

**MINUTES OF THE OCTOBER 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, October 13, 2009, at 9 a.m. in Room 22, 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; James Larew, Administrative Rules Coordinator; fiscal staff; caucus staff; and other interested parties.

Convened Rep. Frevert convened the meeting at 9:02 a.m.

Fiscal overview Sue Lerdal presented the LSA fiscal report.

INSURANCE DIVISION Rosanne Mead represented the division.

ARC 8144B No questions on proposed ch 13, consent for prohibited persons to engage in the business of insurance.

ARC 8132B No action on proposed amendments to chs 39 and 72 regarding the long-term care partnership program. Ms. Mead indicated that training and reporting requirements will be clarified and noted that the CMS electronic reporting database is now operative.

ARC 8140B Ms. Mead reported that proposed ch 58, third-party administrators, will be clarified in regard to HMOs and traditional insurance carriers. Ms. Mead stated that the division intends to launch the electronic registration process January 1, 2010.

IOWA FINANCE AUTHORITY Mark Thompson and Carla Pope represented the authority.

ARC 8103B No action on amendments to ch 32, Iowa jobs program.

ARC 8181B No action on proposed ch 34 regarding disaster recovery housing project tax credits. Ms. Pope explained that this state tax credit program will operate in conjunction with the federal low-income housing tax credits program and that the authority is proceeding cautiously to ensure that all proper procedures are in place.

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF Melanie Johnson, Terry Vestal, Alaina Santizo, Stoney Harris, Kent Powell, and Amy Johnson represented the department. Other interested parties included Chris Myres of Sioux City.

ARC 8145B No questions on amendments to financial assistance programs.

ARC 8149B No questions on proposed amendments to ch 25, housing fund.

ARC 8148B Mr. Powell reported that this Notice of Intended Action will be terminated.

ARC 8147B No action on amendments to ch 71, targeted jobs withholding tax credit program, which operates in five pilot cities. Mr. Harris indicated that the department uses payroll records to verify the number of jobs created and retained. Mr. Myres explained that the pilot cities submit quarterly reports to the department of revenue and an annual report to IDED.

ARC 8146B No questions on ch 76, aggregate tax credit limit for certain economic development programs.

ARC 8033B Ms. Santizo reported that the board deleted the words "includes but is not limited to" from the definition of "good cause," thereby limiting good cause to disaster areas. Sen. Bartz expressed appreciation for the board's response.

PUBLIC HEALTH DEPARTMENT Ken Sharp, John Kreamer, Patricia Quinlisk and Jim Goodrich represented the department. Other interested parties included Jenni Tyler and Mark Odden on behalf of the Iowa Association of Nurse Anesthetists, Patrick Allaire of the Iowa Society of Anesthesiologists, Linda Goeldner of the Iowa Nurses Association, and Laura Malone of the Iowa Hospital Association.

Public Health Department (continued)

- ARC 8173B Proposed ch 31 pertains to waivers or variances from administrative rules of the plumbing and mechanical systems board. Sen. Bartz pointed out an inconsistency in language regarding granting and cancellation of waivers. Sen. Kibbie observed that the department did not schedule ICN sites in the northern part of the state.
- ARC 8161B Proposed 41.1(5) regarding supervision of fluoroscopy is intended to align the department's rule with an amendment adopted by the board of nursing. Ms. Tyler and Mr. Odden expressed support for the amendment and commented that, in 91 of the 117 hospitals in Iowa, CRNAs are the only personnel to administer anesthesia. Ms. Tyler stated that, to improve patient safety, ARNPs use fluoroscopy for correct placement of a catheter or picc line. On behalf of the Iowa Association of Anesthesiologists, Dr. Allaire expressed concerns about ARNPs using fluoroscopy for pain management; such procedures can be highly risky and ARNPs have no training in radiology. Sen. Courtney inquired about data regarding any injuries caused by ARNP-supervised fluoroscopy. Dr. Allaire responded that while anecdotal information exists, there is no database that tracks such injuries. Rep. Upmeyer commented that claims data might at least identify practitioners who are using the procedure. Discussion related to hospital credentialing committees, ethical practice of providers, risks to patients, access to care, and the need for more data. Ms. Goeldner indicated that malpractice rates for ARNPs have declined. Ms. Malone expressed support for the amendment.
- ARC 8162B No questions on proposed 127.7(2)"e" regarding qualifications of county medical examiner investigators.
- ARC 7966B Sen. Bartz requested a review of isolation and quarantine provisions of ARC 7966B. Dr. Quinlisk advised Sen. Bartz that involuntary isolation and quarantine is rarely necessary and that Heather Adams of the attorney general's office would be in touch with him in regard to the form.

