

**MINUTES OF THE JULY 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 Tuesday, July 13, 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, and Nathan Reichert were present. Representative Linda Upmeyer was not present.
- Also present:** Joseph A. Royce and Michael Duster, Legal Counsel; Stephanie A. Hoff, Acting Administrative Code Editor; James Larew, Administrative Rules Coordinator; fiscal staff; caucus staff; and other interested parties.
- Convened** Rep. Frevert convened the meeting at 9:30 a.m.
- Fiscal overview** Jess Benson presented the LSA fiscal report.
- IOWA FINANCE AUTHORITY** Lori Beary, Terri Rosonke and Mark Thompson represented the authority.
- ARC 8906B** No action on 26.8(7) regarding the extension of the maximum allowable loan term for livestock water quality facilities loans from 10 years to 15 years.
- ARC 8907B** No action on amendments to ch 29 pertaining to energy efficiency assistance loans under the jump-start housing assistance program.
- ARC 8905B** No action on amendments to 32.5 that implement new funding for the targeted (noncompetitive) grant awards of the Iowa jobs program.
- ARC 8890B** No action on ch 38, Iowa jobs II program, a competitive grants program limited this year to disaster prevention.
- CAPITAL INVESTMENT BOARD, IOWA** Jim McNulty represented the board.
- ARC 8875B** No action on proposed 3.9 that pertains to the repeal of the tax credit for investments in venture capital funds. No action on the proposed amendment to 4.4 that provides for a reduction in the amount of contingent tax credits related to investments in the Iowa fund of funds to \$60 million.
- ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF** Kelley Myers, Thom Guzman, Peggy Russell, Alana Anderson and Gail Kotval represented the department.
- ARC 8922B** Ch 40, Iowa jobs main street program, sets forth the criteria for high-priority projects eligible for funding through the Iowa jobs II program. Discussion included the protection of restored buildings from fire, the green streets criteria, and permanent recognition acknowledgments, such as plaques. Rep. Heaton asked whether "would likely" might be changed to "shall" in 40.4(2)"h." Mr. Guzman agreed to follow up.
- ARC 8852B** No action on amendments to ch 79 that allow a business to apply for assistance if the business can provide documentation of at least a 12-month lease, including a month-to-month lease for the previous 12 months, in a disaster-damaged space.
- ARC 8920B** Ch 80, Iowa small business loan program, establishes criteria by which a business may apply for, receive and manage loan funds for investment in machinery, supplies and new technologies. Discussion pertained to preparation of small business development centers to aid small businesses and to underwriting requirements. Noting the purpose of the program, Rep. Reichert expressed concern about how credit scores are used and encouraged the department to consider additional underwriting criteria. Ms. Myers offered to provide additional information and more thorough analysis of the underwriting requirements, including the requirements in 80.7(2).
- ARC 8848B** No questions on amendments to ch 104 that allow Iowa high school graduates who attend college out of state to participate in the targeted industries internship program.
- ARC 8850B** No action on ch 114, Iowa innovation council. Ms. Kotval reported that written public comments support the rules but request that the term "targeted industry" be clarified and that renewable energy industry fit within the definition of advanced manufacturing. Sen. Bartz asked that the rule be clarified to reflect that the recommendations of the executive committee go back to the council for action.

ENVIRONMENTAL PROTECTION COMMISSION Randy Clark, Jim McGraw and Tom Anderson represented the commission.

ARC 8843B No questions on ch 16 regarding revocation, suspension, and nonrenewal of licenses for failure to pay state liabilities.

ARC 8845B Proposed amendments to chs 23, 24, and 28 update state air quality rules by adopting new or amended federal requirements and allow the option of submitting initial excess emission reports by E-mail. Sen. Bartz asked that this rule making be placed on the agenda for the August meeting so that public comments might be reviewed and the committee could decide whether to request a formal regulatory analysis. Rep. Reichert requested that the regulatory analysis include not only the cost to businesses but also the benefit to public health. Sen. Horn inquired about the fiscal impact of the rules on the state. Rep. Heaton noted the cost of retrofitting or replacing emergency utility engines and asked whether an exemption for infrequent use of such engines might be granted. Sen. Kibbie inquired about the feed mills affected and the cost of the standards and requested that public comments received be provided to the committee.

ARC 8844B No action on ch 210, beautification grant program.

NATURAL RESOURCE COMMISSION Willie Suchy, Randy Clark, David Downing, Aaron Lumley and Martin Konrad represented the commission. Kevin Kelly represented Kelly Tree Farm, Clarence, Iowa.

ARC 8885B No action on amendments to ch 23 concerning wildlife habitat funding.

ARC 8877B No action on amendments to ch 40 that replace no-wake zones with defined speed restrictions of five miles per hour in listed areas. Sen. Horn asked for clarification of the effect the change. Rep. Reichert requested confirmation that there are no substantive changes in zones or in speed restrictions at night in Dickinson County and clarification that the rules allow no-wake speed for boats without speedometers. Mr. Clark agreed to follow up on the questions from Sen. Horn and Rep. Reichert.

