

# MINUTES OF THE AUGUST 2004 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 10, and Wednesday, August 11, 2004, in Room 116, State Capitol, Des Moines, Iowa.

**Members present:** Representative George Eichhorn, Chair, and Senator Paul McKinley, Vice Chair; Senators John P. Kibbie and Mary Lundby; Representatives Danny Carroll, Marcella Frevert, David Heaton and Geri Huser. Senators Michael Connolly and Donald Redfern were excused.

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

**Convened** Chair Eichhorn convened the meeting Tuesday, August 10, 2004, at 9 a.m.

**PROFESSIONAL LICENSURE DIVISION** Pierce Wilson represented the division, and Ed Friedmann represented the board of physician assistant examiners. Other interested parties included Denise Hill of the Iowa Medical Society, Kathie Lyman of the Polk County Medical Society, Leah McWilliams of the Iowa Osteopathic Medical Association, Jennifer Davis of the Iowa Academy of Family Physicians, Kent Nebel of the board of medical examiners, Lorinda Inman of the board of nursing, Lynn Boes and Linda Goeldner of the Iowa Nurses Association, Sheryl Puderbaugh of the Iowa Association of Nurse-midwives, Karla McHenry of the Iowa Medical Society, nurse practitioner and physician assistant Linda Ruble, Jenny Tyler of the Iowa Association of Nurse Anesthetists, and Libby Coyte of the Physician Assistants Society.

**ARC 3345B** Wilson reported that since imposition of a 70-day delay at the June 2004 ARRC meeting, the department and the governor's office have been researching legal issues, the board of physician assistant examiners met July 21, and a meeting with constituent organizations scheduled for August 4 was canceled and rescheduled for August 18. Gentry agreed to ask Representative Boddicker to clarify the intent of HF 628 and asked the committee to defer action until after the August 18 meeting.

Eichhorn encouraged interested parties to submit written comments to the committee. Hill summarized the serious concerns shared by the Iowa Medical Society, the Polk County Medical Society, Iowa Osteopathic Medical Association, the Iowa Academy of Family Physicians, the board of medical examiners, the Iowa Nurses Association, the board of nursing, and the Iowa Association of Nurse-midwives and requested a session delay. Tyler stated that CRNAs agree with the concerns expressed by the other medical associations and supported the request for the session delay.

Ruble, a nurse practitioner and physician assistant, voiced support for the amendments, and Coyte expressed the opinion that the amendments do not expand the scope of practice. Puderbaugh emphasized the importance of ensuring that medical practitioners operate within the scope of their practice.

Carroll and Kibbie asked that a special telephonic meeting be scheduled for Monday, August 23, 2004, at 9 a.m.

**REGENTS BOARD** Pam Elliott represented the board.

**ARC 3433B** Royce noted that statute requires inclusion of specific fees in rules and suggested an emergency rule making to include the fees. Elliott agreed to insert the admission fees in the rules.

**ENVIRONMENTAL PROTECTION COMMISSION** Jim McGraw, Brent Parker, Mel Pins and Gene Tinker represented the commission. Other interested parties included Joe Johnson of the Iowa Farm Bureau Federation, Kari Carney of Iowa Citizens for Community Improvement, and Rich Leopold of the Iowa Environmental Council.

**ARC 3515B** No questions on proposed amendments relating to air pollution.

**ARC 3516B** No action on amendments pertaining to nonpublic water supply wells and well contractor certification.

**ARC 3517B** Amendments to ch 65 incorporate a phosphorous index. Materials were distributed which summarize record-keeping requirements relating to manure management plans. Discussion concerned the livestock producer's access to records of crop producers regarding use of commercial fertilizer and the livestock producer's liability for noncompliance with manure management plans in the event of overfertilization. Tinker explained that the commission can enforce the livestock producer's manure management plans, but has no authority to regulate the crop grower's use of commercial fertilizers.

