

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

Date of meeting: A special meeting of the Administrative Rules Review Committee (ARRC) was held Monday, November 20, 2006, and Tuesday, November 21, 2006, in Room 22, State Capitol, Des Moines, Iowa.

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

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

Convened Vice Chair Kibbie convened the meeting at 9:02 a.m.

Fiscal report Mary Beth Mellick presented the LSA report on rule makings that may have a significant fiscal impact.

PHARMACY EXAMINERS BOARD Terry Witkowski represented the board.

ARC 5473B No questions on proposed 2.4 concerning completion of internship for pharmacy licenses.

ARC 5465B No question on termination of the notice to amend chs 3 and 7 regarding delegation of functions to pharmacy technicians.

ARC 5466B No action on proposed amendments to chs 3 and 7 regarding delegation of functions to pharmacy technicians. Sen. McKinley was advised of the statutory requirement for a pharmacist to be present when drugs are dispensed; Ms. Witkowski stated that she does not believe the board has the authority to waive the requirement.

ARC 5470B No questions on proposed 6.3 concerning pharmacy reference library updates.

ARC 5467B No comments on proposed 8.5(3) to require a secure physical barrier to prevent entry to a pharmacy department when the department is closed.

ARC 5468B No questions on proposed 10.18(2), which authorizes a pharmacy technician 18 years of age or older to witness the disposal of unused portions of controlled substances.

ARC 5477B No questions on proposed 15.4 concerning correctional facility pharmacy reference library updates.

ARC 5464B No questions on termination of notice to amend 20.3(4) regarding resale of compounded drug products.

ARC 5469B No questions on proposed amendment to 20.3(4) to authorize a pharmacy to sell to a hospital pharmacy a compounded drug product prepared pursuant to a prescriber's authorization for administration to a specific patient and to establish requirements for labeling and record keeping.

ARC 5463B No questions on proposed amendments to ch 21 to ensure the validity of electronic signatures on prescriptions.

PUBLIC HEALTH DEPARTMENT Barb Nervig represented the department.

ARC 5421B No questions on amendments to ch 3 concerning sharing of newborn hearing screening information.

ARC 5422B No questions on amendments pertaining to radon testing, analysis, and mitigation.

ARC 5457B No questions on correction of cross references in 71.3(1).

Committee business

- The minutes of the October 2006 meeting were approved. (Sen. Courtney's motion)
- The committee approved the secretary's request to remove from the Iowa Administrative Code the rules of the Iowa Seed Capital Corporation, which was repealed in 2001 Iowa Acts, chapter 61, section 19. (Rep. Frevert's motion)
- The next meetings were scheduled for December 12 and 13, 2006, and January 3, 2007.
- Rep. Huser asked that staff ensure that the agenda list all Bulletins needed for each meeting.
- There was discussion about the different understandings in the Senate and the House regarding the intended use of the funds appropriated for injured veterans.

Motion to refer Sen. McKinley moved a general referral to seek clarification of legislative intent.

Motion carried The motion carried.

ADMINISTRATIVE SERVICES DEPARTMENT Marianne Mickelson and Greg Fay represented the department.

ARC 5485B No comments on 25.9, information technology enterprise operational standards.

ARC 5484B No action on 25.11 regarding assessment and enforcement of security operational standards. Mr. Fay reported that a combination of internal and external resources are used to ensure security.

AGRICULTURAL DEVELOPMENT AUTHORITY Jeff Ward represented the authority.

ARC 5483B No action on ch 6, procedural rules for the beginning farmer tax credit program.

ETHICS AND CAMPAIGN DISCLOSURE BOARD Charlie Smithson represented the board.

ARC 5472B No questions on amendments to chs 1 and 2 relating to agency description, code of ethics, and prohibited use of information.

ARC 5474B No questions on correction of a cross reference in 4.21(5).

ARC 5475B No action on the amendment to 4.25(1)“h” to remove the monetary cap on the use of campaign funds to purchase tickets to a fund-raising meal.

ARC 5476B No questions on 4.41 regarding violation of the requirement that political material include a “paid for by” attribution statement.

ARC 5478B No action on 4.59(8) concerning the \$20 civil penalty for a permanent organization’s failure to file Form DR-OTC related to a contribution in excess of \$750. Mr. Smithson reported that no penalty will be imposed for a first violation by an organization that has not previously made a contribution in excess of \$750 if the report is filed within ten days of notification from the board.

