

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, November 10, 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, Marcella Frevert, David Heaton, and Geri Huser.

Also present: Joseph A. Royce, Legal Counsel; Kathleen K. Bates, Administrative Code Editor, and Karon Elfvin, Assistant; Brian Gentry, Administrative Rules Coordinator; fiscal staff, caucus staff and other interested parties.

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

ELDER AFFAIRS DEPARTMENT Jeanne Yordi and Debra Meyers represented the department.

ARC 2904B Proposed amendments to ch 8 establish a program to train and certify volunteers for the long-term care ombudsman program in cooperation with the office of the long-term care resident's advocate/ombudsman. In response to Heaton's concerns about a shift of responsibilities from communities, Yordi attempted to clarify the roles of the volunteers and the resident's advocate committees and agreed to check on why foster group homes are included in the definition of long-term care facility. Carroll requested a list of other states using a volunteer program and asked that Royce request a written response from the department of inspections and appeals regarding the volunteer program. Eichhorn suggested that the department seek input from the attorney general's office regarding the use of volunteers.

ARC 2905B In compliance with HIPAA regulations, proposed amendments to ch 8 remove the requirement that medical information be provided to resident advocate committees. Meyers reported that area agencies on aging lack funding to continue participation in the resident advocate program.

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT Ron Rowland represented the department. Laverne Schroeder represented the Iowa quarterhorse and harness racing associations.

ARC 2887B No questions on amendments to the Iowa organic program, ch 47.

ARC 2873B Proposed amendments to ch 62 would make rules for registration of Iowa-foaled horses and Iowa-whelped dogs consistent with rules of the racing and gaming commission. Schroeder commented that the phrase "or animal welfare laws" should specify a statute, and asked that there be provisions for reinstatement of registrations.

ARC 2871B No questions on amendments to ch 64 concerning low pathogenic avian influenza.

DEAF SERVICES DIVISION Kathryn Baumann-Reese represented the division.

ARC 2890B Baumann-Reese outlined proposed amendments to chs 1 to 4 and clarified the roles of program planners and consultants. Royce raised a concern about the amendment to 1.3(2) which would allow a motion to be carried by a majority of the commissioners present, rather than a majority of the commission. Committee members were in agreement that the chair should be a voting member of the commission and that a majority vote of commission members should be required to carry a motion.

ENVIRONMENTAL PROTECTION COMMISSION Chuck Corell, Steve Williams, and Alex Moon represented the commission.

ARC 2864B No action on amendments to chs 60, 62, and 63 concerning federal effluent and pretreatment standards.

ARC 2865B No action on amendments to ch 93 pertaining to water pollution control. McKinley requested that meetings about septic systems be scheduled in southern Iowa.

ARC 2863B Proposed amendments to ch 111 relate to financial assurance for municipal solid waste landfills. Moon advised Frevert that the commission and Buena Vista County have satisfactorily resolved issues relating to funding of the landfill's postclosure account.

NATURAL RESOURCE COMMISSION Ross Harrison and Terry Little represented the commission.

ARC 2911B Proposed amendments to ch 33 pertain to the resource enhancement and protection program and include a new rule intended to increase public awareness of REAP projects. Carroll requested information about amounts spent on development and on land acquisition; Kibbie asked that Royce forward the information to the committee.

ARC 2910B No action on the amendment to make antlerless-only deer licenses available to nonresidents for the period of December 24 to January 2.

ARC 2909B No questions on amendments relating to block deer hunts.

MANAGEMENT DEPARTMENT Steve Ford represented the department.

ARC 2838B No questions on termination of the notice to adopt ch 11.

ARC 2872B Proposed ch 15 pertains to the local government innovation fund committee. Ford responded to McKinley's question regarding the sufficiency of an annual report by explaining that the committee has the flexibility to require additional reporting.

Management Department (continued)

McKinley encouraged results-oriented reporting and close monitoring of multi-year projects. Angelo suggested incorporation of a mechanism for recommending legislative changes when innovations may not be allowed by existing statutes.

PERSONNEL DEPARTMENT Gregg Schochenmaier represented IPERS.

ARC 2875B Schochenmaier reviewed the proposed amendments to ch 21 and noted that the adopted amendments will clarify that the "100 times" limit does not apply to postretirement death benefits. Connolly expressed concern about the adequacy of the death benefit when a member dies prior to the age of retirement, and Frevert noted a concern about how IPERS benefits may be handled in divorce settlements.

ADMINISTRATIVE SERVICES DEPARTMENT Carol Stratemeyer, Kenneth Paulsen, and Patrick Deluhery represented the department. Wayne Hansen of Control Installations of Iowa (CI3) was also present.

ARC 2885B Ch 105 consolidates three former chapters pertaining to purchasing and provides for electronic procurements. Deluhery asserted that the rules promote economic development in Iowa and offered a commitment to work with advocacy groups to resolve their concerns about sole-source procurements. Angelo made reference to a letter committee members received from CI3 which objects to sole-source purchasing; Deluhery responded that the particular situation cited by CI3 was a competitively bid master contract, not a sole-source procurement. Eichhorn voiced concern that there may be a potential for abuse in the invitation to qualify, master contract and sole-source procurement provisions. In response to McKinley's questions about bidding thresholds, Paulsen clarified that the process for bids, whether formal or informal, is competitive.