Johnson expressed Iowa Farm Bureau's concerns about 65.17(13)"e" and 65.17(17)"g" and willingness to work with affected stakeholders to find a solution.

**Environmental Protection Commission (continued)**

Carney expressed support for the rule and encouraged careful record keeping and communication to avoid overapplication of fertilizer. Leopold noted that the information required by the rule is necessary to meet the objective of ensuring clean water.

Motion to delay Kibbie moved a 70-day delay on 65.17(13)"e."

Motion failed The motion to delay did not carry. [See Wednesday, August 11 for motion to reconsider.]

ARC 3518B No action on amendments to ch 137, Iowa land recycling program and response action standards.

**NATURAL RESOURCE COMMISSION** Richard Bishop, Steve Dermand, and Dale Garner represented the commission.

ARC 3488B No action on proposed amendments to ch 40 regarding no-wake zones at Green Island and Lake Odessa State Wildlife Areas.

ARC 3491B No action on boat motor regulations on Banner Lakes at Summerset State Park in Warren County.

ARC 3487B Bishop noted that the proposed amendment prohibiting trespass on the Middle River Wildlife Area in "Allamakee County" should have been for "Warren County."

ARC 3489B No questions on proposed 105.4(1)"i" relating to adults accompanying youth on special educational hunts.

ARC 3492B No action on amendments to ch 106 to increase deer hunting in Iowa. Frevert suggested allocation of additional licenses for Palo Alto County.

**NATURAL RESOURCES DEPARTMENT** Ross Harrison represented the department.

ARC 3490B No action on ch 11, Iowa nature store. Harrison agreed to McKinley's request for sales and inventory records to be shared with the committee.

On another topic, Kibbie noted that the public safety on Lake Okoboji is jeopardized by DNR patrol boats that are out of service and in need of repair.

**MEDICAL EXAMINERS BOARD** Kent Nebel represented the board.

ARC 3565B No questions on amendments pertaining to fingerprint packets and fees.

ARC 3564B No questions on proposed increase in renewal and reinstatement fees.

ARC 3566B No action on proposed increase in requirements for licensure of foreign-trained physicians. The amendments bring Iowa's standards in line with those of other states and allow additional time for adjustment to cultural and language differences.

**Committee business** The minutes of the July 2004 meeting were approved.

The September meeting was set for Tuesday, September 14 (and Wednesday, September 15, if necessary).

**PUBLIC HEALTH DEPARTMENT** Dawn Mouw, Heather Adams, Holly Hanson, Rita Gergely, Judy Naber, Jill France and Judy Solberg represented the department. Denise Hill of the Iowa Medical Society was also present.

ARC 3575B Amendments to ch 4 pertain to the center for congenital and inherited disorders. Discussion related to the department's authority to collect a fee for newborn screening and the department's use of the fee. Adams asserted that this fee differs from other fees and is necessary to operate the program mandated by the legislature; Eichhorn requested background information to clarify how this fee differs from other fees.

ARC 3571B No action on proposed amendments to ch 11 pertaining to the AIDS drug assistance program. Heaton advised the department to ask for a state match for supplemental funding.

ARC 3574B No questions on ch 68 concerning control of lead-based paint hazards.

ARC 3576B No action on amendments to ch 73 relating to the special supplemental nutrition program for women, infants and children.

ARC 3577B No action on amendments to ch 88, volunteer health care provider program.

ARC 3572B No questions on proposed 96.4 concerning fees for vital records.

ARC 3573B Proposed amendments to ch 202 pertain to the certificate of need program. Huser suggested that the department consider one of the other established regional groupings rather than counties in considering relocations and replacement of health facilities. Hill commented that Item 3 may be a concern for physicians.

- AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT** Ron Rowland and Dr. John Schiltz represented the department. Judy Collora of the farm deer council was also present.
- ARC 3534B Rowland reported that the department has met with the farm deer council and has applied to the USDA, which may have funding for one-year grants for CWD programs. Rowland asked the legislature to address the issue since the federal grant, if received, will fund the program for this year only. Gentry encouraged the department to also check with the department of management regarding any executive branch options. Frevert asked that the committee be advised regarding USDA funding. Lundby suggested that if the USDA grant is not forthcoming, the matter be placed on the September agenda. Expressing appreciation to the department and the committee as well as concern that the federal grant may not be sufficient, Collora explained the need for timely reinstatement of the program.
- ARC 3469B No questions on proposed amendments to dairy rules, ch 68.
- RACING AND GAMING COMMISSION** Jack Ketterer represented the commission.
- ARC 3449B No action regarding proposed amendments to implement HF 2302. McKinley requested a letter from the commission to clarify that buying contracts at a casino would not preclude an Iowa company from consideration. McKinley asked Ketterer to find out whether the commission has the authority to adopt a rule whereby a gambler's family members could exclude the gambler from a casino.
- ARC 3448B Rule 1.6, which limits the number and location of racetracks and excursion boats, is proposed to be rescinded. Ketterer noted that the commission requests that the socioeconomic impact study that the legislative council requested by July 1, 2005, be expedited as the information would be helpful in the commission's consideration of licensing requests. Kibbie emphasized that there was no legislative mandate for the commission to defer licensing decisions until after completion of the study.
- PUBLIC SAFETY DEPARTMENT** Mike Coveyou, Steve Conlon, Jim Kenkel, Joe Diaz, and Randy Novak represented the department. Also present was Susan Judkins of the Iowa League of Cities.
- ARC 3549B No action on amendments to ch 8 pertaining to the sex offender registry.
- ARC 3507B No questions on amendments to ch 23 concerning closed circuit surveillance on excursion gambling boats.
- ARC 3482B Proposed amendments to ch 54 establish training standards for fire fighter certification. Judkins provided copies of comments from the public hearing and asked for the opportunity to work with the department on issues related to costs, definitions, number of trainers, and liability. Frevert highlighted the need for well-trained, qualified volunteer fire fighters. Novak reported that training will be offered evenings and weekends throughout the state.
- Motion Carroll made a motion to request a regulatory analysis, including budget impact and a review by the insurance division.
- Huser stated that the legislation required that every type of fire service be represented on the council and noted that safety was the primary concern as well as insurance premiums, which are affected by the fire service available in the community.
- Motion carried The motion passed on a vote of 6 to 1. The regulatory analysis must be published in the Bulletin 20 days before the department can adopt the rules.
- ARC 3481B No action on proposed amendments to ch 55 regarding regional training facilities and two new sources of revenue for the fire fighter training and equipment fund: sale of fire fighter plates and income tax checkoff.
- ARC 3479B No questions on amendments to ch 59 regarding line-of-duty death benefits.
- HUMAN SERVICES DEPARTMENT** Nancy Freudenberg represented the department. Susan Cameron of the Iowa Health Care Association and Kristie Oliver of the Iowa Association of Homes and Services for the Aging were also present.
- ARC 3547B No questions regarding appeal hearings for subjects of child or dependent adult abuse reports.
- ARC 3466B No questions on amendments to rescind the truancy rule in the FIP program and to disregard one vehicle per household in determining FIP and food assistance eligibility.
- ARC 3486B Notice to amend ch 36 to provide for the quality assurance assessment for nursing facilities is terminated; the simultaneously filed emergency rules remain in place. The department is awaiting approval from CMS and will renote the rules when approval is received. Cameron stated that the provider community supports the quality assurance assessment and fee and also asked that the legislature extend the deadline set for CMS approval. Oliver echoed support and indicated that the profession is willing to work with the department and the legislature to extend the sunset provision.
- ARC 3510B No action on amendments relating to the FIP and PROMISE JOBS programs.
- ARC 3579B No action on proposed Medicaid premium increase for employed persons with disabilities.
- ARC 3468B No action on proposed change in payment provisions for employed persons with disabilities.

