

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, August 12, and Wednesday, August 13, 2003, in Room 116, State Capitol, Des Moines, Iowa.

Members present: Representative George Eichhorn, Chair, and Senator Jeff Angelo, Vice Chair; Senators John P. Kibbie, Paul McKinley, and Donald Redfern; Representatives Danny Carroll, Marcella Frevert, and David Heaton. Representative Mark Kuhn and Senator Michael Connolly were 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 8:15 a.m.

PUBLIC SAFETY DEPARTMENT Mike Coveyou represented the department.

ARC 2563B No action on adoption of building code accessibility standards. Coveyou reported that state and federal requirements are nearly identical and that the building code advisory committee recommended the January 1, 2004, effective date in order to allow time for training, which will be provided at no charge in five locations across the state. Eichhorn asked Coveyou to make inquiries about how the department might respond in the event of a district court challenge to a provision of a code adopted by reference.

ETHICS AND CAMPAIGN DISCLOSURE BOARD Charlie Smithson represented the board.

ARC 2585B No questions on consolidation of rules relating to duties and organization of the board.

ARC 2605B Smithson reported that proposed amendments to ch 4 case filing requirements for organizations making contributions in excess of \$750.

ARC 2604B No questions on proposed amendments regarding signature requirements for computer-generated reports.

ARC 2606B Proposed 4.8(3) allows the board to provide reports electronically.

ARC 2633B No questions on proposed amendments relating to permissible uses of campaign funds.

ARC 2603B The proposed amendment to 4.32 concerning contributions from political committees not organized in Iowa brings the rule into conformance with statute.

ARC 2632B No questions on proposed reorganization of chapters.

ARC 2586B No questions on renumbering of two chapters.

ADMINISTRATIVE SERVICES DEPARTMENT Carol Stratemeyer represented the department.

ARC 2635B Chapter 10 establishes customer councils for utility services provided by the department. McKinley suggested that the business plan include a listing of the alternatives to utility services the councils considered and an explanation of why they rejected them. Frevert asked Stratemeyer to provide the criteria used for biennial review and approval of the business plan.

CORRECTIONS DEPARTMENT Michael Savala represented the department.

ARC 2636B No action on the appeal process for sex offender risk assessment, 38.3(5).

MANAGEMENT DEPARTMENT Kathy Mabie represented the department.

ARC 2602B No questions on ch 11 pertaining to the grants enterprise management system.

SECRETARY OF STATE Steven Mandernach represented the office.

ARC 2640B No action on proposed amendments relating to electronic transmission of election results.

PROFESSIONAL LICENSURE DIVISION Lois Churchill and Ella Mae Baird represented the division.

ARC 2628B An amended notice regarding chiropractic schools was published pursuant to a recommendation from the attorney general's office. Frevert asked that terminology differences between physical therapists and chiropractors be resolved prior to adoption of the amendments.

ARC 2629B No questions on proposed amendments relating to practice of acupuncture by chiropractors.

ARC 2584B No questions on amendments to rules of the board of dietetic examiners.

ARC 2627B No questions on amendments regarding curriculum at massage therapy schools.

ARC 2630B No questions on amendments relating to athletic trainers.

