

**MINUTES OF THE DECEMBER 2006 MEETING  
OF THE  
ADMINISTRATIVE RULES REVIEW COMMITTEE**

Date of meeting: The regular meeting of the Administrative Rules Review Committee (ARRC) was held Tuesday, December 12, 2006, and Wednesday, December 13, 2006, in Room 116, State Capitol, Des Moines, Iowa.

Members present: Senator John P. Kibbie, Vice Chair; Senators Michael Connolly, Thomas Courtney, Paul McKinley, and James Seymour; Representatives Danny Carroll, Marcella Frevert, David Heaton, and Geri Huser. Representative George Eichhorn was not present.

Also present: Joseph A. Royce, Legal Counsel; Kathleen K. West, Administrative Code Editor; Sonya Streit, Administrative Rules Coordinator; fiscal staff, caucus staff and other interested parties.

Convened Rep. Carroll convened the meeting at 1:08 p.m.

**Fiscal report** Mary Beth Mellick presented the LSA report on rule makings that may have a significant fiscal impact. There was discussion about the impact of several DHS rules, and members requested that LSA clarify the report by identifying costs that were covered by appropriations and by determining net total impacts.

**HUMAN SERVICES DEPARTMENT** Nancy Freudenberg, Ann Wiebers, and Jennifer Vermeer represented the department. Other interested parties included Shelly Chandler of the Iowa Association of Community Providers, Christopher Squire of the American Cancer Society, Jennifer Harbison of the Iowa Academy of Family Physicians, and Linda Goeldner of the Iowa Nurses Association.

ARC 5538B No action on amendments to the family investment program. Discussion related to the scope of the fiscal analysis. It was noted that the change from retrospective to prospective budgeting and quarterly rather than monthly reporting will result in increased efficiencies for the department and increased stability for participants.

ARC 5551B Proposed 65.3 pertains to collection and reporting of data on race and ethnicity for the food assistance program. Rep. Huser asked that data be reported statewide rather than by county. Rep. Heaton congratulated the department on receipt of a \$500,000 bonus from the federal government in recognition of the department's efficiency in administration of the program.

ARC 5537B No action on the amendment to ch 75 concerning Medicaid premiums for the employed persons with disabilities coverage group.

ARC 5514B These amendments add remedial services as covered services under Medicaid. Ms. Freudenberg outlined changes from the notice and distributed a report on plan reviews that have been completed. Discussion related to the goals of both remedial services and habilitation services, obligations of counties, and projected costs to counties. Ms. Chandler commented that counties and providers have had input and would like to continue to have a voice at the table as rules are developed.

ARC 5536B The amendment to add Medicaid coverage for smoking cessation drugs was based on recommendation of the drug utilization review committee and the pharmaceutical and therapeutics committee. Ms. Freudenberg reported that 12 weeks of pharmacotherapy will be provided through two forms of nicotine replacement therapy (patch and gum) in addition to generic Zyban® and other drugs that are currently covered that may be used for smoking cessation; other forms of nicotine replacement could be requested through an exception to policy. Medicaid members will also receive counseling through the Quitline Iowa program. Mr. Squire requested that, in addition to gum and patches, lozenges and inhalers be approved; that two 12-week quitting attempts be covered per year; that four 30-minute counseling sessions be covered; and that physician reimbursement for patient counseling be included. Ms. Harbison agreed with the comments made on behalf of the American Cancer Society. Ms. Goeldner submitted written comments from the Iowa Nurses Association. Discussion related to success rates, copayments, and the effect of smoking on other chronic diseases. Sen. Connolly expressed the view that the rules don't go far enough. Ms. Vermeer noted that most private health insurance does not cover cessation products and asked that the department be allowed to proceed with implementation of the Medicaid coverage.

Motion to refer Rep. Huser moved a general referral to the legislature with the stipulation that the committee revisit the matter at the March meeting.

Motion carried The committee referred the matter to the legislature and agreed to review the program in March.

ARC 5515B No questions on amendments to implement child welfare remedial services.

ARC 5533B No questions on amendments to ch 170 concerning child care assistance.

ARC 5535B No action on the family support subsidy program.

Special review No comments on annual adjustments to the SSA program.

**ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF**

Excused ARC 5542B

**EDUCATIONAL EXAMINERS BOARD**

Excused ARC 5520B, ARC 5518B, ARC 5519B

**TRANSPORTATION DEPARTMENT**

Excused ARC 5509B, ARC 5506B, ARC 5523B

**CITY FINANCE COMMITTEE**

Excused ARC 5541B

**DENTAL EXAMINERS BOARD**

Excused ARC 5568B

**IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM** Kelly Lovell represented IPERS.

ARC 5562B No action on amendments to implement antispiking provisions and streamline procedures.

**LABOR SERVICES DIVISION**

Excused ARC 5534B

**IOWA FINANCE AUTHORITY** Mark Thompson and Lori Beary represented the authority.

ARC 5548B No action on ch 28, wastewater treatment financial assistance program. Ms. Beary reported that there will be four allocations per year.

