



STATE OF NEW HAMPSHIRE  
JOINT LEGISLATIVE COMMITTEE ON ADMINISTRATIVE RULES

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

**Action Minutes**

**SEPTEMBER 20, 2018**

**Members Present:** Senators Reagan, Feltes, Avard, French, and Ward\*, and Representatives McGuire, Schmidt, Hatch, Lang, and Ohm\*. (\*) 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 #13, which received a preliminary objection).

1. The meeting was convened at 9:05 a.m. by Sen. Reagan as Chair.

Members present at this time, aside from Sen. Reagan, were Sens. Feltes, Avard, French, and Ward, and Reps. Schmidt, Hatch, Lang, and Ohm.

Sen. Reagan designated Sen. Ward and Rep. Ohm as alternates, respectively, for Sen. Kahn and Rep. Wolf, who were absent.

2. The Committee discussed the minutes of the Committee meeting on August 16, 2018.

Rep. Schmidt moved that the minutes be approved.

Rep. Hatch seconded.

Adopted.

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

**CONSENT AGENDA**

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

FP 2018-44	MIDWIFERY COUNCIL Certification Requirements for Midwifery
FP 2018-47	PHARMACY BOARD Fees for Limited Retail Drug Distributors, Mail-Order Pharmacies, Manufacturers, Wholesalers and Distributors, and Outsourcing Facilities
FP 2018-90	DEPARTMENT OF ENVIRONMENTAL SERVICES Solid Waste Programs Combustion of Construction and Demolition Debris Amendments
FP 2018-107	LOTTERY COMMISSION Locations Permitted to Sell Keno
FP 2018-111	BOARD OF FAMILY MEDIATOR CERTIFICATION Procedural Rules

- FP 2018-114 BOARD OF FAMILY MEDIATOR CERTIFICATION  
Ethical Standards
- FP 2018-118 INSURANCE DEPARTMENT  
Ancillary Health and Blanket Insurance General Provisions
- FP 2018-119 INSURANCE DEPARTMENT  
Discontinuance of Individual Ancillary Health Coverage
- FP 2018-120 DEPARTMENT OF HEALTH AND HUMAN SERVICES  
Commissioner  
Syringe Services Program
- FP 2018-127 DEPARTMENT OF REVENUE ADMINISTRATION  
Tobacco Tax Reporting and Payment
- FP 2018-136 DEPARTMENT OF HEALTH AND HUMAN SERVICES  
Former Division of Public Health Services  
General Licenses - Byproduct Material Other Than Source Material
- FP 2018-137 DEPARTMENT OF HEALTH AND HUMAN SERVICES  
Former Division of Public Health Services  
Radiation Safety Requirements for Industrial Radiographic Operations

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

- FP 2018-48 PHARMACY BOARD  
Pharmacy Interns
- FP 2018-58 PHARMACY BOARD  
Pharmacy Technicians
- FP 2018-60 BOARD OF REGISTRATION OF FUNERAL DIRECTORS AND EMBALMERS  
Unlicensed Personnel; Eye Procurement; Ethical and Professional Standards; Preparation  
Room Requirements and Equipment
- FP 2018-109 DEPARTMENT OF HEALTH AND HUMAN SERVICES  
Former Division of Public Health Services  
Newborn Screening

The Committee discussed adding the following Final Proposals to the Consent Agenda for Committee approval of Final Proposals:

- FP 2018-112 BOARD OF FAMILY MEDIATOR CERTIFICATION  
Certification Requirements
- FP 2018-116 BOARD OF FAMILY MEDIATOR CERTIFICATION  
Continued Status of Certified Family Mediator Programs

The Committee also discussed adding the following Final Proposals to the Consent Agenda for Committee Conditional Approvals:

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|-------------|---|
| INT 2018-19 | DEPARTMENT OF HEALTH AND HUMAN SERVICES<br>Former Division of Public Health Services<br>Milk Producters, Milk Plants, Producer-Distributors, and Distributors |
| FP 2018-43  | HIGHER EDUCATION COMMISSION<br>Career School Licensing  |
| FP 2018-113 | BOARD OF FAMILY MEDIATOR CERTIFICATION<br>Continued Status  |
| FP 2018-115 | BOARD OF FAMILY MEDIATOR CERTIFICATION<br>Initial Certification of Family Mediator Training Programs  |

Rep. McGuire arrived during the discussion of this item and requested removal of Final Proposal 2018-47 from the Consent Agenda.

