

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

Time of meeting The regular meeting of the Administrative Rules Review Committee (ARRC) was held Tuesday and Wednesday, October 8 and 9, 1996, in Room 22, State Capitol, Des Moines, Iowa.

Members present: Senator Berl E. Priebe and Representative Janet Metcalf, Cochairs; Senators H. Kay Hedge, John P. Kibbie, William Palmer, and Sheldon Rittmer; Representatives Horace Daggett, Minette Doderer, Roger Halvorson, and Keith Weigel.

Also present: Joseph A. Royce, Legal Counsel; Kathleen Bates, Administrative Code Editor, and Cathy Kelly, Assistant; Paula Dierenfeld, Administrative Rules Coordinator; caucus staff and other interested persons.

Convened •Cochair Priebe convened the meeting at 10 a.m.

HUMAN SERVICES DEPARTMENT Mary Ann Walker, Eric Sage, Charlcie Parrish, and Lin Nibbelink represented DHS.

ARC 6694A •Kibbie asked if enough funding was available for child care under the family investment and PROMISE JOBS programs, and Sage responded affirmatively.

ARC 6695A •Priebe inquired about the fiscal impact of the increased SSA, RCF and in-home health related care reimbursement rates on counties. Walker replied state funds would be increased to \$357,800 for fiscal year 1997 but no county funding would be affected.

ARC 6692A There were no questions concerning proposed amendments Chapters 75, 76, and 86.

ARC 6696A •Rittmer requested Walker to report back on the extent to which proton pump inhibitors are used.

•Walker responded to Doderer that the prior authorization in 78.1(2)"a"(3) for proton pump inhibitor must be obtained from the department.

ARC 6693A No committee action on proposed reimbursement of SNFs in 79.1(9)"a" and "d."

ARC 6697A There were no questions on 79.1(9)"e," and 81.6(16)"e."

ARC 6698A No committee action on the amendment to 83.22(1)"b" following an explanation of county implementation of case management and funding from the department of elder affairs for inclusion in the elderly waiver program.

ARC 6699A There were no questions concerning debts due from transfers of assets in 89.2(2)"b" and rule 89.3.

ARC 6700A There were no questions regarding on-the-job training in 93.23(3)"d" and 93.123(3)"d."

ARC 6701A There were no questions concerning provider rates in 150.3(5)"p"(2) to (4).

ARC 6702A •Comments on court-ordered services have resulted in clarifications in amendments to Chapter 151.

•Metcalf was assured by Sage that the revisions are satisfactory to all concerned.

•In response to Daggett, Sage noted the chief juvenile officers of the eight judicial districts recommended schools where juvenile problems existed for inclusion in the pilot program. The pilot program in four of the eight judicial districts which implemented supervised community treatment services, life skills development services and the school-based supervision programs was "extremely well received." Sage stated 42 sites currently exist. He said attendance is markedly improved in the school-based supervision programs and added that community treatment services are court ordered.

•Kibbie asked if the reduced experience requirement is applicable to those workers holding degrees. Sage replied it pertains to care staff. Qualifications for such positions include high school diplomas and one year of experience in a child foster care facility.

ARC 6703A •Rittmer noted paragraph 202.17(1)"a" refers to an appropriation of \$23,601,280 for group care, while legislation set that figure at \$24,601,280. He then asked if the program was being phased out. Walker assured the committee this was a mistake, not an attempt to reduce funding, and would be corrected to reflect the appropriated amount.

•Kibbie was informed by Sage that youngsters removed from the facility at Woodward were either below the age of 13 or exhibited mental health problems.

•Royce presented Senator Maggie Tinsman's concern that some local officials prefer not to send youngsters to boot camps and have steered them into other programs, saying there is a lack of money. Sage said there has been considerable input from juvenile officers who have expressed strong support for the programs. He added the court sees this as an alternative for younger delinquents who have had no extensive history of law violations and that it makes a strong impact on newer offenders and serves as a deterrent. Sage pointed out the programs are strongly backed by tracking and monitoring and very few of the program participants become repeat offenders.

HUMAN SERVICES DEPARTMENT(Cont'd)

ARC 6730A

•Priebe asked if the noticed amendments to Chapter 153 would enable a mentally disabled person to move into this state and receive benefits from the state payment program.

•Nibbelink pointed out that this program is for people who are ineligible for other programs and who reside in Iowa but do not have "legal settlement" in any county. She stated that people moving from other states have to meet the same extensive eligibility criteria that Iowa residents have to meet.

•In response to Doderer, Walker stated this program is funded by state and federal governments.