ARC 8878B No action on ch 46, all-terrain vehicles, off-road motorcycles and off-road utility vehicles. Discussion pertained to the types of vehicles, economic development potential, the enforcement of noise levels, the designation of off-road parks, and the purpose of dealers' landline telephones.

ARC 8879B No questions on ch 47, snowmobiles.

ARC 8880B No questions on ch 50, all-terrain vehicle, off-road motorcycle, off-road utility vehicle, snowmobile and vessel bonding.

ARC 8886B No action on the rescission of 53.3, controlled hunting program on Lake Odessa. Rep. Reichert asked that the public be made aware of the change.

ARC 8876B No action on the proposed rescission of 71.2(2)"c," which will allow for the sale of state forest nursery stock outside the state of Iowa. Mr. Kelly expressed opposition to the rule. Rep. Frevert pointed out that the rule implements 2010 legislation.

ARC 8881B No questions on proposed amendments to 81.2, fishing regulations.

ARC 8882B The proposed amendment to 88.1 clarifies the definition of fishing tournament.

ARC 8887B No action on amendments to ch 94 regarding nonresident deer hunting.

ARC 8888B No questions on amendments to ch 106 pertaining to deer hunting by residents.

ARC 8889B No action on amendments to 108.7 to expand the areas open for the taking of bobcat and to increase the quota to 250.

ARC 8883B No questions on proposed amendments to ch 113, which define "priority watershed" and direct compensation for natural resource damages from the vicinity of the loss to priority watersheds.

MEDICINE BOARD Kent Nebel, Mark Bowden and Tom Drew represented the board. Other interested parties included Linda Goeldner and Ginny Wangerin on behalf of the Iowa Nurses Association, Patrick Allaire, an anesthesiologist from Ames, Iowa, Jim Carney on behalf of the Iowa Association of Nurse Anesthetists, Mike Heller on behalf of the Iowa Dental Association, Sherif Tewfik on behalf of the Iowa Society of Anesthesiologists, Heidi Goodman on behalf of the Iowa Medical Society, and Shannon Strickler on behalf of the Iowa Hospital Association.

ARC 8925B Proposed 13.8 and amendments to 23.1 pertain to standards of practice and grounds for discipline by medical directors at medical spas. Ms. Goeldner objected to the statement in the rule that medical aesthetic services are the practice of medicine.

Medicine Board (continued)

ARC 8918B Rule 13.9 pertains to interventional chronic pain management. The rule defines interventional chronic pain management, lists procedures, establishes standards, and identifies interventional chronic pain management as the practice of medicine. Discussion focused on the purpose of the rule, the “practice of medicine” provision and ways to clarify it in the rule, potential statutory clarification regarding scope of practice, the issue of patient safety and related cases and lawsuits, communication between the medicine board and the boards of other practitioners, the difference between interventional chronic pain management and pain management procedures, the effect of the rule on rural hospitals and practitioners, credentialing of practitioners in hospitals, and the issue of access. Dr. Allaire expressed support for the rule and advocated the consistent approach to chronic pain management afforded by the rule. Mr. Carney expressed opposition to the rule because of its ambiguity, presented the declaratory order filed by the association, and requested an objection to the rule. Mr. Heller expressed opposition to the rule, requested clarification that the rule does not apply to dentistry, and encouraged either a delay or an objection. Dr. Tewfik expressed support for the rule as it sets guidelines for physicians. Ms. Wangerin expressed opposition to the rule based on the “practice of medicine” provision and concern that the rule will decrease access and increase costs by limiting services, and requested an objection. Ms. Goodman expressed support for the rule as an extension of existing rules on interventional chronic pain management and stated that the ambiguity has been addressed. Ms. Strickler expressed opposition to the rule, citing the rule’s ambiguity related to who may practice in a hospital and the effect of the rule on delivery and access, and requested either an objection or a delay.

Motion to object Sen. Kibbie moved an objection to 13.9(3), practice of medicine.

Motion failed On a roll call vote of 5 in favor and 4 opposed, the motion failed.

Following discussion, Rep. Heaton requested continued review of ARC 8918B at the August meeting.

ARC 8917B No questions on amendments to ch 14 pertaining to Iowa physician health committee.

PUBLIC HEALTH DEPARTMENT ARC 8860B and ARC 8861B were excused from review at this meeting.

PUBLIC SAFETY DEPARTMENT ARC 8855B was excused from review at this meeting.

UTILITIES DIVISION David Lynch represented the division. Other interested parties included Gary Clark of Huxley Communications Cooperative and Tom Lovell of Clear Lake Telephone Company.

ARC 8859B No questions on amendments to ch 15 or on ch 45, electric interconnection of distributed generation facilities.

ARC 8858B No questions on proposed amendments to 19.4 and 20.4 regarding disconnection of residence with a deployed service member.

