

NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

ADMINISTRATIVE RULES COMMITTEE

Wednesday, September 4, 2019
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, Rick Becker, Josh Boschee, Kim Koppelman, Andrew Marschall, Brandy Pyle, Dan Ruby, Bernie Satrom, Vicky Steiner, Nathan Toman, Robin Weisz; Senators Joan Heckaman, Jerry Klein, Randy D. Lemm, Nicole Poolman, David S. Rust

Others present: See [Appendix A](#)

It was moved by Senator Poolman, seconded by Senator Heckaman, and carried on a voice vote that the minutes of the June 11, 2019, meeting be approved as distributed.

At the request of Chairman Devlin, Legislative Council staff reviewed the [Supplementary Rules of Operation and Procedure of the North Dakota Legislative Management](#).

At the request of Chairman Devlin, Legislative Council staff reviewed a memorandum entitled [Administrative Rules Committee - Background Memorandum](#).

The Legislative Council staff said the appendix to the memorandum--[Guidelines under North Dakota Century Code Section 28-32-10](#) fulfills the requirement of the Legislative Council to establish standard procedures for all administrative agencies to follow in complying with North Dakota Century Code (NDCC) Section 28-32-10. She said the memorandum has been updated to include references to the procedural requirements for the North Dakota Ethics Commission.

It was moved by Representative Boschee, seconded by Representative Pyle, and carried on a roll call vote that the updated procedures to comply with the requirements of NDCC Section 28-32-10, as contained in the memorandum, be adopted. Representatives Devlin, Becker, Boschee, Koppelman, Marschall, Pyle, Ruby, Satrom, Steiner, Toman, and Weisz and Senators Heckaman, Klein, Lemm, Poolman, and Rust voted "aye." No negative votes were cast.

STATE DEPARTMENT OF HEALTH

Chairman Devlin called on Mr. Kirby Kruger, Medical Services Section, State Department of Health, for testimony ([Appendix B](#)) regarding the October 2019 rules of the department regarding North Dakota Administrative Code (NDAC) Chapter 33-06-01.

In response to a question from Representative Becker, Mr. Kruger said there is a national definition of violent death reporting as well as a national system for violent death reporting.

In response to a question from Representative Koppelman, Mr. Kruger said the state's participation in the national violent death reporting system was voluntary. He said the State Department of Health made the decision to participate in the national reporting system.

In response to a question from Representative Ruby, Mr. Kruger said the purpose of reporting diseases and conditions is to gather more information. He said as neonatal abstinence syndrome has become better understood, it was determined the condition should be added to the list of reportable diseases and conditions.

Chairman Devlin called on Mr. Jason Wahl, Director, Division of Medical Marijuana, State Department of Health, for testimony ([Appendix C](#)) regarding the rules of the department regarding NDAC Chapter 33-44-01.

In response to a question from Senator Rust, Mr. Wahl said all batches of medical marijuana are required to be tested for the presence of certain heavy metals. He said the levels for inorganic arsenic, cadmium, lead, and mercury may not exceed the parts per million listed in NDAC Section 33-44-01-48.1.

In response to a question from Representative Koppelman, Mr. Wahl said tetrahydrocannabinol (THC) concentration is tested by the laboratory. He said the rules require the THC concentration to be 6 percent or less for products intended for minors. He said testing is done so the purchaser is aware of the product's THC concentration. He said the range of THC concentration is required to be listed on the product. He said there is not a maximum allowable THC concentration for dried leaves and flowers. He said the only products with a maximum THC concentration are capsules and products intended for minors.

In response to a question from Representative Ruby, Mr. Wahl said the proper disposal of plant waste, such as trimmed leaves and stems, is addressed in the medical marijuana rules. He said rules dealing with watering and water runoff are being addressed by the Department of Environmental Quality.

In response to a question from Representative Koppelman, Mr. Wahl said as of the date of this meeting, dispensaries are open in Fargo, Bismarck, Williston, and Grand Forks. He said dispensaries will open in Jamestown, Devils Lake, and Minot by the end of September. He said the final dispensary, which will be located in Dickinson, will open this winter. He said dispensaries have live feed cameras. He said the data from inspections and live feed cameras are reviewed to identify areas in need of improvement.

