

**MINUTES OF THE JULY 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, July 12, 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 Guy Vander Linden 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 9:05 a.m.

Fiscal overview Jess Benson presented the LSA fiscal report.

SECRETARY OF STATE Sarah Reisetter represented the secretary of state.

ARC 9564B Proposed amendments to ch 21 pertain to election forms and instructions, in particular, a redistricting special election blackout period. In response to an inquiry from Sen. Kibbie, Ms. Reisetter stated that the only public comment received relates to the tabulation of election results by school district.

ARC 9559B No action on 21.31 and 21.32 concerning the maximum allowable deviation from ideal population related to district and ward apportionment. Ms. Reisetter stated that no public comment has been received in regard to the rules.

BANKING DIVISION Rod Reed and Shauna Shields represented the division.

ARC 9593B Amendments to ch 18 pertain to licensure of real estate closing agents. Committee members expressed concern about emergency rule making and about the authority for the requirement for electronic maintenance of loan records. In response to these concerns, Ms. Shields expressed regret regarding the emergency filing of amendments that implement 2010 legislation but noted that the division obtained and incorporated feedback from affected parties before adoption of the amendments, and Mr. Reed stated that the division, in particular, the superintendent of banking, has statutory authority to prescribe record-keeping requirements. Ms. Findley added that the governor's office carefully pre-clears emergency filings.

ENVIRONMENTAL PROTECTION COMMISSION Adam Schnieders and Karen Lodden represented the commission.

ARC 9553B Amendments to ch 64 pertain to the reissuance of NPDES General Permit No. 5 for mining and processing facilities. Mr. Schnieders stated that 320 facilities are covered under this general permit and that the Iowa Limestone Association and quarry operators and owners provided input in the development of the reissued permit. Discussion pertained to the size of a storm water runoff construction site (reduced from five acres to one acre), transfer of title by nonelectronic means, coverage by permit for expansion, and unauthorized discharges. Sen. Bartz stated that the committee may want to examine the possible violation of the one-acre site size for General Permit No. 2, which is related to the demolition or construction of farm buildings.

NATURAL RESOURCE COMMISSION Jeff Kopaska and Willie Suchy represented the commission.

ARC 9585B No action on the rescission of ch 88, fishing tournaments. Mr. Kopaska stated that these rules have been incorporated into new ch 44, special events and fireworks displays.

ARC 9587B Proposed amendments to ch 106 pertain to deer hunting by nonresidents. Sen. Bartz requested that the department continue to consider what constitutes a blind.

PHARMACY BOARD Terry Witkowski represented the board.

ARC 9554B No questions on proposed amendments to 2.12 regarding specific requirements for continuing education activities for pharmacists.

Pharmacy Board (continued)

- ARC 9557B Proposed ch 40 and amendments to ch 3 pertain to tech-check-tech (TCT) programs. In response to an inquiry from Sen. Seymour, Ms. Witkowski stated that a TCT program may be authorized for all checking of automated medication distribution systems (AMDS) and unit dose dispensing systems in a hospital pharmacy and in a general pharmacy that provides services to patients in a residential care facility. In addition, Ms. Witkowski confirmed that either a registered nurse or a pharmacist may verify the final check of drugs to be dispensed in either system.
- ARC 9555B No questions on proposed amendments to 4.1 and 4.6 concerning the application for registration by pharmacist-interns.
- ARC 9556B No questions on proposed amendments to ch 5, which clarify the authority of a pharmacy support person under pharmacist supervision to place a pharmacist-verified prescription container into a bag or sack for delivery to a patient.

PROFESSIONAL LICENSURE DIVISION Pierce Wilson and Theresa Hegmann represented the division.

- ARC 9579B No questions on the termination of proposed amendments to 327.6(1)“d” pertaining to delegated prescribing by physician assistants.
- ARC 9580B No questions on proposed amendments to 327.6(1)“d” regarding delegated prescribing by physician assistants.
- ARC 9568B No action on 363.2(11) clarifying that a conviction of a crime includes when the judgment of conviction or sentence was deferred. Rep. Pettengill expressed concern about the repercussions of the amendment and reiterated her opposition to this amendment in the rules of the professional licensure boards.

PUBLIC SAFETY DEPARTMENT Ray Reynolds and Mike Coveyou represented the department.

- ARC 9561B No questions on proposed amendments to 201.2(1) pertaining to fire safety requirements for bleachers, grandstands, and folding and telescopic seating.
- ARC 9562B Proposed amendments to 301.3 relate to building code requirements for bleachers, grandstands, and folding and telescopic seating. Sen. Bartz suggested that a special review of chs 201 and 301 be conducted to examine the applicability to the state of Iowa of certain sections of the International Fire Code that are adopted by reference.

