



LEGISLATIVE & REGULATORY SUBCOMMITTEE MEETING MINUTES

Saturday, December 3, 2016
2005 Evergreen Street, 1st Floor
1st Floor Hearing Room
Sacramento, CA 95815

LEGISLATIVE & REGULATORY SUBCOMMITTEE MEMBERS

Susan Good, Public Member, Chair
Michelle Hurlbutt, RDH Educator
Nicolette Moultrie, RDH
Garry Shay, Public Member

LEG 1 Roll Call/Establishment of Quorum

Susan Good, Chair of the Legislative and Regulatory Subcommittee, called the meeting to order at 10:34 a.m. Chair Good took roll call and a quorum was established with all four subcommittee members present.

LEG 2 Public Comment for Items Not on the Agenda

Chair Good asked if any subcommittee member or member of the public would like to comment on any item not on the agenda. There were no comments.

LEG 3 Approval of the May 6, 2016 Legislative & Regulatory Subcommittee Meeting Minutes

Garry Shay requested that the word "noted" replace the word "injected" in reference to a recorded comment he had made as part of the minutes.

Motion: Michelle Hurlbutt moved to approve the May 6, 2016 Legislative and Regulatory Subcommittee meeting minutes, as amended.

Second: Nicolette Moultrie.

Chair Good asked if any member of the public would like to comment. There were no comments.

Vote: The motion to approve the May 6, 2016 Legislative and Regulatory Subcommittee meeting minutes, as amended, passed 4-0.

Name	Vote:		Other
	Aye	Nay	
Susan Good	X		
Michelle Hurlbutt	X		
Nicolette Moultrie	X		
Garry Shay	X		

LEG 4 Policy Regarding New Procedure for the State Rulemaking Process

Ms. Champlain explained that on September 7, 2016, the Department of Consumer Affairs (DCA) changed its policy for processing rulemaking packages. DCA had previously held the practice of reviewing all rulemaking packages prior to those packages being submitted to the Office of Administrative Law (OAL). Then, around five years ago, DCA waived the right to preliminary review. Now, in light of OAL having issued a rash of disapprovals to rulemaking packages originating with DCA, administrators at DCA revoked the waiver for preliminary review. The result is that DCA entities now must submit all rulemaking packages through a review process within DCA prior to submitting those rulemaking packages to OAL. This change will add at least four months of front-end processing to each rulemaking package submitted to OAL.

Chair Good asked for clarification on the purpose of this change. Ms. Champlain replied that although there will be an additional processing time prior to submission to OAL, the expectation was that there will be fewer disapprovals from OAL. Chair Good commented that this may mean less time overall if the result is avoiding disapproval at OAL's level.

Michelle Hurlbutt asked how the change will affect the rulemaking packages that are already in process. Kelsey Pruden, DHCC's Legal Counsel, explained that DHCC's pending rulemaking packages will have to be processed using the recently adopted method. Ms. Pruden clarified that while the process that was in place prior to September 2016 allowed a rulemaking package to process through preliminary steps with only an informal approval from the legal department, the new process requires a formal approval from the legal department. DHCC's rulemaking packages therefore have to be re-evaluated through the legal department so that the formal approval can be given.

Ms. Hurlbutt expressed concern about the added processing time. She stated that since DHCC's regulations are all concerned with consumer protection, the added delay to an already long process is particularly worrisome. She asked that those involved be mindful of priorities so that the rulemaking packages could move as expediently as possible.

Ms. Champlain stated that although every person she had worked with in the rulemaking process seemed to be dedicated to timely and efficiently processing the rulemaking packages, since the process itself involves back and forth collaboration and modification through different entities, it may not be realistic to promise expediency. For example, each rulemaking package is disseminated through DCA's regulatory and legislative review unit where it passes to DCA's budget and legal units. Any change requested by one of these units would require another review of the updated version to pass through the other unit so that both legal and budget approve the final version that will be presented to OAL. Additionally, each unit does not have one single individual to grant approval. In both the legal and budget units, there are analysts or attorneys, plus their supervisors. Approval must be granted at the top level of each unit.

Chair Good stated that the consumer can only gain by a prudent and diligent process for rulemaking. While this adjustment may delay some important regulations from going into effect, it will ensure that when those regulations do go into effect, they will be the best that they can be.

Public Comment: JoAnne Galliano asked if, once a rulemaking package is noticed with OAL and a hearing takes place, then there are changes resulting from the hearing, would those changes cause the rulemaking package to have to be routed through the entire process again? Ms. Pruden answered that since the final rulemaking review is still in place, all changes after a hearing would require the rulemaking to be reviewed again. She noted that the second approval would likely take less time than the first.

There were no additional comments.

LEG 5 Status Report on Legislation

Ms. Champlain reported on the status of bills the DHCC had elected to follow during the May 2016 meeting as well as bills members of the public had subsequently requested the DHCC follow.

