

**MINUTES OF THE JUNE 2008 MEETING
OF THE
ADMINISTRATIVE RULES REVIEW COMMITTEE**

Date of meeting: A special meeting of the Administrative Rules Review Committee (ARRC) was held by telephone on Monday, June 9, 2008, at 1 p.m. and in Room 116, State Capitol, Des Moines, Iowa, on Wednesday, June 11, 2008.

MONDAY, JUNE 9, 2008

Convened: Sen. Connolly convened the meeting at 1 p.m.
 Roll call: Mr. Royce called the roll. The following members were present via telephone: Sen. Connolly, Senator Angelo, Senator Courtney, Representative Frevert, Representative Heaton, Representative Jacoby, Senator Kibbie, and Senator Seymour.

PUBLIC SAFETY DEPARTMENT Mike Coveyou represented the department. Other interested parties included Wes Ehrecke of the Iowa Gaming Association.

ARC 6591B At its March 2008 meeting, the Committee imposed a 70-day delay on this rule making relative to video surveillance in casino areas.
 Mr. Coveyou summarized the discussions that have taken place and indicated that disagreements regarding access to surveillance video recordings are not likely to be resolved. Mr. Ehrecke outlined industry's concerns and requested a session delay.

Motion to delay: Sen. Kibbie moved a session delay; Sen. Courtney seconded the motion.
 Motion carried: By roll call vote, all eight members present voted to delay ARC 6591B until the adjournment of the 2009 Session of the General Assembly

Adjourn: The telephone conference meeting ended Monday, June 9, 2008, at 1:20 p.m.

WEDNESDAY, JUNE 11, 2008

Convened: Sen. Connolly reconvened the meeting Wednesday, June 11, 2008, at 9 a.m.
 Members present: Senator Michael Connolly, Chair; Senators Jeff Angelo, Thomas Courtney, John P. Kibbie, and James Seymour; Representatives Marcella Frevert, David Heaton, and Linda Upmeyer were present.
 Representatives David Jacoby and Philip Wise, Vice Chair, were not present.

Also present: Joseph A. Royce and Michael Duster, Legal Counsel; Kathleen K. West, Administrative Code Editor; Deborah Svec-Carstens, Assistant Counsel to the Administrative Rules Coordinator; fiscal staff; caucus staff; and other interested parties.

Fiscal overview Sue Lerdal presented the LSA fiscal report.

PUBLIC HEALTH DEPARTMENT Barb Nervig represented the department. Matt Gannon of the attorney general's office was present. Other interested parties included Representative McKinley Bailey; Larry Barry; Tom Baldwin; Bruce Anderson on behalf of the Iowa Auto Dealers Association; Bill Mahon; Susan Cameron of the Iowa State Sheriffs and Deputies Association; Mary Gannon of the Iowa Association of School Boards; Brian Freulich of the Iowa Bar Owners Association; Kelly Meyers of the Iowa Healthcare Association; Bill and Kathy Duncan of Two of a Kind; and Joe Sturgis of the Rusty Nail in Davenport.

ARC 6795B No action on proposed ch 50 regarding oral health. Ms. Nervig stated that the department would ensure that terms defined in the rules conform with those in statute.

ARC 6798B Proposed ch 51 pertains to dental screening. Ms. Nervig reported that the department of education will assist in identifying eligible children. Ms. Gannon presented written concerns on behalf of the Iowa Association of School Boards regarding notarization of requests for religious exemption, provision of information regarding screening resources, and possible conflicts with federal law involving student records.

ARC 6801B Proposed ch 67 includes blood lead testing requirements for children enrolling or attempting to enroll in kindergarten. Ms. Gannon noted that the association's written comments identify concerns about these rules that are similar to those for the dental screening rules.

Informal review: The committee had the opportunity to informally review the rules that will be presented to the state board of health for implementation of HF 2212. Ms. Nervig set forth the process the department used in drafting the rules and identified the variety of entities and organizations that had input. Ms. Nervig noted that the state board of health intends to adopt rules that will go into effect July 1, while also receiving public comments during an extended comment period prior to the final adoption of the rules. Many of the comments received thus far pertain to definitions, including "grounds of a public building" and "serving of food incidental to the consumption of alcoholic beverages." Ms. Nervig noted that the department intends that compliance with the new rules will be accomplished through education.

