

**MINUTES OF THE AUGUST 2005 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 9, and Wednesday, August 10, 2005, in Room 116, State Capitol, Des Moines, Iowa.
- Members present:** Representative George Eichhorn, Chair, and Senator Paul McKinley, Vice Chair; Senators Jeff Angelo and John P. Kibbie; Representatives Danny Carroll, Marcella Frevert, and David Heaton. Senators Mary Lundby and Michael Connolly and Representative Geri Huser were excused.
- Also present:** Joseph A. Royce, Legal Counsel; Kathleen K. West, Administrative Code Editor; Gary Dickey Jr., Administrative Rules Coordinator; fiscal staff, caucus staff and other interested parties.
- Convened** Chair Eichhorn convened the meeting at 9:05 a.m.
- Fiscal report** Lisa Burk presented a report on licensure fees for health professions. Mary Beth Mellick summarized the LSA report of rules with a fiscal impact in excess of \$100,000. Noting that these figures are based upon certain assumptions, McKinley asked if LSA follows up to see if the projected fiscal impacts are actualized. Mellick agreed to find out about follow-up.
- ADMINISTRATIVE SERVICES DEPARTMENT** Carol Stratemeyer, Mark Johnson, Stephen Lindner, and Ken Paulsen represented the department.
- ARC 4291B** Amendments to ch 1 pertain to the department's organization and mission. In response to committee concerns about the emergency adoption and information on the department's Web site, which indicates that the department is expanding its customer base and offering new and additional services, Stratemeyer stated that the department does not intend to be competing in the private sector.
- ARC 4293B** No action on ch 45, which relates to payroll deductions for tuition program contributions. The treasurer's office has expressed concern about the effect the prohibition on solicitations will have on a similar program offered through the treasurer's office. McKinley suggested inclusion of an appeal process for termination decisions.
- ARC 4295B** No action on 105.7(1) regarding RFP postings on the department's Web site. McKinley asked to see the business plans for the four department enterprises.
- ARC 4289B** No action on amendments to ch 111 concerning disposal of state surplus property. Frevert suggested a regular posting of state surplus property.
- HUMAN SERVICES DEPARTMENT** Nancy Freudenberg and Mary Nelson represented the department. Other interested parties included Stacey Cyphert of the University of Iowa Hospitals and Clinics, Kim Piper of the department of public health, and Kim Schmett of the Coalition for Family and Child Services.
- ARC 4323B** No questions on amendments to clarify that there will be no hearing on appeal of a service termination when the department no longer offers the service.
- ARC 4395B** No action on amendments relating to resolution of legal settlement disputes.
- ARC 4322B** No questions on amendments pertaining to intergovernmental transfers in Medicaid.
- ARC 4321B** No questions on amendments relating to SSA eligibility.
- ARC 4320B** Amendments to chs 75 and 76 implement the Medicaid waiver for family planning services. Freudenberg confirmed that birth control would be available to persons under the age of 18 and agreed to check with the department of public health, which administers the program, regarding any safeguards to protect persons against abuses such as incest.
- ARC 4396B** No action on amendments to ch 75 regarding Medicaid eligibility. Freudenberg reported two changes from the Notice. Heaton requested additional information about drugs for persons in community-based corrections and correctional institutions.
- ARC 4319B** No questions on the annual update of statewide average costs and charges for nursing facility services.
- ARC 4397B** No action on limitation of Medicaid drugs, except for oral contraceptives, to a 30-day supply.
- ARC 4318B** No questions on increase in reimbursement rates for medical providers.
- ARC 4337B** No questions on termination of proposed amendments relative to Medicaid reimbursements for hospital care.
- ARC 4317B** No questions on amendments to ch 79 regarding claim processing for drug reimbursements.
- ARC 4316B** No questions on 79.1(13)"a" concerning copayments for Medicaid-covered drugs.

Human Services Department (continued)

ARC 4315B No action on amendments to ch 85 and adoption of ch 92, IowaCare. Cyphert distributed written comments, asked that details of agreements with DHS be included in the rules, and expressed concern about limitations on pharmaceutical and durable medical equipment services.

