

**MINUTES OF THE MAY 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, May 14, 2002, and Wednesday, May 15, 2002, in Room 116, State Capitol, Des Moines, Iowa.

Members present: Senator Sheldon Rittmer, Chair, and Representative Clyde Bradley, Vice Chair; Senators Jeff Angelo, Patricia Harper, John P. Kibbie, and Paul McKinley; Representatives Danny Carroll, Marcella Frevert, Mark Kuhn and Janet Metcalf.

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 Rittmer convened the meeting Tuesday, May 14, 2002, at 9 a.m.

PAROLE BOARD Jim Twedt represented the board.

ARC 1472B Twedt summarized the proposed amendments and advised the committee that, due to a legislative change, provisions regarding notice of court-appointed attorneys will be amended.

HUMAN SERVICES DEPARTMENT Mary Ellen Imlau, Nancy Freudenberg, Jane Gaskill, Loren Bawn, and Jim Krogman represented the department. Other interested parties included Craig Syata of the Iowa Association of Community Providers, Jayme Whitehead of Iowa Lutheran Hospital and Ned Chido of Iowa Health Systems.

ARC 1561B Amendments implementing a new field operations service delivery structure have been adopted. Rittmer expressed concern about lack of communication with the counties. Krogman advised McKinley that the last major reorganization of the department was in 1992 when district offices were reorganized as regional offices. Bradley requested information about the number of federal dollars lost due to cutbacks in state funding.

ARC 1594B No questions on proposed amendments to ch 14 regarding offset of county debts owed the department.

ARC 1562B No questions on amendments to chs 41 and 93.

ARC 1595B Proposed amendments relating to Medicaid waiver services require emergency amendment due to legislation enacted subsequent to submission of the Notice. Carroll asked the department to work with the association of community providers and incorporate the emergency amendments into the regular rule making. Syata urged the department to proceed as quickly as possible in amending the rules in accordance with House File 2416.

ARC 1589B No questions on the rescission of amendments reducing payments to providers.

ARC 1563B No questions on amendments relating to dental services for adults.

ARC 1564B Amendments to chs 78 and 79 pertain to dental services. Carroll reported that some providers do not accept Medicaid patients because they often do not keep appointments they have made. McKinley suggested the department assist in educating clients about the need to notify dentists when they cannot keep their appointments.

ARC 1565B No questions regarding reimbursement rates for hospitals.

ARC 1503B No questions on amendments to ch 93 regarding well-being visits.

ARC 1497B No questions on 61.6(2) extending eligibility for refugee services.

ARC 1498B Bawn explained the criteria for the federal targeted assistance grant and indicated that Polk County is the only county in Iowa with a high enough concentration of refugees to qualify.

ARC 1499B No action on 75.1(39)"b," Medicaid coverage for employed persons with disabilities.

ARC 1500B No action on amendments to ch 75 relating to Medicaid eligibility.

ARC 1501B No questions on the amendment to include ARNPs with psychiatric certification as independent providers for Medicaid.

ARC 1554B No questions on termination of the notice for amendments to chs 78, 79 and 81 to reduce payments to providers.

ARC 1502B No questions on amendments relating to optometric and optical services.

ARC 1243B At the March meeting, the committee requested a further review of the Iowa plan for behavioral health. Having met with the department, the Iowa Hospital Association, Merit Behavioral Care, and Lutheran Hospital, Gentry summarized the 1995 policy of continuing services to children under the age of 18 when medical necessity no longer requires hospitalization. The 1998 contract defined psycho-social necessity as an expression of medical necessity and offered assurance that there would be no discharge without a discharge plan which allowed for appropriate follow-up care and treatment. The contract authorized 14 days of additional funding if a safe, appropriate living arrangement was not available. The rules in effect in 1998 did not include the

Human Services Department (continued)

contract language authorizing an additional 14 days, which has now been added to the rules.

Lutheran Hospital expressed concern that, in the event of an appeal, an ALJ may take into account the authorization for 14 days without considering the provision for psycho-social necessity. Gaskill outlined the process followed when the department is notified that the 14-day period has been initiated and the process followed when there is an appeal of a decision regarding payment.

