

## NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

### ADMINISTRATIVE RULES COMMITTEE

Monday, December 5, 2016  
Prairie Room, State Capitol  
Bismarck, North Dakota

Representative Bill Devlin, Chairman, called the meeting to order at 8:30 a.m.

**Members present:** Representatives Bill Devlin, Randy Boehning, Joshua A. Boschee, Kim Koppelman, Scott Louser, Mike Schatz, Mary Schneider, Gary R. Sukut, Nathan Toman, Robin Weisz; Senators Kelly M. Armstrong, Kyle Davison, Joan Heckaman, Jerry Klein

**Others present:** See [Appendix A](#)

**It was moved by Senator Armstrong, seconded by Representative Louser, and carried on a voice vote that the minutes of the September 13, 2016, meeting be approved as distributed.**

#### NORTH DAKOTA RACING COMMISSION

Chairman Devlin called on Mr. Gunner laCour, Director, North Dakota Racing Commission, for testimony ([Appendix B](#)) regarding the rules of the commission.

In response to a question from Senator Klein, Mr. laCour said the licensed companies asked the Racing Commission for these regulations. He said the racing industry is moving to a more regulated environment.

#### OFFICE OF MANAGEMENT AND BUDGET

Chairman Devlin called on Ms. Becky Sicble, Interim Director, Human Resources Management Services, Office of Management and Budget, for testimony ([Appendix C](#)) regarding the rules adopted by the Office of Management and Budget.

In response to a question from Representative Koppelman, Ms. Sicble said agencies have been advised to provide an approval process for sick leave.

#### BOARD OF CHIROPRACTIC EXAMINERS

Chairman Devlin called on Dr. Michael Remmick, President, State Board of Chiropractic Examiners, for testimony ([Appendix D](#)) regarding rules adopted by the board.

In response to a question from Representative Koppelman, Dr. Remmick said members of the State Board of Chiropractic Examiners have discussed concerns regarding the practice of giving free items to entice patients to receive care is ethical. He said the ethics board of the American Chiropractic Association has addressed inducements. He said he is aware of the United States Supreme Court decision in *North Carolina State Board of Dental Examiners v. Federal Trade Commission*, in which the Court held a nonsovereign actor controlled by active market participants enjoys immunity only if the challenged conduct is actively supervised by the state.

In response to a question from Senator Klein, Dr. Remmick said each professional board polices advertising policies.

In response to a question from Senator Armstrong, Dr. Remmick said the board members are selected by the Governor to serve a 5-year term.

In response to a question from Representative Koppelman, Dr. Remmick said offering free items to entice patients to seek care has been a common complaint of chiropractors and the public. He said the board's purpose in adopting a rule prohibiting the practice was to clarify the issue.

## STATE BOARD OF COSMETOLOGY

Chairman Devlin called on Ms. Sue Meier, State Board of Cosmetology, for testimony ([Appendix E](#)) regarding rules adopted by the board. She said the rules were the result of statutory changes made by 2015 Senate Bill No. 2097. She said many of the revisions involve changes in terminology and cleaning and disinfecting standards.

## INDUSTRIAL COMMISSION

Chairman Devlin called on Mr. Bruce Hicks, Assistant Director, Oil and Gas Division, Industrial Commission, for testimony ([Appendix F](#)) regarding rules of the commission carried over for consideration from the September 13, 2016, meeting.

In response to a question from Representative Schneider, Mr. Hicks said there is an ongoing study on leak detection systems. He said providing incentives for implementing leak detection systems would be a good tool.

In response to a question from Senator Klein, Mr. Hicks said rules requiring real-time reporting of leaks must be reasonable. He said sharing of data needs to be done as quickly as possible. He said the country is still in the infancy of pipeline regulation. He said one of the goals of the rules was to be flexible and enforceable. He said the rules require any hit on a line to be reported.

Senator Armstrong said North Dakota is at the forefront of pipeline regulations. He said the state has the most comprehensive pipeline rules in the country.

**It was moved by Senator Armstrong, seconded by Representative Toman, and carried on a roll call vote that the amendments to the October 2016 rules offered by the Industrial Commission be approved.** Representatives Devlin, Boehning, Boschee, Koppelman, Louser, Schatz, Schneider, Sukut, Toman, and Weisz and Senators Armstrong, Davison, Heckaman, and Klein voted "aye." No negative votes were cast.

## NORTH DAKOTA BOARD OF MASSAGE

Chairman Devlin called on Ms. Pat Berg, President, North Dakota Board of Massage, for testimony ([Appendix G](#)) regarding the rules adopted by the North Dakota Board of Massage.

In response to a question from Representative Boehning, Ms. Berg said the board is moving to a 2-year license cycle.

**It was moved by Representative Boehning, seconded by Representative Koppelman, and carried on a roll call vote that subsection 1 of North Dakota Administrative Code Section 49-01-02-03 be changed from "an annual basis" to "a biennial basis."** Representatives Devlin, Boehning, Boschee, Koppelman, Louser, Schatz, Schneider, Sukut, Toman, and Weisz and Senators Armstrong, Davison, Heckaman, and Klein voted "aye." No negative votes were cast.

## STATE BOARD OF EXAMINERS FOR NURSING HOME ADMINISTRATORS

Chairman Devlin called on Ms. Peggy Krikava, Executive Director, State Board of Examiners for Nursing Home Administrators, for testimony ([Appendix H](#)) regarding rules adopted by the State Board of Examiners for Nursing Home Administrators.

In response to a question from Senator Davison, Ms. Krikava said because in-person continuing education is more effective, the number of allowable online continuing education hours was limited to 10.

In response to a question from Representative Koppelman, Ms. Krikava said the qualifications for a health services executive license, as established by the National Association of Long Term Care Administrator Boards, is a higher standard than the current rules require.

