

**MINUTES OF THE SPECIAL MEETING  
OF THE**

**ADMINISTRATIVE RULES REVIEW COMMITTEE**

- Date of meeting:** A special meeting of the Administrative Rules Review Committee (ARRC) was held Monday, October 13, 2003, in Room 116, State Capitol, Des Moines, Iowa.
- Members present:** Representative George Eichhorn, Chair, and Senator Jeff Angelo, Vice Chair; Senators Michael Connolly, John P. Kibbie, and Paul McKinley; Representatives Danny Carroll, Marcella Frevert, David Heaton, and Mark Kuhn. Senator Donald Redfern was not present.
- Also present:** Joseph A. Royce, Legal Counsel; Kathleen K. Bates, Administrative Code Editor, and Teresa Vander Linden, Assistant Editor; Brian Gentry, Administrative Rules Coordinator; fiscal staff, caucus staff and other interested parties.
- Convened** Chair Eichhorn convened the meeting at 9 a.m.
- AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT** Ron Rowland represented the department.
- ARC 2791B** Rowland outlined rules for whitetail deer hunting preserves and farm deer premises. Heaton expressed concern that there is no cap on the per-hour fee for veterinary inspections. Angelo asked that the department provide a breakdown of costs to the department and to preserve operators in order to ensure that fees are justified.
- ARC 2781B** No questions on the proposed rescission of ch 59 relating to sorghum.
- DENTAL EXAMINERS BOARD** Jennifer Hart represented the board. Other interested parties included Dr. Thomas Wilson, Larry Carl and Bob Kreamer of the Iowa Dental Association and Brice Oakley of the Iowa Dental Hygienists Association.
- ARC 2784B** No questions on termination of the notice to amend 1.1 and 10.3(3) pertaining to preventive services provided by dental hygienists.
- ARC 2783B** Because areas of the state have been identified as dental shortage areas, rule 10.5, providing for supervision of a dental hygienist in a public health setting, was proposed to increase access to dental care. Under this rule, a hygienist, in accordance with a specific written agreement with the supervising dentist, would be able to provide services prior to the dentist's exam. Hart reported that the board has received significant public input.
- Motion** Carroll requested a regulatory analysis of the rule.
- In response to committee questions, Hart clarified that while the rule applies to both adults and children, the rule will have a greater effect on children and that similar provisions exist in other states. Provisions regarding communications between the dentist and the hygienist and standing orders would be specified in the agreement rather than in this rule. This rule, developed in consultation with the governor's office, the department of public health, and the department of human services Medicaid program, received the unanimous support of the board of dental examiners, which includes five dentists and four other members.
- Carl stated that the dental association's goal is provision of the highest quality dental care possible; identified further information needed, including the effect on the professions, the cost to the state, the number of additional Iowans that will be served, and numbers of dental professionals that will be involved; and expressed concern about application of sealant prior to a patient's being seen by a dentist. Carl advised Kuhn that of the 1600 dentists practicing in Iowa, about 1000 accept Medicaid patients; however, Hart clarified that the number accepting new Medicaid patients is significantly lower.
- Gentry urged the dental association to provide the board an alternative recommendation for increasing access to dental care by the underserved population of Iowa. Frevert asked that the association work aggressively with the educational institutions to reduce the two- to five-year waiting list to enter a dental hygiene program.
- Substitute motion** Carroll accepted Connolly's substitute motion that the committee issue an informal request for information. Hart confirmed that the board will provide requested information.
- Oakley urged the committee to allow the board to consider comments raised at the public hearing and received during the public comment period and proceed with the adoption of a rule.
- Wilson expressed concern about the possibility that a hygienist might apply sealant over decay.
- Motion carried** The substitute motion for an informal analysis of proposed rule 10.5 passed.
- ARC 2786B** No questions on issuance of a temporary permit to practice dentistry.
- ARC 2787B** No questions on expanded functions for dental assistants.
- ARC 2785B** No questions on the proposed amendment regarding monitoring of nitrous oxide.

**EDUCATION DEPARTMENT** Carol Greta, Leland Tack, and Jim Clark represented the department.

ARC 2741B No questions on proposed 21.33 regarding an increased administrative fee for reviewing drinking drivers programs taken outside the state.

