

NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

ADMINISTRATIVE RULES COMMITTEE

Tuesday, June 14, 2016
 Roughrider Room, State Capitol
 Bismarck, North Dakota

Representative Bill Devlin, Chairman, called the meeting to order at 9:00 a.m.

Members present: Representatives Bill Devlin, Randy Boehning, Joshua A. Boschee, Robert Frantsvog, Kim Koppelman, Scott Louser, Gail Mooney, Mike Schatz, Mary Schneider, Peter F. Silbernagel, Gary R. Sukut, Blair Thoreson, Nathan Toman, Robin Weisz; Senators Kelly M. Armstrong, Kyle R. Davison, Jerry Klein, Connie Triplett

Members absent: None

Others present: See [Appendix A](#)

It was moved by Representative Koppelman, seconded by Representative Frantsvog, and carried on a voice vote that the minutes of the March 14, 2016, meeting be approved as distributed.

SECRETARY OF STATE

Chairman Devlin called on Mr. Alvin A. Jaeger, Secretary of State, for testimony ([Appendix B](#)) regarding the rules adopted by the Secretary of State. Mr. Jaeger also presented testimony ([Appendix C](#)) regarding a request for the approval of the repeal of North Dakota Administrative Code Chapter 72-01-02.

In response to a question from Representative Schatz, Mr. Jaeger said boxing originally was regulated by the North Dakota Commissioner of Agriculture and Labor. Mr. Jaeger said when that department was split into two separate departments, the Secretary of State at the time, Ben Maier, offered to take over boxing regulation. He said other combative sports, such as professional wrestling, are regulated by the sport.

In response to a question from Representative Koppelman, Mr. Jaeger said the rule changes regarding combative sports have been needed for a long time. Mr. Jaeger said each combative sporting event costs his office about \$2,000.

In response to a question from Representative Mooney, Mr. Jaeger said the goal of the rules changes and legislation being prepared for introduction in the upcoming legislative session is to make boxing self-sustaining. Mr. Jaeger said mixed martial arts is a bigger sport in the state than boxing.

In response to a question from Representative Schatz, Mr. Jaeger said the state will regulate combative sports on reservations if tribal officials agree to abide by the Secretary of State's rules. Mr. Jaeger said Four Bears Casino regulates its own events.

It was moved by Representative Koppelman, seconded by Senator Triplett, and carried on a roll call vote that the request for the repeal of Chapter 72-01-02 be approved. Representatives Devlin, Boehning, Boschee, Frantsvog, Koppelman, Louser, Mooney, Schatz, Schneider, Silbernagel, Sukut, Toman, Thoreson, and Weisz and Senators Armstrong, Davison, Klein, and Triplett voted "aye." No negative votes were cast.

STATE BOARD OF VETERINARY MEDICAL EXAMINERS

Chairman Devlin called on Dr. John Boyce, Executive Secretary, State Board of Veterinary Medical Examiners, for testimony ([Appendix D](#)) regarding the rules adopted by the State Board of Veterinary Medical Examiners.

In response to a question from Chairman Devlin, Dr. Tom Bettenhausen, Member, State Board of Veterinary Medical Examiners, said giving clients the option of a written prescription that can be filled somewhere other than with the veterinarian is the right thing to do for the public. Dr. Bettenhausen said the change to the rule allows for competition.

In response to a question from Representative Silbernagel, Dr. Bettenhausen said most states require veterinarians to provide a written prescription upon request.

In response to a question from Senator Triplett, Dr. Bettenhausen said a record is maintained and the client may ask for a written prescription.

In response to a question from Representative Boehning, Dr. Bettenhausen said a veterinarian and client relationship must exist before a prescription can be written.

STATE DEPARTMENT OF HEALTH

Chairman Devlin called on Ms. Brenda Weisz, Director, Division of Accounting, State Department of Health, for testimony ([Appendix E](#)) regarding a request for the repeal of Chapters 33-03-27 and 33-03-32.

It was moved by Representative Weisz, seconded by Representative Schneider, and carried on a roll call vote that the request for the repeal of NDAC Chapters 33-03-27 and 33-03-32 be approved. Representatives Devlin, Boehning, Boschee, Frantsvog, Koppelman, Louser, Mooney, Schatz, Schneider, Silbernagel, Sukut, Toman, Thoreson, and Weisz and Senators Armstrong, Davison, Klein, and Triplett voted "aye." No negative votes were cast.

