

**MINUTES OF THE SEPTEMBER 2006 MEETING
OF THE
ADMINISTRATIVE RULES REVIEW COMMITTEE**

Date of meeting: The regular, statutory meeting of the Administrative Rules Review Committee (ARRC) was held Tuesday, September 12, 2006, in Room 22, and Wednesday, September 13, 2006, in Room 24, State Capitol, Des Moines, Iowa.

Members present: Representative George Eichhorn, Chair, and Senator John P. Kibbie, Vice Chair; Senators Michael Connolly, Thomas Courtney, Paul McKinley, and James Seymour; Representatives Danny Carroll, Marcella Frevert, David Heaton, and Geri Huser.

Also present: Joseph A. Royce and Emily Gardyasz, Legal Counsel; Kathleen K. West, Administrative Code Editor; Sonya Streit, Administrative Rules Coordinator; fiscal staff, caucus staff and other interested parties.

TUESDAY, SEPTEMBER 12

Convened Vice Chair Kibbie convened the meeting at 9:05 a.m.

Fiscal report Mary Beth Mellick presented the LSA report on rule makings that may have a significant fiscal impact.

HUMAN SERVICES DEPARTMENT Nancy Freudenberg, Carol Stratemeyer, Eileen Creager, Mary Nelson, and Eugene Gessow represented the department. Other interested parties included Shelly Chandler of the Association of Community Providers, Shannon Strickler of the Iowa Hospital Association, Linda Hinton of the Iowa State Association of Counties, Kim Schmett of the Coalition for Family and Children's Services, Gloria Gray of Children and Families of Iowa.

ARC 5332B Proposed amendments to the family investment program generated discussion about the department's ability to verify eligibility and the possibility that persons who have used up their eligibility elsewhere will move into the state and receive benefits. Members asked the department to provide information about the criteria and procedures used by workers to verify eligibility. Members were comfortable with reapplications being handled by telephone, but asked that the rule be clarified to require that initial applications be made in person.

ARC 5334B Amendments to implement the consumer choices option for the six Medicaid HCBS waiver programs have been adopted. Ms. Freudenberg explained that consumers will not receive cash, but will be credited with the value of the services, and an individual support broker will assist the consumer in the purchase of services. Ms. Freudenberg reported that the department will be working with the Iowa Nurses Association regarding comments that were received after the amendments were adopted. Ms. Creager confirmed that the department will investigate potential providers and will notify consumers about findings of dependent adult abuse; the department reserves the right to refuse to accept a consumer's choice of provider. Mr. Gessow agreed to provide the committee with comments the department has received.

ARC 5368B These amendments, which add remedial services as a covered service under Medicaid and delete adult rehabilitative options (ARO) and rehabilitative treatment services (RTS), were reviewed in conjunction with ARC 5372B, which proposes an interim step in the redesign of the child welfare system. Under the new model, adults and children will be assessed by a licensed practitioner of the healing arts (LPHA), who will be responsible for developing treatment plans and for ongoing reassessment of the Medicaid member and review of the treatment plan. Rep. Carroll questioned the assumptions used for the fiscal analysis. The department intends to implement remedial services November 1, 2006; committee members expressed concern about the potential interruption of services, the ability of LPHAs to assess all participants and develop treatment plans by November 1, and the availability of providers in some areas of the state.

Ms. Chandler commented on providers' need for training and providers' concern that there is not enough time to work out the details prior to implementation. Noting that counties are a funding source that needs to be represented at the table, Ms. Hinton expressed concern about the department's communications with stakeholders and the impact of the new provisions on county budgets. Ms. Strickler indicated that the definition of LPHA needs to be clarified, and pointed out that licensed master of social work (LMSW) is not included as an LPHA. Mr. Schmett noted that although changes are needed in child welfare, the November 1 implementation is problematic in that more than 6,000 children will need to be assessed by LPHAs, billing systems will need to be changed, and all providers will need to be enrolled in Medicaid. A party from Iowa Lutheran Hospital commented on the amount of time required to make referrals and assessments and added that Magellan does not include a certified alcohol and drug counselor as a provider of substance abuse assessments. Ms. Gray stated that there is not enough time to complete the assessments by November 1, and there is a shortage of providers in areas of the state, particularly southern Iowa.

Human Services Department (continued)

- Rep. Huser asked that the department meet with all stakeholders to address issues, that a timeline for implementation be formulated, that the fiscal analysis be clarified, that the impact on county budgets and counties' ability to opt out of the program be determined, and that this rule making be included on next month's agenda. Members requested clarification regarding the definition of LPHA and the role of Magellan.
- ARC 5333B No action on 79.3, which pertains to maintenance of records by providers of Medicaid services. A side-by-side comparison of the previous rule, the noticed rule and the adopted rule was distributed.
- ARC 5372B See ARC 5368B above.
- ARC 5369B No formal action on proposed amendments to ch 170, child care assistance program. Rep. Heaton requested a progress report on implementation of electronic payment of child care assistance and whether the department will need to return unspent federal funds.
- ARC 5367B No action on proposed amendments to ch 184 concerning the family support subsidy program.