ARC 5479B Rule 5.8 pertains to holders of certain government positions who are prohibited from engaging in political activities. Mr. Smithson agreed to send the list to the committee.

ARC 5480B No questions on 6.11 regarding sales or leases by regulatory agency officials or employees.

ARC 5471B No questions on 6.12 regarding sales or leases by members of the office of the governor.

ARC 5461B No questions on 9.3 regarding grounds for disciplinary action.

UTILITIES DIVISION David Lynch and Mary Whitman represented the division.

ARC 5502B No action on amendments pertaining to eligibility, certification, and reporting requirements for eligible telecommunications carriers.

ARC 5423B No questions on the proposed amendment to ch 22 to prohibit unauthorized changes in telecommunications services.

Special review Subrule 7.1(8), regarding delegation of authority to issue procedural orders, is under a 70-day delay, which was imposed at the October 10, 2006, ARRC meeting. [ARC 5380B, IAB 9/13/06] Mr. Lynch clarified circumstances under which procedural orders might need to be issued, such as emergency situations or for the convenience of agreeing parties. Mr. Lynch noted that any person may request that any procedural order be reviewed by the board. Rep. Eichhorn expressed concern about the standard of “prejudice to the nonmoving party is not great.” No further action was taken.

INSURANCE DIVISION Rosanne Mead represented the division.

ARC 5490B No questions on amendments to ch 3 regarding contested cases.

ARC 5498B No questions on amendments to ch 10, licensing of insurance producers.

ARC 5499B No questions on amendments to ch 11, continuing education for insurance producers.

ARC 5492B No questions on general filing requirements for property and casualty insurance rates and forms.

ARC 5495B No questions on general filing requirements for life insurance rates and forms.

ARC 5497B No questions on general filing requirements for accident and health insurance rates and forms.

ARC 5444B No action on amendments to ch 36 concerning individual accident and sickness coverage. Ms. Mead reported that most standard plans exceed these requirements. Rep. Heaton asked about the division’s plans to address coverage for those who have no insurance; Ms. Mead agreed to relay the question to the commissioner. On another matter, Rep. Huser expressed concern that elderly persons have been sold annuities that may cause them to be disqualified from receiving Medicaid coverage. Rep. Heaton asked that representatives of the insurance division and the department of human services appear together at the December meeting to respond to Rep. Huser’s concern.

EDUCATION DEPARTMENT Carol Greta represented the department.

ARC 5415B No action on proposed amendments to ch 17, open enrollment. Ms. Greta reported that the proposed amendments have now been adopted. In response to a request from the Iowa Association of School Boards, a change from the notice was made in item 6, where the time period for filing a written appeal was changed from 15 days to 30 days.

ARC 5424B No action on ch 44, school buses. Discussion related to seat belts, the decibel level of the backup warning, and the use of school buses to transport a small number of pupils. Ms. Greta indicated that legislation will be proposed to allow for transport of pupils in smaller vehicles and to require the inspection of any vehicle used to transport pupils.

ARC 5416B No questions on the rescission of ch 62, educational improvement projects. Ms. Greta stated that the program was never funded.

- INSPECTIONS AND APPEALS DEPARTMENT** David Werning represented the department. Other interested parties included Cynthia Beauman of the health facilities council.
- ARC 5431B Proposed amendments to ch 51 provide for licensure of a long-term acute care hospital within a licensed hospital. Members were advised that a physician would refer a patient that requires a level of care above nursing home care to such a facility, that Medicare would cover the cost of care, and that there would be no time limitation. Mr. Werning reported that CMS has already approved of long-term acute care hospitals within licensed hospitals and that federal guidelines exist. Ms. Beauman expressed support for the amendments and the concept of a long-term acute care hospital within a hospital.
- ARC 5432B No action on amendments pertaining to death records of residents of residential and intermediate care facilities.
- ARC 5429B Amendments to chs 58 and 61 provide for person-directed care environments in long-term care facilities, characterized by a more homelike environment with increased decision making and choices by the residents.
- ARC 5430B Proposed amendments to chs 58, 64, and 65 pertain to admission procedures for long-term care facilities and require facilities that receive Medicaid reimbursement to report the names of potential veterans to the Iowa department of veterans affairs. Members asked that the rules be rewritten to require that spouses, dependents and widows of veterans also be reported.
- ARC 5433B To conform with DHS rules, this amendment increases from 18 to 30 the number of days a resident's bed at an ICF-MR may be held open. On Tuesday, November 21, Ms. Freudenberg confirmed that the amendment is in conformance with DHS rules.
- RECORDS COMMISSION** Kathy Gourley represented the commission.
- ARC 5447B No questions on the proposed amendment to definitions in rule 1.2.