**Human Services Department (continued)**

- ARC 3580B Proposed amendments to chs 75 and 76 provide for a Medicaid waiver for family planning services. Freudenberg clarified that funding is 10 percent state and 90 percent federal and that abortion is not included.
- ARC 3465B No questions on the annual update of statewide average costs of nursing facility, ICF/MR, and mental health institute care.
- ARC 3546B No questions on 76.13, health insurance data match program.
- ARC 3464B No questions on the Medicaid waiver for day habilitation services for persons with mental retardation.
- ARC 3462B No questions on amendments to ch 79 relating to Medicaid reimbursement methodology.
- ARC 3463B No questions on amendments pertaining to Medicaid reimbursement for nursing facility services.
- ARC 3461B No action on amendments relating to Medicaid reimbursement for hospital care at the University of Iowa.
- ARC 3509B No action on amendments to ch 86, the HAWK-I program.
- ARC 3508B No questions on proposed amendment to HAWK-I rules relating to selection of plan.
- ARC 3578B No questions on proposed amendments to ch 95 concerning offset against federal income tax refunds and federal nontax payments to recover delinquent child support.
- ARC 3460B No questions on 110.10(2) regarding child development homes.
- ARC 3459B No action on continuation of rates for purchase of social service contracts and rehabilitative treatment and supportive services contracts.
- ARC 3458B No questions on amendments to ch 153 relating to the state payment program for services to adults with mental illness, mental retardation, and developmental disabilities.
- ARC 3457B No questions on proposed amendments to ch 201 concerning subsidized adoptions.

**Wednesday, August 11, 2004**

**Members present:** Representative George Eichhorn, Chair, and Senator Paul McKinley, Vice Chair; Senators John P. Kibbie and Mary Lundby; Representatives Danny Carroll, Marcella Frevert, David Heaton and Geri Huser. Senators Michael Connolly and Donald Redfern were excused.

**EDUCATION DEPARTMENT** Carol Greta represented the department.

- ARC 3473B No action on amendments to ch 17, open enrollment. Greta stated that the definitions of "sibling" and "multiple attendance centers" were clarified.
- ARC 3474B Amendments to ch 33 pertain to educating the homeless. Carroll noted that the rules may need to be revised to include transportation of preschoolers. McKinley pointed out that no state law requires this additional burden on local districts; the department opted to participate in this program. Greta confirmed that the department is not required to implement the educating the homeless program, but could not confirm that the associations and districts were told that the state's participation was optional. McKinley requested a letter from the department outlining federal requirements tied to participation and expressed the opinion that the federal grant of \$200,000 is small in comparison to potential costs. There was discussion about the number of homeless students in Iowa and the source and accuracy of the information; Greta agreed to provide additional information.

**ETHICS AND CAMPAIGN DISCLOSURE BOARD** Charlie Smithson represented the board.

- ARC 3499B No questions on the definition of "regulatory agency."
- ARC 3500B No questions on proposed 1.2 concerning board advisory opinions.
- ARC 3496B No questions on 4.3(1) identifying types of campaign committees required to file statements of organization.
- ARC 3498B No questions on correction of a cross-reference.
- ARC 3497B No questions on the amendment to prohibit donation of campaign funds to a charitable organization employing or benefiting the candidate or member of candidate's family and to allow candidates' sharing of information.
- ARC 3502B No questions on proposed relocation of rule regarding civil penalties for late reports.
- ARC 3504B No action on ch 5, use of public resources for a political purpose. Smithson stated that the rules do not apply to the legislative branch.
- ARC 3503B No questions on proposed ch 6, executive branch ethics.
- ARC 3501B No questions on amendments to ch 7 concerning personal financial disclosure statements.

**SECRETARY OF STATE** Sandy Steinbach and Steve Mandernach represented the secretary of state.

ARC 3538B Steinbach reported that proposed amendments to ch 21 pertaining to absentee ballot couriers have generated many comments, and changes will be made when the rules are adopted. Most concerns relate to absentee ballots returned by someone other than the voter or an absentee ballot courier. Steinbach noted that an emergency implementation would facilitate training of couriers and agreed to provide the committee with a copy of the rules prior to the emergency filing. McKinley requested an informal fiscal impact study.

