

MINUTES OF THE SPECIAL MEETING OF THE ADMINISTRATIVE RULES REVIEW COMMITTEE

- Time of meeting: The special meeting of the Administrative Rules Review Committee (ARRC) was held Tuesday, January 4, 2000, in Room 116, State Capitol, Des Moines, Iowa.
- Members present: Representative Clyde Bradley, chair, and Senator H. Kay Hedge, vice chair; Senators Merlin E. Bartz, Patricia M. Harper, John P. Kibbie, and Sheldon Rittmer; Representatives Danny Carroll, Minnette Doderer, and Janet Metcalf. Representative Geri Huser was excused.
- Also present: Joseph A. Royce, Legal Counsel; Brian Gentry, Administrative Rules Coordinator, and Stephanie Pickens, Assistant; Kathleen K. Bates, Administrative Code Editor, and Teresa Vander Linden, Assistant; caucus staff and other interested persons.
- Convened •Chair Bradley convened the meeting at 9:10 a.m.
- HUMAN SERVICES DEPARTMENT** Mary Ann Walker represented the department.
- ARC 9565A No questions on amendments to departmental organization, ch 1.
- ARC 9562A No questions on proposed 25.11 to 25.19 concerning county management plans for mental health, mental retardation and developmental disability services.
- ARC 9566A No questions on adult care income deduction for FIP eligibility, ch 41.
- ARC 9568A No questions on SSA and community spouse resources and needs annual adjustment.
- ARC 9569A No action on amendments to ch 65 pertaining to the standard utility deduction.
- ARC 9563A No questions on proposed amendment to 75.1, transitional Medicaid quarterly report.
- ARC 9570A Walker summarized changes that will be made to 75.1(39), Medicaid coverage for working individuals with disabilities.
- ARC 9571A No action on 75.13(2) concerning life estates and remainder interests.
- ARC 9526A DHS intends to emergency adopt these amendments to the HAWK-I program.
- Metcalf questioned the department's authority to expand the program and requested that ARRC review the final amendments before emergency implementation.
- Walker will provide Carroll a copy of the directive from HCFA pertaining to American Indian and Alaskan Native children.
- ARC 9572A No questions on 95.14, child support closure.
- ARC 9564A No action on the proposed amendment to 170.2(2) concerning child care services.
- AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT** John Schiltz represented the department.
- ARC 9546A Proposed amendments to ch 64 pertain to pseudorabies.
- Kibbie reported receiving requests that buildings be required to remain empty for a period of time after an infected herd is moved out. Schiltz responded that under the federal buyout program a 30-day vacancy is required, but properly cleaned and disinfected buildings can be safely repopulated in less than 30 days. Although vaccination and subsequent testing are required for swine entering infected buildings, "area spread" remains a concern among neighbors.
- Bartz and Rittmer agreed that neighbors of infected herds might be better protected by a period of vacancy. In addition, Bartz asked the department to reconsider the statistical sampling testing requirement for the lesser of 30% of the herd or 30 sows. In response to Bartz's inquiry about hogs from Minnesota, Schiltz reported that the virus is under control in Minnesota and additional restrictions have been lifted.
- Bradley was informed that the pseudorabies advisory council is meeting January 12, and they will be advised of the recommendations made today.
- SOIL CONSERVATION DIVISION** Ken Tow and Bill McGill represented the division.
- ARC 9528A No questions on proposed amendments to ch 10.
- DENTAL EXAMINERS BOARD** Connie Price represented the board. Brice Oakley represented the Iowa Dental Hygienists Association.
- ARC 9552A The practice of dental hygiene is defined in 1.1. Comments received pertain to supervision by dentists and requests for assurances that dental hygienist duties may not be delegated to dental assistants.
- Price responded to Metcalf that dental assistant registration legislation is pending, so the board will be clarifying portions of this definition that can be delegated to a dental hygienist only.
- Oakley voiced support for the process but uncertainty about wording in the preamble that the rules do not preclude the performance of such activities by other dental auxiliary. Oakley encouraged the board to carefully work out the wording of the rule to be consistent with legislation pertaining to dental assistants.
- ARC 9553A These proposed amendments would rescind the subrules and amendments under session delay, except for 29.6(6), which was noncontroversial.
- Motion Metcalf moved the delay on 29.6(6) be lifted.
- Motion carried The motion to lift the session delay on 29.6(6) passed.