ENVIRONMENTAL PROTECTION COMMISSION Courtney Cswercko, Randy Clark, Martin Conrad and Elaine Douskey represented the commission.

- ARC 8123B No action on amendments pertaining to E. coli effluent limits and nutrient monitoring.
- ARC 8120B No questions on amendments to ch 65, animal feeding operations.
- ARC 8122B No questions on proposed amendments to ch 133, compensation for damages to natural resources, reviewed in conjunction with ARC 8107B of the natural resource commission. Both rule makings pertain to compensation for the loss of fish.
- ARC 8124B No questions on amendments to chs 134 and 135 regarding UST operator training, closure investigations, compliance inspections, and piping leak detection.

NATURAL RESOURCE COMMISSION Mark Warren, Richard Smith, Daryl Howell and Willie Suchy represented the commission.

- ARC 8104B No action on 15.4, increase in electronic licensing administrative fee.
- ARC 8105B No action on amendment to 77.2 to upgrade bald eagle and peregrine falcon from endangered to special concern species.
- ARC 8106B No action on amendments to ch 91, waterfowl and coot hunting seasons.
- ARC 8107B No questions on proposed amendments regarding valuation of fish, reviewed in conjunction with ARC 8122B of the EPC.

HUMAN SERVICES DEPARTMENT Nancy Freudenberg, Ann Wiebers, and Mary Nelson represented the department. Mike Heller and Larry Carl represented the Iowa Dental Association.

- ARC 8094B No questions on state mental health institutes and resource centers, chs 28 to 30.
- ARC 8095B No action on 75.1(20), Medicaid eligibility of newborns.
- ARC 8096B No action on the amendment to 75.11(2)"a" to extend Medicaid coverage to all eligible children.
- ARC 8093B No questions on termination of the notice of intended action to amend eligibility requirements for the transitional Medicaid group.
- ARC 8113B No action on proposed 76.12(7) pertaining to estate recovery.
- ARC 8097B No action on 78.2(5) regarding Medicaid-covered nonprescription drugs.

Human Services Department (continued)

- ARC 8112B Ms. Wiebers explained that uninsured children with HAWK-I coverage receive health and dental services; these proposed amendments to ch 86 would allow insured children whose insurance does not cover dental services to receive dental-only coverage through the HAWK-I program. Ms. Wiebers added that medically necessary orthodontia will be covered. Ms. Wiebers reported that any willing insurer can participate in the program and that Delta Dental has opted to participate, but Wellmark chose not to provide dental services. Mr. Heller and Mr. Carl expressed concern that there is only one participating provider of dental services and asked that any participating provider of medical services be required to cover dental services.
- ARC 8127B No questions on 86.2(4)"b," which pertains to the waiting period for determination of uninsured status for HAWK-I eligibility.
- ARC 8110B No questions on proposed amendments to ch 86 concerning conditions of eligibility for the HAWK-I program.
- ARC 8109B No questions on extension of HAWK-I coverage to all eligible children.
- ARC 8118B No action on proposed amendments to ch 109 concerning record checks and licensing fees for child care centers.
- ARC 8098B No action on the amendment to ch 110 regarding visual inspection for lead hazards in a dwelling registered as a child development home. Rep. Reichert requested additional information about the legislation's specification of facilities built before 1960.
- ARC 8099B No questions on amendments to ch 176 relating to dependent adult abuse.
- ARC 8183B No questions on proposed amendments to ch 204, subsidized guardianship program.

PROFESSIONAL LICENSURE DIVISION Judy Manning, Ella Mae Baird, and Roxanne Sparks represented the division. Other interested parties included Kelli Soyer of the Iowa chapter of the National Association of Social Workers and Jim Clark of Heartland AEA.

- ARC 8152B No questions on amendments regarding temporary licensure and supervised work experience for marital and family therapists and mental health counselors.
- ARC 8100B No questions on proposed amendments regarding the accrediting organization for respiratory care programs.
- ARC 8101B Ms. Sparks presented the proposed amendments to chs 279 to 284, relative to social work. Ms. Sparks reported that commenters have expressed opposition to the definition of "diagnosis," which specifies the Diagnostic and Statistical Manual of Mental Disorders (DSM). Ms. Soyer commented that the DSM is appropriate in a mental health setting, but is not the best tool for other locations. Ms. Soyer expressed a willingness to work with the board in developing a new definition that broadly represents the profession. Mr. Clark asked that other appropriate tools for diagnosis be included.
- ARC 8111B No action on proposed 363.2(11) concerning sign language interpreters and transliterators. Mr. Larew provided an update on work with board regarding examination and licensure.

VOLUNTEER SERVICE, IOWA COMMISSION ON Adam Lounsbury represented the commission.

- ARC 8158B No questions on chs 9 and 10 regarding the Iowa summer youth and green corps programs.

