

**MINUTES OF THE DECEMBER 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, December 9, 2008, and Wednesday, December 10, 2008, in Room 116, State Capitol, Des Moines, Iowa.
- Members present: Senator Michael Connolly, Chair, and Representative Philip Wise, Vice Chair; Senators Thomas Courtney, John P. Kibbie, and James Seymour; Representatives Marcella Frevert, David Heaton, and Linda Upmeyer were present. Senator Jeff Angelo and Representative David Jacoby were not present.
- Also present: Joseph A. Royce, 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.
- INSURANCE DIVISION** Rosanne Mead and Dennis Britson represented the division. Other interested parties included Scott Sundstrom on behalf of the Federation of Iowa Insurers and America's Health Insurance Plans (AHIP), and Nat Shapo on behalf of the Life Insurance Settlement Association.
- ARC 7350B No questions on amendments to ch 10 concerning insurance producers.
- ARC 7351B No action on amendments to ch 11 regarding continuing education for insurance producers. Sen. Kibbie mentioned two new farm bill programs (ACRE and SURE); Sen. Connolly suggested outreach to the agricultural community regarding these programs, possibly through the insurance consumer advocate.
- ARC 7353B No questions on 15.8(3)"e," prohibited designations.
- ARC 7347B Amendments to ch 39 provide for independent review of benefit trigger determinations for long-term care insurance. Ms. Mead explained the process by which individuals can be certified as independent reviewers and how the consumer can request independent review of a denial of benefits. Iowa's rules are being considered by NAIC as a national model for independent review of benefit trigger determinations for long-term care insurance. Mr. Sundstrom expressed support for the division's implementation of the legislation and confirmed that AHIP supports the rules.
- ARC 7348B No action on 39.29(4) concerning long-term care insurance premium rate increases.
- ARC 7317B No action on amendments to ch 48 concerning viatical and life settlements. Mr. Shapo expressed concern about the suitability requirements and requested a 70-day delay on the amendments. In response to Rep. Wise, Mr. Sundstrom indicated that the Federation of Iowa Insurers supports both the statute and the rules. Discussion related to the timing of comments submitted by the Life Insurance Settlement Association.
- ARC 7349B No questions on amendments to ch 50 regarding use of senior-specific certificates and professional designations.
- ARC 7304B No questions on ch 98, annual financial reporting requirements.
- ARC 7318B No action on chs 100 to 106 regarding sales of cemetery merchandise, funeral merchandise and funeral services. Mr. Britson commented that concerns raised during the rule-making process have been resolved.
- AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT** Margaret Thomson represented the department.
- ARC 7339B No action on proposed amendments to ch 45 concerning out-of-state aerial pesticide applicators. Ms. Thomson reported receiving comments on the definition of "aerial applicator supervisor" and the requirement for face-to-face daily meetings, and requests for inclusion of latitude and longitude.
- ARC 7370B No action on proposed 85.48 concerning designations for ethanol blended gasoline. Discussion related to the requirement for separate hoses for different blends.
- ARC 7338B No action on proposed amendments to chs 90 and 91 to allow for electronic warehouse receipts and credit-sale contracts.

Agriculture and Land Stewardship Department (continued)

ARC 7283B Amendments to chs 64 and 65 include moose in the voluntary CWD program and provide for more visible tagging. Ms. Thomson reported that CWD has not been found in Iowa.

ARC 7282B Amendments to ch 76 adopt federal regulations for meat and poultry. Rep. Upmeyer suggested that a link to the federal regulations would be helpful.

IOWA FINANCE AUTHORITY Mark Thompson and Loyd Ogle represented the authority. Bill Blue represented the Iowa Land Title Association (ILTA).

ARC 7293B No questions on the second amended 2009 QAP.

ARC 7403B Mr. Ogle advised the committee that ILTA opposed the definition of “title plant” in 9.7, waiver of the up-to-date title plant requirement. Mr. Ogle noted that because the definition is already in the Iowa Code, it does not need to be in the waiver rule and that the board can remove the definition the next time these rules are amended. Mr. Blue asked that the definition be delayed for 70 days.

Motion to delay Rep. Wise moved a 70-day delay on the definition of “title plant” and asked that review be scheduled before the delay expires.