Dental Examiners Board(continued)

•Metcalf commented on the need for written office protocols.

Oakley urged the board to resolve the issues pertaining to induction, monitoring and deduction of nitrous oxide.

ECONOMIC DEVELOPMENT DEPARTMENT Allen Williams represented the department.

ARC 9533A No action on amendments to the new jobs and income program, ch 58.

ARC 9532A No questions on amendments to ch 59 concerning enterprise zones.

EDUCATION DEPARTMENT Jim Tyson, Jim Clark, and Julia Thorius represented the department.

ARC 9531A Proposed amendments to ch 17 pertain to open enrollment.

•Bartz was informed that "good cause" is defined in statute. In response to Bartz's concern about the exclusion by rule of closure of buildings, Tyson maintained that the board of directors of a school district has the authority to establish attendance centers.

ARC 9591A Chapter 41 establishes rules for special education.

•Clark informed Metcalf that these rules are aligned with federal regulations.

•In response to questions raised by Hedge and Rittmer, Clark explained provisions for discipline of special education students which attempt to balance safety needs and the obligation to provide special education to students with disabilities. The rules, which are verbatim from the federal regulations, allow for suspensions of up to ten days and educational services provided in another setting for special education students who are expelled. Clark added that the IEP team has to make a determination of whether the behavior is related to the disability.

•Harper questioned the inequity that results when there is no obligation for districts to provide education in an alternate setting for expelled non-special education students.

•Carroll speculated that providing all special education services included in an IEP could result in an undue financial hardship on districts. Carroll pointed out that the ADA requires that a "reasonable accommodation" be made and allows for exceptions when an undue financial hardship would result. Clark responded that the ADEA requires an "appropriate" education be provided, and the IEP determines what is appropriate. Further, weighted funding is provided for special education students.

ARC 9530A No questions on proposed amendments to ch 69 pertaining to access to a school breakfast program.

ELDER AFFAIRS DEPARTMENT Stephanie Laudner represented the department.

ARC 9592A Subrules 27.2(3) to 27.2(8) pertain to certification fees for assisted living programs.

Motion to refer Metcalf moved a general referral of the fees.

Motion carried The motion to refer certification fees for assisted living programs to the general assembly passed.

PETROLEUM UNDERGROUND STORAGE TANK FUND BOARD, IOWA COMPREHENSIVE

Scott Scheidel represented the board. Mark Thompson represented the attorney general's office. Ron Marr represented Petroleum Marketers of Iowa.

ARC 9503A Proposed amendments to chs 10 and 11 pertain to the transfer of assets and liabilities of the insurance fund to a private, nonprofit entity.

•Scheidel responded to Kibbie that the legislation established an insurance board to govern the transition.

•Scheidel informed Metcalf that the board intends to adopt the rules by March 1, and Metcalf requested that the board not file the rules emergency under any circumstances.

•Responding to Bartz's concern about the intent of the legislature, Thompson indicated that the legislation requires privatization by July 1, 2004.

Thompson reported that there are some concerns that changes in the program may be made after it is privatized.

Marr pointed out that the insurance fund is money from tank owners, not the state.

ARC 9472A No questions on 10.2, deductible options for insurance coverage.

ARC 9473A No questions on amendments to ch 11.

INSURANCE DIVISION Angela Burke Boston and Craig Goettsch represented the division. Tom O'Mara represented the Iowa Independent Auto Body Association. Jan Karsjens represented East Green Collision. Martha Martell represented IADA.

ARC 9558A Boston summarized comments received on 15.15, use of aftermarket crash parts in automobile insurance policies, and changes from the notice.