ARC 3537B Proposed ch 26 pertains to counting votes. Steinbach stated that ballots consistently marked in a way that clearly reflects a voter's intent will be counted even when they are not marked in the usual manner and that ballots with identifying marks will be excluded.

ARC 3523B No questions on ch 31 regarding registration of postsecondary schools.

ARC 3526B No questions on 40.7, which specifies fees for the revised nonprofit corporation Act.

**VOTER REGISTRATION COMMISSION** Sandy Steinbach represented the commission.

ARC 3568B No action on amendments relating to voter registration.

**ELDER AFFAIRS DEPARTMENT** Mary Ann Young represented the department. Other interested parties included Kristie Oliver of the Iowa Association of Homes and Services for the Aging and Ken Watkins of the Iowa Association for Assisted Living.

ARC 3530B Proposed amendments to ch 25 pertain to alarm systems in assisted living facilities serving persons with wandering behaviors. Oliver and Watkins expressed support for the amendments. Watkins voiced a concern that requiring written procedures of all assisted living facilities may be interpreted to mean that all assisted living facilities are required to have alarm systems and noted that the fiscal impact could be significant.

ARC 3531B No action on proposed ch 26 concerning monitoring, civil penalties, complaints and investigations for elder group homes, adult day services and assisted living programs. Watkins pointed out that the statute refers to "imminent" danger; whereas, the rule uses the term "immediate" danger. Young responded that the rules will use "imminent" consistently.

ARC 3529B No questions on termination of previously proposed ch 29.

ARC 3528B No action on proposed ch 29, elder group homes. Frevert commended the department for its use of the ICN for the public hearings.

#### **Committee business**

Motion to reconsider Lundby moved the committee reconsider the motion to delay 567—65.17(13)"e."

Motion carried The motion carried.

Motion to delay The motion for a 70-day delay passed.

**INSPECTIONS AND APPEALS DEPARTMENT** David Werning represented the department.

ARC 3555B No questions on amendments to ch 51 pertaining to critical access hospitals.

ARC 3552B No questions on proposed amendment to admission procedures at the Iowa Veterans Home.

ARC 3535B No questions on amendments to ch 71 concerning overpayment recovery.

ARC 3561B No questions on amendments to ch 103 relating to bingo.

**IOWA FINANCE AUTHORITY** Loyd Ogle, Matt White, Carla Pope, Tracy Siebold and Donna Davis represented the authority. Other interested parties included James Conlin and Kris Saddoris of Conlin Properties.

ARC 3560B No action on 9.1 to 9.15 concerning the title guaranty division.

ARC 3559B Proposed 12.1 and 12.2 pertain to the qualified allocation plan (QAP) for low-income housing tax credits. Ogle identified changes from the previous QAP: Consultants have been included in the cap that previously applied only to developers; underwriting and operating reserve requirements have been updated to conform with best practices of the National Council of State Housing Authorities; the appeal process for unsuccessful projects has been clarified. Lundby asked that the authority ensure that projects would not be disqualified for using a successful consultant. Eichhorn voiced concerns about the charges and policies related to the market study.

Conlin and Saddoris distributed written comments and expressed concerns about the authority and opposition to its practices related to underwriting, selection criteria, market study costs, basing awards on criteria other than score, and the appeal process. Ogle explained that the authority needs discretion in awarding tax credits in order to ensure equity throughout the state and stated that written documentation is provided when projects are denied. Ogle indicated that the authority will look into refunding the difference when the cost of the market study is less than the amount charged.

ARC 3558B No action on proposed 19.1 regarding the state housing trust fund. Saddoris supported the rule but objected to the preference given new entities.

ARC 3557B No action on proposed ch 20, senior living revolving loan program.