**NATURAL RESOURCE COMMISSION** Ken Herring and Mike Smith represented the commission. Other interested parties included Mike Hood of Spirit Lake Protective Association and interested citizens Phil Petersen of Lake Okoboji, Nancy Exline-Downing, and Ray Downing.

ARC 5532B Mr. Herring reported that proposed ch 16, which pertains to docks and other structures on public waters, is intended to protect natural resources and ensure public use while balancing the rights of riparian landowners. Mr. Smith indicated that since general permits were not authorized by statute, paper permits will be issued without fee. The rules are intended to limit hoist sprawl while grandfathering existing docks and hoists. Mr. Petersen distributed photographs documenting hoist sprawl and letters of support for the proposed rules from various organizations associated with Iowa's lakes; Mr. Hood also expressed support for the rules. Ms. Downing expressed concern about the advisory committee that was proposed for two areas. Rep. Huser suggested that if the advisory committee was not authorized by statute, the department should not establish it by rule.

**PROFESSIONAL LICENSURE DIVISION** Pierce Wilson represented the division. Ed Friedman represented the board of physician assistant examiners. Other interested parties included Kent Nebel of the Iowa board of medical examiners, Karla Fultz McHenry of the Iowa Medical Society, Libby Coyte and Tony Brenneman of the Iowa Physician Assistant Society, Robert Witt of Proteus Migrant Health, Jennifer Harbison of the Academy of Family Physicians, nurse practitioner and PA Linda Ruble, Frank Severino of the Polk County Medical Society and the Iowa Osteopathic Medical Society, and Melinda Schwartz of Mercy Care in Cedar Rapids. Gary Ellis represented the Iowa Optometric Association.

ARC 5546B No questions on proposed amendment to cosmetology continuing education rules.

ARC 5529B No questions on 141.7 regarding licensure of nursing home administrators.

ARC 5517B No action on proposed amendments to optometry rules. Mr. Ellis indicated that the board of optometry examiners is working with the Iowa Optometric Association regarding the association's concerns about administrative costs.

ARC 5522B Proposed amendments to the physician assistant rules generated numerous comments. Mr. Nebel presented concerns of the Iowa medical board regarding the proposed amendments that would eliminate the requirement that the physician assistant report changes in supervising physician to the board within 90 days, eliminate the requirement that a physician assistant notify a physician that the physician is listed as the PA's supervising physician, and eliminate the requirement that training in a new procedure be carried out only under the direct, personal supervision of the supervising physician. Ms. McHenry and Ms. Harbison concurred with the concerns outlined by Mr. Nebel. Mr. Brenneman expressed the support of the Iowa Physician Assistant Society for the amendments; Ms. Ruble, Ms. Coyte, and Mr. Witt concurred with comments made by Mr. Brenneman. Mr. Severino reported that both organizations he represents oppose the changes. Ms. Schwartz commented that she waited four weeks for her physician assistant license to be issued.

Committee members discussed the function of physician assistants, the role of supervising physicians, liability issues, and the tensions that exist between the professional associations. Rep. Carroll pointed out that wording in 326.8 is so broad that it is almost meaningless and asked that the language be clarified. Sen. Kibbie urged the board to listen to the concerns and resolve the issues.

ARC 5521B No questions on the amendment to allow PAs to prescribe stimulants.

**MEDICAL EXAMINERS BOARD** Ann Mowery represented the board.

- ARC 5510B No action on the amendments to encourage temporary licensure of physicians for short-term work in Iowa. Sen. Seymour commended the board for these provisions.
- ARC 5513B No questions regarding proposed continuing education credit for specialty certification under ABMS or AOA.
- ARC 5512B No action on proposed passing score for Internet-based test of English proficiency.
- ARC 5511B No questions on proposed 23.1(37) regarding discipline for failure to complete the fingerprint process.

**PROFESSIONAL LICENSING AND REGULATION BUREAU** Pam Griebel and Shari Fett represented the bureau.

- ARC 5539B No action on amendments to reflect the legislative change from a division of the department of commerce to a bureau within the division of banking.

**PUBLIC HEALTH DEPARTMENT** Barb Nervig and Mary Jones represented the department. David Fraise of the Iowa Prescription Drug Corporation was also present.

- ARC 5555B No action on proposed amendments to ch 1 concerning surveillance of communicable and infectious diseases. Ms. Jones updated the committee on Iowa's emergency response preparedness.
- ARC 5563B No action on proposed ch 109, prescription drug donation repository program. The Iowa Prescription Drug Corporation was awarded the contract for administration; Mr. Fraise responded to questions regarding safeguards, liability, and opportunities for participation.
- ARC 5565B No questions on proposed ch 113, public health response teams.
- ARC 5566B No questions on proposed amendments to chs 126 and 127 concerning medical examiners.
- ARC 5567B No action on the new designation of neonatal intensive care units. Ms. Nervig agreed to send the committee the names of the four hospitals that may request designation as Level II regional neonatology centers.

