

MINUTES OF THE SPECIAL MEETING OF THE ADMINISTRATIVE RULES REVIEW COMMITTEE

Time of meeting A special meeting of the Administrative Rules Review Committee (ARRC) was held Monday, March 10, 1997, in Senate Committee Room 22, State Capitol, Des Moines, Iowa.

Members present: Senators Merlin E. Bartz, H. Kay Hedge, John P. Kibbie, and Sheldon Rittmer and Representatives Danny Carroll, Minnette Doderer, Janet Metcalf, Christopher Rants, and Keith Weigel. Senator William Palmer was absent.

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

Convened •Co-chair Metcalf convened the meeting at 7:35 a.m.

Committee Business •Metcalf moved that Senator H. Kay Hedge fill the unexpired co-chair term. The motion, seconded by Kibbie, carried.

Hedge in chair The April meeting was scheduled for Monday, April 7, 1997, at 7:30 a.m.

•Hedge moved approval of the minutes of the February meeting. Motion carried.

•Kibbie requested a report on the status of past ARRC referrals to the General Assembly.

Discussion followed concerning the role of the committee.

•Kibbie asked the committee's advice regarding SF 192 which would amend 17A.8(9) to provide for the delay and, upon the adjournment of the General Assembly, rescission of a rule unless the legislature voids the delay and rescission by statute. Royce clarified that Kibbie's bill relates to session delays, not referrals, and added that the committee can also introduce legislation. This option might be considered because a referral does not always result in a response from a legislative committee.

WORKFORCE DEVELOPMENT BOARD/SERVICES DIVISION Pat Sampson represented the division.

ARC 7080A There were no questions on proposed chs 1 and 2 regarding the board and its mission and structure.

ARC 7083A No committee action on provisions transferred from job service division to 877—ch 24 to allow voter registration in workforce development centers.

ARC 7081A No questions on proposed ch 25 regarding public records and fair information practices.

ARC 7082A No questions on proposed ch 26 regarding petitions for rule making and declaratory rulings.

ARC 7079A No questions on proposed ch 28 regarding forms.

HUMAN SERVICES DEPARTMENT Mary Ann Walker, Jim Chesnik, Kathy Ellithorpe, Marcia Stark, Charlcie Parrish, Deidre Leverette, and Jeff Terrell appeared on behalf of the department.

ARC 7068A Proposed ch 2 provides for the contracting out of DHS employees and property.

•Metcalf asked for an example of how space might be leased. Jim Chesnik replied that the juvenile treatment programs held at the Glenwood state hospital school would be an example. Those leasing the space assume the costs, so it's cost-neutral to the department. Chesnik stated Iowa Code section 225C.13 limits leasing to state or county government or a nonprofit corporation.

ARC 7027A No questions regarding elimination of FIP control groups.

ARC 7040A No questions on SSA program eligibility dates in 50.3.

ARC 7041A Proposed Medicaid amendments regarding reserve bed days, billing process, and definition of abuse.

•Walker explained to Kibbie that SSA cannot begin when the resident of a residential care facility is hospitalized and on reserve bed days. The number of reserve bed days was expanded from 10 to 20.

ARC 7053A No questions regarding proposed elimination of waivers for food stamp households in ch 65.

ARC 7069A Revision of statewide average cost of care consideration for Medicaid eligibility, ch 75.

•Walker advised Bartz that a transfer of assets results in a period of ineligibility, based on the statewide average cost of care for a private pay person.

ARC 7028A Medical assistance eligibility cards for lock-in recipients, 76.6, 76.9(2), 88.46(5).

•Walker told Rittmer that a physician monitors lock-in recipients to avoid overuse of medications.

ARC 7029A No committee action on elimination of prior authorization for hearing aids for children, ch 78.

ARC 7038A Amendments proposed for 78.18 and 80.2 require the use of dental and screening center claim forms.

