

**MINUTES OF THE JUNE 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 Tuesday, June 14, 2011, at 9 a.m. in Room 116, State Capitol, Des Moines, Iowa.
- Members present: Senator Wally Horn, Chair, and Representative Dawn Pettengill, Vice Chair; Senators Merlin Bartz, Thomas Courtney, John P. Kibbie, and James Seymour; Representatives David Heaton, Jo Oldson, Rick Olson, 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 Sen. Horn convened the meeting at 9 a.m.
- Fiscal overview** Sue Lerdal presented the LSA fiscal report. In response to an inquiry from Sen. Bartz, Ms. Lerdal stated that LSA will provide more information about the \$500,000 in administrative costs related to the neighborhood stabilization program.

CITY DEVELOPMENT BOARD Craig Block and Jim Halverson represented the board.

- ARC 9546B Amendments to chs 7 and 8 pertain to additional documentation required on petitions for annexation, specifically, a statement describing whether a city has applied any smart planning principles to a territory. On behalf of the board, Mr. Block requested a 70-day delay. In response to an inquiry from Sen. Courtney, Mr. Halverson explained that the delay would allow the board to reach a consensus.
- Motion to delay Rep. Pettengill moved a 70-day delay on ARC 9546B.
Discussion pertained to the necessity for and effect of a delay and the board's role and scope of authority. Sen. Courtney noted the seriousness of a delay and pointed out the importance of reaching a consensus on rules before their adoption.
- Motion carried On a voice vote of 9 to 0, the motion carried. The rule making will be reviewed at the August meeting.

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF Elyse Shindelar represented the department.

- ARC 9504B Amendments to ch 27 relate to the neighborhood stabilization program (NSP). Discussion pertained to the administration costs, the difference between an eligible and a noneligible community, and identification of selected communities. Sen. Bartz expressed concern about \$500,000 in administrative costs for a \$5 million program. At the request of Rep. Heaton, the department will provide the names and activities of and award amounts granted to the selected communities under the third allocation of funding (NSP3).

NATURAL RESOURCE COMMISSION Kevin Szcodronski, Jeff Kopaska, Willie Suchy, and Tamara Mullen represented the commission.

- ARC 9552B Amendments to ch 14 pertain to concessions. Discussion pertained to the stringency of the requirements for concessionaires. Mr. Szcodronski stated that recycling and the provision of healthy food choices are encouraged but not required and that the department will assist concessionaires in these and other activities.
- ARC 9539B Ch 44 establishes special event permits. Mr. Kopaska stated that the department has received letters of support from all parties previously opposed to the rules. Rep. Upmeyer expressed appreciation for the department's effort to reach a consensus with all parties.
- ARC 9524B Proposed amendments to 52.1 pertain to wildlife refuges. Mr. Suchy stated that the amendments clarify the rules for wildlife refuges and waterfowl refuges. In response to an inquiry from Sen. Bartz, Mr. Suchy clarified that game management is the purpose for the change in posted dates on wildlife refuges. Sen. Bartz requested that the department reconsider the removal of language in 52.1(2)"c" that allows retrieval of dead or wounded game animals. In response to an inquiry from Sen. Kibbie regarding public hearings, Mr. Suchy stated that waterfowl hunters have been included in discussion about the amendments, and Ms. Mullen noted that public comment is received primarily by E-mail and by telephone and fax.

Natural Resource Commission (continued)

- ARC 9541B and ARC 9540B No action on the rescissions in ch 61 pertaining to special event permits or on the rescission of ch 65, fireworks displays in state parks and recreation areas. These rules have been incorporated into new ch 44 (see ARC 9539B).
- ARC 9506B No questions on proposed amendments to ch 91 concerning the annual adjustment to season dates for waterfowl and coot hunting.
- ARC 9542B Proposed amendments to ch 94 pertain to nonresident deer hunting. In response to an inquiry from Sen. Bartz, Mr. Suchy clarified that a deer stand would be considered a blind only if it is enclosed and is constructed of man-made materials and that blaze orange is not required on deer stands. Mr. Suchy noted that, to ensure hunter safety, the public and law enforcement requested the amendment to the blaze orange requirement for blinds because of the increasing popularity of pop-up blinds.
- ARC 9507B Proposed amendments to ch 98 concern wild turkey spring hunting. In response to an inquiry from Sen. Seymour, Mr. Suchy noted that a decline in the turkey population has occurred because of nesting conditions, but hunting is designed not to have an effect on the population.
- ARC 9543B The proposed amendment to 107.2 pertains to jackrabbit season. Mr. Suchy stated that the department is closing the season because the jackrabbit population is in decline and isolated.
- ARC 9544B Proposed amendments to ch 108 relate to hunting and trapping of furbearers. In response to an inquiry from Sen. Bartz, Mr. Suchy clarified that fur harvesters and all others must have a CITES tag.
- ARC 9545B The proposed amendment to 109.1 pertains to groundhog season. Mr. Suchy stated that a continuous open season is proposed because the groundhog is not a threatened species and is sometimes a nuisance.