- Committee business** Angelo moved approval of the minutes of the July meeting. The motion carried. The committee will meet Tuesday, September 9, 2003.
- Royce advised the committee that in March new leadership at the Iowa Veterans Home increased the personal needs allowance without amending the rules. Heaton expressed concern that this action affects state appropriations and may be in violation of federal requirements. Gentry asked that the Iowa veterans home work with the attorney general's office, assess the fiscal impact and bring a proposal to the committee next month regarding how to rectify the error. Members voiced concern about agency actions that affect appropriations.
- LAW ENFORCEMENT ACADEMY** Penny Westfall represented the academy. James Hanks represented Western Iowa Tech Community College; Laverne Schraeder represented the Chiefs of Police Association.
- ARC 2561B** Westfall outlined comments received on the new rule regarding training of an individual who intends to become certified as a law enforcement officer. The rules were filed emergency in order to have rules in place for the four courses being offered in September.
- Hanks asserted that the rules do not comply with legislative intent and noted particular concern about the requirement that applications be submitted 60 days in advance of the course. Hanks questioned the basis for imposing an administrative fee; conducting background investigations; medical, psychological and cognitive testing of applicants and the absence of standards for such investigations and tests.
- Westfall stated that the academy is willing to work with Western Iowa Tech Community College and the law enforcement associations and, if agreement can be reached, changes can be incorporated in the adopted rules. Westfall noted that the academy's understanding of the legislative intent was to reduce costs to cities and counties by shifting training costs to the individuals being trained. Westfall explained that 3.12(5)"b" pertains to the testing that a hired individual must complete at the academy in order to be certified as a law enforcement officer.
- Heaton stated that the community college program was intended as a convenience so that candidates could receive training without already having been hired, but emphasized that candidates attending community college programs should receive no less training than those going through the regular academy program and should undergo the same background checks.
- Schraeder stated that the Iowa chiefs of police support the rules and pointed out that, if necessary, the rules can be amended when notice of intended action is adopted.
- Eichhorn expressed concern about the academy's lack of communication with the community colleges and the time elapsed between the date of approval of the rule and filing of the document.
- Motion to object** Angelo moved an objection to the emergency filing.
- In light of potential legal costs to the state, Gentry asked the committee to give the academy an opportunity to rescind or revise the rules before imposing an objection. Redfern pointed out that the objection is to the emergency filing of this rule only; if the academy were to amend or rescind the rule, the objection would be removed.
- Motion carried** The motion carried; the rule will expire 180 days after the objection is filed in the office of the administrative code editor.
- UTILITIES DIVISION** Gary Stump and Jennifer Johnson represented the board. Serge Garrison represented small utilities. Cal Hultman represented the railroads.
- ARC 2621B** No questions on amendments to ch 15 concerning alternate energy production.
- ARC 2620B** Proposed ch 43 pertains to the Iowa broadband initiative. Johnson indicated that the board's eventual goal is to make advanced telecommunications services available to all customers in all exchanges, and these rules reflect a start in those areas where no services are available at an affordable rate. In response to Carroll's concerns about the need for regulatory flexibility and the high costs of filings before the board, Johnson noted that the rules do not require a lot of specific detail to be included in the plans and that regulatory costs can be recovered. Carroll also expressed concern about the lack of confidentiality for a carrier's broadband initiative plan and the absence of a definition of "availability of services."
- Motion** Carroll requested a regulatory analysis pursuant to 17A.4A.
- Motion carried** The motion carried. A regulatory analysis must be published before the rules can be adopted.

Utilities Division (continued)

- ARC 2506B Chapter 42 is under a 70-day delay. Stump reported that a few issues between small utilities and the railroads remain unresolved. Garrison indicated that the utilities and railroads are close to agreement and requested an extension of the delay to afford the parties additional time. Hultman concurred that agreement is close.
- Motion to delay Frevert moved a session delay be imposed on ch 42.
- Motion carried The motion carried. Chapter 42 is delayed until the end of the next legislative session. Carroll asked that a review be scheduled for next month's meeting so that the delay can be lifted.

HUMAN SERVICES DEPARTMENT Nancy Freudenberg, Gene Gessow and Jeanne Nesbit represented the department. Other interested parties included Shannon Strickler of the Iowa Hospital Association, Linda Goeldner and Lynn Boes of the Iowa Nurses Association, Ann Diehl of the Iowa Nurse Practitioners Society and the Iowa Association of Nurse Practitioners, and ARNPs Betty McGehe, Catherine Stevenson, and Sheryl Puderbaugh.

