

**MINUTES OF THE MAY 2009 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, May 12, 2009, at 9 a.m. in Room 116, State Capitol, Des Moines, Iowa.
- Members present: Representative Marcella Frevert, Chair; Senators Merlin Bartz, Thomas Courtney, John P. Kibbie, and James Seymour; Representatives David Heaton, Nathan Reichert, and Linda Upmeyer were present. Senator Wally Horn and Representative Tyler Olson were not present.
- Also present: Joseph A. Royce and Michael Duster, Legal Counsel; Kathleen K. West, Administrative Code Editor; James Larew, Administrative Rules Coordinator; fiscal staff; caucus staff; and other interested parties.
- Convened Rep. Frevert convened the meeting at 9:02 a.m.
- Motion: Rep. Reichert offered a motion, seconded by Rep. Heaton, that Rep. Frevert be elected chair of the committee and Sen. Horn be elected vice chair.
- Motion carried: Rep. Frevert (chair) and Sen. Horn (vice chair) were unanimously elected.
- Fiscal overview** Sue Lerdal presented the LSA fiscal report.

**MEDICINE BOARD** Mark Bowden and Kent Nebel represented the board. Siroos Shirazi, chair of the board, and board member Carole Frier were also present. Other interested parties included Janine Freeman of the Iowa Medical Society, Jim Carney on behalf of the Iowa Association of Nurse Anesthetists, Nick Mauro on behalf of the Iowa Association of Anesthesiologists, Richard Rosenquist of the University of Iowa, Maureen Keehnle of the Iowa Hospital Association, and Lorinda Inman of the Iowa Board of Nursing.

**Special review** Mr. Nebel explained that the board’s draft policy statement regarding chronic interventional pain management, requested by the Iowa Medical Society, is a means of providing advisory opinions to the public. Mr. Nebel stated that policy statements are not enforceable, but they provide the board’s position on important public safety issues. The draft policy states that CRNAs do not possess the requisite education or training to practice medicine and, particularly, to perform chronic interventional pain management. Mr. Nebel indicated that although there is no empirical data to indicate that Iowans have been adversely affected by CRNA-administered pain management, increasingly complex procedures and potentially dangerous pain management techniques have evolved over the past 20 years. Rep. Heaton asked Mr. Nebel to provide the committee further information about those new techniques. Several committee members expressed concern about the public’s access to care in rural areas where there are no anesthesiologists, and Sen. Seymour asked Mr. Nebel to provide information about how many anesthesiologists statewide are involved in Hospice. Ms. Freeman expressed the opinion that there is no need for a rule and stated that the requested policy applies only to the medical subspecialty of chronic interventional pain medicine, which falls within the practice of medicine. Mr. Carney asserted that, pursuant to Iowa Code section 17A.2(2), the policy statement is an “agency action” which requires rule making; and he stated that the policy is both unreasonable and beyond the authority of the board. Mr. Mauro expressed support for the policy statement. Dr. Rosenquist commented on this new medical subspecialty, spoke of risks involved in new procedures, and expressed the opinion that costly pain management procedures have been used excessively. Rep. Upmeyer expressed an interest in knowing who is performing such procedures and suggested that the board limit their policy statement to specific procedures. Ms. Keehnle stated that 91 of 117 Iowa hospitals have only CRNAs performing anesthesia services; therefore, this policy statement from the board of medicine is of concern to hospitals. Ms. Inman expressed concern that the policy statement affects the scope of practice of CRNAs.

Mr. Royce clarified that according to Iowa’s administrative procedure Act, a generally applicable statement of policy constitutes a rule and must be adopted pursuant to Iowa Code chapter 17A.

Medicine Board (continued)

Motion Sen. Kibbie offered a motion (seconded by Sen. Seymour) to advise the board that any further action should be in the form of a rule making.

Motion carried Mr. Royce agreed to draft a letter to convey to the board the committee's position.

**NURSING BOARD** Lorinda Inman represented the board. Other interested parties included Siroos Shirazi of the board of medicine, Laurie Fajardo and Kathy Murtensen of the Iowa Radiological Society, and Heidi Goodman of the Iowa Medical Society.