Chairman Devlin called on Mr. Curt Erickson, Manager, Hazardous Waste Program, State Department of Health, for testimony ([Appendix F](#)) regarding a request to repeal and reserve three subdivisions in Sections 33-23-02-173, 33-24-02-175, and 33-24-02-194.

In response to a question from Representative Schneider, Mr. Erickson said federal regulations require the rules to be equivalent. Mr. Erickson said he has been working on cleaning up differences between state rules and federal regulations since early 2015.

It was moved by Senator Triplett, seconded by Representative Frantsvog, and carried on a roll call vote that the request to repeal and reserve three subsections in Sections 33-24-02-173, 33-24-02-175, and 33-24-02-194 be approved. Representatives Devlin, Boehning, Boschee, Frantsvog, Koppelman, Louser, Mooney, Schatz, Schneider, Silbernagel, Sukut, Toman, Thoreson, and Weisz and Senators Armstrong, Davison, Klein, and Triplett voted "aye." No negative votes were cast.

Chairman Devlin called on Mr. Terry O'Clair, Director, Division of Air Quality, State Department of Health, for testimony ([Appendix G](#)) regarding rules adopted by the State Department of Health.

In response to a question from Representative Silbernagel, Mr. O'Clair said the American Coatings Association supported the adoption of the rules.

In response to a question from Representative Schneider, Mr. O'Clair said the rule regarding hydrogen sulfate is more restrictive than federal rule because federal government does not have a hydrogen sulfate standard.

In response to a question from Senator Triplett, Mr. O'Clair said it is economical to put information regarding the permit to construct application on the website.

Senator Triplett said she is concerned about public access to that information. She said not all people have internet access. Mr. O'Clair said the intent is to not publish in newspapers. Mr. O'Clair said newspapers will continue to be used for larger notifications.

In response to a question from Representative Mooney, Mr. O'Clair said regulations identify what is a minor source and what is a major source. Mr. O'Clair said minor sources will be published on the website and major source criteria will be published in the local newspaper.

STATE BOARD OF ANIMAL HEALTH

Chairman Devlin called on Dr. Susan Keller, State Veterinarian, for testimony ([Appendix H](#)) regarding the rules adopted by the State Board of Animal Health.

In response to a question from Chairman Devlin, Dr. Keller said the purpose of the new rules is to increase brand inspection fees and to reorganize the rules in a more logical manner.

In response to a question from Senator Triplett, Dr. Keller said increasing fees will keep the brand inspection program self-sustaining.

In response to a question from Senator Klein, Dr. Keller said it is required that a veterinarian and brand inspector be at all livestock auctions.

DEPARTMENT OF HUMAN SERVICES

Chairman Devlin called on Mr. Jonathan Alm, Legal Services Division, Department of Human Services, for testimony ([Appendix I](#)) regarding rules adopted by the department.

In response to a question from Representative Schneider, Ms. Maggie D. Anderson, Executive Director, Department of Human Services, said the term "MAGI-based methodology" refers to the methodology to determine income based on modified adjusted gross income. Ms. Anderson said the change in subdivision a of subsection 1 on page 179 of the supplement clarifies that a patient over 65 is eligible for Medicaid for behavioral health care. She said Medicaid does not pay for behavioral health care between the ages of 21 and 64. She said subdivision b clarifies that inpatient care for an individual under the age of 21 is covered for residential treatment facility costs.

In response to a question from Representative Weisz, Mr. Alm said the change regarding bad debts on page 198 of the supplement will limit collection fees to industry standards for collection agencies and the amount of the bad debt.

In response to a question from Representative Koppelman, Ms. LeeAnn Thiel, Medical Services Division, Department of Human Services, said a collected bad debt would reduce reimbursement to a nursing home for that year.

In response to a question from Representative Schneider, Mr. Alm said the appeals procedure on page 215 of the supplement was removed because the appeals procedure is in statute. Mr. Alm said the department always provides written notice to the provider of the right to appeal.

In response to a question from Representative Mooney, Mr. Alm said the comments from the Long Term Care Association were related to the allotment process. Mr. Alm said the department considered all programs when looking at funding and cuts as part of the allotment process.

In response to a question from Representative Schneider, Ms. Thiel said 2015 House Bill No. 1359 related to bad debt and a one-time increase in rates for nursing facilities. Ms. Thiel said as a result of the allotment, however, the changes in the bill have not been implemented. She said there was not a cut in services but rather no new services added. She said money was not taken from facilities as a result of the allotment.