Chiodo stated that the main providers were not involved in the decision to incorporate the 14-day period into the rules; Whitehead echoed the concern that although the department notified the Iowa Hospital Association, they did not directly notify providers. Gentry suggested that the department present the rule and its potential implications to providers and provider associations at the July and October meetings of the Iowa Plan Round Table and the September and December meetings of the Iowa Plan Advisory Committee. Frevert asked that conversations between the department and providers continue and that Lutheran Hospital participate in the forums suggested by Gentry. Rittmer asked the parties to meet and report back to the committee.

Special review

No questions on emergency adoption of amendments to chs 51 and 52.

SOIL CONSERVATION DIVISION Ken Tow, Bill McGill and Bill Ehm represented the division.

ARC 1530B

No action on proposed amendments to ch 10 pertaining to financial incentives for soil erosion control.

BLIND, DEPARTMENT FOR THE Bruce Snethen represented the department.

ARC 1566B, ARC 1567B, ARC 1568B, ARC 1570B, ARC 1571B, and ARC 1569B were reviewed as a group. There were no questions.

CORRECTIONS DEPARTMENT Michael Savala represented the department.

ARC 1592B

Rules relating to visiting have been amended in response to staff reductions. Savala reported that the department contacted the Iowa Civil Liberties Union, the justice consortium and the state ombudsman prior to the emergency adoption of the amendments. When the simultaneously submitted notice is adopted, a minimum number of hours will be specified. A chart illustrating the change in visiting hours at each institution was distributed.

EDUCATIONAL EXAMINERS BOARD Susan Fischer represented the board.

ARC 1543B

No action on 14.101(3) providing for temporary permits.

ARC 1580B

No action on ESL endorsement, 14.140(4).

ARC 1542B

No action on the talented and gifted endorsement, 14.140(13).

EDUCATION DEPARTMENT Ann McCarthy and Judy Jeffrey represented the department.

ARC 1526B

No questions on amendments to ch 68. McCarthy indicated that the conservation education program has been transferred to the department of natural resources, so this chapter will be rescinded in June.

ARC 1527B

No questions on the rescission of ch 77.

ARC 1525B

Proposed new ch 77 pertains to standards for teacher intern preparation programs. In response to Frevert's concern, Jeffrey explained that the first 12 hours the individual must take include classroom management. McKinley inquired about rule 77.9 regarding diversity. Jeffrey clarified that the rule pertains to racial, ethnic and gender diversity and that gender diversity refers to male and female.

ARC 1528B

No questions on the rescission of ch 78.

EMPOWERMENT BOARD Kris Bell represented the board.

ARC 1513B

No questions on proposed ch 1 relating to community empowerment.

EMERGENCY MANAGEMENT DIVISION John Benson represented the division.

ARC 1490B

No action on amendments to ch 10.

Committee business

Kibbie moved approval of the minutes of the April meeting. The motion carried. The next meeting was scheduled for June 11, 2002.

PHARMACY EXAMINERS BOARD Lloyd Jessen and Terry Witkowski represented the board. Lori King of the Iowa Hospital Association, Shauna Shields of the attorney general's office, and Nancy Ruzicka of the department of inspections and appeals were present.

ARC 1511B

Jessen reported that, in response to a comment from the Iowa Hospital Association regarding persons authorized to check the automated dispensing machine after drugs have been placed in the machine by a technician, an amendment will be made to include nurses. King responded that including nurses is a step in the right direction, but requested that individual hospitals be free to designate who is authorized to check the machine. Shields supported the board's interpretation of the statute. Jessen indicated that the board would not be in favor of allowing pharmacy technicians to check the machine.

ARTS DIVISION Julie Bailey represented the division.

ARC 1485B

No action on proposed amendments to the arts division rules.

CULTURAL AFFAIRS DEPARTMENT Julie Bailey represented the department.

ARC 1486B No action on proposed amendments to the Iowa community cultural grants program and the cultural enrichment grant program.

MEDICAL EXAMINERS BOARD Ann Mowery represented the board.

ARC 1573B No questions on elimination of the fee for the special purpose examination.

ARC 1574B No questions on proposed amendments regarding reinstatement and permanent physician licensure.

ARC 1575B No questions on emergency amendments regarding reinstatement.

