

**MINUTES OF THE JUNE 2009 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, June 9, 2009, at 10 a.m. in Room 103, State Capitol, Des Moines, Iowa.

Members present: Representative Marcella Frevert, Chair, and Senator Wally Horn, Vice Chair; Senators Merlin Bartz, Thomas Courtney, John P. Kibbie, and James Seymour; Representatives David Heaton, Tyler Olson, Nathan Reichert, and Linda Upmeyer were present.

Also present: Joseph A. Royce and Michael Duster, Legal Counsel; Kathleen K. West, Administrative Code Editor; fiscal staff; caucus staff; and other interested parties.

Convened Rep. Frevert convened the meeting at 10 a.m.

Fiscal overview Jess Benson presented the LSA fiscal report.

EDUCATION DEPARTMENT Carol Greta represented the department. Bill Wimmer and Craig Schoenfeld represented the Iowa Beverage Association.

ARC 7783B No action on amendments to ch 12, which implement the physical activity and cardiopulmonary resuscitation course requirements of the healthy kids Act. Ms. Greta identified changes made as a result of public comment. Sen. Bartz voiced a complaint about the annual physical activity contract. Ms. Greta advised Rep. Upmeyer that the department has issued guidance to schools in regard to recess activity. Sen. Courtney commended both the legislature and the department for attempting to address the issue of obesity.

ARC 7787B No questions on the statewide voluntary preschool program.

ARC 7786B No questions on the rescission of ch 48, the certified school to career program.

ARC 7782B Amendments to ch 58 implement the nutritional content standards for food and beverages sold in schools. Ms. Greta identified several changes made as a result of public comments, including allowing caffeinated beverages in secondary schools and removing size limitations on yogurt and 100 percent fruit juices. Ms. Greta clarified the difference between regulated fund-raising activities and nonregulated activities and noted that the effective date for the rules was changed to July 1, 2010. Mr. Wimmer and Mr. Schoenfeld expressed concern that the rules differ from guidelines developed by the Alliance for a Healthier Generation and indicated that regulations will soon be developed at the federal level by the Department of Agriculture. Rep. Heaton questioned the ban on carbonated beverages. Rep. Reichert expressed the hope that the department will continue discussions with concerned parties.

Motion to refer Sen. Kibbie moved a general referral to the legislature.

Motion carried The motion carried; rules governing nutritional content standards for food and beverages sold in schools are referred to the general assembly.

ARC 7780B Proposed amendments to ch 79 pertain to practitioner preparation programs. Sen. Kibbie requested information about the number of individuals enrolled in teacher preparation programs and Rep. Heaton asked for information about test scores of those entering teacher preparation programs.

ARC 7785B No action on amendments to ch 83.

ARC 7784B No questions on rescission of ch 91 concerning Phase III, educational excellence program.

ARC 7781B No action on proposed ch 98, financial management of categorical funding.

EDUCATIONAL EXAMINERS BOARD George Maurer represented the board.

ARC 7751B No questions on proposed amendments to ch 13 to consolidate classes of licenses.

ARC 7778B No questions on proposed 13.11(5), uniform expiration date for Class B licenses.

ARC 7744B No questions on proposed rescission of provisions that will be included in proposed ch 27.

ARC 7748B No questions on proposed 20.7 to allow retiring teachers with a year of teaching experience within the previous five years during the term of a valid Iowa teaching license to obtain a substitute license.

ARC 7745B No questions on 22.2, which allows paraprofessionals to serve as short-term substitutes.

Educational Examiners Board (continued)

- ARC 7747B No questions on proposed 25.2, definition of "practitioner."
- ARC 7743B No questions on proposed ch 27 concerning professional service licenses.

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF Gail Kotval represented the department.

- ARC 7764B No action on ch 113, community microenterprise development organization grant program.
- ARC 7763B No department representative was present for the proposed amendment to 314.5(2), renewable fuel infrastructure program. Sen. Kibbie asked that this rule making be placed on the July agenda and requested an explanation of the three- and five-year commitments.