•Weigel inquired about children who have no dental insurance but require dental surgery. Stark explained that dental work and hospitalization determined to be medically necessary and preauthorized would be paid.

HUMAN SERVICES (Cont'd)

- ARC 7030A No questions regarding the addition of four counties to the elderly waiver program, 83.22(1).
- ARC 7039A Proposed amendments to ch 88, managed health care providers.
- Weigel asked if the plan to provide mental health services through the MHAP rather than HMO contracts was required by statute or at the department's initiative. Walker responded that this was the department's choice, that community mental health centers are supportive, and that the department believes that the result will be increased access to services.
- ARC 7070A Child day care payment rates, proposed amendments to 170.4(7). Since the department did not think the amendments were controversial, no hearings had been planned.
- Metcalf requested Walker to report back on how the department will notify existing providers.
 - Bartz asked how many public assistance children are in nonregistered family homes. Questioning the department's decision to encourage registration by not increasing the rates for nonregistered homes, Bartz expressed the opinion that federal block grant moneys are supposed to be applied equally, whether the home is registered or nonregistered.
 - Doderer pointed out that there's no inspection of registered homes, so wondered about the difference between registered and nonregistered homes.
 - Responding to Hedge, Walker stated that there's no "red tape" involved in becoming registered.
 - Kibbie reported that nonregistered homes were a concern at a welfare reform meeting that he attended recently. Kibbie further asked if day care had sufficient funding this fiscal year.
- Walker will address all these issues when the rules are adopted.
- ARC 7042A The amendment to 185.1 proposes a definition of licensed independent social worker.
- Walker explained to Metcalf that licensed independent social workers, qualified as outlined in Iowa Code section 154C.3, can practice independently, as required of social workers on the CACT teams.
- Special review DHS, by emergency procedures, will increase reimbursement rates by 7.98 percent to comply with the federal maintenance of effort requirement.
- Special review Leverette distributed information to the committee regarding special needs adoptions and explained that the training is intended to avoid delays in the adoption process. Iowa's adoption strategic plan has been nationally recognized. Discussion ensued about recruitment of minority families.
- Foster parent training

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT was represented by Ron Rowland and Mike Mamminga.

- ARC 7067A Mamminga outlined the meat and poultry amendments to ch 76.
- Bartz inquired about policies regarding unclaimed meat. Mamminga responded that how unclaimed meat is handled depends on whether it was inspected or uninspected. Federal law requires that uninspected meat must be returned to the livestock producer for the exclusive use of the producer or destroyed. Inspected meat can be used commercially. Regarding deer products, Mamminga observed that when a deposit is required, the meat is generally claimed; whereas there is a higher probability of meat not being claimed when no deposit is required. In response to Bartz's inquiry about whether the department might consider inspecting the meat so it could be used, Mamminga stated that all inspections are of live animals.
 - Mamminga informed Hedge that poultry are held to the same E-coli standards as red meat.
 - Mamminga replied to Bartz that farm processing of red meat for sale has never been permitted, but poultry may be dressed and sold by farmers, as long as it involves fewer than 1,000 birds per year.

Metcalf in chair

DENTAL EXAMINERS BOARD Connie Price represented the board.

- ARC 7058A No questions regarding proposed specialty degree licensing.
- ARC 7057A No questions regarding the proposed amendments to ch 12.
- ARC 7056A No questions on the proposed amendments on reinstatement of lapsed licenses.
- ARC 7055A No questions on the proposed continuing education amendment.
- ARC 7060A No questions on the appeal procedure when licensure is denied.
- ARC 7059A No questions on the amendment to 30.5.

IOWA DEPARTMENT OF ECONOMIC DEVELOPMENT David Lyons and Mary Lawyer represented IDIED. Community colleges were represented by Steve Ovel, Clark Marshall, Tom Fey, Dave Palmer, Gordon Greta, Linda Kading, Gene Gardner, Cal Hultman, and others.

