

**MINUTES OF THE SPECIAL MEETING
OF THE
ADMINISTRATIVE RULES REVIEW COMMITTEE**

- Time of meeting:** A special meeting of the Administrative Rules Review Committee (ARRC) was held Monday, February 8, 1999, in Senate Committee Room 22, State Capitol, Des Moines, Iowa.
- Members present:** Senator H. Kay Hedge, chair, and Representative Christopher Rants, vice chair; Senators Merlin E. Bartz, Patricia M. Harper, John P. Kibbie, and Sheldon Rittmer; Representatives Danny Carroll, Minnette Doderer, Geri Huser, and Janet Metcalf.
- Also present:** Joseph A. Royce, Legal Counsel; Kathleen K. Bates, Administrative Code Editor, and Teresa Vander Linden, assistant; Brian Gentry, Administrative Rules Coordinator, and Stephanie Pickens, assistant; caucus staff and other interested persons.
- Convened** •Chair Hedge convened the meeting at 8 a.m. and introduced Brian Gentry and Stephanie Pickens as well as new ARRC members Geri Huser and Patricia Harper.
- HUMAN SERVICES DEPARTMENT** Mary Ann Walker and Anita Smith represented the department with Marne Woods from the attorney general's office. Linda Goeldner and Lynn Boes appeared on behalf of the Iowa Nurses' Association.
- ARC 8614A** Proposed chs 3 to 5 implement changes to Iowa Code chapter 17A relating to procedures for rule making, petitions for rule making and declaratory orders.
•Metcalf asked that agencies be encouraged to adopt uniform rules by reference.
- ARC 8627A** Proposed amendments to ch 75 pertain to the annual adjustment to the statewide average costs and charges for nursing care.
- ARC 8615A** Ch 86 and amendments to ch 76 implement the HAWK-I program. Walker highlighted three changes resulting from comments received: A "prudent layperson" standard was added for coverage of emergency room visits; the maximum cost per month per family was lowered from \$30 to \$20; and the definition of "Good cause" was revised. Smith reported that on January 1, Iowa Health Solutions was operating in 16 counties which account for 50 percent of the population and that over 900 applications were received in the first three weeks. Effective March 1, Wellmark will cover the rest of the state with an indemnity plan.
•Doderer challenged "prudent layperson" language as subject to interpretation.
•Carroll was informed that families under 150 percent of poverty, for example, a family of four earning less than \$2057 per month, pay nothing for the coverage and that for families over 150 percent of poverty the maximum premium is \$20 per month. It is anticipated that revenue from the premiums, approximately \$2 million, will offset administrative costs. Carroll expressed the view that payment of the premium is important so that the program remains insurance, rather than welfare.
•In response to Kibbie's inquiry about northwest Iowa, Smith indicated that only two hospitals in the state have not signed contracts with Wellmark; in those cases Wellmark will pay the enrollee rather than the hospital.
•Rants was advised that amounts billed to the patient beyond the amount paid by Wellmark will have to be paid by the state. Woods clarified that participants are informed in advance that additional costs may be incurred if they go to nonparticipating providers. Woods explained that by contract Wellmark is obligated to provide adequate access, and the size of this program should encourage Wellmark to comply with the terms of the contract.
•Smith responded to Harper that program information is being distributed by school nurses, Head Start coordinators and WIC programs.
Goeldner voiced concern that the definition of "physician" as it relates to "physician services" would exclude physician services performed by advance practice nurses. Boes added that, especially in rural areas, advance practice nurses provide necessary medical services which must also be covered.
- ARC 8626A** No questions on proposed amendments to ch 78 pertaining to payment for diabetic supplies and binaural hearing aids.
- ARC 8617A** •Walker explained to Kibbie that HAWK-I appeals will be made to the provider and then to the insurance division, not to the department of human services.
- TRANSPORTATION DEPARTMENT** Steve Westvold, Jan Hardy, Kirsten Bandow and Dave Titcomb represented the department. Lorelei Brewick appeared on behalf of the Iowa State Bar Association. Pat Deveny was also present.
- ARC 8624A** •Westvold explained to Carroll that the change from discretionary to mandatory language regarding permit revocations was intended to eliminate subjectivity and the potential for preferential treatment. Carroll voiced concern about the arbitrary language and expressed the view that the department should evaluate violations and make reasonable judgments.
•Metcalf was informed that these amendments reflect the current fees which were increased by statute in 1997.

