

**MINUTES OF THE AUGUST 2007 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 14, and Wednesday, August 15, 2007, in Room 22, State Capitol, Des Moines, Iowa.

Members present: Senator Michael Connolly, Chair, and Representative Philip Wise, Vice Chair; Senators Jeff Angelo, Thomas Courtney, John P. Kibbie, and James Seymour; Representatives Marcella Frevert, David Heaton, David Jacoby, and Linda Upmeyer.

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. Connolly convened the meeting at 9:12 a.m.

**Fiscal report** Ron Robinson presented the LSA fiscal report on ten rule makings that may have a significant fiscal impact. Sen. Connolly requested additional information about the phaseout of the tax on social security. Ms. Lerdal agreed to follow up on Rep. Upmeyer's question about the cost of a physical examination and Medicaid's payment of \$45.

**INSPECTIONS AND APPEALS DEPARTMENT** Steve Mandernach and David Werning represented the department.

ARC 6061B No questions on amendments to the targeted small business certification program.

ARC 6078B No action on proposed amendments to ch 51 concerning inspection of the nonaccredited Iowa-licensed hospital at Oakdale.

ARC 6076B No questions on an amendment to 51.14(3) to strike the sunset provision regarding authentication of medication orders within 30 days.

ARC 6077B No questions on proposed amendment to 51.14(3) regarding authentication of verbal orders.

ARC 6053B No action on ch 106, which pertains to card game tournaments conducted by certain veterans organizations.

ARC 6122B No action on amendments to ch 100 and new ch 107 pertaining to annual game nights.

**NURSING BOARD** Lorinda Inman and Kathy Weinberg represented the board. Linda Goeldner represented the Iowa Nurses Association.

ARC 6040B Ms. Weinberg outlined changes in proposed ch 2 concerning nursing education programs and indicated that institutions wishing to provide a nursing education program will be required to demonstrate the availability of clinical sites and qualified faculty. Discussion related to the approval process for programs, the national test for nursing certification, on-line nursing programs, Medicare and Medicaid reimbursement rates and the need for higher pay for nurses in Iowa. Ms. Goeldner expressed support for quality programs and commented that on-line programs help make up for the shortage of qualified faculty.

ARC 6039B No questions on amendments to ch 3 concerning duplicate wallet cards and temporary licenses.

**IOWA FINANCE AUTHORITY** Mark Thompson represented the authority.

ARC 6058B No questions on amendments to ch 19, state housing trust fund.

**UTILITIES DIVISION** David Lynch represented the division.

ARC 6124B Mr. Lynch indicated that no comments have been received on proposed ch 44 pertaining to certificates of authority for cable and video services. Rep. Wise indicated that the rules may generate some controversy and should be scheduled for another review when they are adopted.

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

ARC 6079B No action on 2.18 regarding use of information obtained from reports filed with the board. The information may be used to solicit campaign contributions, but not for other commercial purposes.

ARC 6080B No action on 4.8, which allows county auditors to obtain disclosure reports from the board's Web site. There was discussion regarding the length of time campaign disclosure reports must be maintained.

ARC 6090B No questions on filing of disclosure reports by statewide and local ballot issue committees.

ARC 6089B The amendment to 4.10 requires that campaign finance reports due five days before an election must be received by the board, not just postmarked, by the due date.

ARC 6087B No questions on the amendment to 4.30(2) pertaining to anonymous contributions in excess of \$10.

ARC 6081B No questions on the amendment to 4.32 regarding verified statements of registration.

Ethics and Campaign Disclosure Board (continued)

ARC 6088B No questions on correction of a cross reference in 4.35.

ARC 6082B No action on 6.10 concerning sales of goods or services to state agencies by state officials and employees. Mr. Smithson clarified that this rule applies to the executive branch only.

**LABOR SERVICES DIVISION** Kathleen Uehling and David Neil represented the division. Jim Obradovich represented Ultimate Fighting Championship (UFC).

ARC 6121B Subrule 177.2(2) pertains to promoter responsibility for professional shoot-fighting events. Mr. Obradovich contended that this and the next two rule makings were based on failed legislation. Discussion related to the authority of the division to regulate shoot-fighting under its statutory authority to regulate boxing. Ms. Uehling stated that the language for this amendment was taken directly from the Code.

ARC 6120B With the rescission of 177.9, the labor commissioner is not required to attend every shoot-fighting event.

ARC 6125B Rule 177.10 requires promoters to provide life and health insurance coverage for professional shoot fighters. Members generally agreed that the coverage limits specified by the rule are very minimal. Discussion related to liability of the state.

Motion to refer Sen. Kibbie moved a referral of all three rule makings to the General Assembly.