- ARC 2612B No action on amendments to ch 1 pertaining to the HAWK-I program.
- ARC 2619B Proposed amendments relate to collection of overpayments. McKinley inquired about the use of a 12-month period in the definition of "current" and asked for additional information about the impact of reducing the period to 60 days.
- ARC 2573B No questions on ch 15 concerning disputed county billings.
- ARC 2609B Proposed 28.13(2)"c" is intended to resolve a conflict with the state constitution.
- ARC 2614B No questions on the proposed rescission of ch 39.
- ARC 2575B Freudenberg noted that these amendments regarding the HCBS waiver for persons with mental retardation are expected to save counties approximately \$20 million.
- ARC 2576B No action on amendments relating to Medicaid crossover claims for dually eligible recipients in hospitals and hospital-based nursing facilities. Freudenberg reported that the state plan has been submitted and if it is not approved, the provisions will be rescinded. In addition, Freudenberg reported on DHS's response to comments received from the Iowa Hospital Association. Strickler stated that retroactive adjustments will result in an administrative burden on hospitals and asked that language be added to the rules to clarify the contingency condition of CMS approval. Eichhorn requested that contingencies be stated in the rules.
- ARC 2577B Amendments to ch 79 add supplemental payments for physician services provided to Medicaid recipients at publicly owned acute care teaching hospitals and will result in a savings of approximately \$13.5 million.
- ARC 2578B No action on amendments to ch 79 relating to reimbursement for prescription drugs and resulting in \$5 million in savings to the state.
- ARC 2579B No action on the amendment pertaining to the copayment for Medical services. Freudenberg reported that DHS will refund any copayments collected in error from the 19 independent diagnostic testing facilities in Iowa.
- ARC 2574B An amendment to ch 83 lowered the age limit from 18 to 16 for eligibility for supported employment services under the home- and community-based mental retardation waiver. Carroll expressed appreciation to the department for this change.
- ARC 2611B The six-month waiting period for children previously covered by employer-sponsored health care has been eliminated from the HAWK-I program. Heaton complimented the department.
- ARC 2583B Amendments to ch 88 include ARNPs certified in designated specialties as MediPASS patient managers. Noting that all ARNPs are independent practitioners, Goeldner voiced concerns regarding use of the term "independently practicing" and raised questions about other managed care, the designated specialties of practice, and the department's fiscal analysis and estimate of the number of affected ARNPs. ARNPs Puderbaugh, McGehe and Stevenson told of their frustration in working with DHS, the difficulty of obtaining billing numbers and confusion about billing when medical practices are owned by a corporation. Puderbaugh noted that while the legislation addressed "managed care," DHS has included only MediPASS. Puderbaugh reported that the department's fiscal agent has recommended billing under the physician's number if a physician is on staff, a practice that misrepresents the care provided and inflates costs. Freudenberg indicated a willingness to advise managed care contractors that ARNPs are allowed as primary care providers; McKinley encouraged the department to resolve these issues and report back to the committee. Frevert and Angelo asked that a clear definition of independent practitioner, agreed upon by both DHS and ARNPs, be brought to the committee next month.
- ARC 2610B No action on the proposed amendments to ch 100 to extend until 2006 the expiration date for the child support parental obligation pilot project.
- ARC 2582B No action on amendments relating to criminal and child abuse record checks for child care licensing and registration.

Human Services Department (continued)

- ARC 2580B No questions on amendments pertaining to reimbursement rates for purchase of service providers and rehabilitative treatment and supportive services.
- ARC 2581B No questions on amendments to ch 170 concerning eligibility for child care assistance.
- Committee business Royce reported that legislative fiscal staff have been in communication with the Iowa veterans home since July 10, 2003, regarding the need for rule making.

Wednesday, August 13, 2003

Members present: Representative George Eichhorn, Chair, and Senator Jeff Angelo, Vice Chair; Senators John P. Kibbie, and Paul McKinley; Representatives Danny Carroll, Marcella Frevert, and David Heaton. Representative Mark Kuhn and Senators Michael Connolly and Donald Redfern were not present.

MEDICAL EXAMINERS BOARD Ann Mowery represented the board.

- ARC 2638B No questions on fee increases for license renewals and reinstatement of permanent physician licenses.

ELDER AFFAIRS DEPARTMENT Mark Haverland, Joel Wulf and Mary Ann Young represented the department. Dean Lerner represented the department of inspections and appeals. Other interested parties included Janet Specht of Liberty Country Living and Dana Petrowsky of the Iowa Association of Homes and Services for the Aging.

Special review Wulf provided the department's projected time lines for implementing HF 672 and HF 675 for adult day care services and assisted living and stated that the department intends to convene a statewide work group of providers and consumers to provide input prior to drafting a notice of intended action and then follow up with an emergency after notice adoption of the adult day care services rules. Discussion centered on adoption of guidelines through the rule-making process, provisions for waivers, the importance of a good working relationship between the professional associations and the regulators, and the need for flexibility rather than overregulation. Haverland differentiated between policy decisions made by the legislature and implementation of those policies by the department. The department of inspections and appeals was advised to improve communications with professional associations and to develop a process that includes both objective and subjective decisions in waiver considerations.