EMPOWERMENT BOARD, IOWA Shanell Wagler represented the board.

- ARC 7831B No questions on amendments to ch 1, community empowerment.

ENVIRONMENTAL PROTECTION COMMISSION Jon Tack represented the commission. Jessica Harder represented the League of Cities.

- ARC 7813B Amendments to the delayed provisions in chs 62 and 63 represent the compromise with concerned parties. Ms. Harder expressed support for the amendments and appreciation to the department. Sen. Bartz inquired about a letter the department sent to Forest City; Mr. Tack agreed to look into the matter and respond.

NATURAL RESOURCES DEPARTMENT Jon Tack represented the department.

- ARC 7814B No action on ch 12, special nonresident deer and turkey hunting licenses.

INSURANCE DIVISION Rosanne Mead represented the division.

- ARC 7795B No action on proposed amendments based on the NAIC model for Medicare supplement insurance. Rep. Upmeyer asked that any comments received from the public be provided to the committee. Ms. Mead advised Sen. Bartz that there are currently 14 plans; in 2010 there will be 11 plans, hospice will be covered, and there will be options for lower premiums combined with higher cost sharing. Ms. Mead agreed to provide the committee a "tip sheet" on the 2010 Medicare supplement insurance plans.
- ARC 7796B No questions on 15.11(5) concerning genetic information.
- ARC 7836B No questions on amendments to ch 10, licensing of insurance producers.

ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA Charlie Smithson represented the board.

- ARC 7806B No questions on proposed amendments to ch 4 defining "electronic filing" and "electronic format."
- ARC 7807B No questions on proposed 4.11(3) concerning filing of form DR-SFA for subsequent elections.
- ARC 7801B No questions on proposed 4.25(1) prohibiting use of campaign funds for payment to a candidate, a candidate's spouse and a candidate's dependent children.
- ARC 7809B No questions on proposed 4.26(2) regarding registration of subsequent candidate's committee.
- ARC 7800B No action on 4.27, which provides an exemption from filing of the independent expenditure statement for federal and out-of-state campaign committees.
- ARC 7803B No questions on proposed 4.37(3) regarding forwarding of committee records.
- ARC 7805B No action on amendments chs 4, 7, 8 and 15 to provide a form for petitions for waiver of civil penalty.
- ARC 7802B No questions on amendments to ch 7 affecting filing dates for statewide candidates.
- ARC 7812B No action on proposed 8.18(2) prohibiting false communications from executive branch lobbyists.
- ARC 7808B No questions on proposed 9.4(1) in regard to assessment of direct costs related to a hearing.
- ARC 7810B No action on proposed amendments to 9.4 regarding civil penalties for violations.
- ARC 7804B No questions on proposed 11.5(3) concerning time for service of notice of hearing.

INSPECTIONS AND APPEALS DEPARTMENT Deborah Svec-Carstens and Steve Mandernach represented the department. Other interested parties included Kelly Meyers of Iowa Healthcare Association, Cindi Kramer of Healthcare of Iowa, Shannon Strickler of the Iowa Hospital Association, Dana Petrowsky of the Iowa Association of Homes and Services for the Aging, Karla Fultz McHenry of the Iowa Medical Society, and John Hale of the Iowa CareGivers Association.

ARC 7828B There was much discussion in regard to proposed ch 52 regarding dependent adult abuse in facilities and programs. Ms. Svec-Carstens reported that the department worked with an advisory group in drafting these rules. Sen. Kibbie asked that additional public hearings be held over the ICN so that affected persons statewide can participate. Ms. Meyers distributed written comments from the Iowa Healthcare Association and explained the association's concerns about several of the definitions. Ms. Kramer, a nurse with 21 years of experience in geriatrics, commented that these rules will result in a shortage of nurses and CNAs willing to work in geriatric facilities. Ms. Strickler stated that hospitals are concerned about the mandatory reporter training for staff. Ms. Petrowski concurred with comments made by Ms. Meyers in regard to the definitions. Ms. McHenry reported that IMS has concerns about the rules and will provide written comments to the department. Commenting on challenges faced by caregivers, Mr. Hale expressed appreciation to DIA for their willingness to work with stakeholders, stressed the importance of differentiating between what constitutes dependent adult abuse and what does not, and suggested that situational examples would be helpful. Ms. Svec-Carstens responded that some of the definitions are in the statute and the definition of "gross negligence" was based on case law.

