

**MINUTES OF THE SEPTEMBER 2002 MEETING
OF THE
ADMINISTRATIVE RULES REVIEW COMMITTEE**

Date of meeting: The regular, statutory meeting of the Administrative Rules Review Committee (ARRC) was held Tuesday, September 10, 2002, in Room 116, State Capitol, Des Moines, Iowa.

Members present: Senator Sheldon Rittmer, Chair, and Representative Clyde Bradley, Vice Chair; Senators Jeff Angelo, Patricia Harper, John P. Kibbie, and Paul McKinley; Representatives Danny Carroll, Marcella Frevert, Mark Kuhn and Janet Metcalf.

Also present: Joseph A. Royce, Legal Counsel; Kathleen K. Bates, Administrative Code Editor, and Karon Elfvin, Assistant; Brian Gentry, Administrative Rules Coordinator; caucus staff and other interested persons.

Convened Chair Rittmer convened the meeting at 9:02 a.m.

HUMAN SERVICES DEPARTMENT Mary Ellen Imlau, Sue Stairs, Vern Armstrong and Nancy Freudenberg represented the department. Other interested parties included Ralph Rosenberg of Coalition of Family and Children Services, Craig Syata of Iowa Association of Community Providers, Lynn Ferrell of Polk County Health Services, Carol Logan of Wapello County, Barbara Martley of Lucas County, and Sue Novak of Linn County.

ARC 1839B Representatives of Polk, Wapello, Lucas and Linn Counties expressed concern that the amendments to ch 14 would encourage use of offset procedures rather than resolution of contested amounts. Ferrell requested that counties be afforded 30 days from receipt, rather than mailing, of billings; that counties not be billed before third-party payments are received; and that a mechanism be instituted for billing the correctional system. Logan noted that while a county cannot move dollars from one fund to another, the department may offset any amounts due the county. County representatives requested better communication from the state. Freudenberg maintained that the offset process has not changed and emphasized that not only is it not the department's intent to rush to offset, but the department cannot offset a disputed bill.

Motion to delay Carroll moved a 70-day delay be imposed on the amendments to encourage discussion between the department and the counties.

Motion carried The motion carried; the September 11, 2002, effective date is delayed 70 days.

ARC 1838B No questions on amendments to chs 51 and 52 relating to SSI "pass-along" requirements.

ARC 1880B No questions on proposed 75.1(36) and 75.1(37).

ARC 1840B Imlau summarized changes made in response to comments received on amendments to Medicaid waiver services. On behalf of the Iowa Association of Community Providers, Syata disputed the methodology used by the department to compute rates for HCBS providers and asserted that this year's rate will not comply with HF 2416. Stairs responded that these rules were written before passage of HF 2416 and explained that a new rule making is at the attorney general's office for review.

Motion to delay Bradley moved a 70-day delay be imposed on 79.1(15)"d"(4).
The motion carried. The October 1, 2002, effective date of 79.1(15)"d"(4) is delayed for 70 days.

ARC 1847B No questions on amendments to 78.4 relating to Medicaid coverage for dental services.

ARC 1841B No questions on amendments pertaining to reimbursement for rehabilitation agencies.

ARC 1881B No questions on proposed amendments to ch 83 relative to time limits for processing applications for HCBS ill and handicapped and mental retardation waivers.

ARC 1882B No action on proposed amendments relating to licensure for child-placing agencies and foster homes. Rosenberg noted that the eight days of required MAPP training results in increased costs for agencies working with foster families and pointed out that provisional licensure of foster parents may result in a loss of federal dollars.

ARC 1848B No questions on amendments concerning reimbursement rates for purchase of service providers and rehabilitative treatment and supportive services.

ARC 1849B The amendment to ch 176 gives hospital administrators access to information in the dependent adult abuse registry.

Special review No action on amendments to ch 109 implemented emergency after notice. Imlau advised McKinley that "child" is defined as a person 12 years old or younger or a person aged 13 to 19 who has a developmental disability.

Special review Rittmer requested this review of child protective services. Armstrong outlined the department's response obligations and the procedures followed. Gentry suggested that the department help schools ensure that all personnel understand their responsibility for maintaining confidentiality.

Human Services Department (continued)

Special review Freudentberg distributed a written summary to clarify the meanings of local variances, departmental exceptions to policy and Medicaid waivers. Metcalf requested a review of waiver report information be scheduled for the October meeting.

EDUCATION DEPARTMENT Ann McCarthy, Jim Clark, and Julie Curry represented the department.

ARC 1909B No questions on amendments to ch 6 concerning appeal procedures.

ARC 1900B No action on amendments to ch 17 relating to open enrollment. McCarthy clarified that the statutory term for "home schooling" is "competent private instruction."

ARC 1902B No questions on amendments to ch 21 pertaining to fees for enrollment in the course for drinking drivers.

ARC 1901B No questions on the rescission of ch 26.

