



STATE OF NEW HAMPSHIRE  
JOINT LEGISLATIVE COMMITTEE ON ADMINISTRATIVE RULES  
ROOM 219  
25 CAPITOL STREET  
CONCORD, NEW HAMPSHIRE 03301-6312

**Action Minutes**

**NOVEMBER 17, 2016**

**Members Present:** Representatives McGuire, Schmidt, Sad, Ladd, and Hatch\*, and Senators Reagan, Cataldo, Avard, and Feltes. \*Indicates alternate member.

(\*\*) 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 #14. However, that item was postponed.)

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, Ladd, Sad, and Hatch, and Sens. Reagan, Cataldo, Avard, and Feltes.

Rep. McGuire designated Rep. Hatch as an alternate for Rep. Kidder, who was absent.

2. The Committee discussed the minutes of the Committee meeting on October 20, 2016.

Rep. Schmidt moved that the minutes be approved.

Sen. Reagan seconded.

Adopted.

3. The Committee discussed the following items on the Consent Agenda:

**CONSENT AGENDA**

**2. *Committee Approval of Final Proposals:***

FP 2016-79	GOVERNING BOARD OF ATHLETIC TRAINERS Initial Application Processing
FP 2016-80	GOVERNING BOARD OF ATHLETIC TRAINERS Continuing Education
FP 2016-81	GOVERNING BOARD OF RECREATIONAL THERAPISTS Requirements for Licensure
FP 2016-82	GOVERNING BOARD OF RECREATIONAL THERAPISTS Continued Status
FP 2016-83	GOVERNING BOARD OF RECREATIONAL THERAPISTS Ethical Standards
FP 2016-92	WATER WELL BOARD Water Well Board Rules: Definitions

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- FP 2016-147      DEPARTMENT OF ENVIRONMENTAL SERVICES  
Air Related Programs  
VOC Recordkeeping for Surface Coating and Printing Operations; Emission Based Fee
- FP 2016-157      DEPARTMENT OF HEALTH AND HUMAN SERVICES  
Former Division of Human Services  
Expiring Rules Related to Income Computation for Medical Assistance, Employment  
Expense Disregard for Medical Assistance, Eligibility for Nursing Facility Care and  
Home and Community-Based Care
- FP 2016-160      DEPARTMENT OF HEALTH AND HUMAN SERVICES  
Commissioner  
Waiver of Procurement Provisions
- FP 2016-165      DEPARTMENT OF HEALTH AND HUMAN SERVICES  
Former Division of Mental Health and Developmental Services  
Autism Registry
- FP 2016-166      DEPARTMENT OF HEALTH AND HUMAN SERVICES  
Former Division of Human Services  
Family Planning Services
- FP 2016-169      DEPARTMENT OF ENVIRONMENTAL SERVICES  
Solid Waste Programs  
Amendments to Solid Waste Operator Training and Certification Requirements

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

- FP 2016-57      DEPARTMENT OF ENVIRONMENTAL SERVICES  
Cross-Program Rules  
N.H. Environmental Laboratory Accreditation Program
- FP 2016-97      GOVERNING BOARD OF PHYSICAL THERAPISTS  
Requirements for Initial Licensure
- FP 2016-98      GOVERNING BOARD OF PHYSICAL THERAPISTS  
Continued Status
- FP 2016-170      DEPARTMENT OF HEALTH AND HUMAN SERVICES  
Commissioner  
Certification Payment Standards for Adoptive Report Writing

Sen. Reagan moved that the Committee approve the Consent Agenda, that is, approve the Final Proposals in Item #2 and conditionally approve the Final Proposals in Item #3 based on the agencies' conditional approval requests.

Rep. Schmidt seconded.

Adopted.

4. The Committee discussed whether to postpone action on certain items to another Committee meeting.

No action to postpone was taken at this time.

5. The Committee discussed Final Proposal 2016-142 from the Board of Veterinary Medicine (Veterinary Medicine and Opioid Prescribing). Dr. Stephen Crawford, State Veterinarian, testified for the Board.

The following persons indicated their opposition to the rules but did not speak:

Alison Darby, DVM, representing the N.H. Veterinary Medical Association.  
Thomas C. Candee, DVM, representing the N.H. Veterinary Medical Association.  
David Stone, representing the Board of Veterinary Medicine.  
Alison Edwards.  
Suzan Watkins, representing the N.H. Veterinary Medical Association.  
Elizabeth Kellett, representing the N.H. Veterinary Medical Association.  
Michael Maki, DVM.  
Tonya Brown, DVM, representing Ethos Veterinary Health.  
Liz Silva, representing Ethos Veterinary Health.

Sen. Reagan moved that the Committee conditionally approve Final Proposal 2016-142 on the condition that (1) rule Vet 501.03 and 501.04 on opioids be removed, (2) the reference to “perjury” on the application form be changed to “unsworn falsification”, (3) a date for the form be inserted on the application form in a footer, and (4) the form be incorporated by reference in Vet 301.01(b) so that it reads: “Applicants for licensure shall complete and submit the ‘Application for Veterinary Licensure’ [insert date] as well as supply supplemental information the board may request because the original information was incomplete or required clarification”.

Rep. Ladd seconded.

Adopted.

6. The Committee discussed Final Proposal 2016-76 from the Department of Environmental Services (Water Quality and Quantity Programs, Surface Water Quality Standards). Peter Demas and William G. Comstock testified for the Department.

Sen. Reagan moved that the Committee approve Final Proposal 2016-76.

Sen. Avarad seconded.

Adopted.

7. The Committee discussed Final Proposal 2016-93 from the Water Well Board (Water Well Board Rules). Rene Pelletier and Richard Schofield from the Department of Environmental Services testified for the Board.