Motion carried By a unanimous roll-call vote, the committee referred the amendments to ch 177 to the legislature.

**Committee business** Senator Kibbie moved approval of the minutes of the July 2007 meeting. The motion carried.

The next meeting will be Tuesday, September 11, 2007.

**ENVIRONMENTAL PROTECTION COMMISSION** Christine Paulson, Jim McGraw, Diane Moles, David Wornson, Paul Nelson, Jon Tack and Richard Leopold represented the commission. Becky Weber represented Region 7 of the U.S. EPA. Commenters included Julie Ketchum of Waste Management, Vickie Moorehead of South Dallas Landfill, Hal Morton of the Des Moines County Regional Solid Waste Commission, Michael Fox of Fremont County Landfill, Myron Magwitz of Page County Landfill and Recycling, Cindy Turkle of Turkle-Clark Environmental Consulting, Gary Schmidt of the regional facility in Fort Dodge, David Hageman of Winneshiek County, Kathy Morris of the Waste Commission of Scott County, Ken Slater of the Cherokee County Solid Waste Commission, Nela Seaman of the Sierra Club, and David Nelsen of Landfill of North Iowa in Mason City.

ARC 6091B No action on amendments related to air quality and ethanol production facilities. Ms. Paulson indicated that these amendments may be adopted and filed emergency after notice as a benefit to ethanol production facilities.

ARC 6092B No questions on proposed amendments to ch 34 relative to CAIR and CAMR.

ARC 6074B No questions on amendments to chs 40 and 43 concerning minor water main construction permits.

ARC 6072B Proposed amendments to ch 135 implement federal provisions pertaining to underground storage tank systems. Members suggested use of the ICN so that hearings could be held statewide.

ARC 6073B The legislature transferred regulatory authority for underground storage tank installer and inspector licensing from the Iowa comprehensive petroleum underground storage tank fund board to the commission. These amendments implement that transfer.

Held over from July Amendments relative to sanitary landfills for municipal solid waste and groundwater protection systems for the disposal of nonhazardous wastes were held over from the July 2007 ARRC meeting.

Mr. Tack reported that, as requested by the committee, the department has met with the Des Moines County Landfill and with Waste Management, solutions have been offered and progress has been made; additional information that the committee requested has been provided; and representatives from the EPA are in attendance at this ARRC meeting. Mr. Leopold commented that the rule-making process has been open and inclusive. Before submitting the rules to the EPC, the department held approximately 30 meetings with stakeholders; hired outside consultants to compare these rules with those of surrounding states; prepared a regulatory analysis, a fiscal analysis and a fiscal impact statement; and extended the public comment period twice. Mr. Leopold reported that most landfills are in compliance or are moving toward compliance and emphasized that that department is willing to approve alternative designs if it can be demonstrated, on a site-by-site basis, that the alternative design is as protective of the groundwater as the encirclement design.

## Environmental Protection Commission (continued)

Ms. Weber summarized landfill regulation since passage of the Resource Conservation and Recovery Act in 1976 and noted that in 1997 Iowa became an approved state for enforcement of uniform federal landfill design standards intended to provide groundwater protection; and, as an approved state, Iowa may take advantage of 28 points of flexibility. Ms. Weber stated that these Iowa rules conform to EPA standards and noted that, if the rules did not conform, citizens could seek remedies for noncompliance through litigation or by petition to the EPA.

Opponents expressed concern that landfills considered proactive in the 1990s and approved under the 1997 rules are now considered noncompliant, concern about the cost of compliance, concern that the three-year window for compliance is not adequate, concern that performance standards for an alternate design may be unattainable, and concern that plastic liners may leak and provide less protection than compacted clay.

Ms. Ketchum stated that Waste Management has met with the department and confirmed that, with only one issue remaining, significant progress has been made. Ms. Morris expressed support for the rules and appreciation for the degree of stakeholder involvement. Ms. Seaman expressed the support of the Sierra Club and asserted that all landfill operators have been aware of the federal requirements and should have prepared for compliance.

Ms. Weber clarified that even without state rules, the federal regulations apply. Ms. Weber advised the committee that the existing EPC rules do not meet federal standards and that these new rules meet, but do not exceed, the minimum federal standards. Rep. Wise requested and received a summary of current provisions that do not meet the federal standards. Mr. Leopold assured Sen. Connolly that the department will continue to work with landfills on environmentally sound solutions. Sen. Kibbie suggested that the department provide the committee an explanation in layman's language of the flexibility available to the department. Sen. Angelo voiced concern about prior approvals granted under rules that were not in compliance with the federal regulations. Members agreed to revisit the matter in September and asked that the department provide evidence that progress is being made.

