

**MINUTES OF THE REGULAR MEETING  
OF THE  
ADMINISTRATIVE RULES REVIEW COMMITTEE**

**Time of meeting** The regular, statutory meeting of the Administrative Rules Review Committee (ARRC) was held Tuesday, May 13, 1997, in Room 116, State Capitol, Des Moines, Iowa.

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

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

**Convened** •Cochair Metcalf convened the meeting at 10 a.m.

**PROFESSIONAL LICENSURE DIVISION** Marge Bledsoe represented the division for the following three Notices.

ARC 7181A There were no questions on 30.3(2)"d" and 30.4(2)"e" concerning behavioral science.

ARC 7193A There were no questions on 302.6(5) amending speech pathology and audiology.

ARC 7194A There were no questions on 350.13(4) to 350.13(7) concerning athletic trainers.

**PUBLIC HEALTH DEPARTMENT** Mike Marshall, Rita Gergely, and Donald A. Flater represented the department.

ARC 7169A No committee action on proposed radiation amendments in Chapters 38 to 41 and 45.

ARC 7170A •Gergely apprised Metcalf these proposed rules will be filed emergency after notice because a \$3.6 million grant which Dubuque received from HUD cannot be used until Iowa has certified lead abatement workers and contractors available to do the necessary work.

•Carroll was informed that approximately 60 of the lead inspectors in Iowa are voluntarily certified. About one-half of that number are from local health departments or other local agencies involved with lead-poisoned children and their families. Others include environmental assessment companies, real estate professionals, those doing only lead inspections, crossovers from the asbestos industry, and painting and home-improvement contractors.

•Gergely acknowledged Carroll's concern over potential deception and victimization and noted Iowa has a strict consumer protection law. She stated that inspectors are encouraged to report only those conditions that are truly hazardous and that it is intended the inspections will remain voluntary. Since this is a relatively new area, surveys indicating average amounts of inspection fees and mitigation would not be practicable.

Gergely indicated that lead-inspector training is now conducted by the department, but that function will be carried out by community colleges. Instructors must be approved by the department, which is working in conjunction with the colleges to develop a curriculum.

•Weigel suggested the rules include notification to the property owner of a potential conflict of interest if a certified inspector is also the lead abatement contractor or lead abatement worker.

•After requesting that any changes be clearly identified in the adopted rules, Metcalf asked how federal mandatory certification of inspectors will affect property buyers. Gergely said there would be minimal impact since inspections are not mandatory and there is no requirement that hazards be removed.

•Carroll pointed out that a lead-disclosure statement is required at the time a property is listed or at the time of the purchase agreement if that dwelling was constructed prior to 1978.

•Bartz expressed concern over the inclusion of fences and outbuildings in the definition of residential dwelling and the potential subsequent cost of abatement. Gergely responded that children might have access to such structures, and abatement is not required by law or rule.

**HUMAN SERVICES DEPARTMENT** Mary Ann Walker, Gary Gesaman, and Jo Ann Kazor represented DHS.

ARC 7163A There were no questions on reimbursement rates, 52.1(3), 177.4(3), 177.4(7), 177.4(8)"b."

ARC 7161A There were no questions on FIP amendments to 41.25(7) and 75.26.

ARC 7164A There were no questions on Medicaid eligibility amendments in 76.11(1) to 76.11(3).

ARC 7165A No committee action on amendments to chapters 77 to 79, 83 regarding waiver programs.

ARC 7190A Walker noted DHS estimates the total cost for lead-poison screening at \$ 336,000 per year, with the state portion at \$123,442. At Metcalf's request, a per-case cost will be provided.

**HUMAN SERVICES (continued)**

- ARC 7166A •Walker indicated to Weigel that sheltered work and work activities for the mentally retarded are funded through local participation money sent to counties by the department. The amendment to 82.7 is not applicable to sheltered workshops, but rather to Medicaid facilities for the mentally retarded. Gesaman added that 82.7 applies to first-time placement in an ICF/MR; the need for that level of care must be approved by the central point of coordination with review by the Iowa Foundation for Medical Care. Once approval has been obtained, a county cannot require a person to relocate to another facility.
- Rittmer was informed there are approximately 120 certified ICF/MR facilities in Iowa.
- ARC 7189A There were no questions on the proposed elderly waiver program amendment in 83.22(1)“b.”
- Special Review Special review of emergency filing of consumer-directed care rules. Walker outlined the responses received following notice.
- Chs 77 to 80, 83

**EDUCATIONAL EXAMINERS BOARD** Orrin Nearhoof and Gary Borlaug appeared on behalf of the board.

- ARC 7197A •Bartz suggested the “reasonable period of time for treatment” in 12.2(1)“c” regarding addiction to prescription drugs be extended to alcohol abuse or possibly to all drug abuse.
- Nearhoof apprised Rittmer that the state board has had no alcohol abuse complaints, and acknowledged that such matters are often resolved at the local level.
- ARC 7198A There were no questions on 17.12 regarding community college staff development programs for license renewal.

