

**MINUTES OF THE FEBRUARY 2007 MEETING
OF THE
ADMINISTRATIVE RULES REVIEW COMMITTEE**

Date of meeting: A special meeting of the Administrative Rules Review Committee (ARRC) was held Friday, February 2, 2007, in Room 116, State Capitol, Des Moines, Iowa.

Members present: Senator John P. Kibbie, Vice Chair; Senators Michael Connolly, Thomas Courtney, Paul McKinley, and James Seymour; Representatives Marcella Frevert, David Heaton, David Jacoby, and Philip Wise. Representative Linda Upmeyer was not present.

Also present: Joseph A. Royce, Legal Counsel; Kathleen K. West, Administrative Code Editor; Deborah Svec-Carstens, associate counsel in the office of the Administrative Rules Coordinator; fiscal staff, caucus staff and other interested parties.

Convened Sen. Kibbie convened the meeting at 8:05 a.m.

Committee business Sen. Kibbie welcomed new committee members and Ms. Svec-Carstens and asked for nominations for committee chairperson. Sen. Connolly nominated Rep. Wise for chairperson. No other nominations were forthcoming; Rep. Wise was elected. Rep. Frevert moved approval of the minutes of the January meeting; the motion carried.

The next meetings were scheduled for March 2, 2007, and April 13, 2007.

Fiscal report Sue Lerdal presented the LSA report on rule makings that may have a significant fiscal impact.

HUMAN SERVICES DEPARTMENT Nancy Freudenberg, Jennifer Vermeer, and Anita Smith represented the department. Other interested parties included Shelly Chandler of the Association of Community Providers, Lynn Ferrell of Polk County Health Services, Linda Hinton of the Iowa State Association of Counties (ISAC) and Marty Ryan of the American Civil Liberties Union (ACLU).

ARC 5646B No questions on amendments to chs 51 and 52 to implement the annual adjustments to the eligibility and payment levels for the SSA program.

ARC 5647B Amendments to ch 75 provide for Medicaid coverage for young adults who are leaving foster care. Sen. Kibbie commented on the merits of the program.

ARC 5648B The amendments to ch 76 clarify Medicaid's estate recovery policy. Sen. Courtney asked about exceptions when there are dependents in the home and requested additional information about recovered assets. Ms. Vermeer explained that the Deficit Reduction Act requires estate recovery; the state retains one-third and remits two-thirds to the federal government.

ARC 5650B Amendments to implement home- and community-based habilitation services are intended to replace the former adult rehabilitation option (ARO) for persons with chronic mental illness. Ms. Freudenberg reported on the participation of ISAC, providers and CPCs in developing the program and indicated that commenters have asked the department to adjust the rates. Committee discussion related to the nonfederal share of the cost of services and its fiscal impact on counties. Ms. Chandler expressed appreciation for the opportunities for stakeholder involvement, but voiced concerns that some persons covered under ARO will not be covered under the new program and that proposed rates are below actual costs. Mr. Ferrell asked that clubhouses certified by the International Center for Clubhouse Development be eligible for reimbursement, that counties be involved in rate setting, that provisions relating to county financial responsibility include a reference to the definition of chronic mental illness, and that provisions regarding targeted case management be revised to require that services be accessed through the managed care contractor. Ms. Hinton commented that as funders of services, counties believe greater oversight in management of the program is needed. Ms. Hinton expressed the view that the new program will not cover all people and all services that were covered under ARO and predicted that services that are not mandated may be cut.

Motion to refer Sen. Kibbie moved a referral of this rule making to the general assembly.

Motion carried The motion carried.

ARC 5665B No action on proposed amendments to the infant and toddler program requirements for meetings between families and the service coordinator.

ARC 5661B No action on a proposed amendment regarding health insurance data match for the HAWK-I program. Ms. Smith clarified circumstances, such as the exception for geographic access, under which a child with insurance coverage may be eligible for HAWK-I. Sen. Courtney asked that the department explore the possibility of recovery of the HAWK-I premium when such an exception is granted.

ARC 5666B No questions on proposed provisions regarding child welfare case plans.

ARC 5651B No questions on amendments to implement child welfare remedial services.

ARC 5699B No questions on proposed ch 172, family-centered child welfare services.