Transportation Department (continued)

- ARC 8604A No action on amendments to chs 400 and 401.
- ARC 8607A No questions on proposed amendments to chs 400 and 401 pertaining to processed emblem plates and inspection of remanufactured vehicles.
- ARC 8600A Titcomb stated that due to comments received, proposed 620.4(5), petition to reopen a hearing, would not be adopted. The department intends to reinstate the previous subrule language.
After noting that Iowa Code section 17A.16 requires that applications for rehearing be filed within 20 days of issuance of the contested case decision, Brewick pointed out that acquittal of OWI may occur later than 20 days after issuance of the contested case decision. Titcomb responded that the rule will allow a petition to reopen hearing at any time.
Deveny related the history of 1997 Iowa Acts, House Files 704 and 707.
- ARC 8608A No questions on proposed amendments to ch 750 pertaining to aircraft registration.

ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA Kay Williams and Charles Smithson represented the board.

- ARC 8610A Smithson summarized proposed amendments to chs 1, 3 to 7, 9, 11 and 12.
 - Rittmer asked about the additions to the rule on legitimate expenditures of campaign funds. Election recount expenses and purchase of incidental items provided to the public by officeholders are allowable expenditures.
 - Metcalf sought clarification of proposed 4.42(2)“c” and was advised that costs incurred by an officeholder to attend local events, including dinners, could be paid from campaign funds.
 - Smithson clarified for Huser that an officeholder’s distribution of items such as pens and pencils that bear the officeholder’s name is allowable on public property, whereas distribution of campaign items is not allowable.
 - Rants observed that the proposed change to “expressly advocates” in Item 3 would also need to be made in the Code and supported the proposal to allow costs of a recount to be paid from campaign funds.
 - Hedge speculated that the language authorizing additional penalties pursuant to Iowa Code section 68B.32D would discourage people from appealing. Smithson agreed, but pointed out that if the violation is not proved, no penalty is imposed. Williams added that the additional sanction would be at the discretion of the board.

ENVIRONMENTAL PROTECTION COMMISSION Mike Murphy and Tom Anderson represented EPC.

- ARC 8623A No questions on environmental self-audits as adopted in ch 12.
- ARC 8622A No action on proposed amendments to ch 209 concerning the landfill alternatives financial assistance program.

INSURANCE DIVISION Susan Voss represented the division.

- ARC 8619A No questions on ch 41, limited service organizations.

PETROLEUM UNDERGROUND STORAGE TANK FUND BOARD, IOWA COMPREHENSIVE Pat Rounds represented the board.

- ARC 8606A No questions on amendments to 15.5(4) rescinding coverage for installers/inspectors.

PERSONNEL DEPARTMENT Kelly Lovell represented the department.

- ARC 8563A No questions on amendments to IPERS rules reflecting statutory changes.

PUBLIC HEALTH DEPARTMENT Don Flater and Jane Borst represented the department.

- ARC 8609A No questions on proposed amendments to radiation rules in chs 38 to 42, 45 and 46.
- ARC 8613A No questions on proposed ch 76 pertaining to the maternal and child health program.

PUBLIC SAFETY DEPARTMENT Mike Coveyou and Roy Marshall represented the department.

- ARC 8602A The amendment to 5.620(1) clarifies that fire safety requirements for small group homes apply to all three- to five-bed facilities licensed pursuant to Iowa Code section 135C.2, not just to small group homes for the mentally retarded.
•Coveyou responded to Metcalf that 135C.2 requires the state fire marshal to adopt fire safety standards no more restrictive than the standards for the demonstration waiver project facilities established in 1986. Metcalf reported that the city of Windsor Heights is in court over a city ordinance requiring the installation of sprinklers in Alzheimer’s small group homes. Marshall pointed out that the statute, not the rule, prohibits local ordinances from being more restrictive than the state fire marshal’s standards.