Motion carried The committee delayed for 70 days the January 7, 2009, effective date of the definition of “Title plant.”

ARC 7402B No questions on termination of the first amended 2009 QAP.

ARC 7404B No questions on 19.1, trust fund allocation plan for the project-based housing program.

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF Hank Manning and Amy Johnson represented the department.

ARC 7314B No questions on 23.4 and 23.10, CDBG contingency fund.

ARC 7316B No action on amendments to provide for waiver of wage and nonstatutory CEBA requirements in presidentially declared disaster areas. Ms. Johnson indicated that applications must be received within 12 months of the disaster declaration and that applicants must return to predisaster conditions and wages within six months of receipt of assistance. Ms. Johnson noted, however, that the six-month period could be subject to waiver.

HUMAN SERVICES DEPARTMENT Nancy Freudenberg and Jennifer Vermeer represented the department.

ARC 7295B No questions on amendments to the application procedures and eligibility requirements for the FIP and Medicaid programs.

ARC 7296B No questions on amendments to ch 58, Iowa disaster aid individual assistance grant program.

ARC 7356B No action on proposed amendments regarding assignment of rights to medical payments from third parties.

ARC 7298B No action on continuous 12 months of Medicaid eligibility for children.

ARC 7367B No questions on proposed ch 87, state-funded family planning program. Ms. Freudenberg commented that since the department received no bids, these rules will be terminated.

ARC 7355B No questions on proposed amendments to expand the health care data match program.

ARC 7300B No questions on amendments to implement Medicaid coverage for behavioral health services.

ARC 7369B No action on proposed amendments to ch 78 in regard to supplemental rebates for diabetic supplies.

ARC 7301B No action on amendments to ch 78 concerning Medicaid coverage of local education agency expenses for transportation.

ARC 7302B No action on amendments to ch 81 regarding performance-related Medicaid reimbursement for nursing facilities.

ARC 7336B No questions on amendments to ch 86, HAWK-I program.

Human Services Department (continued)

- ARC 7303B The amendments to chs 109 and 110 update requirements for staff training for child care centers and child development homes. Rep. Frevert asked that the department explore alternatives for rural areas, such as offering classes over the ICN or providing opportunities for evening classes.
- ARC 7371B No questions on proposed amendments to ch 177 concerning in-home health-related care.
- ARC 7385B No action on amendments to ch 65, food assistance program.
- ARC 7386B No action on amendments to ch 75, medical assistance for children in court-approved subsidized guardianship homes. Ms. Freudenberg advised Rep. Heaton that when a child for whom Iowa is legally responsible moves to another state and is not eligible for benefits, Iowa must pay up to the Iowa Medicaid rate for the child.
- ARC 7388B No questions on 75.1(43), Medicaid for children with disabilities.
- ARC 7394B No questions on amendments to chs 77 and 78 to comply with federal regulations for case management services.
- ARC 7396B An amendment to 78.4 provides for Medicaid coverage of periodontal and endodontic dental services. This amendment restores a coverage that was eliminated in 2002. Ms. Freudenberg reported that the department has approved 85 percent of the requests for exception to policy for these services. Ms. Freudenberg apologized that this amendment was inadvertently adopted and filed emergency after notice, effective December 1, 2008, and indicated that the department would rescind the amendment and continue on an exception-to-policy basis if the committee does not want this amendment implemented. Discussion related to the potential cost savings that may result from early treatment of infectious diseases, as well as committee concern that policy was changed without legislative direction. Ms. Vermeer outlined who would be included under this amendment. Rep. Upmeyer requested tracking of claims data and suggested that increased Medicaid reimbursement to dentists might result in earlier access to care and prevention of more serious problems.
- Motion to refer Sen. Kibbie moved a referral to the general assembly.
- Motion carried Medicaid coverage for periodontal and endodontic dental services was referred to the general assembly.
- ARC 7372B No questions on proposed amendments regarding foster care and adoption policies.
- ARC 7397B No questions on amendments to ch 150 concerning donations to the department.
- ARC 7399B No questions on 184.9, family support subsidy.
- Special review Ms. Vermeer explained the origin of the IowaCare program and distributed materials to summarize the program. CMS approved this limited benefit program for adults aged 19 to 64 who are below 200 percent of the federal poverty level, pregnant women who are between 200 and 300 percent of the poverty level, and the former state papers patients; the waiver for this program expires June 10, 2010. The providers are the University of Iowa Hospitals and Clinics, Broadlawns Hospital, and the four mental health institutions. Discussion related to portions of the program that have not been implemented, the lack of a means test for premiums, geographical distribution of program participants, and increased bad debt that hospitals throughout the state have incurred. Rep. Heaton requested information about how many participants pay premiums.
- PUBLIC SAFETY DEPARTMENT** Ross Loder and Jim Kenkel represented the department.
- ARC 7312B No action on proposed ch 235, commercial explosive licensing. Public comments have been received in regard to the need for licensing and background checking of blasters in addition to licensing of the commercial entity.
- ARC 7344B No action on ch 61, reduced ignition propensity cigarettes.
- ARC 7342B No action on update to the 2008 national electrical code, with amendments to provide that ground fault circuit interrupters comply with the 2005 national electrical code.
- ARC 7345B No action on update of the fire fighter certification standards. Mr. Loder advised Rep. Frevert that most volunteer fire fighters already have training that is equivalent to firefighter I certification, which is required in order to engage in structural fire fighting.