ARC 6704A

These amendments eliminate the level system for placement on the Child Abuse Registry. Walker stated the most controversial comments on Chapter 175 pertained to the notifications sent to county attorneys of all people accepted for child abuse assessment. Sage added a committee meeting is scheduled prior to the convening of session and the county attorneys have been requested to submit a report.

•Kibbie wondered how people receive notice of placement on the registry and time in which to appeal. Sage replied that each person on the registry receives a form which gives notification of placement on the registry and of the right to appeal within a certain time limit.

ARC 6705A

No committee action concerning rule 200.5 after provision of information requested by the ARRC regarding adoption placements when termination of parental rights is appealed.

GENERAL SERVICES DEPARTMENT David Ancell was present from general services.

ARC 6711A

There were no questions concerning Capitol complex handicapped parking rules 4.1 and 4.3.

CREDIT UNION DIVISION Jim Forney, William G. Sizer, and Ernest W. Gilson appeared on behalf of the credit union division, and Aimee Campin and Julie Andersen were present from the Iowa Credit Union League.

ARC 6714A

•Metcalf requested clarification of the meaning of secondary capital deposit. Forney responded that such a deposit is received from a "non-natural person, (required to be an entity, either a member or nonmember)" and is used to meet losses that low-income designated credit unions could incur.

•In response to Hedge, Forney indicated this type of deposit is an uncommon occurrence, and the language parallels that of the federal government.

RACING AND GAMING COMMISSION Jack Ketterer represented the commission for the following.

ARC 6707A

•Ketterer clarified that proposed 20.15 regarding political campaign contributions does not apply to boat operators.

•Palmer expressed concern that the commission might deny a license to a fully funded applicant because of feasibility study results. Ketterer responded that subrule 21.10(9) permits the commission to review independent and unbiased studies. The commission, however, does not base its decision regarding the applications solely on the studies.

•Ketterer responded to Daggett that subrule 6.1(9) includes the word "may" rather than "shall" since a market feasibility study is not always necessary. Daggett then asked if the commission has veto power over any action on Prairie Meadows involving Harrahs, Circus Circus, or Argosy. Ketterer replied it has the power if there is cause, but it is premature to be involved at this point as it is still a local issue.

•Hedge voiced concern the state appeared to be moving from protecting gamblers to protecting investors by limiting their competition.

•Halvorson asked about the impact of the amendment to subrule 20.10(5) regarding acceptance of applications only during the month of December. Ketterer stated this affords the opportunity to regulate the industry and maintain its integrity since all applications and renewals can be considered simultaneously.

ARC 6706A

Ketterer reported a letter was received from the Code Editor stating the change from "millimeter" to "milliliter" regarding phenylbutazone could not appropriately be made in a Code Editor's bill.

Motion to Delay

Halvorson moved a session delay be placed on 10.6(2)"g" as amended in ARC 6706A.

Motion Carried

Following discussion the motion carried. Metcalf pointed out that should the legislature act, the committee would have to take appropriate action on the identical emergency amendment adopted in ARC 6474A.

EDUCATIONAL EXAMINERS BOARD Linda Beal and Jane Heinsen represented the board of educational examiners.

ARC 6736A

No committee action on 17.11 regarding community college staff development programs.

ARC 6737A

There were no questions concerning staff development programs, rule 17.12.

COMMITTEE BUSINESS Discussion ensued regarding the manure management plans feedlot objection. It was decided to request clarification when the environmental protection commission appears in the afternoon.

Recess

The committee recessed at 12:05 a.m. and reconvened at 1:36 p.m.

CORRECTIONS DEPARTMENT Fred Scaletta and Harry Cannon were present from the department.

Selective Review

- The review, requested by Weigel, concerns prison industry competition with private industry for the manufacture and sale of similar goods. Weigel noted the prison industry experienced a \$2.9 million net profit in the past year with an average wage of 41 to 50 cents for prisoners.
- Cannon responded prison industries' 22 different product lines are sold to government or quasi-government agencies or not-for-profit organizations. Prison industries has gone from being a bankrupt organization 12 years ago to a self-sustaining entity and provides a "useful social purpose."
- In response to Weigel, Cannon stated all prisoners have been mandated to work a 40-hour week by 1997 with the exception of those exempted by mental and physical disabilities and those who have been assessed a major security risk. Expansion in this area includes investigation, evaluation and purchase of new technology and training for the 85 civilian technicians; an increased focus on service-related businesses; and use of imaging technology and document preparation.
- Weigel asked if figures exist which show the number of prisoner placements upon release and the recidivism rate. Cannon replied there is no data concerning placement but a 1984 study showed a lower recidivism rate for those who had gone through the prison industries program.
- Doderer asked if government public agencies still buy furniture from prison industries. Cannon replied the original intent was that all purchases by state agencies be from the prison industries but subsequent exceptions were added and no enforcement or penalty exists. He added that Grinnell College does more business with the prison industries than all three regent institutions combined.