In response to a question from Representative Weisz, Mr. Wahl said the October 2019 rules require products to be stability tested once before the product's expiration date.

In response to a question from Senator Klein, Mr. Wahl said the 2019 legislation regarding plant count gives the department flexibility in responding to demand for the product. He said the department requires documentation to justify an increase in plant count.

INSURANCE COMMISSIONER

Chairman Devlin called on Ms. Laney Herauf, Legal Counsel, Insurance Department, for testimony ([Appendix D](#)) regarding the October 2019 rules of the Insurance Commissioner.

Ms. Herauf said as a result of 2019 legislation that transferred the authority for petroleum tank release compensation fund to the Department of Environmental Quality, she requested the rules for NDAC Chapter 45-10-02 on pages 137-140 of Supplement 374 be withdrawn from consideration.

It was moved by Senator Poolman, seconded by Representative Koppelman, and carried on a roll call vote that NDAC Chapter 45-10-02 on pages 137-140 of Supplement 374 be withdrawn from consideration. Representatives Devlin, Becker, Boschee, Koppelman, Marschall, Pyle, Ruby, Satrom, Steiner, Toman, and Weisz and Senators Heckaman, Klein, Lemm, Poolman, and Rust voted "aye." No negative votes were cast.

In response to a question from Representative Koppelman, Ms. Herauf said the Insurance Department, which is a member of the National Association of Insurance Commissioners, receives model acts and rules from that organization. She said before adopting any model rule, the department reads each rule line by line to ensure the rule fits North Dakota. She said the model rules are very thoughtfully crafted to fit the state.

In response to a question from Chairman Devlin, Ms. Herauf said the October 2019 rules relating to Medicare are the only rules adopted as a result of federal law change.

STATE BOARD OF PHARMACY

Chairman Devlin called on Mr. Mark Hardy, Executive Director, State Board of Pharmacy, for testimony ([Appendix E](#)) regarding the October 2019 rules of the board.

In response to a question from Representative Becker, Mr. Hardy said the change in the ratio of pharmacy technicians to pharmacists in retail and hospital settings is due to changes in the duties for which pharmacy technicians are trained and authorized. He said in the past, a pharmacy technician's authority was limited to duties such as taking phone orders, transferring prescriptions, and other technical tasks. He said the duties of pharmacy technicians have expanded to include screening patients for consultation and other functions that enable pharmacists to perform more clinical duties.

In response to a question from Senator Heckaman, Mr. Hardy said the rule relating to the destruction of controlled drugs at a nursing facility does not distinguish between the types of nursing facilities. He said the rule applies to nursing facilities with health care providers on staff.

In response to a question from Representative Koppelman, Mr. Hardy said changes in NDAC Section 61-03-03.1-01 regarding the definition of "intern" were recommended by North Dakota State University. He said the

evolving pharmacy program model allows graduating high school seniors to be accepted into the pharmacy program conditionally. He said once in the program, the student is considered to be accepted unconditionally.

In response to a question from Representative Boschee, Mr. Hardy said there is an evolving national model of pharmacy services that includes more compounding, out-of-state delivery, and other specialties.

DEPARTMENT OF HUMAN SERVICES

Chairman Devlin called on Mr. Jonathan Alm, Department of Human Services, for testimony ([Appendix F](#)) regarding the October 2019 rules of the department.

In response to a question from Representative Becker, Mr. Alm said the new language in NDAC Section 75-03-14-03(8), which requires foster home household members to be in compliance with concealed weapons permit laws, was added to clarify a household member is required to follow the concealed weapons permit law. He said the language could be removed without issue.

In response to a question from Representative Becker, Ms. Kelsey Bless, Children and Family Services, Department of Human Services, said to be in compliance with the federal Family First Prevention Services Act and to qualify for related federal funding for foster care, the state must comply with a certain number of foster care standards, including those regarding swimming pool safety and sleeping arrangement. She said if North Dakota would opt-out of following the federal standards, the state would not receive Title IV-E funding, which supports the cost of the placement of children in foster care homes.

In response to a question from Representative Koppelman, Ms. Bless said she is not aware of any state that has not complied with the Family First Prevention Services Act and was denied federal funding. She said funding meets up to one-half of the cost of foster care.