AGING, DEPARTMENT ON Joel Wulf represented the department.

- ARC 9577B No action on amendments to 5.6, which set forth an equitable funding formula that gives priority to older Iowans most in need of aging services.

IOWA FINANCE AUTHORITY Mark Thompson and Sheri Krohn represented the authority.

- ARC 9590B Proposed amendments to 27.2 and 27.3 pertain to the military service member home ownership assistance program. In response to an inquiry from Sen. Kibbie, Ms. Krohn stated that hundreds of service members have thus far benefited from the program.

HUMAN SERVICES DEPARTMENT Charles Palmer, Jennifer Vermeer, and Nancy Freudenberg represented the department. Other interested parties included Shelly Chandler of the Iowa Association of Community Providers; John Johansen; Alissa Tschetter-Siedschlaw; Lloyd Vander Kwaak of ChildServe; Lori Myer; Vincent Zigler; John McMullen; Daniel Wolf; Teresa [no last name stated]; Sheila Kobliska of Chickasaw-Mitchell Targeted Case Management; Betty Thorn; Erin Caldwell Owen; Kevin Harris; Mike Moritz of Ethicon Endo-Surgery, Inc.; Larry Pope and Kari Boyens of Iowa Health Physicians and Clinics; Kelly Close; and Larry Carl and Brian McGarvey of the Iowa Dental Association.

- ARC 9589B No questions on proposed amendments to chs 5 and 175 pertaining to the child abuse registry.
- ARC 9591B Proposed amendments to ch 36 relate to facility assessments. Ms. Freudenberg stated that this notice will be terminated because the assessments have not been funded.
- ARC 9581B No action on amendments to 75.1(39)“b,” which provide the annual update of premium levels for employed people with disabilities and revise the payment address.
- ARC 9582B No action on amendments to ch 75 that provide the annual updates of the statewide average cost of nursing facility services and institutional care.

Human Services Department (continued)

ARC 9588B	No action on amendments to chs 78, 79 and 90 related to coverage and payment provisions for Medicaid case management services.
ARC 9563B	No questions on proposed amendments to 108.10 pertaining to supervised apartment living placement services.
Special Review	<p>In compliance with 2011 Iowa Acts, House File 649, section 29, fourteen rule makings related to Medicaid cost containment and rate adjustment were reviewed by the committee prior to their effective dates. Ms. Vermeer explained that the cost containment decisions are based on a comparison of other states' coverage policies and on the priority of the various waivers. Ms. Vermeer summarized the following Medicaid cost containment and rate adjustments that require rule-related changes:</p> <ol style="list-style-type: none"> 1. Amendments to ch 75: Allow liens to recover Medicaid expenses for services involving malpractice. 2. Amendments to ch 78: Eliminate coverage for bariatric surgery. 3. Amendments to ch 78: Eliminate coverage for weight-loss drugs and limit coverage of drugs for symptomatic relief of cough and cold. 4. Amendments to ch 78: Restrict coverage for orthodontia for children. 5. Amendments to ch 78: Limit use of respite care under HCBS waivers to 48 hours per month. 6. Amendments to ch 78: Limit payment for durable medical equipment under an HCBS waiver to the amount paid for fee-for-service Medicaid. 7. Amendments to ch 79: Increase reimbursement rates for home- and community-based waiver services. 8. Amendments to ch 79: Increase pharmacy dispensing fee. 9. Amendments to ch 79: Increase reimbursement rates for psychiatric medical institutions for children. 10. Amendments to ch 79: Eliminate graduate medical education payments for out-of-state hospitals. 11. Amendments to ch 79: Eliminate payment for treatment of a hospital-acquired condition. 12. Amendments to ch 79: Reduce physician payment for services provided in a facility setting. 13. Amendments to ch 79: Implement emergency room copayment and reduce Medicaid payment when service is nonemergency and patient is not referred by another provider. 14. Amendments to ch 80: Require new forms for paper billing of Medicare crossover claims. <p>Mr. Palmer commended the department, the management department, and LSA for the careful monitoring of the Medicaid budget. He stated that the manageable budget for Medicaid passed by the legislature has been based on the low end of the budget range but does not reflect the draconian cuts made in the Medicaid budgets of other states. He requested that the committee not delay the rules.</p> <p>In response to an inquiry from Rep. Heaton, Mr. Palmer clarified that #5 has been withdrawn for redrafting but has already been revised to include a change from 48 hours of respite per month to 576 hours of respite per year; and that the rule will again be discussed at the August committee meeting, which will be held prior to the adoption of the rule. Mr. Palmer agreed to meet within the next week with Rep. Heaton and Rep. Lisa Heddens and department representatives for further discussion of the rule.</p> <p>Mr. Palmer clarified for Sen. Kibbie that #5 would be filed emergency and under notice. Mr. Royce reviewed the emergency rule-making process and the committee's options in regard to Medicaid rules. Sen. Kibbie encouraged interested parties to attend the public hearing. Sen. Bartz suggested that the department hold the public hearing via the Iowa communications network (ICN) to enable broad-based public participation. Sen. Courtney encouraged the public to express their views by e-mail to legislators and to the governor's office.</p>

