

**MINUTES OF THE DECEMBER 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, December 8, 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 Representative Linda Upmeyer were present. Senator Wally Horn, Vice Chair; Senator James Seymour, and Representatives David Heaton, Tyler Olson, and Nathan Reichert were present via telephone.
- Also present: Joseph A. Royce and Michael Duster, Legal Counsel; Kathleen K. West, Administrative Code Editor; fiscal staff; caucus staff; and other interested parties.
- Convened Rep. Frevert convened the meeting at 9 a.m.
- Fiscal overview** Sue Lerdal presented the LSA fiscal report.
- MEDICINE BOARD** Kent Nebel represented the board. Interested parties included Ed Friedmann of the Iowa Physician Assistant Board and Heidi Goodman of the Iowa Medical Society.
- ARC 8353B No questions on proposed 12.1 to 12.3 concerning nonpayment of state debt.
- ARC 8199B Review of proposed amendments regarding medical directors at medical spas was carried over from the November meeting. Mr. Friedmann pointed out that nurse practitioners are exempt from these rules and asked that physician assistants be exempted also. Ms. Goodman commented that while the Iowa Medical Society supports the board of medicine, they have proposed alternative language. Mr. Nebel advised Rep. Upmeyer that nurse practitioners are exempt because they are independent practitioners; whereas, PAs practice under the supervision of a physician.
- EDUCATIONAL EXAMINERS BOARD** George Maurer represented the board. Pam Griebel represented the attorney general. Adam Gregg represented Western Governors University (WGU), Brad Hudson and Christy Hickman represented the Iowa State Education Association.
- ARC 8251B No questions on proposed 12.8, portfolio review and evaluation fee.
- ARC 8249B Proposed 13.3 provides for review and evaluation of portfolios of applicants from recognized non-Iowa institutions. Mr. Gregg expressed concern that students who enrolled in nationally accredited WGU and were assured by the board of educational examiners prior to October 2009 that they would be eligible for licensure in Iowa are now not eligible to apply for licensure because of their nontraditional teacher preparation process. Dr. Maurer indicated that only elementary teachers are affected because Iowa has a surplus of elementary school teachers. Committee members expressed concern that the board's action affecting elementary teachers is arbitrary. Dr. Maurer agreed to convey the committee's concerns to the board, but stated that the board does not meet again until February. Mr. Gregg provided Mr. Royce with letters from students who have been affected by the change to the board's rules and asked that the letters be shared with committee members. The committee will consider action on this rule at the January ARRC meeting.
- ARC 8250B Proposed 13.17 was reviewed in conjunction with ARC 8249B.
- ARC 8248B No questions on amendments concerning licenses and endorsements.
- ARC 8143B Review of proposed 11.4 pertaining to filing of complaints and services of complaint notices to respondents was carried over from the November ARRC meeting. Dr. Maurer reported that, at the advice of the attorney general, the board amended the rule to provide that the notice to the respondent does not include the identity of the complainant. Mr. Hudson and Ms. Hickman explained that, after nine years, the board has reinterpreted a statute passed in 2000. Ms. Hickman asserted that this change in interpretation prevents educators from fully participating in the investigation of a complaint. Ms. Hickman commented that the legislature, not a regulatory board, should determine the legislative intent of the statute. Mr. Hudson noted that during the comment period, 103 commenters opposed the change; only 2 commenters supported the change.

Educational Examiners Board (continued)

Dr. Maurer indicated that the board's new assistant AG has interpreted the statute differently than the previous assistant AG did.

Ms. Griebel reported that, based on court rulings, the AG's office has consistently interpreted that statute as the board now interprets it and added that this amendment aligns these rules with rules of other licensing boards in Iowa. Ms. Griebel advised the committee that the board has already adopted the rule.

**ATTORNEY GENERAL** Thomas Henry Miller and Eric Tabor represented the office of attorney general. Kellie Paschke represented the Iowa Association of Chiefs of Police. Gary Mikulec represented Iowa Police Chiefs, Susan Cameron represented Iowa State Sheriffs and Deputies, Linda Hinton represented the Iowa State Association of Counties

ARC 8257B Proposed amendments to ch 33 increase the percentage of proceeds from forfeited property retained by the attorney general from 10 percent to 20 percent. Mr. Miller commented that the change will help offset budget shortfalls and reported that the remainder is turned over to the local seizing authority. Ms. Paschke commented that the 90 percent is often divided among participating jurisdictions and that the forfeited funds are used to purchase equipment for law enforcement. Ankeny police chief Mikulec expressed opposition to the amendments and concern about the \$400,000 threshold. Ms. Cameron pointed out that the amendments increase administrative responsibilities of local law enforcement while decreasing the amount of forfeited funds they receive. Ms. Hinton voiced opposition to the amendments that shift revenue from the local level to the state level. Mr. Tabor stated that budget cuts have forced the office to explore other options for generating revenue and asserted that some local entities also maintain large balances.

