

**MINUTES OF THE REGULAR MEETING
OF THE**

ADMINISTRATIVE RULES REVIEW COMMITTEE

Date of meeting: The regular, statutory meeting of the Administrative Rules Review Committee (ARRC) was held Tuesday, July 8, 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, Paul McKinley, and Donald Redfern; Representatives Danny Carroll, David Heaton, and Mark Kuhn. Representative Marcella Frevert was excused.

Also present: Joseph A. Royce, Legal Counsel; Kathleen K. Bates, Administrative Code Editor, and Teresa Vander Linden, Assistant Editor; Brian Gentry, Administrative Rules Coordinator; Jennifer Vermeer and Patty Funaro of the Legislative Services Agency; caucus staff and other interested parties.

Convened Chair Eichhorn convened the meeting at 9 a.m.

COLLEGE STUDENT AID COMMISSION Julie Leeper represented the commission.

ARC 2536B No questions on proposed ch 2, agency procedure for rule making.

ARC 2535B No questions on proposed ch 3, declaratory orders.

ARC 2534B No questions on proposed ch 4, due process.

ARC 2533B No questions on proposed ch 5, contested cases.

ARC 2532B No action on proposed ch 6, public records and fair information practices.

ARC 2531B No questions on proposed ch 7, uniform rules for waivers.

ECONOMIC DEVELOPMENT DEPARTMENT Paul Stueckradt represented the department.

ARC 2519B Ch 60, entrepreneurial ventures assistance program, was amended to align with CEBA rules. These amendments provide a definition for eligible business and increase maximum awards to streamline applications under these programs.

EDUCATIONAL EXAMINERS BOARD Chris Scase represented the board.

ARC 2537B Amendments to chs 11 and 12 pertain to license denial or revocation. Scase reported that favorable comments were received from the Iowa State School Boards Association and the School Administrators of Iowa; however, the Iowa State Education Association has questioned the constitutionality of the amendments. Scase stated that the attorney general's office supports and will defend the statute and the rules. Scase explained that, for the protection of the public, convictions of the specified offenses will result in revocation or denial, even when judgment or sentence is deferred.

ENVIRONMENTAL PROTECTION COMMISSION Jeff Myrom, Jim Thayer, Brent Parker, Steve Hopkins, Anne Preziosi, Jim McGraw, Kelly Stone, and Connie Dou represented the commission.

ARC 2525B These amendments were proposed to make the rules more consistent with federal regulations regarding air quality and to allow for variance from construction permitting for trial burns of alternative fuels. McKinley requested further information about variances granted and denials appealed.

ARC 2527B The amendment to 22.106(1) increases the fee cap for Title V operating permits. Carroll expressed disappointment that the department's fiscal note did not reflect the impact of fee increases that will be allowed as a result of the increase in the cap. McKinley requested additional information about fees in surrounding states.

ARC 2523B Stone reported that EPC is in the process of developing assessment protocols and that although the portion of the South Cedar Creek near Garnavillo was not reclassified as proposed, the requested fiscal impact statement has been prepared and is available. These amendments change the Class A use designation to three contact designations; establish E coli as the bacteria indicator instead of fecal coliform; and adopt by reference the surface water classification document. Dou clarified that E coli is considered a better indicator than fecal coliform, and noted that the change in bacterial indicator does not change the standard. Angelo was advised that upcoming rules may have an impact on cities and counties.

Stone attributed the increased number of reports of affected lakes and waterways to more frequent and better monitoring. Eichhorn asked that the information from the regulatory analysis of the proposed reclassification of South Cedar Creek be forwarded to the committee.

ARC 2526B Proposed amendments pertaining to reauthorization of general permit no. 4 affect private waste water systems that discharge to the surface. These amendments require that effluent monitoring be performed by a qualified sampler; increase sampling frequency for free access sand filters; and require testing of Class C waters for bacterial content. Connolly expressed concern about the quality of water in Iowa lakes. Parker responded that these amendments are a step in the right direction, but noted that more county sanitarians, certified wastewater operators, and resources are needed for monitoring and enforcement. Costs of management and effluent testing are a concern, especially in southern and southeastern parts of the state where surface

Environmental Protection Commission (continued)

discharge systems are more prevalent. Connolly encouraged EPC to recommend legislative changes to address water quality issues.

ARC 2524B No action on amendments to ch 109 relating to disposal of special waste.

INSURANCE DIVISION Jim Thornton represented the division.

ARC 2529B No action on proposed 30.8 pertaining to electronic delivery of group life insurance certificates.

ARC 2530B No action on proposed 35.8 regarding electronic delivery of accident and health group insurance requirements.