**NURSING BOARD** Lorinda Inman and Lois Churchill were present from the board and Linda Goeldner represented the Iowa Nurses Association.

- ARC 7173A •Chapter 6 rules establish minimum standards for nursing practice. In response to Carroll’s question, Inman stated that certified nurse-midwives are advanced registered nurse practitioners authorized to practice midwifery.

**MEDICAL EXAMINERS BOARD** Ann Martino and Jennifer Hart appeared on behalf of the board. Becky Roorda was present from the Iowa Medical Society.

- ARC 7153A There were no questions on proposed medical records management amendments to 12.4.
- ARC 7152A •Rittmer was advised that the proposed rules will encompass any new drug which could be used for treatment of chronic pain.
- Martino offered the information that lay-midwifery is considered the practice of medicine without a license and is a Class D felony. Lay-midwives are working to establish criteria for registration or licensure under the auspices of either the nursing board or the medical examiners board.

**PETROLEUM UNDERGROUND STORAGE TANK FUND BOARD, IOWA COMPREHENSIVE** Representing the board was Pat Rounds.

- ARC 7196A •Kibbie asked whether those landowners recently eligible for remedial benefits will purchase insurance coverage on a backdated basis for coverage from 1990 through 1993 at an accelerated rate. Rounds replied that rates for 1991 through 1993 are based on scheduled rates in the Code. He added that backdated insurance coverage cannot be obtained if, at the time of request, the landowner was required to have coverage via federal rule.
- In response to Metcalf, Rounds stated that since December 1993, landowners were required by state and federal law to have insurance coverage. Those who continued to operate without it will get neither remedial benefits nor insurance coverage and some have chosen to abandon the sites. The board is working to assist new owners who have acquired a site previously owned and abandoned by a person not operating within the parameters of the law.
- Weigel was informed that when a person who has no coverage opts to sell the site, neither the seller nor the purchaser can obtain any benefits from the program. Rounds stated it is not difficult for prospective purchasers to determine if sites are eligible for benefits. Lending institutions require a due diligence search and a determination of compliance with environmental laws before purchase of a site.
- In response to Bartz, Rounds stated the board encourages counties which have acquired abandoned contaminated sites for back taxes to resell the site to cities so properties can be redeveloped and returned to the tax rolls and blighted areas can be restored. The board pays 100 percent of the cost of corrective action and assessment associated with those tanks and allows direct transfer of benefits from the county to the city. Counties are granted nontransferable third-party liability protection.

**ELDER AFFAIRS DEPARTMENT** Ron Beane represented the department.

- ARC 7195A No committee action on amendments to update Chapter 2.
- Metcalf was informed by Beane that the assisted living rules have been adopted although not all of the interested parties with whom the department has worked are in full agreement.

**INSPECTIONS AND APPEALS DEPARTMENT** Rebecca Walsh and Nancy Ruzicka represented the department.

- ARC 7180A No committee action concerning proposed 51.20, hospitals—food and nutrition services.
- ARC 7192A No committee action on amendments proposed for Chapters 56 to 59 and 61 to 65. Ruzicka clarified that “accurate assessment” refers to a standard of practice required by the board of nursing.

**TRANSPORTATION DEPARTMENT** Present from the department were Dick Hendrickson, Dave Titcomb, Dennis Ehlert, Shirley Andre, Tom Sever, Michael L. Winfrey, Kerry A. Kirkpatrick, Jody Johnson, Valerie Hunter, and Jan Hardy; present from the Corrections Department was Darlene Baugh; appearing from Iowa Independent Automobile Dealers’ Association were Janet Cassill, Frank Alderton, and Gary Englin; Dave Duncan was present from the Iowa Automobile Dealers’ Association.

- ARC 7172A There were no questions on motor carrier safety and hazardous materials regulations, 520.1(1).
- ARC 7191A There were no questions on 601.5(2)“a”(9) regarding proof of age and identity.
- Special Review Chapter 425
- The special review pertaining to motor vehicle dealer license was requested by Doderer. Discussion concerned the requirement that dealers must be open 32 hours per week. Ehlert stated that enforcement of the rule has resulted in loss of eight to nine dealers’ licenses.
  - Rants requested staff counsel research whether there are laws or rules requiring other businesses to maintain a set number of hours.
  - Doderer asked Andre to determine what actual economic interest concerning motor vehicle dealers the department needs to enforce.
- This issue will be rescheduled for further review.