Ms. Bless provided information ([Appendix G](#)) on the federal money received for foster care.

In response to a question from Representative Koppelman, Ms. Bless said the new rule in NDAC Section 75-03-14-04(9) authorizes the Department of Human Services to require, at the expense of the department, psychological testing for any resident of a family foster home for children. She said if the home study indicates an area of concern, a psychological assessment may be recommended. She said the person who does the home study does not have the skill base to do that assessment. She said the evaluation is performed to ensure foster parents are capable psychologically of caring for foster children.

In response to a question from Representative Boschee, Ms. Bless said North Dakota has implemented the Family First Prevention Services Act in stages, but most of the implementation will occur in October 2019. She said the purposes of the Act are to reduce congregate care, reduce service delivery costs, and move those saved funds to provide prevention services in the state. She said the department collectively has worked across its divisions, including Children and Family Services, Behavioral Health, Field Services, Medical Services, and its fiscal division to understand what the department's options are to embed the prevention component. She said because of the many advantages for the state, North Dakota opted to move forward with compliance with the federal law.

Representative Pyle said as a mother of a child who went through the foster care system, she is concerned the rules and laws may discourage people from becoming foster parents.

Ms. Bless said foster parents are held to a higher standard because they are responsible for children who are not their own.

In response to a question from Representative Steiner, Ms. Bless said the permanency preference for a relative of the foster child is federal requirement. She said the best interest of the child also is considered but family preference must be considered as well.

In response to a question from Representative Koppelman, Mr. Alm said the language in NDAC Section 75-03-40-26 regarding fingerprints has been used elsewhere in departmental rules. He said the language was approved by the Bureau of Criminal Investigation. He said state law gives the department the authority to make certain records confidential.

In response to a question from Senator Heckaman, Mr. Alm said the seclusion and restraint provisions in the rules are based upon guidance from the United States Department of Education, the Protection and Advocacy Project, the Division of Juvenile Services, the department's Behavioral Health Division, and the State Hospital.

In response to a question from Representative Becker, Ms. Bless said regarding NDAC Section 75-03-41-09(3), based upon the situation and to protect the safety of the client, it may be necessary to release confidential information without the client's consent. She said this subsection is intended to address those situations in which a client living in an independent living arrangement tells a member of the professional staff the client is going injure oneself or others. She said this rule authorized the professional staff member to break the confidentiality requirement in those instances.

In response to a question from Senator Heckaman, Mr. Alm said the rules will affect six residential child care facilities in the state.

It was moved by Representative Koppelman, seconded by Representative Becker, and carried on a roll call vote that the October 2019 rules of the Department of Human Services be amended to remove "A household member with a concealed weapons permit shall follow the regulations set forth in state law." in NDAC Section 75-03-14-03(8) and to remove ", or other compelling professional reasons exist" in NDAC Section 75-03-41-09(3). Representatives Devlin, Becker, Boschee, Koppelman, Marschall, Pyle, Ruby, Satrom, Steiner, Toman, and Weisz and Senators Heckaman, Klein, Lemm, and Rust voted "aye." No negative votes were cast.

Mr. Alm said the Department of Human Services, pursuant to NDCC Section 28-32-07, requests an extension to July 1, 2020, to adopt rules to implement Section 3 of Senate Bill No. 2012 (2019) relating to peer support certification.

It was moved by Representative Boschee, seconded by Representative Pyle, and carried on a voice vote to grant the Department of Human Services an extension to July 1, 2020, to adopt rules to implement Section 3 of Senate Bill No. 2012 (2019) relating to peer support certification.

Mr. Alm said the Department of Human Services also requests an extension to October 1, 2020, to adopt rules to implement NDCC Section 50-25.1-15, as amended by House Bill No. 1285 (2019), relating to approved locations for abandoned infants.

It was moved by Senator Klein, seconded by Representative Weisz, and carried on a voice vote to grant the Department of Human Services an extension to October 1, 2020, to adopt rules to implement NDCC Section 50-25.1-15, as amended by House Bill No. 1285 (2019), relating to approved locations for abandoned infants.

No further business appearing, Chairman Devlin adjourned the meeting at 12:40 p.m.

Vonette J. Richter
Legal Division Director

ATTACH:7