

# MINUTES OF THE DECEMBER 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, December 14, 2004, in Room 22, 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** Vice Chair McKinley convened the meeting at 9 a.m.

**FISCAL IMPACT STATEMENTS** Jennifer Vermeer presented an overview of rule makings with a fiscal impact over \$100,000 and those for which the fiscal impact cannot be determined.

**HUMAN SERVICES DEPARTMENT** Nancy Freudenberg and Vern Armstrong represented the department. Other interested parties included shelter operators Tom Lazio, Gary Gansemer, and Bill Reagan; Kim Schmidt of the Coalition for Family and Children's Services; and Jane Hartman of Lutheran Services in Iowa.

**ARC 3767B** No action on amendments to make the assessment fee for intermediate care facilities for the mentally retarded applicable to the state resource centers at Woodward and Glenwood.

**ARC 3768B** No questions on the amendment to 65.8(7) to allow deduction of excess medical expense when a food assistance recipient receives a Medicare prescription drug discount card or credit.

**ARC 3766B** No questions on the increase in Medicaid premiums for employed persons with disabilities.

**ARC 3773B** No action on amendments relating to selection of plan for HAWK-I participants.

**ARC 3765B** No questions on procedures for offset against federal income tax refunds and federal nontax payments to recover delinquent child support.

**Special review** On November 1, 2004, DHS implemented three strategies affecting emergency shelter care. Freudenberg reported that these strategies eliminate payment for voluntary, non-court-ordered placements not authorized by the Code, establish discharge planning and team review processes for shelter care placements, and limit the use of family-centered services for children in shelter care. The Coalition for Family and Children's Services has initiated a petition for rule making regarding the department's implementation of these strategies. The department agreed that rules are needed to implement the strategy to limit payment for family-centered services but does not believe that the other strategies require rule making. To Schmidt's assertion that 132 fewer children per day are being served as a result of these changes, Freudenberg responded that children are served in other appropriate placements, such as with relatives or in foster family homes. Armstrong added that the department must serve children in the best way possible within the limits of its appropriations. Heaton stressed the importance of immediate access to services in all areas of the state and invited Armstrong to meet with the appropriations committee and clarify where shelter care fits in the department's redesign of the child welfare system.

Schmidt expressed the opinion that the option for voluntary placement may reduce instances of child abuse and save lives and expressed concern that the new policies may result in the return of children to unsafe home situations. Shelter operators expressed concern for the safety of children and reported that empty beds resulting from the department's strategies may force closure of shelters. Hartman emphasized the importance of continuing voluntary placements. Kibbie requested a map of shelter locations and ages of children served.

**SECRETARY OF STATE** Charles Krogmeier and Barb Huey represented the secretary of state.

**ARC 3763B** No action on 21.301 concerning absentee ballots cast by voters whose registrations are inactive.

**ARC 3762B** No action on amendments to ch 26 pertaining to counting votes.

**ARC 3780B** No action on ch 27, HAVA grants. Krogmeier stated that these rules set out the process for grant applications and indicated that no decisions have been made regarding recommendations for voting equipment.

**DENTAL EXAMINERS BOARD** Jennifer Hart represented the board.

**ARC 3778B** No questions on the proposed amendment relating to a candidate's second failure of the clinical examination for dental hygienist licensure.

**ARC 3777B** Hart reported that this amendment reinstates former language while the board works with the Iowa Dental Association to resolve issues related to mandatory reporting of acts or omissions.

**ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF** Diane Foss represented the department.

ARC 3810B No questions on amendments to ch 24, the emergency shelter grants program.

ARC 3809B No questions on amendments to ch 29, the homeless shelter operation grants program.

**CREDIT UNION DIVISION** James Forney represented the division.

ARC 3821B No action on ch 17, which mirrors requirements for federal credit unions relating to investment and deposit activities.

**ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA** Charlie Smithson represented the board. Laverne Schroeder was also present.

ARC 3786B No questions on 1.7 concerning sales of goods and services.

ARC 3788B No questions on correction of references to renumbered rules.

ARC 3791B No questions on proposed amendments relating to use of ID numbers by state parties and candidates.

ARC 3790B No questions on the proposed amendment regarding contributions by out-of-state committees.

ARC 3789B Proposed 6.20 prohibits loans from executive branch lobbyists except for loans in the form of a campaign contribution or loans made in the ordinary course of business.

