

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

- Date of meeting:** The regular, statutory meeting of the Administrative Rules Review Committee (ARRC) was held on Tuesday, October 14, 2008, in Room 116, State Capitol, Des Moines, Iowa.
- Members present:** Senator Michael Connolly, Chair, and Representative Philip Wise, Vice Chair; Senators Jeff Angelo, Thomas Courtney, John P. Kibbie, and James Seymour; Representatives Marcella Frevert, David Heaton, David Jacoby, and Linda Upmeyer were 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.
- Convened** Sen. Connolly convened the meeting at 8:32 a.m.
- Fiscal overview** Sue Lerdal presented the LSA fiscal report.
- INSURANCE DIVISION** Rosanne Mead, Matt Hargrafen, Kim Cross and Angela Burke Boston represented the division. Other interested parties included Mike Triplett on behalf of Medco Health Solutions and Nicole Schultz on behalf of the Iowa Pharmacy Association.
- ARC 7201B No questions on proposed amendments to ch 10 concerning insurance producer licensing.
- ARC 7202B No questions on proposed amendments to ch 11, continuing education for insurance producers.
- ARC 7205B No questions on proposed 15.8(3)“e,” which prohibits the use of senior-specific certifications and professional designations in the sale of life insurance and annuities.
- ARC 7207B No action on proposed amendments to ch 39 pertaining to independent review of benefit trigger determinations for long-term care insurance.
- ARC 7200B No action on proposed subrule 39.29(14), which requires an insurer that raises premiums to issue notice to policyholders and to offer options for a reduced benefit, a contingent benefit or an alternative mechanism.
- ARC 7153B No questions on amendments to ch 48 concerning viatical and life settlements.
- ARC 7190B Proposed amendments to ch 50 prohibit the use of senior-specific certifications and professional designations in the sales of securities.
- ARC 7141B No questions on ch 60, workers’ compensation rate filing procedures.
- ARC 7124B Proposed ch 98 concerning annual financial reporting requirements is intended to replace rule 5.25, effective January 1, 2010. Discussion related to the effect of the current national financial crisis on the solvency of Iowa-domiciled insurance companies. Sen. Connolly requested additional information about Iowa insurers that may have been adversely affected by credit-default swaps.
- ARC 7082B Subrules 59.6(3), 59.6(5), and 59.7(6) are under a 70-day delay. Mr. Triplett indicated that after further review of the delayed provisions, Medco Health Solutions has concluded that the subrules as adopted in ARC 7082B are not problematic.
- Motion** Rep. Frevert made a motion to lift the delay.
- Motion carried** The motion carried; the 70-day delay on subrules 59.6(3), 59.6(5), and 59.7(6) is lifted, effective October 15, 2008.
- ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA** Charlie Smithson represented the board.
- ARC 7181B No questions on proposed 4.4(1) concerning appointment of officers to campaign committees.
- ARC 7188B No questions on proposed 4.6(2) regarding amended statements of organization.
- ARC 7182B No questions on 4.10, campaign disclosure reports.
- ARC 7160B No questions on 4.11 regarding voluntary filing of Form DR-SFA.
- ARC 7183B No questions on 4.27, which reduces the financial threshold for reporting an independent expenditure statement.

Ethics and Campaign Disclosure Board (continued)

- ARC 7185B No questions on proposed 4.32, which pertains to electronic filing of verified statements of registration.
- ARC 7189B No questions on proposed 4.34, which establishes a procedure for filing of reports by 527 Committees.
- ARC 7186B No questions on proposed electronic filing of Form DR-OTC.
- ARC 7187B No questions on proposed electronic filing of Form PFD.
- ARC 7161B No questions on 8.6 regarding executive branch lobbying expenditures.

IOWA FINANCE AUTHORITY ARC 7135B was excused from review at this meeting.

HUMAN SERVICES DEPARTMENT Nancy Freudenberg, Jennifer Vermeer, Sally Nadolsky, and Ann Wiebers represented the department.