Tuesday, November 21, 2006

- Committee business** David Werning of the department of inspections and appeals and Patrick Palmersheim of the department of veterans affairs heard the committee's concerns that the amendments in ARC 5430B should be revised to ensure that care facilities notify the department of veterans affairs about veterans and spouses, dependents, and widows of veterans who may be eligible for benefits.
- Motion Rep. Frevert made a motion to refer the matter to the general assembly.
- Motion carried The motion carried.
- HUMAN SERVICES DEPARTMENT** Nancy Freudenberg, Eugene Gessow, Eileen Creager, Mary Nelson, and Carol Stratemeyer represented the department. Other interested parties included Mark Hanson of the Iowa Association of Area Agencies on Aging and Cynthia Beauman of the Northwest Aging Association.
- ARC 5413B No action on amendments to allow electronic application for food assistance via a secure Web site. Ms. Stratemeyer confirmed that applicant identification is verified and a face-to-face interview is held.
- ARC 5417B These amendments include case management services as covered services under the HCBS elderly waiver. Ms. Freudenberg reported that the legislation provides that reimbursement cannot exceed an average of \$70 per month. The statewide average cost was \$114 per month; so, based on the dollars available, the department opted for a fixed fee for service of \$70, rather than cost-based reimbursement. Ms. Freudenberg stated that the waiver was submitted to CMS in November 2005, and CMS approved the request in August 2006. Although the rules were filed emergency for October 1, 2006, implementation, Ms. Freudenberg offered assurance that, in following up on the notice portion of the emergency filing, the department will consider the committee's input.
- Mr. Hanson expressed a preference for cost-based reimbursement and noted that if services are not needed monthly, a client's quarterly costs could amount to less than three months' fixed reimbursement. Ms. Beauman expressed concern about the \$70 limit and concern that the elderly waiver may not be consistent with other waiver programs. Mr. Gessow clarified that a case manager's ongoing responsibility goes beyond simply seeing a client once a month, and he corrected a misconception that a person might be eligible under more than one waiver program.
- Motion to refer Rep. Frevert moved a referral of case management services under the elderly waiver to the general assembly.
- Motion carried The rules, which remain in effect, are referred to the legislature.
- ARC 5438B No questions on amendments to increase Medicaid reimbursement rates.
- ARC 5436B The IowaCare program, ch 92, has been in effect for 12 months. These amendments clarify reapplication procedures and eligibility criteria and reflect changes in the poverty level. Sen. McKinley requested additional information regarding the number of individuals covered, how many are current in their payments, and the reenrollment rates.

Human Services Department (continued)

- ARC 5434B No questions on amendments to chs 113 and 200 regarding waiver of foster or adoptive parent preservice training.
- ARC 5419B No action on amendments to ch 153 pertaining to funding for local services. There was discussion about issues related to county of legal settlement.
- ARC 5435B No questions on 201.6(1)“a”(7) to increase the reimbursement for nonrecurring expenses in subsidized adoptions.
- ARC 5420B No action on amendments to ch 204 to implement a five-year demonstration project for the subsidized guardianship program. Ms. Freudenberg reported that approximately 900 children qualify; the department estimates that over the five years approximately 3,000 could qualify.

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF Ken Boyd and Nichole Warren represented the department. Tina Hoffman represented the grow Iowa values board.