ARC 4314B No action on ch 91, Medicare drug subsidy.

ARC 4398B Freudenberg outlined amendments resulting from negotiations with CMS and implementation of the IowaCare program. Discussion related to provisions for self-declaration of income and resources.

ARC 4313B Amendments to chs 150 and 156 pertain to purchase of service and payments for foster care. Freudenberg explained the department's RFP to contract for guaranteed and nonguaranteed shelter care beds across the state with the intent of balancing provider needs for predictability of income with the state's need to provide shelter for children as close as possible to the children's homes. Schmett expressed the belief that the shelter care provisions are contrary to the intent of HF 825, which requires contracting for 288 beds, including 15 unallocated beds. Nelson stated that the department has contracts to guarantee 246 beds with the ability to contract at any time for an additional 91 nonguaranteed beds; Schmett maintained that payment for 273 beds should be guaranteed. Heaton requested a monthly report regarding shelter bed utilization.

ARC 4400B No questions on amendments to ch 170 pertaining to child care services.

ARC 4312B No questions on amendments to ch 175 concerning child protective services.

ARC 4324B No questions on amendments to ch 176 regarding report of dependent adult abuse evaluation.

ARC 4311B No questions on an amendment relating to access to dependent adult abuse information.

ARC 4310B No questions on amendments to ch 185 increasing RTSS reimbursement rates.

ARC 4402B No action on amendments relating to subsidized adoptions.

IOWA FINANCE AUTHORITY Dennis Dietz, Sharon Murphy and Carla Pope represented the authority.

ARC 4422B No action on proposed 19.1 and 19.2, state housing trust fund.

ARC 4405B No action on proposed ch 23, the transitional housing revolving loan program. Frevert asked that public hearing ICN sites include locations in NW Iowa.

ARC 4406B No questions on proposed ch 24, home and community-based services rent subsidy program.

PUBLIC HEALTH DEPARTMENT Barb Nervig, Kim Piper, Rita Gergely, Marnell Kretschmer and Don Callaghan represented the department.

ARC 4382B No questions on amendments to ch 4 concerning the center for congenital and inherited disorders.

ARC 4394B Amendments to ch 7 pertain to immunizations. Kretschmer reported that many public comments were received; most were supportive. Discussion related to provisional enrollment of transfer students pending the transfer of records, and exemptions from vaccination requirements for medical and religious reasons.

ARC 4381B No questions on corrective amendments to the lead hazard notification process.

ARC 4383B No questions on amendments to ch 73 concerning the WIC program.

ARC 4380B No questions on amendments to the scope of practice for EMS providers.

UTILITIES DIVISION David Lynch represented the Division. Other interested parties included Tom Feiler, Barbara Burnett and Nancy Boyd on behalf of Clipper Windpower, Stephen Dryden of Midwest Renewable Energy, and Terry Harmon of Alliant Energy.

ARC 4342B Lynch reported that there has been much interest in the wind energy and renewable energy tax credits; rule 15.18 sets out procedures for certification of eligibility for these tax credits. Boyd voiced concern that the rules setting out the procedures became effective prior to the effective date of HF 882 and distributed written materials summarizing concerns that five of the seven projects awarded under Iowa Code chapter 476B did not have a PPA and were indirectly owned by the same persons. Lynch responded that the statute allows for agreements other than PPAs; clarified that the rules are merely procedural and were adopted under existing authority; and stated that the rules were not implemented before the statute became effective on July 1, 2005. There was discussion about why the PPA requirement was included in the statute. Harmon clarified that the PPA gives lenders assurance that the energy will be purchased. Lynch added that the standard offer for qualifying facilities serves the same purpose. Lynch maintained that the statute did not direct the board to consider indirect ownership; but, based on public comments, the board could address the ownership issue. Lynch indicated that since the tax credits are available for ten years, hundreds of millions of dollars are at stake.

