

NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

ADMINISTRATIVE RULES COMMITTEE

Wednesday, June 10, 2015
Roughrider Room, State Capitol
Bismarck, North Dakota

Representative Bill Devlin, Chairman, called the meeting to order at 10:00 a.m.

Members present: Representatives Bill Devlin, Joshua A. Boschee, Kim Koppelman, Mark S. Owens, Mike Schatz, Peter F. Silbernagel, Nathan Toman; Senators Kelly M. Armstrong, Joan Heckaman, Jerry Klein, Connie Triplett

Members absent: Representatives Randy Boehning, Robert Frantsvog, Ben Koppelman, Blair Thoreson, Robin Weisz

Others present: See [Appendix A](#)

It was moved by Senator Klein, seconded by Representative Boschee, and carried on a voice vote that the minutes of the March 6, 2015, meeting be approved as distributed.

STATE DEPARTMENT OF HEALTH

Chairman Devlin called on Ms. Darleen Bartz, Health Resources Division, State Department of Health, for testimony ([Appendix B](#)) regarding rules adopted by the State Department of Health. Ms. Bartz said the rule changes will result in more current standards being applied for construction and remodeling of basic care facilities, hospitals, and nursing facilities in the state. She said the rules add definitions to the basic care facilities rules for end-of-life care and secured units or facilities, provide an option for basic care facilities to provide end-of-life care to residents if certain requirements are met, and provide for the posting of findings related to compliance of basic care facilities on the department's website.

In response to a question from Chairman Devlin, Ms. Bartz said the new North Dakota Administrative Code Section 33-03-24.1-23 allows for optional end-of-life care services in basic care facilities.

In response to a question from Representative K. Koppelman, Ms. Bartz said the limited prognosis of six or fewer months to live in the definition of "end-of-life care" is consistent with hospice program definitions. She said it is necessary for hospice to be involved because end-of-life care cannot be provided by basic care facilities. She said if hospice is not used, the resident must be transferred to a skilled nursing facility.

In response to a question from Representative Silbernagel, Ms. Bartz said in 2016 a working group will be formed to look at changes in services for skilled nursing units. She said several changes made to the rules were done in response to public comments.

In response to a question from Representative K. Koppelman, Mr. Monte Engel, Health Facilities, State Department of Health, said the National Fire Protection Association is an association that is not government-affiliated. He said the association is a consensus organization, the purpose of which is to develop fire standards. He said the federal government has adopted the association's fire code as well. He said the code is modeled after actual fire situations that have occurred. He said every evolution of the code is based on increased fire knowledge.

Ms. Bartz said the move to the 2012 fire code was based upon a request from the long-term care facilities' industry.

In response to a question from Representative Schatz, Ms. Bartz said the request for authority and guidelines for optional end-of-life care was from the industry and the families. She said it is difficult for a resident to change facilities at such a traumatic point of life.

In response to a question from Representative K. Koppelman, Ms. Bartz said Section 33-03-24.1-23(6) on page 16 requires the basic care facility to notify the State Department of Health within 48 hours of a resident's election for hospice care. She said the department needs to be aware of this election in order to ensure the facility is able to provide the resident with the needed extra care. She said the facility is required to provide the department with the name of the resident and the name of the hospice agency serving the resident. She said this is an important element in the process. She said the department is not requesting any information prohibited by federal law. She said the purpose of the requirement is to ensure resident safety.

Representative K. Koppelman said he would like more information on why the department needs to know of the name of the resident and not just that the facility has a resident who needs hospice care.

Representative Silbernagel said he is comfortable with the rule as adopted.

DEPARTMENT OF TRANSPORTATION

Chairman Devlin called on Mr. Glenn Jackson, Director, Driver's License Division, Department of Transportation for testimony ([Appendix C](#)) regarding the rules adopted by the Department of Transportation. Mr. Jackson said the department amended the rule relating to medical conditions that may affect the licensing of a driver. He said the change removed references to specific conditions and diseases in which loss of consciousness occurred and more clearly defined the medical conditions as convulsions, seizures, blackouts, or fainting spells.

In response to a question from Senator Triplett, Mr. Jackson said an altered state of consciousness is a neurological condition that affects an individual's ability to know what the individual is doing without actually losing consciousness. He said the rule deals with medical conditions only and does not pertain to the use of drugs or alcohol.

STATE BOARD OF PLUMBING

Chairman Devlin called on Mr. Brent Beechie, Chief Inspector, State Board of Plumbing, for testimony ([Appendix D](#)) regarding rules adopted by the State Board of Plumbing. Mr. Beechie said the rules were adopted to remove the State Board of Plumbing from the entities with administrative authority for onsite sewage treatment systems. He said the rules also clarify the existing requirements for plumbing in residential dwelling units. He said the rule change is related to the issue that arose in Leith, North Dakota, regarding the plumbing requirements in residential units.

In response to a question from Senator Heckaman, Mr. Beechie said it is likely the State Board of Plumbing will continue to receive calls regarding onsite sewage treatment systems. He said the board will refer those callers to public or county health units.

DEPARTMENT OF HUMAN SERVICES

Chairman Devlin called on Ms. Julie Leer, Department of Human Services, for testimony ([Appendix E](#)) regarding the rules adopted by the Department of Human Services. Ms. Leer said the adopted rules, which relate to the child support guidelines, are the result of the child support guidelines review that is required to be completed every four years. She said two legislative members serve on the child support guidelines review committee.

In response to a question from Senator Heckaman, Mr. Jim Fleming, Director, Child Support Enforcement Division, Department of Human Services, said the child support attorneys prefer the specific mileage rate be included in the administrative rules rather than just using a reference to the mileage rate that is provided by law. Mr. Fleming said the child support guideline amounts are a balance of the obligor's ability to pay and the financial needs of the child. He said when an obligor has a very high income, the financial needs of the child are considered more than the percentage of income. He said the growth in personal income in the state has been surprising.

In response to a question from Senator Triplett, Mr. Fleming said North Dakota uses the United States census data on the cost of raising a child in a rural area as the basis for the guidelines. He said the numbers do not have a break even point at which the income and the percentage as child support is just right for meeting the needs of the child.

COMMITTEE DISCUSSION

Representative K. Koppelman said he understands the need of the State Department of Health to do its job, however, he is unsure if there is a need for a resident's name to be divulged to state government. He said he would like to visit with the department to discuss the issue in more depth.

It was moved by Representative K. Koppelman, seconded by Senator Triplett, and carried on a roll call vote that Section 33-03-24.1-23(6) on page 16 of the July 2015 supplement be held over for consideration at the next meeting of the Administrative Rules Committee.

In response to a concern from Ms. Bartz, Representative K. Koppelman said the remaining portion of Section 33-03-24.1-23 can be implemented as scheduled. He said holding over subsection 6 would not prevent a facility from providing the name of the resident to the department but the facility would not be required to provide the resident's name.

Representatives Boschee, K. Koppelman, Schatz, and Toman and Senators Heckaman and Triplett voted "aye." Representatives Devlin, Owens, and Silbernagel and Senators Armstrong and Klein voted "nay."

No further business appearing, Chairman Devlin adjourned the meeting at 11:30 a.m.

Vonette J. Richter
Assistant Code Revisor

ATTACH:5