**REVENUE AND FINANCE DEPARTMENT** James Hamilton and Mel Hickman represented the department.

- ARC 7199A
- In response to Weigel, Hickman stated that proposed rule 40.50 is intended to determine taxable amounts to be reported on the Iowa individual income tax return applicable to persons receiving monthly benefits from state pension plans after 1995. Since that date, 100 percent of the contribution has been taxed for Iowa purposes but not for federal.
  - Hamilton indicated to Palmer the department uses the federal method for taxing pensions.
  - Kibbie stated that when IPERS is pretaxed for state income tax, the cost to the state treasury during the first year will be \$4 million for six months, \$8 million during the second year, and the amount will gradually lessen in subsequent years.
- ARC 7182A
- No committee action pertaining to decedent-owed debts, 86.6(2)“a.”

**STATE PUBLIC DEFENDER** Bill Wegman, Mark Smith, and Rebecca Walsh appeared on behalf of the department.

- ARC 7171A No committee action on renoticed contracts for indigent defense services, Chapters 1 and 10.

**TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION, IOWA** Present on behalf of the commission were Harold Thompson, Dick Opie, Libby Nelson, and Tami Fujinake. Others in attendance included Todd Schulz from the Iowa Telecommunications Association; Mike May and Judy Pletcher from the Rural Iowa Independent Telephone Association; Don Jennings from Mid-Iowa Communications; Dick Vohs from Iowa Network Services, Inc.; and Judy Peppler from US West Communications.

- ARC 7186A
- Opie advised the committee a consensus was not reached concerning Internet access and a moratorium was declared to preclude any Internet expansion until the issue is resolved.
- Rants questioned whether changes to 7.12 permit expanded Internet access.
  - Kibbie pointed out the substantive changes that occurred in Chapter 7 since it was noticed and said rules are usually withdrawn and renoticed when extensive change occurs.
- May, Jennings, and Schulz expressed concern over changes to 7.12, the lack of opportunity to comment on those changes prior to the effective date of May 14, and the possible facilitation of dial-up Internet access.
- 70-Day Delay Motion Carried
- Rittmer moved Chapter 7 be delayed for 70 days and renoticed. The motion was seconded and carried unanimously.

**NATURAL RESOURCE COMMISSION** Arnie Sohn, Sherry Baudler, Anne Preziosi, Catharine Fitzsimmons, and Richard Bishop appeared on behalf of the commission for the following.

- ARC 7176A            There were no questions on 16.9 regarding dock management areas.
- ARC 7174A            •Rants requested a report from the commission on the anticipated amount of money to be generated by increasing the fees for barge fleeting areas and lease of lands and waters.
- ARC 7175A            No committee action on 92.3(3) requiring the use of nontoxic shot for the taking of waterfowl.
- ARC 7177A            There were no questions on 102.2 concerning falconry.

**ENVIRONMENTAL PROTECTION COMMISSION** Scott Vander Hart, Mike Murphy, Larry Haage and Dennis Alt represented the commission; also present were John Halleland, mayor of Randall; Dean Schade representing the Iowa League of Cities; Stan Walk from Mitchell County Development Corporation; and Mark Duben representing Iowa Consulting Engineers Council.

- ARC 7178A            There were no questions concerning air quality amendments to 20.2 and 22.100.
- ARC 7179A            No committee action on emission standards amendments to Chapters 22 and 23.
- Special Review      •The special review was requested by Carroll on behalf of Representative Garman.  
23.2                    Halleland spoke to the "insurmountable" restrictions placed on open burning that must be met by smaller communities. Murphy indicated the commission will take this under advisement and report back to the committee at the July meeting.
- July Agenda
- Special Review      •The special review was requested by Bartz. Walk explained to the committee the difficulties  
43.3                    and expense encountered when an engineer must approve small commercial construction projects involving public wells.
- Alt stated to Rittmer that well construction requirements are in Iowa Code chapter 455B.
- Bartz requested the commission prepare an informal economic impact statement.

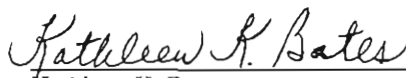
**Committee Business** •Metcalf moved approval of the minutes. Motion carried.  
Discussion ensued regarding procedure for payment of committee members' expenses. Recommendations will be accepted at the June meeting on future expense procedure.

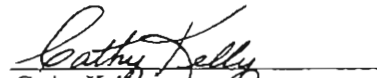
**Election**            •Carroll nominated Senator Kay Hedge for chair and Representative Christopher Rants for vice chair. The motion was seconded. Palmer moved to amend the motion to include term limits of two years for the officers, at which time the vice chair or a member of that house will be elevated to the position of chair. The motion as amended was approved.

**June meeting**        The June meeting was scheduled for Tuesday and Wednesday, June 10 and 11, 1997.

**Adjourned**            The meeting was adjourned at 3:55 p.m.

Respectfully submitted,

  
Kathleen K. Bates

  
Cathy Kelly

APPROVED:

  
Representative Janet Metcalf, Cochair