

**MINUTES OF THE FEBRUARY 2010 MEETING
OF THE
ADMINISTRATIVE RULES REVIEW COMMITTEE**

- Date of meeting:** The regular, statutory meeting of the Administrative Rules Review Committee (ARRC) was held on Monday, February 8, 2010, in Room 116, 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 7:45 a.m.
- Fiscal overview** Sue Lerdal presented the LSA fiscal report.
- HUMAN SERVICES DEPARTMENT** Nancy Freudenberg, Ann Wiebers, Jennifer Vermeer, Anita Smith and Jeff Andersen represented the department.
- ARC 8439B** Amendments to chs 7, 75, and 76 implement presumptive Medicaid eligibility for children. Rep. Heaton asked for a fiscal estimate for 2012. Rep. Upmeyer requested information regarding other states that have taken this approach.
- ARC 8440B** Ch 52 is amended to reflect the annual adjustment to the SSA personal needs allowance for persons living in a family life home or a residential care facility. Sen. Kibbie provided the department a letter he had received regarding a Dickinson County facility.
- ARC 8460B** No questions on the rescission of FIP emergency assistance; Ms. Freudenberg reported that there has been no funding for the program since 2003.
- ARC 8461B** Proposed amendments to chs 75 and 76 pertain to Medicaid express lane eligibility (ELE) for children. Rep. Heaton requested a fiscal estimate for 2012.
- ARC 8443B** No questions on amendments to implement the long-term care partnership program.
- ARC 8444B** No questions on amendments to ch 75 regarding Medicaid eligibility.
- ARC 8445B** Amendments to ch 81 implement nursing facility pay for performance. At the request of Rep. Frevert, Ms. Vermeer clarified the role of the department of inspections and appeals.
- ARC 8446B** No questions on the inflation factor for reimbursement of ICF/MRs.
- ARC 8478B** No action on health and dental plans under the HAWK-I program.
- ARC 8479B** Proposed amendments to 86.2 provide for 3 months of HAWK-I coverage while the department awaits proof of citizenship and identity. Sen. Bartz asked why proof of both citizenship and nationality are required in 86.2(7)"d." Sen. Bartz also asked the department to provide the citation to the federal requirement for 90 days of eligibility without documentation of citizenship and identity.
- In regard to the outcome of citizenship and identity verifications, Rep. Reichert asked the department to provide information regarding the number of eligible citizens who would have been denied coverage versus the number of ineligible persons who received 90 days of coverage.
- ARC 8447B** No action on the reduction in the reimbursement rate for supervised apartment living.
- ARC 8449B** No action on the reduction in the reimbursement rate for foster group care.
- ARC 8486B** No action on the reduction for state payment program expenses.
- ARC 8451B** No action on the reduction in the reimbursement rate for foster family care and adoption and guardianship subsidies.
- ARC 8490B** No questions on the proposed redetermination of foster group care costs.
- ARC 8459B** No action on proposed ch 159 regarding child care resource and referral services.
- ARC 8453B** No questions on amendments to the child abuse assessment intake process.

ATTORNEY GENERAL Eric Tabor represented the office of the attorney general.

ARC 8476B Mr. Tabor explained that the attorney general has the authority to allocate a percentage of forfeited property assets to local law enforcement agencies and that these amendments, which decrease the percentage allocated from 90 percent to 80 percent, are in line with federal practices. Mr. Tabor indicated that the additional funds retained are needed because of reductions in the budget. Discussion related to the impact on local law enforcement entities, the appropriations process, and pending legislation that may affect forfeited property. Rep. Heaton requested a report on the charges the attorney general's office assessed the department of human services for legal services.

Motion to delay Rep. Upmeyer moved a 70-day delay on the amendments.

Mr. Larew expressed support for the attorney general.

Motion failed On a vote of 5 to 5, the motion to delay failed.

ENVIRONMENTAL PROTECTION COMMISSION Richard Leopold, Wendy Rains, Chuck Corell, Tom Collins, Elaine Douskey, and Dave Wornson represented the commission. Other interested parties included Emily Piper of the Iowa Rural Water Association, Jessica Harder of the Iowa League of Cities, Wally Taylor and Virginia Soelberg of the Sierra Club, Rich White of Iowa Limestone Producers Association, Steve Roe of the Izaak Walton League and the Raccoon River Watershed Association, Ted Payseur of the Iowa Water Pollution Control Association (IWPCA), Brad Klein of the Environmental Law and Policy Center, Shannon Garretson of the Iowa Environmental Council, Mike Cobb of Cobb Oil Company, Eldon Meyer of K&H Cooperative, Jeff Hove and Dawn Carlson of Petroleum Marketers and Convenience Stores of Iowa.