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT (Excused from this meeting)

EDUCATIONAL EXAMINERS BOARD (Excused from this meeting)

EDUCATION DEPARTMENT (Excused from this meeting)

ETHICS AND CAMPAIGN DISCLOSURE BOARD (Excused from this meeting)

- Committee business** Minutes of the August 2006 meeting were approved.
The next meeting will take place Tuesday, October 10 and, if necessary, Wednesday, October 11, 2006.
Committee members were asked to comment on the draft of the objection to ARC 5234B. Rep. Frevert noted that the style of the draft objection differs from that of objections issued by the committee over the past several years. Ms. Streit commented that the discussion leading to the objection at last month's meeting focused on the fact that the legislature did not intend to give the director discretion in this area not, as the objection indicates, that the rule was unreasonable, arbitrary and capricious. Sen. Connolly voiced concern that a potential litigant was instrumental in the drafting of an objection to a rule which the state may have to defend in court. Committee members were in agreement that Mr. Royce should review the tapes of the meeting and redraft the text of the objection in the customary style. Sen. Courtney and Sen. Connolly suggested that Mr. Royce consult the attorney general prior to redrafting the objection.
The committee agreed to schedule for review at the October meeting two additional matters: the otter trapping season and a guidance document pertaining to landfills.
The committee approved the secretary's request to remove from the Administrative Code the rules of the Human Investment Council[417], which was repealed by 2000 Iowa Acts, ch 1231, and the Narcotics Enforcement Advisory Council[551], which was repealed by 2000 Iowa Acts, ch 1126. The Administrative Rules Coordinator has already approved removal of these rules.

ADMINISTRATIVE SERVICES DEPARTMENT Marianne Mickelson and Ken Paulsen represented the department.

- ARC 5317B No questions on the rescission of 1.7 regarding the selling of goods or services by a regulatory agency; authority now rests with the ethics and campaign disclosure board.
- ARC 5338B No action on proposed 25.9, adoption of enterprise operational standards.
- ARC 5339B No action on proposed 25.11 regarding security operational standards. Rep. Huser expressed the view that no governmental entities should be exempted from these security standards.
- ARC 5258B Amendments to ch 105, procurement of goods and services, give purchasing personnel an opportunity to undergo additional training and become certified to purchase goods and services up to \$50,000.

ECONOMIC DEVELOPMENT DEPARTMENT Ken Boyd, Terry Vestal, Jeremy Babcock, Nichole Warren and LuAnn Reinders represented the department. Ron Robinson represented the fiscal services division of the legislative services agency.

- ARC 5300B This rule making clarifies the definition of "benefits" to enable the department to determine benefit value in the wage calculation for the high quality job creation program and the grow Iowa values fund.
- ARC 5336B Proposed ch 25 pertains to the housing fund. Rep. Heaton asked about the role of the department and that of Iowa Finance Authority in the area of housing and requested any information that the department could provide. Mr. Vestal indicated that the department administers federal funds through the home investment partnership program and the community development block grant program.

Economic Development Department (continued)

- ARC 5302B Amendments to ch 59 update the enterprise zone rules to implement 2006 Iowa Acts, Senate Files 2147 and 2183. Under the new definitions, 11 new communities may qualify. Mr. Robinson explained that the fiscal analysis is based on historical data and expanded by the additional cities.
- ARC 5305B No action on proposed ch 70 concerning the port authority grant program.
- ARC 5307B No action on proposed ch 71, targeted jobs withholding tax credit.
- ARC 5335B No questions on proposed 104.3(1) regarding the Iowa wine and beer promotion grant program.
- PAROLE BOARD** Darren Jaques represented the board.
- ARC 5297B No action on proposed 11.1 regarding voluntary termination of parole.
- ARC 5296B No action on proposed 11.2 concerning work release day reporting revocation.
- ARC 5298B No action on proposed 11.6(2)"f," automatic revocation of parole.

