

**MINUTES OF THE AUGUST 2006 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 8, 2006, in Room 22, State Capitol, Des Moines, Iowa.
- Members present: Representative George Eichhorn, Chair; Senators Michael Connolly, Paul McKinley, and James Seymour; Representatives Danny Carroll, Marcella Frevert, David Heaton, and Geri Huser. Senator Thomas Courtney was present via telephone for the Environmental Protection Commission review. Vice Chair John P. Kibbie was excused.
- Also present: Joseph A. Royce, Legal Counsel; Kathleen K. West, Administrative Code Editor; Sonya Streit, Administrative Rules Coordinator; fiscal staff, caucus staff and other interested parties.
- Convened Chair Eichhorn convened the meeting at 9:10 a.m.
- Fiscal report** Mary Beth Mellick presented the LSA report on rule makings that may have a significant fiscal impact.
- HUMAN SERVICES DEPARTMENT** Nancy Freudenberg, Ann Wiebers, and Mary Nelson represented the department. Other interested parties included Kristie Oliver of the Iowa Association of Homes and Services for the Aging, Shannon Strickler of the Iowa Hospital Association, Susan Cameron of the Iowa Health Care Association, Sandra Quilty of the American Cancer Society, Threase Harms-Hassoun of the Iowa chapter of Clean Air for Everyone (CAFE), Randy Yontz of the American Heart Association, Linda Hinton of the Iowa State Association of Counties, and Carol Logan of Wapello County CPC.
- ARC 5220B No action on ch 187, concerning aftercare services and supports, which are intended to assist youths between the ages of 18 and 21 who are leaving foster care and transitioning into adulthood. Ms. Nelson reported that annually approximately 300 to 400 foster care children reach the age of 18, and she outlined outreach efforts the department has made to ensure that those eligible for services know how to access the program.
- ARC 5283B No action on proposed amendment to the Medicaid premium for the employed persons with disabilities coverage group. Rep. Heaton asked Ms. Freudenberg to provide information about what constitutes “employment” for a person to qualify for the coverage.
- ARC 5219B No questions on amendments pertaining to Medicaid for independent young adults.
- ARC 5287B Amendments to chs 75 and 81 regarding Medicaid eligibility for persons receiving long-term care services are intended to comply with the Deficit Reduction Act of 2005. Ms. Oliver explained that the contract between a continuing care retirement community (CCRC) and a resident determines whether the entrance fee is counted as a resource when eligibility for Medicaid is calculated.
- ARC 5217B In accordance with a federal requirement, this amendment to ch 75 requires that Medicaid applicants and recipients provide documentation of nationality or citizenship. Members discussed types of documentation accepted and wondered who pays for services if recipients are unable to provide adequate documentation within the allotted time. Rep. Carroll asked that LSA monitor the program and advise the appropriations chairpersons about potential financial liability to the state. Sen. McKinley suggested that the department cross-check numbers used for verification to ensure that the same identification numbers are not being used by more than one person. Ms. Wiebers responded that social security information is verified through the federal database and that duplicate numbers are identified.
- ARC 5215B No action on amendments to allow Medicaid coverage for limited emergency medical services to legal aliens. Ms. Strickler expressed support for the amendments, which eliminate diagnosis codes and reduce “red tape” for hospitals.
- ARC 5211B Amendments to chs 75 and 81 increase the personal needs allowance for residents of nursing facilities. Ms. Freudenberg reported that if the increase were applied to other facilities, such as PMICs and ICFMRs, there would be a cost increase of \$342,000 to the state and \$68,000 to counties. Discussion related to whether the state can impose restrictions on a resident’s use of the personal needs allowance. Ms. Cameron stated that the Iowa Health Care Association supports the increase.
- ARC 5213B No questions on the update of the statewide average cost of nursing facility care.
- ARC 5214B No questions on the disregard of the value of a motor vehicle in determining eligibility for the family medical assistance program.
- ARC 5285B No action on proposed amendments to subrule 76.12(7) concerning estate recovery.