PHARMACY BOARD Lloyd Jessen and Terry Witkowski represented the board. Other interested parties included Roni Ferraro, Nicole Schultz of the Iowa Pharmacy Association (IPA), and Diane Heiken.

- ARC 9502B No action on amendments to 3.22 relating to the technical functions of pharmacy technician trainees and uncertified pharmacy technicians.
- ARC 9530B No questions on the termination of proposed amendments to chs 6, 7, 15 and 16 pertaining to the elimination of the requirement that pharmacies maintain the Iowa Law and Information Manual.
- ARC 9526B Amendments to ch 8 pertain to unethical conduct or practice, confidential information, and requirements for a pharmacy that is closing or is transferring its business. Mr. Jessen stated that the board and interested parties have not reached a consensus on notification by a closing pharmacy.
- Ms. Schultz expressed support for the written 14-day notification of the board, DEA and patients by a closing pharmacy but expressed opposition to the rules in their entirety because the closing pharmacy is required to notify all patients in writing with a form to facilitate the transfer of prescription records. Ms. Schultz requested a 70-day delay to work with the board on language pertaining to written instructions that would direct patients to contact the closing pharmacy about their records and rights.
- Ms. Ferraro expressed concern about proper notification of a patient, including prior consent and authorization, before the transfer of prescription records and about the patient's right to privacy protection. In addition, Ms. Ferraro stated that the 14-day notification period is inadequate and should be changed to 30 days. Ms. Heiken expressed concern about patient safety, particularly that of patients with special needs and those on Medicaid lockout, and expressed support for a 70-day delay.
- Discussion ensued regarding patient privacy, the use of a form for notification, the board's role in the transfer of prescriptions, preservation of the value of the closing pharmacy, and the enforcement of rules.

Motion to delay Sen. Kibbie moved a 70-day delay on Item 4 (8.35(7)).

Motion carried On a voice vote of 10 to 0, the motion carried.

Sen. Kibbie requested that the board provide an update on the resolution process prior to the end of the 70-day period. Rep. Pettengill expressed appreciation to the board for their continuing work with interested parties. This rule making will be reviewed at the August meeting.

Pharmacy Board (continued)

- ARC 9527B No questions on the termination of proposed ch 11, drugs in emergency medical service programs.
- ARC 9528B No questions on proposed ch 11, drugs in emergency medical service programs.

REAL ESTATE COMMISSION David Batts represented the commission.

- ARC 9505B No action on the amendment to 11.2 regarding the enforcement of a protective clause.
- ARC 9486B No questions on the proposed amendment to 5.11 pertaining to license discipline reporting. This rule making was held over from the May meeting.

VETERANS AFFAIRS, IOWA DEPARTMENT OF Lisa Purvis represented the Iowa veterans home.

- ARC 9492B No questions on proposed amendments to ch 10 pertaining to eligibility of Gold Star parents for admission to the Iowa veterans home. This rule making was held over from the May meeting.

PROFESSIONAL LICENSURE DIVISION Judy Manning, Pierce Wilson and Barb Huey represented the division. Other interested parties included Diana Kautzky on behalf of the Iowa Hearing Association.

