



STATE OF NEW HAMPSHIRE  
JOINT LEGISLATIVE COMMITTEE ON ADMINISTRATIVE RULES

ROOM 219  
25 CAPITOL STREET  
CONCORD, NEW HAMPSHIRE 03301-6312

**Action Minutes**

**OCTOBER 20, 2016**

**Members Present:** Representatives McGuire, Schmidt, Kidder, Ladd, Sad, Gottling\*, and Hatch\*, and Senators Reagan, Cataldo, Feltes, Avard, and Daniels\*. (\*) Indicates alternate members.

(\*\*) Indicates where Part 1, Article 28-a of the N.H. Constitution was an issue in the Committee's discussions or decisions in this meeting. (See Item #16. However, that item was approved.)

1. The meeting was convened at 9:00 a.m. by Rep. McGuire as Chair.

Members present at this time, aside from Rep. McGuire, were Reps. Schmidt, Kidder, Sad, Gottling, and Hatch, and Sens. Reagan, Cataldo, and Feltes.

Rep. McGuire designated Sen. Daniels, Rep. Gottling, and Rep. Hatch as alternates, respectively, for Sen. Avard, Rep. Ladd, and Sen. Watters, who were absent.

2. The Committee discussed the minutes of the Committee meeting on October 6, 2016.

Sen. Reagan moved that the minutes be approved.

Rep. Schmidt seconded.

Adopted.

4. The Committee discussed the following items on the Consent Agenda.

**CONSENT AGENDA**

***2. Committee Approval of Final Proposals and Proposed Interim Rules:***

FP 2016-84	LOTTERY COMMISSION Instant Lottery Games
FP 2016-119	MIDWIFERY COUNCIL Public Requests for Information; Complaints of Misconduct; Settlements; Explanation of Adopted Rules
FP 2016-128	LOTTERY COMMISSION Games of Chance
FP 2016-143	DEPARTMENT OF REVENUE ADMINISTRATION Deletion of Witnessed Signature Requirement for Filing Real Estate Transfer Tax Declaration of Consideration Forms
FP 2016-144	DEPARTMENT OF REVENUE ADMINISTRATION Deletion of Witness Signatures Requirement for Power of Attorney

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FP 2016-145	DEPARTMENT OF REVENUE ADMINISTRATION Property Tax Credits, Exemptions, and Deferrals
FP 2016-146	DEPARTMENT OF ENVIRONMENTAL SERVICES Air Related Programs Nonattainment New Source Review and Prevention of Significant Deterioration Amendments
FP 2016-152	DEPARTMENT OF HEALTH AND HUMAN SERVICES Former Division of Human Services Expiring Rules Related to Income Computation for Financial Assistance to Needy Families and the Adult Categories of Financial Assistance and the Adult Financial Assistance Employment Expense Disregard
FP 2016-154	INSURANCE DEPARTMENT Mortality Tables For Use in Determining Reserve Liabilities For Annuities
FP 2016-155	CURRENT USE BOARD Assessment Ranges for Forest Land Categories, With and Without Stewardship, Unproductive Land and Wetland Categories
FP 2016-158	DEPARTMENT OF HEALTH AND HUMAN SERVICES Former Division of Human Services Medicaid Care Management – Pharmacy Exclusion
FP 2016-159	DEPARTMENT OF HEALTH AND HUMAN SERVICES Former Division of Human Services Rules Related to Resource Limits for the Medical Assistance Program
INT 2016-30	DEPARTMENT OF HEALTH AND HUMAN SERVICES Former Division of Human Services Medicaid Substance Use Disorder (SUD) Treatment and Recovery Support Services

**3. *Committee Conditional Approvals:***

FP 2016-85	LOTTERY COMMISSION Second Chance Drawings
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**4. *Committee Acceptance of Agency Responses to Objections:***

OR 2016-127	DEPARTMENT OF HEALTH AND HUMAN SERVICES Former Division of Mental Health and Developmental Services Conditional Discharge
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Sen. Reagan moved that the Committee approve the Consent Agenda, that is, approve the Final Proposals and Proposed Interim Rule in Item #2, conditional approve the Final Proposal in Item #3 based on the agency's request, and accept the objection response and approves the rules in Item #4.

Rep. Schmidt seconded.

Adopted.



Sen. Feltes moved that the Committee approve Final Proposal 2016-118 which the understanding, based on the testimony of the Medical Society, that the Society will draft ethical obligations to further clarify when prescribing opioids would constitute unprofessional conduct.

Sen. Reagan seconded.

Adopted.

