

**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, July 13, 1999, in House Committee Room 1, State Capitol, Des Moines, Iowa.

Members present: Representative Janet Metcalf, temporary chair; Senators Merlin E. Bartz, Patricia M. Harper, H. Kay Hedge, John P. Kibbie, and Sheldon Rittmer; Representatives Clyde Bradley, Danny Carroll, Minnette Doderer, and Geri Huser.

Also present: Joseph A. Royce, Legal Counsel; Stephanie Pickens, office of the Administrative Rules Coordinator; Bruce Carr and Teresa Vander Linden, Administrative Code Office; caucus staff and other interested persons.

Convened •Metcalf convened the meeting at 9:45 a.m.

STATE PUBLIC DEFENDER Mark Smith represented the public defender's office.

ARC 9134A Chs 11 to 13 pertain to indigent defense services and court-appointed counsel eligibility guidelines.
 •Smith estimated for Kibbie that the \$15,000 class A felony limit should cover approximately 93 percent of cases and that attorneys may file for exemptions.
 •Rittmer was informed that 145 full-time public defenders handle almost all serious crime cases in counties served and over half of all cases statewide.

HUMAN SERVICES DEPARTMENT Mary Ann Walker, Maya Krogman, and Anita Smith represented the department. Doug Getter, Iowa Biotechnology Association, and Cal Hultman, Pharmaceutical Research and Manufacturers of America, were also present.

ARC 9115A No questions on reference corrections in 29.3 and 30.2.

ARC 9094A No questions on notice of decision for FIP and FMAP-related Medicaid applicants.

ARC 9137A Amendments pertain to the family investment and medical assistance programs.
 •Bartz expressed concern about the potential for program abuses due to the disregard of earnings-in-kind. Krogman responded that the department encounters few earnings-in-kind cases and is unaware of any cases in which clients have circumvented program requirements by taking advantage of the disregard policy.

ARC 9139A No questions on amendments intended to implement a system of "seamless" child care.

ARC 9140A No questions on annual adjustment to income eligibility guidelines for the emergency food assistance program.

ARC 9142A Walker outlined amendments regarding Medicaid eligibility for children.
 •Walker confirmed for Kibbie that Medicaid for children covers a portion of medically necessary dental work but no cosmetic dental work.
 •Walker will provide Harper with an estimate of the number of children made eligible for Medicaid as a result of the amendments.

ARC 9116A No questions on subsidized guardianship program, 75.1(11) and ch 204.

ARC 9144A Emergency amendments to ch 78 revise drug prior authorization rules and add new drug classes requiring prior authorization. Walker reported that a public hearing will be held as requested by pharmaceutical manufacturers.
 Hultman stated opposition to the amendments and distributed a position paper on drug prior authorization.
 Getter voiced concern about the implications for Iowa's pharmaceutical research industry and urged consideration be given to the cost benefits of the federal rebate and to the manner in which surrounding states address the issue.

ARC 9145A The amendment to 78.14 regarding Medicaid payment for hearing aids was promulgated in response to a petition for rule making.
 •Walker informed Metcalf that the amendment permits adults who sign an informed consent statement to waive the medical evaluation requirement.

ARC 9147A No questions on Medicaid amendments to chs 79 and 81.

ARC 9148A No questions on term of office for medical assistance advisory council officers.

ARC 9089A The HAWK-I program is amended to define extreme economic hardship. Walker reported that the board, after taking into account concerns expressed by ARRC members, decided to keep the 5% limit and not to define extreme economic hardship for an employer.
 •Bartz commented that omitting the definition could result in cancellation by small businesses of insurance benefits for employees whose children would be eligible for HAWK-I.
 •Smith concurred with Carroll that disincentives such as level of benefits and the need for coverage of spouses may serve as adequate deterrents to keep families with employer-sponsored coverage from shifting their coverage for children to HAWK-I.

ARC 9150A No questions on amendments relating to child care services.

JULY 13, 1999

ARC 9152A No questions on rate revisions for support and rehabilitative treatment services.
ARC 9154A No questions on mandated rate increases for foster family and adoptive homes.
ARC 9118A No questions on amendments pertaining to the foster home insurance fund.
ARC 9155A No questions on rescission of ch 164, foster care project grants.
ARC 9157A No action on amendments to ch 169 regarding funding for empowerment areas.
ARC 9158A No questions on amendments to ch 202, foster care services.