- ARC 9547B Amendments to chs 31, 32 and 33 pertain to marital and family therapists and mental health counselors. Discussion centered on the change in terminology from “felony” to “crime.” Ms. Manning stated that this change has been made for consistency with Iowa Code section 147.55(5). Mr. Wilson noted that this change will apply to the rules of the 19 professional licensure boards.
- ARC 9513B No action on the amendment to 41.8(1) to remove the requirement for the board to send a renewal notice to the licensee.
- ARC 9551B No questions on the proposed amendment to 45.2(11) clarifying that conviction of a crime includes when the judgment of conviction or sentence was deferred.
- ARC 9519B No questions on proposed amendments to chs 180 to 183 pertaining to licensure of optometrists.
- ARC 9509B No action on the amendment to 220.9(1) to remove the requirement for the board to send a renewal notice to the licensee.
- ARC 9508B No action on the amendment to 224.2(12), which pertains to changing “felony” to “crime.”
- ARC 9549B No questions on the proposed amendment to 326.9(1) to remove the requirement for the board to send a renewal notice to the licensee.
- ARC 9550B No questions on proposed amendments to 327.6(1)“d” pertaining to delegated prescribing by physician assistants. Mr. Wilson stated that, since publication, this notice has been terminated, and the amendments are to be published under a new notice of intended action.
- ARC 9517B No action on amendments to 328.3(2) concerning category I and category II continuing education for physician assistants.
- ARC 9548B No questions on the proposed amendment to 329.2(11) clarifying that conviction of a crime includes when the judgment of conviction or sentence was deferred.
- ARC 9424B New ch 123 and amendments to chs 121, 122, and 124 pertain to hearing aid dispensers. At the April meeting, the committee imposed a 70-day delay on Item 9 (124.2(6)) in anticipation of a change in statutory language related to the naming of a business. Ms. Huey stated that the board has taken no action because legislation is in process. Rep. Pettengill informed the committee that two different bills have been passed in the House and await Senate action. Ms. Kautzky expressed appreciation for the assistance of the committee and also noted pending legislation.

PUBLIC HEALTH DEPARTMENT Barb Nervig represented the department.

- ARC 9536B No action on amendments to ch 88 pertaining to the volunteer health care provider program (VHCPP). Ms. Nervig stated that the amendments allow for additional volunteers in protected clinics by permitting health care profession students to volunteer at the clinics.
- ARC 9535B No action on amendments to ch 88, volunteer health care provider program (VHCPP). Ms. Nervig reported that the proposed amendments pertaining to dentists and the VHCPP have not been adopted and stated that discussion with the dental board is ongoing.

Public Health Department (continued)

- ARC 9533B No action on the amendments to 126.3, which increase some of the fees for services provided by the state medical examiner division.
- ARC 9534B No action on amendments to ch 155 concerning the substance abuse and gambling treatment program committee.

PUBLIC SAFETY DEPARTMENT Ross Loder and Brian Young represented the department.

- ARC 9515B Proposed ch 505 and amendments to chs 500, 502 and 551 pertain to the electrician and electrical contractor licensing program and to the electrical inspection program. In response to an inquiry from Rep. Pettengill, Mr. Young clarified the requirements for students enrolled in postsecondary electrical education programs at community colleges.
- ARC 9516B Proposed ch 600 pertains to the statewide interoperable communications system board. Mr. Loder explained that the position of statewide interoperability coordinator is under contract with the board but funded by the federal government. Discussion pertained to the sustainability of federal funding for the coordinator position and the stipulations of the contract. Mr. Loder offered to provide the committee with the dollar amount of the federal funding. In response to a request from Sen. Courtney, Mr. Loder agreed to consider changing “shall” to “may” in 600.3. Rep. Heaton requested that the department provide the legislature with status updates regarding the board.

UTILITIES DIVISION Gary Stump and Cecil Wright represented the division.

- ARC 9501B No action on amendments to chs 20 and 25 concerning updates of electric and gas technical standards.
- ARC 9529B No questions on proposed 19.18 pertaining to the capital infrastructure investment automatic adjustment mechanism.

DENTAL BOARD Gary Roth, chair, represented the board.

- ARC 9510B No action on amendments to chs 11 and 12 relating to the licensure of dentists and dental hygienists in Iowa. Mr. Roth expressed appreciation to the Iowa Dental Association for assistance in the passage of 2011 Iowa Acts, Senate File 438, which expands the options available for applicants seeking licensure by credentials. Mr. Roth also stated that the board unanimously supports the amendments.

INSPECTIONS AND APPEALS DEPARTMENT David Werning and Jean Davis represented the department.

- ARC 9514B Proposed amendments to 10.14 concern the issuance of a subpoena by the division of administrative hearings. Discussion pertained to the issuance of an agency subpoena and the change in the number of days within which a request for subpoena must be received by the division prior to a scheduled hearing.

HUMAN SERVICES DEPARTMENT Nancy Freudenberg, Wendy Rickman and Jennifer Vermeer represented the department. Other interested parties included Stacie Dorman and Denise Bissett.