IOWA FINANCE AUTHORITY Loyd Ogle and Tim Waddell represented the authority.

ARC 2560B Ogle highlighted changes in the 2004 QAP, including a set-aside for service-enriched housing, IFA's commissioning of market studies, and a change in the fee basis. Waddell explained how the service-enriched set-aside for ADA-defined disabilities differs from the affordable assisted living set-aside. Eichhorn mentioned concerns about IFA's internalization of the market study, the appropriateness of the \$4500 fee, criteria for waiver of the unit cost cap, a change in wording from "project costs" to "hard construction costs." Waddell responded that IFA believes that the proposed changes will result in objective and fair market studies, less duplication and fewer rejections.

MEDICAL EXAMINERS BOARD Ann Mowery and Theresa Weeg represented the board. Other interested parties included Libby Coyte of the Iowa Physician Assistants Society.

ARC 2545B Proposed amendments to ch 21 are the result of legislation enacted in 2003 Iowa Acts, House File 628. Coyte noted that physician assistants are concerned about emergency and disaster situations, PAs employed in federal facilities, and the use of "ineligibility" rather than "eligibility." Mowery agreed to consider the concerns. Carroll encouraged the parties to work together and indicated that Representative Boddicker, the floor manager of the bill, wants differences to be resolved.

NURSING BOARD Lorinda Inman represented the board. Linda Goeldner represented the Iowa Nurses Association. Senator Neal Schuerer was also present.

ARC 2558B No action on proposed amendments relating to public records and the nursing newsletter. Inman reported that the attorney general's office determined standard acceptable advertising.

ARC 2557B The amendment to 3.1 provides for a fee increase to licensees. Ten percent of the fee increase will go to the general fund; the rest, approximately \$200,000, will remain with the board of nursing. Goeldner reported that the association supports the increase.

ARC 2556B No action on the charge for on-line renewal of licenses. Inman advised Senator Schuerer that approximately 80 percent of nurses renew on-line.

ARC 2553B The amendment to 6.2(5)"c" clarifies that registered nurses can delegate non-life-saving procedures to EMS personnel.

ARC 2555B No questions on 6.3(4)"b" and "d" pertaining to nurses at end-stage renal dialysis units.

ARC 2554B No questions on expansion of scope of practice for LPNs at WIC clinics.

PROFESSIONAL LICENSURE DIVISION Lois Churchill represented the division.

ARC 2514B Churchill outlined proposed amendments relating to social workers and noted that the amendments are based on the code of ethics of the national association of social workers. McKinley inquired about the term "culturally sensitive." Discussion related to ethnic, geographic and lifestyle considerations. Churchill advised McKinley that licensure is required of social workers including those employed by religious organizations. McKinley asked that Churchill verify that the national code of ethics includes the words "sexual orientation" in provisions relating to discrimination and sexual harassment.

PUBLIC HEALTH DEPARTMENT Doreen Chamberlin and Dean Austin represented the department. Other interested parties included David Oxley and Kenneth Kunsman of OraSure Technologies.

ARC 2522B No questions on amendments to ch 88 pertaining to the volunteer health care provider program.

Special review In rule 12.2, the definition of "sample" defines substances from the human body capable of revealing the presence of alcohol or other drugs to be urine, breath and blood. Senator Schuerer asked that the department look into including saliva or hair for employee drug testing. Oxley reported that Iowa is one of only six states not recognizing oral fluids for employee drug testing. Kunsman demonstrated the process to illustrate the chain of custody of the sample prior to its receipt by a certified laboratory and stressed that oral fluid testing balances the employee's right to privacy with the employer's need to know. Kunsman asserted that saliva testing is both cost-effective and reliable. McKinley urged the department to proceed immediately with emergency rule making to accommodate testing of oral fluids and make Iowa rules more conducive to business development.

SECRETARY OF STATE Chris Scafe represented the office of the secretary of state.

ARC 2539B Proposed ch 25 provides the administrative complaint procedure required by the Help America Vote Act. Eichhorn expressed concern about the presiding officer's being an elected official affiliated with a political party and the partisan composition of the panel that presides when the complaint involves the secretary of state. Scafe clarified that these procedure apply only to federal elections.

UTILITIES DIVISION Cecil Wright and Penny Baker represented the division.

ARC 2550B No questions on amendments related to gas pipeline and storage.

ARC 2548B No questions on amendments resulting from reviews conducted pursuant to executive orders 8 and 9.

ARC 2549B The definition of "eligible customer" was proposed to ensure that competitive telephone companies serve both residential and business customers.

WORKFORCE DEVELOPMENT DEPARTMENT Joe Bervid represented the department.