ARC 1576B No action on amendments pertaining to special licensure

ARC 1578B No questions on the proposed amendment to 10.1 regarding approved abuse education training programs and mandatory training for identifying and reporting abuse.

ARC 1496B No action on use of the test of spoken English (TSE) to measure English proficiency.

ARC 1577B No questions on the proposed amendments to ch 11 regarding providers of abuse identification training.

ARC 1579B No questions on mandatory training on abuse identification and reporting.

ARC 1560B No questions on proposed amendments pertaining to chronic, nonmalignant pain.

ARC 1494B No questions on amendments relating to English proficiency for acupuncturists.

RACING AND GAMING COMMISSION Karyl Jones, Jean Davis and Jack Ketterer represented the commission. Laverne Schroeder was also present.

ARC 1512B No questions on proposed amendments to chs 4, 7, and 11 regarding stewards and promotional activities at a licensed facility.

Special review Frevert requested a review of standardbred racing and purses. Ketterer indicated that the commission's role is to approve agreements reached by the racing facilities and racing associations and suggested that concerns be addressed to the harness horsemen's association. Schroeder explained that breakage money goes into the breeders fund, but breakage contributions from thoroughbreds and quarter horses far exceed contributions from standardbreds. Frevert asked that the committee request information from the department of agriculture and land stewardship regarding the breakdown of funds comprising the breeders fund.

UTILITIES DIVISION Gary Stump and Cecil Wright represented the division.

ARC 1584B No questions on 1.6(2) regarding sale of goods and services.

ARC 1585B No questions on updating of pipeline and transmission rules.

ARC 1551B No action on updating of gas and electric safety standards.

ARC 1520B No questions on ch 40 pertaining to competitive bidding.

DENTAL EXAMINERS BOARD Jennifer Hart and Connie Price represented the board. Other interested parties included Joyce Van Haafton, Mary Davis, Sandra Duffy of Consumers for Dental Choice, Ivan Brand, and Lori May.

Special review Hart stated that subrule 27.7(8) protects patients and reflects national standards. Hart maintained that studies by numerous organizations, such as the American Dental Association, the Food and Drug Administration, the U.S. Public Health Service, the Department of Health and Human Services, Canadian health authorities, the American Medical Association and the World Health Organization, have supported the board's position that there is no evidence that amalgam fillings cause physiological or psychological problems or that removal of the fillings improved any of the purported symptoms.

Van Haafton stated that research by the National Institute of Dental Research indicates that mercury in the amalgam exceeds safe levels and the subrule violates free speech principles and the patient's right to know.

Davis reported difficulties encountered by those who wish to be tested for allergy to amalgam and identified adverse health effects some dentists attribute to mercury. Duffy viewed the subrule as unconstitutional in that it violates the dentist's right to free speech and has the effect of a gag order on mercury-free dentists. Duffy held that informed consent requires that patients be advised of what some dentists believe are dangers associated with mercury amalgams. Brand addressed the issues of product safety, reasonable risk, and safe alternatives. May supported the consumer's right to informed consent.

Gentry suggested that the board refer the question regarding constitutionality of the subrule to the attorney general's office and consult with the department of public health regarding possible adverse effects of mercury in amalgam.

PUBLIC SAFETY DEPARTMENT Mike Coveyou and Jerry Brown represented the department.

Coveyou requested committee permission to publish in the Iowa Administrative Bulletin a list of approved preliminary breath-testing devices. Rittmer called for a vote. The committee approved publication of the notice.

SECRETARY OF STATE Sandy Steinbach and Bob Galbraith represented the office of the secretary of state.

ARC 1524B No action on 21.602 regarding nominations by write-in votes at primary elections.

REVENUE AND FINANCE DEPARTMENT David Casey and Dick Stradley represented the department. Other interested parties included Sioux City assessor Mel Obbink, Lew Weinberg of Weinberg Investments and Kris Saddoris of Conlin Properties.

ARC 1523B No questions on amendments relating to individual income tax, withholding tax, and corporate income tax.

ARC 1521B No questions on amendments to chs 7, 10, 67, and 81.

ARC 1522B No questions on amendments pertaining to eligible development business investment tax credit.