Public Health Department (continued)

Much of the discussion related to the rules as they apply to the outdoor seating areas of restaurants and bars. The legislation specifically prohibits smoking in outdoor seating areas of restaurants, but the rules allow for smoking in outdoor areas of bars that serve only certain specified food that is incidental to the consumption of alcoholic beverages. Sen. Courtney pointed out that the intent of the legislation was to protect employees, but under these rules the employees who deliver the authorized incidental food to the outside seating area will be exposed to smoke. Sen. Courtney suggested that a pick-up window for food would be more protective of employees than restricting the type of food that can be served. Rep. Heaton asked about whether smoking would be allowed on the patio of a restaurant/bar that allows beverages only and serves no food on the patio. Rep. Frevert urged the department to refrain from imposing fines under the emergency rules, since changes may be made in the final adoption at the end of the extended comment period. Rep. Upmeyer expressed concern about the roles of the department of public health and the department of inspections and appeals in the enforcement of the rules. Rep. Bailey asserted that these rules are contrary to the intent of the legislation and that many legislators assured their constituents that smoking would be allowed on the patios of bars, including bars that serve food.

Mr. Barry, owner of three establishments, encouraged the department to base the determination of whether an establishment is a bar or a restaurant on the percentage of their sales. Mr. Baldwin asserted that these rules unfairly define most bars as restaurants and that the rules exceed legislative authority. Mr. Sturgis voiced concern that legislators assured owners of bars that outdoor smoking would be allowed and asserted that the rules will cause business failures. Mr. Mahon commented that the rules will have an adverse effect on all bars, especially those in leased locations.

Other concern raised include the following: Mr. Anderson expressed concern that the signage requirement for vehicles exceeds the statutory requirement that the sign be legible. Ms. Gannon expressed concern about the signage requirements for school buses and for buildings that have been tobacco-free for years. Ms. Cameron commented that the rules will impose a burden on local law enforcement. Mr. Freulich expressed the opinion that it is unfair for the state to prohibit smoking at outdoor entertainment venues, but to allow smoking at the state fair and indicated that the legislation intended to protect employee health has been extended to protection of the general public. Mr. Freulich also expressed concern about the cost of signage for small businesses. Ms. Meyers noted that federal certification guidelines require healthcare facilities in publicly owned buildings to accommodate residents who smoke. Ms. Duncan commented on the negative impact that the smoking prohibition will have on her business. Mr. Duncan expressed the opinion that the law is unfair and violates the Constitution.

CORRECTIONS DEPARTMENT Michael Savala and Delbert Longley represented the department. Other interested parties included Susan Cameron of the Iowa State Sheriffs and Deputies Association and State Ombudsman Bill Angrick.

ARC 6755B No action on ch 37 regarding Iowa state industries.
ARC 6800B No action on amendments to ch 50 concerning jail inspections and operations. Mr. Longley identified the changes made since publication of the notice.

Mr. Angrick commented that he would like to work with the department on some suggestions regarding mental health assessments and medical monitoring of prisoners who are in restraint. Ms. Cameron noted that the association supports the these rules and indicated an interest in working with the department and the ombudsman in regard to mental health issues.

ELDER AFFAIRS DEPARTMENT Jeanne Yorde represented the department. Kelly Meyers represented Iowa Health Care Association/Iowa Center for Assisted Living(IHCA/ICAL).

ARC 6789B Proposed ch 9, resident advocate committees, clarifies the process for membership on the committees, training and orientation for volunteers, and termination of membership. Ms. Meyers distributed written comments in which the organization requested that failure to maintain objectivity or becoming adversarial to the facility be included as a reason for termination. In addition, Ms. Meyers expressed concern about rule 9.12, regarding complaints referred from the department of inspections and appeals. Ms. Yorde agreed that changes need to be made.

ENVIRONMENTAL PROTECTION COMMISSION Christine Paulson, Jim McGraw, Lori McDaniel and Adam Schnieders represented the commission. Neila Seaman represented Iowa Sierra Club.

ARC 6783B No action on amendments to update air quality rules to new state and federal requirements.