Rep. Schmidt moved that the Committee approve the Consent Agenda in Items #2 and #3, with the exception of Final Proposal 2018-47 from the Pharmacy Board, that is, (1) approve the Final Proposals in Item #2 except for Final Proposal 2018-47 and (2) conditionally approve the Final Proposals in Item #3 based on the agencies' conditional approval requests.

Rep. Lang seconded.

Rep. McGuire moved to amend the motion to add Final Proposal 2018-112, Final Proposal 2018-116, Proposed Interim Rule INT 2018-9, Final Proposal 2018-43, Final Proposal 2018-113, and Final Proposal 2018-115 to the Consent Agenda, that is, (1) approve Final Proposal 2018-112 and Final Proposal 2018-116 and (2) conditionally approve the Proposed Interim Rule and Final Proposals 2018-43, 2018-113, and 2018-115 based on the agencies' conditional approval requests and, in the case of Final Proposal 2018-113, the amended conditional approval request.

Sen. Feltes seconded.

The motion as amended was adopted.

4. The Committee discussed Final Proposal 2018-87 from the Department of Health and Human Services (Former Division of Public Health Services, Home Health Care Providers Licensing). Allyson Zinno and Melissa St. Cyr testified for the Department.

The Department had submitted a conditional approval request in a letter and amended rules dated September 19, 2018 which was supplemented by an amended conditional approval request in a letter and amended rule dated September 19, 2018.

Rep. McGuire moved that the Committee conditionally approve Final Proposal 2018-87 based on the conditional approval request and amended conditional approval request with the further amendment to delete the words "if any" in He-P 809.10(a)(3).

Sen. Feltes seconded.

Adopted.

5. The Committee discussed Final Proposal 2018-88 from the Department of Health and Human Services (Former Division of Public Health Services, Home Hospice Care Providers Licensing). Allyson Zinno and Melissa St. Cyr testified for the Department.

The Department had submitted a conditional approval request in a letter and amended rules dated September 19, 2018.

Gina Balkus and James Culhane, representing the Granite State Home Health Association, testified.

The Committee then recessed this item.

6. The Committee discussed again Final Proposal 2018-87 from the Department of Health and Human Services (Former Division of Public Health Services, Home Health Care Providers Licensing). Allyson Zinno and Melissa St. Cyr testified for the Department.

Sen. Feltes moved that the Committee reconsider its vote to conditionally approve Final Proposal 2018-87.

Sen. French seconded.

Adopted.

Gina Balkus and James Culhane, representing the Granite State Home Health Association, testified.

Rep. McGuire moved that the Committee conditionally approve Final Proposal 2018-87 based on the conditional approval request and amended conditional approval request, with further amendments to (1) delete the words "if any" in He-P 809.10(a)(3), (2) insert the words "If allowed by the policy in (k) above" at the beginning of He-P 809.16(l), and (3) delete He-P 809.17(h)(7) on maintaining basic life support certification.

Sen. French seconded.

Adopted.

7. The Committee resumed discussion of Final Proposal 2018-88 from the Department of Health and Human Services (Former Division of Public Health Services, Home Hospice Care Providers Licensing). Allyson Zinno and Melissa St. Cyr testified for the Department.

Gina Balkus, representing Granite State Home Health Care Association, testified again.