Human Services Department (continued)

In response to an inquiry from Rep. Pettengill, Mr. Palmer stated that the legislature retained funding for the family planning waiver, which must be maintained for the state to receive federal funds. Ms. Vermeer clarified for Sen. Courtney the emergency room copayment policy and, for Rep. Olson, the increase in the pharmacy dispensing fee, which eliminates the 5 percent reduction imposed in 2009.

Committee members expressed concern about the effect of the cost containment and rate adjustments on affected parties and the hope that, while the budget must be maintained, the recipients' needs would be addressed.

The following testimony was heard in regard to #5. Ms. Chandler expressed appreciation to the department for the withdrawal and redrafting of the rule making to change respite from 48 hours per month to 576 hours per year. However, Ms. Chandler stated that the definition of respite and the services provided under the ill and handicapped waiver should be made consistent with the other waivers and suggested that supported community living services be added to this waiver. Mr. Johansen, who serves on the Iowa developmental disabilities council, stated that the rule reveals a lack of communication about and understanding of respite, that he will resign his appointment on the council if the rule is not changed, and that cuts need to be made elsewhere. Ms. Tschetter-Siedschlaw stated that respite enables families to remain together and is less expensive than other options. Mr. Vander Kwaak expressed agreement with previous comments and stated that respite, an entry-level service, enables children to remain at home. Ms. Myers stated that respite is life-saving for her autistic son. Mr. Zigler stated that respite allows a child such as himself to learn new things. Mr. McMullen observed that the reduction in respite would impact not only his and his wife's jobs but also those of the caregivers. Mr. Wolf stated that respite enables his family to stay together and suggested other ways to raise state revenue without reducing funds for respite. Teresa expressed appreciation for respite services. Ms. Kobliska stated that respite prevents institutionalization and that she intends to inform the administrators at a statewide meeting of targeted case managers about the withdrawal of the rule and the need for involvement of this group in discussion with the department. Ms. Thorn stated that respite enables children to learn, keeps families together, and is more cost-effective and safer than institutional care. Ms. Owen expressed appreciation for respite, which can prevent child abuse. Mr. Harris suggested that the health insurance premium payment (HIPP) program, which is one of the services available to people who receive Medicaid and in which his family participates, might be a solution for other Medicaid members whose respite will be reduced.

The following testimony was heard in regard to #2. Mr. Moritz stated that the economic impact on the state of eliminating coverage for bariatric surgery has not been sufficiently considered and requested that the rule making be delayed. Mr. Pope expressed opposition to the removal of coverage for bariatric surgery and stated that the removal will cost, not save, the state money. Ms. Boyens expressed concern about the elimination of a life-saving and cost-saving surgery. Ms. Close, citing statistics about the increase in obesity nationwide, requested that coverage for bariatric surgery and weight-loss medications (see #3) not be eliminated.

The following testimony was heard in regard to #4. Mr. Carl stated that orthodontia for a child is preventive care and will decrease the costs to the state for the child's oral health care in the future and requested that the rule be delayed. Mr. McGarvey clarified the use of the Salzmann Scale to determine a child's need for orthodontia.

Motion

Sen. Kibbie moved that, after the human services council meets and adopts the Medicaid rules, the committee hold a telephonic conference before August 1, 2011, to deal appropriately with #2, #3 and #4.

Motion carried
Special Review

On a voice vote of 9 to 0, the motion carried.

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 provisions regarding respite services (ARC 9403B). The department provided an update at the June meeting, at which time additional testimony from affected parties was heard. Alternatives have been found for those parties. Rep. Heaton, who assisted the affected parties, stated that they are not in need of additional services and expressed appreciation to the committee for assistance in this matter.

Committee business The minutes of the June 14, 2011, meeting were approved.
The next meeting was scheduled for Tuesday, August 16, 2011, at 9 a.m.
The committee granted the Administrative Code editor permission to publish in the July 27, 2011, Iowa Administrative Bulletin a notice from the Federal Emergency Management Agency (FEMA) regarding FEMA's intent to reimburse eligible applicants for eligible costs for debris removal and emergency protective measures incurred from flooding on May 25, 2011, and continuing.

Adjourned The meeting was adjourned at 1:15 p.m.

Respectfully submitted,

Stephanie A. Hoff

APPROVED:

Chair Wally Horn

Vice Chair Dawn Pettengill