Request for Opinion Eichhorn suggested that the committee seek an opinion from the attorney general regarding the authority for the emergency rule. The committee may then consider whether to object to the emergency rule.

CORRECTIONS DEPARTMENT Michael Savala and Ann Brown represented the department. Other interested parties included David Spencer.

ARC 4403B Amendments to ch 38 pertain to the risk assessment for sex offenders who have committed a criminal offense against a minor. Spencer expressed concern about the risk assessment and the qualifications of the treatment staff at Mt. Pleasant. Brown commented that the curriculum used at Mt. Pleasant is being revised and that the clinical director of the program will be a psychologist.

PUBLIC SAFETY DEPARTMENT Mike Coveyou, Steven Conlon, Jerry Brown, and Maria Sides represented the department. David Spencer was also present.

ARC 4358B No action on amendments to ch 83 concerning the Iowa sex offender registry. Angelo commented that in Florida sex offenders must reapply for a driver's license every year, with the result that the state gets a current photograph and address every year. Spencer expressed the opinion that Iowa focuses undue attention on sex crimes.

ARC 4361B No questions on ch 156 which pertains to the DNA database.

RACING AND GAMING COMMISSION ARC 4391B was excused from review at this meeting.

DENTAL EXAMINERS BOARD Jennifer Hart represented the board.

ARC 4364B No questions on proposed amendments to ch 11 concerning local anesthesia permits.

ARC 4362B No action on proposed amendments relating to fees.

ARC 4363B No questions on amendments to rules governing dental assistants.

ENVIRONMENTAL PROTECTION COMMISSION Gene Tinker, David Wornson and Paul Nelson represented the commission.

ARC 4354B No action on termination of proposed amendments to ch 65 which were not in accord with recent legislation. The commission has been working with the industry and hopes to proceed with an emergency rule making.

ARC 4353B No action on proposed amendments to ch 136 pertaining to financial responsibility for underground storage tanks.

NATURAL RESOURCE COMMISSION Steve Derrmand, Kevin Szczodronski, Terry Little and Jeff Vonk represented the commission. Other interested parties included Laverne Schroeder of the Iowa Sportsmen's Federation.

ARC 4340B No questions on amendments to ch 40.

ARC 4349B No action on cabin rental fees at Stone State Park.

ARC 4351B No questions on amendments to increase the nonresident license quota for antlerless deer.

ARC 4352B No questions on wild turkey spring hunting.

ARC 4339B Amendments to ch 106 pertain to deer hunting by residents. Little distributed a summary of the amendments, the comments received and commission responses and reviewed steps that have been taken to reduce the deer herd. Department surveys have shown a need for additional efforts in southern Iowa; therefore, the department has added an additional antlerless only season in November and a special rifle season in the southern two tiers of the state in January. Royce noted receipt of four calls expressing concern about the rifle season; Little reported that the commission received a letter of support from Iowa Farm Bureau. On behalf of Iowa Sportsmen's Association, Schroeder expressed support for the rifle season. Kibbie asked that the department follow up with a report to the committee after this season. Vonk indicated that there is a need to double the number of nonresident deer licenses.

PHARMACY EXAMINERS BOARD Lloyd Jessen, Terri Witkowski, and Mike Seifert represented the board. Other interested parties included Senator Jack Hatch, Marty Ryan of the Iowa Civil Liberties Union, Frank Severino on behalf of the Polk County Medical Society and the Iowa Osteopathic Medical Association, and Karla Fultz McHenry on behalf of the Iowa Medical Society.

ARC 4365B No action on amendments related to fees.