**Wednesday, August 15, 2007**

Members present: Senator Michael Connolly, Chair, and Representative Philip Wise, Vice Chair; Senators Jeff Angelo, John P. Kibbie, and James Seymour; Representatives Marcella Frevert, David Heaton, and David Jacoby. Senator Courtney and Representative Upmeyer were not in attendance.

**VETERANS AFFAIRS, IOWA DEPARTMENT OF** Patrick Palmersheim represented the department.

ARC 6094B No action on amendments to ch 11 to expand coverage for the injured veterans grant program. Mr. Palmersheim thanked the committee for its role in facilitating release of information from the VA in Washington, D.C.

ARC 6093B No action on ch 13, Vietnam Conflict veterans bonus.

ARC 6126B No action on proposed ch 14, veterans trust fund. Discussion related to the purpose of the fund and how it will be administered, efforts to avoid duplication of county services, and suicide prevention measures. Sen. Kibbie asked Mr. Palmersheim to provide Mr. Royce with a summary of public comments before the final rules come before the committee.

**SECRETARY OF STATE** Sandy Steinbach and Linda Langenberg represented the secretary of state.

ARC 6129B No action on amendments to chs 21, 22 and 26, which implement the requirement that direct recording electronic voting equipment include a paper record. Ms. Steinbach reported that 72 counties will have to make changes. Discussion related to pending federal legislation that may affect these amendments.

ARC 6063B No action on amendments to ch 21 concerning absentee voting.

ARC 6128B No questions on proposed amendments to ch 21 concerning absentee voting and electioneering at satellite absentee voting stations.

ARC 6130B No action on proposed amendments to ch 22 regarding testing of voting equipment.

**PUBLIC HEALTH DEPARTMENT** Barb Nervig represented the department.

ARC 6118B No action on proposed amendments to ch 4, center for congenital and inherited disorders.

ARC 6116B No questions on the rescission of ch 10.

ARC 6106B No action on amendments to the radiation rules to conform to federal requirements.

ARC 6108B No action on ch 56, brain injury services program. Ms. Nervig reported that 60 applications for the cost-share program have been received and the waiting list for the DHS waiver has decreased.

ARC 6117B No questions on the rescission of ch 82.

ARC 6109B No questions on amendments to ch 93, abuse education review panel.

ARC 6111B No questions on proposed ch 130, emergency medical services advisory council.

Public Health Department (continued)

- ARC 6110B No questions on amendments to ch 131 pertaining to training, education and certification of EMS providers.
- ARC 6114B No questions on proposed update of the trauma registry data dictionary for reportable patient data.
- ARC 6112B No questions on amendments to ch 157 concerning the drinking drivers course offered by substance abuse treatment and assessment programs.
- ARC 6115B No questions on 173.14 concerning subpoenas.

**EDUCATIONAL EXAMINERS BOARD** George Maurer and Susan Fischer represented the board.

- ARC 6071B No questions on proposed 1.2 pertaining to board membership.
- ARC 6069B The amendment to 14.104 requires a credential evaluation report and a demonstration of proficiency in English by applicants from foreign institutions.
- ARC 6103B No action on the proposed middle school endorsement, which would allow teachers to focus on two, rather than all four, content areas.
- ARC 6102B No action on the proposed language arts endorsement, which combines English, speech and journalism.
- ARC 6067B No questions on 14.143, which pertains to substitute authorization at the elementary school level for paraeducators.
- ARC 6104B No action on 14.144 concerning removal or reinstatement of an endorsement.

**PUBLIC SAFETY DEPARTMENT** Mike Coveyou, Jessica Lown, Randy Novak, and David Jobes represented the department

- ARC 6047B Subrule 11.21(4) implements national criminal history checks for teacher applicants. Mr. Coveyou noted that the “thorough background investigation” required by the statute will be very costly for school districts; discussion about the possible need for legislation ensued.
- ARC 6049B Amendments to ch 25 pertain to confidentiality of records containing security procedures or emergency preparedness information and release of official photographs of department employees. Discussion related to possible conflicts between the peace officer bill of rights and provisions related to access to public records.
- ARC 6065B No action on amendments to ch 259 regarding fire training facilities. In response to questions raised by Rep. Frevert, Mr. Coveyou indicated that there is no statutory authorization for the department to pay for physical examinations for volunteer firefighters and that all regional training facilities are centers for homeland security preparedness.

**HISTORICAL DIVISION** Gordon Hendrickson and Kathy Gourley represented the division.

- ARC 6062B No action on ch 48, which pertains to historic preservation and cultural and entertainment district tax credits. Mr. Hendrickson outlined the review sequencing categories and noted that applications within each category are assigned a random number. Rep. Frevert asked that the minutes reflect Mr. Hendrickson’s expression of appreciation for the work of the staff of the administrative code office.