The Board had submitted a conditional approval request in a letter and amended rules dated November 16, 2016.

Sen. Feltes moved that the Committee conditionally approve Final Proposal 2016-93 based on the request but with further amendments as proposed by Rene Pelletier, specifically (1) by amending “the reference portion” in We 302.06(e) in the conditional approval request to read “the reference form (2016) portion”, and (2) by amending We 602.25(e) in the final proposal by replacing all words after “produce” with “a volume of clear water to meet the demands of the household which the well serves.”

Rep. Schmidt seconded.

Adopted.

8. The Committee discussed Final Proposal 2016-172 from the Insurance Department (Prescription Prices for Pharmacists and Pharmacies). Jennifer Patterson and Tyler Brannen testified for the Department.

The Department had submitted a conditional approval request in a letter and amended rules dated November 8, 2016.

The following persons also testified:

Paula Rogers, representing Anthem Blue Cross and Blue Shield.

Rick Newman, representing the N.H. Independent Pharmacy Association.

Richard Cohen.

Jodi Grimbilas, representing CVS Health.

Sen. Reagan moved that the Committee make a preliminary objection to Final Proposal 2016-172 on the grounds that the rules were beyond the Department's authority regarding the definition of "usual and customary price" in Ins 2704.03

Rep. Ladd seconded.

A roll call vote was called. The vote was as follows:

Sen. Reagan	Yes
Sen. Cataldo	Yes
Sen. Avard	Yes
Sen. Feltes	No
Rep. Ladd	Yes
Rep. Sad	No
Rep. Schmidt	No
Rep. Hatch	No
Rep. McGuire	Yes

The vote was 5 "yes" and 4 "no". The motion was adopted.

9. After a break, with Reps. McGuire, Schmidt, Ladd, Sad, and Hatch, and Sens. Reagan, Cataldo, and Avard present, the Committee discussed Proposed Interim Rule INT 2016-33 from the Department of Health and Human Services (Commissioner, Child Care Program Licensing Rules). Michael Holt and Catherine Bernhard testified for the Department.

Sen. Feltes returned to the meeting during the discussion of this item.

Sen. Reagan moved that the Committee approve Proposed Interim Rule INT 2016-33.

Sen. Cataldo seconded.

Adopted.

10. The Committee discussed Proposed Interim Rule INT 2016-34 from the Department of Health and Human Services (Former Division of Public Health Services, Assisted Living Residence-Residential Care Licensing.). Michael Holt and Catherine Bernhard represented the Department.

Sen. Reagan moved that the Committee approve Proposed Interim Rule INT 2016-34.

Rep. Sad seconded.

Adopted.

11. The Committee discussed Proposed Interim Rule INT 2016-35 from the Department of Health and Human Services (Former Division of Mental Health and Developmental Services, Rights of Persons Using Emergency Shelters). Michael Holt and Catherine Bernhard testified for the Department.

Sen. Reagan moved that the Committee approve Proposed Interim Rule INT 2016-35.

Sen. Avard seconded.

Adopted.

12. The Committee discussed Proposed Interim Rule INT 2016-36 from the Department of Health and Human Services (Former Division of Public Health Services, Community Residences at the Residential Care and Supported Residential Care Level). Michael Holt and Catherine Bernhard testified for the Department.

Sen. Reagan moved that the Committee approve Proposed Interim Rule INT 2016-36.

Sen. Cataldo seconded.

Adopted.

13. The Committee discussed the following Final Proposals from the Department of Health and Human Services:

FP 2016-176	Former Division of Public Health Services Use of Byproduct Materials in the Healing Arts Recordkeeping, Accountability, Safety Instructions, and Training
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FP 2016-177	Former Division of Public Health Services The Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material
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Sen. Reagan moved that the Committee approve Final Proposal 2016-176 and Final Proposal 2016-177.

Sen. Avard seconded.

Adopted.

- \*\*14. The Committee discussed Final Proposal 2016-86 from the Board of Education (NH Rules for the Education of Children with Disabilities). Diana Fenton of the Department of Education testified for the Board.

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The Board had submitted a request pursuant to RSA 541-A:12, I-a for (1) comments to the Final Proposal by Committee staff, which were provided on November 15, and (2) delayed Committee review to a meeting which is at least 28 days but not more than 60 days (December 23, 2016) after filing.

Rep. Ladd moved that the Committee approve the Board's request and request a waiver of the Committee's deadline of December 23, 2016 to act on the Final Proposal, with a new deadline so that the Final Proposal could be heard, if necessary, at the Committee's regularly scheduled meeting in February, 2017, tentatively set for February 17, 2017.

Sen. Avard seconded.

Sen. Feltes recused himself from the vote.

The motion was adopted.

15. The Committee discussed Proposed Interim Rule INT 2016-37 from the Department of Safety (Interim Road Toll Administration Rules). David Hilts and Scott Bayer testified for the Department.

Sen. Feltes moved that the Committee approve Proposed Interim Rule INT 2016-37 and indicate support for the Department requesting a waiver from the Director of the Office of Legislative Services of the Department's deadline pursuant to RSA 541-A:19, X to adopt, file, and make effective the interim rule.

Sen. Reagan seconded.

Adopted.

16. The Committee briefly discussed the scheduled, continued meeting of December 1, 2016.

It was the consensus of the Committee to cancel the continued meeting.

17. The Committee discussed the response by the Guardian ad Litem Board dated November 10, 2016 to the Committee's petition on October 20, 2016 to amend rule Gal 215.04(a) relative to press restrictions in a rulemaking hearing.

Since the response stated that the Board had granted the petition and begun rulemaking, it was the consensus of the Committee to take no further action.

18. The Committee adjourned by consensus at 11:00 a.m.