members asked why the board is limiting the persons who can represent an employee in a grievance to coworkers. Board representatives Mr. Tim Cook and Ms. Aimee Claeys explained that the board wanted to ensure that a representative would be someone from within the institution who would understand the institution's policies. Members questioned whether an employee could choose an attorney as a representative, and Mr. Cook and Ms. Claeys explained that an employee is eventually allowed to be represented by an attorney if the grievance goes to arbitration. Members questioned whether this change complies with relevant court rulings, and Mr. Cook and Ms. Claeys stated that it did. Members asked the board to provide the committee with information regarding persons who have served as representatives in the past.

Members questioned why the initial appeal to an employee's department head is being eliminated, and Mr. Cook and Ms. Claeys explained that the elimination would promote efficiency because an employee already begins a grievance with an informal meeting with the department head, therefore requiring the employee to then make formal complaint to the same person would be redundant.

Public comment was heard from Ms. Morgan Miller representing American Federation of State, County and Municipal Employees Council 61 (AFSCME). She expressed concern regarding the limitation of representatives to coworkers, stating that AFSCME has provided representatives in the past. She asserted that this change would violate a provision of Iowa Code chapter 20 and relevant court rulings. She also expressed concern regarding the elimination of the appeal to a department head, which she asserted would reduce participation in the grievance process by unions.

Action. No action taken.

ADMINISTRATIVE SERVICES DEPARTMENT, *Human Resources Procedures*, 5/24/17 IAB, ARC 3072C, NOTICE.

Background. This rulemaking makes numerous changes to the department's rules relating to human resources. Some changes pertain to 2017 Iowa Acts, House File 291. Changes include modifying overtime rates for eligible employees to conform with the federal Fair Labor Standards Act rather than paying for each hour worked over 40; eliminating various distinctions between contract and noncontract employees; striking rules relating to dues deductions for employee organizations; making various changes relating to calculation of pay; eliminating requirements that certain matters be negotiated through collective bargaining; making procedural changes relating to transfers, discipline, and grievances; and other matters.

Commentary. Committee members asked why the department had changed language on job performance as it relates to pay increases to reference "overall" job performance. Department Director Janet Phipps explained that the new language would not penalize an employee who has a poor job performance in a single category. Members asked why the department increased the amount of time for a supervisor to respond to a grievance complaint. The director explained that the department wanted to allow sufficient time for a meeting to occur. Members asked why language relating to negotiation of pay grade changes in collective bargaining had been changed from "shall" to "may." The director stated that the law in this area may be changed in the future. Members had several questions regarding the changes to overtime. The director explained that over 600 employees would be affected and would lose eligibility for overtime, although they may be able to use flex time instead. She explained that this change reflects the fact that overtime is no longer a mandatory subject for collective bargaining. Members questioned whether changes relating to persons permitted to represent an employee in a grievance proceeding comply with relevant court rulings, and the director stated that they do. Additional discussion was had regarding criteria for pay increases for certified teachers and eligibility of community-based corrections employees for promotional lists.

Public comment was heard from Ms. Morgan Miller representing AFSCME. She expressed concern about various provisions of the rulemaking, including some issues raised by committee members such as the changes relating to job performance, the time for a supervisor to respond to a grievance complaint, criteria for pay increases for certified teachers, and eligibility of community-based corrections employees for promotional lists. She questioned the legality of the changes relating to persons permitted to represent an employee in a grievance proceeding. Additionally, she asked how the department defines "base pay" and "certified teacher" and which employees would be affected by the overtime changes and how much overtime would be lost. She stated that AFSCME is still reviewing the rulemaking and may have additional concerns in the future.

Action. No action taken.

Next Meeting. The next committee meeting will be held in Room 116, Statehouse, on Thursday, July 6, 2017, beginning at 9:00 a.m.

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