

**MINUTES OF THE FEBRUARY 2004 MEETING
OF THE**

ADMINISTRATIVE RULES REVIEW COMMITTEE

- Date of meeting: A special meeting of the Administrative Rules Review Committee (ARRC) was held Monday, February 9, 2004, in Room 116, State Capitol, Des Moines, Iowa.
- Members present: Representative George Eichhorn, Chair, and Senator Paul McKinley, Vice Chair; Senators Michael Connolly, John P. Kibbie, Mary Lundby, and Donald Redfern; Representatives Danny Carroll, Marcella Frevert, David Heaton, and Geri Huser.
- Also present: Joseph A. Royce, Legal Counsel; Kathleen K. Bates, Administrative Code Editor, and Teresa Vander Linden, Assistant Editor; Brian Gentry, Administrative Rules Coordinator; fiscal staff, caucus staff and other interested parties.
- Convened Chair Eichhorn convened the meeting at 9 a.m.
- HUMAN SERVICES DEPARTMENT** Nancy Freudenberg and Mary Nelson represented the department. Other interested parties included Bill Brown and Kim Schmett of the Coalition for Family and Children's Services and Dana Cheek and Karon Perlowski of the Child and Family Policy Center.
- ARC 3108B No action on amendments to ch 25 to change the deadline for county applications for risk pool funding.
- ARC 3074B No questions on 28.13(2)"c," which was amended because the procedure used to apply credits due counties from a state institution or institutional program was not in conformance with the state constitution.
- ARC 3114B No action on proposed amendments to rules of the FIP and PROMISE JOBS programs. Freudenberg agreed to provide information regarding the percentage of participants who are in educational institutions. Frevert and Huser expressed concern about the 48 participants who, due to the change in rules, will be terminated from the program, rather than grandfathered.
- ARC 3075B No questions on amendments to ch 86 adding on-line HAWK-I applications as valid Medicaid applications.
- ARC 3115B Amendments to chs 78 and 79 pertaining to maternal health centers include local nonemergency medical transportation and acceptable degrees for staff who deliver care coordination and psychosocial services. Carroll questioned the addition of dental hygienists under the coordination of care provisions in 78.25(3)"a." Freudenberg agreed to check on the amendment. Heaton asked the department to contact the Iowa Dental Association regarding this amendment. McKinley noted that while the amendment expands benefits, the department has identified no fiscal impact. Freudenberg agreed to check on tracking of additional costs as a result of the expanded benefits.
- ARC 3072B No action on amendments to the HAWK-I program. McKinley requested additional information about geographic access statistics.
- ARC 3116B No action on proposed amendments to ch 105 concerning county and multicounty juvenile detention homes and juvenile shelter care homes. Freudenberg advised Huser that the amendments do not require additional record keeping for counties, and Nelson clarified that Medicaid coverage would be retained by a youth in shelter care; but since detention homes are correctional, the youth in a detention home would not be eligible for Medicaid coverage.
- ARC 3117B No action on amendments to provide services to youth in independent living placements who are not self-supporting when they reach the age of 18.
- ARC 3076B Amendments to ch 170 provide sanctions for fraud in obtaining child care assistance. McKinley requested data on any current providers who have been found to have committed fraud.
- ARC 3078B No action on amendments to ch 185 concerning group treatment therapy and counseling. Freudenberg reported that CMS has received the rules and has expressed no concerns. The Coalition for Family and Children's Services thanked the department for its work in developing these rules.
- ARC 3077B Subrule 201.3(3) clarifies eligibility for adoption subsidies. Individuals already receiving child care assistance are grandfathered in at the rates in effect for the child care program. In cases in which the child care provider will not accept the DHS rate, the department could grant an exception to policy or use another source of funding. Nelson advised Heaton that the department is working with the Iowa Foster and Adoptive Parents Association to put together a brochure about benefits available through the adoption subsidy program and the foster care program. In addition, the department has requested that the national resource center provide staff training on assisting families. Huser expressed concern that, contrary to legislative intent, this amendment may discourage adoption of special needs children. Heaton commented that the \$54 million in subsidized adoptions accounts for the greatest increase in the appropriation and that the intent is to ensure that the subsidy and services are appropriate, but not necessarily open-ended.