Hansen distributed a letter that indicated dissatisfaction on the part of those trying to do business with the state and requested a session delay on the rules. Deluhery contended that contracts for items identified by Hansen as sole-source procurements were competitively bid and commented that Hansen has indicated that these rules do not address the problems. Frevert asked Hansen to recommend a way to resolve his concerns. Gentry suggested that Hansen identify the rules that are problematic, and commented that the concerns may be beyond the scope of these rules. Redfern wondered if rapid changes in technology would make master contracts for software impractical. Eichhorn asked that the department proceed with the planned meeting with industry on November 19 to discuss concerns and stated that the committee would have the option of calling a special meeting or could take up the matter at the December meeting.

UTILITIES DIVISION Cecil Wright represented the board.

ARC 2883B No questions on the proposed amendments to ch 7 concerning capital infrastructure investments and cost of capital changes.

ARC 2882B No questions on proposed amendments to ch 19 pertaining to small volume gas transportation service.

WORKFORCE DEVELOPMENT DEPARTMENT Joe Bervid represented the department.

ARC 2880B No questions on amendments to ch 25 and 42.12(2)"j."

Committee business Minutes of the October 2003 meeting were approved. The next meeting was set for December 9 and 10, 2003. Senator Angelo welcomed Representative Huser on her return to the committee.

REVENUE DEPARTMENT David Casey and Alan Harding represented the department.

ARC 2879B No questions on amendments pertaining to the first-year depreciation allowance and research activities credit.

ARC 2878B No action on amendments to ethanol-blended tax credits provisions to include both fiscal-year and calendar-year filers.

ARC 2877B No action on investment tax credit for equity investment in qualifying business or community-based seed capital fund and the Iowa fund of funds. Casey reported that to date no certificates have been issued.

ARC 2876B No questions on proposed amendments related to endow Iowa tax credits.

ARC 2908B No questions on penalties for sale of cigarettes or tobacco products to persons under the age of 18.

ARC 2907B No action on proposed amendments to ch 77 concerning determination of value of utility companies.

PUBLIC SAFETY DEPARTMENT Mike Coveyou and Jim Kenkel represented the department.

ARC 2852B No action on amendments to ch 5 concerning exits.

ARC 2886B No action on fire safety rules for hospitals, licensed health care facilities and assisted living facilities. Kenkel clarified the rationale for requiring metal, rather than plastic, surge protectors.

INSPECTIONS AND APPEALS DEPARTMENT David Werning and Jean Davis represented the department. Other interested parties included state ombudsman Bill Angrick and IOMAD representative Ned Chiodo.

ARC 2862B No questions on a proposed exception to licensing requirements for nonprofit organizations that conduct bingo games.

ARC 2912B Davis outlined proposed amendments regarding registration of electrical and mechanical amusement devices. Heaton strongly suggested that counters be required on such devices in order to ensure that moneys are accurately reported; Davis responded that the department does not have statutory authority to require counting mechanisms. Chiodo indicated that definitions of "owners" and "distributors" have created a situation in which distributors also fall within the definition of owners; therefore, the rules intended to apply to distributors are unenforceable. Davis asserted that the definitions are consistent with statute and are applicable to the approximately 45 distributors in the state. Frevert encouraged the department and Chiodo to meet, cooperate and resolve differences; Gentry urged Chiodo to suggest alternative definitions that would resolve the concerns of Chiodo's clients.

ARC 2826B Amendments pertaining to prescription drugs in long-term care facilities were reviewed at the October meeting. Werning reported that the proposed amendments have been terminated and a study group has been established to address the issue. Troubled by a comment made at last month's meeting, Eichhorn asked that the department respond to an assertion that the deputy director asked parties not to comment at the ARRC meeting. Davis responded that the deputy director had communicated to a couple of associations that concerns could be raised at the public hearing or made directly to the department, but that the intention was not to interfere with first amendment rights or the rule-making process. Gentry indicated that the governor is committed to public participation; and after further conversations with the department and the Iowa Nurses Association, a determination will be made regarding any actions that need to be taken to ensure no further miscommunication. Eichhorn stressed that the committee meeting is open to the public, and the committee is willing to hear from those who wish to comment.

Angrick stated that Heaton asked the state ombudsman to investigate the incident and that a preliminary inquiry has been initiated.

HUMAN SERVICES DEPARTMENT Nancy Freudenberg, Mary Nelson, Eugene Gessow, and Jeanne Nesbit represented the department. Other interested parties included Karon Perlowski and Dana Cheek of Child and Family Policy Center, Mary O'Brien of Visiting Nurse Services, foster and adoptive parents Julie Cronk and Wendy Laurence.

ARC 2902B No action on amendments to implement the Health Insurance Portability and Accountability Act.

ARC 2839B No questions on amendments related to collection of overpayments.

ARC 2851B No actions on county applications for risk pool funding.

