

MINUTES OF THE JUNE 2004 MEETING
OF THE

ADMINISTRATIVE RULES REVIEW COMMITTEE

Date of meeting: A special meeting of the Administrative Rules Review Committee (ARRC) was held Monday, June 7, 2004, in Room 116, 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 Marcella Frevert, David Heaton, and Geri Huser. Representative Danny Carroll was 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 at 9 a.m.

HUMAN SERVICES DEPARTMENT Nancy Freudenberg represented the department.

ARC 3339B No questions on proposed amendments to the HAWK-I program.

Special review of emergency filings and progress report:

- Freudenberg provided a progress report on the department’s work with the insurance division to ensure that Medicaid is the payor of last resort.
- No questions on the planned emergency filing of nursing facility rates.
- No questions on the planned emergency filing to continue rehabilitative treatment and supportive services rates.

PROFESSIONAL LICENSURE DIVISION Pierce Wilson represented the division, and Ed Friedmann represented the board of physician assistant examiners. Other interested parties included Libby Coyte on behalf of the Physician Assistant Society, rural health clinics and community health centers; Ann Mowery of the board of medical examiners; Jennifer Davis of the Iowa Academy of Family Physicians; Leah McWilliams of the Iowa Osteopathic Medical Society; Sheryl Puderbaugh of the Iowa chapter of the American College of Nurse Midwives; Lorinda Inman of the board of nursing; Denise Hill of the Iowa Medical Society; and Kathie Lyman of the Polk County and Warren County Medical Societies.

ARC 3343B No questions regarding amendments to chs 325, 326, 329 and 330.

ARC 3345B In response to a request from the governor’s office and concerned parties, Friedmann asked that a 70-day delay be imposed on the amendments to chs 326 and 327 so that issues raised by concerned parties can be resolved.

Motion to delay Kibbie moved a 70-day delay be imposed on ARC 3345B.

Gentry stated that the governor’s office supports a delay so that legislative directives and policy considerations can be clarified. Encouraging the board to withdraw the rules, Gentry indicated that the governor’s office will be working with all parties to facilitate productive ways to address the issues and will keep the committee informed through Royce. Heaton cautioned the board against increasing the scope of practice through rules, and Redfern expressed concern that changes were made without statutory authority. Frevert asked for further information about the required training and testing of the various medical professionals, such as physician assistants, nurses, nurse practitioners, and physicians.

Mowery expressed support for the delay and indicated that the board of medical examiners, which has submitted comments orally and in writing at every step in the process, feels so strongly about the issues relating to surgery and obstetrical care that the board will not allow physicians to supervise PAs who perform those functions. Davis submitted written concerns of the Iowa Academy of Family Physicians and asked the committee to consider imposing both a session delay and an objection. Coyte expressed support for the amendments and a willingness to work toward resolution of the issues. McWilliams distributed written comments, expressed concern about the public safety, and requested that a session delay and an objection be placed on the amendments. Puderbaugh expressed support for the work of physician assistants, but opposed the amendment to 327.1(1)“g” in that physician assistants lack specific training and experience to perform obstetric care. Lyman expressed concerns about physician liability and patient safety which would result from allowing supervision outside the area of practice of the supervising physician and the provision of obstetrical care by PAs. Inman expressed concern that the amendments expand the scope of practice without the requisite education and may compromise nursing care. Hill stated that the Iowa Medical Society submitted written comments to the board in March, appeared at the public hearing, and attended the PA board meeting to discuss the same four concerns: the amendment to strike “common to the physician’s practice” in 327.1(1), the amendment to strike “office” before “surgical procedures” in 327.1(1)“e,” the change to allow for obstetrical care in 327.1(1)“g,” and rule 327.4 regarding newly licensed PAs practicing at remote medical sites. Hill stated that the Iowa Medical Society requests that a session delay and an objection be placed on the amendments.