Citing requirements for room size, bathroom location, and living arrangements, Specht questioned whether the rules adequately address the needs of residents in dementia-specific facilities and pointed out that waivers can be viewed as a tool for innovation rather than as a means to avoid compliance with rules. Haverland indicated that investors expect consistency from government to ensure that everyone follows the same rules; however, he encouraged the legislature to grant the department authority to develop new outcome-based models through pilot projects. Haverland agreed to provide the committee copies of the work group's draft rules.

Lerner confirmed that DIA has responsibility for enforcement of the rules of the department of elder affairs and also has the authority to grant or deny waivers; however, he emphasized that life-safety code requirements cannot be waived. Gentry directed DIA to take into consideration the views expressed and to examine and apply waiver rules as appropriate.

Frevert stated that care of the elderly is one of the most important issues in Iowa and encouraged all parties to continue communications and exploration of options.

CAPITAL INVESTMENT BOARD David Casey represented the board.

- ARC 2618B No questions on proposed amendments relating to tax credits for investments in qualifying businesses and community-based seed capital funds and investments in venture capital funds.
- ARC 2623B No questions on ch 4 pertaining to investment tax credits for investments in a fund of funds organized by the Iowa capital investment corporation.

ECONOMIC DEVELOPMENT DEPARTMENT Melanie Johnson, Rose Wazny, Ken Boyd, Donna Lowery and Amy Johnson represented the department.

- ARC 2589B No questions on update of department organizational rules and rescission of obsolete rules.
- ARC 2591B Wazny reported that proposed rules for ch 25 generated many comments. The department intends to terminate this notice and begin a new rule-making process.
- ARC 2594B Proposed amendments to chs 51 and 55 incorporate the self-employment loan program into the targeted small business financial assistance program.
- ARC 2590B No questions on rules for CEBA modernization projects.
- ARC 2592B Johnson outlined proposed amendments to ch 59 pertaining to enterprise zones and reported that approximately 2/3 of the projects involve expansion of existing businesses and that overall 6,728 jobs have been created.
- ARC 2593B Proposed ch 62 provides criteria for cogeneration pilot projects.
- ARC 2588B No action on ch 169 concerning public records and fair information practices.

EDUCATIONAL EXAMINERS BOARD Anne Kruse and Chris Sease represented the board.

- ARC 2622B No questions on 11.4(1) regarding who may initiate complaints.
 ARC 2639B No questions on 11.21(3) concerning legal representation in contested case hearings.
 ARC 2624B No questions on 14.107 concerning correction of licenses.
 ARC 2625B No questions on amendments to ch 14 clarifying names of licenses.
 ARC 2626B No questions on 15.3(8) pertaining to the school psychologist endorsement.

ENERGY AND GEOLOGICAL RESOURCES DIVISION Angela Chen represented the division.

- ARC 2596B No questions on the rescission of obsolete chapters and the amendment of ch 18 to conform to federal requirements.

ENVIRONMENTAL PROTECTION COMMISSION James McGraw, Christine Paulson, and Wayne Ferrand represented the commission.

- ARC 2597B Proposed amendments to ch 23 provide an additional exemption for cities to conduct controlled burning of demolished buildings and clarify existing open burning rules.
 ARC 2595B No action on proposed chs 90 to 92 and amendments to ch 93 to expand the uses of the state revolving fund to include nonpoint water quality. Ferrand agreed to advise the department of the committee's request that public hearings be held in all affected areas of the state and over the ICN.

NATURAL RESOURCE COMMISSION Kevin Szcodronski, Richard Bishop and Bill Ohde represented the commission. Other interested parties included Allen Magdefrau, Jeff Campbell, David Vanden Boom, Richard Beames and Gary Cook.

- ARC 2598B No action on the proposed amendment to allow 24-hour fishing at the ritz unit at Clear Lake state park.
 ARC 2600B Bishop outlined changes from the proposed amendments to the deer hunting rules and noted that the department has more than doubled the number of licenses issued.
 ARC 2599B No questions on proposed amendments related to block deer hunts.
 ARC 2493B Bishop reported that amendments to ch 51 concerning use of decoys and stationary blinds on pools 16, 17 and 18 of the Mississippi River were proposed because the department is now required by the Fish and Wildlife Service to register blinds. At hearings in the affected area, an overwhelming majority of hunters wanted to retain their existing sites. Bishop clarified that, as in the past, blinds cannot be padlocked, and another party may use the blind if the owner is not on site at the start of the hunting day. McKinley asked if there is precedent for private use of public land and was informed that private docks may be constructed on public land.

