



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 | [July 6, 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.

LSA Staff: Jack Ewing, LSA Counsel, (515) 281-6048; Tim Reilly, LSA Counsel, (515) 725-7354.

ADMINISTRATIVE RULES REVIEW COMMITTEE

July 6, 2017

Chairperson: Representative Dawn Pettengill

Vice Chairperson: Senator Mark Chelgren

ADMINISTRATIVE SERVICES DEPARTMENT, *Terrace Hill Endowment for the Musical Arts, 6/7/17 IAB, ARC 3113C, NOTICE.*

Background. This notice of intended action from the Department of Administrative Services (DAS) seeks to implement changes to Iowa Code chapter 8A implemented in 2013. The rulemaking revises the DAS rules relating to organization of the Terrace Hill Endowment for the Musical Arts (THEMA) and removes references to the Terrace Hill Society, a nonprofit organization that merged with the Terrace Hill Foundation to become the Terrace Hill Society Foundation.

The Terrace Hill Commission is the Governor-appointed board created, according to Iowa Code section 8A.326, "to provide for the preservation, maintenance, renovation, landscaping, and administration of the Terrace Hill facility." The Terrace Hill Partnership is a nonprofit organization for the purpose of raising funds for Terrace Hill distinct from the Terrace Hill Society Foundation.

Commentary. Mr. Joe Happe, a Terrace Hill Society Foundation board member, expressed opposition to the rulemaking on behalf of his organization because it was not provided any notice or opportunity to provide input. He stated this rulemaking is an unnecessary change and is the "hangover" from past issues between various interested groups.

Ms. Kaye Lozier, Chairperson of the Terrace Hill Commission, explained that the rule change is necessary to remove out-of-date language regarding the merged groups. She noted that the Terrace Hill Society Foundation is not being excluded from any interaction but is instead choosing not to participate and has rejected a proposed Iowa Code chapter 28E agreement relating to the Terrace Hill Society Foundation's connection to Terrace Hill.

A committee member asked whether the issues between the two groups have prevented agreements in the past. Ms. Lozier said that the issue is a desire for autonomy on behalf of the Terrace Hill Society Foundation, that wants to remain a private foundation. The commission feels a written agreement should be in place stating how it would work with the Terrace Hill Society Foundation.

Another committee member asked Mr. Happe whether he believes the proposed rules fail to comply with the Iowa Code. Mr. Happe answered affirmatively. He noted that the proposed Iowa Code chapter 28E agreement contained a provision that provided that upon the agreement's termination by either party, the Terrace Hill Society Foundation would change its name and transfer title of all property to the Terrace Hill Commission or the state.

The Assistant Attorney General representing DAS told the committee that the proposed rules are consistent with the statute. A committee member requested DAS to provide a comparison of the rulemaking and the related provisions in the Iowa Code.

Action. No action taken.

UTILITIES DIVISION, *Public Utilities — Reorganization, 6/21/17 IAB, ARC 3120C, NOTICE.*

Background. This notice of intended action from the Iowa Utilities Board (IUB) seeks to amend rules regarding the reorganization of a public utility. The proposed amendments modify the revenue limits for utilities operating in more than one regulated line of business. They clarify that multiple corporate officers' time may be accounted for and allocated and change provisions regarding filing of testimony for hearings. The rulemaking would also require water, sanitary sewage, and storm water drainage utilities to provide notice to IUB of any acquisition or disposition of the whole or any substantial part of a public utility's assets.

Commentary. Mr. Tim Whipple, representing the Iowa Association of Municipal Utilities, asked IUB to withdraw Item 6 of the proposed rulemaking, relating to provision of notice to IUB prior to transfer of utility assets. Mr. Whipple noted that the Iowa League of Cities is concerned about Item 6 as well, though no one spoke on behalf of the League. Concern about Item 6 relates to IUB trying to assert jurisdiction over utilities the agency does not regulate through purchase agreements. Mr. Whipple cited a current issue occurring in the town of Blue Grass, Iowa.

A committee member asked Mr. Whipple whether Item 6 would give IUB authority to halt public utility transactions. Mr. Whipple stated that it would not, but that other parts of this IUB rule chapter would cover that issue. He noted that chapter 21 of IUB's rules is a better place for Item 6.

Action. No action taken.

EDUCATION DEPARTMENT, *Community Colleges — Courses for Drinking Drivers, 6/7/17 IAB, ARC 3087C, NOTICE.*

Background. This rulemaking provides revisions to the department's rules establishing requirements for certificate,

diploma, and degree programs and instructional courses for drinking drivers offered by community colleges. Such programs are court ordered. The rulemaking includes terminology changes and increases tuition fees for in-state and out-of-state instructional courses as well as an administrative fee for such courses collected by the department.