- Professional Licensure Division (continued)
Gentry expressed an expectation that all issues will be resolved. Royce stated that the rules will be placed on the August agenda and, if concerns remain, the committee will have the option of imposing a session delay or an objection.
- Motion carried The motion carried; the 6/16/04 effective date of the amendments in ARC 3345B is delayed for 70 days.
- ADMINISTRATIVE SERVICES DEPARTMENT** Patricia Lantz, Ed Holland and Jean McPherson represented the department.
- ARC 3370B No action on amendments relating to parking at the capitol complex. Lantz clarified that the fine for parking violations was raised from \$5 to \$10 with an additional \$10 fee for delinquency. Frevert and Heaton commented that sufficient close parking or a shuttle service would be helpful for citizens visiting the capitol.
- ARC 3365B Proposed ch 46 provides procedures for payroll deductions for additional insurance coverage. Connolly asked that the director be advised that the current 457 program does not give enough options to employees. Holland responded that this program applies to supplemental insurance products, such as cancer insurance and long-term care, rather than investments; Connolly suggested that the rules clearly specify the types of supplemental insurance products that would be eligible for the program. McKinley stated that the rules should include an appeal process for application and termination decisions and should not require use of a social security number. McPherson responded that centralized payroll currently uses the social security number but within the next year will use a different employee identification number.
- DENTAL EXAMINERS BOARD** Jennifer Hart represented the board.
- ARC 3347B No action on various amendments to update the board's rules. Hart indicated that the passing score is established by the central regional dental testing service.
- ECONOMIC DEVELOPMENT DEPARTMENT** Terry Vestal represented the department.
- ARC 3336B No action on proposed amendments to ch 25 concerning HUD's American Dream Down Payment Initiative and the Iowa's housing needs assessment: Meeting the Challenges of the Next Decade. Discussion pertained to the single-family home forgivable loan. McKinley requested further information regarding default rates and total amounts of loans outstanding. Heaton asked that the developmental disabilities council be advised that these loans are available for persons with disabilities.
- EDUCATION DEPARTMENT** Carol Greta and Ray Morley represented the department.
- ARC 3331B Proposed amendments to ch 17 pertain to open enrollment considerations in districts that have desegregation plans. Greta clarified that these rules apply to open enrollments between districts, not attendance centers within a district, and are intended to uphold existing plans. The rules, which incorporate guidelines adopted by the department in 1972, establish when a district can adopt and when a district can implement a desegregation plan. McKinley requested information about numbers of denials. Redfern expressed concern that these rules will limit the educational choices available to some families and that the same options are not available to all students.
- ARC 3330B No action on proposed amendments to ch 33 which relate to educating the homeless. Morley indicated that every district has designated a liaison for the homeless. Greta noted that federal funding will probably not be sufficient to cover costs of transportation. Morley clarified the definition of "homelessness" as lacking a fixed, regular and adequate nighttime residence.
- ENVIRONMENTAL PROTECTION COMMISSION** Chuck Corell, Kelly Stone and Tom Anderson represented the commission.
- ARC 3360B No action on amendments to chs 61 and 62 pertaining to standards for total dissolved solids. Corell indicated that the effect on wastewater treatment facilities is not known. Eichhorn expressed concern about the adoption of a rule that has unknown consequences for wastewater treatment facilities.
- ARC 3359B Proposed amendments to ch 118 deal with discarded appliance demanufacturing. Anderson indicated that fees charged by facilities are not regulated by the department. Frevert expressed support for toxic cleanup days sponsored by DNR.
- ARC 3358B No action on proposed ch 122, which relates to electronics recycling.