- ARC 9538B No questions on proposed amendments to chs 77 and 78 to allow licensed mental health counselors and certified alcohol and drug counselors to enroll as Medicaid providers of behavioral health services.
- ARC 9531B No action on amendments to 79.16 regarding the Iowa electronic health record incentive program.
- ARC 9532B No action on amendments to 92.7(1)“a,” which update the sliding scale used to determine premiums for medical assistance benefits under the IowaCare program.
- ARC 9518B Proposed amendments to ch 170 pertain to child care assistance. In response to an inquiry from Sen. Bartz, Ms. Rickman clarified the issue of ineligibility for receipt of public funds in Items 9 and 12.
- ARC 9403B At the April meeting, the amendments to chs 78 to 80, which update, streamline, and clarify Medicaid policy for HCBS waiver services, were reviewed, and following discussion, the committee imposed a 70-day delay on 78.34(5)“d,” 78.38(5)“h,” 78.41(2)“g,” 78.43(3)“d,” and 78.52(5)“a,” all of which clarify respite services.

Human Services Department (continued)

Ms. Freudenberg stated that the amendments clarify when respite is a covered service used to provide a break for the usual caregiver from the care of the Medicaid member. In an effort to clarify federal policy on respite, Ms. Vermeer stated that the department had contacted the Centers for Medicare and Medicaid Services (CMS) and other states in Iowa’s CMS region, which include Nebraska, Kansas and Missouri, for more information. In response, CMS reiterated the approved respite services as defined in Iowa’s waivers, and the other states in Iowa’s CMS region confirmed that their policies do not cover day camps when a caregiver is working. Ms. Vermeer stated that the department’s policy is consistent with federal policy and with the policies of the other states in Iowa’s CMS region.

Ms. Dorman, a single parent who works full-time, stated that without respite (day camp) in the summer, her only options are to relinquish her son to the care of the state or to seek public assistance. Ms. Bissett, who is self-employed, stated that there is no day care appropriate for her 18-year-old autistic son and requested financial assistance for day camp. Ms. Dorman and Ms. Bissett stated that their incomes exceed the percentage of the poverty level required to qualify for other programs and assistance.

In response to the testimony, Sen. Bartz explored the options of the affected parties regarding the waiver, and Rep. Heaton inquired about alternative funding of assistance for parents of children with disabilities, noting that many families in Iowa are in similar situations.

Ms. Vermeer reiterated federal policy regarding respite care and suggested that the affected parties request assistance from their case managers to procure other covered and noncovered services. Ms. Rickman offered department assistance to the affected parties in finding additional sources of funds, such as child care assistance, subsidized emergency respite or child care subsidies. With the permission of the affected parties, Rep. Heaton requested that Ms. Rickman provide progress reports to him regarding the affected parties.

Rep. Pettengill inquired about additional actions available to the committee and reminded the committee that, as part of the original motion for the 70-day delay, letters were to be sent to Sen. Grassley and Sen. Harkin regarding CMS respite care policy. Sen. Bartz considered the possibility of a session delay, which would allow more time for finding a solution for the affected parties and which could be lifted by the committee at its July meeting.

Motion to delay

Sen. Bartz moved a session delay on 78.34(5)“d,” 78.38(5)“h,” 78.41(2)“g,” 78.43(3)“d,” and 78.52(5)“a” for purposes of discussion, which pertained to funding for and federal policy about respite, including funding for members currently receiving respite; issues related to the 70-day delay; and the consequences of a session delay.

Mr. Royce noted that the July meeting could be held before the 70-day delay expires or that a telephonic meeting for special review of this rule making could be held.

Rep. Heaton emphasized the importance of compliance with federal policy and suggested that the committee take no further action while the department explores other solutions. Sen. Courtney expressed support for the motion and stated that available solutions have already been identified. Ms. Vermeer reminded the committee of the federal policy and noted that many parents pay for day camp, the cost of which is similar to that of child care.

Motion withdrawn

On the condition that a special committee meeting would be scheduled before the 70-day delay expires, Sen. Bartz withdrew the motion to impose a session delay.

Ms. Freudenberg stated that a special committee meeting scheduled before the July meeting would be necessary to review DHS rule makings based on pending legislation and that the delayed rule making pertaining to respite could also be placed under special review at that meeting.

Rep. Pettengill requested that the aforementioned letters to Sen. Grassley and Sen. Harkin be sent as soon as possible.

June 14, 2011

Committee business The minutes of the May 11, 2011, meeting were approved.
The next meeting was scheduled for Tuesday, July 12, 2011, at 9 a.m.

Adjourned The meeting was adjourned at 2:15 p.m.

Respectfully submitted,

Stephanie A. Hoff

APPROVED:

Chair Wally Horn

Vice Chair Dawn Pettengill