Human Services Department (continued)

Gentry advised the department to monitor adoptions of special needs children to determine whether there is a decrease in these adoptions. Nelson responded that there may be a decrease in the number of adoptions because the pool of children to be adopted is smaller. Adoptive parent Cheek expressed appreciation that the department has provided for grandfathering but stated a concern about future adoptions of special needs children. Cheek requested a study of the program statewide. Perlowski voiced concern that monitoring plans and outcomes are not known. Eichhorn asked the department to provide a report regarding its monitoring of adoptions.

ETHICS AND CAMPAIGN DISCLOSURE BOARD Charlie Smithson represented the board.

ARC 3047B

Proposed ch 5 pertains to use of public resources for a political purpose. Smithson reported that proposed 5.4(2)“d” and 5.5(4) will be withdrawn as a result of comments received. Smithson asked the committee to advise him if they have concerns pertaining to separation of powers. Frevert suggested that the rules may have more of an effect at the local level. Smithson advised Connolly that with increased frequency the board has been contacted for guidance about the difference between education and advocacy. Carroll suggested that the state government committee provide input on the rules. Gentry encouraged the board to contact the attorney general’s office to ensure consistency between the rules and the constitution and statutory criminal and campaign provisions. Kibbie was concerned that there may be local overreaction against use of buildings as caucus sites; Redfern was concerned that the rules may exceed the board’s authority. Gentry requested issuance of advisory opinions to provide interpretation of the rules and how they apply in specific situations. Carroll suggested that 5.5(10) be reworded to ensure balance. Eichhorn asked that the attorney general’s opinion on the separation of powers issue be forwarded to Royce.

LAW ENFORCEMENT ACADEMY Penny Westfall represented the academy. Susan Cameron represented the Iowa State Sheriffs and Deputies Association.

ARC 2978B

Westfall stated that after holding 20 meetings statewide, the academy will be recommending changes to the council in response to concerns about costs, the physical exam, vision and hearing tests. Eichhorn requested feedback after the February 12 meeting of the council. Cameron expressed appreciation for Westfall’s meetings and commented that it appears that the revised rules address the concerns of sheriffs and deputies.

INSPECTIONS AND APPEALS DEPARTMENT David Werning and Jean Davis represented the department. Other interested parties included Ned Chiodo on behalf of Iowa Operators of Music and Amusement, Dawn Carlson of Petroleum Marketers and Convenience Stores of Iowa, Bill Wohlers of Redline Vending and IOMA, Dan Ruzek of ADC, and Lorian Eaton of Clean Shot in Ottumwa.

ARC 3081B

No questions on proposed amendments to long-term care facility admission procedures regarding determination of veterans’ eligibility for benefits.

ARC 3080B

Ch 105 and amendments to ch 104 pertain to registration of electrical and mechanical amusement devices. Werning reported on changes made as a result of public comment, including clarification of who must register as a distributor and pay the \$2500 fee.

Motion to delay

Carroll moved a 70-day delay in order to determine if any pending legislation would affect these rules.

Chiodo stated that the rules create inequitable risk since the \$2,500 fee does not apply to all operators and expressed support for the proposed 70-day delay and tighter restrictions on placement of machines. Davis responded that the \$2,500 fee applies to manufacturers, manufacturers’ representatives, and distributors but not to owners such as social and fraternal organizations. Davis reported that although registration is required by statute, only about 3,000 of the state’s 10,000 machines have been registered and not all known distributors have registered. Davis indicated that even if the rules are delayed, the statute requires registration. Chiodo stated that the industry is concerned about potential abuse by for-profit entities that are owners of machines. Ruzek commented that he has signed affidavits from 120 convenience store operators that children are not allowed to play the machines. Carlson reported that convenience store operators abide by the law and they do not sell tobacco or alcohol to minors or allow underage players. Eaton indicated that the two registered machines she owns are not profitable enough to support a \$2,500 fee. As a means of legitimizing the industry and more effectively penalizing misuse, Wohlers asked that the \$2,500 fee apply to those who own devices and offer them for public use.

Motion carried

The motion carried. Ch 105 and amendments to ch 104 were delayed for 70 days.

ECONOMIC DEVELOPMENT DEPARTMENT Allen Williams represented the department.

ARC 3109B

Ch 63 implements the university-based research utilization program. McKinley commented that the department needs to track who is receiving tax credits to see if the filing of consolidated returns has created a loophole.

CULTURAL AFFAIRS DEPARTMENT Jack Porter and Kathy Gourley represented the department.