Public Safety Department (continued)

ARC 7343B No questions on update to the 2008 national electrical code with amendments relating to ground fault circuit interrupters.

ARC 7341B No questions on update to the 2008 national electrical code with amendments relating to ground fault circuit interrupters.

Mr. Royce reported that Mr. Coveyou asked that the electrical inspection program be scheduled for January.

PUBLIC HEALTH DEPARTMENT Barb Nervig, Ken Sharp, Matt Gannon, and Bonnie Mapes represented the department. Other interested parties included George Eichhorn on behalf of Choose Freedom Iowa; Randy Stanford, Todd Shanno and Marliea David of Iowans for Equal Rights; Brian Froehlich of the Iowa Bar Owners Coalition; Diana Heathcoat, owner of All in the Family Raceway; Scott Gorman of the Chesterfield Lounge in Ft. Dodge; Beverly Walsmith of the Iowa Tobacco Prevention Alliance; Denny Whitson of Old Guys Trucking; Mark Rogers of Legends American Grill; Jennifer Bennett; and Mike Wegner of Employee Family Resources (EFR).

ARC 7332B No questions on ch 27 relative to the plumbing and mechanical systems examining board.

ARC 7328B No action on proposed ch 28, plumbing and mechanical systems licensure fees, which is intended to be adopted and filed emergency after notice. Commenters requested a reduction in the fee for a master license.

ARC 7330B Proposed ch 29 pertains to application, examination, and licensure of plumbing and mechanical systems professionals. Rep. Frevert inquired about whether a felon is precluded from obtaining a license. Mr. Sharp responded that the board will make a determination as to whether the conviction was related to the practice of the profession.

ARC 7357B No questions on out-of-hospital do-not-resuscitate orders.

ARC 7358B No questions on proposed amendments to ch 143 regarding maintenance of AED devices.

ARC 7389B No action on amendments to ch 7 pertaining to immunizations.

ARC 7390B No questions on ch 14 in regard to water treatment systems.

ARC 7391B No questions on amendments to ch 131 concerning inactive status for EMS providers and discipline.

ARC 7392B No questions on amendments to ch 132 in regard to EMS air medical services, driver training, and employee termination.

ARC 7393B No action on ch 153 to implement the smokefree air Act. Ms. Mapes outlined the changes that were made in response to public comment and distributed the department's responses to comments received as well as a letter from the attorney general to county attorneys in regard to enforcement. Rep. Wise commended the attorney general for the message this letter sends to local law enforcement.