•Rittmer expressed the view that persons should be informed at the time the insurance is purchased and added that the disclosure required at the time of delivery may not be read. Boston pointed out that independent insurance agents oppose having that burden since the requirement is a company decision.

•Boston indicated to Carroll that there have been consumer complaints about aftermarket crash parts and that policies requiring only OEM parts are available.

Insurance Division(continued)

- Kibbie inquired about requirements of lenders, leasing companies and rental companies. Martell responded that although lenders require insurance, they do not specify OEM or aftermarket parts.
- Doderer was informed that the division is attempting to educate consumers through presentations and brochures.
- Motion to delay Rittmer moved a session delay be imposed on the rule.
- Motion failed The session delay motion did not pass.
- Motion to refer Hedge moved a general referral.
- Motion carried The motion to refer rule 15.15 to the general assembly passed.
- ARC 9556A No action on 50.109 and 50.110 concerning examination requirements for investment advisers and investment adviser representatives.

ENVIRONMENTAL PROTECTION COMMISSION Anne Preziosi and Doug Campbell represented EPC.

- ARC 9536A No action on proposed Title V operating fee, 22.106(1).
- ARC 9535A Proposed 23.1(4) pertains to adoption of national emission standards.
- Bartz requested information about the schedule for compliance with federal standards.

NATURAL RESOURCE COMMISSION Janet Ott, Steve Dermand, and Daryl Howell represented the commission.

- ARC 9585A No questions on amendments to ch 28, ATV vehicle registration cost-share program.
- ARC 9581A The proposed amendment to 49.5 adds a segment of the Des Moines River to the list of meandered streams in which operation of motor vehicles is prohibited.
- Kibbie requested information about the effect of meandered stream listings on drainage district designations. Dermand will find out.
- ARC 9584A No questions on amendments to ch 61 concerning state parks and recreation areas.
- ARC 9583A No questions on designation of the Topeka shiner as a threatened species.
- ARC 9582A No questions on the proposed correction of a legal description in ch 83.

TRANSPORTATION DEPARTMENT Gary Harris and Jon Ranney represented the department.

- ARC 9527A No action on proposed ch 717, general aviation airport infrastructure program.

Committee Business

- Budget LSB director Diane Bolender presented a proposed ARRC budget.
- Motion to approve Doderer moved approval of the proposed budget.
- Motion carried The motion to approve the budget passed.
- Minutes Metcalf asked that the minutes of the December 14, 1999, ARRC meeting be corrected to reflect her comment that, in response to her request, the Treasurer's office had given assurances that the LIFT amendments would not be emergency adopted and then, despite those assurances, proceeded with an emergency adoption.
- Motion to amend Bradley asked unanimous consent to so amend the minutes.
- Motion carried The committee unanimously agreed to the amendment of the minutes.
- February meeting The next meeting was scheduled for Friday, February 4, 2000.

PROFESSIONAL LICENSING AND REGULATION DIVISION Kay Chapman represented the division and Pam Griebel represented the attorney general's office.

- ARC 9577A Proposed ch 5 establishes waiver procedures for all professional licensing boards of the department of commerce.
- Griebel responded to Metcalf that 5.3(4) allows for more specific provisions of law or rule to prevail. Gentry added that the executive order also permits agencies to determine contexts in which waivers might not be appropriate.
- In response to Bradley's concerns about mandatory waivers, Chapman emphasized that waivers are mandatory only if the board finds that no purpose of the rule would be served. Gentry stressed that the burden of persuasion is on the petitioner; and the board has discretion in its findings.
- Kibbie suggested clarification in the wording of 5.3(4) prior to adoption. Griebel and Gentry agreed to reconsider the language.
- Bartz conceded that a uniform process for seeking waivers may be advisable, but the criteria for granting waivers need to be specific to the agency and the rule.

Executive Orders

Gentry reviewed the previous committee discussions and identified three areas of concern: the legislative history of HF 667, the governor's authority to issue the order, and the policy issues. Gentry asked David Lyons to present the waiver rules drafted by IDED. Lyons distributed copies of the rules and stated that the rules afford the agency and the public the flexibility that they need. Michelle Casper related how IDED has sought public input via the Internet in its review of agency rules and has provided training sessions for agency staff administering rules.

