

**MINUTES OF THE FEBRUARY 2011 MEETING
OF THE
ADMINISTRATIVE RULES REVIEW COMMITTEE**

Date of meeting: The regular, statutory meeting of the Administrative Rules Review Committee (ARRC) was held on Friday, February 11, 2011, at 8 a.m. in Room 116, State Capitol, Des Moines, Iowa.

Members present: Representative Dawn Pettengill, Chair, and Senator Wally Horn, Vice Chair; Senators Merlin Bartz, Thomas Courtney, John P. Kibbie, and James Seymour; Representatives David Heaton, Rick Olson, Janet Petersen, and Linda Upmeyer were present.

Also present: Joseph A. Royce and Jack Ewing, Legal Counsel; Stephanie A. Hoff, Administrative Code Editor; Brenna Findley, Administrative Rules Coordinator; fiscal staff; caucus staff; and other interested parties.

Convened Rep. Pettengill convened the meeting at 8:05 a.m.

Motion Sen. Horn moved that Rep. Pettengill be elected chair of the committee.

Motion carried Rep. Pettengill was elected.

Fiscal overview Sue Lerdal presented the LSA fiscal report.

NURSING BOARD Lorinda Inman represented the board, and Cindy Arterburn represented the board’s intravenous (IV) therapy committee. Other interested parties included Theresa Murphy of the Iowa Staff Nurses Association (ISNA), Virginia Wangerin of the Iowa Nurses Association, Lisa Flanagan, RN, Karen Kaiser, RN, and Teresa Meyer, RN.

ARC 9329B Amendments to 6.1, 6.3 and 6.5 pertain to IV therapy scope of practice for the licensed practical nurse (LPN) in licensed hospitals, nursing facilities and certified end-stage renal dialysis units.

Rep. Heaton requested clarification of the procedure for IV therapy and rehydration-related issues. Rep. Olson inquired about the change in the required work experience from 12 to 6 months, after which an LPN may begin the 65-hour training in IV therapy. Sen. Horn questioned the amount of required training. Ms. Inman confirmed for Sen. Seymour that the employer is responsible for verifying evidence of an LPN’s completion of IV therapy training and that there had not been technical problems with the transmission of the ICN hearing. Ms. Inman advised Rep. Upmeyer that the definition of supervision pursuant to Iowa Code chapter 152 applies to an RN supervisor who supervises an LPN and that the rules do not change the definition but do add to an RN supervisor’s responsibilities. Rep. Pettengill inquired about the liability of an RN supervisor. Rep. Petersen expressed concern about the availability of an RN supervisor who is not required to be on site and about an RN supervisor’s right to decline to supervise an LPN. Sen. Seymour pointed out that employers, as a part of continuous quality improvement, regularly review errors and that written procedures allow an employee who is not comfortable with a particular order the option not to follow the order. Sen. Kibbie considered the possibility that LPNs be encouraged to continue their education in order to become RNs. Sen. Courtney inquired about the way to ensure the best patient care. Sen. Seymour affirmed the expansion of both the scope of practice for LPNs and the standard of care.

Ms. Wangerin, in expressing support for the rules, summarized the responsibilities of RN supervisors and stated that both practice and scientific evidence support the delegation of IV therapy to LPNs. Ms. Kaiser expressed support for the rules, noting that the rules aid long-term care facilities in rural areas by allowing a competent LPN with appropriate training to perform IV therapy. Ms. Arterburn expressed support for the rules, citing the expansion of the education of LPNs and of the standard of practice in the state, both of which promote patient safety. Ms. Arterburn also presented the committee with written comments from Jodie Stoker, RN, who, because of an unforeseen circumstance, was unable to attend the meeting.

Nursing Board (cont'd)

Ms. Murphy expressed opposition to the rules, citing particular concern about patient safety and the liability of an RN supervisor. Ms. Flanagan expressed opposition to the rules with particular concern about the quality of LPN training, the increased workload of an RN supervisor, and patient safety. Ms. Meyer expressed opposition to the rules, noting particular concern about the critical care thinking of an LPN and patient safety.

Motion to refer

Sen. Kibbie moved a general referral on ARC 9329B.

Motion carried

On a voice vote of nine to one, the motion carried.

EARLY CHILDHOOD IOWA STATE BOARD Shanell Wagler represented the board.