- AB 1863, Wood, was chaptered. This allows Federally Qualified Health Centers and Rural Health Centers to apply for an adjustment to the rate for a visit with a RDH. Chapter 610.
- AB 2859, Low, was chaptered. This enables DHCC to issue retired status licenses by regulation. Chapter 473
- SB 1039, Hill, was chaptered. This increases DHCC's license renewal fee ceiling from \$160 to \$500 for biennial renewals. Chapter 799.

- SB 1098, Cannela, was chaptered. This bill was substantially changed from the time DHCC chose to watch. Originally, it would have created an advisory committee to promote and facilitate increased utilization for children eligible to receive Denti-Cal services. The version of this bill that passed had omitted the advisory committee in favor of requiring the Department of Health Care Services to self-report on their progress toward increasing Denti-Cal utilization. Chapter 630.
- The following bills died: AB 12, Cooley; AB 648, Low; SB 1033, Hill; SB 1155 Morrell; and SB 1217, Stone.

Chair Good asked if any subcommittee member or member of the public would like to comment. There were no comments.

LEG 6 Discussion & Possible Action to Promulgate Regulations for a Retired License Status; Recommendation to the Full Committee

Ms. Champlain reported that the passage of AB 2859 authorized the DHCC to create, by regulation, a retired category of licensure. The bill included the following parameters for the retired license:

- Holder of a retired license may not engage in any activity for which an active license is required.
- Holder of a retired license will not be required to renew that license.
- Licensing agency may only issue a retired license to an applicant who holds a license that is not placed on inactive status for disciplinary reasons.

Ms. Champlain stated that the other aspects of the retired license will be at the discretion of the DHCC. She provided proposed regulatory language and application forms for consideration.

Public Comment: JoAnne Galliano noted that the fee for the retired license would have to be established through statute and that this would take time. Ms. Pruden agreed.

The subcommittee members determined that since the new rulemaking process was likely to be lengthy, it would be best to agree on the substance of the proposed language and relevant forms at the present meeting so DCA's review could begin as soon as possible. Then, while the rulemaking file was processing, the DHCC would pursue legislation for the retired licensure fees.

Ms. Hurlbutt stated that since in some of the DHCC's standing regulations there is no specific fee listed, instead there is a reference to "fees required by the committee," it may not be necessary to list a specific fee in DHCC's retired license regulation. By listing a relative rather than a specific fee, the DHCC may be able to avoid having to seek statutory authority for the fee. Ms. Pruden advised that since the forms are considered part of the regulatory language, they are required to be clear to the persons affected. Stating a relative fee, such as half the current licensing fee, may be flagged as unclear.

Ms. Pruden itemized revisions throughout the proposed forms and regulatory language that would increase clarity and specificity. The subcommittee discussed each item and agreed on the outcome as follows:

- Fees.
The fee for issuing a retired license should be half of what the fee for an active license was on the day the applicant applied for a retired license. This would be stated on the application. This would need to be enacted through statute.
- Age Requirement Discarded in Favor of Years of Service Requirement.
Mr. Lum asked the subcommittee to clarify their intention regarding whether an applicant should be required to have reached a particular age as a condition of qualifying for a retired status license.

Mr. Shay requested that the subcommittee discuss the policy reasons behind promulgating a retired license in order to answer this question.

Lori Hubble stated that licensees who have reached the age of retirement often feel there is a stigma in allowing their license to cancel, but presently, the only other option besides maintaining the requirements for active licensure is to place the license on inactive status and continue to pay the renewal fees every two years. Ms. Hubble said that the retired license serves the purpose of allowing a licensee to maintain pride in his or her professional accomplishments at the close of a career.

Nicolette Moultrie stated that she is not sure it is fair to associate an age requirement with the retired license because if a licensee chooses to change professions and has no intention of returning to the practice of dental hygiene, yet still wants to maintain the license that was earned, as it is, the DHCC would continue to collect renewal fees until that individual reaches a certain age.

Chair Good stated that she supports an age requirement for eligibility for a retired license because without it, many licensees may choose to retire to avoid paying a renewal fee and completing continuing education, but then attempt to reactivate the license at a time much later on. In these cases, if

more than five years had passed then the individual would have to go through the entire process that a new applicant must go through. She indicated that it is foreseeable that this process could cause problems. Additionally, she noted, the retired license states the word, “retired” and this word usually indicates that a person has reached a certain age.

Mr. Shay stated that he would be in favor of taking out the age requirement as long as the provision stating a retired license can only be returned to active status one time.

Ms. Pruden noted that some licensing entities require licensees to have attained a certain number of years licensed in their profession instead of using an age requirement.