Mr. Eichhorn asked the committee to object to the rules because enforcement by the alcoholic beverages division does not comply with the statute, which requires a hearing before a judicial magistrate. Asserting that the fiscal impact statement was flawed, Mr. Stanford asked that the committee object to the rules and that the general assembly reconsider the statute. Furthermore, Mr. Stanford stated that the rules allow for anonymous complaints in violation of a person's right to face his or her accuser. Mr. Froehlich stated that although he has not been fined, he is facing the loss of his liquor license. Ms. Heathcoat and Mr. Gorman commented on the adverse effect of the rules on their establishments. Ms. Mapes advised the committee that smoking would not be allowed on the patio if there is food preparation equipment in the establishment, seating on the patio, or an enclosure of the patio. Ms. Wellsmith expressed support for the rules and statute. Ms. David wants business owners to have input on how to refine the rules so that businesses can survive. Mr. Whitson asserted that the rules are discriminatory and unfair in that bar owners who violate the rules will lose their liquor license, but other violators will not lose their livelihood.

Public Health Department (continued)

Mr. Rogers expressed opposition to the rules and stated that even though he dislikes smoking, he values freedom more. Ms. Bennett reported that the rules have adversely affected her DJ entertainment business as a result of loss of business by bars and restrictions imposed on veterans organizations. Rep. Frevert encouraged dissatisfied parties to contact their legislators and offer suggestions for change. Mr. Wegner expressed support for the rules and concern about youth smoking. Mr. Shanno commented on the negative effect of the smoking prohibition on his bowling center and expressed the hope that the rules could be revised so that businesses can survive.

Motion to object Sen. Seymour moved an objection on the rules on the grounds that the distinction between bars and restaurants is unreasonable.

Motion failed On a vote of two in favor of the motion to six opposed, the motion failed.

REVENUE DEPARTMENT David Casey, Jim McNulty, and Ed Henderson represented the department.

ARC 7364B No questions on 6.8, which provides for a tax return extension in disaster areas.

ARC 7334B No action on the interest rate for calendar year 2009.

ARC 7331B No questions on proposed 11.10, bonding procedure.

ARC 7363B No questions on update of rules pertaining to motor fuel.

ARC 7327B No action on proposed amendments to chs 32 and 33, use tax exemption for mobile homes and manufactured housing.

ARC 7361B Amendments to chs 38, 41, 42, and 52 implement individual and corporation income tax credits for charitable conservation contributions.

ARC 7359B No questions on amendments to chs 40 to 42, 52 and 53 concerning individual and corporation tax.

ARC 7360B No questions on tax credits for individual, corporation and franchise tax.

ARC 7326B No questions on proposed inheritance tax exemption for qualified tuition plans.

ARC 7333B No questions on proposed applicability dates for inheritance and estate tax.

ARC 7335B No action on license sanctions for collection of state debt. These rules were based on DHS child support collection. Sen. Seymour was advised that after a payment agreement is made, licenses can be reinstated.

ARC 7383B No questions on 12.10, audit limitation for lawn care, landscaping and tree trimming and removal services.

ARC 7382B Amendments to chs 70 and 80 pertain to replacement tax and property tax exemptions. The wind energy tax credit against the replacement tax for electric companies is new this year. Discussion related to electric cooperative companies and the fiscal impact.

ARC 7384B No questions on 230.11, web search portal business exemption.

ENVIRONMENTAL PROTECTION COMMISSION Christine Paulson, Jim McGraw, Chuck Corell, Dennis Alt, Lori McDaniel, David Wornson, Elaine Douskey, Chad Stobbe, Dan Olson, and Courtney Cswerko represented EPC. Commissioner Susan Heathcoat was also present. Other interested parties included Emily Piper on behalf of Iowa Rural Water Association, Jessica Harder on behalf of the Iowa League of Cities, Jim Carroll of USDA Rural Development, and Randy Van Dyke of Iowa Lakes Regional Water.

ARC 7306B No action on proposed amendments to ch 22 and 23 to adopt federal air quality regulations. Discussion related to recent newspaper articles about air quality problems in schools. Mr. McGraw questioned some of the data and methodology as reported in the articles and indicated that the department has sent a response to the newspapers and has issued a letter to schools. Mr. McGraw noted that the department is analyzing data and will be monitoring and establishing standards.

