

**MINUTES OF THE AUGUST 2002 MEETING
OF THE
ADMINISTRATIVE RULES REVIEW COMMITTEE**

- Date of meeting:** The regular, statutory meeting of the Administrative Rules Review Committee (ARRC) was held Tuesday, August 13, 2002, in Room 116, State Capitol, Des Moines, Iowa.
- Members present:** Senator Sheldon Rittmer, Chair, and Clyde Bradley, Vice chair; Senators Jeff Angelo, John P. Kibbie, and Paul McKinley; Representatives Marcella Frevert, Mark Kuhn and Janet Metcalf. Representative Danny Carroll and Senator Patricia Harper were not present.
- Also present:** Joseph A. Royce, Legal Counsel; Kathleen K. Bates, Administrative Code Editor; Brian Gentry, Administrative Rules Coordinator; Andrew Fay, committee intern; caucus staff and other interested persons.
- Convened** Chair Rittmer convened the meeting at 8:35 a.m.
- HUMAN SERVICES DEPARTMENT** Mary Ellen Imlau, Nancy Thoma and Jeanne Nesbit represented the department.
- ARC 1831B** No questions regarding proposed amendments relating to applications for food stamps, FIP and Medicaid.
- ARC 1830B** No questions on proposed amendments to ch 58 concerning the emergency assistance program.
- ARC 1796B** No questions on annual amendments relating to the statewide average cost of nursing facility, mental health institute and ICF/MR care.
- ARC 1797B** No questions on recovery of Medical assistance after death of recipient.
- ARC 1833B** Proposed amendments to ch 113 authorize variances for maximum license capacity of foster family homes. Metcalf inquired about the department's use of the terms "waiver," "variance," and "exception." Imlau responded that a "variance" is a local decision, whereas a "waiver" or an "exception to policy" is a department decision. Gentry was advised that variances are not recorded in the department's report of waivers requested and granted. While members recognized the need for flexibility at the local level, they requested a reporting of variances to ensure that rules are applied fairly statewide.
- ARC 1768B** No questions on eligibility for child care assistance.
- ARC 1832B** No questions on the proposed hospital trust fund.
- Special reviews**
 - In response to reduced appropriations and increased postage costs, Nesbit and Thoma presented the department's plan for making child support payments by electronic funds transfer in lieu of mailing state warrants. It is estimated that costs will be reduced by approximately \$35,000 per month. The department is negotiating with the superintendent of banking to establish accounts and access cards for custodial parents that do not already have bank accounts. Metcalf commended the department for the innovation.
 - Rittmer asked that a review of child abuse investigations be scheduled for the next meeting.
 - Bradley moved unanimous consent to allow the department to publish in the Iowa Administrative Bulletin a notice of Medicaid reimbursement methodology for nursing facilities. There were no objections.
- INSURANCE DIVISION** Rosanne Mead represented the division.
- ARC 1824B** No action on amendments intended to safeguard customer information.
- CITY DEVELOPMENT BOARD** Steve McCann and Chris Scase represented the board.
- ARC 1809B** No action on proposed chs 1 to 11. McCann explained changes in rules 7.3 and 7.8 concerning voluntary annexations.
- CORRECTIONS DEPARTMENT** Michael Savala and John Baldwin represented the department. Representatives of Iowa CURE included Meredith Bruns, Ken Bennett, Robin Bennett, Travis Bennett, Patty Gronewold, Chelsea Lepley, and Chris Cruchelow. Jean Basinger of Friends of Iowa Prisoners, the Justice Reform Consortium and the Board of Criminal Justice Ministries was also present.
- ARC 1771B** Savala reported that, in response to concerns raised by Iowa CURE, the department has expanded 20.3(3) to be more inclusive regarding minor children and added that if the visiting room is full, visits may be shortened in an attempt to allow everyone to visit. Savala presented information about increasing numbers of prisoners and rising medical costs, decreased appropriations and the resulting reduced numbers of employees and services provided, including reductions in substance abuse treatment. Savala noted that Iowa ranks forty-eighth in the nation in per capita prison spending.

Corrections Department (continued)

Baldwin indicated that the department is facing difficult choices and must prioritize spending. Gentry explained that the federal government would intervene if Iowa did not provide for the basic safety and living environment of prisoners and that the department has a difficult task of balancing public safety with the needs and rights of offenders.

Bradley asked the department to provide a copy of the guidelines by which the department determines that offenders are low-risk and recommended for parole.