Human Services Department (continued)

- ARC 5284B Proposed amendments relating to Medicaid coverage for certain prescription and nonprescription smoking cessation drugs generated comments from representatives of the American Cancer Society, the Iowa Heart Association, and Clean Air for Everyone, who encouraged the department to cover all methods of cessation, including FDA-approved drugs and behavioral components. Members suggested that the department take these comments into consideration and proceed with a broader approach.
- ARC 5209B No questions on continuation of the increased reimbursement rate for mileage for Medicaid and PROMISE JOBS.
- ARC 5210B No questions on the 3 percent increase in reimbursement rates for providers of medical and remedial care.
- ARC 5216B No questions on the amendment to ch 79 regarding the obligation of Medicaid providers to report changes and pay tax-reporting penalties.
- ARC 5288B Amendments to chs 88 and 153 shift administration of the state payment program from the state to the county central points of coordination (CPCs). Ms. Freudenberg indicated that the department, in consultation with LSA, will develop a methodology for distributing funds to the counties; and the MH/MR/DD commission will adopt rules to implement the methodology. The rules will be subject to approval by both the commission and the council on human services. Ms. Hinton voiced concerns about the time schedule and confirmed the authority of the counties. Ms. Logan invited the committee to read the minutes of the MH/MR/DD commission meetings.
- ARC 5218B No questions on amendments to ch 92 to clarify provisions regarding copayments and to simplify the reapplication process for IowaCare.
- ARC 5286B No action on amendments to ch 92 regarding premium payment for IowaCare.
- ARC 5208B No questions on amendments to chs 113 and 200 regarding waiver of foster or adoptive parent preservice training.
- ARC 5207B No questions on the 3 percent increase in the reimbursement rate for social service providers.
- ARC 5206B No questions on the increase in the reimbursement rates for foster care and adoption maintenance subsidy.
- ARC 5204B No questions on the increase in the reimbursement rates for rehabilitative treatment and supportive services.
- ARC 5205B No questions on the increased reimbursement rate for nonrecurring subsidized adoption expenses.
- ARC 5251B Proposed ch 204 provides for a five-year demonstration waiver for the subsidized guardian program. Discussion related to the random selection for the control group and the experimental group and the approximately 3000 children who will be served in the five years.

ADMINISTRATIVE SERVICES DEPARTMENT (Excused from this meeting)

MEDICAL EXAMINERS BOARD Ann Mowery and Kent Nebel represented the board. Other interested parties included Denise Hill of the Iowa Osteopathic Medical Association, Linda Goeldner of the Iowa Nurses Association, and Jeanine Freeman of the Iowa Medical Society.

- ARC 5265B No questions on proposed amendments to broaden temporary licensure provisions to allow for short-term work in Iowa.
- ARC 5236B Chs 22 to 26 are intended to replace ch 12. Discussion focused on whether the mandatory reporting provisions accord with the statute. Rep. Eichhorn noted that when the legislature nullified similar provisions adopted by the dental examiners board, he gave assurance that all boards would be held to the same standard. Rep. Frevert asked about comments received from medical associations and the attorney general; Mr. Nebel agreed to forward to Mr. Royce a summary of comments received. Mr. Royce indicated that he would also redistribute the memo he had prepared at the time the dental examiners rule was reviewed. Sen. Connolly expressed concern about associations exerting pressure on legislators rather than working through their representatives on the boards. Ms. Hill distributed written comments and noted that the association has concerns about the lack of a reasonableness standard. Ms. Goeldner voiced concerns about the lack of due process in the investigation of reports based on hearsay. Ms. Freeman commented that reporting is driven both by law and medical ethics and encouraged the board to continue working with the professional associations. Mr. Nebel stated that the board would be willing to redraft the rule to be consistent with Iowa Code section 272C.4.

REVENUE DEPARTMENT David Casey and Jim McNulty represented the department. Sara Eide represented the Iowa Catholic Conference and the Iowa Association of Christian Schools.

- ARC 5255B No action on proposed amendments to 42.30 regarding the school tuition organization tax credit. Ms. Eide expressed support for the rule.

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF Melanie Johnson represented the department.

ARC 5234B No action on proposed amendments to ch 168 to add rules to define “employee” as the term applies to all state direct financial assistance programs and tax credit programs administered by the department and to clarify the term’s applicability to leased and contract employees.

ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA (Excused from this meeting)

Committee business Minutes of the July 2006 meeting were approved.

The next meeting will take place Tuesday, September 12, 2006.

ENVIRONMENTAL PROTECTION COMMISSION Dave Wornson, Christine Paulson, Chuck Corell, Gene Tinker, Brent Parker and Wayne Gieselman represented the commission. A large number of interested persons were present from Dickinson County, Iowa Citizens for Community Improvement, the Association for the Preservation of Clear Lake, the Iowa Network for Local Control, the Iowa Environmental Council, the Green Party, and the Sierra Club.

ARC 5245B No questions on amendments to implement environmental covenants.

ARC 5246B No questions on amendments to chs 22 and 23 to adopt federal regulations and clarify construction permit exemptions.

ARC 5244B No questions on 64.16 regarding fees for wastewater construction and operation permits.

ARC 5242B No questions on amendments to ch 65 to incorporate a definition of “designated wetland.”