ARC 7714B Proposed new subrule 7.2(2) provides for ARNP supervision of fluoroscopy. Dr. Shirazi, Dr. Fajardo, Ms. Murtensen and Ms. Goodman commented on the extensive training of radiological technicians and expressed opposition to the proposed subrule.

ARC 7668B No action on consolidation of chs 17 and 18 regarding nonpayment of child support, student loan or state debt.

**ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA** Excused from review of ARC 7705B

**IOWA FINANCE AUTHORITY** Excused from review of ARC 7702B, ARC 7701B, ARC 7700B, ARC 7703B and ARC 7704B.

**ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF** Melanie Johnson, Mike Miller, and Stoney Harris represented the department.

ARC 7709B No action on ch 27, neighborhood stabilization program. At the request of Sen. Bartz, Mr. Miller agreed to provide further information about the transfer of title to foreclosed property in relation to this program.

ARC 7706B No action on proposed amendments to the brownfield redevelopment program to include industrial or commercial property identified as grayfield sites and to describe eligibility requirements and application procedures for the redevelopment tax credits.

ARC 7708B No action on ch 79, disaster recovery business rental assistance program.

ARC 7561B Amendments to ch 71, targeted jobs withholding tax credit program, are under a 70-day delay. Ms. Johnson reported that SF 304 addressed the issues raised during the rule-making process and asked permission to proceed with an emergency filing in order to have revised rules in place when SF 304 becomes effective July 1, 2009.

**EMPOWERMENT BOARD, IOWA** Debra Scrowther represented the board.

ARC 7677B No questions on proposed amendments to ch 1, community empowerment.

**ENVIRONMENTAL PROTECTION COMMISSION** Jim McGraw, Wendy Rains, Chuck Corell, Jon Tack, Russell Tell and Wayne Gieselman represented the commission. Other interested parties included Chuck Becker of the Belin Law Firm and Klint Gingerich of Gingerich Well Drilling.

ARC 7679B Ch 35, air emissions reduction assistance program, establishes the procedures for use of economic stimulus funding (\$1.73 million). Mr. McGraw advised Sen. Kibbie that education and outreach activities include the department's Web site, E-mail notifications, newspaper articles and radio ads. Mr. McGraw indicated that preference will be given to projects that involve matching funds, and all invoices for reimbursement are due September 30, 2010. Sen. Bartz suggested that the department notify organizations and publications that target the agricultural community.

ARC 7694B No questions on amendments to chs 50 and 55 regarding fees for the water use permit program.

ARC 7728B No questions on the scheduling of an additional public hearing on proposed amendments to ch 101 regarding solid waste comprehensive planning.

## Environmental Protection Commission (continued)

Special review Rule making for water well drilling site wastewater discharge was required by 2008 Iowa Acts, ch 1165. Mr. Gieselman stated that EPC will discuss draft rules at its May meeting, and that a Notice of Intended Action may be commenced in June. Mr. Becker commented that the Iowa Water Well Association is concerned because the legislation required rules by July 1, 2009. The association provided the department with draft rules that would require a general permit. The association considers one of the changes proposed by EPC in regard to narrative standards, as opposed to best management practices, to be prohibitive. The association has suggested an alternative solution which EPA has approved in North Carolina.

Mr. Gingerich provided four samples of water to illustrate various degrees of sediment that ranged from 2000 NTUs to 36 NTUs. The association estimates that it would cost an additional \$33,000 per well to achieve EPC's proposed 25 NTUs. Members expressed concern about any case-by-case determinations that the commission may make before rules are finally adopted. Rep. Frevert requested a Notice of Intended Action for review at the July meeting.

**HUMAN SERVICES DEPARTMENT** Nancy Freudenberg, Jennifer Vermeer, and Mary Nelson represented the department. Other interested parties included Linda Hinton of the Iowa Association of Counties.

ARC 7730B No questions on proposed amendments to ch 7 concerning appeal procedures.

ARC 7717B No questions on amendments to ch 28 and proposed new chs 29 and 30 pertaining to state mental health institutes and resource centers.