ETHICS AND CAMPAIGN DISCLOSURE BOARD Charles Smithson represented the board.
ARC 9136A No action on amendments to ch 4 adopted in response to recent litigation.
ARC 9109A No questions on administrative procedure rules.

COLLEGE STUDENT AID COMMISSION Julie Leeper represented the commission. Captain Mike Kuehn represented the Iowa national guard.
ARC 9123A No questions on administrative procedure rules.
ARC 9119A Vocational-technical tuition grant program guidelines for part-time recipients are amended.
•Leeper confirmed for Bartz that a statutory change would be necessary to allow FTE-plus students to receive more than the yearly maximum aid allowance.

ARC 9124A No questions on ch 14, osteopathic physician recruitment program.
ARC 9120A Proposed amendments to ch 20 implement changes to the Iowa national guard educational assistance program which allow students to use funds for expenses other than tuition and fees.
•Metcalf questioned the level of funding and noted that in the first year 50% of funds reverted. Leeper stated that the commission expects that the \$40,000 carryover to next fiscal year will be expended.
•Responding to Huser, Leeper explained that the guard uses the program to recruit high school students who must graduate, receive guard training, and enroll in college before becoming eligible for funds.
•Kibbie expressed satisfaction with the program, noting that it has not been in effect long and its primary aim is to boost guard enrollment.
•In response to Bradley's question about funds administration, Leeper explained that to ensure that tuition and fees are paid first all funds are sent directly to the college or university for disbursement to the student.
•Hedge expressed concern about program name changes made by the legislature and the associated administrative costs.
•Kuehn assured Huser that the guard approves of the rules. Leeper explained that rules were developed in consultation with the adjutant general's office, which carries out the program for which CSAC administers the funds.

ARC 9121A Proposed amendments to ch 32 pertain to the chiropractic forgivable loan program.
ARC 9122A No questions on proposed ch 35, teacher shortage forgivable loan program.
ARC 9125A No action on industrial technology forgivable loan program amendment.

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF Allen Williams, Wayne Palmer, and Melanie Johnson represented the department.
ARC 9093A Amendments to ch 23 concern the Iowa community development block grant program.
•Palmer informed Metcalf that the department notifies all cities and counties of changes to the program and of the availability of grants.

ARC 9092A No questions on amended definition of full-time.

Committee business
Minutes The minutes were approved.
New member Metcalf welcomed Representative Clyde Bradley who succeeds Christopher Rants on the committee.
Meeting dates The next meeting was set for August 3 at 9 a.m.
EPC notice The committee granted EPC permission to publish a public notice in the Bulletin.
Review requested At Huser's request, the city development board will be added to the September agenda for a special review of the court ruling on the moratorium issue.
August agenda Representatives from educational examiners and the education department are added to the August agenda since they were unavailable for the July meeting.

INSURANCE DIVISION Craig Goettsch, Angela Burke Boston, and Susan Voss represented the division. Other interested parties included David Tideman and Craig Walters of State Farm Insurance; Kirk Hansen, Alliance of American Insurers; Jan Karsjens of Collision Center in Winterset; Jack Gillis of the Certified Auto Parts Association (CAPA); Fred Haskins of the Iowa Insurance Institute; Tom O'Mara of Martensdale Collision Center; and Martha Martell of the Iowa Automobile Dealers Association.
ARC 9114A Proposed rules 50.81 to 50.88 concern the sale of securities at financial institutions.
•Goettsch outlined for Metcalf steps the division has taken to ensure that consumers know that financial securities are not insured by FDIC.

Boston explained that proposed rule 15.15 mandates that insurers requiring the use of after market parts clearly notify policyholders that after market parts are used to repair vehicles. Boston agreed to the committee's request for a public hearing.

Hansen expressed opposition to the rule on the grounds that it contradicts other disclosure requirements, suggests that warranties for the remaining original equipment manufacturer (OEM) parts may be void, and gives the impression that after market parts are inferior to OEM parts. Hansen stated that the Magnusson-Moss Warranty Act provides that use of after market parts cannot void the warranty on remaining OEM parts. Hansen asked that the issue be referred to the legislature.

- Boston advised Metcalf that the disclosure required by Iowa Code chapter 537B is provided to consumers at the time of a vehicle repair whereas rule 15.15 requires notification to consumers at the time of policy purchase.