Several members of Iowa CURE emphasized the importance of visiting in the rehabilitation of offenders and expressed the desire for the public to have a stronger voice in establishing visiting hours. Requests were made for maximum visiting hours and a 6-month trial period of unlimited visitors for those serving a life sentence. Basinger reported instances when visitors have been turned away and requested that additional visitors in the category of friends be allowed for inmates that do not have immediate family.

ENVIRONMENTAL PROTECTION COMMISSION Mary Skopec, Wayne Ferrand, Mel Pins, Jon Tack, and Robin Pruisner represented the commission. Jim West represented the Iowa Grocery Association.

ARC 1774B No action on volunteer monitoring data requirements. Skopec clarified that the quality assurance plan process is necessary if the data is to be used for the Section 303(d) list of impaired waters.

ARC 1778B Proposed amendments to chs 60 and 64 implement Phase II of EPA's storm water discharge regulations. Ferrand indicated that 49 municipalities with populations over 10,000 are included under these proposed rules.

ARC 1795B No action on amendments to ch 65 imposing fees for construction permit applications and manure management plans.

ARC 1773B No questions on amendments to ch 111 relating to financial assurance requirements for municipal solid waste landfills.

ARC 1788B No action on ch 116 which pertains to registration of waste tire haulers. Tack reported that the commission is amending ch 117 in response to the committee's concern that rights of adjacent property owners may be affected by the prohibition on burning within 300 feet of a tire pile.

ARC 1538B Amendments relating to beverage container deposits were delayed at the July ARRC meeting. Tack reported that the commission and the Iowa Grocery Association are very close to complete agreement.

Motion Metcalf moved that except for 107.4(3)"d," 107.4(4), 107.9(2), 107.9(3), and the second unnumbered paragraph of rule 107.14, the session delay be lifted.

Motion carried The motion carried. Except for the specified portions, the delay is lifted, effective August 14, 2002.

NATURAL RESOURCE COMMISSION Marion Conover, John Walkowiak, Dale Garner and Richard Bishop represented the commission.

ARC 1776B No questions on ch 35, fish habitat promotion for county conservation boards.

ARC 1775B No action on amendments to ch 71.

ARC 1777B Proposed ch 104 pertains to importation, transportation and disease monitoring of cervids. Frevert expressed concern that diseased road kill from Wisconsin may be imported into Iowa and processed into animal feed.

ETHICS AND CAMPAIGN DISCLOSURE BOARD Charlie Smithson represented the board.

ARC 1789B No questions on amendments to ch 4 pertaining to financial threshold for registration of a campaign committee.

ARC 1792B No action on filing of financial disclosure reports by fax.

ARC 1791B No questions on filing of VSR by out-of-state PACs.

ARC 1790B No action on rule 4.50 regarding forgiven or transferred loans or obligations.

ARC 1793B No questions on proposed 4.52 concerning county central committee request for inactive status.

ARC 1794B No questions on proposed 11.3 relating to filing exemptions for personal financial disclosure statements.

ARC 1769B No questions on proposed ch 14 relating to board procedures for rule making.

INSPECTIONS AND APPEALS DEPARTMENT David Werning and Sherry Hopkins represented the department.

ARC 1837B No questions on amendments relating to raffles and bingo.

Following up on a question raised in July, Metcalf contended that the language in 30.3(4) which requires multiple licenses for farmers market vendors operating simultaneously at multiple locations does not conform to the statute. The department reported that it does not plan to delete the requirement. Gentry offered to meet with the department and the attorney general's office to resolve this issue.

PERSONNEL DEPARTMENT Greg Cusack and Kelly Lovell represented the department.

ARC 1826B

No action on amendments to ch 21 regarding IPERS. Cusack pointed out that the definition of wages is intended to address questions relating to benefits that qualify under IRC Section 125. Rittmer suggested clarification of the date in 21.19(1). Frevert noted that employer-mandated reductions in hours may adversely affect retirement benefits. These amendments allow an individual to make contributions to IPERS to maintain benefits that would have accrued had it not been for the unpaid furloughs.

PHARMACY EXAMINERS BOARD Excused from review.**PROFESSIONAL LICENSURE DIVISION** Excused from review.**REVENUE AND FINANCE DEPARTMENT** David Casey represented the department.

ARC 1800B

No questions on amendments to chs 7, 15, and 87.

ARC 1825B

No questions on proposed amendments to ch 50.

TRANSPORTATION DEPARTMENT Ruth Skluzacek and Will Zitterich represented the department.

ARC 1779B

No questions on proposed ch 150 relating to improvements and maintenance of primary road extensions.

