

**MINUTES OF THE JULY 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, July 14, 2009, at 10 a.m. in Room 22, State Capitol, Des Moines, Iowa.
- Members present: Representative Marcella Frevert, Chair, and Senator Wally Horn, Vice Chair; Senators Merlin Bartz, John P. Kibbie, and James Seymour; and Representatives David Heaton and Tyler Olson were present. Senator Thomas Courtney and Representative Nathan Reichert participated in the afternoon session via telephone. Representative Linda Upmeyer was 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 10:02 a.m.
- Fiscal overview** Jess Benson presented the LSA fiscal report. Sen. Bartz asked Mr. Benson to check on the fiscal analysis for ARC 7904B which increases the amount of fines, yet indicates a loss of revenue.

TRANSPORTATION DEPARTMENT Tammy Nicholson, Mark Lowe, and Kim Snook represented the department.

- ARC 7909B No questions on rescission of rules of the railway finance authority and transfer of authority for the railroad revolving loan and grant fund program to the department.
- ARC 7885B No action on proposed ch 813 regarding close clearance warning signs along railroad tracks. Ms. Nicholson summarized the department's work with local and national United Transportation Union officials and identified changes from the department's original rule making which was commenced last year.
- ARC 7901B No questions on update of CFR references in ch 529, motor carrier regulations.
- ARC 7902B Ms. Snook outlined amendments which pertain to acceptable forms of identification, driving tests, air breaks, driving records, license suspensions, proof of financial responsibility, and remedial driver improvement interviews. Sen. Seymour inquired about a person on active duty who is stationed out of state and was required to provide an Iowa address in order to renew an Iowa driver's license. Ms. Snook responded that an Iowa address is required, even if it's the address of a relative, and added that she has been working with that individual. Ms. Snook assured Rep. Frevert that the department has communicated with driver education programs regarding the changes affecting graduated licenses.

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF Elyse Shindelar, Mike Miller, Matt Rasmussen, Melanie Johnson, Stoney Harris, and Dick Vegors represented the department. Other interested parties included Chris Meyers of Sioux City.

- ARC 7845B No action on ch 27, neighborhood stabilization program. Sen. Kibbie was advised that communities may use these funds for demolition of blighted municipal properties.
- ARC 7844B No questions on the brownfield redevelopment program and redevelopment tax credit.
- ARC 7848B No action on amendments to ch 71, targeted jobs withholding tax credit program. In response to Sen. Bartz's concern about the inclusion of "but not limited to" in the definition of "local financial support," Mr. Larew suggested that the phrase "directly related to a project" be moved to appear before the phrase "including, but not limited to." Mr. Meyers commented that he has been working with the department on clarification of provisions concerning noncompetition and dollar-for-dollar match.
- ARC 7847B No questions on amendments to 71.4 and 71.5(1).
- ARC 7763B No action on 314.5(2)"e," renewable fuel infrastructure program.

ENERGY INDEPENDENCE, OFFICE OF Brian Crowe represented the office.

- ARC 7913B Proposed ch 5 pertains to the energy efficiency community grant program. Sen. Bartz questioned the extent of the authority and role of the power fund board.

IOWA FINANCE AUTHORITY Mark Thompson, Roger Brown, Terri Rosonke, Tracy Siebold, and Lyle Schwery represented the authority. Steve Larson represented the office of treasurer of state.

ARC 7892B No questions on rescission of the definition of “title plant” in 9.7(2).
ARC 7891B No questions on 12.3 and 12.4, updates to the compliance monitoring manual.
ARC 7850B No questions on 19.1, state housing trust fund.
ARC 7895B No questions on proposed 19.1 regarding allocation plans for the local housing trust fund and project-based housing programs.
ARC 7899B No questions on amendments to the jump-start housing assistance program.
ARC 7842B No action on amendments to ch 29, which provide for an extension of interim mortgage assistance for eligible properties.
ARC 7896B No action on proposed ch 33, water quality financial assistance program.
ARC 7897B No questions on ch 35, affordable housing assistance grant fund.
ARC 7894B No action on ch 36, public service shelter grant fund. Sen. Kibbie inquired about the status of applications in regard to new construction, renovation, and geographic distribution.
Special review Ch 32 regulates the I-JOBS program and its board. In response to Sen. Kibbie’s question about the status of bonding, Mr. Larson reported that the treasurer is in New York pricing bonds, and money will be available to fund the projects by the end of the month. Sen. Bartz expressed appreciation to IFA for their willingness to work with interested parties.