Rep. Heaton expressed concern about 52.7 in regard to examination of the personal financial records of a resident of a facility. Requesting an update from the department at next month's meeting, Rep. Upmeyer commented that the rules, which seem threatening to nurses, CNAs and facility owners, do not implement legislative intent. Rep. Olson asked the department to provide information in regard to the definition of "willful misconduct" and requested copies of written comments. Sen. Kibbie asked that rules not be overly burdensome for caretakers. Sen. Bartz asked the department to consider the nexus of the definitions of "intimate relationship," "caretaker" and "sexual exploitation." Rep. Frevert expressed appreciation for the discussion and encouraged additional public hearings and communications.

IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM Donna Mueller and Kelly Lovell represented IPERS.

ARC 7759B No questions on amendments to chs 4, 6, and 15 to allow employees to make additional contributions to restore covered wages reduced by employer-mandated reduction in hours.

REVENUE DEPARTMENT David Casey, Jim McNulty and Dale Hyman represented the department. Other interested parties included Dale McCrea, Muscatine County Assessor and president of the Iowa State Association of Assessors; Dick Thornton of Iowa Golf Course Owners Association; and Joe Johnson of Iowa Farm Bureau Federation.

ARC 7793B No questions on proposed 7.61 regarding petitions for rule making.

ARC 7761B No questions on amendments to update and clarify numerous chapters pertaining to individual and corporation income tax.

ARC 7788B Proposed 71.1(1) and 71.2(1) pertain to the responsibility of an assessor to classify property according to its present use. Mr. Hyman reported that these amendments are in response to a court decision that the rules were not in compliance with statute. Mr. McCrea distributed materials from the uniform standards for professional appraisal practices and voiced opposition to use of the word "speculative" in proposed 71.2(1). Mr. Thornton noted that the term "highest and best use" is not in Iowa law. Mr. Johnson stated that suggestions have been submitted to the department that would result in more uniform assessment and valuation practices statewide. Sen. Kibbie requested that copies be forwarded to the committee.

Revenue Department (continued)

ARC 7832B No action on proposed 18.20(7) and 212.8 regarding taxation of communication services and payments made by a third party. Mr. Casey explained that these amendments are based on the streamlined sales and use tax agreement.

PUBLIC HEALTH DEPARTMENT Barb Nervig represented the department. Shanell Wagler was present from the empowerment board.

ARC 7791B No action on proposed amendments to ch 4, center for congenital and inherited disorders, which provide for an increase in the fee for neonatal metabolic screening. Discussion related to reporting and confidentiality.

ARC 7792B No questions on proposed amendments to chs 39 and 41 concerning radiation.

ARC 7798B No action on WIC food package approval criteria.

ARC 7794B No action on proposed ch 83, early childhood Iowa council. Ms. Wagler stated that the empowerment board has worked in relationship with the department of public health since 2002.

ARC 7839B Amendments to ch 15 pertain to pool and spa safety. Sen. Kibbie requested additional information about the cost of compliance for communities that have swimming pools.

ARC 7838B No questions on the rescission of ch 121.

HUMAN SERVICES DEPARTMENT Nancy Freudenberg represented the department. Other interested parties included Deb Eckerman Slack of Iowa State Association of Counties, case management director Sheila Kobliska of Chickasaw County, and Lynn Ferrell of Polk County Health Services.

ARC 7768B No questions on amendments to ch 25 concerning "county of residence" for disability services management.

