

**MINUTES OF THE MAY 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, May 11, 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 Danny Carroll, Marcella Frevert, David Heaton, and Geri Huser.

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.

MEDICAL EXAMINERS BOARD Ann Mowery represented the board.

ARC 3290B No action on proposed amendments to chs 8 and 12 relating to fees.

ARC 3289B No questions on the proposed amendment to allow a pharmacist-intern under the direct supervision of an authorized pharmacist to administer influenza and pneumococcal vaccines.

PHARMACY EXAMINERS BOARD Terry Witkowski represented the board.

ARC 3242B No questions regarding prescription container label requirements when a brand-name drug is substituted for a prescribed generic drug.

HUMAN SERVICES DEPARTMENT Nancy Freudenberg represented the department.

ARC 3327B Proposed amendments to chs 77 to 79 and 83 include day habilitation services in the Medicaid HCBS waiver program for persons with mental retardation. Freudenberg reported that the amendments are the result of a collaborative effort involving the department, counties and provider groups and indicated that because some consumers who are currently accessing adult day care or prevocational services may opt to receive day habilitation services, costs would shift from counties to Medicaid. Freudenberg added that day habilitation services are intended to improve the recipient's quality of life, but stated that this benefit may not be measurable.

ARC 3328B No questions on proposed amendments to ch 99 concerning suspension or reinstatement of child support obligations.

ARC 3329B No action on proposed 110.10(2) pertaining to requirements for Category C child development homes, which can care for a maximum of 16 children. Freudenberg noted that additional changes may be needed to comply with recent legislation.

ARC 3325B No action on amendments to ch 112 relating to licensing and regulation of child foster care facilities.

ARC 3326B No action on amendments to ch 202 pertaining to local transition committees, which review plans for youth in foster care to transition to adulthood.

ADMINISTRATIVE SERVICES DEPARTMENT Carol Stratemeyer and Michael Prey represented the department. Roger Baysden of Iowa Prison Industries (IPI) was also present.

ARC 3307B Stratemeyer outlined the vacation and sick leave incentive program for early retirement. Noting that the rules do not specifically prohibit participating employees from being rehired as consultants, McKinley requested a list of employees who were rehired as consultants after electing to participate in the previous incentive program. Gentry stated that the governor's office is working closely with the department to address concerns about subsequent rehiring of participating employees.

ARC 3303B No questions on amendment of the definition of "agency" to conform with statute.

ARC 3315B Proposed ch 111 pertains to disposal of surplus state property. Connolly expressed concern about subrule 111.2(1), which allows an agency some discretion in disposing of state property; and several members concurred that all state property should be disposed of according to the same orderly, open procedures that are based on the best interests of the taxpayers. Gentry suggested that the department examine closely provisions in the state constitution and Iowa Code chapters 721 and 68B and that the department seek counsel from the ethics and campaign and disclosure board and the attorney general's office. There was discussion about computer recycling, public auction, Internet auction, appropriate disposal of items on which no one bids, and the need for definitions of words like "unfit" and "unnecessary." Baysden reported that IPI has administered the state surplus operation for the past seven years and invited the committee to visit the Records Building and observe the state's surplus property.

ENVIRONMENTAL PROTECTION COMMISSION Chuck Corell, Kelly Stone, Gene Tinker and Robert Drustrup represented the commission. Susan Judkins represented the Iowa League of Cities.

ARC 3281B No questions on stream designations and site-specific water quality standards for total dissolved solids.