ARC 5243B Amendments to ch 65 concerning animal feeding operations provide for departmental evaluation of sites and director discretion to deny, modify or condition a construction permit or manure management plan if the evaluation determines that the proposed operation or expansion would cause pollution to the waters of the state, would violate state water quality standards, or would have an adverse effect on the natural resources of the state or the environment. Mr. Gieselman reviewed the statutory authority for the amendments and the factors the department would consider in the evaluation: the likelihood that manure would be applied on frozen or snow-covered ground; the proximity to sensitive areas, trout streams, and karst terrain; land application areas with slopes greater than 9 percent and the distance the manure would be transported; and the two-year capture zone for public water supply. Mr. Gieselman noted that decisions by the director could be appealed to district court and the Iowa supreme court.

Rep. Carroll and Rep. Heaton voiced concern that the department is implementing by rule that which the legislature did not approve and suggested that the department should, instead, adjust the master matrix if it is not adequate. Expressing the opinion that the department is acting within its authority and that Iowans support these amendments, Sen. Connolly commended the department for its leadership. Rep. Frevert characterized the period between the effective date of the rule and the next legislative session as a pilot project and noted that the director will be under great scrutiny to ensure that decisions are made responsibly. Rep. Eichhorn expressed the opinion that the amendments conflict with the statute that mandates use of the master matrix.

Public comment related to support for the amendments, inadequacy of the matrix in regard to alluvial soils and karst terrain, the need for preservation of the water resources of the state, and environmental and economic concerns.

Members expressed appreciation for the input from citizens who addressed the committee and clarified that the issue is not water quality or local control, but whether the department has statutory authority to adopt the amendments.

Motion to Object Rep. Carroll moved an objection on the grounds that the amendments are beyond the authority delegated to the agency. Following discussion, Sen. Connolly requested a roll-call vote.

Motion carried The motion carried with Rep. Carroll, Sen. Courtney, Rep. Heaton, Rep. Huser, Sen. McKinley, Sen. Seymour, and Rep. Eichhorn voting AYE; and Sen. Connolly and Rep. Frevert voting NAY.

Regulatory Analysis No action on the regulatory analysis on ARC 5042B pertaining to commercial septic tank cleaners.

NATURAL RESOURCE COMMISSION Dale Garner represented the commission.

ARC 5222B No action on ch 95 relating to game harvest reporting and landowner-tenant registration.

ARC 5221B No questions on amendments to ch 106 pertaining to deer hunting by residents.

VETERANS AFFAIRS DEPARTMENT (Excused from this meeting)**INSURANCE DIVISION** (Excused from this meeting)

IOWA FINANCE AUTHORITY Dennis Dietz and Tim Waddell represented the authority. Other interested parties included Jim Conlin of Conlin Properties and Bill Reinke of Houses, Inc.

ARC 5228B Proposed amendments to ch 12 pertain to the 2007 qualified allocation plan (QAP) for low-income housing tax credits. Mr. Conlin distributed written comments and voiced concern about the set-asides in the QAP. Discussion related to whether adequate credits remain for families that do not fall into a set-aside category. Rep. Huser asked IFA to provide information about the number of families residing in units built with IFA funds. Mr. Reinke expressed support for the the work of IFA in allocating the tax credits.

Not reviewed: ARC 5293B, ARC 5289B, ARC 5291B, ARC 5229B, ARC 5292B, ARC 5290B

PUBLIC SAFETY DEPARTMENT Mike Coveyou, Jim Kenkel, Randy Novak, and Sam Knowles represented the department.

ARC 5241B No questions on amendments to ch 5 relating to local adoption of the 2006 edition of the International Fire Code and to automatic fire extinguishing systems.

ARC 5186B No action on proposed 5.52 concerning sprinklers in elevators.

ARC 5256B No action on amendments to ch 259 concerning regional emergency response training center programs. Issues relating to duplication of services or facilities in two areas of the state were discussed. Mr. Coveyou confirmed that training centers are to provide training for fire protection, emergency response, and homeland security services.

ARC 5185B No questions on proposed 303.2 and 303.3 pertaining to energy conservation in residential and nonresidential construction.

ARC 5184B No questions on the rescission of subrule 303.9(2) to eliminate a requirement to base energy conservation in residential construction on the home heating index.

ARC 5232B No questions on amendments to chs 400 and 402 regarding peace officers' retirement, accident, and disability system, line-of-duty death benefit, and service purchases.

ARC 5231B No questions on proposed amendments to chs 400 and 402, regarding peace officers' retirement, accident, and disability system, line-of-duty death benefit, medical board, administrative services, and service purchases.

Adjourned The meeting was adjourned at 4:55 p.m.

Respectfully submitted,

Kathleen K. West

APPROVED:

Chair George Eichhorn

Vice Chair John P. Kibbie