ARC 1903B No questions on the amendment to ch 36 regarding athletic eligibility of open enrollment students.

ARC 1904B No questions on the fee for school bus inspections.

ARC 1908B No questions on ch 58, school breakfast and lunch program.

ARC 1907B No questions on the rescission of ch 68.

ARC 1905B No questions on the rescission of ch 69.

ARC 1906B No questions on amendments to ch 97 concerning supplementary weighting for regional academies and whole-grade sharing.

ARC 1916B The early ACCESS integrated system of early intervention services is proposed in ch 120. Clark reported that the rules represent coordination with the departments of public health and human services. Approximately \$3.8 million in federal funding was directed to development of the coordinated family-centered system.

GENERAL SERVICES DEPARTMENT Carol Stratemeyer represented the department.

ARC 1879B No questions on termination of 3.4(14) regarding use of amplified sound in common areas of the capitol complex.

ARC 1911B Ch 12, purchasing standards for service contracts, applies to executive branch agencies only. Royce suggested terminology for referencing the legislative and judicial branches.

ARC 1912B No questions on ch 13 concerning uniform terms and conditions for service contracts.

IOWA FINANCE AUTHORITY Loyd Ogle and Donna Davis represented the authority.

ARC 1864B No action on proposed ch 3 pertaining to the multifamily preservation program and the Iowa homesteading program.

ARC 1865B No questions on proposed amendments to the housing assistance fund.

REVENUE AND FINANCE DEPARTMENT David Casey represented the department.

ARC 1869B No questions on proposed 52.1(10) pertaining to deferment of income for start-up programs.

SECRETARY OF STATE ARC 1872B Excused from review.

PUBLIC SAFETY DEPARTMENT Mike Coveyou, Sam Knowles and Jim Kenkel represented the department.

ARC 1895B Proposed amendments to ch 2 relate to bail enforcement, private investigation and private security businesses. Metcalf expressed concern that the last paragraph in item 11 would allow the department to rescind approval of a private security uniform after expenditures were made based on the department's approval of the uniform. The intention of the provision was to avoid confusion when a private security agency begins operating in an area where the agency's uniform is similar to that used by law enforcement. Royce stated that the rule creates a potential for state interference with property rights without due process. Metcalf suggested that the department not adopt the paragraph in question, but involve affected parties in a new rule making. Gentry recommended that the department seek information from police departments about their uniforms.

ARC 1897B No action on ch 55 regarding the volunteer fire fighter training and equipment fund.

PUBLIC HEALTH DEPARTMENT Tonya Diehn, Kathleen Widelski, Jane Borst, Ray Jones, and Steve Poole represented the department.

ARC 1863B Diehn outlined proposed amendments to ch 4 affecting newborn screening. Metcalf suggested that the fee for the neonatal metabolic screening be specified in the rules. Royce concurred.

ARC 1862B Amendments to ch 74 pertain to family planning services. Widelski confirmed that, in accordance with federal Title X requirements, family planning services ensure client confidentiality, even when the client is a minor. McKinley asked that the October agenda include a further review of a child's access to birth control pills without parental permission. Borst explained that the department operates other programs, including abstinence-only programs, but family planning services are targeted to those who have already made the decision to be sexually active.

ARC 1861B No action on ch 112 governing biological agent risk assessment.

Public Health Department (continued)

ARC 1860B No action on chs 130 and 140 concerning emergency medical services training grants and the EMS system development grants fund. Royce commented on the longer application process. Department representatives offered assurance of training and assistance with the applications and noted that the renewal process is more streamlined.

ALCOHOLIC BEVERAGES DIVISION Lynn Walding, John Lundquist and Judy Seib represented the division. Other interested parties included Bob Skow, Craig Walter, and Fred Haskins.

Regulatory analysis The division published a regulatory analysis based on information supplied by licensees. Walding reported receiving comments concerning the assault and battery exclusion, continuous coverage requirement, and coverage for loss of support. Skow, Haskins and Walter echoed the comments mentioned by Walding and indicated that these issues may result in increased costs and fewer carriers. Walter suggested that the next session of the legislature address other remedies, such as surety bonds.

TRANSPORTATION DEPARTMENT Shirley Andre represented the department.

Special review The department reported that, pending issuance of an attorney general's opinion, "nonrenewable/documentation required" is no longer being stamped on licenses issued to persons temporarily residing in the United States. The department will issue duplicate licenses at no charge to persons whose licenses bear the wording in question.

Committee business Kibbie moved approval of the August minutes. The motion carried.
The next meeting was scheduled for October 8, 2002.

EDUCATIONAL EXAMINERS BOARD Susan Fischer and Jane Heinsen represented the board.

ARC 1914B No questions on 14.143 regarding the substitute authorization.

ARC 1915B No action on amendments to ch 15 pertaining to endorsements for teachers of the hard-of-hearing and visually impaired.

ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA Charlie Smithson represented the board.