ARC 2835B Proposed ch 34, concerning funding for children residing in four state institutions, generated considerable discussion. Tack and Clark responded to questions about public comments received, numbers of students in general education and special education in the institutions, the needs and costs of educating students within a school environment or in an institutional setting, and weighting of funding for students served pursuant to an IEP. Under the funding mechanism, a student may be counted both in the school and the institution due to the different dates for reporting pupil counts in public schools and in institutions.

ARC 2807B Proposed ch 47 pertains to career academies. McKinley suggested that 47.2(4)“c” include a requirement for a method to assess effectiveness in achieving results.

ARC 2808B Ch 68 pertains to public charter schools. In response to Frevert’s inquiry about teacher benefits, the department indicated that benefits would be determined by local contracts. McKinley was advised that the requirement that hiring reflect the demographics of the student population was added at the recommendation of the state board of education. McKinley expressed disappointment that only 40 points were awarded for student achievement. In response to questions raised, Greta clarified that one-gender school are not prohibited by these rules, and that open enrollment is applicable to charter schools until the number of students intended to be served is reached.

ARC 2809B No action on proposed amendments to ch 97 pertaining to funding for regional academies.

**UTILITIES DIVISION** Gary Stump, Amy Christensen, David Lynch, and Jennifer Smithson represented the board.

ARC 2772B No action on amendments relating to alternate energy purchase programs.

ARC 2773B No questions on amendments to ch 39 regarding eligible telecommunications carrier designation for wireless carriers.

ARC 2782B Lynch summarized the regulatory analysis on proposed ch 43, the Iowa broadband initiative. Carroll thanked the board for the timely response to the request for an analysis. Lynch reported that the board has been working with the department of economic development and agreed to provide the names of the IDED representatives.

**ECONOMIC DEVELOPMENT DEPARTMENT** Mike Fastenau, Rose Wazny, Michael Johansen, Donna Lowery, Ken Boyd, Joseph Jones, Amy Johnson, and Melanie Johnson represented the department.

ARC 2755B Proposed amendments to chs 7 and 20 make grow Iowa values funds applicable to the Iowa jobs training program and the accelerated career education program and create a program for jobs retention. Johnson indicated that unless a statute requires board approval, the director approves funding up to \$1 million. McKinley suggested that funding over \$50,000 require board approval.

ARC 2754B Proposed ch 9 pertains to workforce training and economic development funds. McKinley requested further information about how \$10 million in reserve funds will be reported.

ARC 2749B No questions on termination of the proposed housing fund rules.

ARC 2753B No action on proposed ch 46 regarding the endow Iowa grants program.

ARC 2797B No questions on proposed ch 47 concerning endow Iowa tax credits.

ARC 2750B No questions on combining SELP rules with the TSB program.

ARC 2798B No questions on termination of the notice to amend the CEBA program.

ARC 2799B Amendments to ch 57 expand the VAAPFAP rules in accordance with HF 692.

ARC 2800B No questions on amendments to ch 58, the new jobs and income program.

ARC 2751B No questions on amendments to ch 59, enterprise zones.

ARC 2748B No questions on ch 62, cogeneration pilot program.

**GROW IOWA VALUES BOARD** Melanie Johnson and Marcia Nichols represented the board.

ARC 2747B Nichols commented on the public hearings. Discussion pertained to concern for rural areas, funding for CEBA and VAAPFAP, wage level requirements, funding decisions, lifestyle marketing, measurement of return on investment, new job creation, and entrepreneurial interest in the program. Frevert acknowledged the contribution of Holmes Foster. Gentry thanked the board for their work in getting rules in place and the program underway.

**IOWA FINANCE AUTHORITY** Loyd Ogle represented the board. James Conlin of Conlin Properties was also present.

ARC 2827B No action on proposed ch 19 pertaining to the state housing trust fund. Conlin encouraged the board to implement sound underwriting procedures.

**REVENUE DEPARTMENT** David Casey represented the department.

ARC 2767B No action on proposed amendments to transfer certain functions to the department of administrative services.