ENVIRONMENTAL PROTECTION COMMISSION Christine Paulson, Chuck Corell, and Elaine Douskey represented the commission.

ARC 7855B No action on proposed air quality updates to conform rules to federal standards. Mr. Larew expressed concern about reports of an industry that may be changing fuels based upon wind direction and location of air monitoring devices. Ms. Paulson responded that the department is looking into practices at facilities and compliance with permits. Ms. Paulson offered Sen. Bartz an explanation of the scope of the NESHAP in regard to plating and polishing operations and metal fabrication and finishing operations.
ARC 7853B No action on proposed amendments to chs 61 and 62 to establish water quality standards for chloride and sulfate; to update references to a rule-referenced document which removes total dissolved solids site-specific approach and revises sulfate ion guideline value; and to revise the default hardness level used for hardness-dependent chemical criteria.
ARC 7854B No questions on proposed amendments to chs 134 and 135 pertaining to UST operator training, closure investigations, compliance inspections, and piping leak detection.

NATURAL RESOURCE COMMISSION Mark Warren, Rich Smith, Bob Dolan, and Roger Jacob represented the commission.

ARC 7852B No questions on ch 15, general license regulations, in conformance with ELSI-2.
ARC 7923B No action on proposed 15.4, which increases license administration fees.
ARC 7917B No questions on 51.6 concerning use of stationary blinds and decoys on game management areas.
ARC 7918B No questions on addition of four wildlife refuge areas to 52.1(2)“a.”
ARC 7857B No questions on 71.3, price increase in nursery stock sale to the public.
ARC 7856B No action on proposed amendment to 77.2 in regard to peregrine falcons and bald eagles.
ARC 7919B No questions on 95.2, landowner-tenant registration.
ARC 7920B No questions on amendments to ch 99 concerning wild turkey fall hunting by residents.
ARC 7921B No action on amendments to ch 106 regarding deer hunting.
ARC 7933B No questions on amendments to ch 108 pertaining to hunting and trapping of certain furbearers.
ARC 7922B No questions on 110.1, trapping limitations.

VOTER REGISTRATION COMMISSION Sarah Reisetter represented the commission.
ARC 7883B No questions on amendments to update chs 1 to 3, 5, 6, and 9 to 11.

INSPECTIONS AND APPEALS DEPARTMENT Steve Mandernach and Ann Martin represented the department. Other interested parties included Lisa Burke of the Department on Aging, Carol Sipfle of the Greater Iowa Chapter of the Alzheimer's Association, and Cindy Baddeloo of the Iowa Center for Assisted Living.

ARC 7877B Proposed ch 67, general provisions for elder group homes, assisted living programs and adult day services, was reviewed in conjunction with ARC 7878B, below.

ARC 7878B Proposed ch 69, pertaining to assisted living programs, was reviewed in conjunction with ARC 7877B. Mr. Mandernach reported that these proposed rules were developed through a collaborative process. Ch 67 includes provisions pertaining to incident reporting and report retention, tenant rights, department notifications, inspections and investigations, enforcement actions, and open records. Ch 69 includes provisions for evaluation of tenants for admission and retention, the involuntary transfer process, retention of tenant documents, food service requirements, dementia-specific education, and veterans benefits. Ms. Baddeloo expressed appreciation to the department and support for the process. Ms. Sipfle asked that the dementia education requirement be increased from 6 hours to 8 hours annually and that initial dementia training be completed within 30 days of hire. Ms. Burke expressed support for the rules and commented on the need for background checks for those who provide personal care or health-related services in assisted living facilities, on-site monitoring and evaluation in the initial certification process, occupancy agreements that are easy to understand, a uniform assessment tool, and an involuntary discharge waiver process when health issues can be addressed with appropriate services and reasonable accommodations.

NURSING BOARD Lorinda Inman and Clyde Bradley represented the Board. Other interested parties included Dr. Siroos Shirazi, Dr. George Lederhaas and Karla McHenry of the Iowa Medical Society, Laura Malone of the Iowa Hospital Association, Mary O'Brien and Jim Carney on behalf of the Iowa Association of Nurse Anesthetists (IANA), Dr. Anthony Leo of Olewein, CRNA Mark Odden, and Linda Goeldner of the Iowa Nurses Association.