ARC 9346B

Ch 1 pertains to the early childhood Iowa initiative. Discussion pertained to the waiver process incorporated in the rules. Ms. Wagler reported that to date two waivers have been requested. Rep. Pettengill requested clarification of the waiver specific to ch 1 and inquired about the model level of performance within the levels of excellence. Sen. Bartz inquired about whether the waiver is specific to the two exceptional circumstances in 1.6(2) and about "compelling documentation" of a hardship and cautioned that a waiver process with too-prescriptive conditions effectively prohibits the waiver. Rep. Heaton encouraged more flexibility in the granting of a waiver and suggested that further legislation regarding the waiver process might be considered.

MANAGEMENT DEPARTMENT Shanell Wagler represented the department.

ARC 9334B

No action on ch 9 pertaining to fiscal oversight of the early childhood Iowa initiative.

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF Tim Waddell and Jane Seaton represented the department.

ARC 9326B

No action on amendments to chs 21 and 25 concerning the removal of HOME housing fund requirements. The HOME housing fund is now administered by the Iowa finance authority.

ARC 9336B

Proposed amendments to ch 39 pertain to the Iowa main street program. Ms. Seaton noted that the amendments expand eligibility to include all Iowa cities regardless of population, eliminate reference to operational grants for start-up local main street programs, and expand designation of main street Iowa districts to include historic traditional neighborhood commercial districts and historic downtowns. Rep. Heaton inquired about the adequacy of funding in rural Iowa if the number of participating communities is expanded. Rep. Upmeyer expressed concern about the expansion of the program and questioned whether this program and others might require review for possible redistribution of funds; Ms. Seaton offered to provide any information needed for that discussion. Rep. Pettengill questioned the expansion and its effect on the distinction that a main street designation provides. Sen. Bartz expressed concern about whether expansion of the pool of applicants might make a designation more difficult to attain and about the fairness and impartiality of the selection criteria and point scoring. Sen. Horn inquired about fire protection for restored buildings. Sen. Seymour commended the program and encouraged its continuation in communities of any size.

ENVIRONMENTAL PROTECTION COMMISSION Chuck Corell, Christine Schwake, Elaine Douskey, and Tamara Mullen represented the commission.

ARC 9330B

Amendments to 61.2(2)"g" provide for water quality certification pursuant to Section 401 of the Clean Water Act (CWA) for three regional permits (RPs). Mr. Corell explained that Section 404 of the CWA authorizes the U.S. Army Corps of Engineers (Corps) to issue permits for the discharge of dredged or fill materials into the nation's waters. Under that authority, the Corps issues an RP through which the same set of conditions can be applied under one permit to a group of similar projects. Mr. Corell also stated that Section 401 of the CWA requires states to certify that the Corps permits and the conditions therein are consistent with state water quality standards. As a result, the CWA authorizes states to add conditions to the permits through state certification. Mr. Corell reported that no public comments were received.

Environmental Protection Commission (cont'd)

Sen. Bartz stated that the amendment to 61.2(2)“g”(8) appears to be a major change in policy and inquired about its effect on permits in drainage districts. Sen. Kibbie requested clarification of the effect of the amendment on a permit for a project on a water body such as West Lake Okoboji. Rep. Upmeyer requested clarification of the standards for the granting of permits by the Corps and by the state and inquired about whether Iowa water quality standards might exceed those of the Corps and EPA. In response to these inquiries, Mr. Corell explained the RP permit process and the process by which the state may add conditions to the RP to be consistent with state water quality standards. Ms. Schwake stated that the Corps determines which projects require a permit and exempts from permits most of the drainage district activity and tiling activity under discussion.

Motion to delay
Motion carried

Sen. Bartz moved a 70-day delay on 61.2(2)“g”(8).
On a unanimous voice vote, the motion carried.

Mr. Royce stated that the rule making will appear on the April agenda. Sen. Kibbie asked that the department provide additional information about the effect of the rule on the upgrading of drainage districts, and Rep. Pettengill requested a list of the water bodies in question and more detail regarding the fiscal impact of the rule. The department will provide further information about the impact of and clarification on 61.2(2)“g”(8).

ARC 9331B

Amendments to ch 135, promulgated pursuant to 2010 Iowa Acts, House File 2531, pertain to site investigation, classification, and corrective action design reports from certified groundwater professionals. Rep. Upmeyer inquired about EPA’s concerns regarding released liability set forth in the statute, specifically, how future owners of a property that has received a no further action certificate might be affected, to which Ms. Douskey replied that there would be no effect on future owners or on the property. Rep. Upmeyer also asked about the effect of EPA’s questioning of the statute, to which Ms. Mullen responded that the department would be most concerned about continued approval of the underground storage tank program.

NATURAL RESOURCE COMMISSION Willie Suchy, Sherry Arntzen and Tamara Mullen represented the commission.