- ARC 7043A Lyons reported that the issue that remains to be resolved pertains to oversight authority in the Iowa industrial new jobs training program. The proposed amendments contain enforcement provisions.

IDED (Cont'd)

•In response to Metcalf, Lyons stated that IDED perceives its authority as oversight, whereas the community colleges believe IDED has coordination authority, not compliance authority.

•Kibbie urged community colleges and IDED to work together to avoid overregulation. Lyons added that IDED has found that those being served are, for the most part, very happy with the program and IDED is not suggesting that there are problems with the community colleges.

•Carroll asked if the amendments were in response to 60 Minutes; Lyons acknowledged that was one of the factors leading to IDED's attempt to clarify the rules.

Kading, representing DMACC, asked IDED to withdraw the rules and expressed a willingness to work with IDED to ensure that rules neither exceed the authority of the department nor become a burden to the colleges.

•Doderer inquired about bonds. Lyons outlined that when a new job is created in a community, 7 percent withholding passes to the state, from which 1½ to 3 percent is held aside. Community colleges work with the company to develop a contract for training, and money is provided to fund the training. Bonds are paid off over time with the 1½ to 3 percent. The program involves \$238 million in bonds.

•Rittmer observed that since the state is funding the training programs, the state should retain oversight. Hultman, representing Western Iowa Tech. Community College, distributed a letter and voiced both opposition to the rules and a willingness to work with IDED to achieve balance and flexibility.

•Lyons outlined for Kibbie the roles of IDED, community colleges and workforce development.

Hedge in chair

Gardner, representing 15 community colleges that oppose the rules and are willing to work with IDED, stated that bond underwriters are concerned about the effect these rules will have on the bond market. Gardner submitted a copy of a letter from Lance Coppock relating to the bond process.

ENVIRONMENTAL PROTECTION COMMISSION Jack Riessen, M.K. Clover, Vic Kennedy, and Mel Pins appeared on behalf of DNR.

ARC 7048A

Pins explained that \$100,000 is available annually for the next six years to state board of regents institutions under the proposed tire-derived fuel program.

•Rittmer asked if any institutions are currently involved in this kind of activity; Pins responded that the University of Iowa has been burning tires since 1990. Iowa State University has the potential to participate, but the University of Northern Iowa would have to modify its boilers.

•Pins responded to Bartz that the \$5 surcharge has been in place since 1996, with \$15 million available for the next six fiscal years.

ARC 7049A

The waste tire processor incentive program, proposed for ch 217, is intended to encourage processors to lower rates. The award of 20 cents per tire, to a maximum of \$20,000, would be available per fiscal year to processors who are in compliance with all applicable state programs.

•Kibbie inquired about the county grant program, ch 215, which has been implemented in 43 counties.

•Rittmer questioned the requirement for 250,000 tires. Pins explained that the requirement for 250,000 tires establishes eligibility and ensures that those applying for the incentive are actually in the business of processing tires. The processing industry has been in Iowa since about 1990, and there are currently three large-scale processors located in Davenport, Muscatine and Des Moines with established uses for their products. In addition, processed tires have been tested as a road base material.

•Bartz asked if the definition of processing would exclude whole tires. Pins clarified that although whole tires do not meet the definition of "processed tires," 217.7 allows whole tires that go to a beneficial end use to qualify under this program.

ARC 7047A

No questions on the water quality certification permit amendment to 61.2(2).

HUMAN INVESTMENT COUNCIL The agency representative had to leave prior to committee review.

•Metcalf requested that review of ARC 7051A be rescheduled because the adopted amendments are not identical to those published under Notice.

PROFESSIONAL LICENSURE DIVISION Marge Bledsoe represented the division for the following:

ARC 7044A

These chiropractic amendments were changed in response to comment received at hearing.

•Metcalf noted the badge requirement in these rules, expressing the wish that all medical personnel be identified by badges.

ARC 7076A

No questions on the proposed amendment to ch 40.

ARC 7075A

Funeral director rules are scheduled for hearing on the ICN March 24, and comments are anticipated.