Motion to delay Metcalf moved a 70-day delay be imposed on 5.620(1).

Motion carried The motion to delay 5.620(1) for 70 days passed.

UTILITIES DIVISION Vicki Place and Gordon Dunn represented the division.

- ARC 8601A No action on ch 35 amendments regarding energy efficiency plans and standards.

EDUCATIONAL EXAMINERS BOARD Anne Kruse represented the board.

- ARC 8633A No action on proposed 14.21(17) pertaining to a science endorsement.

Committee Business •Doderer moved the minutes of the January meeting be approved.
The motion passed.

The next meeting was set for March 8, 1999, at 8 a.m.

REVENUE AND FINANCE DEPARTMENT Carl Castelda and Ed Henderson represented the department.

Harry Griger of the attorney general's office was present. Other interested parties included real estate developer Robert Burns; Nancy Boyd and Robert Andeweg of Brown, Winick Law Firm; Jim West and Bruce Baker of Nymaster Law Firm; Jennifer Kingland on behalf of Iowa Realtors; Tracy Kasson of the League of Cities; Dean Hunziker a developer from Ames; and David Vestal of the Iowa Association of Counties.

ARC 8632A

Amendments to ch 40 are applicable to capital gains benefits in the current tax filings. An Economic Impact Statement was published on proposed 71.1 pertaining to taxation of condominiums. Castelda reported that a survey was sent to all 108 assessing jurisdictions and that 61 jurisdictions responded. A statewide average was projected based on 1997 assessments. The department intends to adopt the proposed amendment and to provide additional examples.

ARC 8342A

Burns urged the department to define condominiums developed and financed under the federal low-income housing tax credit program as residential property.

Andeweg criticized the department's economic impact statement for not considering the impact on all of the parties affected by the change and disputed the accuracy of the extrapolated numbers.

West opposed the amendment in terms of business commitments which were based on the existing rates, the lack of a statutory definition of condominiums, and the potentially inequitable treatment of renters and buyers in the same building.

Baker criticized the economic impact statement as largely based on the Iowa City area and not representative of the state and based on apartments converted to condominiums, not those condominiums originally built as condominiums.

Kingland voiced concern about unfair treatment of condominium owners in buildings where a majority of the units are rented.

Kasson supported the department's proposed rule because of the tax benefit afforded homeowners.

Hunziker stated that the upscale housing which draws people to Ames was made possible by the rollback.

Vestal distributed written comments and offered support for the proposed change.

•Castelda indicated to Rants that although the department is familiar with the information pertaining to condominiums developed under the federal low-income housing credit, the department believes that an exception would have to be made by the general assembly, rather than the department. Castelda confirmed that property assessments would be determined by majority use of the building, but stressed that the primary intent is considered rather than just the actual number of owners and renters. Therefore, if the intent is to sell the units, the whole building would be assessed as residential, even if a majority of the units are rented.

•Kibbie was informed that although it is conceivable, it would be unlikely that an owner-occupied condominium could end up being taxed as commercial property.

•Doderer expressed the view that it's the business owners, not homeowners or renters, who will benefit or be hurt by the tax.

•Carroll expressed concern about a rule that allows tax to be assessed on a per-building basis and collected on a per-unit basis. Carroll opposed the rule on the conviction that communities benefit from affordable family housing options more than from increased tax revenues.

•Following discussion about the advisability of objecting to a proposed rule or referring it to the legislature, the consensus of the committee was to take no action until the rule is adopted. Bartz asked that the item appear on the March agenda.

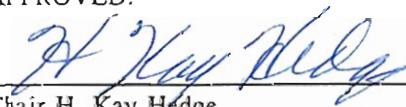
Adjourn

The meeting was adjourned at 11:20 a.m.

Respectfully submitted,


Kathleen K. Bates

APPROVED:


Chair H. Kay Hedge

Vice chair Christopher Rants