ARC 7889B No action on proposed amendments to ch 3 concerning criminal conviction history of applicants for licensure.

ARC 7888B Ms. Inman reported that the board worked with the department of public health, the bureau of radiological health, the Iowa Medical Society, the board of medicine, and the Iowa Association of Nurse Anesthetists on subrule 7.2(2), which sets forth education requirements for ARNPs supervision of fluoroscopy. Ms. Inman clarified that the equipment used for fluoroscopy is operated by radiology technicians and that fluoroscopy may be used for procedures such as foreign body location, proper placement of extended-length IV lines, video swallowing studies, and various pain management techniques.

Ms. Goeldner expressed support for the new subrule. Dr. Lederhaas voiced concern about patient safety and overuse of pain management procedures. Dr. Shirazi indicated that the rule is contrary to national standards and the training standards are inadequate, and added that he believes it is inappropriate for an ARNP to supervise a highly trained radiology technician. Ms. McHenry commented that this is a scope of practice issue and asked the committee to impose a session delay on the subrule. Ms. Malone expressed support for the subrule and indicated that 91 of the 117 hospitals rely heavily on ARNPs to provide care. Ms. Malone also noted that, under department of public health rules, physician assistants may supervise fluoroscopy. Ms. O'Brien reminded the committee that the subrule is not about chronic pain management, but about the use of fluoroscopy, a valuable diagnostic and therapeutic tool. Mr. Carney identified other states that authorize CRNA use of fluoroscopy, and commented that use of this diagnostic tool by CRNAs is consistent with established practice in Iowa. As a public member of the board, former Rep. Bradley commented that there is no case in which a CRNA has used fluoroscopy inappropriately and added that he believes there is no risk to the public. Dr. Leo indicated that while he appreciates the work of CRNAs, he is concerned that, because fluoroscopy is the gateway to chronic pain management, certain procedures may be performed excessively. Mr. Odden stated that he has practiced pain management for over 20 years with patients who would not be able to travel to larger cities for medical care.

Nursing Board (continued)

- Motion to delay Rep. Olson moved a session delay on 7.2(2).
Discussion pertained to the lack of agreement among the boards that govern the various medical professionals. Mr. Larew urged the various medical professionals to focus less on their perceived rank and to communicate and cooperate as members of a team.
- Motion failed With six members voting “Yes” (Sen. Horn, Sen. Bartz, Sen. Courtney, Rep. Heaton, Rep. Olson, Rep. Reichert) and three members voting “No” (Rep. Frevert, Sen. Kibbie, Sen. Seymour), the motion for a session delay on subrule 7.2(2) failed.
- Motion to refer Sen. Kibbie moved a general referral.
- Motion carried On a unanimous voice vote, the motion carried.

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

- ARC 7879B No questions on amendments to ch 25 concerning the risk pool board.
- ARC 7928B No questions on the amendment to 65.21(1) regarding collection on food assistance claims resulting from agency error.
- ARC 7929B No action on Medicaid eligibility of newborns. Sen. Bartz suggested that the catchwords of the subrule may need to be updated.
- ARC 7931B No questions on income limit increase for Medicaid eligibility for infants and pregnant women.
- ARC 7932B No questions on 75.11(2)“a” regarding Medicaid coverage for all eligible children.
- ARC 7935B No questions on 75.21 and 75.25 pertaining to Medicaid health insurance premium payment (HIPP) program.
- ARC 7936B No action on amendments to ch 77 concerning incident reporting standards for providers of HCBS habilitation and certain HCBS waiver services. Ms. Freudenberg noted changes made in response to comments received.
- ARC 7937B No questions on 79.1(19) regarding reimbursement for translation and interpretation services.
- ARC 7881B Amendments to ch 86 extend HAWK-I coverage to all income-eligible children. Ms. Wiebers explained that the department considers documentation of the child, not the parent, in making the determination of eligibility.
- Special review Ms. Vermeer reported that the department continues working with providers of case management services. Ms. Vermeer reported that a number of entities are generally supportive of the 15-minute billing unit, whereas counties have requested a daily unit.
- Committee business** The minutes of the June 2009 meeting were approved.
The next meeting was scheduled for Friday, August 7, 2009.
Birthday greetings were extended to Sen. Kibbie.
- Adjourned The meeting was adjourned at 3:38 p.m.

Respectfully submitted,

Kathleen K. West

APPROVED:

Chair Marcella Frevert

Vice Chair Wally Horn