Environmental Protection Commission (continued)

- ARC 7307B Proposed amendments to chs 50 and 55 affect the fee schedule for the water use permit program. Much discussion followed in regard to the establishment of a flat fee as opposed to a sliding scale based on allocation. Sen. Seymour agreed that the legislation provided for “a fee,” but expressed concern about the proposed annual budgeting process. Rep. Frevert expressed disappointment that the department did not take advantage of the ICN for the hearings and commented that smaller users are concerned that the flat fee is too high. Sen. Kibbie expressed a preference that fees be based on usage. Mr. Alt suggested that individual irrigation well permits can be merged into a single permit. Mr. Royce noted that Iowa Code chapter 17A requires that fees be set out in the rules.
- ARC 7368B Proposed amendments to ch 61 affect Iowa’s antidegradation implementation procedure. These proposed amendments would establish a four-tier approach in lieu of the Tier I, Tier II, and Tier III established by federal regulations: Tier I waters must meet water quality standards, Tier II waters have better quality than standards require; an increase in pollution in these waters is allowed only if necessary to accommodate important economic or social development. Tier III classification is for waters classified as outstanding national resources. These rules establish a “Tier II-1/2” for outstanding Iowa waters. Ms. Harder and Ms. Piper voiced concern that these rules exceed federal requirements and that cumulative costs will be burdensome to communities. In addition, standards do not exist for all potential “pollutants of concern.” There was discussion that Tier II-1/2 standards are far closer to Tier III than to Tier II. Sen. Connolly commended EPC for protecting water quality in Iowa. Commissioner Heathcoat stated that a majority of the commissioners supported inclusion of this optional tier, and they believe that communities want the opportunity to have their high quality water resources protected.
- Motion Rep. Wise moved an informal regulatory analysis on the establishment of Tier II-1/2.
- Motion carried An informal regulatory analysis was requested.
- ARC 7308B No action on proposed ch 69, private sewage disposal systems. Discussion related to drainage fields, free access and buried sand filters, the costs of inspection and septic system upgrades.
- ARC 7310B No action on proposed amendments to ch 101, solid waste comprehensive planning requirements.
- ARC 7395B No questions on amendments relative to emission standards for brick and boiler MACTs that were vacated by a Washington, D.C. court.
- ARC 7400B No action on the proposed rescission of the delayed controversial provisions of ch 135.
- ARC 7152B A regulatory analysis on proposed amendments to chs 60 and 62 to 64 regarding wastewater disposal systems was presented. Mr. Corell reported meeting with stakeholders before estimating an impact of \$1.1 million annually. Mr. Corell explained that the cost of getting the sample to the lab is driven by the federal regulations which limit sample holding time to 6 hours, but clarified that that EPC will not take enforcement action unless sample holding time exceeds 30 hours. The cost of influent sampling and monitoring is another factor in the fiscal analysis. Ms. Harder and Ms. Piper expressed appreciation for EPC’s response, but commented that the cumulative costs to small communities are prohibitive. Rep. Frevert asked for more information about data collection costs. Mr. Carroll distributed and explained a cost estimate developed by USDA Rural Development. Mr. Carroll projected that the cost to 473 communities will be unfair. Mr. Van Dyke provided four examples and commented on the cost per home for Iowa’s 100 communities and 600 unincorporated clusters to put in sewer systems and noted that collection, treatment and disposal must be both technically and financially feasible.

MANAGEMENT DEPARTMENT ARC 7313B was excused from review at this meeting.

ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA ARC 7377B, ARC 7373B, ARC 7376B, ARC 7379B, ARC 7380B, ARC 7378B, ARC 7375B, and ARC 7374B were excused from review at this meeting.

PAROLE BOARD ARC 7337B was excused from review at this meeting.

UTILITIES DIVISION ARC 7366B, ARC 7365B and ARC 7362B were excused from review at this meeting.

Committee business The minutes of the November 2008 meeting were approved.

The next meetings were scheduled for the following dates:

Friday, January 9, 2009; February 6, 2009; March 6, 2009; and April 10, 2009.

Sen. Kibbie suggested that new committee members Senators Wally Horn and Merlin Bartz and Representatives Nathan Reichert and Tyler Olson be invited to attend the January meeting.

Adjourned

The meeting was adjourned at 12:45 p.m.

Respectfully submitted,

Kathleen K. West

APPROVED:

Chair Michael Connolly

Vice Chair Philip Wise