•Bledsoe told Rittmer that a bill passed last year required licensure for funeral homes and crematories. These proposed rules require that a licensed person transport bodies, although some small funeral homes would prefer that an employee be allowed to pick up bodies.

PROFESSIONAL LICENSURE (Cont'd)

•Bartz asked about the provision for authorization to embalm without consent. Bledsoe stated that federal provisions allow for embalming when all protocols for consent, including religious consideration, have been exhausted. Royce added that funeral homes that embalm without consent may charge for the service, but the person responsible is under no legal obligation to pay.

•Hedge raised the case of communicable disease; Royce reported that as a public health consideration the body would have to be cremated if not embalmed within 24 hours, overriding religious objections.

ARC 7074A No questions on the amendments to ch 180, regarding optometry.

ARC 7073A No questions on the amendments to ch 200 regarding physical therapy.

ARC 7045A Comment was received regarding newborn screening hearing test by persons performing screening for OSHA. They are already exempt, so no change was made to the adopted rules

PUBLIC HEALTH DEPARTMENT Pierce Wilson represented the department for the following

ARC 7061A Wilson stated that prior to proposing ch 177 regarding health data collection the department met with the Iowa Hospital Association and CHMIS and that both support the rules.

•Weigel asked the plans if CHMIS is not funded by the legislature. Wilson replied that much would remain the same, but the department would have to look at other avenues for data collection.

INSPECTIONS AND APPEALS DEPARTMENT Mary Oliver, health facilities division, represented the department.

ARC 7034A No committee action on amendments pertaining to heating system, medication administration and dietary requirements in health care facilities.

•Bartz requested Oliver to provide information regarding required temperature in facilities as opposed to the heating system capability that is set out in the rules.

RACING AND GAMING COMMISSION Karyl Jones represented the commission.

ARC 7032A •Weigel questioned the language difference between the proposed amendment to 10.5(15) and the filed amendment to the same subrule (ARC 7033A), regarding the required negative equine infectious anemia test. Jones stated that by the time the Noticed amendment is adopted, the filed amendment will be in effect, so the word "enter" will no longer be in 10.5(15)"a."

ARC 7033A No committee action on 4.31, 10.5(15) and 24.15 regarding records.

REVENUE AND FINANCE DEPARTMENT Carl Castelda represented the department.

ARC 7072A No questions regarding inheritance tax amendments to ch 86.

ARC 7071A No committee action on fiduciary income tax amendment to 89.8(8).

•Bartz asked about the department's plans regarding the Internet access tax rule that is under 70-day delay. Castelda stated that the department views the service as taxable.

STATE PUBLIC DEFENDER Rebecca Walsh, Bill Wegman, and Mark Smith represented the state public defender's office. Lorelei Brewick appeared on behalf of the Iowa State Bar Association.

ARC 7036A The Iowa State Bar Association's written comments on amendments to chs 1, 10 and 13, regarding eligibility and cost for court-appointed counsel and requirements for private attorneys who contract with the state public defender, were distributed to the committee.

•Metcalf requested a response to the bar association's concerns. Smith stated that Part III of the ABA Criminal Justice Providing Defense Services guidelines deals with contracts for services. If adopted, contracting would be with a very limited number of law firms; currently the state public defender will contract with any attorney that wishes to provide services to indigent defendants. Those guidelines would also impose limitations on contracting attorneys' outside practice of law.

•Doderer asked about fees and learned that by statute a noncontract lawyer cannot be paid more than contract lawyers. Currently the state has over 1,000 contracts, and rates depend upon the gravity of the case. Supreme court fee guidelines indicate that a reasonable rate is between \$40 and \$60 per hour.

•Rants was told that the state public defender's office can request the court to review claims that appear to be excessive, and the rules provide for termination of contract for repeated excessive claims.