ARC 2518B Bervid noted that item 15 of the proposed amendments to ch 24 has been withdrawn by the department. McKinley suggested that the rules be clarified as to determination of local conditions. McKinley asked Bervid to find out how many persons have been disqualified based on a finding that the person was not "earnestly and actively" seeking employment or for failure to respond to a referral without good cause.

INSPECTIONS AND APPEALS DEPARTMENT David Werning, Marvin Tooman, Dean Lerner and Mindla White represented the department. Other interested parties included Susan Cameron representing nursing facilities, long-term care ombudsman Debra Meyers, and Patrick Palmersheim of the veterans affairs commission.

ARC 2520B No questions on proposed amendments to ch 51 concerning hospitals.

ARC 2521B Proposed amendments relating to residential care facilities and nursing facilities pertain to use of surge protectors and drugs dispensed by the VA. The amendments clarify that a facility cannot require the VA to repackage medications in a format compatible with the facility's drug distribution system. Heaton encouraged the departments of inspections and appeals and human services and the pharmacy board and the VA to work together to resolve problems related to distribution of medications to veterans in nursing facilities and suggested that the Iowa Veterans Home be used as a point of distribution for unit dose packaging of prescriptions for those veterans. Palmersheim confirmed that the veterans home is planning to purchase new equipment that could be used to supply prescriptions to veterans in nursing facilities, but pointed out that because so many different distribution systems are in use, it is unlikely that a single packaging format will work in all facilities. Cameron reported that nursing facilities support the goal of HF 619 and are willing to accept one unit-dose dispensing system to address liability and resident safety concerns. Meyers expressed support for the rule change and pointed out that individuals with private insurance have faced the same problem when their insurance plan does not provide medications that are compatible with the unit dose dispensing system at the nursing facility.

Special review Because of an increase in the number of complaints, Carroll requested a review of fines assessed for nursing facility noncompliance. Tooman clarified that there are both state and federal penalties. White explained Class I, II, and III violations and reported that state fines were last adjusted in 1986. Meyers expressed the view that fines are inadequate because some facilities continue to provide substandard care. Lerner clarified that state fines are set by statute and that the department has requested that they be increased. Tooman added that the department wants the ability to assess multiple fines. Gentry encouraged the department to examine available tools and to identify ways to enforce compliance.

Special review A special project for independent informal dispute resolution is no longer funded by CMS. The department continues to seek funding to maintain the pilot project.

HUMAN SERVICES DEPARTMENT Nancy Freudenberg represented the department.

ARC 2559B No questions on proposed amendments to implement changes in federal requirements for the food stamp program.

ARC 2540B No questions on annual adjustment of statewide average cost of nursing facility services.

ARC 2541B No questions on 76.12(7)"c" regarding recovery of payments from estates of Medicaid recipients.

ARC 2528B No questions on termination of proposed amendments to supported community living services under the home- and community-based mental retardation and brain injury waivers.

ARC 2515B Amendments to ch 79 pertain to Medicaid reimbursement methodology for hospital inpatient and outpatient services. Freudenberg reported that the department will accommodate changes requested by the Iowa Hospital Association.

ARC 2517B No questions on amendments to provide for paper attachments to electronic requests for prior authorization.

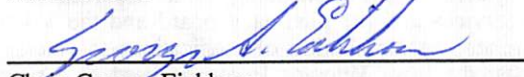
Human Services Department (continued)

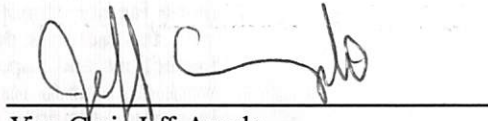
- ARC 2516B No questions on amendments to ch 81 related to nursing home accountability measures.
- ARC 2538B No questions on amendments to ch 130 concerning child care assistance limits and fees.
- Special review No questions on the rent subsidy program, ch 53.
- Eichhorn raised a question about implementation of cross-over claims if the department's plan is approved. Freudenberg responded that if the rules are approved, the rates will be recalculated back to July 1, 2003.
- Committee business** Vermeer reported on issues raised by agencies at the June 19, 2003, meeting and summarized in a memo to the committee.
- Funaro reported on how contingent effective dates are handled in the Iowa Code and in the Session Laws. Eichhorn asked that rules specify when an implementation date is different from the effective date.
- There were no committee comments on the general referrals for dramshop insurance and waiver of driver education fees for indigent students.
- Kibbie moved approval of the minutes of the June meeting. The motion carried.
- The next meeting was scheduled for August 12 and 13, 2003.
- Adjournd The meeting was adjournd at 4:05 p.m.

Respectfully submitted,


Kathleen K. Bates

APPROVED:


Chair George Eichhorn


Vice Chair Jeff Angelo