PUBLIC SAFETY DEPARTMENT Mike Coveyou, Ross Loder, Jim Kenkel and Stuart Crine represented the department. Other interested parties included Rich White of Iowa Limestone Producers Association, Greg Schillberg of Schillberg Construction Co. Inc., James McMullen of the Life Safety Coalition, Wayne Boyd of NFPA, Brent Jones of Applied Fire Technologies, Tom Sri of Kidde, Barney Murphy of Sprinkler Fitters Local 669, and Joe Johnson and Chris Gruenhagen of Farm Bureau.

- ARC 8154B No questions on termination of the notice of intended action regarding commercial explosive licensing.

Public Safety Department (continued)

- ARC 8155B Proposed ch 235 pertains to commercial explosive licensing. Mr. Coveyou reported that proposed rule 235.10 regarding fees will probably not be adopted as proposed and that federal inspections may be accepted in lieu of state inspection. Mr. White, who reported that the association has been working with the department, pointed out that the rules need to address whether sole proprietors need to have an individual blaster license. Mr. Schillberg expressed support for the rules.
- ARC 8156B No action on fire safety rules: rescission of ch 5, adoption of ch 200, and amendment of chs 201, 202 and 205.
- ARC 8150B Proposed amendments to 210.1 to 210.5 require dual sensor technology in smoke detectors installed on or after April 1, 2010. Sen. Courtney was advised that the department would consider allowing installation of two separate units rather than a single dual sensor unit. Mr. Sri expressed support for the rule and recommended that performance-based industry standards be required rather than a particular technology. Mr. McMullen offered to work with the department on possible revisions to this rule making. Mr. Boyd expressed general support, but asked that two units be allowed in lieu of a single dual sensor unit. Mr. Jones expressed a preference for a performance standard rather than a particular technology.
- ARC 8151B The requirement for installation of dual sensor smoke detectors is postponed until April 1, 2010, due to lack of availability of the required smoke detectors.
- ARC 8114B No questions on 221.4(2) regarding dispensing of blended biofuels.
- ARC 8178B No action on proposed 251.202 concerning fire fighter certification.
- ARC 8153B No action on proposed ch 276, licensing of fire system installers and maintenance workers. Mr. Murphy wanted assurance that plumbers would not be doing the work of sprinkler fitters.
- ARC 8179B Proposed amendments to chs 300, 301 and 303 affect the state building code. The residential code includes requirements for basement insulation in homes above U.S. highway 20 and for sprinkler systems in new residential construction. The department has opted to move the implementation date for residential sprinklers to January 1, 2013. Mr. Coveyou advised Sen. Courtney that cost estimates range from \$.38/sq. ft. to \$5/sq. ft., with a national average of \$1.61/sq. ft. Mr. Murphy commented the cost range is due to the wide variety of sprinkler heads that can be installed. Rep. Reichert expressed appreciation to the department for postponing the implementations date for the residential sprinklers until the next code updates. Mr. Crine advised the committee that building codes are adopted locally, and the state building code has limited applicability: state-owned buildings, state-funded buildings, and modular buildings.
- ARC 8180B Alternative building codes are proposed for qualified historical buildings that meet requirements for inclusion in the National Register of Historic Places. Sen. Bartz asked for a side-by-side comparison of the proposed changes and the current requirements.
- ARC 8160B Mr. Coveyou presented proposed amendments affecting electrician and electrical contractor licensing and electrical inspections and noted that Item 14, regarding inspections on farms, has generated the most controversy. Sen. Bartz expressed the view that the electrical examining board is exceeding its authority since Iowa Code section 103.23 does not include farm property. Mr. Loder responded that while both residential and commercial applications are included in that section, they are not defined. Mr. Loder added that during the legislative discussions the trade associations favored licensing and inspection for farms, whereas Farm Bureau opposed licensing and inspection. SF 478 included language that exempted farm employees from licensure requirements and prohibited county inspections. Discussion related to the intent of the legislation. Sen. Kibbie commented that insurers and electrical providers are interested in having quality electrical work on farms. Ms. Gruenhagen questioned the authority for state inspections on farms and commented that members report that state inspectors are applying industrial codes to farms and are requiring costly installations. Mr. Johnson stated that during session negotiators were unable to come to agreement about inspections. Mr. Loder agreed to continue discussions with concerned parties.

Committee business The minutes of the September 2009 meeting were approved.
The next meeting was scheduled for Tuesday, November 10, 2009.
Adjourned The meeting was adjourned at 2:45 p.m.

Respectfully submitted,

Kathleen K. West
Kathleen K. West

APPROVED:

Marcella R. Frevert
Chair Marcella Frevert

Wally E. Horn
Vice Chair Wally Horn