In response to a question from Representative Koppleman, Ms. Pam Sagness, Director, Behavioral Health Division, Department of Human Services, said the definition of behavioral health professional was replaced with an individual practicing within the individual's scope of practice. Ms. Sagness said that change ensures reimbursement will be based on scope of work. She said all definitions are being reviewed by a working group. She said the group will be making recommendations to the interim Health Services Committee in July 2016.

In response to a question from Representative Schneider, Ms. Sagness said the focus of the voucher system is to address gaps in the continuum of care. Ms. Sagness said the 2015 funding was intended to address that gap. She said the voucher system was a new program. She said there will not be any restriction or reduction in services as a result of not fully implementing the program.

Ms. Anderson said the changes in these rules are not restrictive. She said all provisions regarding the Medicaid program fall under federal requirements. She said the voucher system and crisis beds are not included in the federal guidelines. She said the voucher system and crisis bed programs will be included in the department's 2017-19 budget preparation. She said there has not been a reduction in current services. She said the department is just not doing as much in new services as was expected after the 2015 legislative session. She said due to the allotment, the department has reduced some of the increases that were passed in the 2015 legislative session.

Chairman Devlin called on Ms. Shelly Peterson, President, North Dakota Long Term Care Association, for comments regarding the rules. Ms. Peterson said 2015 House Bill No. 1359, which would have reformed the basic care payment system, would have had a positive impact on the industry. She said due to the allotment process, the progress made under that bill has been lost. She said she is looking forward to working with the Legislative Assembly during the 2017 session. She said while the statute remains in effect, the limits have been eliminated.

Chairman Devlin called on Mr. Nate Medhus, President/CEO, ShareHouse, Inc., for testimony ([Appendix J](#)) regarding the rules.

In response to a question from Representative Mooney, Mr. Medhus said providers in rural areas are most affected when rates are kept at current levels. Mr. Medhus said 2015 House Bill No. 1359 would have provided a 35 percent increase over Medicaid rates.

In response to a question from Representative Schneider, Mr. Medhus said access to services will remain the same rather than being able to expand services.

Ms. Sagness said about 5 percent of the population needs services. She said private providers are not required to report to the state, which makes data collection difficult.

Chairman Devlin called on Mr. Kurt Snyder, Executive Director, Heartview Foundation, for testimony ([Appendix K](#)) regarding the rules. Chairman Devlin said Mr. Snyder's concerns should have been raised in the department's hearing.

TAX COMMISSIONER

Chairman Devlin called on Mr. Myles Vosberg, Director, Tax Administration Division, Tax Commissioner's office, for testimony ([Appendix L](#)) regarding rules adopted by the Tax Commissioner.

In response to a question from Representative Koppelman, Mr. Vosberg said the rules adopted by the Tax Commissioner were necessitated by legislation as well as clarifications and removing obsolete items.

In response to a question from Senator Triplett, Mr. Vosberg said the last rule changes were in 2006.

In response to a question from Representative Koppelman, Mr. Vosberg said the Tax Commissioner's office provides information and guidelines to affected parties when rules are obsolete.

In response to a question from Representative Thoreson, Mr. Vosberg said for taxation purposes, software is considered to be tangible digital property.

COMMITTEE DISCUSSION

Chairman Devlin said he is concerned about the limitation on public information which may result from the changes to the rules of the State Department of Health on pages 13, 21, and 59 of the supplement. He said perhaps the language could be amended to read "and on the department's website" rather than "or on the department's website."

It was moved by Representative Koppelman, seconded by Senator Triplett, and carried on a voice vote that the changes regarding publication on the department's website on pages 13, 21, and 59 of the supplement be held over to the next meeting.

Chairman Devlin said Mr. O'Clair will be asked to attend the next meeting to discuss the committee's concerns.

In response to a question from Representative Boehning, Chairman Devlin said the concerns about the programs affected by the budget allotment should have been discussed at the Department of Human Services' hearings on the rules.

Senator Triplett said she is concerned about the length of time between updates on the rules of some agencies, departments, and boards. She said perhaps there is a need to require regular updates of rules.

Chairman Devlin said the committee will discuss the frequency of rules updates at the next meeting.

No further business appearing, Chairman Devlin adjourned the meeting at 12:00 p.m.

Vonette J. Richter
Assistant Code Revisor

ATTACH:12