ARC 3110B No action on proposed ch 9 pertaining to cultural and entertainment districts. Frevert encouraged the department to ensure that information about the program is disseminated statewide.

ADMINISTRATIVE SERVICES DEPARTMENT Carol Stratemeyer and Michael Prey represented the department.

ARC 3082B These proposed amendments transfer the human resources rules from the former department of personnel to the department of administrative services. McKinley asked that the department explain the exceptions referenced in proposed 68.3(3)“a” and that appropriate committees in the legislature also receive a copy of the report referenced in 68.3(4). McKinley inquired about the changes in referenced documents pertaining to equal employment opportunity and affirmative action and about why the department used two terms, “sex” and “gender,” in these rules instead of using one term consistently. A final concern raised by McKinley pertained to investigation of discrimination complaints; Prey responded that the department would initiate an investigation unless the employee filed the complaint with the civil rights commission.

ENVIRONMENTAL PROTECTION COMMISSION Wayne Gieselman, Jim McGraw, Chuck Corell, Sean Fitzsimmons and Diane Moles represented the commission. Kari Carney of Iowa Citizens for Community Improvement was also present.

ARC 3092B Gieselman reported that the proposed rules pertaining to animal feeding operations establish a health effects value (HEV). Gieselman stated that the standard for hydrogen sulfide was based on the joint university study on air quality and that these proposed rules will have no effect on any animal feeding operation, but are intended only to establish a benchmark for the monitoring required by legislation. Gieselman explained the difference between these rules and the rules nullified by the legislature last year. These rules do not establish ambient air standards, but apply only to livestock operations at separated locations and include no standard for ammonia. In addition, the department is assembling a work group to make recommendations regarding best management practices, dispersion modeling, and emissions characteristics.

Point of order Connolly pointed out that several members had to leave by noon and asked that if a motion were going to be made regarding these rules, it be offered while members were present to vote.

Motion Carroll moved a regulatory analysis. Lundby requested discussion prior to a vote on the motion; Connolly clarified that his request was not intended to preclude discussion. Eichhorn suggested that the committee recess and reconvene on Wednesday, February 11, 2004, at 8 a.m. to review the environmental protection commission rules and to conduct committee business.

Recess The committee recessed.

Wednesday, February 11, 2004

ARC 3094B Corell reported that the amendments to the drinking water rules adopt federal regulations, prohibit returning of water from a heat exchanger to a water main, reestablish construction permit fees, and restructure certification programs and fees. In response to questions about lab certification fees, Moles stated that the fees defray the costs of operating this self-supporting program and that fees for private labs are higher because more analyses are performed.

ARC 3092B(cont'd)

Motion withdrawn Carroll asked unanimous consent to withdraw the motion for a regulatory analysis and inquired about ISU’s recommendation of 30 ppb subsequent to the joint university recommendation of 15 ppb for hydrogen sulfide. Gieselman indicated that the University of Iowa will advise the department during the public comment period if they concur with ISU’s reevaluation. Carroll suggested that the 15 ppb be identified in the rules as a measure for purposes of the field study but questioned the inclusion of the words “for purposes of the field study” in regard to comprehensive plans and programs in 32.2(1). Fitzsimmons summarized field study monitoring to date and clarified the meaning of “separated location.”

Kibbie commented on declining school populations and abandoned houses in rural areas and expressed the hope that the committee would not stand in the way of EPC’s efforts to improve the quality of Iowa’s air. Eichhorn concurred that Iowans want clean air; but, concerned that establishing too strict a standard for hydrogen sulfide may have a disproportionate adverse effect on small operations, he encouraged the department to check with the universities as to their recommendations.

To illustrate that Iowa’s standards are significantly more lenient than those in surrounding states, Carney distributed ambient air standards for property line sampling in other states and urged the committee to allow the EPC to proceed with the rules.

Committee business Huser moved approval of the minutes of the January meeting. The motion carried. The next meeting was set for Monday, March 8, 2004. There was discussion of charter agencies' flexibility in purchasing, travel and printing, but concern about the loss of records established through the waiver procedures and the RFP process. The committee discussed whether to seek a quarterly report from charter agencies; Gentry agreed to confer with the department of management as to reporting.

Adjourned The meeting was adjourned at 9:17 a.m.
Respectfully submitted,

Kathleen K. Bates

APPROVED:

Chair George Eichhorn

Vice Chair Paul McKinley