

**MINUTES OF THE JULY 2008 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 8, 2008, at 9 a.m. in Room 116, State Capitol, Des Moines, Iowa.
- Members present: Senator Michael Connolly, Chair, and Representative Philip Wise, Vice Chair; Senators Jeff Angelo, Thomas Courtney, John P. Kibbie, and James Seymour; Representatives Marcella Frevert, David Heaton, David Jacoby, and Linda Upmeyer were present.
- Also present: Joseph A. Royce and Michael Duster, Legal Counsel; Kathleen K. West, Administrative Code Editor; Deborah Svec-Carstens, Assistant Counsel to the Administrative Rules Coordinator; fiscal staff; caucus staff; and other interested parties.
- Convened Sen. Connolly convened the meeting at 9 a.m.
- Fiscal overview** Sue Lerdal presented the LSA fiscal report.
- ADMINISTRATIVE SERVICES DEPARTMENT** Patricia Lantz, Debbie O'Leary, and Shauna Shields represented the department. Brice Oakley of Avenson, Oakley & Cope appeared on behalf of information technology vendors.
- ARC 6809B Proposed ch 108 pertains to contractual limitation of vendor liability provisions. Ms. O'Leary noted that the department reviewed other states' rules and that the vendor community provided input for these proposed rules, which are intended to balance risks to the state, the taxpayers, and the vendor community. These rules are similar to California's rules in that vendor liability, with certain exceptions, is double the amount of the contract. The rules address IT procurements and are applicable only to DAS procurements. The State Public Policy Group report was distributed to committee members at the request of Rep. Wise. Mr. Oakley distributed written comments and asked that the department give more consideration to risk assessment practices before adopting these rules. Rep. Wise asked Mr. Royce to schedule these rules for further review at the August meeting.
- EDUCATION DEPARTMENT** Jeff Berger and Thomas Mayes represented the department. Linda Goeldner represented the Iowa Nurses Association and Iowa School Nurses Organization.
- ARC 6837B No questions on termination of Notice ARC 5630B regarding the entrepreneurs with disabilities program.
- ARC 6836B No questions on proposed Iowa self-employment program, 56.20 and 56.37 to 56.41.
- ARC 6838B Proposed amendments to ch 103 pertain to restraint and confinement of students. Mr. Mayes reported that the rules require use of positive behavioral intervention measures, involvement of school administrators, staff training, and documentation for purposes of evaluation. Discussion related to parental notification, student mental health needs, safety of students, visual observation of students who are in seclusion rooms, and clarification of responsibilities. Members wanted parental notification to be required at the time restraint or seclusion is implemented, not just by means of the annual notification regarding the school's policies. Ms. Goeldner commented that nurses were not involved in the drafting of these rules, and that they want the rules to require parental notification and direct visual observation of secluded students.
- VETERANS AFFAIRS DEPARTMENT** Patrick Palmersheim and Kent Hartwig represented the department.
- ARC 6865B Ch 12, county grant program for veterans, was adopted and filed under emergency rule-making procedures. Members questioned the use of the emergency procedures. Discussions pertained to the intent of the program and inequities among counties. Sen. Connolly requested a report of how each county has expended funding from this program.
- ARC 6882B No action on 13.1(1) concerning the Vietnam Conflict veterans bonus.
- VETERINARY MEDICINE BOARD** Excused from review of ARC 6836B at this meeting.
- PHARMACY BOARD** Terry Witkowski represented the board.
- ARC 6867B No questions on amendments to ch 3 regarding certification of pharmacy technicians.
- ARC 6872B No questions on proposed 8.11(5) concerning provision of prescription blanks and forms by hospitals.
- ARC 6843B No questions on 8.35(6)"c," regarding temporary pharmacist in charge.
- ARC 6874B No action on proposed amendments to ch 13, sterile compounding practices.
- ARC 6869B No questions on amendments to ch 18 concerning centralized prescription filling and processing. Ms. Witkowski reported that the requirement for written patient authorization for the prescription to be filled by another pharmacy has not yet been resolved.

