

**MINUTES OF THE AUGUST 2001 MEETING
OF THE
ADMINISTRATIVE RULES REVIEW COMMITTEE**

Date of meeting: The regular meeting of the Administrative Rules Review Committee (ARRC) was held Tuesday, August 14, 2001, in Room 116, State Capitol, Des Moines, Iowa.

Members present: Senator Merlin E. Bartz, Chair; Representative Clyde Bradley, Vice Chair; Senators Patricia Harper, JoAnn Johnson, and John P. Kibbie; Representatives Danny Carroll, Marcella Frevert, Janet Metcalf, and Paul Scherrman. Senator Sheldon Rittmer was excused.

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

Convened Chair Bartz convened the meeting at 10 a.m.

RACING AND GAMING COMMISSION Jack Ketterer, Jean Davis, Karyl Jones and Bill Hanson represented the commission. Other interested parties included Tom Flynn representing Prairie Meadows, Herb Strentz of the Iowa Freedom of Information Council, and Gilbert Cranberg, formerly of the Des Moines Register.

Special review Johnson requested a special review after an editorial in the Des Moines Register revealed that Prairie Meadows charges \$25 per hour to compile information not readily available. Cranberg stated that a report issued by Prairie Meadows mentioned that purses at that track account for a significant portion of the income for an important segment of the Iowa horse industry. Seeking the basis for the statement, Cranberg asked Prairie Meadows for a list of winners of purses at Prairie Meadows and was advised of the fee for compiling the information. Flynn stated that Prairie Meadows freely gives information if it is available when requested; if the information is not available, a reasonable fee is charged for compilation of the information. Davis noted that the regulatory authority could, by rule, require the filing of a report which would become a public record when filed with the commission. Ketterer confirmed that the commission fully complies with the open records law; and although the private entity that operates Prairie Meadows is not subject to the statute, the racing program contains much information about purses won by leading owners.

Strentz spoke in favor of legislation that would make gambling licensees subject to the open records law.

Metcalf urged Prairie Meadows to make public the requested information about the \$17 million paid out in purses. Bartz reminded interested parties that Iowa Code section 17A.7 provides a means by which parties may petition an agency to adopt a rule.

REVENUE AND FINANCE DEPARTMENT Carl Castelda represented the department.

ARC 0829B No questions the amendment to 4.1(4)"b"(1) to clarify audit of multilevel marketers.

ARC 0831B No action on proposed 52.1(9) relating to foreign corporations storing goods in an Iowa warehouse. Carroll and Castelda discussed the effect of the rule relative to the intent of the legislation.

ARC 0825B No questions on proposed 53.6 and 59.6 concerning income from obligations issued by the state or its subdivisions.

ARC 0830B No questions on ch 85 pertaining to the tobacco master settlement agreement.

HUMAN SERVICES DEPARTMENT Nancy Freudenberg, Lucinda Wonderlich-Fuller, Charlene Hansen, Deb Bingaman, Maya Krogman, DeAnn Barnhill, Mary Bilstad, Eileen Creager, and Sally Nadolsky represented the department. Other interested parties included Lynn Ferrell of Polk County Health Services, Anastasia Baker of the Iowa State Association of Counties, and Bob Holtz of Iowa Healthcare Association.

ARC 0768B No action on the hardship exemption which allows for six-month extensions of FIP assistance.

ARC 0807B No questions on the proposed rescission of ch 49, transitional child care program.

ARC 0769B No questions on SSA rate increases for residential care facilities and in-home health-related care.

ARC 0808B No questions on proposed 65.1 regarding suspension of food stamp benefits.

ARC 0827B No formal action on amendments to the food stamp program. Johnson was advised that unless a change is made at the federal level, the incomes of students saving for college must be counted toward the family's income in determining food stamp eligibility. Neither the department nor the committee received a response to the letters sent to Iowa's Congressional delegation. Royce agreed to make additional contacts. Bartz requested information about federal requirements relative to the workfare program.

ARC 0770B No questions on the annual update of income guidelines for the emergency food assistance program.

AUGUST 14, 2001

Human Services Department (continued)