7. The Committee discussed the following proposals from the agencies indicated:

Final Proposal 2016-44	Board of Podiatry Opioid Prescribing
Final Proposal 2016-45	Board of Registration in Optometry Opioid Prescribing
Final Proposal 2016-131	Board of Nursing Opioid Prescribing
Final Proposal 2016-140	Board of Dental Examiners Opioid Prescribing
Final Proposal 2016-141	Naturopathic Board of Examiners Opioid Prescribing

Robert Lamberti, from the Office of Professional Licensure and Certification, testified for the agencies.

The agencies had submitted conditional approval requests in cover memos and amended rules dated September 14, 2016 and amended conditional approval requests in cover memos and amended rules dated October 18, 2016. The Naturopathic Board of Examiners had submitted a conditional approval request in a cover memo and amended rule dated October 18, 2016.

Sen. Reagan moved that the Committee conditionally approve Final Proposals 2016-44, 2016-45, 2016-131, 2016-140, and 2016-141 based on the amended conditional approval requests for the first four Final Proposals, and on the conditional approval request for the Naturopathic Board of Examiners.

Rep. Kidder seconded.

Adopted.

8. The Committee discussed Final Proposal 2016-72 from the Police Standards and Training Council (Application and Qualification, Continued Status, Ethical Standards and Training Approval). Timothy Merrill and Mark Bodanza testified for the Council.

The Council had submitted a conditional approval request in a cover letter and amended rules dated September 27, 2016 and an amended conditional approval request in a cover letter and amended rules dated October 17, 2016.

Sen. Reagan moved that the Committee conditionally approve Final Proposal 2016-72 based on the amended conditional approval request.

Sen. Feltes seconded.

Adopted.

9. The Committee discussed Final Proposal 2016-109 from the Department of Environmental Services (Oil and Remediation Programs, Ambient Groundwater Quality Standards (AGQS) for Perfluorooctanoic Acid (PFOA) and Perfluorooctane Sulfonate (PFOS). Gretchen Hamel and Clark Freise testified for the Department.

Sen. Reagan moved that the Committee approve Final Proposal 2016-109.

Rep. Kidder seconded.

Adopted.

10. The Committee discussed Final Proposal 2016-96 from the Department of Labor (Managed Care Programs in Workers' Compensation). Rudolf Ogden and Meredith St. Germain testified for the Department.

Rep. Schmidt had left the meeting prior to the discussion of this item, but returned during the discussion.

Kathy Bizarro Thunberg, representing the N.H. Hospital Association, also testified. The Association had also submitted written testimony dated July 17, 2016 from Paula Minnehan.

Rep. Hatch left the meeting during the discussion of this item.

Sen. Daniels moved that the Committee approve Final Proposal 2016-96.

Sen. Reagan seconded.

Rep. Schmidt absented himself from the meeting for purpose of the vote because he had not been present for most of the discussion. Rep. McGuire therefore designated Rep. Gottling as an alternative for Rep. Schmidt.

The motion was then adopted by a show of hands, with the Chair announcing 5 "yes" and 4 "no".

Rep. Schmidt then returned to the meeting. Rep. Gottling was no longer a voting member.

11. The Committee discussed Proposed Interim Rule INT 2016-31 from the Department of Health and Human Services (Former Division of Human Services, Medicaid General Program Information and Provider Requirements). Michael Holt represented the Department.

The Department had submitted a conditional approval request in a letter and amended rules dated October 18, 2016.

Sen. Reagan moved that the Committee conditionally approve Proposed Interim Rule INT 2016-31 based on the request.

Sen. Cataldo seconded.

Adopted.

12. The Committee discussed Proposed Interim Rule INT 2016-32 from the Department of Health and Human Services (Former Division of Human Services, Radiation or MRI Machine Security Screening System Non-Medical). Catherine Bernhard testified for the Department.

Rep. Sad moved that the Committee approve Proposed Interim Rule INT 2016-32.

Rep. Schmidt seconded.

Adopted.

13. The Committee discussed the issue of forms of the Department of Safety, with reference to Proposed Interim Rule INT 2016-31 of the Department of Health and Human Services (Former Division of Human Services, Medicaid General Program Information and Provider Requirements), which required submission of a Department of Safety form for Medicaid providers on criminal background checks. David Hilts, of the Department of Safety, testified for that Department.

Rep. McGuire moved that the Committee petition the Commissioner of the Department of Safety pursuant to RSA 541-A:4 to adopt all forms of the Department as required by RSA 541-A:19-b.

Sen. Feltes seconded.

Adopted.

14. The Committee discussed Proposed Interim Rule INT 2016-29 from the Department of Safety (Interim Limited Privilege Driver's License Rules). David Hilts and Jeffrey Oberdank testified for the Department.