## Revenue Department (continued)

- ARC 2834B No questions on proposed amendments regarding tax benefits and exemptions relating to military service.
- ARC 2769B Proposed amendments relating to investment tax credits for value-added agricultural products were coordinated with IDED.
- ARC 2768B No questions on proposed amendments relating to eligible housing business tax credits and property rehabilitation tax credits for individual, corporate and franchise taxes.
- ARC 2832B No action on new capital investment program tax credits.
- ARC 2833B Proposed amendments to chs 67 to 69 pertain to motor fuel. Connolly requested information about the cost to the general fund for the credit allowed for sales of ethanol blended gasoline in excess of 60 percent of a dealer's volume.
- ARC 2766B No action on proposed amendments to chs 78 and 80 pertaining to property tax credits and exemptions.

**Committee business** The next meeting was scheduled for Monday, November 10, 2003. Kibbie moved approval of the minutes of the September 2003 meeting. The motion carried. Kuhn announced that he will be the ranking member of the appropriations committee and that Representative Geri Huser will replace him on ARRC in November. Connolly asked that the minutes reflect appreciation for Representative Kuhn's service.

**LOTTERY AUTHORITY** Mary Naubauer and Brandi King represented the authority.

- ARC 2771B The rule making implements SF 453 which established the Iowa lottery authority as an independent public authority. King identified substantive changes regarding disqualification of vendors, the hearing board for retailer license appeals, removal of the retailer incentive, and provisions for monitor vending machines.

**ENVIRONMENTAL PROTECTION COMMISSION** Anne Preziosi, Dennis Alt, Kelly Stone and Connie Dou represented the commission.

- ARC 2774B No questions on amendments relating to air pollution.
- ARC 2775B No action on proposed small unit exemption, 22.1(2)"w."
- ARC 2779B Alt outlined proposed amendments to drinking water rules to implement new federal requirements and indicated that the most controversial provisions are in regard to the proposed increase in lab certification fees and the construction permit fees. Alt commented that small water supplies may be affected by the arsenic standards and that low-interest loans are available through the drinking water state revolving loan fund. McKinley expressed concern about the effect of the lab certification fee and encouraged the commission to schedule public hearings in southern Iowa.
- ARC 2776B No action on proposed amendments to chs 61 and 62 pertaining to wastewater treatment and disposal. Dou summarized the amendments and indicated that the most significant fiscal impact will result from the chloride standard for aquatic life protection and the addition of the Class A2 secondary contact recreational use to the Class B(CW), Class HQ and Class B(WW) designations in the "Surface Water Classification." Committee members commended the department for efforts to ensure clean water, yet also expressed concern about costs to small communities.

**INSURANCE DIVISION** Susan Voss, Kim Cross, and Angela Burke Boston represented the division. Paula Dierenfeld represented the Iowa Federation of Insurers.

- ARC 2796B Proposed amendments to ch 5 relate to the annual audited financial report. Carroll reminded the division of the importance of submitting fiscal impact information to the legislative services agency.
- ARC 2794B No action on proposed 5.34 concerning actuarial opinion and memorandum.
- ARC 2801B Proposed 20.41 to 20.60 implement HF 599 by establishing a mandatory risk-sharing facility for basic property insurance coverage under the Iowa FAIR plan.
- ARC 2795B Dierenfeld expressed support for the proposed adoption of the 2001 CSO mortality table.
- ARC 2743B No action on ch 78 concerning the uniform prescription drug information card. Voss noted that the division will enforce compliance in January 2004. Kibbie requested information about carriers that provide drugs only in bulk.

**PUBLIC HEALTH DEPARTMENT** Denise Ramsey, Jane Borst, Tonya Diehn, and Charlene Craig represented the department.

- ARC 2820B No action on proposed ch 3 concerning early hearing detection and intervention.
- ARC 2824B No questions on amendments to ch 4 relating to the birth defects institute.
- ARC 2823B No action on amendments to ch 7 regarding immunizations of persons attending elementary or secondary schools or licensed child care centers. On a related matter, Heaton voiced concerns about foster parents' access to medical information.
- ARC 2822B No questions on addition of varicella vaccine to list of required immunizations.
- ARC 2821B Craig reported that the fee which is charged for shipments of low-level radioactive waste and used to offset the cost of training for first responders is proposed to be increased because there have been fewer shipments than were expected when the fee was established.

