

**MINUTES OF THE JUNE 2005 MEETING
OF THE
ADMINISTRATIVE RULES REVIEW COMMITTEE**

- Date of meeting: The regular, statutory meeting of the Administrative Rules Review Committee (ARRC) was held Tuesday, June 14, 2005, in Room 22, State Capitol, Des Moines, Iowa.
- Members present: Representative George Eichhorn, Chair, and Senator Paul McKinley, Vice Chair; Senators Jeff Angelo, Michael Connolly, and John P. Kibbie; Representatives Marcella Frevert, David Heaton and Geri Huser. Senator Mary Lundby and Representative Danny Carroll were excused.
- Also present: Joseph A. Royce, Legal Counsel; Kathleen K. West, Administrative Code Editor; Gary Dickey Jr., Administrative Rules Coordinator; fiscal staff, caucus staff and other interested parties.
- Convened Chair Eichhorn convened the meeting at 9:05 a.m.
- Fiscal report** Sue Lerdal presented the LSA fiscal overview.
- HUMAN SERVICES DEPARTMENT** Nancy Freudenberg, Jeanette Wiig, Vern Armstrong, Matt Haubrich, Susan Parker, and Eugene Gessow represented the department. Other interested parties included Carol Logan of Wapello County, Janet Metcalf on behalf of Broadlawns Medical Center and Stacey Cyphert of University of Iowa Hospitals and Clinics.
- ARC 4185B No questions on amendments to implement the Iowa Medicaid enterprise.
- ARC 4169B No action on proposed amendments relating to resolution of legal settlement disputes. There was discussion about when and how counties are notified of the determination of the county of legal settlement.
- ARC 4184B Amendments to ch 25 require the reporting of personally identifiable data on persons served under county management plans for mental health, mental retardation and developmental disability services. Freudenberg reported that the data is needed to prevent duplication of services. Logan objected to the requirement and asked the department to explore the possibility of implementing a system, such as that used by the department of public health, which assigns a unique identifier to individuals. Haubrich stated that an assistant attorney general indicated that the system used by the department of public health does not deidentify data sufficiently enough to comply with HIPAA requirements; furthermore, many counties do not have the resources to implement such a system. Haubrich explained that the department stores the data received from counties on a secure server with Medicaid data. Gessow noted that Medicaid clients must provide personally identifiable data; Huser expressed concern that private-pay clients would also be required to provide such data. Discussion related to the need for the department to move forward with the mental health redesign.
- Motion to refer In the dual interests of allowing the redesign to move forward and also protecting privacy, Connolly moved a referral to the general assembly and a request for a bill draft in both the House and Senate on the use of a unique identifier.
- Motion carried The motion passed.
- ARC 4183B No comments on termination of an expired notice regarding electronic application for food assistance. The department intends to initiate a new notice on the same subject.
- ARC 4139B No questions on amendments to increase utility and telephone allowances for food assistance eligibility.
- ARC 4168B No questions on proposed amendments to ch 75 regarding Medicaid eligibility for inmates and persons who refuse to obtain a social security number because of well-established religious objections.
- ARC 4138B Amendments to chs 78 and 79 implement the Medicaid preferred drug list (PDL). Heaton expressed concern that the PDL restricts prescribers in the psychiatric community. Parker advised the committee that the attorney general's office is involved in discussions related to concerns raised by the Iowa Psychiatric Society.
- ARC 4199B No questions on proposed amendments to ch 78 to limit Medicaid drugs to a 30-day supply.
- ARC 4133B No questions on termination of the proposed amendments to ch 182 relating to family-centered services.
- ARC 4135B No action on amendments to chs 150, 152, 182, and 185 pertaining to family-centered services.
- ARC 4137B No questions on amendments to ch 176 pertaining to reporting of dependent adult abuse.
- ARC 4198B No questions on proposed amendments to ch 201 concerning nonrecurring expenses in subsidized adoptions.
- ARC 4136B No questions on amendments to the method of calculation for subsidized adoptions.

Human Services Department (continued)

Special review Freudenberg summarized nine emergency filings.
 In regard to ch 91, eligibility for the Medicare drug subsidy, Huser inquired about certain drugs for dual eligibles in nursing home settings. Gessow advised Huser that Iowa Medicaid will cover all Medicaid-covered drugs that are not covered by Part D. Freudenberg distributed copies of the most recent version of ch 92, IowaCare, which implements the expansion of the Medicaid program as directed by HF 841. Freudenberg outlined provisions of the program and pointed out that IowaCare is not an entitlement program; it will cease when the fiscal year's funds are expended. Gessow offered assurances that Broadlawns will continue to be able to provide the services currently provided.
 Cyphert distributed written comments and stated that the one-month limitation on retroactive eligibility may not be sufficient in all cases and that covered services should be clarified. Metcalf commented that Broadlawns looks forward to working with the department to make this program work.

PHARMACY EXAMINERS BOARD Terry Witkowski and Lloyd Jessen represented the board. Marty Ryan represented the Iowa Civil Liberties Union.

ARC 4153B No questions on amendments pertaining to fees.
 ARC 4181B Amendments to ch 10 pertain to dispensing of drugs containing pseudoephedrine. Ryan expressed concern about the wording in new subrule 10.31(7) which requires the electronic data collection system to be capable of producing a hard-copy printout of the records upon request, but does not specify who may make such a request. Witkowski agreed to clarify the provision regarding lawful requests for a printout.