ARC 2850B No questions on the rescission of ch 39, mental illness special services fund.

ARC 2895B No questions on amendments to ch 53, rent subsidy program.

ARC 2894B No action on extension of limited Medicaid eligibility for expanded specified low-income Medicare beneficiaries.

ARC 2898B An amendment to 75.1(39)"b"(1) concerns Medicaid premiums for employed persons with disabilities. Freudenberg agreed to provide Heaton with eligibility requirements for the program.

ARC 2846B No action on amendments to ch 75 to 79, 84 and 88 regarding Medicaid participation by ARNPs. The department continues to work with providers on billing issues.

ARC 2903B No questions on on-line application for the HAWK-I program.

ARC 2845B Amendments to chs 77 to 79 and 83 add services to Medicaid HCBS mental retardation waiver and remove limitations on five-bed facilities. Carroll inquired about the range indicated in the fiscal analysis. Vermeer agreed to request information from the Iowa State Association of Counties to determine the amount counties are currently spending on the added services.

ARC 2844B Freudenberg reported that rules concerning crossover claims will need to be revised because CMS will not allow the 30 percent reimbursed hospitals by the department to be written off as Medicare bad-debt costs.

ARC 2843B No action on supplemental payments for physician services for Medicaid recipients at teaching hospitals.

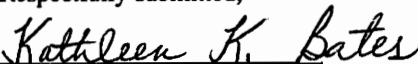
ARC 2899B No questions on amendments to ch 79 concerning payments to hospitals from the graduate medical education and disproportionate share fund.

ARC 2841B Amendments to ch 79 pertain to Medicaid reimbursement for prescription drugs. Gessow agreed to advise McKinley as to whether rebates and discounts were considered in establishing costs of prescription drugs. Carroll outlined the process for determining costs and commented that the listing of drugs seemed to be rather brief. Gessow responded that the department is exploring options for expanding the list within its legislative authority.

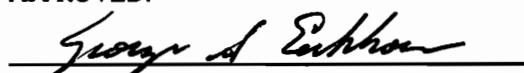
Human Services Department (continued)

- ARC 2842B No questions on implementation of a copayment for Medicaid services.
- ARC 2892B No questions on proposed amendments to ch 86, HAWK-I program.
- ARC 2840B Amendments to ch 100 extend the expiration date for child support parental obligation pilot projects. Nesbit gave Frevert written information about funded and unfunded projects.
- ARC 2849B No questions on criminal and child abuse record checks for licensing and registration of child care facilities.
- ARC 2900B Freudenberg outlined amendments intended to contain costs of the adoption subsidy program while achieving and maintaining permanence for children in foster care through adoption. The department received 68 written comments, and 77 people attended the public hearings. Freudenberg reported that existing subsidy agreements will be unchanged except that, for child care, the child care subsidy program, rather than the adoption subsidy program, will have to be accessed. Heaton voiced concern about the effect of the amendments on adoption of special needs children. Nelson noted that the department is working with the Iowa foster and adoptive parents association to provide information about resources available to families.
- Cronk expressed concerns about her family's financial ability to provide for the needs of their adopted and foster children without child care assistance. Laurence commented on the continued need for resources that have been provided for her three special needs children. Perlowski offered to work with the department to improve the future for children affected by the rules. O'Brien stated that the recommendations of the department's advisory committee do not represent the views of all advocacy groups concerned with the issues. Cheek raised questions about the specialized programs referenced in the rules. Huser noted that the state will be providing for these children in one way or another, and it would be better for the children to be placed in loving homes.
- Motion to delay Huser moved a 70-day delay so that the department can resolve these concerns. Carroll noted that the delay can be lifted when the committee is comfortable that all existing adoption subsidies are grandfathered. The department agreed to meet with concerned parties and resolve the issues.
- Motion carried The motion carried; the rules will be placed on the December agenda.
- ARC 2848B No questions on reimbursement rates for purchase of service providers and rehabilitative treatment and supportive services.
- ARC 2893B No action on proposed amendments to ch 170, child care assistance funding, pertaining to sanctions for fraud.
- ARC 2847B No questions on amendments regarding child care assistance eligibility for families with medically incapacitated parents.
- ARC 2896B No action on amendments to ch 176 concerning dependent adult abuse. Frevert expressed an interest in exploring the options for expenditures from the senior living trust fund.
- ARC 2897B No action on voluntary foster care placements.
- Committee business Angelo stated that Children and Family Services of Iowa has submitted a petition for rule making regarding audit procedures in group foster homes. A review will be scheduled for the December meeting.
- No departmental representative was requested to appear for a review of podiatry rules; however, Tom Fey and Kevin Kruse of the Iowa Podiatric Medical Society asked that the committee place ARC 2891B on the December agenda so that concerns about practitioners qualified to administer conscious sedation who have not submitted an attestation by January 1, 2005, can be addressed.
- Adjourned The meeting was adjourned at 4:45 p.m.

Respectfully submitted,


Kathleen K. Bates

APPROVED:


Chair George Eichhorn

Vice Chair Jeff Angelo