Iowa Finance Authority (continued)

ARC 3556B No action on proposed ch 21, home- and community-based services revolving loan program.

**DENTAL EXAMINERS BOARD** Jennifer Hart represented the board. Larry Carl of the Iowa Dental Association was also present.

ARC 3520B Amendments to various chapters update the board's rules. Carl requested a 70-day delay on Items 17 and 20 which would broaden reporting requirements and shorten the time period in which to report. Carl asserted that the fiscal impact of these amendments could be significant. Noting that terminology, not policy, has changed, Hart responded that Iowa Code section 153.33 mandates the board to adopt rules that implement the recommendations of the Centers for Disease Control and Prevention (CDC). Carl contended that the statute does not require the board to adopt all of the CDC recommendations. Hart indicated that, following the advice of the attorney general, the board adopted the recommendations, but not the suggestions.

Motion to delay Encouraging dialogue, Frevert moved a 70-day delay on Items 17 and 20.

Motion carried The motion carried.

ARC 3522B No questions on proposed amendments regarding a fingerprint packet and fee.

ARC 3521B No action on proposed amendments to chs 35 and 51 relating to a fee for monitoring compliance of licensees who are on probation or under a contract for an impairment.

**EDUCATIONAL EXAMINERS BOARD** Anne Kruse and Chris Scase represented the board.

ARC 3553B Ch 25 sets out a code of professional conduct and ethics. Discussion related to the words "or membership in a definable minority" which appears in 25.3(6)"e" and follows the listing of federally protected definable minority groups. Eichhorn expressed concern that the addition could lead to increased litigation. Carroll pointed out that the minority listings differ in chs 25 and 26 and Iowa Code section 216.9 and voiced concern that the department is changing the law through administrative rules. Heaton questioned the authority of the board to expand on statute. Lundby expressed appreciation for the rules. Scase supported the board's authority to expand on the previously delineated protected classes in regulating the conduct of teachers within their profession.

ARC 3540B No questions on the proposed mathematics endorsement.

ARC 3539B No action on 14.131 concerning the Class E license.

ARC 3542B No action on proposed special education consultant endorsement. McKinley asked if there were any requirements for special training in reading instruction. Huser requested additional information about the percentage of special education students with reading difficulties.

ARC 3443B No action on proposed director of special education endorsement.

ARC 3541B No action on proposed school social worker statement of professional recognition.

ARC 3554B No action on ch 26 concerning code of rights and responsibilities.

**ECONOMIC DEVELOPMENT DEPARTMENT** Rose Wazny and Terry Vestal represented the department.

ARC 3562B No action on proposed amendments to ch 23. There was discussion about required wage levels; McKinley urged the department to drop wage requirements. Wazny agreed to provide a list of average county and regional wage levels. McKinley asked that the department also provide statutory basis for wage requirements in programs administered by the department.

ARC 3563B No questions on amendments to ch 25, housing fund.

**WORKERS' COMPENSATION DIVISION** Jim Christenson represented the division.

ARC 3513B No action on amendments to ch 8 concerning contested cases.

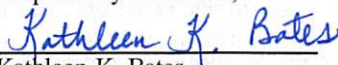
ARC 3447B No questions on payroll tax tables.

**Committee business** The committee was reminded of the telephonic meeting scheduled for 9 a.m. on Monday, August 23.

Brian Gentry announced that this would be his last meeting as the Administrative Rules Coordinator because he is going to work in the private sector. The committee expressed appreciation for his years of service and wished him well.

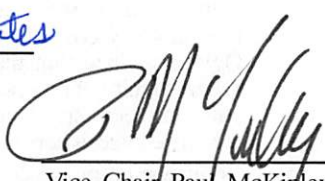
Adjourned The meeting was adjourned at 1:15 p.m.

Respectfully submitted,

  
Kathleen K. Bates

APPROVED:

  
Chair George Eichhorn

  
Vice Chair Paul McKinley