

NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

ADMINISTRATIVE RULES COMMITTEE

Monday, September 12, 2011
Roughrider Room, State Capitol
Bismarck, North Dakota

Representative Kim Koppelman, Chairman, called the meeting to order at 1:00 p.m.

Members present: Representatives Kim Koppelman, Bill Amerman, Randy Boehning, Bill Devlin, Robert Frantsvog, Joe Kroeber, Mike Schatz, Blair Thoreson, Dwight Wrangham; Senators Tom Fischer, Layton Freborg, Joan Heckaman, Jerry Klein, Margaret Sitte

Members present by teleconference connection: Representative Duane DeKrey; Senator John M. Andrist

Members absent: Representatives Tracy Boe, David Monson

Others present: See [Appendix A](#)

It was moved by Senator Klein, seconded by Senator Freborg, and carried on a voice vote that the minutes of the previous meeting be approved as distributed.

STATE BOARD OF NURSING

Chairman Koppelman called on Mr. Brian Bergeson, Special Assistant Attorney General, State Board of Nursing, for presentation of a request for approval of repeal of obsolete rules. A copy of a request to eliminate obsolete rule provisions prepared by Mr. Bergeson on behalf of the State Board of Nursing is attached as [Appendix B](#). Mr. Bergeson said 2011 House Bill No. 1041 established a nurse aide registry under the jurisdiction of the State Department of Health and 2011 Senate Bill No. 2148 removed the requirement for physician collaboration regarding prescriptive authority of advanced practice registered nurses. Both of these bills made several existing rules provisions of the State Board of Nursing obsolete and not in compliance with the 2011 legislation.

Mr. Bergeson said after submission of the request for elimination of obsolete provisions, further consideration was given to the rules provisions. He said the State Board of Nursing believes that three of the rules requested to be changed are not fully obsolete, and the board withdraws its request to repeal those three rules. He said the rules to be retained are North Dakota Administrative Code Sections 54-01-03-01(63), 54-07-01-03, and 54-07-02-02.1. He said with these three rules exceptions, the State Board of Nursing requests committee approval for repeal of the remaining rules provisions as submitted.

It was moved by Representative Devlin, seconded by Senator Heckaman, and carried on a roll call vote that the Administrative Rules Committee agree with the suggested elimination of obsolete rule provisions submitted by the State Board of Nursing with the three exceptions stated by Mr. Bergeson. Voting in favor of the motion were Representatives Koppelman, Amerman, Boehning, DeKrey, Devlin, Frantsvog, Kroeber, Schatz, Thoreson, and Wrangham and Senators Andrist, Fischer, Freborg, Heckaman, Klein, and Sitte. No negative votes were cast.

STATE WATER COMMISSION

The chairman called on Mr. Bob Shaver, State Water Commission, for presentation of a request for elimination of an obsolete rule provision. A copy of a letter from Mr. Todd Sando, State Engineer, is attached as [Appendix C](#). Mr. Sando's letter describes the requested change and the reasons the provision is obsolete.

It was moved by Senator Klein, seconded by Senator Sitte, and carried on a roll call vote that the Administrative Rules Committee agree with the State Water Commission on the suggested change to an obsolete provision of North Dakota Administrative Code Section 89-03-03-02. Voting in favor of the motion were Representatives Koppelman, Amerman, Boehning, DeKrey, Devlin, Frantsvog, Kroeber, Schatz, Thoreson, and Wrangham and Senators Andrist, Fischer, Freborg, Heckaman, Klein, and Sitte. No negative votes were cast.

STATE BOARD OF MEDICAL EXAMINERS

The chairman called on Mr. Duane Houdek, Executive Secretary, State Board of Medical Examiners, for testimony ([Appendix D](#)) relating to rules adopted by the board.

Mr. Houdek said the fee increase adopted by the board would be the first fee increase for doctors since 1997. He said the increased fee would still be below the national average licensing fee for physicians and competitive with fees of surrounding states. He reviewed the reasons outlined in his written testimony for the fee increase and the other rules changes.