- ARC 7118B No action on exemption of income received from temporary employment with the U.S. Bureau of the Census in determining eligibility for FIP.
- ARC 7119B No questions on amendments to ch 65 concerning the food assistance program.
- ARC 7208B No questions on proposed 75.1(43) regarding Medicaid for children with disabilities.
- ARC 7206B No action on amendments to chs 77 and 78 to bring case management provisions into conformance with federal regulations.
- ARC 7137B A proposed amendment to ch 78 would provide Medicaid coverage for dental services to treat periodontal and endodontic disease. Ms. Vermeer indicated that the federal government does not allow the department to exclude coverage for these infectious diseases. Rep. Wise expressed concern that coverage of these services was not included in the department's budget and requested that the department present an informal regulatory analysis at the November meeting. Discussion related to access to dental care and the long-term benefits of preventive care.
- ARC 7121B No questions on 78.9(9) regarding home health agency care for maternity patients and children.
- ARC 7122B The amendment to 78.13(5) increases the Medicaid reimbursement rate for nonemergency medical transportation by car from 30 cents per mile to 34 cents per mile. Rep. Wise expressed concern about the fiscal impact of the increase and asked that an informal fiscal analysis be presented at the November meeting.
- ARC 7125B The amendment to 93.110(6)"b" increases the mileage reimbursement rate for the PROMISE JOBS program. Rep. Wise requested an informal fiscal analysis to be presented at the November meeting.
- ARC 7173B No questions on proposed amendments to ch 150.
- ARC 7127B No questions on purchase of service rate limits for supervised apartment living and shelter care.
- ARC 7130B No questions on rate increase for foster family care.
- ARC 7131B No questions on amendments to ch 170 concerning KinderTrack and child care assistance policy.
- ARC 7132B No action on rate increase for group foster care services.
Rep. Frevert commented that concerns have been raised that the department's RFP for wrap-around services will exclude some providers in the 14-county area of north central Iowa. Ms. Freudenberg noted that the RFP has been clarified and reissued and added that there is an appeal process in place.
Rep. Heaton requested that a special review of the Medicaid preferred drug list be scheduled for the November meeting.
Rep. Upmeyer requested that a special review of the IowaCare program be scheduled for the December meeting.

REVENUE DEPARTMENT David Casey and Jim McNulty represented the department.

- ARC 7197B No questions on proposed 6.8, tax return extension in disaster areas.
- ARC 7204B No action on proposed amendments to update rules on taxation of motor fuel.
- ARC 7198B No action on proposed amendments to individual and corporation tax and charitable conservation contribution tax credits.
- ARC 7199B No questions on proposed amendments to chs 40 to 42, 52 and 53 concerning individual and corporation tax.

Revenue Department (continued)

ARC 7196B No questions on proposed amendments to individual, corporation and franchise tax in regard to tax credits and checkoffs.

NATURAL RESOURCE COMMISSION Paul Tauke, Marion Conover and Ross Harrison represented the commission. Other interested parties included Kevin Kelly of Kelly Tree Farm.

ARC 7145B Proposed 71.2 and 71.3 provide for nursery stock sales to the public. Mr. Tauke reported that in Iowa there are 138,000 private woodland owners and 1100 tree farmers; in addition, there are two private sector nurseries that produce reforestation stock: Cascade Forestry, which supports the rules, and Kelly Tree Farm, which opposes the rules. Mr. Kelly feared that these amendments would result in the public's buying from the state rather than from private enterprise. Mr. Tauke explained that because trees must be purchased from the state nursery in lots of 500, the nursery is not in competition with private enterprise. Mr. Tauke added that the Missouri state nursery also sells low-cost trees to Iowans and that the Illinois state nursery charges nothing for trees. Discussion related to the main functions of the state nursery: reforestation and wildlife habitat.

ARC 7146B No questions on proposed daily limit for bluegill and crappie.

ARC 7149B No action on amendments to ch 91, waterfowl and coot hunting seasons. Rep. Frevert asked Mr. Harrison to check on whether landowner permits for hunting Canada geese are available in Palo Alto County.

ARC 7148B Mr. Harrison reported that the commission intends to revise proposed 94.6(3) concerning special licenses for nonresident deer hunting.

ARC 7150B Mr. Harrison reported that the commission intends to revise proposed 98.11(3) concerning special licenses for wild turkey spring hunting.

ARC 7151B Mr. Harrison reported that the commission intends to revise proposed 99.2(4) concerning special licenses for wild turkey fall hunting.

ARC 7147B Proposed 106.11(4)"e" would impose a \$2 fee for deer depredation permits in order to cover the cost of issuance under the electronic licensing system. It is expected that approximately four to five thousand permits will be issued this year. Mr. Kelly opposed the fee and commented that it's unreasonable for him to pay for a permit to shoot deer that are damaging his crops.

ARC 7144B Proposed ch 12 pertains to special nonresident deer and turkey licenses. Discussion related to the three-person committee that awards the licenses to promote Iowa.

PUBLIC SAFETY DEPARTMENT Mike Coveyou, Ross Loder, Stuart Crine and Jim Kenkel represented the department.

ARC 7180B No action on proposed ch 61, reduced ignition propensity cigarettes.