Human Services Department (continued)

ARC 5653B Amendments to ch 176 give department protective service supervisors the authority to approve extensions of time for completion of dependent adult abuse reports. In addition, the rules reference the Iowa Code provisions regarding access to dependent adult abuse information and clarify when the department will not release the identity of the person who made the report of dependent adult abuse. Mr. Ryan stated that although the department did respond to the comment submitted by the ACLU, the legislature needs to resolve conflicting provisions in Iowa Code sections 235B.6 and 235B.10 to preserve the criminal defendant's sixth amendment right to confront witnesses against him.

Motion to refer Rep. Frevert moved a referral of Iowa Code sections 235B.6 and 235B.10 to the general assembly.

Motion carried The motion carried.

ARC 5672B No questions on proposed amendments pertaining to qualifications for providers of family-centered parental counseling and education services.

Special review Rep. Frevert reported that her questions regarding treatment of assets for determining Medicaid eligibility have been resolved. Ms. Freudenberg clarified eligibility for the mandatory coverage groups and optional coverage groups.

ECONOMIC DEVELOPMENT DEPARTMENT Melanie Johnson and Laura Stein represented the department. David Smitherman represented the renewable fuel infrastructure board.

ARC 5662B No action on proposed amendments to the entrepreneurial ventures assistance program. Discussion related to access to the business accelerators and other IDED-recognized entrepreneurial development organizations.

ARC 5689B No questions on proposed amendments to ch 168 to align contract-signing requirements with the 120-day period established for the grow Iowa values fund.

ARC 5663B The proposed amendments to the renewable fuel infrastructure program pertain to the duration of the contract and repayment or waiver. Rep. Wise asked about the criteria for granting a waiver; Ms. Johnson responded that the board intends at first to consider requests on a case-by-case basis and then adopt criteria based on experience. Members discussed the roles of the IDED board and the renewable fuel infrastructure board (board), the statutory composition and gubernatorial appointment of the voting members of the board, and when waiver criteria should be in place. Members agreed that they do not want to prevent the program from being implemented, but they do want the board to develop criteria for granting waivers.

Motion to refer Sen. Courtney moved a referral of 314.5(4) to the general assembly.

Motion carried The motion carried.

Motion Sen. Connolly made a motion that the committee send a letter to the board and the IDED board regarding the need for waiver criteria and that a progress report be presented at the April meeting.

Motion carried Mr. Royce will draft a letter for the committee's approval.

Mr. Smitherman commented on the background and integrity of each member of the board and advised the committee of the progress the board has made to carry out their statutory charge and implement the program. The three-year contract approved by the board was extended by the IDED board to five years; Mr. Smitherman indicated that businesses may not be willing to risk signing a five-year contract if there is not flexibility regarding waivers. Rep. Wise asked that the letter accompanying the contracts specify a date by which the signed contract should be returned.

Sen. Connolly reiterated his concerns about the structure of the board and the lack of specific criteria for a waiver.

ENVIRONMENTAL PROTECTION COMMISSION Theresa Stiner, Jim McGraw, Chuck Corell, Wendy Rains, Gene Tinker, and Alex Moon represented the department.

ARC 5635B No questions on amendments to ch 11 regarding a tax exemption for property used to process waste glass products.

ARC 5694B No questions on the proposed permit exemption for mobile agricultural and construction internal combustion engines.

ARC 5695B No questions on proposed amendments to ch 22 concerning sources subject to BART requirements for regional haze regulations.

ARC 5692B No questions on proposed statewide ambient air quality standards.

ARC 5637B No questions on amendments to fees for public water supply systems.

ARC 5638B No action on proposed sanitary sewer extension construction permits. Mr. Correll noted that letters explaining this proposed amendment were sent to the Iowa Water Pollution Control Association, the Iowa Association of Municipal Utilities, the Iowa League of Cities, the American Council of Engineering Companies, and the department of economic development; no comments were received.

ARC 5636B No questions on proposed amendments to ch 65 limiting land application of manure, process wastewater or settled open feedlot effluent.

