

# MINUTES OF THE NOVEMBER 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, November 9, 2004, in Room 24, State Capitol, Des Moines, Iowa.

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

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 a.m.

**FISCAL IMPACT STATEMENTS** Jennifer Vermeer presented a summary of nine rule makings that have a fiscal impact greater than \$100,000, three of which were not anticipated in fiscal notes: Rule makings by DHS relating to the ill and handicapped waiver and adoption subsidies will result in a savings of \$367,000 and \$333,000, respectively, in the first year, and a department of public safety rule making relating to temporary incapacity claims will cost \$134,000. Vermeer noted that the depreciation allowance provided for in department of revenue rules will have an impact of \$56 million, and rules relating to underground storage tanks will cost \$18 million; however, both had fiscal notes. Royce requested additional information about the fiscal impact of the EPC rule making relating to NPDES permits for confined animal feeding operations.

**HUMAN SERVICES DEPARTMENT** Nancy Freudenberg represented the department.

ARC 3724B No questions on amendments pertaining to appeals and hearings for child or dependent adult abuse reports.

ARC 3721B No questions on amendments relating to FIP and the food assistance program.

ARC 3715B Health insurance data match provisions implementing SF 2298 are intended to ensure that the state is the payer of last resort. Discussion related to how the department would be aware of situations in which employed persons decline health insurance coverage. Freudenberg agreed to provide additional information about the Medicaid application screening process.

ARC 3760B No action on proposed amendments regarding electronic application for food assistance.

ARC 3714B No action on 75.1(39)"b"(4) regarding Medicaid coverage for employed persons with disabilities. The amendment, which allows the Medicaid premium to be applied to the current month when services were not accessed in past due months, generated discussion about the lack of incentive for recipients to pay premiums for months in which services were not accessed. Freudenberg noted that mechanisms, such as offsetting tax refunds, allow the department to collect money owed. Freudenberg agreed to look into the number of Medicaid recipients who have lost coverage for failure to pay.

ARC 3759B No questions on the annual update of the statewide average cost of nursing facility services to a private pay resident and statewide average charges for medical institutional care.

ARC 3716B No questions on amendments to ch 79 concerning Medicaid reimbursement methodology.

ARC 3717B No questions on amendments related to Medicaid reimbursement for nursing facility services.

ARC 3722B No questions on amendments to HCBS ill and handicapped waiver provisions.

ARC 3761B Freudenberg reported that the department has terminated proposed amendments to ch 99 pertaining to support obligations. Eichhorn asked the department to respond to Huser's concerns that the terminated amendments may have been intended to address issues raised by Representative Boddicker.

ARC 3718B No questions on continuation of rates for purchase of service and RTSS contracts.

ARC 3719B No action on amendments to ch 153 concerning the state payment program.

ARC 3720B No action on amendments to ch 201, subsidized adoptions. Huser noted that the interim committee referred this program to the legislature.

**INSURANCE DIVISION** Rosanne Mead and Kris Gross represented the division.

ARC 3752B No questions on proposed amendments relating to confidentiality of investigation files and clarification of the commissioner's authority regarding cease and desist orders.

ARC 3753B Proposed amendments to ch 37 set out NAIC model minimum standards for Medicare supplement insurance plans A to J, which are updated in regard to drug benefit guidance. Mead noted that Plans K and L will be available in January 2006. Lundby mentioned that the senior health information program volunteers are most helpful in clearly explaining the plans to consumers.

**IOWA FINANCE AUTHORITY** Donna Davis represented the authority. James Conlin of Conlin Properties was also present.

ARC 3757B Davis reported that no comments were received on amendments to ch 3 regarding multifamily housing loans. Conlin distributed written materials and expressed opposition to IFA's awards to entities listed on the authority's watch list. In response to members' concerns about the number of projects on the watch list, Davis explained that the watch list is not necessarily a negative listing.

ARC 3758B No questions on the state housing trust fund, 19.1.

**ATTORNEY GENERAL** Marti Anderson represented the attorney general. Nancy Robertson of the Iowa Coalition Against Domestic Violence was also present.

ARC 3725B No action on proposed 9.50 to 9.65, victim services grant program. McKinley requested a breakdown of grants made. Robertson expressed support for the proposed rules.

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

ARC 3730B Proposed 25.4(4) adds the American dream downpayment initiative to the home ownership portion of the housing fund. Wazny indicated that, in order not to slow the application process, McKinley's suggested requirement for loan approval could be included in the contract agreement with grantees rather than in the rule.

**ELDER AFFAIRS DEPARTMENT** Joel Wulf represented the department.

ARC 3750B The department is proposing rescission of ch 20, older Iowans legislature (OIL). Wulf indicated that there is currently no appropriation or statutory authority for the older Iowans legislature and that OIL leadership is in the process of organizing as a 501(c) not-for-profit entity. Discussion concerned the transition from the original purpose of the program, which was to teach seniors about the legislative process, to its role as an advocacy organization. Lundby expressed a concern about the potential exclusion of older Iowans who could not afford to pay the dues. Frevert emphasized the importance of keeping the constituency informed about the public hearings and ensuring that seniors know of this proposed change.