- Boston told Hedge that a definition of after market parts is provided in 537B and in rules and that a recycled part is neither after market nor OEM but salvage.

- Boston informed Bradley that under the proposed rule, notice applies only to the collision coverage portion of policies. Boston also explained that the division promulgated the rule out of concern for consumers who do not learn of their policy's provisions concerning after market parts until they need to have a car repaired. Bradley commented that the notice should differentiate between the use of structural versus nonstructural after market parts.

- Rittmer asserted that, as a consumer, he assumed OEM parts would automatically be used to repair a new car under warranty.

Karsjens opposed the amendment and distributed a written summary of concerns.

- Responding to concerns expressed by Bartz regarding resale of repaired cars, Tideman stated that after market parts often do not exist for newer models and that his agency guarantees all replacement parts whether after market or OEM.

Gillis explained the role of CAPA and voiced opposition to the amendment, stating that the disclosure requirement is an attempt to protect car company monopolies by causing consumers to feel something is wrong with after market parts.

- Gillis told Bartz that not all after market parts are CAPA-certified. Tideman stated that the State Farm guarantee requires parts be either CAPA-certified or OEM.

- Gillis informed Doderer that CAPA is an independent, nonprofit, standard-setting organization which receives 38% of its funding from the insurance industry and the remainder from manufacturers who pay 75 cents for every part CAPA certifies.

Citing his agency's efforts to educate consumers about after market parts use and the low number of complaints from policyholders, Tideman questioned whether consumer protection concerns prompted the rule and also questioned why notice would be given to the consumer at the time of policy delivery rather than at the time of purchase.

- Gillis told Huser that CAPA is implementing the recommendations made in Consumer Reports, such as requiring galvanization and vehicle tests.

- Harper reported on a letter from an auto shop dealer who complained that some after market parts do not fit and require extra labor not covered by insurers.

O'Mara gave the committee a video on after market parts.

Martell expressed support for the rule.

EDUCATION DEPARTMENT Leland Tack and Sue McCurdy represented the department. Galen Howsare of the West Des Moines community school district was also present.

Special review

At Metcalf's request, Tack reported on upcoming rules intended to implement advance funding for new students. Instead of prorating the funds across districts, the school budget review committee (SBRC) intends to allocate moneys to districts after taking into account the amount and relative budget impact of growth in each district.

- Huser suggested that the department clarify waiver provisions and set out parameters. Royce provided Tack with copies of waiver rules adopted by other agencies.

- Huser and Bartz concurred with Howsare's view that the legislature intended for funds to be prorated based on the third Friday in September enrollment count to maintain the integrity of the state cost per-pupil.

- Metcalf recommended that the department adopt the rules on an emergency-after-notice basis rather than on an emergency basis.

ENVIRONMENTAL PROTECTION COMMISSION Anne Preziosi, Scott Vander Hart, and Jeff Geerts represented the commission.

ARC 9098A

Amendments to chs 22, 23, and 25 pertain to air quality.

- Vander Hart will be in touch with Bartz to explain the difference between standards outlined in subparagraphs 22.103(2)"a"(1) and 22.103(2)"b"(3).

ARC 9097A

Proposed ch 105 pertains to organic materials composting facilities.

- Geerts confirmed for Bartz that "same farm" refers to a farm operation not a farm site. Bartz suggested that the commission consider changing the distances specified in 105.9(6) to mirror those required for livestock confinement operations.

•Bradley questioned whether the distances from wells specified in 105.9(6) were appropriate. Geerts will look into the issue.

NATURAL RESOURCE COMMISSION Mike Carrier and Steve Dermand represented the commission.

ARC 9170A New ch 24 establishes a bluffslands protection revolving loan fund. Carrier explained that \$500,000 is allocated equally between the Mississippi River and Missouri River bluffslands to provide loans to private conservation organizations.

•Bartz expressed the view that the program was intended to be implemented statewide because "bluffslands" includes not only the Mississippi and Missouri rivers but also their tributaries. Carrier responded that he was unaware some legislators held this view and stated that inclusion of tributary bluffslands would complicate efforts to divide the funds equally between the two rivers.

ARC 9174A No questions on proposed ch 29, local recreation infrastructure grants program.

ARC 9172A Amendments to ch 30 pertain to grants for lake restoration.