ARC 7178B No questions on proposed adoption of the 2008 National Electrical Code in 201.3.

ARC 7179B No questions on proposed adoption of the 2008 National Electrical Code in 301.5

ARC 7177B No questions on proposed adoption of the 2008 National Electrical Code in 504.1.

ARC 7176B Proposed chs 550 to 553 implement the electrical inspection program for state facilities and for areas of the state without an inspection program. Committee members expressed concern that the rules impose the maximum fees allowed by law and that affected parties may not even know about the rules. Mr. Crine confirmed that "do-it-yourself" work requires inspection.

ENVIRONMENTAL PROTECTION COMMISSION Randy Clark, Christine Paulson, Diane Moles, Courtney Cswercko, David Wormson and Elaine Douskey represented the commission. Other interested parties included Jessica Harder of the Iowa League of Cities, Ted Payseur of the Iowa Water Pollution Control Association, John Veach of the Iowa Rural Water Association, and Jim Carroll of USDA-Rural Development.

ARC 7140B No questions on 1.6, EPC voting requirements.

ARC 7143B No questions on amendments to chs 20 to 23, 25, and 33 concerning air quality.

ARC 7142B No questions on rescission of the \$25 application fee for water use and allocation permits.

Environmental Protection Commission (continued)

ARC 7152B Proposed amendments to chs 60 and 62 to 64 pertain to wastewater disposal systems. Ms. Cswercko distributed material to illustrate the increased cost per person in the committee members' home communities. Ms. Harder commented that the highest impact will be on communities with a population of 500 or less and expressed concern that EPC is imposing costs on cities to collect data that will be used to establish future standards. Mr. Payseur indicated that the proposed amendments will be burdensome on small cities and asked that EPC consider affordability. Mr. Veach distributed written comments that summarized concerns from small communities. Mr. Carroll expressed the belief that these amendments will have a significant impact on communities that have a population under 1000.

Rep. Wise asked that an informal regulatory analysis on these rules be presented at the December meeting and that the rules not be adopted before that time.

ARC 6892B The amendments published in ARC 6892B are under a 70-day delay which expires October 16, 2008. Mr. Wornson reported meeting with stakeholders on a solution that will be presented to the commission for approval. Mr. Wornson distributed a copy of the amendments with the controversial portions highlighted.

Motion to delay Rep. Wise moved a session delay on only the controversial portions of the rule making: 567—135.2(455B), definition of "Sensitive area," 135.9(4)"f," 135.10(4)"a," last sentence, 135.10(4)"b," last sentence of first paragraph, 135.10(4)"f," 135.10(11)"h."

Motion carried The motion carried; the above-listed portions of ARC 6892B were delayed until adjournment of the 2009 Session of the General Assembly.

PUBLIC HEALTH DEPARTMENT Barb Nervig and Bonnie Mapes represented the department. Other interested parties included George Eichhorn on behalf of Choose Freedom Iowa; Randy Stanford, Todd Shanno and Maralee David on behalf of Iowans for Equal Rights; Christopher Squire on behalf of the Tobacco Control Commission; Kathy Calloway on behalf of the American Cancer Society; Rep. McKinley Bailey; Eileen Fisher on behalf of Clean Air For Everyone; Gary Gibson, owner of a small sports bar in Grinnell, Iowa; Connie Greene of Freedom Fighters; Larry Duncan of Otis Campbell's; Tom Baldwin, owner of Drink and Wellman's Pub; Greg David of David's Briar Shop; Dennis Whitson of Ottumwa, Iowa; Dan Ramsey of the American Lung Association of Iowa; Peggy Hubbard of the American Cancer Society; and Rick Golden of Outer Limits.

ARC 7171B No questions on proposed ch 14, water treatment systems.

ARC 7155B No action on proposed ch 27 concerning administrative and regulatory authority of the plumbing and mechanical systems examining board.

ARC 7169B No questions on proposed amendments to ch 131 pertaining to EMS providers.

ARC 7170B No questions on proposed amendments to ch 132 concerning EMS air medical services, driver training and employee termination.

ARC 7023B Ch 50, oral health, is under a 70-day delay. Ms. Nervig reported that most of the concerns have been resolved, but the definition of "Dental home" is still at issue and the department intends to continue working with concerned parties.

Session delay Rep. Wise moved a session delay on the definition of "Dental home."

Motion carried The motion carried; the definition of "Dental home" was delayed until adjournment of the 2009 Session of the General Assembly.