Magdefrau stated that at the public hearing he presented a petition with 200 signatures urging the department to conduct a lottery for sites as Illinois does. Bishop responded that public opinion in the area was very strong to retain the traditional sites and the department intends to adopt the rules for a five-year period.

Speaking on behalf of duck hunters who support the rules, Campbell stated that some areas are considered good hunting spots because hunters have worked the area around their blinds setting out gallon jugs and decoys. Permanent blinds are well constructed, but Campbell speculated that blinds for temporary use would be poorly constructed and abandoned at the time of each drawing.

Vanden Boom expressed support for DNR's proposed rules and voiced opposition to the lottery system. Beames characterized the current system as unfair and requested a lottery system and distance requirements between blinds. Cook expressed the view that there is plenty of room for all the hunters and sharing blinds can result in new friendships.

INSURANCE DIVISION Susan Voss and Rosanne Mead represented the division. Other interested parties included Fred Haskins of the Iowa Insurance Institute, Robert Parsons of Allied/Nationwide Insurance, Bob Skow of Independent Insurance Agents of Iowa, Bob Hurns of NAIL, Jim West of Iowa Automobile Dealers Association, Cal Hultman of Alliance of Automobile Manufacturers, and Gerald Newbrough.

- ARC 2616B Mead reported that an outstanding issue concerns diminished value, which is included in the rule making as a result of a state supreme court decision. Mead stated that the division believes that the rule strikes a balance between protecting consumers and affording insurers flexibility to determine how to inform insureds but noted that the industry is not willing to accept any form of a rule on this subject.

Carroll speculated that the court decision and subsequent rule could put insurers in the position of subsidizing the automobile industry and suggested that the department submit a bill to the legislature.

Insurance Division (continued)

Noting that Iowa Code section 507B.12 prohibits the division from adopting rules that expand upon statutory provisions, Haskins challenged the authority for subrule 15.43(10), which is based on a court decision rather than statute. Parsons voiced opposition to 15.43(10) and contended that inclusion of this provision is excessive regulation. Skow indicated that compensation for diminished value becomes an issue only because Iowa law requires damage disclosure and the solution is to repeal that statute. Skow asserted that this subrule will result in increased premiums. Hurns stated that vehicles can be repaired to preaccident condition and to the satisfaction of their owners and that the court decision should not be applied to third-party claims.

West reported that the association opposes 15.45(2) regarding use of aftermarket crash parts and indicated that the department has expressed a willingness to work with the association. Hultman expressed support for the NAIC model rule and a willingness to work with the division to resolve concerns. Newbrough expressed concern about litigation over aftermarket parts and the perception that vehicles must be restored to new condition rather than preaccident condition. Voss confirmed that the division will work with concerned parties.

Motion to delay

Kibbie moved a session delay on 15.43(10).

Motion carried

The motion carried. Subrule 15.43(10) is delayed until adjournment of the 2004 Session of the General Assembly.

ARC 2631B

The division is continuing review of proposed 40.16 pertaining to HMO deductibles and coinsurance charges and may not proceed to adopt the rule due to changes in the market place.

GROW IOWA VALUES BOARD Holmes Foster and Melanie Johnson represented the board.

ARC 2698B

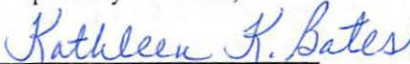
Foster explained the purpose of the emergency rules.

McKinley reiterated the goals of HF 692: to grow the population and economy of the state and increase the wealth of Iowans. McKinley questioned inclusion of nonprofit entities in the definition of business, the preference afforded three industry clusters, consideration of land use in reviewing applications, and the applicant's report of intended return on investment. McKinley advised against including any wage requirement and stressed the need for lifestyle marketing. Angelo and Heaton expressed concern about wage floors, particularly in rural areas. Frevert commended the board's progress. Eichhorn indicated an interest in having value-added agriculture included in this program.

Adjourned

The meeting was adjourned at 1:45 p.m.

Respectfully submitted,


Kathleen K. Bates

APPROVED:


Chair George Eichhorn


Vice Chair Jeff Angelo