ARC 8871B Amendments to ch 22 address high-volume access service (HVAS) and the effect HVAS can have on a local exchange carrier’s (LEC’s) revenues from intrastate switched access services. Discussion focused on whether the rules affect cable television or Internet service, the definition of traffic pumping (access stimulation), clarification of the definition of intrastate calls, the certificate revocation process, revenue sharing agreements, the purpose of high access charges, the effect of the rule on economic development and on the issue of greater equality in services for rural and urban areas, and waivers. Mr. Clark requested a session delay because of the effect on customers, including an increase in intrastate billings in excess of 100 percent, and on rural development. Mr. Lovell requested a session delay and asked that the scope of the rules be narrowed to address the problem of traffic pumping and the effect of the rules on economic development.

Motion to delay Sen. Bartz moved a 70-day delay on ARC 8871B.


Motion failed On a roll call vote of 3 in favor and 6 opposed, the motion failed.

- HUMAN SERVICES DEPARTMENT** Nancy Freudenberg and Jeff Marsten represented the department. Other interested parties included Shannon Strickler on behalf of the Iowa Hospital Association, Dion Williams on behalf of Systems Unlimited, Bob Bartles on behalf of Hope Haven, Shelly Chandler on behalf of the Iowa Association of Community Providers, and Linda Goeldner on behalf of the Iowa Nurses Association.
- ARC 8894B No questions on amendments to chs 36 and 79 pertaining to health care access assessment. Ms. Strickler expressed support for the rules.
- ARC 8853B No questions on proposed amendments to chs 41 and 75 regarding return of documents submitted during eligibility determination.
- ARC 8897B No questions on amendments to 75.1 concerning medical assistance for employed persons with disabilities.
- ARC 8864B No questions on proposed amendments to 75.20 pertaining to reviews of disability and disability redeterminations for members attaining age 18.
- ARC 8898B No questions on annual update of statewide average cost and charges for nursing facility services and institutional care.
- ARC 8899B The amendments to chs 79 and 85 regarding reimbursement rates for providers continue the rate reductions instituted in December 2009 pursuant to Executive Order 19 for state fiscal year 2011. Ms. Freudenberg stated that, in the follow-up on this double barrel, a clarification that the rate reduction is not cumulative will be made. Discussion concerned the effect on providers of the elimination of the 2.5 percent margin, clarification of the terms "rate cut" and "margin," and, as explained by Mr. Marsten, the department's methodology for implementing the 2.5 percent cut in waiver rates.
- Mr. Williams expressed concern about the elimination of the 2.5 percent margin and its fiscal impact on providers and asked that the elimination of the margin be repealed. Following Mr. Royce's explanation of the options for action, Rep. Frevert noted that repeal was not an option for the committee. Mr. Bartles also expressed concern about the elimination of the 2.5 percent margin, explained its fiscal impact, and requested an objection. Ms. Chandler expressed the concern of the provider community about the margin and reported that a compromise had been negotiated with the department that implements the elimination of the 2.5 percent margin only from July 1, 2010, through June 30, 2011. Ms. Chandler expressed appreciation for the compromise but requested that future conversations with providers about rule changes be held before rules are adopted.
- ARC 8865B No questions on the termination of the amendment to ch 79 concerning the reimbursement rate for family planning clinics.
- ARC 8840B No questions on proposed amendments to ch 86 that provide HAWK-I enrollees a one-month grace period for each monthly premium owed.
- ARC 8838B No action on amendments to 86.2 that provide for three months of HAWK-I coverage while the department awaits proof of citizenship and identity.
- ARC 8841B No questions on proposed amendments to 86.6 that extend the period within which a new enrollee may request to switch from one HAWK-I health plan or dental plan to another.
- ARC 8839B No questions on 86.19(1), the definition of "client error" used in recovery of overpayments.
- ARC 8901B No questions on 108.10(3)"c" pertaining to supervised apartment placement services.
- ARC 8902B, ARC 8903B and ARC 8904B No questions on reimbursement rate increases for supervised apartment living, foster group care and foster family care, which were reviewed as a group.
- ARC 8912B No questions on 177.5(2) pertaining to health assessment for in-home health related care. Ms. Freudenberg stated that the department had revised the amendment to clarify that ARNPs are not under the supervision of a physician. Ms. Goeldner expressed appreciation to the department for the clarification. Ms. Freudenberg also reported that the concern that the person certifying the provider of services cannot be employed by the provider has been addressed.
- ARC 8914B No questions on amendments to ch 204 terminating the subsidized guardianship program.

Committee business The minutes of the June 2010 meeting were approved.
The next meeting was scheduled for Tuesday, August 3, 2010.
[Note: Subsequently, the next meeting was rescheduled for
Monday, August 16, 2010.]

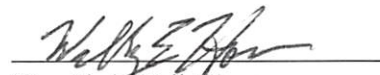
Motion Sen. Bartz moved an informal regulatory analysis on ARC 8845B.
Motion carried On a voice vote of 9 to 0, the motion carried.
Adjourned The meeting was adjourned at 4 p.m.

Respectfully submitted,


Stephanie A. Hoff

APPROVED:


Chair Marcella Frevert


Vice Chair Wally Horn