



ADMINISTRATIVE RULES COMMITTEE

Wednesday, June 1, 2022
Roughrider Room, State Capitol
Bismarck, North Dakota

Senator Nicole Poolman, Chairman, called the meeting to order at 10:02 a.m.

Members present: Senators Nicole Poolman, Joan Heckaman, Jerry Klein, Randy D. Lemm, Shawn Vedaa; Representatives Bill Devlin, Karen Karls, Kim Koppelman, Andrew Marschall, Brandy Pyle, Bernie Satrom, Nathan Toman

Members absent: Representatives Tom Kading and Robin Weisz

Others present: See [Appendix A](#)

It was moved by Representative Pyle, seconded by Representative Devlin, and carried on a voice vote that the minutes of the March 4, 2022, meeting be approved as distributed.

Ms. Jill Grossman, Counsel, Legislative Council, presented a memorandum entitled [Voiding and Carrying Over Administrative Rules](#).

OFFICE OF MANAGEMENT AND BUDGET

Mr. Lynn Hart, Total Rewards Manager, Human Resources Management Services Division, Office of Management and Budget, presented testimony ([Appendix B](#)) regarding the July 2022 rules of the Office of Management and Budget.

NORTH DAKOTA AERONAUTICS COMMISSION

Mr. Kyle Wanner, Executive Director, North Dakota Aeronautics Commission, presented testimony ([Appendix C](#)) regarding the July 2022 rules of the commission.

In response to a question from a committee member, Mr. Wanner noted the commission is statutorily required to license all aerial application activities, including private and commercial use.

ATTORNEY GENERAL (LOTTERY)

Mr. Mathias Anderson, Account/Budget Specialist, North Dakota Lottery, presented testimony ([Appendix D](#)) regarding the July 2022 rules of the Attorney General (Lottery).

STATE BOARD OF DENTAL EXAMINERS

Ms. Rita Sommers, Executive Director, State Board of Dental Examiners, presented testimony ([Appendix E](#)) regarding the July 2022 rules of the board.

A committee member expressed concern regarding ensuring the statutorily required independent consumer member of the board was truly independent from the dental practice realm.

Mr. Levi Andrist, Attorney, GA Group, PC, on behalf of Smile Direct Club, presented testimony ([Appendix F](#)) expressing concern with three provisions in the board's rules, namely North Dakota Administrative Code (NDAC) Sections 20-03-01-01(2)(c), 20-03-01-01(5)(r), and 20-04-01-01(6)(aa). He noted his client is concerned the newly added language in the rules could negatively affect his client's business model. He proposed new language be added to those provisions and requested the committee void or carry over those specific provisions.

Ms. Sommers noted the board's role is to regulate dentistry and protect the state's citizens, and the rule changes were based on patient safety, rather than on one corporate entity's business model. She noted the board is not seeking to keep teeth aligner manufacturers out of the state, and the rules were reviewed by the Attorney General's office and do not conflict with state law.

In response to a question from a committee member, Ms. Sommers noted Mr. Andrist's proposed language was not presented to the board for consideration.

After conferring with the board's legal counsel, Ms. Sommers requested the committee carry over the three disputed provisions in the rules to allow the board an opportunity to review Mr. Andrist's proposed language.

It was moved by Senator Heckaman, seconded by Senator Klein, and carried on a roll call vote that NDAC Sections 20-03-01-01(2)(c), 20-03-01-01(5)(r), and 20-04-01-01(6)(aa), will be held over for further consideration at the September 2022 meeting due to an absence of statutory authority and a failure to comply with express legislative intent. Senators Poolman, Heckaman, Klein, Lemm, and Vedaa and Representatives Devlin, Karls, Koppelman, Marschall, Pyle, Satrom, and Toman voted "aye." No negative votes were cast.

BOARD OF DIETETIC PRACTICE

Ms. Wendy Mankie, Chairman, Board of Dietetic Practice, presented testimony ([Appendix G](#)) regarding the July 2022 rules of the board.

STATE BOARD OF COSMETOLOGY

Ms. Rebecca Wood, Vice President, State Board of Cosmetology, presented testimony ([Appendix H](#)) regarding an April 2022 rule carried over from the March 4, 2022, meeting and proposed new language for NDAC Section 32-02-01-13 relating to permitted and prohibited animals in licensed salons.

It was moved by Representative Satrom, seconded by Representative Koppelman, and carried on a roll call vote that NDAC Section 32-02-01-13 be amended to read, "No animals, birds, or other pets, except service animals and fish in aquariums, shall be permitted in any licensed salon. Service animals must be under the control of the handler or owner at all times." Senators Poolman, Heckaman, Klein, Lemm, and Vedaa and Representatives Devlin, Karls, Koppelman, Marschall, Pyle, Satrom, and Toman voted "aye." No negative votes were cast.

STATE DEPARTMENT OF HEALTH

Mr. Jason Wahl, Director, Division of Medical Marijuana, State Department of Health, presented testimony ([Appendix I](#)) regarding the July 2022 rules of the department.

In response to a question from a committee member, Mr. Wahl noted:

- For purposes of medical marijuana, a minor is an individual under the age of 19.
- There have been instances in which an individual who is 18 years old wants to apply for the medical marijuana program, but the individual does not have a parent or court-appointed legal guardian to sign the individual's application.
- Those individuals are required to fill out the minor application, even though they are 18 years old, and a designated caregiver must purchase and possess the product on the individual's behalf.

Mr. Darin Meschke, Director, Division of Vital Records, State Department of Health, presented testimony ([Appendix J](#)) regarding the July 2022 rules of the department.