Brewick, representing the Iowa State Bar Association, requested that references to the ABA standards remain in the rules and that the outdated fees be reviewed in order to ensure competent representation for indigents. In addition, the bar association is concerned that if the contract attorney is outside the county, the defendant would have limited access to counsel.

•In response to Doderer's inquiry, Wegman stated that both counsel and co-counsel would receive the fee and expenses are paid in addition to the fee.

STATE PUBLIC DEFENDER (Cont'd)

•Wegman indicated to Rittmer that Iowa statutes and supreme court guidelines impose no competency standard other than licensure to practice law in Iowa. Further, the Iowa license permits an attorney to practice anywhere in the state, so the state public defender cannot prevent the court from appointing counsel based on regional limitation. Wegman and Smith maintain that instances of counsel appointed from outside the area of residence or incarceration are rare and that no complaints have been received.

TRANSPORTATION DEPARTMENT David Titcomb, Dick Hendrickson, Tom Sever and Val Hunter represented DOT.

ARC 7031A No committee action regarding the exemption for medically unqualified drivers in 520.7 and 520.8.
 Special review The departments of transportation and corrections have met and agreed to include as a primary
 Inmate ID identification document the inmate descriptor inquiry. The committee authorized this change to be made through emergency rule-making procedures.

INSURANCE DIVISION Terri Vaughan and Rosanne Mead appeared on behalf of the division.

ARC 7077A No committee action on form and rate filing exemption in 20.11.
 Special review Requested by Kibbie regarding individual health insurance coverage. Vaughan explained that insurance
 Individual health companies have the right to withdraw from a market if they provide 90 days' notice to the policyholders and, three days prior to that, to the commissioner and stay out of the market for five years. Principal complied with these requirements when they discontinued coverage for 4,500 self-employed individuals in Iowa and 180,000 nationwide. Although another carrier offered coverage to those affected, there was no requirement for Principal to find alternative coverage. Vaughan stated that in the areas of mental health coverage and lifetime limits Mutual of Omaha's policy differs from the one Principal offered. Affected consumers have until March 17 to elect Mutual of Omaha's coverage; otherwise, they are eligible for guaranteed issue basic and standard coverage or, if they can be underwritten, they may apply to 37 other providers for individual health insurance. Vaughan also explained the difference between guaranteed renewable and noncancelable policies.

LABOR SERVICES DIVISION Walter Johnson and Kathleen Uehling represented the division. Dennis Hogan represented Sheet Metal Contractors of Iowa and James Obradovich represented the Iowa chapter of the National Electrical Association.

ARC 7062A Construction contractor registration amendments to ch 150 were adopted.
 •Bartz inquired about the conditions of registration referred to in 150.11 and whether notice regarding renewal is given. Johnson indicated that if the registrant's check does not clear, the registrant fails to meet the conditions of registration. Approximately 3 percent of the registration renewals sent out by the division are returned as undeliverable, which may happen if there was a change of address within the 2-year registration period and no forwarding address.
 •Johnson responded to Bartz that fines for nonregistration, established in statute, are up to \$500 for a first violation and up to \$5,000 for repeat violations.
 •Bartz asked if the additional cost for mailing the renewal notices by certified mail could be added to the renewal fee, and if there would be justification to changing the renewals to a calendar-year or fiscal-year basis. Johnson indicated that the division would be willing to consider these issues.
 Hogan distributed copies of letters Sheet Metal Contractors of Iowa and the Iowa chapter of the National Electrical Association had sent the division commenting on the proposed amendments and requesting a flexibility analysis; yet when the division adopted the amendments, they stated that no comment had been received.

Motion to refer •Weigel moved a referral to the General Assembly. Motion carried.
 Motion carried

Committee Business Doderer sought direction from ARRC members regarding HSB 230.

Adjourned The meeting was adjourned at 11:30 a.m.

Respectfully submitted,

Kathleen K. Bates
 Kathleen K. Bates

APPROVED:

H. Kay Hedge
 Senator H. Kay Hedge