ARC 1414B Amendments to ch 71 relate to valuation of low-income housing property. Stradley informed the committee of meetings held with assessors and the housing industry regarding the emergency amendments. A public hearing will be held during the formal notice period this summer. Obbink reported a general decrease in property tax valuations for Section 42 properties reevaluated under these rules. Weinberg distributed written comments and requested that the department simplify the process for valuation since the uniform capitalization rate does not reflect differences between rural areas and areas with greater growth. Saddoris expressed concern about assessors' treatment of vacancies in determining valuations.

INSURANCE DIVISION Roseanne Mead and Jerry Wickersham represented the division.

ARC 1558B No questions on contraceptive coverage.

ARC 1593B No action on proposed amendments relating to long-term care insurance. Discussion ensued regarding the exclusions listed in the rules.

ENVIRONMENTAL PROTECTION COMMISSION Christine Spackman, Jon Tack, David Wornson, Wayne Ferrand, and Brian Tormey represented the commission. Other interested parties included Jim West and Jerry Fleagle of the Iowa Grocery Industry Association, Dewayne Johnson of the Iowa Recycling Association, and Kathryn Russell of R & R Redemption Center.

ARC 1536B No questions on the termination of proposed amendments to chs 1, 9, and 11.

ARC 1535B No questions on the amendment regarding storm water discharge associated with industrial activity.

ARC 1537B No questions on ch 109, special waste authorizations.

ARC 1538B Tack reported changes in the beverage container deposits rules made to resolve some objections of the Iowa Grocery Industry Association and summarized four areas of concern that remain unresolved: process for approval of redemption centers; pickups from dealer-agents; pickups from unapproved redemption centers; and distributor payments to redemption centers. Tack advised Gentry that in 1983 a declaratory ruling upheld the requirement that the redemption center be paid within one week of pickup. West indicated that the association has filed written comments and maintained that the rules are in conflict with the statute. West asked the committee to object to specific portions of the amendments and indicated that a challenge in court is likely.

Johnson and Russell voiced support for the amendments and commended the work of the department's advisory committee.

Motion to delay Metcalf moved a 70-day delay be imposed on the amendments.

Following discussion of the issues, Bradley called for a vote on Metcalf's motion.

Motion carried The motion passed.

Gentry suggested that while the amendments are under delay the department seek an attorney general's opinion to determine whether the rules conflict with the statute.

ARC 1541B No questions on amendments pertaining to discarded appliance demanufacturing.

ARC 1539B No questions on amendments relating to financial responsibility for underground storage tanks.

NATURAL RESOURCE COMMISSION Marion Conover, Jon Tack, John Walkowiak, and Jerry Kemperman represented the commission. Don Westefer of Cascade Forestry Service was also present.

ARC 1515B No questions on amendments pertaining to ATV grant awards.

ARC 1518B No questions on proposed ch 35, fish habitat promotion for county conservation boards.

ARC 1516B No questions on amendments to ch 37 relating to boating safety equipment.

ARC 1514B No questions on amendments to ch 40 regarding boat horsepower restrictions.

ARC 1517B Proposed 71.3 pertains to nursery stock prices. Kemperman indicated that the forestry bureau sells nursery stock to the public in minimum 500-plant orders for conservation plantings, pollution control, wildlife habitat and reforestation. No adverse comments were received during the public comment period or at the public hearing.

Natural Resource Commission (continued)

Westefer distributed a packet of material and voiced concern about the effect of the state nursery on private sector enterprise. Westefer requested a cap on state nursery production and an increase in pricing. Carroll suggested factors to be considered in trying to reach price parity and asked the department to provide documentation of the demand for seedlings in Iowa, the capacity of private enterprise to meet the demand, comparison of size and price of products sold by the state nursery and private growers, and the amount of inventory carried over from the previous year as well as planned planting for this year.

Walkowiak stated that federal cost-share programs for conservation have increased demand for nursery stock.

GENERAL SERVICES DEPARTMENT Tim Brand, Carol Stratemeyer, Patricia Schroeder and Shauna Shields represented the department. Other interested parties included Bill Dikis and Randy Cram of the Iowa chapter of the American Institute of Architects, Jolec Belzung of the Iowa Engineering Society, and David Scott of Consulting Engineers Council of Iowa.