Sen. Bartz suggested that the legislature may need to consider establishing in statute the amount of forfeited funds that the AG may retain. After a review of the previous three years' fiscal information, Rep. Upmeyer asked the AG office to reconsider these amendments.

**TRANSPORTATION DEPARTMENT** Mark Lowe represented the department.

ARC 8339B Amendments to chs 601 and 630 are adopted to implement federal requirements for issuance of REAL ID driver's licenses and nonoperators identification cards. Mr. Lowe indicated that REAL ID driver's licenses will be required for accessing federal buildings, nuclear power facilities, and federally regulated aircraft. Iowa is in compliance with the first 18 of 35 benchmarks. Mr. Lowe explained that Iowa expects to have until May 10, 2011, to meet the remaining benchmarks, and that persons under the age of 50 will need to present the REAL ID credential December 1, 2014.

**INSPECTIONS AND APPEALS DEPARTMENT** Deborah Svec-Carstens represented the department. Other interested parties included nursing home resident advocates John Tapscott, Gaiana Hopkins Tapscott, and Marilyn Bunn; Mardi Deluhery on behalf of the Governor's Developmental Disabilities Council; George Appleby on behalf of Iowa Council of Health Care Centers and Iowa Association of Community Providers (IACP); Sylvia Piper on behalf of Iowa Protection and Advocacy Services; Kelly Meyers and Ken Watkins on behalf of Iowa Health Care Association (IHCA) and Iowa Center for Assisted Living (ICAL); Dana Petrowsky of Iowa Association of Homes and Services for the Aging (IAHSA); Susan Cameron on behalf of IHCA; Representative Bruce Hunter, floor manager of the bill; Shannon Strickler of the Iowa Hospital Association; Anthony Carroll of AARP; and John Hale of Iowa Care Givers Association.

ARC 8294B Ch 52 pertains to dependent adult abuse in facilities and programs. Ms. Svec-Carstens outlined numerous changes made in response to comments received. Ms. Svec-Carstens noted that the department is scheduling 40 training sessions to take place statewide over the ICN during the next six months. Mr. Tapscott identified himself as an advocate for nursing home residents and expressed support for the rules. Ms. Deluhery expressed support for the department and the rules. Mr. Appleby expressed concern that the definition of gross negligence in the rule includes language from the discussion about the court decision and concern that there is no time limit for DIA's investigation into alleged abuse.

Inspections and Appeals Department (continued)

Mr. Appleby suggested a 30-day time limit for completion of the investigation. Ms. Piper commented that nursing home residents deserve the highest quality of care that can be provided and expressed support for the department and the definition of gross negligence.

Ms. Meyers asked the committee to delay the rules and expressed concerns about the definition of gross negligence and about subrule 52.7(4). Mr. Watkins stated that the definition of gross negligence from the Thompson case is well established in Iowa law; and that if another definition is used, the legislature, not the department, should determine the definition. Ms. Petrowsky concurred with Ms. Meyers, Mr. Appleby and Mr. Watkins and added that all of these organizations are opposed to abuse. Ms. Cameron requested a session delay so that the legislature can adopt a definition of gross negligence. Rep. Hunter indicated that the intent of the legislation was to protect dependent adults and good care givers. Rep. Hunter indicated that he supports the definition of gross negligence that appears in the rules; that he supports training of all employees who have contact with residents, including janitorial and food service workers, to be reporters. Finally, Rep. Hunter explained why the department needs to have access to employee records to establish a pattern of abuse. Ms. Strickler reported that recently there have been cases involving such things as clinical decision making and other matters that once would have been handled by the licensing board that are being treated as dependent adult abuse cases. Furthermore, the association requested clarification about which employees are exempted from the training. Mr. Carroll expressed support for the rules and indicated that the department has been responsive to many of the concerns raised during the rule-making process. Mr. Carroll stated that only employees with no potential contact with patients should be exempted from mandatory reporter training. Mr. Hale expressed support for the rules and emphasized the importance of the words "totality of the circumstances" in the definition of dependent adult abuse. Ms. Bun reported on her husband's neglect while he was in a nursing home and the numerous reports of abuse that she has received subsequent to then. In supporting the rules, Ms. Tapscott emphasized that the facilities are the homes of their residents.