ARC 6990B The regulatory analysis of rules to implement the smokefree air Act was published for ARC 6990B. Comments on the regulatory analysis included the following:

Mr. Eichhorn stated that the regulatory analysis is incomplete because the cost to employers involves more than the cost of the signage; employers are also required to provide notice to all current and prospective employees and to maintain records to document that notice was provided. Mr. Stanford commented that the regulatory analysis was not widely available unless someone knew how to find it on the Internet and that although the regulatory analysis showed little fiscal impact, the hospitality industry has reported losses of 30 to 40 percent in Iowa since July 1, 2008, and reports from Minnesota and Ohio show a significant loss of small businesses since smoking bans went into effect there. Mr. Squire asserted that objective, peer-reviewed studies show a zero fiscal impact. Ms. Calloway commented that the regulatory analysis is consistent with other studies.

Public Health Department (continued)

Rep. Bailey reported small business closures directly related to the smoking ban in his district and noted that the LSA fiscal analysis stated that there will be negative impacts in rural Iowa. Ms. Fisher stated that closures of restaurants and bars occur frequently and cannot be attributed to the smokefree air Act. Mr. Gibson asserted that the full fiscal impact will not be felt until patio areas are closed for the winter. Mr. Shanno stated that the department has not responded to concerns expressed by Iowans for Equal Rights; furthermore, the regulatory analysis did not conform to Iowa Code section 17A.4A as the department did not describe alternative methods of achieving the purposes of the rule, such as maintaining separately ventilated indoor smoking areas.

ARC 6989B

Ms. Nervig distributed materials that included a summary of comments received and proposed changes that will be presented to the board regarding entrances, grounds of a public building, size of vehicle signs, anonymous complaints, notices of violation, and actions taken following a third violation. No change will be proposed in regard to bars and restaurants. Rep. Heaton asked that LSA check with the insurance division regarding information that bars and restaurants must provide for insurance regarding percentage of sales of food and alcohol. Members agreed that most of the public comments received have been in regard to the statute, not the rules. Sen. Connolly emphasized the importance of abiding by the law. Ms. Greene pointed out that much of the public is confused about the law and the rules.

A bar owner from Emmetsburg expressed the belief that the law is unconstitutional and stated that his business has suffered a 30 percent loss as a result of this law. Mr. Eichhorn indicated that the statute requires judicial branch action, but executive branch agencies are revoking licenses based on complaints rather than judicial findings. Mr. Duncan commented that public notice was inadequate, the law is unconstitutional, and he has been denied due process. A representative of Iowans for Equal Rights voiced concerns about due process. Mr. Baldwin asserted that the department has exceeded the scope of the legislation in imposing a food preparation standard for determining whether an establishment is a bar or a restaurant. Ms. David complained about the lack of responsiveness from the department and urged the committee to formally object to the rules. Rep. Bailey pointed out inconsistencies in the way the department defined the word "incidental" in the rules. Black's Law Dictionary defines "incidental" as subordinate to something of greater importance or having a minor role, but the department defined "incidental" in terms of the manner in which the food is prepared. In the same rules, in regard to a retail tobacco store, the department uses the word "incidental" to indicate the proportion of sales of tobacco products as opposed to nontobacco products. Rep. Bailey expressed disappointment that the department disregarded over 1000 comments from the public because the department determined that the comments were about the statute rather than the rules. Finally, Rep. Bailey noted that all service organizations and private clubs such as VFW, American Legion Posts, Moose Lodge, Elks, etc. are now regulated as restaurants. Mr. Whitson indicated that he has chosen civil disobedience in protest to the smokefree air Act. Mr. Ramsey expressed appreciation for the department's educational approach. Mr. David commented on the adverse effect Iowa laws have had on his business. Ms. Hubbard expressed support for the law and the rules. Mr. Golden reported that even though he has not been convicted of a violation, he is losing his liquor license based on complaints. Mr. Golden further commented that it is unfair for the state to exempt casinos from the law that is destroying his business.

Sen. Seymour stated that he agrees with comments made by Mr. Eichhorn and wants the record to show that he objects to these rules. Rep. Upmeyer agreed with the issue raised by Rep. Bailey in regard to the term "incidental" and expressed concern that the department was advised against responding to commenters and concern that persons may be denied due process. Rep. Frevert voiced concern about the lack of information about public meetings and about the department's nonresponsiveness. Sen. Connolly thanked everyone for their participation.

Committee business The minutes of the September 2008 meeting were approved.
The next meeting was scheduled for Friday, November 7, 2008.
Adjourned The meeting was adjourned at 3:50 p.m.

Respectfully submitted,

Kathleen K. West

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APPROVED:

Michael W. Connolly
Chair Michael Connolly

Philip Wise
Vice Chair Philip Wise