Environmental Protection Commission (continued)

ARC 6782B Amendments to 61.3(5) modify surface water classifications based upon stream assessments for approximately one-third of Iowa's streams. Ms. McDaniel outlined the activities that have taken place and stated that the commission changed the initial recommendation for 47 streams. Rep. Heaton requested a description of each of the classifications. Ms. Seaman expressed support for the rules, but concern that, due to public comments, not all streams are receiving adequate protection.

INSURANCE DIVISION Jim Mumford represented the division. Bill Wimmer represented the Iowa Pharmacy Association.

ARC 6781B Mr. Mumford reported that many comments were received on the prompt pay provisions in proposed ch 59, pharmacy benefits managers, and noted that the commissioner will consider these comments before final adoption of the rules. Mr. Wimmer indicated that the 30-day provision was based on paper claims and the association supports a 20-day payment requirement for electronic claims. Mr. Wimmer added that four states require payment in 15 days, and Medicaid claims are paid in 7 days. Rep. Frevert asked about a potential conflict of interest when pharmacy benefit managers may be in competition with the pharmacies.

SECRETARY OF STATE Sandy Steinbach represented the office of Secretary of State.

ARC 6791B No questions on proposed 21.100, solicitation of comments on HAVA plan 2008.

ARC 6773B No questions on proposed 21.601 regarding the number of signatures needed for supervisor district candidates.

ARC 6727B No questions on 22.32, optical scan voting system purchase program.

ARC 6749B Ms. Steinbach reported there will likely be changes in these proposed amendments to ch 23 pertaining to voter registration based on a change in advice from the U.S. Department of Justice.

PHARMACY BOARD Terry Witkowski represented the board.

ARC 6668B These amendments regarding pharmacy technicians were delayed at the April ARRC meeting. Amendments to resolve the issues will be filed emergency to become effective when the 70-day delay expires.

ARC 6671B These amendments regarding centralized prescription filling and processing were delayed at the April ARRC meeting. Ms. Witkowski reported that the board is still working on one issue regarding written authorization from the patient for another pharmacy to fill the prescription and that amendments will be filed emergency to become effective when the 70-day delay expires.

HUMAN SERVICES DEPARTMENT Nancy Freudenberg represented the department.

ARC 6759B No questions on amendments to ch 11 regarding trafficking in food assistance benefits.

ARC 6797B No questions on proposed amendments to 41.30 regarding the 60-month limit for FIP assistance.

ARC 6775B No questions on amendments to chs 75 and 76 concerning Medicaid eligibility and terminology.

ARC 6761B No action on 75.1(39)"b"(3), premiums for Medicaid for employed persons with disabilities. Ms. Freudenberg agreed to provide information about the number of participants in this group.

ARC 6760B No questions on amendments to chs 75, 81, 82, and 85 to implement personal needs supplemental payments.

ARC 6770B No questions on termination of the notice for a home health agency fee schedule.

ARC 6772B No questions on proposed amendments to ch 86, the HAWK-I program, to implement an income exemption.

ARC 6751B No questions on 86.2(2)"b"(44), the state and federal earned income tax credit income exemption for the HAWK-I program.

ARC 6806B No action on proposed amendments to ch 88, program for all-inclusive care for the elderly (PACE). There was discussion about the requirement for cost neutrality. Ms. Freudenberg reported that one organization in Woodbury County has enrolled in the program.

ARC 6754B No questions on the \$1/month increase in premiums for IowaCare.

ARC 6807B No questions on proposed amendments to ch 92, IowaCare program, concerning the availability of smoking cessation drugs in local community pharmacies.

Special review No questions on four rule makings to be adopted and filed emergency.

VETERINARY MEDICINE BOARD Margaret Thomson represented the board. Tom Johnson represented the Iowa Veterinary Medicine Association.

ARC 6747B Ms. Thomson distributed copies of an amended notice (ARC 6863B) with the controversial provisions from ARC 6747B removed. Mr. Johnson indicated that more time and resources would be needed to implement proposed ch 8 and that provisions in ch 12 regarding facilities could not be met.

Committee business The minutes of the May 2008 meeting were approved.
The next meeting was scheduled for Tuesday, July 8, 2008, at 9 a.m.

Adjourned The meeting was adjourned at 1:40 p.m.

Respectfully submitted,

Kathleen K. West
Kathleen K. West

APPROVED:

Michael W. Connolly
Chair Michael Connolly

Philip Wise
Vice Chair Philip Wise