Rep. Upmeyer voiced concerns about the timeliness of investigations, the need for clear training, and the disagreement over the definition of gross negligence. Rep. Upmeyer also noted that most abuse does not happen in facilities. Rep. Frevert commented on the very good care that some nursing homes provide.

Motion to refer Sen. Kibbie moved a referral to the general assembly.  
Motion carried On a unanimous roll-call vote, the motion passed.

**ENVIRONMENTAL PROTECTION COMMISSION** ARC 8312B and ARC 8313B were excused from review at this meeting.

**PUBLIC HEALTH DEPARTMENT** ARC 8276B, ARC 8268B, ARC 8270B, ARC 8360B, ARC 8361B, ARC 8362B, ARC 8359B, ARC 8363B, ARC 8364B, ARC 8365B, ARC 8366B, ARC 8355B, and ARC 8357B were excused from review at this meeting.

**CORRECTIONS DEPARTMENT** ARC 8321B was excused from review at this meeting.

**REVENUE DEPARTMENT** David Casey, Jim McNulty, Ed Henderson, and Dale Hyman represented the department. Don Stanley represented the office of attorney general. Dave Kubik represented the Iowa Association of Assessors.

ARC 8306B No action on proposed amendments regarding taxable and exempt sales and hotel and motel tax.

ARC 8354B No questions on the proposed interest rate for calendar year 2010.

ARC 8356B No questions on 40.15 concerning married taxpayers filing joint federal but separate Iowa returns.

ARC 8352B Proposed 71.1 and 71.2 pertain to responsibilities of assessors. Mr. Stanley explained that the proposed rules result from a district court ruling. Mr. Kubik agreed with Item 1, but indicated that Item 2 should be based on the "highest and best use" standard. Mr. Stanley stated that highest and best use must be supported by comparable sales and must not be speculative in nature. Rep. Frevert urged the parties to work out their differences.

Revenue Department (continued)

ARC 8358B No questions on amendments to chs 79 and 80 concerning real estate tax and declaration of value; property tax credits and exemptions.

**ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF** Amy Johnson and Kent Powell represented the department.

ARC 8275B No questions on termination of the Notice regarding amendments to the film, television, and video project promotion program.

ARC 8273B No questions on termination of the Notice regarding housing tax credits.

**EDUCATION DEPARTMENT** Carol Greta and Su McCurdy represented the department. Other interested parties included Andrea Farrier on behalf of Iowa HSAP professionals, Renee Krepfle of Linn-Mar schools, Donna Stinson of Des Moines Public Schools, and Kurt Subra, CFO of the West Des Moines School District.

ARC 8054B Rules 98.12 and 98.112 are under a 70-day delay. Ms. Greta explained that an HSAP can be operated by an accredited nonpublic school district or a public school district. Ms. Farrier provided the background of home schooling in Iowa, differentiated between home schooling and HSAPs, and asked that the rules allow HSAP funding to be used for any necessary expenditures of the HSAP. Ms. Farrier asked for clarification of the legislature's intent regarding use of HSAP funding. Ms. Krepfle and Ms. Stinson stated that the department has directed districts wanting to establish HSAPs to model the Des Moines and the Marion programs and expressed concern about the department's recent change in policy. Mr. Subra stated that districts need clarification from the department regarding allowable expenditures, and he pointed out similarities between the voluntary preschool program and the home school assistance program. Ms. McCurdy advised Sen. Bartz that although there was no statutory change regarding how HSAP funds could be spent, the department determined that districts were not spending HSAP funds appropriately between 1991 and 2008.

Motion to delay Rep. Upmeyer moved a Session Delay on rule 98.12.

Motion carried The motion carried; 98.12 is delayed until the adjournment of the 2010 Session of the General Assembly.

**HUMAN SERVICES DEPARTMENT** Nancy Freudenberg and Jennifer Vermeer represented the department. Other interested parties included George Appleby on behalf of Iowa Council of Health Care Centers and Iowa Association of Community Providers (IACP), Linda Hinton of the Iowa Association of Counties, Nicole Schultz of the Iowa Pharmacy Association, and Doug Johnson of Iowa Health Care Association.