ARC 1770B

No questions on amendments concerning special permits for operation and movement of vehicles and loads of excess size and weight.

Committee business

Kibbie moved approval of the minutes of the July meeting. The motion carried. The next meeting will be held Tuesday, September 10, and Wednesday, September 11, 2002. Metcalf requested a report from the governor's office on waivers.

ELDER AFFAIRS DEPARTMENT Mary Ann Young and Mark Haverland represented the department.

Steve Young represented the department of inspections and appeals. Other interested parties included Dana Petrowsky of the Iowa Association of Homes and Services for the Aging, Kathy Martin of Lakeview Lodge of Friendship Village, and Becky Groff of Alzheimer's Association.

ARC 1810B

No questions on amendments to ch 9 relating to resident advocate committees.

ARC 1814B

Pursuant to a 28E agreement, the department of inspections and appeals is responsible for inspections of assisted living facilities. Gentry summarized discussions that have taken place and recommended that, when the department of inspections and appeals finds that a resident may require a higher level of care, the department notify a facility of its findings and that the facility consult with the resident, the resident's family, and physician and social worker as appropriate, to make a recommendation to the department of elder affairs, which would be responsible for the final decision.

Haverland outlined the dementia-specific provisions of the rules, which include level-of-care criteria. Petrowsky distributed written concerns about the rules and reported that 50 percent of the population over the age of 85 experience some form of dementia. Martin commented that stage 5 of the global deterioration scale would be more appropriate than the stage 4 criteria included in the dementia-specific rules. Martin expressed concern that required training for direct care workers in assisted living facilities exceeds training required for employees in nursing homes and opposed the requirement for assessments to be conducted prior to occupancy, within 30 days of occupancy and "as needed," but not less than annually. Groff supported use of the global deterioration scale to ensure appropriate placements.

Mr. Young indicated the department is in accord with Gentry's recommendations and would favor independent, third-party level-of-care assessments, but is concerned that marketing by some facilities promises permanent residency. Twenty reviews have been completed; the only violations of level-of-care criteria were at Bickford Cottage. Bradley requested a written summary of the department's handling of the cases of those residents determined by the department's inspections to require a higher level of care. Gentry noted a need for legislative clarification of the scope of assisted living. Gentry agreed to continue to work with the departments, interested ARRC members and the attorney general's office to make a recommendation to the committee next month.

ECONOMIC DEVELOPMENT DEPARTMENT Hank Manning, Terry Vestal and Mike Fastenau represented the department.

ARC 1812B

No action on proposed amendments to ch 23 pertaining to the wage criteria for the CDBG program.

ARC 1811B

No formal action on proposed amendments to ch 25 relating to the housing fund. McKinley requested information about the impact on the private sector.

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VISION IOWA BOARD Michael Gartner, Andrew Anderson, Melanie Johnson, and Richard Johnson represented the board. Representative Jack Hatch requested the review.

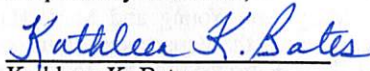
Special review

Hatch asked the committee to consider whether the procedures followed by the vision Iowa board reflect the intent of ch 212. Hatch expressed concern about conditions placed on the funding of the Iowa events center and distributed a list of projects whose funding may be jeopardized by changes the board made to the terms of the project. Polk County wanted to limit to five years the commitment to use gambling revenues; however, when county residents indicated they would not support the project if it raised property taxes, the board required an eight-year commitment of gambling revenues. Gartner explained that after a project is awarded, funding is contingent upon the parties reaching mutually agreeable terms. Gartner indicated that the board is charged with the responsibility of leveraging state money as much as possible. Anderson noted that because each project is different, the board needs flexibility to function as the best stewards of state resources. Metcalf voiced support for the vision Iowa board. While some members questioned the board's authority to dictate the source of matching funds and others suggested that the rules should more clearly specify negotiation procedures, there was agreement that rules under the current appropriation should not be changed.

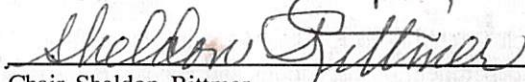
Adjourn

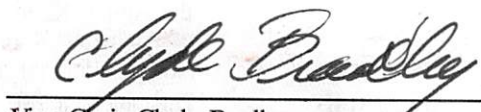
The meeting was adjourned at 4:10 p.m.

Respectfully submitted,


Kathleen K. Bates

APPROVED:


Chair Sheldon Rittmer


Vice Chair Clyde Bradley