In response to a question from a committee member, Mr. Meschke noted the increase in fees for copies of vital records is to cover the costs of new advancements in systems and processes, including the issuance of copies of vital records on security paper to prevent the records from being tampered with or photocopied. He noted even with the increase in fees for copies of vital records, North Dakota charges less than what most other states charge.

In response to a question from a committee member, Mr. Meschke noted, in the event of a home birth or a birth occurring outside of a hospital, the department is anticipating accepting documentation to prove the mother was pregnant, such as a laboratory test result, ultrasound, or documentation from a doctor appointment, along with proof of residency, such as a utility bill.

DEPARTMENT OF ENVIRONMENTAL QUALITY

Mr. David Stradinger, Manager, Radiation and Indoor Air Quality Control Program, Division of Waste Management, Department of Environmental Quality, presented testimony ([Appendix K](#)) regarding the July 2022 rules of the department.

STATE BOARD OF PLUMBING

Ms. Kimberley Tomanek, Business Manager, State Board of Plumbing, presented testimony ([Appendix L](#)) regarding the July 2022 rules of the board.

STATE REAL ESTATE COMMISSION

Ms. Jeanne Prom, Executive Director, State Real Estate Commission, presented testimony ([Appendix M](#)) regarding the July 2022 rules of the commission.

In response to a question from a committee member, Ms. Prom noted the cost of adopting the rules was higher compared to other agencies because the proposed rule changes were lengthy, and the State Real Estate Commission employed its special assistant attorney general to conduct an extensive, line-by-line review of its existing rules.

SEED COMMISSION

Mr. Ken Bertsch, North Dakota State Seed Commissioner, presented testimony ([Appendix N](#)) regarding the July 2022 rules of the commission.

DEPARTMENT OF HUMAN SERVICES

Mr. Jonathan Alm, Director, Legal Advisory Unit, Department of Human Services, presented testimony regarding the July 2022 rules of the department relating to NDAC Chapter 75-03-17, Psychiatric Residential Treatment Facilities for Children ([Appendix O](#)), and Chapter 75-09.1-11, Substance Use Disorder Treatment Voucher System ([Appendix P](#)).

Mr. Jim Vetter, Vice President, Treatment Services, Dakota Boys and Girls Ranch, noted he appreciated the department's assistance in developing the rules.

Mr. Alm noted the department recently received comments from the regulated community and requested the proposed language in NDAC Section 75-03-17-05(2) regarding the minimum required amount of psychiatry time a facility should provide be changed from the one hour per week per bed back to the original requirement of one-half hour per week per bed.

It was moved by Representative Satrom, seconded by Representative Koppelman, and carried on a roll call vote that the proposed language for the second sentence in NDAC Section 75-03-17-05(2) be amended to read, "Each facility shall provide a minimum of one-half hour per week per bed of psychiatry time, one hour per week per bed of family therapy time, and two hours per week per bed of individual therapy time." Senators Poolman, Heckaman, Klein, Lemm, and Vedaa and Representatives Devlin, Karls, Koppelman, Marschall, Pyle, Satrom, and Toman voted "aye." No negative votes were cast.

NORTH DAKOTA BOARD OF ATHLETIC TRAINERS

Mr. Ray Hall, Chairman, North Dakota Board of Athletic Trainers, presented testimony ([Appendix Q](#)) regarding the July 2022 rules of the board.

STATE DEPARTMENT OF HEALTH

Pursuant to North Dakota Century Code (NDCC) Section 28-32-07, Ms. Bridget Weidner, Director, Division of Health Facilities, State Department of Health, requested an extension ([Appendix R](#)) to December 2022 to adopt rules to implement Senate Bill Nos. 2226 and 2334 (2021), relating to regulation of residential end-of-life facilities.

In response to a question from a committee member, Ms. Weidner noted the department has met with stakeholders, and progress is being made toward adopting rules.

Kilee Harmon, Executive Director, Gaia Home, noted there have been good conversations with the department regarding adopting rules to implement Senate Bill No. 2226, and her organization is pleased with the progress made.

It was moved by Senator Klein, seconded by Representative Satrom, and carried on a roll call vote that the State Department of Health be granted an extension to December 2022 to adopt rules to implement Senate Bill Nos. 2226 and 2334. Senators Poolman, Heckaman, Klein, Lemm, and Vedaa and Representatives Devlin, Karls, Koppelman, Marschall, Pyle, Satrom, and Toman voted "aye." No negative votes were cast.

PRIVATE INVESTIGATIVE AND SECURITY BOARD

Pursuant to NDCC Section 28-32-07, the Private Investigative and Security Board requested an extension ([Appendix S](#)) to September 2022 to adopt rules to implement House Bill No. 1463 (2021) and Senate Bill Nos. 2095, 2096, and 2126 (2021), relating to board membership, fees, and certification of instructors of armed first responders in schools.

It was moved by Representative Pyle, seconded by Senator Vedaa, and carried on a voice vote that the Private Investigative and Security Board be granted an extension to September 2022 to adopt rules to implement House Bill No. 1463 and Senate Bill Nos. 2095, 2096, and 2126.

COMMITTEE DISCUSSION

Some committee members requested information be presented at the next meeting regarding why some administrative agencies use assistant attorneys general and others use special assistant attorneys general for the agency's legal counsel and the cost difference between each.

The next committee meeting is scheduled for Monday, September 12, 2022.

No further business appearing, Chairman Poolman adjourned the meeting at 1:48 p.m.

Jill Grossman
Counsel

ATTACH:19