Rep. Schmidt moved that the Committee conditionally approve Final Proposal 2018-88 based on the Department's conditional approval request, with further amendments to (1) insert the words "If allowed by

the policy in (k) above”, in the beginning of He-P 823.17(l), (2) delete He-P 823.18(h)(7), and (3) correct the citation in He-P 823.06(b)(1) from “He-P 809.04(a)(1)” to “He-P 823.04(a)(1)”.

Sen. French seconded.

Adopted. Sen. Reagan noted for the record that Sen. Feltes, Sen. Ward, and Rep. Ohm voted “no”.

8. The Committee discussed Final Proposal 2018-108 from the Department of Health and Human Services (Former Division of Public Health Service, Substance Use Disorder Residential Treatment Facility Licensing). Melissa St. Cyr testified for the Department.

The Department had submitted a conditional approval request in a letter and amended rules dated September 14, 2018, which was supplemented by an amended conditional approval request in a letter and amended rules dated September 19, 2018.

Eric Spofford, representing Granite Recovery Centers, testified.

Justin Etling, representing The Process Recovery Center, and Andrew West registered their presence but did not speak.

Rep. Ohm and Rep. Lang left the meeting during the discussion of this item.

Rep. McGuire moved that the Committee postpone action on this item to the next regular meeting on October 18, 2018 and request a waiver from the Director of the Office of Legislative Services of the Committee’s October 1, 2018 deadline to act on Final Proposal 2018-108.

Sen. Avard seconded.

Adopted.

9. The Committee discussed an emergency rule filed by the Department of Health and Human Services on August 20, 2018 (Former Division of Mental Health and Developmental Services, Medical Assistance Services Provided by Education Agencies). Allyson Zinno and Melissa Nemeth testified for the Department.

No further action was taken.

10. The Committee discussed Proposed Interim Rule INT 2018-18 from the Community Development Finance Authority (Community Development Block Grant Rules). Meena Gyawali and Kathleen Easterly Martley, Executive Director, testified for the Authority.

Senator Feltes moved that the Committee approve Proposed Interim Rule INT 2018-18.

Rep. Schmidt seconded.

Adopted.

11. The Committee discussed Final Proposal 2018-51 from the University System of New Hampshire (Financial Policies on Classification of Students for Tuition Purposes). Karyl Martin, Associate General Counsel, testified for the University System.

Rep McGuire moved that the Committee make a preliminary objection to Final Proposal 2018-51 on the grounds that the rules are unclear and contrary to legislative intent as outlined in the annotations to the Final Proposal by Committee staff, with the recommendation that the Board of Trustees of the University System seek legislative clarification of the scope of its rulemaking authority under RSA 541-A and RSA 187-A as discussed in the comments of Committee staff, and with the request that the University System provide more data relevant to the fiscal impact statement, specifically the number or percentage of students who receive in-state tuition rates.

Sen. Avard seconded.

Adopted.

12. The Committee discussed Final Proposal 2018-91 from the Department of Environmental Services (Air Related Programs, Municipal Waste Combustion, Including Requirements for Combusting Processed Wood Residue). Peter Demas testified for the Department.

The Department had submitted a conditional approval request in a letter and amended rule dated September 10, 2018 and an amended conditional approval request in a letter and amended rule dated September 19, 2018.

The following persons also testified:

Katie Lajoie, R.N.

John Tutlin.

Sen. Avard moved that the Committee conditionally approve Final Proposal 2018-91 based on the amended conditional approval request.

The motion was adopted. Sen. Reagan noted for the record that the vote was 5 “yes” and 3 “no”, with Sen. Feltes, Rep. Schmidt, and Rep. Hatch voting “no”.

- \*\*13. The Committee discussed Final Proposal 2018-129 from the Department of Environmental Services (Oil and Remediation Programs, Underground Storage Tank Facilities). Peter Demas and Michael Juranty testified for the Department.