Cheryl Marten also testified.

Rep. Schmidt moved that the Committee (1) approve Proposed Interim Rule INT 2016-29 with the recommendation that the Department discuss with the Department of Justice the court orders already made on the limited privilege driver's license, (2) strongly urge the Department to comply with the orders and issue the licenses, and (3) request that the Department report back to the Committee on the result of its discussions with the Department of Justice.

Rep. Sad seconded.

Rep. Ladd moved to amend the motion to recommend that installation of the interlock device referenced in the rules not be installed until the limited licenses are approved.

The amendment was not seconded.

The motion as originally proposed was adopted.

15. After a break, with Reps. McGuire, Schmidt, Kidder, Ladd, Sad, and Gottling and Sens. Reagan and Feltes present, the Committee discussed Final Proposal 2016-121 from the Department of Safety (Rental Agent Rules).

Sen. Reagan moved that the Committee conditionally approve Final Proposal 2016-121 on the condition that the form be amended to be consistent with the text of the rules.

Rep. Schmidt seconded.

Adopted.

- \*\*16. The Committee discussed Final Proposal 2016-87 from the Department of Safety (Building Permit System Rules). David Hilts and Matt Labonte testified for the Department.

Sen. Reagan moved that the Committee approve Final Proposal 2016-87.

Rep. Kidder seconded.

Sen. Avard and Sen. Daniels returned to the meeting at this time.

The motion was adopted.

17. The Committee discussed Final Proposal 2016-150 from the Insurance Department (Op-In by Self-Funded Private Employers). Commissioner Roger Sevigny, Tyler Branhen, and Jennifer Patterson testified for the Department.

The Department had submitted a conditional approval request in a cover letter and amended rule dated October 14, 2016.

The following persons also testified:

Paula Rogers, representing Anthem Blue Cross and Blue Shield.

George Roussos, representing Cigna.

Sen. Reagan moved that the Committee conditionally approve Final Proposal 2016-150 based on the conditional approval request, with the further amendment to Ins 4005.03(d) to add the words "under RSA 400-A:16, IIP" at the end of the paragraph.

Rep. Schmidt seconded.

Adopted.

Sen. Daniels and Rep. Sad left the meeting at this time.

18. The Committee discussed Final Proposal 2016-120 from the Midwifery Council (Certification Requirements; Continued Status; Scope of Midwifery Practice). Robert Lamberti, from the Office of Professional Licensure and Certification, testified for the Council.

Rep. Ladd left the meeting as the discussion of this item began.

The Council had submitted a conditional approval request in a cover memo and amended rules, dated October 18, 2016.

The following persons also testified:

Sarah Milone.

Kathryn Noble.

Rep. McGuire designated Rep. Gottling as an alternate for Rep. Sad, who was absent.

Sen. Reagan moved that the Committee conditionally approve Final Proposal 2016-120 based on the request.

Sen. Feltes seconded.

Adopted.

19. The Committee discussed Final Proposal 2016-136 from the Guardian ad Litem Board (Organizational Rules; Procedural Rules). Robert Lamberti, from the Office of Professional Licensure and Certification, testified for the Board.

The Board had submitted a conditional approval request in a cover memo and amended rules dated October 18, 2016.

Sen. Reagan moved that the Committee conditionally approve Final Proposal 2016-136 based on the request and petition the Board pursuant to RSA 541-A:4 to remove the press restrictions contained in Gal 214.04(a).

Sen. Avard seconded.

Adopted.

20. The Committee discussed Final Proposal 2016-37 from the Guardian ad Litem Board (Certification Requirements; Continued Status; Ethical Standards and Standards of Practice). Robert Lamberti, from the Office of Professional Licensure and Certification, testified for the Board.

The Board had submitted a conditional approval request in a cover memo and amended rules dated October 18, 2016.

Sen. Reagan moved that the Committee conditionally approve Final Proposal 2016-37 based on the Board's request, with a further amendment to insert the language from the N.H. Supreme Court decision, in Appeal of Oligny (2010) in Gal 303.01(h), as outlined in the annotation to the rule by Committee staff, so that Gal 303.01(h) reads as follows:

“(h) Be of good character, as demonstrated by the applicant’s:

- (1) Respect for the rights of others and the law;
- (2) Fairness;
- (3) Trustworthiness and reliability; and
- (4) Professional commitment to the judicial process and the administration of justice.”

Sen. Avard seconded.

Adopted.

21. It was the consensus of the Committee to cancel the continued meeting scheduled for November 3, 2016, and adjourn.

The Committee adjourned at 12:48 p.m.