ARC 1533B No action on amendments to ch 10 regarding inventory guidelines for state of Iowa real and personal property. Brand outlined changes made in response to questions raised during the comment period.

ARC 1532B No action on proposed ch 12 pertaining to purchasing standards for service contracts.

ARC 1531B Proposed ch 13 pertains to uniform terms and conditions for services contracts. Stratemeyer summarized changes made in response to public comment.

Dikis and Cram voiced a concern about the performance clause and requested "standard of the industry" payment since time frames may be affected by circumstances beyond the control of the architect, such as planning and zoning or building permit application and issuance. Belzung reported that the engineering society would like to have selection criteria for professional services differentiated from criteria for other services and would prefer that cost not be a criterion for professional services. Scott indicated that the federal government uses a two-step process, whereby cost is considered after the best candidates are selected.

PROFESSIONAL LICENSURE DIVISION Marge Bledsoe represented the division.

ARC 1591B No questions on 17.1 regarding materials for board review.

ARC 1556B No questions on proposed ch 30 pertaining to behavioral science examiners.

ARC 1557B No questions on amendments to ch 31 regarding mandatory reporting of abuse.

ARC 1588B No questions on proposed amendments relating to licensure of chiropractors.

ARC 1510B No questions on proposed amendments concerning the dietetic examiners board.

ARC 1590B No questions on proposed amendments regarding nursing home administrators.

ARC 1550B No questions on amendments to licensure of respiratory care practitioners.

ARC 1509B No questions on proposed amendments relating to speech pathology and audiology.

ARC 1495B No action on proposed amendments concerning licensure of physician assistants.

ARC 1549B No questions on amendments regarding athletic trainers.

TRANSPORTATION DEPARTMENT Ron Beane, Jody Johnson, Tom Sever, and Dave Titcomb represented the department.

ARC 1505B No questions on amendments relating to holiday rest stops, adopt a highway, and agricultural promotion.

ARC 1506B No questions on amendments to ch 151 regarding city requests for closure of primary road extensions.

ARC 1544B Johnson outlined proposed amendments to vehicle registration and certificate of title, special registration plates, drivers' privacy protection, dealer permits, motor vehicle equipment, and rescue vehicles. Carroll asked the department to notify the Iowa state association of counties and the treasurers' association of the proposed amendments.

ARC 1546B No questions on proposed ch 421 regarding mobile home dealers, manufacturers, and distributors.

ARC 1507B No questions on regulations applicable to carriers.

ARC 1508B No questions on adoption of federal regulations relating to for-hire interstate motor carriers.

ARC 1545B Titcomb outlined proposed amendments to rules concerning licenses, computerized driver license records, drivers' privacy protection, sanctions, OWI and implied consent and financial liability coverage cards.

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WORKFORCE DEVELOPMENT DEPARTMENT Joe Bervid represented the department.

ARC 1598B No action on rule 24.50 regarding temporary extended unemployment compensation. Discussion ensued about the requirement for earnestly and actively seeking employment and the policy regarding recovery of overpayments. Bervid agreed to supply information about the number of applicants disqualified in the past year for not earnestly and actively seeking employment. Bradley requested a copy of the federal policy regarding overpayment recovery.

PERSONNEL DEPARTMENT Michael Prey, Kelly Lovell, Gene Gardner, and Gregg Schochenmaier represented the department.

ARC 1519B No questions on proposed amendments to chs 1 and 4 regarding the years of service incentive program.

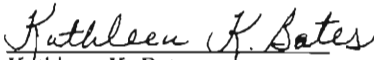
ARC 1586B No action on amendments related to IPERS.

ARC 1583B No action on proposed and emergency IPERS amendments.

ARC 1491B Proposed 21.33 pertains to the benefits advisory committee(BAC). McKinley requested a copy of BAC bylaws when they are adopted.


Adjourn The meeting was adjourned Wednesday, May 15, 2002, at 12:52 p.m.

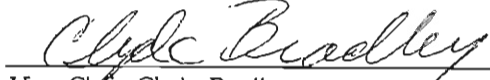
Respectfully submitted,


Kathleen K. Bates


Teresa VanderLinden

APPROVED:


Chair Sheldon Rittmer


Vice Chair Clyde Bradley