- NATURAL RESOURCES DEPARTMENT** Ross Harrison represented the department. Dave Brasher represented the Iowa chapter of the National Federation of Independent Business.
- ARC 3357B** The Iowa nature store is proposed in ch 11. Harrison reported that the department would contract with vendors who would offer items through an on-line Web site as well as at state parks. According to the agreement, the state will pay \$3,500 to develop the Web site, and the vendor will produce the items for cost plus 25 percent. McKinley expressed disappointment that bidders were not solicited statewide and requested a copy of the RFP, the bid list and the contract. Eichhorn questioned the statutory authority for this venture. Suggestions from members included licensing of logos, involving IDED's tourism division, and investigating ways to promote Iowa's parks without encroaching on the private sector. Brasher commented that the rules may be in violation of Iowa Code chapter 23A since the department is not specifically exempted.
- Committee business** The July meeting will be held Thursday, July 8, 2004. The minutes of the May 2004 meeting were approved. The committee approved a request from the department of public safety to publish in the Iowa Administrative Bulletin a notice of availability of funds for loans to local fire departments to purchase firefighting equipment. Royce noted that, as a result of a supreme court ruling, rule 16.2 of the alcoholic beverages division will be rescinded.
- PAROLE BOARD** Richard Bordwell represented the board.
- ARC 3321B** No action on proposed updating of board rules. Bordwell explained, in response to the comment received from the Iowa Civil Liberties Union regarding fearful witnesses, that hearsay evidence is allowed in parole hearings.
- PETROLEUM UST FUND BOARD, IOWA COMPREHENSIVE** James Gastineau and David Stewart represented the board.
- ARC 3361B** No action on ch 14 concerning aboveground petroleum storage tanks.
- ENGINEERING AND LAND SURVEYING EXAMINING BOARD** Randall Beavers represented the board.
- ARC 3342B** No questions on proposed 1.5 regarding licensed professional engineers and building construction.
- ARC 3341B** No action on the amendments to clarify that passing examination scores are not released.
- ETHICS AND CAMPAIGN DISCLOSURE BOARD** Charlie Smithson represented the board.
- ARC 3354B** No action on proposed amendments to ch 1.
- ARC 3350B** No action on amendments to ch 4 concerning loans and debts.
- ARC 3356B** No questions on a proposed amendment to 4.3(1) to identify the seven types of campaign committees.
- ARC 3353B** No questions on proposed correction of a cross reference in 4.8(3).
- ARC 3366B** No questions on campaign disclosure report due dates.
- ARC 3351B** No questions on the amendment to 4.25(1) regarding use of campaign funds for payment of a bonus to campaign staff, including a family member.
- ARC 3355B** No questions on a proposed amendment to 4.25(1) clarifying permissible donations of campaign funds to a charitable institution.
- ARC 3349B** No questions on 4.26 and 4.27 regarding transfer of assets between candidates and filing of independent expenditure statement.
- ARC 3369B** No questions on 4.35(1)"c" regarding disclosure of source of campaign contributions.
- ARC 3364B** No action on 4.38 concerning political attribution statement.
- ARC 3348B** No questions on 8.9(1)"c" concerning filing of executive branch lobbyist client reports.
- ARC 3352B** No questions on amendments to 8.9 concerning due dates for filing executive branch lobbyist client reports.
- INSPECTIONS AND APPEALS DEPARTMENT** David Werning represented the department.
- ARC 3381B** No questions on proposed amendments to ch 71, overpayment recovery, to include the HAWK-I program and update form numbers.
- PUBLIC HEALTH DEPARTMENT** Judy Solberg and Barb Nervig represented the department.
- ARC 3373B** No action on proposed ch 68 concerning control of lead-based paint hazards. Lundby determined that there will be no liability for local boards of health that do not adopt the rules.
- ARC 3371B** Proposed amendments to ch 73, the Iowa WIC program, add nutrition educators; allow for precertification of pregnant women; provide for checks to be issued for three months, rather than one; and prohibit WIC-only stores in Iowa.
- ARC 3372B** No action on proposed amendments to ch 88 concerning the volunteer health care provider program.

RACING AND GAMING COMMISSION Karlyn Dalsing represented the commission.

ARC 3333B No action on amendments to chs 3 to 6, 8 and 12.

TRANSPORTATION DEPARTMENT Jody Johnson, Tina Hargis, Steve Gent, and Lance Stumbo represented the department.

ARC 3363B Proposed amendments to chs 116 and 117 pertain to junkyard control and outdoor advertising. Gent reported that, in accordance with an agreement with the Federal Highway Administration, the department is no longer required to regulate junkyards that are adjacent to primary highways. Lundby expressed disappointment that the department will no longer require fences and concern that local governments will have no authority over junkyards in unzoned areas. McKinley suggested that the department notify local communities and tourism and development groups before the hearings.

Approximately 64 additional billboards may be erected on Iowa's interstate highways as a result of legislative changes to allow billboards on land that is currently zoned and used for commercial purposes.

ARC 3332B No action on proposed 401.9 concerning firefighter plates.

Adjourned The meeting was adjourned at 2:45 p.m.

Respectfully submitted,

Kathleen K. Bates

APPROVED:

Chair George Eichhorn

Vice Chair Paul McKinley