Commentary. Committee members asked why the department is raising these fees and if the increase was legislatively mandated. Department representative Mr. Jeremy Varner explained that the fee increases were not legislatively mandated but are the result of complaints from the vendor of these courses that the current fees have not kept pace with costs, leading to the courses being operated at a loss. Mr. Varner stated that these complaints have increased recently. He noted that such operating losses can lead to courses being cancelled. He also explained that the department's administrative fee is currently not enough for the department to break even on its own expenses, and the department has been subsidizing the costs out of its general fund. He stated that the department considered fees charged by other states when setting the new fees, and committee members asked that the department provide that information to the committee.

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 ARRC meeting. At the June meeting, committee members expressed concern regarding the department's decision to implement HF 2392, division II, through guidance prior to the expiration of the session delay on ARC 2947C. An additional special review of these rules was scheduled for the July 2017 ARRC meeting.

Commentary. Department representative Mr. Phil Wise began by discussing several issues raised during the special review of ARC 2947C at the June 2017 ARRC meeting. He described the department's view of the relationship between ARC 2947C and HF 2392, division II. He asserted that division II is largely self executing and that the department has the legal authority to implement the division through guidance prior to the expiration of the session delay. He described the department's methodology for allocating certain funds pursuant to division II, and described the effect of various bills filed or enacted during the 2017 Legislative Session on the department's efforts to implement it. Some committee members disagreed with the department's conclusion that division II is largely self executing.

Committee Counsel Mr. Jack Ewing summarized a memorandum that committee counsel were asked by Chairperson Pettengill to prepare on the question of implementation of division II by guidance. He stated that the department arguably has the legal authority to implement division II by guidance prior to the expiration of the session delay on ARC 2947C based on the text of division II, particularly a June 30, 2017, deadline for implementation of certain provisions of the division, as well as the department director's authority to "interpret" school laws and rules. He noted that the department is still required to fulfill the rulemaking requirements provided in division II. Chairperson Pettengill asked that committee counsel prepare a memorandum for the August ARRC meeting describing considerations that can affect a department's legal authority to implement legislation by guidance.

Additional discussion occurred regarding the department's allocation of funds pursuant to division II, during which Mr. Wise asserted that the department needed to distribute certain funds allocated in the division by a June 30, 2017, implementation deadline provided in the division in order to comply with the division and suggested that failure to distribute such funds might be contrary to federal law.

Public comment was heard from Ms. Sandra Mueller, Executive Director of the Iowa Association for Career and Technical Education, who spoke about her recent experiences in career and technical education in Iowa.

Action. A motion to lift the session delay on ARC 2947C failed on a 3-6 vote (seven votes required to pass).

PUBLIC HEALTH DEPARTMENT, *Trauma Registry*, 6/7/17 IAB, ARC 3106C, FILED.

Background. The Department of Public Health (DPH) adopted this rulemaking on May 10, 2017, which became effective on July 12. The rules amend DPH's rules governing its trauma registry.

DPH made several changes to the noticed version of this rulemaking in response to committee concerns expressed during the February 10, 2017, meeting, including removal of social security numbers from the registry.

Commentary. A committee member thanked DPH for working with various legislators to address concerns but

described these rule amendments as “a work in progress.” The committee member cited what she saw as several errors and inconsistencies between DPH’s stated goals for amending these rules and the resulting amendments. The committee member expressed interest in possible action on a bill still pending in the Senate that would prohibit DPH from collecting names in relation to health data. She noted that the state should look to use a patient identification numbering system rather than rely on patient names. The committee member moved for a session delay of the rulemaking.

Mr. Ken Sharp, the Division Director for DPH’s Division of Acute Disease Prevention, Emergency Response, and Environmental Health, stated that concerns about incorrect references in the revised rule were mistaken. Mr. Sharp expressed concern regarding a session delay because DPH has been working on these rule changes for over two years and has received positive feedback from various interested groups. He indicated DPH would be willing to make changes to these rules as needed but would be concerned about not implementing this rulemaking.

Mr. Sharp noted that he understood concerns about privacy and security regarding patient data collection, but also noted that using a different identification system would come at a cost that would be tough to estimate. He indicated that patient information would need to be uniform across states and even countries so that a patient’s information is not counted more than once.

One committee member expressed concern about delaying a rulemaking for pending legislation that may or may not progress during the 2018 Legislative Session.

Action. The motion for a session delay failed by a vote of 5 to 4 (would need seven to pass).

Next meeting. The next committee meeting will be held in Room 116, Statehouse, on Friday, August 4, 2017, beginning at 9:00 a.m.

LSA Staff: Jack Ewing, LSA Counsel, (515) 281-6048; Tim Reilly, LSA Counsel, (515) 725-7354.

Internet Site: <https://www.legis.iowa.gov/committees/committee?ga=87&groupID=705>