Mr. Shay stated that it would be best to find a simple and straightforward method that would be easy for the licensee to understand and easy to administer. He stated that if the age of retirement under the Social Security Act were the criteria chosen, it could prove problematic since it could be different for each person and the staff would have to research each application to discover that applicant’s minimum age of retirement. He proposed that it would be reasonable to require ten years of licensed service to the profession. This would satisfy the underlying need for an individual to have been invested in the profession, it would not be too burdensome on the licensee, and it would be easy for the staff to verify. He added that if this option were adopted, it would be wise to make very explicit on the application for retirement of license that there is a one-time limit on bringing a retired license back to active status.

- Out-of-State Licensed Experience Will Not Count Toward Years of Service.

Only the time an applicant was licensed in California would count toward that applicant’s required years of service for determining eligibility for a retired license. However, *all* years the applicant was licensed in California would count, even if the applicant was not in practice during some of those years. (This provision was intended to cover educators who are licensed but are not practicing.)

- No Practice of Any Kind While License is Retired.

Ms. Pruden noted that the bill allowed for an exception if pursued by regulation that would allow practice while in retired status in specific situations. She inquired whether the subcommittee intended that holders of retired licenses not be allowed to provide dental hygiene services at sponsored free health events. Ms. Hurlbutt said that she did not support retired licensees providing dental hygiene services of any kind or in any setting. Chair Good added that since a holder of a retired license is not

required to maintain proficiencies through continuing education, allowing this person to provide dental hygiene services could put the public at risk.

- Two Year Limit for Reactivating Retired License.

Ms. Moultrie stated she would like to reduce the amount of time that a retired license could be brought back to active status from the proposed five years to two years. This reduction would allow a person who is relatively young at the time of retiring his or her license a reasonable window of opportunity to decide if he or she may want to place the license on an inactive status to keep the option available for a later reactivation.

Ms. Champlain added that Ms. Moultrie's idea would solve the additional problem of how to reevaluate for competency when a holder of a retired license wishes to return that license to active status. The current requirement for holders of active licenses is a biennial certification of having met continuing education requirements. If the time limit for returning a retired license to active status is reduced from five years to two years, it would perfectly correspond with the regular continuing education reevaluation, thereby eliminating the need for a separate competency evaluation mechanism.

- Ten (Non)Consecutive Years Qualify.

Ms. Moultrie requested that the subcommittee address whether a licensee should have to have served ten consecutive years in the profession and whether the ten years must be spent practicing in California. The subcommittee reached consensus in determining that the licensee should have held a current (whether active or inactive) California license for ten years. It should not matter if those ten years were consecutive.

- Retroactively Applying the Retired License is Not Currently Feasible.

The subcommittee discussed the viability of an option for licensees who had, at the close of their careers as hygienists, allowed their licenses to cancel prior to the creation of the retired category of licensure, to be allowed to qualify for a retired license.

Ms. Pruden pointed out that it may not be possible to retroactively apply a statute. AB 2859 explicitly states that a "retired license shall be issued to a person with either an active license or an inactive license that was not placed on inactive status for disciplinary reasons." She added that the relevant section of the Business and Professions Code pertaining to cancelled licenses* would also preclude opening the retired license to those whose license has been cancelled.

§ 1939 states a license that is not renewed within five years after its expiration may not be renewed, restored, reinstated, or reissued. The holder of the license may apply for and obtain a new license upon meeting all of the requirements of a new applicant prescribed in this article.

Chair Good noted that while it would have been nice to offer an exception, under these circumstances it appears that doing so will not be possible. Mr. Shay agreed and suggested the subcommittee abandon the idea.

Motion: Michelle Hurlbutt moved to direct staff to integrate the changes that the subcommittee discussed and to recommend to the full committee to adopt the language and forms as amended.

Second: Nicolette Moultrie.

Chair Good asked if any member of the public would like to comment. There were no comments.

Vote: The motion to direct staff to integrate the changes that the subcommittee discussed and to recommend to the full committee to adopt the language and forms as amended passed 4-0.

Name	Vote:		Other
	Aye	Nay	
Susan Good	X		
Michelle Hurlbutt	X		
Nicolette Moultrie	X		
Garry Shay	X		

LEG 7 Future Agenda Items

Ms. Hurlbutt stated that the DHCC will need to seek statutory authority setting the retired license fee.

Ms. Hurlbutt requested that staff investigate the possibility of a statutory change to allow licensees who, at the close of their careers as hygienists, allowed their licenses to cancel, prior to the creation of the retired category of licensure, to have access to a retired license.

Chair Good asked if any member of the public would like to propose a future agenda item. There were no comments.

LEG 8 Adjournment

Motion: Chair Good moved to adjourn.

Second: Nicolette Moultrie.

Vote: The motion to adjourn passed 4-0.

Name	Vote:		Other
	Aye	Nay	
Susan Good	X		
Michelle Hurlbutt	X		
Nicolette Moultrie	X		
Garry Shay	X		

The Legislative and Regulatory Subcommittee adjourned at 12:20 p.m.