**INSPECTIONS AND APPEALS DEPARTMENT** David Werning and Dean Lerner represented the department. Other interested parties included Linda Goeldner of the Iowa Nurses Association and Judy Weller of Pomeroy Care Center, Cheryl Jones of the state board of health, Dana Petrosky of the Iowa Association of Homes and Services for the Aging, and Ken Watkins, counsel for the Iowa Healthcare Association.

ARC 2793B  
ARC 2826B

No questions on updating of cross references in ch 51.  
The department has proposed removing restrictions on the manner in which all residents in long-term care facilities obtain prescription drugs. Discussion focused on residents' rights, safety concerns, and equal protection considerations. Carroll showed a resident's individual unit dose tray, which is filled by a pharmacist in color-coded containers to indicate time of administration. Carroll encouraged the department to find a way to protect both resident rights and safety. Connolly commended the courage of the department for proposing an amendment that faces opposition from powerful provider groups. Kibbie commented on a legislative effort to allow veterans to be reimbursed for prescriptions obtained from local pharmacies. Heaton asked that rules include a waiver. Eichhorn advised the department to seek broad input prior to publishing a proposed amendment rather than through the notice process.  
Goeldner expressed disappointment that the department did not involve registered nurses, who bear responsibility for medication administration, in the process. Goeldner suggested that the VA provide bulk medications to a designated pharmacy so that the pharmacist can assemble unit dose trays. Weller stated that when care facilities receive drugs in bulk, large quantities of medications are wasted when the patient's prescription changes or the patient dies, and space for storage of drugs is limited. Jones reported that the state board of health has had input and has a great deal of interest in this issue. Watkins asserted that risks associated with these amendments outweigh benefits and will not reduce costs.

ARC 2825B

No action on proposed amendments relating to declaration of incompetency of care facility residents.

**HUMAN SERVICES DEPARTMENT** Nancy Freudenberg represented the department. Other interested parties included Dana Petrowsky of the Iowa Association of Homes and Services for the Aging, Cal Hultman of PHARMA, and ARNPs Cheryl Jones, Carrie Ryan and Cheryl Puderbaugh.

ARC 2816B  
ARC 2817B

No questions on proposed amendments related to FIP diversions.  
Reductions in SSA reimbursement rates for in-home health-related care and care in residential care facilities are proposed. A supplemental appropriation could avoid the need for making these cuts. Petrowsky stated that the reductions will result in costs being covered at only 10 percent of the state's 212 residential care facilities.

ARC 2818B

Proposed amendments to ch 65 institute simplified reporting for the food assistance program and eliminate monthly reporting.

ARC 2742B  
ARC 2789B

No questions on amendments pertaining to food assistance.  
Proposed amendments to ch 78 expand prior authorization coverage for drugs and implement a preferred drug list (PDL), which will be developed and recommended to the department by a governor-appointed pharmaceutical and therapeutics committee. Drugs not listed on the PDL will require prior authorization. The department intends the rules to become effective January 1, 2004.

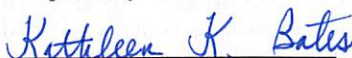
ARC 2583B

Hultman distributed written comments and expressed concern that the best interests of the patient may not be considered.  
Amendments to ch 88 allow ARNPs to serve as MediPASS patient managers. Freudenberg outlined progress made since the last meeting and reported that additional changes will be on the November agenda. All 22 categories of ARNP practice will be recognized by Medicaid as eligible for a provider number. Six categories of ARNPs are eligible to provide managed care under MediPASS. A memo from the attorney general's office regarding the practice of ARNPs is being sent to HMOs and PHPs. The department committed to resolving any outstanding billing issues.  
Puderbaugh provided examples to clarify "incident to" services and expressed appreciation to the committee and the department for improved communications with ARNPs. Jones thanked parties who have worked to resolve concerns.

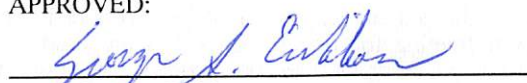
Adjourned


The meeting was adjourned at 5:15 p.m.

Respectfully submitted,

  
Kathleen K. Bates

APPROVED:

  
Chair George Eichhorn

  
Vice Chair Jeff Angelo