ARC 4307B Proposed ch 13 provides for an electronic drug database program. Jessen reported that the board received a federal grant and a supplemental grant from the U.S. Department of Justice to establish a prescription monitoring program. Jessen distributed copies of the National All Schedules Prescription Electronic Reporting Act of 2005 (NASPER) and indicated that about 20 states have established this type of program. Jessen noted that the board is interested in continuing to meet with concerned parties and advised the committee that Iowa's program would differ from NASPER by including medications which contain pseudoephedrine. While members recognized a potential benefit to having electronic access to medical information in life-threatening situations, they also expressed concern about the security of data, confidentiality of a person's medical records, the board's implementation by rule of a program that failed to receive the support of the legislature, and costs of implementation. Senator Hatch distributed and read written comments in opposition to the rules proposed by the board. McHenry reported that the Iowa Medical Society has submitted written comments expressing strong concerns. In expressing concern about privacy issues, Ryan cited examples of breaches of security of government databases. Severino stated that the Polk County

Pharmacy Examiners Board (continued)

Medical Society and the Iowa Osteopathic Medical Association have submitted written comments in opposition to the rules. Jessen clarified that the database is intended to collect data about Schedules 2 through 5 controlled substances only.

WEDNESDAY, AUGUST 10, 2005

EMPOWERMENT BOARD, IOWA Shanell Wagler represented the board. Other interested parties included Palo Alto-Kossuth Empowerment Board members Ellen Picray and Erv Rowlands. Sheila Hansen of Every Child Counts was also present.

Special review Frevert requested a special review of an empowerment board program. Picray and Rowlands related difficulties encountered this year in their attempts to secure scholarships for at-risk children and indicated that the number of children served this year will drop from 67 to 7. Wagler responded that, in an attempt to improve quality, this year the empowerment board requires that preschools take steps to become nationally certified in order to receive scholarship funds. Heaton reminded Wagler that the intent of the legislature was to assist low-income parents with preschool tuition. In response to Kibbie's inquiry about when the committee will see the rules for this program, Wagler indicated that the board has not adopted rules. Discussion related to the need for rules and implementation of a policy change which had the support of the governor, but not the legislature. Royce advised the board to adopt rules as soon as possible. Hansen commented that high-risk children might need more intense programs and longer care.

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF Melanie Johnson, Mike Fastenau, and Cali Beals represented the department.

ARC 4374B No action on amendments to ch 1.

ARC 4370B No action was taken on ch 2, grow Iowa values fund assistance. Discussion related to calculation of the county average wage, provisions for waiver, and requirements for reporting by universities and community colleges. Angelo asked that a public hearing be scheduled in Osceola, Creston, or Corning.

ARC 4368B No action on amendments to chs 7, 9, and 20. McKinley suggested that the rules specify the information required to be included in progress reports.

ARC 4413B No questions on proposed ch 31, economic development region initiatives.

ARC 4414B No action on proposed ch 32, tax credits for economic development region revolving loan fund.

ARC 4415B No action on proposed 47.2 to 47.5 concerning the endow Iowa grants program.

ARC 4416B No questions on proposed amendments to ch 47.

ARC 4371B No questions on amendments to the CEBA program.

ARC 4372B No action on amendments to the new jobs and income program, new capital investment program, and high quality jobs creation program. McKinley suggested that provisions regarding pension plans include stock and that mining be included as a targeted industry.

ARC 4418B No action on proposed amendments to the enterprise zone rules, ch 59.

ARC 4373B No action on ch 69, loan and credit guarantee program. McKinley expressed the view that the fee of 2.5 percent of the guaranteed amount is too high and will inhibit participation of small business.

ARC 4412B No questions on 168.201 to 168.203 concerning wage thresholds calculation. McKinley posed several questions about the programs as a whole and requested additional information about targeted areas for growth, about instances in which wage requirements have been waived and about the number of new jobs that have actually been created, as opposed to the number pledged.

INSPECTIONS AND APPEALS DEPARTMENT David Werning and Jean Davis represented the department. Other interested parties included Bill Wohlers, Jack Woods, and Larry Elbert of IOMA.

ARC 4385B No questions on amendments to ch 51, hospitals.

ARC 4384B No questions on amendments to ch 57, residential care facilities.

ARC 4386B No action on amendments to ch 58, nursing facilities.

ARC 4377B Werning outlined changes made in response to comments received on amendments affecting electrical and mechanical amusement devices, including provisions relating to reporting, confidentiality, and counting mechanisms. Davis reviewed fees paid by owners, distributors, and manufacturers, as well as the fees assessed each machine.