WEDNESDAY, SEPTEMBER 13

- SECRETARY OF STATE** Sandy Steinbach and Syeta Glanton represented the office of secretary of state.
- ARC 5328B No action on proposed ch 11 pertaining to agricultural landholding reporting.
- ARC 5371B No action on proposed amendments relating to implementation of HAVA. Ms. Steinbach reported that the primary election experience led to the amendments and that county auditors were involved in the process.
- ARC 5340B No action on proposed ch 46 concerning life science enterprises.
- WORKERS' COMPENSATION DIVISION** HelenJean Walleser represented the division.
- ARC 5331B No action on amendments to update the division rules relating to forms and procedures for workers' compensation settlements and commutations. Discussion related to benefits for illegal aliens.
- REVENUE DEPARTMENT** David Casey, Ed Henderson, and Jim McNulty represented the department.
- ARC 5321B No action on update of individual, corporate, and fiduciary income tax rules.
- ARC 5325B No action on proposed amendments relating to individual and corporation income tax credits.
- ARC 5360B No action on proposed amendments relating to ethanol blended gasoline, biodiesel blended fuel, and E-85 gasoline promotion tax credits. Rep. Carroll was advised that there is no tax on soy-based fuel for agricultural purposes. Mr. Casey clarified which fuels are exempt from road use tax but are subject to sales tax.
- ARC 5357B No action on proposed amendments to implement the soy-based transformer fluid tax credit.
- ARC 5358B No action on proposed amendments to property tax rules. Mr. Henderson clarified policy on taxation of vacant units in low-rent housing projects owned by nonprofit organizations. Discussion related to relief for low-income elderly renters and property owners, which was funded at approximately 96 percent of the estimated need.
- ARC 5359B No action on proposed amendments to inheritance tax rules.
- ENVIRONMENTAL PROTECTION COMMISSION** Courtney Cswercko represented the department.
- ARC 5324B No questions on the amendment to the fees structure for wastewater permits to exclude an erroneous fee for confinement animal feeding operations.
- NATURAL RESOURCE COMMISSION** Dale Garner, Sherry Arntzen, Linda DePaul, Jim Lawson and Martin Konrad represented the commission.
- ARC 5353B Dr. Garner reported that the proposed amendments to ch 51 were intended to restrict the use of horses and prohibit paintball guns on game management areas.
- ARC 5349B No questions on cabin rental fees at Waubonsie State Park.
- ARC 5352B Proposed ch 67 pertains to development and management of recreation trails in state forests, parks, preserves and recreation areas. Ms. DePaul distributed photographs of unofficial trails that have been closed due to ecological damage. Committee members suggested that recreational users and equestrian organizations be contacted and advised of the location of developed trails that are appropriate to use.
- ARC 5348B No action on proposed amendments to ch 81, fishing regulations, to adjust the length and bag limits for walleye at specific lakes, largemouth bass at Green Valley Lake, and hybrid striped bass at Big Creek Lake.
- ARC 5354B No questions on amendments to waterfowl and coot hunting seasons.
- ARC 5350B No action on amendments to wild turkey fall hunting by residents.
- ARC 5351B No action on amendments to ch 105, deer population management zones, to impose a penalty for violations.

IOWA FINANCE AUTHORITY Lori Beary represented the authority.

ARC 5346B Proposed ch 28 pertains to the wastewater treatment financial assistance program. This program is intended to help small communities that may have to improve their wastewater treatment facilities due to the change in stream designations; \$4 million per year for ten years was appropriated to assist disadvantaged communities with a populations of 3,000 or less. The committee was advised that stream designations will be made through the rule-making process; therefore, communities will not all be affected at the same time.

Rep. Huser asked that both DNR and IFA be scheduled to appear together at the October meeting with a timeline for implementation. Members expressed concerns about the adequacy of funding, the prioritization of awards, and that discharges from wastewater treatment facilities account for only 20 percent of the pollution.

INSURANCE DIVISION Rosanne Mead represented the division.

ARC 5365B No questions on proposed amendments to ch 3, contested cases.

ARC 5361B No questions on proposed amendments to ch 10 regarding licensing of insurance producers.

ARC 5366B No questions on proposed ch 11, continuing education for insurance producers.

ARC 5323B Amendments to ch 15 pertain to standards for recommendations made to consumers that result in transactions involving annuity products. Ms. Mead advised Rep. Huser that DHS has not contacted the division about DHS Medicaid eligibility rules regarding valuation of annuities and informed Rep. Heaton that the division is working with the Iowa Medicaid enterprise on a partnership program for long-term care insurance. Discussion related to the need for regulation of the rates and products offered.

ARC 5363B No questions on proposed amendments to rate and form filing procedures for property and casualty insurance.

ARC 5364B No questions on proposed amendments to rate and form filing procedures for life insurance policies.

ARC 5362B No questions on proposed amendments to rate and form filing procedures for accident and health insurance.

ARC 5322B No action on proposed amendments to ch 36 regarding individual accident and sickness coverage. Sen. McKinley asked for information about other states that have adopted or not adopted the NAIC standards.

INTERIOR DESIGN EXAMINING BOARD Pam Griebel and Jennifer Voorhees represented the board.

ARC 5311B No action on proposed chs 1 and 2.

Adjourned The meeting was adjourned at 11:30 a.m.

Respectfully submitted,

Kathleen K. West

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APPROVED:

George A. Eichhorn

 Chair George Eichhorn

John P. Kibbie

 Vice Chair John P. Kibbie