ARC 8467B No questions on proposed ch 15 concerning cross-media electronic reporting.

ARC 8466B Amendments to ch 61 adopt Iowa's antidegradation policies and implementation procedures. Mr. Corell summarized the two and one-half years of work and collaboration that have gone into the amendments and the changes that have been made in the process. Sen. Horn expressed concern about the public's perception of the department. Mr. Leopold commented on successful efforts the department has made with stakeholder groups and noted that these provisions meet the federal guidelines and are less ambiguous than Iowa's existing language. Mr. Corell added that the department will be working with limestone quarry owners and will be conducting the antidegradation analysis for quarries when their general permit is issued. Mr. Leopold explained that the department will consider community input and environmental and economic impacts in making antidegradation decisions. Mr. Leopold advised Sen. Kibbie of the process by which a group can petition to have a body of water included in the outstanding Iowa waters classification. Sen. Bartz expressed concern about the outstanding Iowa water classification of a drainage district ditch and wanted assurance that, in the future, tile discharges would not be regulated as point source discharges. Sen. Bartz also expressed concern that the rules do not sufficiently differentiate between discharges and degradation.

Ms. Piper stated that there are still questions to be resolved, such as what constitutes "important." Ms. Harder indicated that there are still concerns about how the policy will be implemented and its effect on growing cities. Mr. Taylor expressed support for the work of the department. Mr. White commented that there is confusion in the industry as to how implementation will be accomplished and suggested that the trial testing be completed before the rules are implemented. Mr. Roe read a letter of support from the association. Ms. Soelberg asked that the committee take no action to prevent the antidegradation rules from going forward. Mr. Payseur commented on the industry's concern about potential costs and pollutants of concern. Mr. Klein commended the department for the process in Iowa. Ms. Garretson commented in support of the rules.

Environmental Protection Commission (continued)

Motion to object Sen. Bartz moved an objection on the grounds that the policy is unreasonable. Sen. Bartz indicated that there are too many unanswered questions, and that greater clarity is needed in regard to alternatives to degradation and important economic and social aspects.

Rep. Reichert asked Mr. Royce to explain the effect of an objection and to clarify when an objection can be imposed. Mr. Royce explained that an objection shifts the burden of proof to the department in defense of the rule and stated that the committee can impose an objection at any time. Mr. Larew expressed the governor's strong support for the rules.

Motion failed On a vote of 4 in favor to 6 opposed, the motion failed.

ARC 8468B Dismissed from review at this meeting.

ARC 8470B Dismissed from review at this meeting.

ARC 8469B

Ms. Douskey reported that the amendment to 135.5(1) requires single-walled, pressurized piping systems at unstaffed fuel facilities to be equipped with devices that either shut down the pump when a leak is detected or immediately notify the owner or operator of a leak. Ms. Douskey reported that approximately 50 releases per year occur. Estimating the cost of compliance at \$1,200 to \$1,450 per fuel line, the department extended the compliance date until January 1, 2013, with an option for a further extension. Mr. Wornson advised Rep. Upmeyer that EPA has not updated its rules since 1987, and EPA rules do not address unstaffed facilities. Mr. Cobb reported having unsatisfactory results from a wireless leak detector that frequently malfunctions due to interference from neon signs; the department indicated that it has recommended a different detector from the one used at Mr. Cobb's facility. Mr. Meyers commented that he believes the current safeguards are sufficient. Mr. Hove stated that the threshold for the wireless system is the same as for the mechanical system. Ms. Carlson stated that paragraph 135.5(1)"e" is more restrictive than federal regulations; therefore, the paragraph is contrary to Iowa law. There was some confusion about whether facilities that are staffed certain hours each day and unstaffed for certain hours at night are affected by the provision. The department has not tracked the specific number of unstaffed facilities that have single-walled pressurized piping, so the exact number of affected facilities is not known.

Motion to delay Rep. Reichert moved a 70-day delay on 135.5(1)"e."

Motion carried On a vote of 8 to 1 the motion to delay carried.

Motion to object Sen. Bartz moved an objection 135.5(1)"e."

Motion carried On a vote of 6 to 3 the motion carried.

Committee business The minutes of the January 2010 meeting were approved.

The next meeting was scheduled for Monday, March 8, 2010, at 7:45 a.m.

Adjourned The meeting was adjourned at 11:22 a.m.

Respectfully submitted,

Kathleen K. West

Kathleen K. West

APPROVED:

Marcella R. Frevert

Chair Marcella Frevert

Wally E. Horn
Vice Chair Wally Horn