NATURAL RESOURCE COMMISSION Don Paulin, Bill Farris, Don Cummings, and Mike Murphy were present.

ARC 6719A

- Farris responded to Priebe that increased prices for nursery stock in rule 71.3 are comparable to private nurseries.
- In response to Hedge, Farris stated the Iowa Wildlife Packet is a special order consisting of 50 hardwood trees, 50 conifers, and 100 shrubs and is more expensive to avoid competition with private nurseries. Other DNR nursery orders are based on a 500 minimum.

ARC 6720A

No committee action concerning waterfowl hunting seasons in Chapter 91.

ENVIRONMENTAL PROTECTION COMMISSION Anne Preziosi, Scott Vanderhart, and Allan Stokes represented the commission. Others present included Kyle Pattison, Steve Schoenbaum, and Linda Kading.

Feedlot objection

Discussion ensued over the correct application of the committee objection relating to manure management plans. It was determined the objection related to ARC 6644A, termination of notice.

ARC 6718A

- Halvorson inquired about the term "farms in the vicinity" in rule 22.100 and Preziosi responded that she would obtain information about the radius encompassed.
- Stokes informed Daggett that a general rule addressed complaints of elevator "fugitive emissions."

Selective Review

- Halvorson presented to the committee the uniqueness of the underground mine waste tire storage, and it was noted the legislative fiscal committee requested ARRC review of this situation.
- Schoenbaum requested waivers and stated the underground uniqueness made it difficult for the owners to strictly comply with the governing laws and regulations. He felt the statute was being applied retroactively since a 1990 letter from DNR to Pattison indicated a solid waste permit was not necessary. Pattison expanded and operated the waste tire facility based on this letter.
- Priebe inquired about the statute-mandated 85 cent per tire bonding requirement and it was clarified that this is an annual requirement, whereas the charge for tires is a one-time charge. Pattison stated there are approximately 2.6 to 2.7 million tires in the underground storage and the fee placed a financial burden on the small company. Priebe asked about fire lanes, and Pattison stated the tires covered seven to eight acres and it would be cost prohibitive to install fire lanes at this point.
- Paulin indicated his belief the legislature was aware of this situation and stated the department would resist a total exemption in this case and rejected the inability to pay the bonding requirement.
- Stokes responded to Halvorson that the statute did not allow for grandfathering of existing facilities.

Motion to Refer
Motion Carried

Kibbie moved referral of this matter to the legislature, and the motion carried.

PUBLIC SAFETY DEPARTMENT Michael Coveyou, Carroll Bidler, and Thomas Bennett represented the department.

ARC 6733A Coveyou said rule 21.3 provided for reimbursement to the state general fund for costs of autopsies and related expenses. Bennett added fees are payable by the county of the decedent's residency when an autopsy is requested by a public agency. If an autopsy is requested by a person or by an executor of an estate, the individual or the estate pays the cost of the autopsy and any related expenses. Reimbursement comes to the state only when the state medical examiner's office performs services. Discussion ensued regarding incurred costs to counties for possible unnecessary autopsies.

Motion to Refer •Metcalf moved 21.3 be referred to the general assembly. The motion carried.
Motion Carried

Recess The meeting recessed at 3:15 p.m.

Reconvened •Priebe reconvened the meeting Wednesday, October 9, 1996, at 9 a.m. Senator Kibbie was excused.

DENTAL EXAMINERS BOARD Constance Price was present from the board for the following.

ARC 6741A •Daggett was informed by Price the impairment self-reporting in Chapter 30 was applicable to dentists and dental hygienists but not to unlicensed dental assistants.

Minutes •Metcalf moved the minutes be approved. Motion carried.

REAL ESTATE COMMISSION Roger Hansen and K. Marie Thayer appeared on behalf of the commission.

ARC 6721A No committee action on amendments to Chapter 1 concerning unlicensed personnel.

REVENUE AND FINANCE DEPARTMENT Carl Castelda represented the department for the following.

ARC 6743A No committee action concerning taxable and exempt sales amendments to Chapters 16 and 18.

ARC 6716A There were no questions concerning the amendments to Chapters 38, 39, 40, 41, 42, and 46.