ARC 7724B No action on proposed amendments to ch 65 concerning collection on food assistance claims resulting from agency error. Ms. Freudenberg explained that there is a period of 12 months for agency error claims, 36 months for claims resulting from household errors, and 6 years for claims involving fraud. Ms. Freudenberg agreed to provide the committee additional information about who may be authorized to use a family's EBT card and where the card may be used.

ARC 7718B No questions on proposed amendments to ch 75 regarding the Medicaid health insurance premium payment program.

ARC 7732B Ms. Freudenberg reported that the department has received numerous comments on this Amended Notice of Intended Action, most of which address the requirement for billing in 15-minute units. Federal regulations do not allow for the monthly rates that were previously paid for case management services in Iowa. Ms. Vermeer reported some very recent changes by CMS, most of which do not affect these rules, but indicated that there is still some uncertainty about whether daily or hourly billing would be acceptable to CMS. Ms. Vermeer advised Rep. Reichert that providers have been aware of the proposed change to 15-minute units for two years. Ms. Hinton commented that the association has concerns about the rules and would welcome specific written information from CMS. Rep. Frevert asked for an update from the department at the June meeting.

ARC 7667B No questions on the annual update of IowaCare premiums.

ARC 7712B No action on proposed amendments regarding foster family home licensing and training and foster care and adoption services. Ms. Nelson clarified that respite care may be provided only by other licensed foster parents.

**VETERANS AFFAIRS, IOWA DEPARTMENT OF** Patrick Palmersheim and Kent Hartwig represented the department.

ARC 7659B No questions on proposed amendments to ch 1.

ARC 7660B No action on proposed ch 7 concerning the county commission of veteran affairs fund and training program.

ARC 7661B Mr. Hartwig explained that because of increased needs and a waiting list for assistance from the veterans trust fund, amendments to ch 14 are proposed to reduce income limits from 300% to 200% of the federal poverty level and to suspend assistance for certain purposes.

**PROFESSIONAL LICENSURE DIVISION** Pierce Wilson represented the division. Other interested persons included Judy Goldsmith of the Iowa board of sign language interpreters and transliterators; Diana Kautzky of Deaf Services Unlimited; Kathryn Baumann-Reece of the deaf services division of the department of human rights; Donald Miksell of the deaf community; Mike VanSant, parent of a deaf child; and educational interpreters Penni Bouwers and Cindy Brikenholtz.

Special review A review of licensure rules for sign language interpreters and transliterators was requested because of the significant number of interpreters who have not yet met the qualifications for licensure. Mr. Wilson reported that in 2007, temporary license holders were granted a two-year extension to complete the educational requirements and pass the examination; however, approximately one-third of the holders of a temporary license have not yet become licensed. The board and the department of education have notified temporary license holders of the education requirements and the dates and locations of examination opportunities. Ms. Goldsmith and Ms. Kautzky commented on the importance of qualified interpreters to all aspects of life for deaf people. Mr. Miksell expressed support for licensure of interpreters. Ms. Baumann-Reece indicated that 2004 legislation required licensure of interpreters, and that temporary license holders have had four years in which to meet the qualifications for licensure. The recommended passing score for the Educational Interpreter Performance Assessment (EIPA) is 4 out of a possible 5; however, Iowa will accept 3.5 as a passing score. Mr. VanSant stated that his children will be losing their interpreters, Penni Bouwers and Cindy Brikenholtz, with whom they have achieved success in school. Mr. VanSant commented on the shortage of interpreters, especially in rural areas, and stressed the importance of the relationship between the child and the interpreter. Ms. Bouwers indicated that the cost of taking the examination is \$250, and there are costs for continuing education courses and for travel to take the courses and the examination. Furthermore, Ms. Bouwers stated that the EIPA includes skills that are not applicable to the children she serves. Ms. Brikenholtz expressed the view that testing sites and dates are inadequate, and there is a 90-day waiting period before the results of the test are available. Ms. Brikenholtz indicated that if she is not licensed by July 1, 2009, the school district cannot employ her. Discussion related to the limited supply of interpreters and the low percentage of those able to pass the EIPA. Mr. Larew expressed concern that only 17 per cent of interpreters achieve the recommended passing score of 4 on the EIPA, and only 38 percent achieve the Iowa standard of 3.5. Mr. Larew invited interested parties from the department of education, the professional licensure division, the deaf services division, and other stakeholders to meet with him and Mr. Royce to address the issues.