ARC 3785B No action on amendments to ch 8 concerning executive branch lobbyist registration. There was discussion about separation of powers and whether having a single ethics and campaign disclosure board creates a separation of powers conflict.

ARC 3787B No questions on 8.20 regarding retention and availability of filed forms.

ARC 3793B No questions on proposed 9.6 concerning whistle-blower protection.

ARC 3792B Proposed 15.2 pertains to waiver of the civil penalty for late-filed reports. Connolly requested state and local data about how many penalties have been imposed and how many have been waived. Discussion concerned late-filed reports in contested races and whether waiver of penalties has had an effect on compliance with filing deadlines. Smithson advised Schroeder that a legislative change would be needed to change from a fiscal-year to a calendar-year basis in the filing of lobbyist client reports.

**INSURANCE DIVISION** Angela Burke Boston represented the division.

ARC 3827B No questions on the rescission of 20.12 regarding the use of credit information in personal insurance.

ARC 3802B No action on proposed 35.20, which pertains to life and health self-funded plans for school districts and school district employees. The proposed rule clarifies the use of 28E agreements and strengthens the division's oversight of public self-funded pooling arrangements.

**MANAGEMENT DEPARTMENT** Heidi Patterson represented the department.

ARC 3811B No action on proposed amendments related to public records.

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

The next meeting will take place January 4, 2005.

**ELDER AFFAIRS DEPARTMENT** Mary Ann Young represented the department.

ARC 3808B No questions on amendments to ch 26 to conform with statutory language.

**ENVIRONMENTAL PROTECTION COMMISSION** Wayne Gieselman, Jim McGraw, Chuck Corell, Kelly Stone, Gene Tinker and Randy Clark represented the commission.

Special review Carroll expressed concern that adoption of a threshold for a material and adverse health effect prior to completion of the field study is in conflict with Iowa Code section 459.207(3) and that the university report, upon which the 30 ppm threshold is based, is not conclusive. Noting that the plaintiff in a lawsuit has cited the department's rule in a lawsuit against a small producer, Carroll asked the department to reconsider these rules. Gieselman maintained that the threshold merely establishes a benchmark for the study and imposes no requirement on any producer. Gieselman stated that the health effects value is used in monitoring data for the field study, but no producer has been cited for violating a standard and creating a health issue. Eichhorn suggested that the attorney general's office be contacted regarding how the standard might be used in litigation and expressed concern about the practice of adopting definitions that will be applicable in future rules. Gieselman responded that other legislative committees have asked that the criteria for the study be made publicly through the rule-making process. Discussion related to nuisance lawsuits, the interests of independent livestock producers, the process by which the field study should be conducted, and the desire to have clean air and water in Iowa.

ARC 3806B No questions on amendments to chs 22, 23 and 25 relating to controlling air pollution.

## Environmental Protection Commission (continued)

- ARC 3805B Amendments to ch 61 establish the protocol that EPC will use in designating cold water streams. Discussion concerned the potential cost to Garnavillo and other communities which may result from designations based on the introduction of nonnative species of trout. Eichhorn reiterated his concern about the establishment of definitions and criteria which are intended to be used in future regulation by the commission but are reported in rule making as having no fiscal impact. Corell maintained that the commission was directed not to designate any streams as cold water streams until the protocol for designation was adopted in rule and that any changes in stream designation would also be made through the rule-making process.
- ARC 3807B Proposed 65.17(13)"e" pertains to records regarding date and rate of application of commercial nitrogen and phosphorus in relation to manure management plans. Connolly said that the paragraph is burdensome and needs clarification. Eichhorn indicated that he is not comfortable with a "known or should have known" standard. Kibbie noted that the high cost of commercial fertilizer makes overapplication unlikely.

**PROFESSIONAL LICENSURE DIVISION** Pierce Wilson represented the division. Other interested parties included Lorelei Heisinger on behalf of the Iowa Association of Cosmetology Schools and the Iowa Physical Therapy Association, Karla Fultz McHenry on behalf of the Iowa Medical Society, and Jenny Tyler and Doug West on behalf of Athletic Trainers of Iowa.