ARC 7740B No questions on amendments regarding an applicant/participant's obligation to provide information or verification to the department.

ARC 7776B No questions on a proposed amendment to ch 41 regarding assignment of support payments to the department for periods in which the family receives FIP assistance.

ARC 7741B No questions on amendments affecting contracting for family-centered child welfare services and foster group care services. Ms. Freudenberg identified changes made in response to comments received.

ARC 7771B No questions on proposed 78.14 regarding hearing aids.

ARC 7770B No questions on amendments to ch 86, HAWK-I program.

ARC 7769B No questions on proposed ch 106, safety standards for children's centers.

ARC 7829B No questions on amendments to ch 11, consolidation and simplification of notification of debt forms.

ARC 7830B No questions on amendments to ch 58 to provide mental health services for persons affected by weather-related natural disasters.

ARC 7833B No questions on 75.1(39), Medicaid premium for employed persons with disabilities.

ARC 7834B No questions on annual update of the statewide average cost of nursing facility services to a private-pay resident and of institutional care.

ARC 7816B No questions on proposed amendments affecting Medicaid coverage of nonprescription drugs.

ARC 7827B No questions on Medicaid coverage and fees for ambulatory surgical center services.

ARC 7835B No questions on update of CFR references relating to payment methodology for prescription drugs.

ARC 7815B No action on proposed amendment to ch 110 concerning visual inspection for lead hazards in child development homes built before 1960.

ARC 7837B No questions on 2009 fee schedule for child care assistance.

Human Services Department (continued)

Special reviews No questions on emergency amendments to comply with federal requirements for a year of Medicaid eligibility for children of Medicaid-eligible mothers.

Ms. Freudenberg reported on the proposed emergency adoption of amendments affecting case managements services. Ms. Freudenberg updated the committee on communications with CMS, reported that the 15-minute unit will be adopted, committed to working with providers to create a documentation form, indicated that the department would not conduct audits this year while details are still being resolved, and emphasized that the 24-hour on-call system would be considered a number of last resort. Sen. Bartz commented that he understands the need for the 24-hour on-call system, but believes there may be a more efficient reporting unit than 15 minutes.

Ms. Kobliska estimated the cost of implementing the 24-hour on-call service for her agency to be \$15,000 per year. Mr. Ferrell commented that the time required to document 15-minute units would reduce the amount of time that case managers have to spend with clients and reported that the state of Virginia is continuing with monthly reporting. Ms. Slack voiced opposition to the 15-minute units and to the 24-hour on-call coverage. Rep. Olson asked the provider community to respond to the department and the committee in regard to acceptable alternatives to the 15-minute unit. Following a discussion of its options, the committee agreed to schedule a telephonic meeting prior to the effective date of the rules if DHS adopts the rules before the next meeting.

Committee business

Rep. Olson asked that I-JOBS be scheduled for review. The minutes of the May 2009 meeting were approved. The next meeting was scheduled for Tuesday, July 14, 2009. The meeting was adjourned at 4:30 p.m.

Adjourned

June 25, 2009, meeting At a special telephone meeting held on June 25, 2009, the Administrative Rules Review Committee voted to delay for 70 days the effective date of 441 IAC 79.1(1)“d,” 79.1(2) and 79.1(24)“a”(1), relating to the 15-minute documentation period and 78.27(2)“d,” relating to needs assessment, in order to allow further discussions at the Committee’s July 14, 2009, meeting. The Committee further requested that the Department continue working with stakeholders concerning the 15-minute documentation provisions, the 24/7 on-call coverage requirements and the new assessment requirements. If a resolution can be reached prior to July 1, the Committee may hold another conference call to lift the delay. If the Department is unable to do so, the Department is requested to present a contingency plan to the Administrative Rules Review Committee in order to keep the program in compliance with the federal government requirements until a resolution can be reached.

Respectfully submitted,

Kathleen K. West
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APPROVED:

Chair Marcella Frevert

Vice Chair Wally Horn