ARC 1887B Smithson called attention to a change requested by the committee to convene a meeting at the call of four members of the board.

ARC 1875B No questions on proposed amendments pertaining to county commissioners of elections and campaign disclosure procedures.

ARC 1873B No questions on proposed amendment to allow a candidate to file an amended statement of organization.

ARC 1888B No questions on amendments related to committee funds.

ARC 1886B No questions on the proposed amendments pertaining to filing of reconciled bank statement with January report and final report.

ARC 1891B No questions on registration of a trust as a PAC.

ARC 1884B No questions regarding exception of business cards from required attribution statements.

ARC 1885B No questions on ch 6.

ARC 1889B No questions on notification of candidates of personal financial disclosure statement requirements.

ARC 1890B No questions on procedures for determining persons required to file personal financial disclosure statements.

ENVIRONMENTAL PROTECTION COMMISSION Catherine Fitzsimmons, Wayne Gieselman, Wayne Ferrand, Robin Praisner, and Brian Tormey represented the commission.

ARC 1876B Proposed 20.2 and 28.1 relate to ambient air quality standards for ammonia and hydrogen sulfide. Angelo questioned whether the rules follow the compromise worked out in the legislation. Gieselman indicated that although the term "community-oriented monitoring site" does not appear in the bill, the rules do reflect the university study. Fitzsimmons explained that the monitoring sites focus on populated areas such as homes, commercial enterprises and educational institutions. Angelo requested additional information regarding the numeric standards.

ARC 1877B No action on amendments to ch 64 regarding wastewater construction and operation permits.

Environmental Protection Commission (continued)

ARC 1899B

Pruisner reported that the interim matrix applies to confinement feeding operations applying for a construction permit after July 10, 2002. Pruisner advised Angelo that the committee submitted a consensus recommendation to the department on 53 mitigating factors and explained that the consensus approach was chosen because consensus encourages compromise. Consensus was not reached on two mitigating factors: use of nontherapeutic antibiotics to promote growth and demonstrated community support, or on the use of subcategories. Kuhn expressed a desire that air, water, and community concerns all achieve minimum scores. Pruisner reported that the original intention was that applicants would complete the entire matrix; however, applicants have received legal advice to stop when they reach the minimum threshold of 100 of the 580 points possible. Pruisner also indicated that the commission does not have authority to require county boards of supervisors that have signed up to use the master matrix to apply it to every construction permit in the county and noted that consensus on a passing score for the master matrix has not yet been reached.

ARC 1898B

No action on amendments to ch 117 regarding open burning near waste tire stockpiles or processing sites.

INSPECTIONS AND APPEALS DEPARTMENT Dean Lerner represented the department.

ARC 1760B

Metcalf maintained that the rule requiring separate licenses for simultaneous operations of vendors selling potentially hazardous foods at farmers markets is contrary to the intention of the legislation. Lerner explained that a license is issued upon inspection of a vendor's stand; simultaneous operations require separate inspections and separate licenses. Lerner stated that the department has received no complaints from vendors, and noted that simultaneous farmers markets seldom occur in Iowa. In response to Harper's inquiry about intent, Gentry explained that individual legislators may differ on intent, and courts interpret intent based on the plain meaning of the words. Davis stated that the attorney general's office noted the statute's use of "a," rather than "any," and added that equal protection considerations are still being reviewed.

Motion to object

Metcalf moved an objection to the emergency filing of ARC 1760B.

Motion carried

The motion carried. The emergency rule will expire 180 days from the date it is filed.

Motion to object

Metcalf moved an objection to subrules 30.3(4) and 30.4(10) on the grounds that they are contrary to statute.

Motion carried

The motion carried.

Motion to refer

Kibbie moved a referral to the general assembly.

Motion carried

The motion carried.

ELDER AFFAIRS DEPARTMENT Mark Haverland represented the department. Dean Lerner represented the department of inspections and appeals. Craig Walter represented the Assisted Living Association.

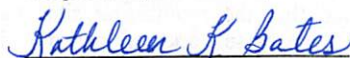
ARC 1814B

Haverland distributed a draft of a rule that would provide for a staffing by concerned parties to determine the appropriate level of care for a resident of an assisted living facility. Unresolved questions include who might initiate a staffing, who would pay, who should be involved, and contracts between facilities and clients. Haverland reported that only a few facilities are operating without discharge plans and indicated that the department does not intend to adopt emergency rules. Gentry recommended that the department take committee comments and concerns into consideration, solicit input from affected parties and return next month.


Adjourn

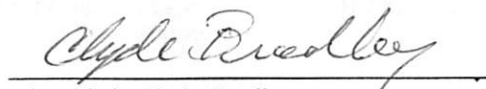
The meeting was adjourned at 4:10 p.m.

Respectfully submitted,


Kathleen K. Bates

APPROVED:


Chair Sheldon Rittmer


Vice Chair Clyde Bradley