ARC 8258B No questions on amendments concerning nursing facility quality assurance assessment and payments.

ARC 8272B No questions on proposed amendments affecting eligibility for FIP, food assistance and Medicaid.

ARC 8259B No questions on amendments to ch 47 to eliminate the FIP diversion program.

ARC 8260B No questions on amendments to chs 75 and 76 regarding Medicare savings programs.

ARC 8311B No questions on proposed amendments to ch 75 pertaining to adoption assistance and HIPP reimbursement.

ARC 8261B No questions on Medicaid for children with disabilities.

ARC 8262B No questions on billing for time-related services.

ARC 8263B No questions on medical assistance advisory council.

ARC 8279B No questions on proposed amendments to the HAWK-I program.

ARC 8281B No questions on effective date of HAWK-I coverage.

ARC 8280B No questions on conditions of HAWK-I eligibility.

ARC 8256B No questions on citizenship and documentation requirements for the IowaCare program.

ARC 8274B No questions on proposed amendments concerning child care assistance.

ARC 8340B No questions on rescission of ch 10.

ARC 8341B No questions on notices of legal settlement disputes.

ARC 8343B No questions on estate recovery.

## Human Services Department (continued)

- ARC 8344B Amendments to chs 78, 79, and 81 implement reductions in reimbursement for providers of Medicaid services. Mr. Appleby commented on the unintended consequences of the rate cuts to providers of services for persons with intellectual disability (ID), without significant savings to the state. Ms. Hinton added that the reason the state will not see significant saving from that cut is that counties pay the nonfederal share of the reimbursement to providers of ID services. Ms. Schultz expressed concern that the cuts are excessive. Mr. Johnson indicated that reductions to skilled nursing facilities exceed the proposed reductions.
- Discussion pertained to the attorney general's explanation of the department's authority for the making the cuts, the effect of the cuts on access to care, and the expected savings. Rep. Upmeyer asked the department to provide the committee the calculations used to determine the reductions to providers. Rep. Heaton expressed concern for those who receive intellectual disabilities services.
- ARC 8346B No questions on the decrease in the mileage reimbursement rate for the PROMISE JOBS program.
- ARC 8319B No questions on amendments to ch 153 concerning implementation of a waiting list for the state payment program.

**PUBLIC SAFETY DEPARTMENT** Mike Coveyou, Jim Kenkel, and Stuart Crine represented the department. Other interested parties included Craig Schoenfeld and Flora Schmidt on behalf of Iowa Home Builders Association, Lance Henning of Greater Des Moines Habitat for Humanity, LaDonna Gratiias of Gratiias Construction, and Donald Cox of the Iowa Association of Fire Chiefs.

- ARC 8307B No questions on state fire marshal rules. Mr. Coveyou outlined changes from the notice.
- ARC 8303B No action on commercial explosive licensing.
- ARC 8302B No questions on fire fighter certification.
- ARC 8305B Amendments to the state building code include the requirement for sprinklers in residential construction. Ms. Schmidt outlined the specific concerns of the association in regard to the residential code and the energy conservation code and commented that the costs of compliance will drive up home prices. Mr. Henning expressed concern about the requirement for sprinklers in residential construction and indicated that this requirement will prevent many families from moving into safe and affordable new housing. Ms. Gratiias stated that smoke detectors, not sprinklers, get people out of burning homes and save lives. Ms. Gratiias outlined concerns about water pressure, mold, and frozen pipes that may result from sprinkler systems. Mr. Schoenfeld asked for a session delay on the residential sprinkler requirement. Mr. Cox reported on statistics regarding deaths of residents and fire fighters. Mr. Cox responded to Rep. Upmeyer that statistics for fires in new construction are not available.
- Motion to delay Rep. Upmeyer moved a Session delay on the residential sprinkler requirement, R313.1 and R313.2, included in rule 661—301.8.
- Motion carried The motion carried; the provisions are delayed until the adjournment of the 2010 Session of the legislature.
- ARC 8304B No questions on the state historic building code.
- Committee business** The minutes of the November 2009 meeting were approved. The next meeting was scheduled for Tuesday, January 5, 2010.
- Adjourned The meeting was adjourned at 3:50 p.m.

Respectfully submitted,

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Kathleen K. West

APPROVED:

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Chair Marcella Frevert

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Vice Chair Wally Horn