- ARC 3764B No questions on amendments to ch 42 regarding colleges for chiropractic physicians.
- ARC 3815B No action on proposed amendments to rules governing the practice of cosmetology. Heisinger noted that the association has a concern about educational requirements for cosmetology schools, and expressed the opinion that the semester credit hour amendments do not accurately reflect the changes made in HF 2193.
- ARC 3781B No questions on amendments relating to nursing home administrators.
- ARC 3774B No action on proposed 326.8(4) concerning physician assistants. McHenry noted that the Iowa Medical Society supports the proposed amendment.
- ARC 3814B No action on proposed amendments regarding athletic trainers. Heisinger expressed the concern of physical therapists that the definition of "physical reconditioning" may expand the scope of practice by including rehabilitation. Tyler and West stated that athletic trainers support the definition and believe that the rules are consistent with statute and that the terms "reconditioning" and "rehabilitation" can be used interchangeably.

**PUBLIC HEALTH DEPARTMENT** Patricia Quinlisk, Jami Haberi, and Ray Jones represented the department.

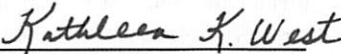
- ARC 3839B No action on proposed 1.12, which is a model rule for quarantine and isolation which may be adopted by local boards of health. Quinlisk distributed copies of Morbidity and Mortality Weekly Report which includes an article documenting use of the model in the case of an import-associated measles outbreak in Iowa.
- ARC 3838B Proposed ch 131 pertains to EMS provider education/training/certification standards. Huser voiced a concern that programs at hospitals and community colleges are being paid for the training that firefighters certified as trainers are providing for other firefighters. Huser also noted that the training programs are not available on weekends.
- ARC 3837B No questions on proposed amendments to ch 132 concerning EMS service program authorization.
- ARC 3836B No questions on proposed amendments to ch 133 regarding white flashing light authorization for EMS providers.
- ARC 3835B No action on amendments to ch 134, trauma care facility categorization and verification. In response to McKinley's inquiry about the review process used to ensure that facilities are appropriately staffed, Joens explained that although site verifications are performed every three years, the department follows up in cases in which the department becomes aware of deficiencies. In those cases, the facility may opt to meet the requirement or voluntarily change its designation.
- ARC 3834B No questions on proposed amendments to definitions in ch 135, trauma triage and transfer protocols.
- ARC 3833B No questions on proposed amendments to ch 136, trauma registry.
- ARC 3832B No action on proposed amendments to ch 137, trauma education and training.
- ARC 3831B No questions on proposed amendment to the definition of "emergency medical care provider" in ch 138.
- ARC 3830B No questions on proposed amendments to ch 139, Iowa law enforcement emergency care provider.
- ARC 3829B No questions on proposed amendments to ch 140 pertaining to the EMS system development grants fund.
- ARC 3840B No questions on proposed amendment to the definition of "service program" in ch 141.

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

- ARC 3804B No questions on amendments relating to cigarette tax, penalties and records and motor fuel refunds.
- ARC 3820B No questions on interest rate for calendar year 2005.
- ARC 3819B No questions on amendments to individual income tax; corporation income tax; fiduciary income tax; penalty and interest.
- ARC 3803B No questions on amendments pertaining to contributions to endowment fund of Iowa educational savings plan trust; franchise tax; and property rehabilitation tax credit.
- ARC 3818B No questions on proposed chs 211, 219, and 231 regarding sales and use tax. Casey advised the committee on national progress related to implementation of the streamlined sales tax.

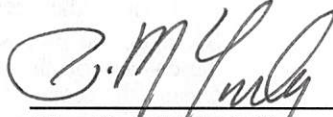
**STATE PUBLIC DEFENDER** Mark Smith represented the office of state public defender. Lorelei Heisinger represented the Iowa Association of Criminal Defense Lawyers and Jenny Tyler represented the Iowa State Bar Association.

- ARC 3813B Ch 13 and amendments to chs 7, 11, and 12 relate to appointment of counsel and claims for services. Smith reported that changes were made in response to identical comments received from the Iowa State Bar Association and the Iowa Association of Criminal Defense Lawyers. Smith maintained that provisions in 12.2(12) and 12.6(5), which state that court orders entered after action on a claim are void, are supported by statute.
- Motion to delay Huser moved a 70-day delay on ARC 3813B.  
Disagreeing with the state public defender's interpretation of the statute, Heisinger and Tyler asked the committee to support the motion for delay.
- Motion carried The motion carried; ARC 3813B is delayed for 70 days.
- Adjourn The meeting was adjourned at 3:30 p.m.

  
Kathleen K. West

APPROVED:

  
Chair George Eichhorn

  
Vice Chair Paul McKinley