Senator Sitte asked if doctors from foreign country schools have an easier time becoming licensed in some states. Mr. Houdek said he does not think any of the changes in these rules would affect North

Dakota licensing for those doctors. He said some states have a reputation of being easier for foreign doctors to obtain a license.

Senator Andrist said he applauds most of these rules. He said the triple fee for late registration of physician assistants seems excessive.

Representative Amerman asked how much information is disclosed on the Board of Medical Examiners' website in light of Health Insurance Portability and Accountability Act (HIPAA) restrictions. Mr. Houdek said the board is largely excepted from restrictions but participation in the physicians health program is not subject to disclosure unless the individual was ordered into the program as a disciplinary measure.

In response to a question from Representative Koppelman, Mr. Houdek said there is some controversy about use of a physician health program in some states. He said the California Legislature did away with the California physician health program because of concerns physicians were being "hidden" in the program after doing harm to patients. Mr. Houdek said the approach of the North Dakota State Board of Medical Examiners is when patient harm has occurred, the offending physician will not be allowed into the physician health program.

Senator Sitte asked what is done if evidence suggests a doctor has stolen prescription drugs. She asked if that would be turned over to law enforcement. Mr. Houdek said the board would turn the evidence over to law enforcement by referral to the state's attorney.

BOARD OF PSYCHOLOGIST EXAMINERS

Chairman Koppelman called on Dr. Alan Fehr, State Board of Psychologist Examiners, for testimony ([Appendix E](#)) relating to rules adopted by the board.

Representative Koppelman said the name of the executive secretary, mailing address, and website are changed in North Dakota Administrative Code Section 66-01-01-01. He asked if the name and address of the executive secretary are shown on the board website. Dr. Fehr said the executive secretary and mailing address is shown on the board website and is also shown on the Governor's website listing of boards and commissions. Representative Koppelman said it may be advisable to remove the individual's name serving as executive secretary so it is not necessary to amend the rule when the executive secretary is replaced with another individual. Representative Koppelman said if the individual's name is shown on the board website and the

Governor's website it would not be necessary to show the individual's name in the rules. Dr. Fehr said he agrees that may be advisable. Representative Koppelman asked if any committee members would agree with Dr. Fehr on such a change to the rule. **It was moved by Representative Frantsvog, seconded by Representative Kroeber, and carried on a roll call vote that the Administrative Rules Committee agree with the Board of Psychologist Examiners to amend North Dakota Administrative Code Section 66-01-01-01 to eliminate the name of the individual serving as executive secretary.** Voting in favor of the motion were Representatives Koppelman, Amerman, Boehning, DeKrey, Devlin, Frantsvog, Kroeber, Schatz, Thoreson, and Wrangham and Senators Andrist, Fischer, Freborg, Heckaman, Klein, and Sitte. No negative votes were cast.

DEPARTMENT OF HUMAN SERVICES

Chairman Koppelman called on Mr. Jonathan Alm, Legal Counsel, Department of Human Services, for presentation of testimony relating to Department of Human Services ratesetting for basic care rules ([Appendix F](#)) and ratesetting for psychiatric residential treatment facilities ([Appendix G](#)). Ms. LeeAnn Thiel, Administrator, Medicaid Payment and Reimbursement Services, Department of Human Services, said the rules make changes to correct references to psychiatric residential treatment facilities. She said these changes do not have a significant effect and are just updated references to those facilities.

WORKFORCE SAFETY AND INSURANCE

Chairman Koppelman called on Ms. Anne Green, Legal Counsel, Workforce Safety and Insurance, for testimony ([Appendix H](#)) relating to rules adopted by Workforce Safety and Insurance.

In response to a question from Representative Boehning, Ms. Green said the coverage extended by the rules for law enforcement officers outside the state for training is good for up to 30 days.

No further business appearing, Chairman Koppelman adjourned the meeting at 2:16 p.m.

John Walstad
Code Revisor

ATTACH:8