Metcalf in chair

ARC 6742A Proposed amendments to Chapter 152 regarding selling of property to collect delinquent debts.
•Daggett inquired about payment of the mortgage on the property if the department seized and sells the property. Castelda responded that a mortgage that existed prior to the tax lien would be paid first.
•Rittmer asked Castelda the length of time in which foreclosure proceedings could be commenced under Chapter 152. Castelda pointed out this was a lengthy multi-step process before the seizure of the property was actually carried out. In most cases people respond and avoid such a sale.

ARC 6715A No committee action on proposed Chapter 210 concerning prepayment of expenses.

UTILITIES DIVISION Vicki Place and Ed Schlak were present from the board.

ARC 6713A There were no questions concerning proposed service line extension in 19.3(10)"b"(4).

ARC 6739A Proposed amendments to Chapters 19 and 20 require the use of checklists in new construction only to ensure compliance with energy efficiency requirements.

•Metcalf inquired about the checklist. Place replied that the division does not want to create an energy efficiency checklist, but will use an existing one prepared by the department of natural resources or public safety (building code). Metcalf stressed there should not be multiple checklists.

ARC 6740A Schlak explained this notice to Chapter 22 dealing with time frames in which primary service, the initial connection to the telephone network, must be provided and in which interrupted service must be restored.

•Hedge asked if a penalty could be applied if service was not restored within the allotted time. Schlak said civil penalties could be brought. Hedge indicated it is not uncommon for winter storms to close roads for several days in rural areas and the utility companies should not be penalized in those instances. Schlak pointed out this would be unlikely because company standards are based on a three-month rolling average. Hedge then asked if telephone service could be interrupted to medically disabled persons. Schlak replied a delay of disconnection can occur for up to 30 days if a medical emergency is substantiated by a doctor.

•In response to Rittmer, Schlak noted there is no limitation on the number of times long distance carriers can be switched.

•Schlak informed Weigel that US West is the only rate-regulated company in Iowa. Weigel inquired about primary service not being supplied within two days, and Schlak replied that after 30 days the utility must provide an alternative form of service, such as a cellular phone or commercial mobile radio and, if no alternative form of service is available, the installation charges are waived and the customer's account is credited in an amount equal to the pro-rata monthly service charge for each day service is not provided.

Priebe in chair

TRANSPORTATION DEPARTMENT Norris Davis, Dick Hendrickson, Dave Titcomb, Dennis Kleen, Mike Winfrey, Jody Johnson, and Jan Harry were present from the department.

ARC 6734A No committee action on proposed amendments to driver license rules in Chapters 600, 601, 602, 605, 607, 615, 630, and 640.

Selective Review •Priebe indicated to Johnson it was his understanding motor home dealers would not be included in the mandatory hours of operation. Johnson replied motor home dealers are included (not mobile homes) but the number of business hours for dealers of motor vehicles, travel trailers, or used vehicles was decreased to 32 hours and the 8 to 4:30 requirement was removed.

•Doderer asked why the department found it necessary to set the business hours for dealers, how it benefited the public, and what was the cost of enforcement. Winfrey noted that cars, vans, and recreational vehicles are high-ticket items requiring certain documentation. Dealers associations have complained about dealers who do not comply with the required hours of operation. In response to Doderer, Winfrey confirmed that some businesses have been closed for noncompliance with the hours of operation.

Metcalf in chair Dierenfeld noted the regulated community has been contacted and is satisfied with these rules. She added any proposed changes should be brought to the attention of the associations.

•Johnson responded to Halvorson that the number of dealers has stayed constant for the past eight years.

Motion to Refer •Doderer moved to refer the definition of "regular business hours" in rule 425.3 pertaining to the hours of operation to the general assembly. The motion carried.

PROFESSIONAL LICENSURE DIVISION Carolyn Adams and Marge Bledsoe represented the division for the following.

ARC 6717A •Daggett asked about the prerequisites for a cosmetology mentor under proposed 61.2(8). Bledsoe replied the mentor had to work in the field, know the profession, and provide a good mentoring experience to the student. She added a contract would exist between the school, student, and the individual salon.

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT Daryl Frey, Chuck Eckermann, Ron Rowland and John Schiltz appeared on behalf of the department.

ARC 6738A No committee action on termination of the pesticide registration fee exemption proposed in 45.5(3) "e."

ARC 6729A •Priebe inquired about what constitutes "adequate veterinary care" in 67.3(3) "e," and whether the department has the authority to require commercial breeders to enter into written agreements with veterinarians. Rowland said this is meant to parallel a federal government requirement. Because state inspectors are not veterinarians, this rule affords the opportunity for animals to be checked on a yearly basis by a veterinarian.