Executive Orders(continued)

•Lyons indicated to Metcalf that the rules will allow the agency to respond more immediately to opportunities that require exceptions. Gentry identified accountability as another effect of the uniform waiver rules. Prior to the executive order, waivers had been granted by numerous agencies under widely varying criteria. Gentry added that the authority to make exceptions is inherent in the rule-making authority that the legislature has delegated to agencies.

•Bradley agreed that the process for waivers is in the purview of the executive branch but held that establishing criteria for granting waivers depends on legislative intent. Bradley also suggested that the terms "waiver" and "variance" be defined.

REVENUE AND FINANCE DEPARTMENT Carl Castelda represented the department.

- ARC 9550A No questions on amendments to chs 5 and 6.
- ARC 9587A No questions on interest rate on interest-bearing taxes for calendar year 2000.
- ARC 9586A No questions on amendments pertaining to tax on cigarettes and tobacco.
- ARC 9589A No questions on sales and use tax amendments.
- ARC 9590A Proposed amendments to chs 40, 52, 54, 58 and 59 relate to individual and corporate income tax.
- Bartz was informed that income tax booklets include a listing of bonds issued by the state of Iowa and its political subdivisions.
- ARC 9551A Amendments to chs 48, 52, and 54 pertain to individual and corporation tax.
- Castelda told Carroll that some IDED programs include recapture provisions for tax benefits, and attempts are made to recoup benefits if an entity no longer complies.
- ARC 9588A No action on death-related taxes.

MEDICAL EXAMINERS BOARD Ann Mowery represented the board.

- ARC 9573A Rule 11.31 increases license fees.
- Mowery responded to Harper that the licensure process in Iowa is extremely complex and has been taking in excess of four months, but the board would like to reduce that time to 60 days. The fee increase will provide additional staff to expedite the process.
- Kibbie was informed that the increases are expected to generate an additional \$240,000 to fund 5 FTEs.
- Bartz requested information on the amount of money generated by fees and the amount spent on salaries.

PHARMACY EXAMINERS BOARD Lloyd Jessen represented the board.

- ARC 9541A No action on proposed amendments which include the uniform waiver rules.
- ARC 9542A No questions on proposed 3.2 pertaining to pharmacist license certificates.
- ARC 9543A No action on proposed 4.1 relating to pharmacist preceptor. Jessen stated that the language may need to be clarified.
- ARC 9539A No questions on termination of the proposed amendment to 7.13(1).
- ARC 9544A Proposed amendments to ch 8 pertain to confidentiality.
- At the request of Metcalf, Jessen will see if pharmacies are preserving confidentiality of persons signing for prescription drugs.
- ARC 9540A No questions on amendments to ch 8.
- ARC 9538A No comments on termination of proposed amendments to ch 21 concerning electronic transmission of prescriptions by patients.
- ARC 9545A No comments on proposed amendment to 36.1(4) concerning time limit for reporting out-of-state disciplinary actions.

TREASURER OF STATE Karen Sinclair represented the treasurer; David Lyons represented IDED.

- ARC 9576A Sinclair distributed 4.11 as revised in response to ARRC request.
- Sinclair agreed with suggestions from Bartz, Metcalf and Bradley regarding the need to improve the wording in 4.11(2)"c" and 4.11(3)"c" and indicated to Metcalf that it is not the intention of the treasurer to prorate funding.
- Lyons assured the committee of cooperation between IDED and the treasurer's office in implementing legislative intent.
- A comparison of waiver rules and a summary of printing costs for the IAC and IAB for the past six years were distributed.

Adjourn The meeting was adjourned at 3:50 p.m.

Respectfully submitted,

Kathleen K. Bates
Kathleen K. Bates

APPROVED:

Clyde Bradley
Chair Clyde Bradley

H. Kay Hedge
Vice Chair H. Kay Hedge