- ARC 0772B No questions on 75.1(40) concerning Medicaid coverage for uninsured women receiving cervical or breast cancer treatment.
- ARC 0773B Amendments to ch 75 implement a federal requirement that Medicaid benefits not be suspended because of a recipient's noncooperation. Bartz requested a copy of the department's letter from HCFA which caused this change in policy.
- ARC 0775B No questions on annual update of statewide average costs and charges for nursing care.
- ARC 0776B No questions on Medicaid reimbursement for dental services at ambulatory surgical centers.
- ARC 0778B No action on child welfare targeted case management services.
- ARC 0779B No questions on the addition of residential-based supported community living service to HCBS MR waiver group.
- ARC 0780B Amendments to chs 78 to 81 implement a modified price-based case-mix system for Medicaid reimbursement of non-state-owned nursing facilities. Freudenberg stated that language will be clarified to reflect that phased-in rates will be effective in 2003, rather than 2002. Holtz expressed support for the rule and agreed with the correction proposed by the department.
- ARC 0782B Amendments to ch 79 implement a 3 percent reduction in reimbursement rates. The department was advised to apply the reduction to case management services because the legislature did not specify that these services were exempt. Baker and Ferrell voiced opposition to the department's decision to include case management services in the reduction, provided examples of past provider rate reductions which were not applied to case management services and demonstrated the financial benefit of the state's following that precedent. Ferrell also expressed a concern about the department's application of the reduction to adult rehabilitation option services under Medicaid.
- Motion to object Kibbie moved an objection to the amendments.
The department conceded some uncertainty about the decision. Gentry urged the committee to seek an attorney general's opinion regarding application of the reduction to case management services.
- Motion withdrawn Kibbie asked unanimous consent to withdraw the motion to object. Bartz asked the matter to be placed on the September agenda.
- Motion Bradley moved that Royce ask the attorney general's office for an informal opinion on Medicaid reimbursement rates.
- Motion carried The motion carried.
- ARC 0784B No questions on amendments to Medicaid waiver services.
- ARC 0809B No questions on proposed amendments affecting managed health care providers.
- ARC 0786B No action on mileage reimbursement increase and extension of time for postsecondary training for PROMISE JOBS recipients.
- ARC 0810B No questions on proposed amendments to ch 110 for group child care homes.
- ARC 0787B No questions on record check evaluations for health care programs.
- ARC 0789B No questions on fees and income eligibility guidelines for child care services.
- ARC 0791B No questions on rate freezes for adoption, independent living and family planning service providers.
- ARC 0793B No questions on rate increase for foster family homes and adoptive homes.
- ARC 0795B No action on nursing facility conversion and long-term care services development grants.
- ARC 0811B No questions on access to dependent adult abuse information.
- ARC 0797B No questions on rescission of ch 179, pertaining to the wrap-around funding program.
- ARC 0799B No questions on RTSS rate freeze.
- ENVIRONMENTAL PROTECTION COMMISSION** Corey McCoid, Jon Tack and Wayne Gieselman represented the commission.
- ARC 0816B No questions on the amendment to ch 22 regarding air pollution monitoring.
- ARC 0815B No questions on certifications and fees for manure applicators and manure storage structures.
- ARC 0818B Proposed 65.6(12) adopts by reference the concentrated animal feeding operation registration program. Gieselman indicated that EPA inspections of unregistered facilities will be taking place in the immediate future.
- ARC 0812B No questions on ch 111 concerning financial assurance requirements for municipal solid waste landfills.

NATURAL RESOURCE COMMISSION Dale Garner and John Phoenix represented the commission.

ARC 0813B No questions on fee for electronic license sales.

ARC 0814B No questions on game management areas.

ARC 0817B No questions on unprotected nongame.

IOWA FINANCE AUTHORITY Loyd Ogle and Mike Tramontina represented the authority. Other interested parties included Kris Saddoris and Jim Conlin of Conlin Properties.

ARC 0764B and

ARC 0765B

Tramontina distributed a memo intended to clarify the distinction between the hard-to-house populations in the HAF program and in the tax credit program. Ogle clarified the four funding categories for HAF funds and explained that while the hard-to-house population is defined in the rules, the term is not used in any of the funding categories; therefore, the definition will be removed from the rules before any additional grants are made. In response to Metcalf's inquiries about the percentage of dollars and credits allocated to the lowest income populations, Tramontina provided examples of how HAF funds and low-income tax credits have been used. Tramontina agreed to provide Metcalf with data to demonstrate that the tax credits awarded to not-for-profit entities in Iowa are in line with the federal requirement. Ogle advised Kibbie that in 1999, 55 percent of Iowa's 19,000 homeless were children.

Conlin urged IFA to require underwriting standards to be applied equally to all projects. Saddoris reported that the recommendation relating to the hard-to-house population was not a high priority of the task force and expressed opposition to the level of the state's allocation of resources to this small segment of the population.

MEDICAL EXAMINERS BOARD Ann Mowery represented the board. Other interested parties included Cliff Berman and Jill Helm of Allscripts and Jeanine Freeman of the Iowa Medical Society.

ARC 0833B

Proposed 13.6 provides quality assurance standards for automated dispensing systems used by physicians. Both the board of medical examiners and the board of pharmacy examiners support the separate standards developed by the boards. Freeman reported that the Iowa Medical Society has no objection to the rule. Johnson was assured that drug counseling will be provided when drugs are dispensed in the physician's office and that each medical clinic will determine which drugs to dispense. Mowery added that consumers will have the option of obtaining drugs from their pharmacy or from the physician's office, but noted that physicians may dispense only the initial prescription, not refills.