Environmental Protection Commission (continued)

- ARC 5639B No questions on amendments to ch 67 to reflect federal changes regarding land application of sewage sludge.
- ARC 5630B No questions on a proposed amendment pertaining to certification of public water supply and wastewater treatment system operators.
- ARC 5643B No questions on ch 118, discarded appliance demanufacturing.
- ARC 5633B No action on proposed amendments pertaining to sanitary landfill financial assurance.
- PUBLIC HEALTH DEPARTMENT** Barb Nervig and Bob Kerk sieck represented the department.
- ARC 5676B No questions on amendments to ch 1 concerning issuance of investigatory subpoenas.
- ARC 5682B No questions on proposed amendments to radiation rules in chs 38 to 42, 44 and 46.
- ARC 5683B Proposed amendments combine two existing chapters into a new ch 80, local public health services, and rescind ch 83, the Iowa senior health program. Sen. McKinley suggested that the definition of "administrative expenses" be more specific.
- ARC 5675B No questions on ch 109, which implements the prescription drug donation repository program. Rep. Heaton questioned the accuracy of LSA's fiscal analysis; Ms. Nervig agreed to follow up.
- ARC 5677B No questions on ch 113 concerning public health response teams.
- ARC 5678B No questions on amendments to rules of the state medical examiner pertaining to tissue retention and disposal.
- ARC 5679B Testing fees for emergency medical care certification were increased. Ms. Nervig reported that the fee is to be paid once, rather than each time the examination is attempted, and she agreed to report back about the use of the fee.
- ARC 5680B No questions on amendments to ch 141, the love our kids grant program.
- ARC 5681B No action on the new designation for neonatal intensive care units.
- ARC 5684B Proposed ch 162 provides for licensure of problem gambling treatment programs. Sen. McKinley suggested reconsideration of the requirement in 162.20(6)"b" for an affirmative action plan for hiring members of protected classes.

REVENUE DEPARTMENT David Casey and Dick Stradley represented the department. Other interested parties included Jim Maloney, Polk County Assessor; Greg Lynch, Ames City Assessor; Matt Randall of Randall Corporation in Ames; Dan Clark of Willow Creek Golf Course; Bill Greazel, Johnson County Assessor; and Dave Ellis of the Iowa State Association of Assessors.

- ARC 5643B No questions on the interest rate for 2007.
- ARC 5642B No action on amendments to implement 2006 legislation regarding individual income tax, and withholding, corporation and franchise tax.
- ARC 5678B No action on amendments to individual and corporate income tax.
- ARC 5686B No action on amendments to establish priority for application of the 32 tax credits.
- ARC 5644B No questions on amendments to chs 67, 68, 82, and 83 concerning taxation of motor fuel, cigarettes and tobacco.
- ARC 5685B Amendments to chs 71 and 80 pertain to property assessments. At the request of Mr. Casey, Mr. Stradley of the property tax appeal board explained each of the amendments, noting that the amendment that has generated the most interest is in regard to valuation based on current use rather than potential use, also known as "highest and best use."
- Mr. Maloney expressed concern that the rule does not accomplish the purpose of uniformity and that it gives preference to some uses of property, for example, golf courses. Mr. Lynch suggested that the Iowa Code should specify the basis for property valuation and referenced a court case in which "highest and best use" was upheld. Mr. Stradley disagreed with Mr. Lynch's interpretation of the case referenced. Mr. Randall supported the rule and expressed concern that assessors have not practiced uniformly. Mr. Clark commented that a property owner, not the assessor, should have the right to determine how the property will be used. Mr. Greazel stated that rules need to be very specific because vagueness results in litigation. One concern that Mr. Greazel raised was in regard to valuation of animal confinement operations. Mr. Ellis expressed the support of the association for the rules.
- Mr. Casey reported that the director of the department is in full support of the rules and noted that the attorney general's office reviewed and approved the rules prior to their adoption. Mr. Stradley commented that these rules are consistent with long-standing department policy and explained that property is assessed annually according to its use; if the use changes, the next assessment will reflect the change. The committee took no action.

FEBRUARY 2, 2007

Adjourned

The meeting was adjourned at 12:06 p.m.

Respectfully submitted,

Kathleen K. West
Kathleen K. West

APPROVED:

Philip Wise
Chair Philip Wise

John P. Kibbie
Vice Chair John P. Kibbie