**PHARMACY BOARD** Terry Witkowski represented the board.

ARC 7676B No questions on proposed ch 37, Iowa prescription monitoring program.

**PROFESSIONAL LICENSURE DIVISION** Judy Manning and Eileen Gloor represented the board of behavioral science.

ARC 7673B No questions on amendments to 31.4 to 31.8. Ms. Manning reported that these amendments address the concerns that were the basis for a 70-day delay.

**PUBLIC HEALTH DEPARTMENT** Jim Goodrich represented the department.

ARC 7675B No questions on proposed amendments to ch 15, swimming pools and spas.

ARC 7670B No questions on ch 37, breast and cervical cancer early detection program.

ARC 7672B No questions on 50.2, definition of "dental home."

ARC 7669B No questions on proposed 73.9(3), WIC food package approval criteria.

ARC 7671B No questions on ch 194, nonpayment of state debt.

**PUBLIC SAFETY DEPARTMENT** Mike Coveyou and Charis Paulson represented the department. Other interested parties included Wes Ehrecke of the Iowa Gaming Association.

ARC 7720B No action on amendments to ch 141. Mr. Ehrecke expressed appreciation for the department's efforts and confirmed that the amendments resolve the concerns.

**REVENUE DEPARTMENT** David Casey, Ed Henderson and Victoria Daniels represented the department. Other interested parties included Vern Schroeder on behalf of the Iowa-Nebraska Farm Equipment Dealers Association.

- ARC 7726B No questions on general amendments affecting property tax.
- ARC 7727B No questions on amendments to ch 91, tax stamp for unprocessed marijuana plants.
- ARC 7725B Proposed ch 226 implements the streamlined sales and use tax Act for agriculture. Ms. Daniels reported that the rules pertain to agricultural production in general, livestock and dairy production, and crop production. Mr. Schroeder expressed appreciation to the department for working with affected parties in this rule making and indicated that the association would like to continue discussions with the department in regard to GPS system software and fees.
- ARC 7666B No questions on ch 239 regarding local option sales tax urban renewal projects.

**NATURAL RESOURCE COMMISSION** Jon Tack, Willy Suchy, and Sherry Arntzen represented the commission.

- ARC 7682B No questions on 8.1, contracts for public improvement projects.
- ARC 7693B No action on proposed 51.6 concerning use of blinds and decoys in game management areas on the Mississippi River.
- ARC 7685B No questions on proposed expansion of the wildlife refuge area listing in 52.1(2)“a” to include four areas that, at certain times of the year, are deemed unsafe for hunting.
- ARC 7684B No action on amendments to ch 61 to update fees for camping and cabin rentals.
- ARC 7683B No questions on 61.7(2) concerning swimming and beach use at state parks and recreation areas.
- ARC 7680B No questions on ch 78, ginseng harvesting and sale.
- ARC 7686B No questions on proposed amendments to ch 91, waterfowl and coot hunting seasons.
- ARC 7687B No action on nonresident deer hunting. Sen. Bartz asked that the change in Item 4 be identified.
- ARC 7688B No questions on proposed 95.2 concerning landowner-tenant registration.
- ARC 7689B No action on proposed amendments regarding wild turkey fall hunting by residents.
- ARC 7690B No questions on proposed amendments to ch 106, deer hunting by residents.
- ARC 7691B No action on proposed amendments to ch 108 pertaining to hunting and trapping of certain furbearers.
- ARC 7692B No questions on proposed amendments to ch 110 regarding trapping.

**Committee business** Sen. Bartz moved, and Sen. Seymour seconded, approval of the minutes of the April 2009 meetings. The motion carried.

The next meeting was scheduled for Tuesday, June 9, 2009.

Adjourned The meeting was adjourned at 3:20 p.m.

Respectfully submitted,

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Kathleen K. West

APPROVED:

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Chair Marcella Frevort

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Vice Chair Wally Horn