PHARMACY EXAMINERS BOARD Terry Witkowski represented the board. Other interested parties included Cliff Berman and Jill Helm of Allscripts and Jeanine Freeman of the Iowa Medical Society.

ARC 0801B

Proposed ch 9 pertains to automated medication distribution systems used by pharmacists. The rules relate to three generic types of systems and are more detailed than the proposed rule of the medical examiners board. Freeman reported that the Iowa Medical Society has submitted several comments to the board. Bradley pointed out language which may need to be clarified or simplified.

ARC 0802B

No questions on proposed amendments to ch 10 regarding registration fees.

ECONOMIC DEVELOPMENT DEPARTMENT Melanie Johnson and Hank Manning represented the department. Other interested parties included Rick Allerly of West Central I-80 Development and Marsha Cory of SCI.

Special review

Johnson requested a review of community development programs. Allerly, who works for a private nonprofit organization, stated that the current rule makes for unfair competition with councils of government (COG) for administration of CDBG grants. Unlike private nonprofit entities, COGs do not have to go through the procurement process. COGs can underbid private entities because the amount allocated for administration is clearly identified in their grant application. Corey concurred that administration fees charged by COGs tend to be lower when a private entity is competing for the project. Manning responded that the department views COGs as an extension of the cities and counties they serve and that COGs cannot charge more than actual costs; however, Manning conceded to Carroll that COGs may charge less than actual costs. Senator Johnson suggested that bid information be kept confidential and all bidders be required to go through the procurement process. Melanie Johnson responded that under the rules recipients can choose to work through their COG or through competitive procurement and commented that the department is reviewing its rules and welcomes comments from affected parties.

AUGUST 14, 2001

LIBRARIES AND INFORMATION SERVICES DIVISION Mary Wegner represented the division.

- ARC 0835B Proposed ch 4 sets out policy for use of meeting rooms. Metcalf asked the division to be certain that the policy is in accord with policies of other governmental entities and Supreme Court decisions.
- ARC 0804B No action on ch 9 relating to the process for appointment of boards of trustees of library service areas. Wegner advised Frevert that due to reorganization of the former regional library system, it is not possible to guarantee that former members will be appointed.

ELDER AFFAIRS DEPARTMENT Beth Bahnson represented the department.

- ARC 0800B No questions on proposed ch 16 concerning the senior living coordinating unit. Bahnson explained two changes from the notice that will be adopted.
- ARC 0826B No action on proposed amendments to ch 26 relating to elder group homes. Metcalf asked the department to be sure the "no conviction of a felony" language is consistent with that used in other facilities.
- ARC 0828B No questions on amendments to ch 27 concerning assisted living programs.

INSURANCE DIVISION Susan Voss represented the division.

- ARC 0834B Craig Goetsch was not available; review will be rescheduled for September.
- ARC 0823B No action on proposed amendments to ch 77 relative to MEWAs. In regard to the Johnson County United Way agencies, Voss indicated that the division is not willing to lower the surplus standards, but will grant a waiver to allow the surplus to be built up over a period of time.

PUBLIC EMPLOYMENT RELATIONS BOARD Sue Warner represented the board.

- ARC 0726B A per diem fee increase is proposed for fact finders, arbitrators and teacher termination adjudicators. Warner reported that IDOP opposes the increase in light of the state budget problems, whereas another commenter suggested removing the cap and letting the market dictate the fee. Warner provided information on fees paid in other states. In response to Metcalf's inquiry, Warner stated that although the proposed \$650 fee is below the average charged by other states, the board may be willing to consider a lesser amount, such as \$600. Kibbie suggested the statute be reviewed.

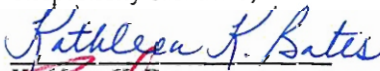
Committee business Johnson moved approval of the July minutes. The motion carried.

The committee agreed to schedule upcoming meetings on the statutory dates: September 11, October 9, November 13 and December 11.

There was discussion about the difficulty of adequately reviewing the large number of DHS emergency filings.

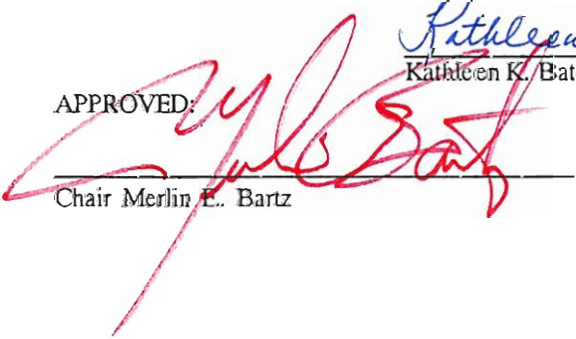
Adjourn The meeting was adjourned at 3:45 p.m.

Respectfully submitted,


Kathleen K. Bates


Teresa VanderLinden

APPROVED:


Chair Merlin E. Bartz


Vice Chair Clyde Bradley