- ARC 5439B No questions on amendments to include the value of benefits in the definition of “wages” for the high quality job creation program and the grow Iowa values fund.
- ARC 5440B No questions on amendments to ch 59, enterprise zones.
- ARC 5441B No questions on ch 70, port authority grant program.
- ARC 5442B Ch 71 implements the targeted jobs withholding tax credit program. Discussion related to inclusion of both new and retained jobs.
- ARC 5443B No questions on amendment to the definition of “employee” to include leased and contract employees.
- Special review Sen. McKinley requested a special review of the grow Iowa values fund. Discussion related to the number of jobs pledged and the number actually created, the return-on-investment model, the due diligence committee, and availability of information. Sen. McKinley encouraged the department to define proprietary information and to make information widely available to the public. Senators Kibbie and Courtney voiced support for the projects that have benefited from the grow Iowa values fund.

ENVIRONMENTAL PROTECTION COMMISSION Jeff Geerts, Diane Moles, Tom Atkinson, Jon Tack and Alex Moon represented the commission. Other interested parties included Scott Smith of the Boone County Landfill and Hal Morton of the Des Moines County Regional Solid Waste Commission.

- ARC 5450B No comments on proposed amendments to ch 11 regarding a tax exemption for property used to process waste glass products.
- ARC 5449B No questions on proposed amendments to ch 43 concerning fees for public water supply systems.
- ARC 5460B No action on rescission of ch 47; the authority for this program has been transferred to the department of public health.
- ARC 5459B No action on amendments to update references to federal effluent and pretreatment standards.
- Special review Ms. Gardyasz summarized the concerns of the Boone County Landfill and the department’s response regarding documents that must be filed for permit renewals. Mr. Smith objected to manner in which the permit process was developed and the cost of preparing required documents. Mr. Morton concurred and expressed a preference for electronic filing. Mr. Tack maintained that although neither the rules nor the guidance document requires the filing of these documents, the Kaizen group concluded that submission of the all documents would speed up the process. Rep. Huser asked that the committee be provided the Kaizen report and the names of the individuals. Members also indicated that the fiscal analysis should include costs to all affected parties.

IOWA FINANCE AUTHORITY Mark Thompson and Loyd Ogle represented the authority.

- ARC 5452B No questions on 9.22 concerning closing protection letters.
- ARC 5456B No questions on amendments to ch 21, the home and community-based services revolving loan program.

PUBLIC SAFETY DEPARTMENT Mike Coveyou, Sam Knowles, and Stuart Crine represented the department. Other interested parties included Keith Luchtel of the Iowa Propane Gas Association.

- ARC 5427B No questions on 5.52 relative to sprinklers in elevators.
- ARC 5501B No questions on 51.200 and 51.202(1) concerning flammable and combustible liquids.
- ARC 5426B No action on contractor certification for installation of preengineered dry chemical and wet agent fire extinguishing systems.
- ARC 5500B No questions on 303.2 and 303.3 regarding energy conservation for residential and nonresidential construction.

Public Safety Department (continued)

- ARC 5446B No action on amendments to chs 400 to 402 pertaining to line-of-duty death benefits and service purchases for the peace officers' retirement, accident and disability system. Discussion related to the cost of service purchase.
- ARC 5396B No questions on proposed amendments to chs 4 and 91 relating to weapons permits.
- ARC 5395B No questions on disposition of seized and forfeited weapons and ammunition.
- ARC 5375B No action on amendments to ch 5 concerning adoption of the international fire code. Mr. Luchtel commented on the association's interest in preserving the National Propane Gas Association training component and NFPA pamphlets 54 and 58 and not also having to purchase the international codes. Mr. Coveyou indicated that these rules do not cover propane installations that are subject to ch 51 of the department's rules.
- ARC 5404B No questions on proposed amendments to the state building code.
- REVENUE DEPARTMENT** David Casey and Jim McNulty represented the department.
- ARC 5494B No questions regarding ethanol blended gasoline, biodiesel blended gasoline and E-85 gasoline promotion tax credits.
- ARC 5493B No questions on the soy-based transformer fluid tax credit.
- ARC 5491B No questions on amendments relating to property tax.
- SECRETARY OF STATE** Sandy Steinbach represented the office of secretary of state.
- ARC 5482B No action on amendments to chs 21, 22 and 26 concerning election instructions, voting systems, and vote counting guidance and clarification. Discussion related to poll worker recruitment and HAVA requirements for voting equipment.
- Adjourned The meeting was adjourned at 12:40 p.m.

Respectfully submitted,

Kathleen K. West

APPROVED:

Chair George Eichhorn

Vice Chair John P. Kibbie