Priebe in chair

INSURANCE DIVISION Present for the following were Scott Galenbeck, Craig Goettsch, Jo Oldson, and Bob Howe from the department; Kirk Cunningham from the Principal Financial Group; Michael Sproule from AmerUs Group; Fred Haskins from the Iowa Insurance Institute; Becky Roorda from IMS; Brice Oakley from MBC; Julianne Thomas from the American Academy of Pediatrics, Iowa Chapter; Linda Goeldner from the Iowa Nurses Association; and Jim West from the Iowa Life and Health Insurance Association.

ARC 6728A Galenbeck stated that the division intends to proceed with an emergency adoption of the rules. Comments have been received and, therefore, changes will be proposed for Chapter 46 concerning the mutual insurance holding companies, but the emergency adoption will be the same as the notice.

•Metcalf pointed out a concern of the commissioner is the supervision of the holding company assets. She was informed a mutual insurance holding company evolved from a mutual insurance company so the assets of a mutual insurance company could be distributed within a holding company structure. Galenbeck stated such assets should, to a certain extent, be supervised and regulated so the funds are available to the policyholders to pay any claims. Metcalf inquired about the effect of subsequent changes on a company that proceeds with a stock offering and was reassured that the rules are intended to facilitate stock offerings.

•West noted the need for the rules, praised the concept of access to capital, but said major problems continue to exist and it is important the rules be correct.

•Priebe reminded concerned parties that if the division goes ahead with the emergency adoption, there is no guarantee of subsequent amendments.

ARC 6745A •Weigel asked why surety bonds have been removed in the proposed amendments to Chapter 50. Goettsch said it's no longer in the statute and in the past 15 years only two claims have been received resulting in only minimal benefit. Weigel requested Goettsch obtain information on whether Iowa broker-dealers have to be SIPC members.

INSURANCE DIVISION(Cont'd)

ARC 6744A

Oldson presented the proposed rules on postdelivery benefits and care.

•Doderer expressed concern that hospital discharges are based on the guidelines and not on the minimum 48- and 96-hour hospital stays as expressed in federal law. She further noted the committee devising the rules was made up of three insurance representatives, one orthopedic surgeon, and two medical doctors. Doderer felt the last sentence of rule 70.8 obviated utilization review by physicians.

•Thomas and Goeldner echoed Doderer's concerns, adding that these guidelines do not sufficiently protect children. Goeldner prefers the term "practitioner" over "physician" because nurses also provide postdelivery care.

•Metcalf stated the rules were intended to reference the most current guidelines and implement a "floating standard" which permitted flexibility.

•Discussion ensued.

ECONOMIC DEVELOPMENT DEPARTMENT Dave Lyons, Melanie Johnson, Mary Lawyer, Lane Palmer, Pat Sampson, and Joe Jones were present from the department, and Steve Ovel was present from Kirkwood Community College.

ARC 6572A

In discussing Chapter 7, Lyons stated any relationship to supplier network training which could lead to or which could be part of outsourcing or job displacement would not be approved.

•Rittmer asked if comments had been taken into account when the rules pertaining to the business network were drawn up and was told they had been and the department had worked in close conjunction with the community colleges. Lyons indicated sponsoring entities would be community colleges or businesses or business associations but sponsoring would not be done by the department.

•Palmer voiced a concern there should be some type of professional oversight of this public money.

•Weigel questioned the effect on rural counties of wage standards weighted for population. Lyons noted the department was searching for the most equitable way of ascertaining wage averages and was considering different ways of calculating wages on a regional basis.

Metcalf in chair

ARC 6727A

No committee action concerning proposed CDBG amendments to Chapter 23.

Priebe in chair

ARC 6726A

No committee action concerning proposed home investment partnership program amendments to Chapter 25.

ARC 6724A

No committee action concerning VAAPFAP amendments to 57.4(1), 57.4(5), 57.10(3).

ARC 6725A

No committee action concerning proposed rule 58.2 and subrule 58.4(5) regarding new jobs and income program.

ARC 6723A

No committee action concerning noticed Chapter 75, workforce development fund.

ARC 6722A

There were no questions concerning emergency rule 75.9, innovative skill development activities.

November Agenda

Metcalf requested a special review of child care centers that have emergency plans.

November Meeting


The November meeting was scheduled for November 12 and 13, 1996.

Adjourned

The meeting was adjourned at 1:15 p.m.

Respectfully submitted,


Kathleen K. Bates


Cathy Kelly

APPROVED:



Senator Berl Priebe, Cochair