Environmental Protection Commission (continued)

- ARC 3282B Proposed amendments to ch 61 pertain to a protocol developed by the fisheries bureau for cold water stream designations. Carroll inquired about the problem that the rules were intended to address and the communities that would be affected and asked the department to provide research data to support the need for the rule. Gentry asked the department to also provide information about how the protocol criteria were developed. Judkins noted that a number of cities in NE Iowa may be affected and asked that the state consider providing financial assistance to affected cities. Kibbie was advised that any change in a stream's designation would have to be made through the rule-making process.
- ARC 3279B No questions on termination of a notice to amend ch 65 which appeared as part of a "double barrel" filing.
- ARC 3283B No questions on proposed ch 137 pertaining to a voluntary land cleanup program.
- INSURANCE DIVISION** Roseanne Mead and Angela Burke Boston represented the division.
- ARC 3306B No action on rescission of subrule 15.43(10) concerning diminished value.
- ARC 3324B No questions on suspension of the small employer health reinsurance program.
- ECONOMIC DEVELOPMENT DEPARTMENT** Hank Manning, Nichole Warren and Michael Johansen represented the department.
- ARC 3285B No action on amendments to CDBG application procedures.
- ARC 3284B Ch 69 relates to the loan and credit guarantee division. Warren highlighted changes from the notice and reported that concerns expressed by bankers have been addressed in the final rules. McKinley voiced disappointment that the rules, particularly the fees, are not more attractive to small business and requested names and occupations of advisory board members. Royce advised the department that specific fees should be set out in the rules.
- IOWA FINANCE AUTHORITY** Loyd Ogle and Matt White represented the authority. James Conlin of Conlin Properties was also present.
- ARC 3322B Ogle outlined the proposed changes to the title guaranty rules and noted that revenues from the title guaranty program support Iowa's first-time homebuyer programs. Conlin distributed materials and commented on his concerns about the operation of the authority, the lack of sound underwriting practices, and the membership of the advisory committee.
- LAW ENFORCEMENT ACADEMY** Penny Westfall represented the academy.
- ARC 3314B Westfall reported that rules regarding reserve officer personal standards have been revised to address concerns about costs of testing. McKinley commended the academy for their methodology in this rule making.
- PETROLEUM UNDERGROUND STORAGE TANK FUND BOARD** Scott Scheidel represented the board.
- ARC 3308B No action on proposed 1.5 and ch 9 concerning potential conflicts of interest and loss portfolio transfers. Scheidel noted that in response to a comment from the ethics and campaign disclosure board "should" will be changed to "shall" in the potential conflict of interest language.
- EDUCATIONAL EXAMINERS BOARD** Anne Kruse represented the board.
- ARC 3311B Proposed ch 25 establishes a code of professional conduct and ethics. Kruse noted that stakeholder groups have provided input and have indicated that the rules are satisfactory. Frevert expressed concern about how Standard VI may be applied. McKinley questioned the definition of illegal discrimination in 25.3(6)"e" and advised the board that the rules should not specify statuses that are not protected under Iowa law. Gentry suggested that gender identity discrimination, although not illegal, be included as unethical. Eichhorn expressed concern about the constitutionality of retroactive application of rules regarding past convictions.
- ARC 3313B No action on proposed 14.131 regarding the Class E license.
- ARC 3310B No questions on amendments relating to fees, which are increased to compensate for reduced appropriations.
- ARC 3312B Proposed ch 26 pertains to rights and responsibilities of practitioners. Eichhorn cautioned the board that the language "right to be licensed" may lead to civil law suits. McKinley noted that no student should be discriminated against and questioned the inclusion of gender identity in 26.3"7" as illegal discrimination. Carroll expressed concern about the repeated inclusion of sexual orientation in the board's rules and wondered if prohibiting only certain forms of discrimination suggests that other types of discrimination are acceptable. Connolly voiced disappointment that the senate did not pass legislation to include similar language in the Iowa Code. Members expressed appreciation to Kruse for her work and professional representation of the board.

COLLEGE STUDENT AID COMMISSION Julie Leeper represented the commission.

ARC 3323B Leeper reported that the proposed amendment to 12.1 to require that at least 50 percent of the hours be taken in a classroom setting is intended to reduce the number of Iowa tuition grant recipients. Frevert expressed some reservations; Carroll asked about the impact of the rule on institutions offering Internet courses; and Heaton requested information on eligibility requirements for Iowa tuition grants.