**REAL ESTATE APPRAISER EXAMINING BOARD** Sylvia King represented the board.

- ARC 6113B No action on amendments to ch 3 proposed in response to federal guidelines concerning examination and work product review.
- ARC 6107B No action on amendments to increase registration fees in order to fund a full-time investigator.

**REVENUE DEPARTMENT** David Casey and Jim McNulty represented the department.

- ARC 6056B No questions on amendments to individual income tax rules pertaining to filing thresholds for persons over the age of 65 and phaseout of tax on social security.
- ARC 6055B No action on the proposed amendment to 68.2(1), which sets the tax rates for gasoline, E-10 and E-85.

**HUMAN SERVICES DEPARTMENT** Nancy Freudenberg, Mary Nelson, and Jan Clausen represented the department. Diane Stahle represented the office of attorney general. Linda Hinton represented the Iowa State Association of Counties. Shelly Chandler represented the Iowa Association of Community Providers. Mikki Stier represented Broadlawns Medical Center. Gary Gansemer and William Brown represented Hillcrest Family Services.

- ARC 6101B No questions on proposed amendments to ch 25 regarding disability services management.
- ARC 6042B Amendments to 25.41 pertain to data reporting by CPC administrators relative to expenditures for mental health, mental retardation, and developmental disability services. Ms. Hinton distributed a chart to illustrate additional information that counties are required to report.
- ARC 6100B Amendments to ch 65 relate to eligibility for the food assistance program and allow for a choice of a standard medical expense deduction or a deduction based on actual medical expenses. The amendments also recalculate the utility deduction allowance.

## Human Services Department (continued)

- ARC 6097B Amendments to chs 75 and 76 eliminate mandatory interviews for Medicaid programs. Rep. Heaton commended the department's goal of increased efficiency and convenience for consumers.
- ARC 6098B No questions on amendments to remove references to RTS and ARO.
- ARC 6095B No questions on amendments to provide for Medicaid payment for routine physical examinations.
- ARC 6045B No action on proposed 78.13 regarding Medicaid reimbursement for nonemergency transportation.
- ARC 6083B No questions on an emergency amendment to continue Medicaid reimbursement for nonemergency transportation at the rate of 30 cents per mile.
- ARC 6051B No action on proposed amendments to ch 92 concerning the IowaCare program. Ms. Stier expressed appreciation for this change and asked that the department also grant retroactive forgiveness of the four-month back premium payment requirement.
- ARC 6084B No question on amendments to the IowaCare program to eliminate premiums for members whose income is at or below 100 percent of the federal poverty level.
- ARC 6075B No action on proposed amendments to the IowaCare rules to specify that the hardship exemption is not allowed for months that the member misrepresented the household's circumstances and to clarify coverage of newborns.
- ARC 6085B No questions on the transportation allowance for the PROMISE JOBS program.
- ARC 6119B No questions on proposed amendments to ch 98 regarding withholding of income to collect court-ordered child support in compliance with Iowa Code chapter 252D.
- ARC 6099B No questions on amendments relative to purchase of family planning services and adult services.
- Special review At last month's meeting, Rep. Heaton asked about the department's ability to transfer surplus HAWK-I funding to cover the personal needs allowance. Ms. Stahle reported that transfers can be made only within a fiscal year, and at the end of the fiscal year, the surplus is deposited into the senior living trust fund. Rep. Heaton asked LSA to determine whether the governor can move funds from the senior living trust fund to address the lack of funding for the personal needs allowance for PMICs.
- Also under special review was the recoupment of overpayments that resulted from inadequate documentation of the setting in which RTSS services were provided. After an audit by CMS, DHS was required to reimburse CMS for overpayments that resulted from the CMS determination that use of a "default setting" was inadequate documentation. The department issued a clarification to advise providers about how to correct their documentation and offered training and technical assistance. Ms. Nelson stated that providers that implemented the corrective procedures were not subject to overpayment recoupment.
- Ms. Freudenberg, Ms. Nelson, and Ms. Clausen excused themselves from the meeting because of their potential involvement in a pending appeal.
- Mr. Gansemer described the kinds of services that Hillcrest Family Services provides. Mr. Brown explained the basis for Hillcrest's appeal of the DHS audit that resulted in a finding of overpayment due to use of a default setting. Following discussion of this issue and consultation with Ms. Svec-Carstens and Mr. Royce, the committee opted to take no action while the appeal is pending.
- Adjourned The meeting was adjourned at 12:35 p.m.

Respectfully submitted,

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Kathleen K. West

APPROVED:

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Chair Michael Connolly

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Vice Chair Philip Wise