Wohlers expressed appreciation to the department for responding to industry concerns, but objected to rule 105.10, reporting requirements. Wohlers contended that data is already being provided to the department of revenue for each location, and it would be too burdensome for the industry to have to also report to the department of inspections and appeals regarding each machine. Davis responded that the statute requires a counting device on each machine and the report to the department twice a year is intended to ensure that the counting device is in working order. There was

Inspections and Appeals Department (continued)

discussion about whether the legislature intended the information to be provided by means of regular reporting to the department or through audit by the department.

Woods indicated that the association requested a regulatory analysis which the department has not provided. Elbert stated that reporting by location is problematic because machines get moved among locations.

Motion to delay Kibbie moved a 70-day delay on rule 105.10.

Motion failed The motion to delay did not pass.

NURSING BOARD Lorinda Inman represented the board. Other interested parties included Linda Goeldner of the Iowa Nurses Association.

ARC 4305B No questions on amendments providing for criminal history background checks for RNs and LPNs.

ARC 4304B The amendment to 3.1 increases the licensure fee for RNs and LPNs. Goeldner commented on the inequity of this board's funding. In light of the fact that the board intends to implement the new fees in September, Eichhorn asked the board to review what will happen in terms of refunds if the legislature increases funding to 90 percent rather than 75 percent of the revenue generated by fees.

REVENUE DEPARTMENT Dick Stradley and Jim McNulty represented the department.

ARC 4306B No questions on amendments to ch 76 regarding assessment of railroad property.

ARC 4408B No questions on individual and corporate income tax reporting, tax credits and deductions.

ARC 4407B No questions on proposed soy-based cutting tool oil tax credit.

REGENTS BOARD Susan Anderson and Andrea Anania represented the board, and Paul Tanaka represented Iowa State University. Other interested parties included Ames citizen Jon Shelness.

ARC 4284B No questions on sanctions for parking violations.

ARC 4345B Amendments to ch 9 pertain to prohibited personal conduct and consequences related to participating in riots, unlawful assemblies and failure to disperse at university-sponsored events. Shelness expressed criticism of ISU's handling of student behavior and challenged the university to institute management practices to identify leaders. Tanaka noted the difficulty of determining leadership in a crowd that may include 26,000 students and thousands of visitors. Anderson summarized public comments received by the board, and Tanaka reported that ISU is hosting a national forum that will involve community leaders, law enforcement and students.

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT Ron Rowland, Mike Bevins and Mary Jane Olney represented the department. Other interested parties included Lori Sokolowski of the Iowa Farmers Union, Susan Roberts of the Drake Agriculture Law Center, Carlene Russell of the department of elder affairs, and Kari Carney of Iowa Citizens for Community Improvement(CCI).

ARC 4285B Bevins identified changes made in response to comments received on the WIC and senior farmers market nutrition rules. The department has since been notified that USDA did not approve any of the changes, and the department must resubmit a plan by November 15, 2005. Carney expressed appreciation for the department's efforts to increase access, but indicated that farmers markets are better venues than moveable farmstands and CCI wants to work with the department on revising the rules. Russell expressed concern that the federal rules may require verification of income instead of self-declaration. Sokolowski supports certified farmers markets and expressed concerns about farmstands. Roberts commended IDALS and, expressing concern about possible income verification requirements for seniors, offered to work with the department on revisions for the USDA.

Committee business The minutes of the July 2005 meeting were approved.
The next meeting will be held Tuesday, September 13, 2005.

Royce suggested that the committee consider legislation to change the period for requesting a regulatory analysis from 32 days to 70 days.

Eichhorn was elected chair of the committee; Kibbie was elected vice chair.

Adjourn The meeting was adjourned at 12:45 p.m.

Kathleen K. West
Kathleen K. West

APPROVED:

George D. Eichhorn
Chair George Eichhorn

John P. Kibbie
Vice Chair John P. Kibbie