Committee business The minutes of the April 2004 meeting were approved.
The next meeting was scheduled for Monday, June 7, 2004.
The July meeting was set for Thursday, July 8.
Kibbie moved approval of DNR's request to publish in the Iowa Administrative Bulletin a notice of the hearing regarding the intended use plan for the drinking water state revolving fund. The committee concurred.
Eichhorn announced that the committee rules of procedure will be reviewed at the June meeting and that special reviews of rules requested by committee members will be scheduled as time permits. Kibbie suggested scheduling special reviews at the end of the agenda.

IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM Gregg Schochenmaier represented IPERS.

ARC 3295B No comments on proposed chs 4 to 6.

REVENUE DEPARTMENT Jerri DeVries represented the department.

ARC 3298B No questions on amendments relating to organization of the department, inheritance tax, the definition of livestock, and exemptions for financial institution fees to a noncustomer and transfer of vehicle from one corporation to another.

ARC 3297B Ch 109 pertains to the school infrastructure local option sales and services tax for the period of April 1, 2003, to December 31, 2022.

UTILITIES DIVISION Cecil Wright and Penny Baker represented the division.

ARC 3317B No action on amendments to ch 7 pertaining to capital infrastructure investments and cost of capital changes.

ARC 3318B No comments on termination of the notice regarding second payment agreements, which will be renoticed in June.

ARC 3316B No action on termination of the notice regarding temperature trigger for cold weather protections. The board is working with DHS to identify low-income customers who may be eligible for LIHEAP.

ARC 3319B No questions on amendments to ch 19 regarding small volume gas transportation service.

ARC 3296B No questions on intrastate access service charges.

PUBLIC SAFETY DEPARTMENT Mike Coveyou and Jim Kenkel represented the department.

ARC 3293B No action on amendments implementing fire safety rules for adult day services programs. Coveyou reported that, except for cases involving imminent peril to residents or staff, compliance enforcement has been delayed for one year.

ARC 3292B No action on 5.626 regarding fire safety in assisted living facilities.

ARC 3291B No action on 5.950 regarding fire safety in residential care facilities.

ARC 3320B No action on 16.130(15) concerning building code and fire safety compliance in hospitals and health care facilities.

ARC 3294B No action on proposed amendments to ch 54 concerning fire fighter certification.

ELDER AFFAIRS DEPARTMENT Mary Ann Young represented the department. Other interested parties included Cindy Haverkamp representing the Iowa Health Care Association and the Iowa Center for Assisted Living and Kristie Oliver on behalf of the Iowa Association of Homes and Services for the Aging.

ARC 3300B No action on amendments relating to organization of the commission and uniform rules.

ARC 3288B No questions on chs 22 to 24 concerning adult day services programs.

ARC 3299B No action on ch 25 concerning assisted living facilities. Young reported that comments received during the notice period have been addressed and that provisions governing the occupancy agreement conform to statute and are readable by the public. Committee discussion related to the multidisciplinary team's assessment, involuntary transfers and appeals of decisions, occupancy agreements, and consumer education. Oliver commended the department for involving the stakeholders in developing the rules and noted that the providers are working on a standardized occupancy agreement. Haverkamp called attention to the alarm system required in 25.37(2) if a cognitive-impaired person resides in the facility, noting that it may be costly and would not result in a "homelike" environment.

ARC 3301B No action on rules relating to monitoring, civil penalties, complaints, investigations and fees for adult day services and assisted living programs.

ARC 3302B No action on proposed ch 29 concerning elder group homes.

MAY 11, 2004

Adjourned

The meeting was adjourned at 2:52 p.m.
Respectfully submitted,

Kathleen K. Bates

APPROVED:

Chair George Eichhorn

Vice Chair Paul McKinley