**COLLEGE STUDENT AID COMMISSION** Julie Leeper represented the commission. Other interested parties included Paula Dierenfeld of Nyemaster Law Firm and Dan Litteral, general counsel at the University of Phoenix.

ARC 3738B No action on amendments to ch 12, Iowa tuition grant program.

ARC 3739B Proposed amendments to ch 21 pertain to approval of postsecondary schools. Out-of-state postsecondary schools must be approved by the college student aid commission and registered with the secretary of state. In the approval process, the commission relies on an advisory committee which, by these proposed rules, must consider the recommendations of the Iowa coordinating council for post-high school education; Leeper stated that the commission wants input from the council in order to determine if the programs are necessary in Iowa or are already being provided in the area in which the institution wishes to operate. Carroll questioned the role of the coordinating council, a nongovernmental entity with whose policies and procedures, which are not subject to the rule-making process, applicants are required to comply. Dierenfeld added that because the coordinating council is not a state agency, it is not subject to the open meetings law. Dierenfeld further pointed out that the certification, accreditation and approval standards, which criterion "10" requires applicant schools to meet, are not specified in the rules; and criterion "14," which pertains to physical facilities, including libraries, does not take into consideration electronic sources of information. Members expressed concern that the commission has ceded its authority, and that these rules make it difficult for out-of-state schools to become certified in Iowa and may affect students enrolled in approved out-of-state institutions currently operating in Iowa that may lose accreditation.

Motion Carroll made a motion for the committee to request a regulatory analysis of the amendments.

Motion carried The motion carried. The regulatory analysis must be published prior to adoption of the amendments.

ARC 3737B No questions on amendments to ch 37, student loan debt collection.

**CAPITAL INVESTMENT BOARD, IOWA** David Casey represented the board.

ARC 3740B No questions on amendments to chs 2 and 3 pertaining to tax credits for investments in qualifying businesses, community-based seed capital funds and venture capital funds.

**REVENUE DEPARTMENT** David Casey represented the department.

- ARC 3742B No action on rules implementing special session legislation regarding the additional first-year depreciation allowance and Section 179 expensing. The department's position, based on Iowa supreme court decisions, is that individuals and businesses wishing to take advantage of the allowance for 2003 will need to file an amended return.
- ARC 3754B No action on proposed amendments relating to the property rehabilitation tax credit and the university-based research utilization program credit.
- ARC 3741B No questions on amendments to chs 42, 52 and 58 concerning tax credits for an equity investment in a qualifying business.

**TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION, IOWA** Ron Koontz represented the commission.

- ARC 3713B No questions on proposed amendments relating to organization, contracts for professional services, and purchasing.

**ENVIRONMENTAL PROTECTION COMMISSION** Gene Tinker represented the commission. Chris Gruenhagen represented the Iowa Farm Bureau Federation and Kari Carney represented Iowa Citizens for Community Improvement.

- ARC 3736B Tinker stated that the proposed amendments relating to regulation of CAFOs and NPDES permitting are intended to comply with EPA regulations and Iowa legislation and have generated many comments. Kibbie asked that a summary of comments received be provided to the committee prior to the commission's adoption of the amendments.

- ARC 3735B Proposed amendments to ch 65 regarding animal feeding operations pertain to construction permits, master matrix and location of groundwater tables. Kibbie asked that a summary of comments received on this rule making also be provided to the committee.

Gruenhagen asserted that these two rule makings do not identify all provisions that are more stringent than required by the EPA, for example, NPDES permits and manure management plans for open feedlots, deadlines, and reporting requirements. Gruenhagen further challenged the minimal fiscal impact reported in the fiscal impact summaries for these rule makings. Eichhorn advised Tinker that 17A.4(3) requires the agency to report the fiscal impact on all affected parties, not just the state.

Frevert expressed dismay that parties to the "fragile marriage" created in 2001 are no longer meeting and communicating.

Expressing support for both rule makings, Carney distributed written comments and a report from the Environmental Integrity Project, Iowa Citizens for Community Improvement, and the Sierra Club. Carney maintained that because the EPA allows states to choose from among three options: general permits, individual permits, or watershed-based permits, the rules are not more stringent than federal requirements and noted that the EPA determined there would be a minimal fiscal impact on producers. Carney pointed out that Iowa will not be in compliance with federal phosphorus standards until 2008. Carney further encouraged the legislature to allow DNR to charge fees for permits to cover the costs of the program.

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

- ARC 3711B Proposed amendments to ch 43 pertain to school bus driver's authorization. Greta outlined the proposed changes, including a vehicle inspection fee. Kibbie expressed concern about the practice of setting future fees through the graduated fee scale.

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

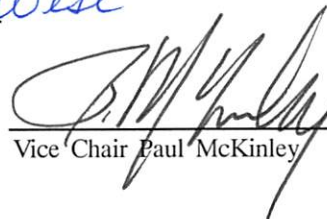
The next meeting will be held December 14, 2004.

**Adjourn** The meeting was adjourned at 12:55 p.m.

  
Kathleen K. West

APPROVED:

  
Chair George Eichhorn

  
Vice Chair Paul McKinley