- ENVIRONMENTAL PROTECTION COMMISSION** Randy Clark, Christine Paulson, Chuck Correll, Jon Tack and David Wornson represented the commission. Other interested parties included assistant attorney general David Sheridan, John Gilliland of the Association of Business and Industry, Jeff Hove on behalf of petroleum marketers, Tom Norris of Petroleum Marketers Management Insurance Corporation, John North of the Iowa Association of Water Facilities.
- ARC 6921B Rule 1.6 was amended to reflect quorum and voting requirements when there are vacancies on the commission. Discussion related to the basis for the emergency rule-making procedures. Members agreed to refrain from action at this meeting to provide an opportunity for a commissioner who was unable to attend to address the committee.
- ARC 6926B No action on proposed amendments to air quality rules. Discussion pertained to the waiver process. Rep. Upmeyer commended the flexibility of state agencies in granting waivers in response to the declared emergencies.
- ARC 6891B Fees for general permits for stormwater discharge are increased by 15 percent. Mr. Correll indicated that some commenters objected to stormwater funds being spent on the floodplain program. Mr. Gilliland thanked EPC for involving stakeholders and asked that an on-line permitting process be implemented in conjunction with the fee increase.
- ARC 6828B Mr. Tack reported that 113.2(8), proposed in response to the committee's Objection filed in December 2007, allows continued use of existing cells. Discussion turned to measures taken in response to the flooding disaster. Mr. Tack reported that landfills have been granted waivers to allow for filling of side-slope space, and the governor has issued a declaration regarding disposal of animal mortalities. Rep. Wise thanked the department for addressing the committee's concerns.
- ARC 6892B Amendments to the technical standards and corrective action plans for owners and operators of underground storage tanks have been adopted. Mr. Wornson summarized the background for these amendments and reported that most of the rule making is not controversial. Mr. Hove and Mr. Norris expressed concern that the rules could result in significant costs to industry without increasing protection to the water. Mr. North expressed support for the rules, and indicated that the association would oppose any steps to remove water supply safeguards.
- Motion Rep. Wise moved a 70-day delay on ARC 6892B and urged industry to propose alternative solutions.
- Motion carried The August 6, 2008, effective date of ARC 6892B was delayed for 70 days.
- HUMAN SERVICES DEPARTMENT** Nancy Freudenberg and Ann Wiebers represented the department.
- ARC 6829B No questions on amendments to ch 36 to reduce the fee for assessments for intermediate care facilities for the mentally retarded.
- ARC 6877B No questions on amendments regarding the state earned income tax credit and eligibility for FIP, child care assistance, FMAP-related Medicaid and HAWK-I.
- ARC 6871B No questions on exemption of census income from the determination of eligibility for FIP.
- ARC 6920B Ms. Freudenberg outlined proposed amendments to ch 58, the disaster aid individual assistance grant program, which is intended to serve persons in governor-declared disaster counties that are not federally declared disaster areas. Sen. Connolly requested additional data as it becomes available.
- ARC 6878B No questions on amendments to 58.4(3) and 58.5 regarding eligibility for emergency assistance.
- ARC 6879B No questions on annual update of statewide average costs and charges for nursing facility services and institutional care.
- ARC 6884B No questions on continuous Medicaid eligibility for children.
- ARC 6887B No action on amendments to chs 77 and 78 concerning personnel qualifications for LEAs, AEAs, and infant and toddler programs.
- ARC 6831B No questions on amendments to ch 78 regarding Medicaid coverage for an additional smoking cessation drug.
- ARC 6889B No questions on Medicaid reimbursement methodology for hospital outpatient services.
- ARC 6873B No questions on proposed amendment to 78.9(9) concerning assignment of service workers for home health agency care for children and maternity patients.
- ARC 6833B No questions on amendments to chs 78 and 79 pertaining to Medicaid coverage for medical and remedial services.
- ARC 6900B No questions on amendments to Medicaid reimbursement rates.
- ARC 6893B No questions on retroactive eligibility for IowaCare.
- ARC 6902B No questions on the 1 percent across-the-board rate increase for social service providers.
- ARC 6906B No questions on 156.6(1), reimbursement rates for foster family care.

Human Services Department (continued)

- ARC 6895B No questions on ch 168, child care expansion programs.
- ARC 6842B No questions on amendments to ch 170, child care assistance programs.
- ARC 6876B Proposed amendments to ch 170 pertain to the KinderTrack program. Rep. Frevert asked that the committee be advised of the amount of vendor liability.
- ARC 6835B No questions on the fee schedule for child care assistance.
- ARC 6911B No questions on the rate increase for group foster care service providers.
- ARC 6914B Proposed amendments to ch 202 pertain to service worker visitation of children in foster care.
- Special review Ms. Freudenberg advised the committee of the department’s temporary measures related to disasters. These measures allow the department to temporarily waive requirements in order to deliver services during or following a disaster. Ms. Wiebers distributed a handout to summarize the state-administered federal Disaster Food Assistance Program, which provides immediate relief to individuals for a limited time following a Presidential Disaster Declaration. Several members commended the department’s efforts. Rep. Heaton expressed a hope that the DHS budget would be kept intact so that budgeted services would not be reduced. Rep. Jacoby asked that the department keep the legislature advised.
- Committee business** The minutes of the June 2008 meeting were approved as corrected. The next meeting was scheduled for Tuesday, August 12, 2008, at 9 a.m. There was discussion regarding the size of the “No Smoking” sign that must be displayed in certain vehicles. Mr. Royce indicated that he believes the public health department could authorize a sign smaller than the 24-square-inch sign required in the rules.
- Adjourned The meeting was adjourned at 2:30 p.m.

Respectfully submitted,

Kathleen K. West

APPROVED:

Chair Michael Connolly

Vice Chair Philip Wise