ARC 9325B

Proposed 22.10 to 22.15 pertain to procedures to be used by the department to develop a three-year pilot program to open private lands to public hunting while providing landowners grant funds to create, manage, and enhance wildlife habitat. Mr. Suchy reported that public comment focused on the question of liability for the landowner who participates in the program. In response to an inquiry by Rep. Pettengill regarding liability, Ms. Mullen stated that, according to the department and the attorney general, Iowa Code chapter 461C ensures that liability protection is afforded to landowners who open their land for recreational use, including landowners who participate in the habitat and public access program.

ARC 9324B

Amendments to chs 61 and 62 pertain to reservations at state parks and recreation areas and state forest camping areas. Ms. Arntzen reported that, in response to public comment, one change was made to the Notice of Intended Action: A range of no less than 50 percent of campsites and up to no more than 75 percent of campsites in each individual campground shall be designated as reservable sites on the reservation system. Senator Kibbie expressed support for the reservation system.

HUMAN SERVICES DEPARTMENT Nancy Freudenberg and Wendy Rickman represented the department.

ARC 9333B

Proposed amendments to 109.6(5)“c” pertain to record checks for volunteers or substitutes at child care centers.
Sen. Bartz suggested that “conditions exist” or “situations exist” be substituted for “criteria are met” in the introductory sentence of 109.6(5)“c.” Rep. Upmeyer requested clarification of the criteria and inquired about how the public will be informed about the rule. In response, Ms. Rickman stated that the information will be posted on the department’s Web site and sent directly to child care centers.

Human Services Department (cont'd)

Rep. Olson inquired about what type of criminal record would exclude a volunteer or substitute, to which Ms. Rickman replied that records are reviewed on a case-by-case basis, and a record of any crime against people would exclude a volunteer or substitute. In response to an inquiry by Rep. Petersen about the time required to conduct a record check, Ms. Rickman stated that she is not aware of any delay but will provide the committee with further information.

HOMELAND SECURITY AND EMERGENCY MANAGEMENT DIVISION John Benson represented the division. Other interested parties included Gary Brown of the Iowa Emergency Management Association; Roger Bissen of the Iowa Firefighters Association; Dien Judge and John Arnold of the ADLM Emergency Management Agency, a joint commission of Appanoose, Davis, Lucas and Monroe counties; and A. J. Mumm on behalf of the Polk County Emergency Management Commission.

ARC 9332B No action on 7.4(4)“a” regarding continuing education requirements for local emergency management coordinators.

ARC 9345B Proposed amendments to 7.7 pertain to the allocation and distribution process for emergency management performance grant moneys received from the federal Department of Homeland Security. Mr. Benson noted that the grant moneys are currently distributed dollar for dollar to county commissions that qualify and apply and that 50 percent of the grant moneys pass to the local level and 50 percent remain at the state level, with a cap of \$39,000 per commission. The proposed amendments update the allocation and distribution process by specifying that the 50 percent pass-through amount will be allocated to local emergency management commissions using a combination of the existing formula and a new formula in which 60 percent of available funds are allocated based on an equal share for all applicants; 20 percent, based on population; and 20 percent, based on the assessed value of property within a commission’s jurisdiction. Mr. Benson stated that the division seeks public comment on the proposed rule making, which was developed and presented by the Iowa Emergency Management Association.

Mr. Brown stated that the current formula is arbitrary and needs to be changed in keeping with the movement toward a population- and risk-based formula to be implemented over a five-year period. Mr. Bissen cautioned that a reduction in funding of county coordinators will in turn affect fire departments. Mr. Judge expressed opposition to the rules because of their effect on the budget, and Mr. Arnold expressed opposition to the rules because of the need for a fairer formula and an increase in the cap. Mr. Mumm expressed appreciation to the Iowa Emergency Management Association for the development of the rules but expressed concern that the inequity of the proposed formula and arbitrary cap will continue to cause a disparity in per capita funding for larger communities.

Mr. Royce suggested that, after the public hearings have been held but before the rules are adopted, the division present the proposed rules at a special meeting of the committee. Sen. Kibbie requested that the written public comments be provided to the committee. Sen. Bartz suggested that joint commissions such as ADLM propose an alternative by which joint commissions are no longer penalized for creating efficiencies in the system. Sen. Seymour commended the joint commissions and encouraged the participation of the new division director in the rule-making process. Rep. Pettengill requested that Mr. Mumm provide the committee with copies of his written comments because his testimony was shortened due to time constraints.