DENTAL EXAMINERS BOARD Jennifer Hart represented the board. Larry Carl and Kelly Hamborg represented the Iowa Dental Association.

ARC 4166B No questions on amendments to allow supervised intraoral suctioning by registered dental assistants.
 ARC 4165B Hart reported that the board has reached a compromise with the Iowa Dental Association regarding the number of days within which acts or omissions must be reported to the board, but disagreement remains as to what must be reported. Karl and Hamborg opposed the mandatory reporting provisions as an expansion of the board's statutory authority. Hart distributed a letter from the attorney general's office in support of the rules and noted that Iowa's other professional licensing boards have the same mandatory reporting requirement. Committee members encouraged the board and the association to strive to improve communications and cooperation.
 Eichhorn requested an informal opinion from the attorney general's office of mandatory reporting of acts or omissions which may result in discipline by the board.
 ARC 4167B No action on amendments to chs 13 and 15 regarding a temporary permit for provision of volunteer services.

EDUCATION DEPARTMENT Carol Greta and Lee Tack represented the department.

ARC 4143B No questions on amendments to ch 2 concerning petitions for rule making.
 ARC 4142B No questions on amendments to ch 96 regarding certificate of need.

INSPECTIONS AND APPEALS DEPARTMENT David Werning and Jean Davis represented the department. Other interested parties included Bill Wohlers, president of Iowa Operators of Music and Amusements (IOMA), and Jerry Nelson of IOMA.

ARC 4144B Proposed amendments to chs 104 and 105 pertaining to electrical and mechanical amusement devices are intended to implement 2004 Iowa Acts, chapter 1118, which caps the number of devices in the state at 6928, requires installation of counting mechanisms, requires security to prevent operation of the machines by anyone under the age of 21, and adjusts fees. Discussion concerned internal and external counting devices, reporting requirements, and the number of machines located in convenience stores. Wohlers expressed the industry's concern that reports required by the department of inspections and appeals would result in disclosure of confidential financial information.

PUBLIC SAFETY DEPARTMENT Mike Coveyou, Sam Knowles, Randy Novak and Jim Kenkel represented the department. Other interested parties included Kim Fensterman of Kirkwood Community College, Craig Patterson of the Iowa Firemen's Association, Milo Sebastian of Allamakee County and Bill Short of Denison.

ARC 4180B No action on amendments to ch 2 concerning licensure of bail enforcement, private investigation, and private security businesses.
 Special review No action on ch 251, fire fighter training and certification. Coveyou distributed responses received from 36 other states and outlined changes in the final rules made in response to concerns raised during the comment period. In response to Frevert's suggestion, Coveyou indicated that the department would support a legislative change to allow training funds to be used for payment of volunteers' physicals. Interested parties expressed both support for and opposition to the rules.

ENVIRONMENTAL PROTECTION COMMISSION Jim McGraw, Gene Tinker, Randy Clark, Dave Wornson, Jim Hummeston and Paul Nelson represented the commission. Erin Peiffer of the Iowa Association of Municipal Utilities was also present.

ARC 4159B No action on proposed amendments pertaining to definitions of "biodiesel fuel," "diesel fuel," "number 1 fuel oil," and "number 2 fuel oil." Peiffer expressed support for the rules.

ARC 4160B No comments on proposed amendment to ch 22 to exempt 12 indoor sources from permit requirements.

ARC 4158B No action on exemptions from emission standards for routine traffic and road maintenance activities.

ARC 4161B No action on amendments to ch 65 concerning animal feeding operations. Discussion related to the permit requirement for facilities that increase the number of animal units.

ARC 4162B No action on the amendment to ch 65 which relates to application of commercial nitrogen and phosphorus.

ARC 4164B No action on proposed amendments to ch 136, underground storage tank technical rules. Wornson explained the "not more restrictive than" and "shall not exceed" standards and the proposed amendments, particularly those related to out-of-service tanks, release detection and overflow protection. Discussion related to E-85 and Connolly's desire that, as a minimum standard, all tanks would be required to be E-85-compatible.

NATURAL RESOURCE COMMISSION Terry Little and Jeff Vonk represented the commission. Other interested parties included Senator Dick Dearden.

ARC 4163B No questions on proposed amendments to ch 51 regarding game management areas closed to shooting.

Special review The department previously proposed amendments to ch 106, deer hunting. Vonk alerted the committee that the commission has now added an antlerless deer season the weekend after Thanksgiving and adopted a limited rifle season in the southern two tiers of the state as changes from the Notice of Intended Action. Senator Dearden opposed the commission's adoption of a rifle season without legislative authorization and expressed concern about the safety of hunters and people living in the southern two tiers of the state.

UTILITIES DIVISION ARC 4157B and ARC 4156B were excused from review.

Committee business The minutes of the May 2005 meeting were approved. The committee's next meeting will take place July 12, 2005. Eichhorn advised members that HF 845, which passed the House of Representatives last session, will affect the committee if the bill is also passed by the Senate. It was decided to elect a chairperson and vice chairperson at the August meeting. Eichhorn presented Joe Royce with a Resolution recognizing Royce's receipt of the 2005 Dwight Ink Award for public service.

Adjourn The meeting was adjourned at 3:55 p.m.

Kathleen K. West

APPROVED:

Chair George Eichhorn

Vice Chair Paul McKinley