At Carrier's request, ARRC agreed to emergency adoption of ARC 9172A, ARC 9170A and ARC 9174A so that grants may be awarded sooner.

ARC 9171A No action on proposed rule 40.47 establishing a speed and distance zone at McGregor on the Mississippi.

ARC 9173A No questions on amendments to ch 61 which increase storage fees for boats and change the length of stay for campers at Lake Manawa State Park.

LIBRARIES AND INFORMATION SERVICES DIVISION Sharman Smith represented the division.

ARC 9159A No questions on rule 3.2, enrich Iowa program.

PERSONNEL DEPARTMENT Greg Cusak represented the department.

ARC 9104A The amendments will be included on the August agenda since the department's representative was unable to attend.

ARC 9169A No questions on noticed amendments to ch 21.

ARC 9168A No action on emergency amendments to ch 21 pertaining to IPERS.

RACING AND GAMING COMMISSION Jean Davis from the attorney general's office and Jack Ketterer represented the commission.

Special review Ketterer and Davis summarized the actions that led to the recent court ruling. Davis reported that the temporary injunction applies only to the rule on credit terminals.

At Royce's request, Davis outlined the factors that may influence the court's final ruling.

•Carroll stated the opinion that legislation in 99F was intended to prevent persons from obtaining credit at gambling sites and if the court should rule against the commission, a loophole will have been created.

PROFESSIONAL LICENSURE DIVISION Marge Bledsoe represented the division. Other interested parties included members of the cosmetology board, Richard Sheriff of R&S Styles, and Mary Lewis of Just Hair.

ARC 9099A to 9101A, 9103A, 9105A, 9128A, and 9163A to 9167A pertaining to uniform rules on agency procedure were considered as a group. No questions were asked.

ARC 9129A Amendments to ch 60 eliminate the practical examination for licensure in cosmetology. Bledsoe reported that a public hearing was held over the ICN and many comments were received.

•Responding to Metcalf, Bledsoe explained that an objective written exam can test almost everything related to cosmetology, particularly criteria related to public health and protection, and that practical tests are subjective and may not be legally defensible. Bledsoe added that very few people fail the practical exam.

Sheriff expressed the view that a practical exam is necessary to uphold professional standards, to maintain reciprocity, and to ensure that cosmetologists can perform the work for which they are licensed.

Lewis opposed eliminating the exam and urged that it be improved not eliminated.

ARC 9106A No questions on amendments to chs 220 and 221.

ARC 9102A Amendments to social work examiners rules include a definition of private practice.

•Metcalf expressed concern that recent legislation might be affected by the definition.

•Responding to Huser, Bledsoe acknowledged the definition's possible implications and stated that the board added the definition to prevent social workers licensed at the master's level from practicing at a higher level than their license permits.

Motion to delay Metcalf moved a 70-delay on ARC 9102A.

Motion carried The motion to delay passed.

ARC 9102A will be revisited at the August meeting.

ARC 9107A No questions on amendments to chs 300 and 301.

PUBLIC HEALTH DEPARTMENT Jennifer Hart and Judy Solberg represented the department.

ARC 9111A No action on amendment to ch 15 requiring facilities to provide soap for bathroom showers and lavatories.

ARC 9113A Solberg summarized the amendments to ch 73, special supplemental nutrition program for women, infants, and children (WIC).

ARC 9112A No action on amendments to ch 10 pertaining to transportation of a dead human body or fetus and disposition of cremated remains.

ARC 9132A No action on transfer of state medical examiner rules.

ARC 9176A No questions on ch 138, trauma system evaluation quality improvement committee.

ARC 9110A Amendments to ch 176 extend to five years the project period for awards or grants.

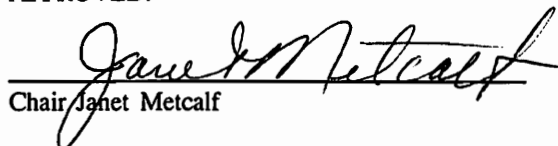
August agenda Bartz asked that ARC 9161A pertaining to bulk dry animal nutrients be added to the agenda. Hedge suggested members review the behind-the-wheel driver instructor rules before the meeting.

Adjourn The meeting was adjourned at 3:40 p.m.

Respectfully submitted,

Teresa Vander Linden

APPROVED:


Chair Janet Metcalf