PUBLIC HEALTH DEPARTMENT Barb Nervig and Kirk Schmitt represented the department. Other interested parties included Gary Brown on behalf of the Iowa State Association of Counties.

ARC 9342B Proposed ch 131 pertains to emergency medical services provider education/training/certification. Ms. Nervig stated that providers will transition over a period of years to one of four levels of certification through continuing education-type training with the goal of uniform national certification.

Mr. Schmitt confirmed for Rep. Upmeyer that the entire EMS community, including the Iowa EMS Advisory Council, supports the rules. In response to Rep. Heaton’s inquiry about the impact on first responders who volunteer in smaller communities, Mr. Schmitt stated that first responders will transition to the emergency medical responder level through currently required, not additional, continuing education.

Public Health Department (cont'd)

Sen. Bartz inquired about the rescission of existing ch 131 and requested a side-by-side comparison of existing ch 131 and proposed ch 131, which the department agreed to provide. In response to an inquiry from Rep. Pettengill, Mr. Schmitt clarified that, through the transition, a currently Iowa-certified provider will continue to be Iowa-certified, and the certification, while at the national level, is still Iowa certification. Rep. Pettengill requested that the public comments be provided to the committee.

ARC 9343B Proposed amendments to chs 132 and 136 require electronic data submission of ambulance report data. Ms. Nervig stated that only 10 of 460 services are not currently using electronic data submission and that the cost of electronic submission would be for computers while the Web-based reporting application is free.

Mr. Brown expressed opposition to the rules because of the cost, which he said should be funded by the state. Rep. Heaton pointed out that, under the Patient Protection and Affordable Care Act (PPACA), electronic data collection will be required.

ARC 9344B No questions on proposed amendments to 134.2(3) pertaining to trauma care and facility categorization criteria adopted by reference.

REVENUE DEPARTMENT Victoria Daniels represented the department.

ARC 9339B The proposed amendment to 235.1 pertains to changes made to rebate requirements for the Newton racetrack under 2009 Iowa Acts, Senate File 478. The proposed amendments to 241.3 to 241.5 pertain to clarification of the scope and applicability of state hotel and motel tax pursuant to Iowa Code chapter 423A. Rep. Heaton requested clarification of the exemption from state-imposed hotel and motel tax applicable to a stay of more than 31 days.

SCHOOL BUDGET REVIEW COMMITTEE Carol Greta represented the committee.

ARC 9320B No action on amendments to ch 1 pertaining to the composition of the committee and to hearings.

ARC 9322B No action on the rescission of 6.2 regarding hearings. This rule will now appear as rule 1.4.

ARC 9321B No action on the rescission of ch 7, on-time funding for increased enrollment. The statute implemented by ch 7 has been repealed.

ARC 9323B No action on amendments to ch 8, which clarify that a petition for waiver is handled by the committee, not by the education department.

TRANSPORTATION DEPARTMENT Paul Steier represented the department.

Special Review Sen. Kibbie requested a special review of 400.39(2) on behalf of a constituent who converted a truck tractor to a motor home. Mr. Steier explained that 400.39(2) was adopted to prohibit a person from registering a truck tractor as a motor home in order to be exempt from requirements such as a commercial driver's license, alcohol restrictions, fuel tax and registration fees. Mr. Steier stated that, after discussion, the department has agreed that a truck tractor that has been modified so as to have an "entire body" and the requisite internal systems, such as cooking facilities and toilet, and that can no longer be used to draw a semi-trailer (the fifth wheel plate has been completely removed) will have had its "mode of operation" substantially altered to allow retitling as a reconstructed motor home. Mr. Steier stated that the vehicle owned by Sen. Kibbie's constituent can be classified as a reconstructed motor home. Mr. Steier also stated that the rule will be clarified in subsequent rule making. Discussion pertained to reciprocity with other states regarding licensing of similar vehicles and related licensing issues.

VOLUNTEER SERVICE, IOWA COMMISSION ON Adam Lounsbury represented the commission.

ARC 9341B No questions on proposed amendments to 8.1 to 8.6, which pertain to Iowa youth mentoring program certification.

Committee business The minutes of the January 4, 2011, meeting were approved.
The next meeting was scheduled for Friday, March 11, 2011, at 8:30 a.m.
For new members, Mr. Royce reviewed the range of committee actions, including delays, general referrals, joint resolutions and nullifications, and objections.

Adjourned The meeting was adjourned at 12:35 p.m.

Respectfully submitted,

Stephanie A. Hoff

APPROVED:

Chair Dawn Pettengill

Vice Chair Wally Horn