Representative Koppelman said it is acceptable to adopt the standards of another entity; however, the standards adopted must be those in existence at the time the rules become effective.

**It was moved by Representative Koppelman, seconded by Senator Armstrong, and carried on a roll call vote that subsection 3 of Section 55-02-01-07 be amended to add "which are in effect on January 1, 2017" to the end of the last sentence of the subsection.** Representatives Devlin, Boehning, Boschee, Koppelman, Louser, Schatz, Schneider, Sukut, Toman, and Weisz and Senators Armstrong, Davison, Heckaman, and Klein voted "aye." No negative votes were cast.

## SUPERINTENDENT OF PUBLIC INSTRUCTION

Chairman Devlin called on Mr. Bob Marthaller, Assistant Superintendent, Department of Public Instruction, for testimony regarding rules carried over from the September 13, 2016, meeting. He said proposed amendment would adopt by reference the AdvancED Accreditation Policies and Procedures for AdvancED Accreditation.

In response to a question from Representative Koppelman, Mr. Marthaller said to be accredited, schools must be in a continuing improvement process. He said the AdvancED accreditation process helps ensure engaged administrators and teachers.

In response to a question from Senator Heckaman, Mr. Marthaller said the last AdvancED revision became effective June 25, 2015. He said when the standards are changed, the Department of Public Instruction will amend the rule to reflect the updated standards.

**It was moved by Senator Armstrong, seconded by Representative Koppelman, and carried on a roll call vote that the amendment proposed by Mr. Marthaller to amend Section 67-10-01-44 to include language adopting by reference the accreditation policies and procedures of AdvancED be approved.** Representatives Devlin, Boehning, Boschee, Koppelman, Louser, Schatz, Schneider, Sukut, Toman, and Weisz and Senators Armstrong, Davison, Heckaman, and Klein voted "aye." No negative votes were cast.

## DEPARTMENT OF HUMAN SERVICES

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

In response to a question from Representative Weisz, Ms. Carol Cartledge, Economic Assistance Division, Department of Human Services, said the changes to Section 75-02-01.2-26 were made to align the formula for disqualifying transfers with the Supplemental Nutrition Assistance Program, commonly known as SNAP, requirements.

In response to a question from Representative Schneider, Ms. Cartledge said good cause provisions relating to timely submissions of information by temporary assistance for needy families clients were repealed to allow clients additional time rather than imposing penalties for late submissions.

In response to a question from Representative Boschee, Ms. Maggie D. Anderson, Executive Director, Department of Human Services, said the change in Section 75-02-02-09.4 was made because of a Medicaid change. She said this change provides for no limitations on the number of visits for behavioral health issues for an individual under the age of 21, but an individual who is age 21 or older is limited to four therapy visits per year.

In response to a question from Representative Weisz, Ms. Anderson said the change to covered paramedic services was made because those services are already covered under the state plan.

Ms. Anderson said the Department of Human Services has been working on developmental disability ratesetting system rules. She said because of a delay in the approval of a waiver from the federal Centers for Medicaid Services, she is requesting the rules regarding developmental disability ratesetting on pages 168-232 of the supplement be carried over to the next meeting.

**It was moved by Senator Klein, seconded by Senator Heckaman, and carried on a roll call vote that the Department of Human Services rules relating to development disabilities ratesetting on pages 168-232 of the supplement be carried over to the March 2017 meeting.** Representatives Devlin, Boehning, Boschee, Koppelman, Louser, Schatz, Schneider, Sukut, Toman, and Weisz and Senators Armstrong, Davison, Heckaman, and Klein voted "aye." No negative votes were cast.

## DEPARTMENT OF CORRECTIONS AND REHABILITATION

Chairman Devlin called on Ms. Lori Steele, Department of Corrections and Rehabilitation, for testimony ([Appendix J](#)) regarding rules adopted by the Department of Corrections and Rehabilitation.

In response to a question from Representative Schneider, Ms. Steele said the rules regarding victim compensation were developed based upon data gathered from other states.

In response to a question from Senator Armstrong, Ms. Steele said the passage of the constitutional amendment known as "Marsy's Law" will not have any effect on these rules or the victim compensation statutes.

In response to a question from Representative Koppelman, Ms. Steele said the maximum per victim compensation is \$25,000, an amount that is in line with recent claims. She said few claims are denied. She said a claim can be denied if the victim fails or refuses to cooperate with law enforcement. She said treatment providers can provide information if a victim is unwilling or unable to comply with law enforcement. She said under statute, the victim compensation fund is a payer of last resort. She said the victim compensation fund includes state general fund dollars, federal funds, and restitution fees.

In response to a question from Representative Schneider, Ms. Steele said domestic violence organizations were consulted in the drafting of the rules. She said other stakeholders also reviewed the rules.

### OTHER BUSINESS

Representative Koppelman said he continues to have concerns about the rule of the State Board of Chiropractic Examiners in Section 17-03-01-01 relating to advertising free items to induce patients to receive care. He said the rule could be considered a restraint on business and appears to be arbitrary and capricious.

**It was moved by Representative Koppelman, seconded by Representative Boehning, and carried on a roll call vote that Section 17-03-01-01 be carried over to the next meeting and that the State Board of Chiropractic Examiners be requested to provide additional information regarding its reason for the rule.** Representatives Devlin, Boehning, Boschee, Koppelman, Louser, Schatz, Schneider, Sukut, Toman, and Weisz and Senators Armstrong and Davison voted "aye." No negative votes were cast.

No further business appearing, Chairman Devlin adjourned the meeting at 11:00 a.m.

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Vonette J. Richter  
Code Revisor

ATTACH:10