Sen. Feltes moved that the Committee make a preliminary objection to Final Proposal 2018-129 on the grounds as outlined in the annotations to Final Proposal 2018-129 by Committee staff, especially the comments relative to forms.

Sen. French seconded.

It was the understanding of the Committee that the response to the objection would be placed on the agenda for the continued Committee meeting on October 4, 2018.

Dan Freihofer, representing New England Convenience Store and Energy Marketers Association (NECSEMA), testified.

The motion was adopted.

14. After a break, with Sens. Reagan, Feltes, and Ward, and Reps. McGuire and Schmidt present, the Committee discussed Final Proposal 2018-59 from the Board of Registration of Funeral Directors and Embalmers (Definitions; Record of Board Actions; Nonadjudicative Investigations & Hearings; Waivers of Substantive Rules; Explanation After Adoption.). Robert Lamberti from the Office of Professional Licensure and Certification testified for the Board.

Sen. Avard and Rep. Hatch returned to the meeting during the discussion of this item.

Rep. McGuire moved that the Committee conditionally approve Final Proposal 2018-59 on the condition that Frl 214.01(g) be inserted to read "Unless otherwise specified in the waiver itself, the waiver shall be effective for the duration of the license."

Sen. Avard seconded.

Adopted.

15. The Committee discussed Proposed Interim Rule INT 2018-20 from the Electricians' Board (Supervision). Robert Lamberti, from the Office of Professional Licensure and Certification, and Dean Sotirakopoulos testified for the Board.

Sen. Feltes left the meeting during the discussion of this item.

Rep. McGuire moved that the Committee approve Proposed Interim Rule INT 2018-20 with the recommendation that the Board seek legislative clarification of RSA 319-C to address the issues outlined in Committee staff annotations to the Proposed Interim Rule.

Sen. Avard seconded.

Adopted.

16. The Committee discussed Final proposal 2018-62 from the Board of Septic System Evaluators (Licensure Requirement; Continued Status; Ethical Standards and Professional Conduct). Robert Lamberti from the Office of Professional Licensure and Certification testified for the Board.

The Board had submitted a conditional approval request in a memorandum and amended rules dated September 17, 2018.

Sen. Avard moved that the Committee conditionally approve Final Proposal 2018-62 based on the request.

Sen. French seconded.

Adopted.

17. The Committee discussed Final Proposal 2018-117 from the Board of Family Mediator Certification (Domestic Violence).

Rep. Schmidt moved that the Committee postpone action on Final Proposal 2018-117 to the regular Committee meeting on October 18, 2018.

Sen. Avard seconded.

Adopted.

18. The Committee discussed the response by the Board of Education to the Committee's preliminary objection to Final Proposal 2018-35 (Certification Standards for Educators on Code of Professional Conduct, Investigations and Disciplinary Proceedings, and Denial of Certification).

The response to the objection had not yet been filed.

Sen. Avard moved that the Committee postpone action on the response to the objection to the regular Committee meeting on October 18, 2018.

Rep. McGuire seconded.

Adopted.

19. The Committee discussed Final Proposal 2018-47 from the Pharmacy Board (Fees for Limited Retail Drug Distributors, Mail-Order Pharmacies, Manufacturers, Wholesalers and Distributors, and Outsourcing Facilities). Robert Lamberti, from the Office of Professional Licensure and Certification, testified for the Board, and Michael Bullek represented the Board.

Rep. Hatch moved that the Committee make a preliminary objection to Final Proposal 2018-47 on the ground that the proposed rules are contrary to legislative intent based on the Committee's determination that RSA 318:38 and RSA 318:51-a do not provide authority to raise the fees from the existing rules by an unreasonable amount, and the Committee suggested that the Final Proposal be withdrawn and the Board request input from the House and Senate Ways and Means Committees in regards to the reasonableness of the proposed fees.

Sen. French seconded.

Adopted.

20. The Committee recessed by consensus at 12:50 p.m.