**REVENUE DEPARTMENT** Jim McNulty, Ed Henderson and Dick Stradley represented the department. Other interested parties included Polk County Assessor Jim Maloney and chief deputy Dale Hyman, Dan Clark of Willow Creek Golf Course, and Warren County Assessor Dave Ellis on behalf of the Iowa State Association of Assessors.

- ARC 5524B No questions on the proposed interest rate for calendar year 2007.
- ARC 5527B No action on proposed amendments to individual income, withholding, corporation income and franchise tax.
- ARC 5544B No questions on amendments pertaining to individual and corporation income tax credits.
- ARC 5526B No questions on proposed amendments regarding motor fuel, cigarettes and tobacco.
- ARC 5545B Mr. Henderson reported that the proposed amendments to property tax rules are intended to ensure uniformity and consistency in property tax appraisal practices throughout the state. The amendments prohibit dual classification of property and require valuation according to the current use of the property; require uniform application of the agricultural factor; provide for use of an alternative manual to value property; and provide for application for tax exemption after an assessment has been completed. Mr. Maloney voiced concern about Item 1 of the amendments and indicated that assessments should be based of the market value of the property rather than the current use of the property. Mr. Hyman concurred with Mr. Maloney and indicated that he believes the amendment represents a dangerous shift in policy. Mr. Ellis stated that in his view the amendment is consistent with current policy. Mr. Clark commented that use, rather than potential use, should determine the tax on recreational areas such as golf courses.
- ARC 5528B No action on amendments to ch 86 pertaining to inheritance tax. Rep. Huser asked that the form be accessible on the department's Web site.

**STATE PUBLIC DEFENDER** Mark Smith represented the office of state public defender.

- ARC 5540B No questions on proposed amendments to chs 7, 12 and 13.

**UTILITIES DIVISION** Cecil Wright represented the division.

- ARC 5525B No questions on proposed amendments regarding natural gas and electric utility customer notice for information and complaints.

**PUBLIC SAFETY DEPARTMENT** Mike Coveyou, Ron Humphrey, Stuart Crine, and Roxann Ryan represented the department.

- ARC 5557B No action on adoption of the International Fire Code.
- ARC 5531B No action on ch 81, criminal intelligence information.
- ARC 5530B No questions on ch 35 regarding filing of complaints against employees.
- ARC 5559B No questions on ch 150 concerning the criminalistics laboratory.
- ARC 5558B No questions on ch 89, the missing person information clearinghouse.
- ARC 5553B No questions on chs 300 and 301 pertaining to the state building code.

Public Safety Department (continued)

- ARC 5560B No questions on building code inspector qualifications.
- ARC 5547B No action on the state historic building code.
- ARC 5543B No questions on ch 372 regarding manufactured or mobile home retailers, manufacturers and distributors; the legislature transferred authority from the department of transportation to the department of public safety.

**INSURANCE DIVISION** Rosanne Mead, Kim Cross and Jim Armstrong represented the division.

Special review The committee had requested that the division and DHS appear for a review of the impact of annuities on Medicaid eligibility. Ms. Freudenberg explained that the Deficit Reduction Act requires the department to take into consideration the value of annuities that are transferred at less than fair market value within a period of five years. DHS agreed to set up a procedure for staff to refer annuity products to the insurance division when there is reason to believe that the sale violated insurance division rules or was not in an elderly person's best interests.

- ARC 5552B No questions on amendments to ch 15.
- ARC 5556B No questions on rate and form filing procedures for surplus lines.
- ARC 5554B No questions on amendments pertaining to viatical and life settlements.
- ARC 5550B Proposed ch 94 recognizes and permits use of preferred mortality tables in determining minimum reserve liabilities. Ms. Cross reported that the division intends to proceed with an emergency after notice implementation with a January 1, 2007, effective date. Sen. McKinley inquired about factors other than smoking that an insurer may consider in making underwriting decisions. Rep. Heaton brought up the question of health insurer reserves, and Sen. McKinley asked for a comparison of reserves held by insurers in Iowa and amounts reserved in other states.

**Committee business** Minutes of the November meeting were approved.  
The January meeting was scheduled for 1 p.m. on Wednesday, January 3, and 8:30 a.m. on Thursday, January 4, 2007.  
The February meeting was scheduled for Friday, February 2, 2007.  
There was discussion regarding statutory provisions for the appointment and term of the committee chair and vice chair.  
Sen. Kibbie requested a January review of the renewable fuels infrastructure program and expressed concern about waiver provisions that may appear in an emergency filing.

Adjourned The meeting was adjourned at 12:02 p.m.  
Respectfully submitted,

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Kathleen K. West

APPROVED:

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Chair George Eichhorn

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Vice Chair John P. Kibbie