

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

Time of meeting The regular meeting of the Administrative Rules Review Committee (ARRC) was held Tuesday and Wednesday, November 12 and 13, 1996, in Room 22, State Capitol, Des Moines, Iowa.

Members present: Senator Berl E. Priebe and Representative Janet Metcalf, Cochairs; Senators H. Kay Hedge, John P. Kibbie, William Palmer, and Sheldon Rittmer; Representatives Horace Daggett, Minnette Doderer, Roger Halvorson, 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 10:05 a.m.

HUMAN SERVICES DEPARTMENT Mary Ann Walker, Barbara Russell, Charlene Hansen, Mike Murphy, Don Kassar, and Jane Jorgenson were present for the following.

ARC 6765A •Metcalf asked if the amendments to Chapters 11 and 65 were the result of federal reform; Walker responded that the changes comply with the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. Jorgenson clarified that the rules pertain to the federal food stamp program. Discussion ensued regarding eligibility of veterans, the homeless and noncitizens.
•Doderer voiced the possible need for a state supplemental food stamp program.

ARC 6767A No questions regarding amendments to Chapters 41, 75, and 153 concerning FIP, Medicaid, and social services block grant eligibility for aliens.

ARC 6769A •Doderer requested the department issue an explanation of eligibility for the food stamp program. This paper will be directed to Royce for subsequent distribution to the committee.

ARC 6757A No committee action concerning expanded medicaid coverage of Senokot in paragraph 78.1(2)“f.”

ARC 6758A Murphy responded to Royce that medical services provided to persons who await trial in nonmedical public institutions are not covered by Medicaid. Discussion ensued regarding payment of such services.
•Weigel moved subrule 79.9(5) be referred to the general assembly. The motion carried.

**Motion to Refer
Motion Carried**

ARC 6759A No questions concerning child day care amendments in Chapters 130 and 170.

ARC 6760A •Kibbie asked if the clothing allowance for children in foster care as set forth in subrules 156.8(1) and 156.11(2) permits the purchase of both new and used clothing; Walker replied that it does.
•Metcalf wondered if the clothing allowance is reviewed on an annual basis to keep up with inflation and the cost of clothing; Walker responded that it is not.

ARC 6761A •In response to Doderer, Kassar explained the change in rule 185.45 from 7 to 30 calendar days allows more families access to family preservation services and reunification.

**Special Review
Boot Camps** The committee was assured the department intends to fund the maximum number of 50 beds.

**Special Review
Child Care Centers** Representative Barry Brauns requested a review of earthquake contingency plans for child care centers. Kassar noted emergency services recommended the inclusion of such plans.
•Metcalf asked if subrule 109.3(6) requires structural changes; Kassar responded that it does not.
•Rittmer pointed out that plans should be in place should such a disaster occur.
•Hedge inquired about expense; Kassar replied that he thinks it would be minimal, but he will check with emergency providers and report back if there are significant expenses.

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF Melanie Johnson, Lane Palmer, Mary Lawyer, Kathy Beery, and Tim Metz represented the department.

ARC 6792A Comments had been received concerning wage calculation for the Iowa Industrial New Jobs Training Project, but no changes were made.
•Weigel moved subrule 5.13(2), pertaining to criteria for calculating the average county and average regional wage, be referred to the general assembly. Motion carried.

**Motion to Refer
Motion Carried
ARC 6793A** Lawyer stated many comments were received and numerous changes resulted in a new Chapter 7.
•Palmer expressed concern that the legislation did not provide for the use of interest to pay off loans. Lawyer noted 260F was in the form of a forgivable loan and, in the past when businesses could not meet loan obligations, community colleges used the 260E program fund interest to repay some of those

260F loans. Johnson added she did not believe the legislation precluded such use and thought it was allowable under administrative rule. Palmer then asked how much interest money has been used. Johnson will provide the information to Royce for distribution to the committee.

- Daggett asked Lawyer how the department pays for the training and was informed that costs are covered through the normal operating budget.

- Priebe was advised by Lawyer that the department reviews all applications and decides which program costs are "necessary" and which are "incidental." He then asked why, in the event of default, businesses are required to repay only a proportion, based on number trained, rather than total project funds. Lawyer responded that this is not a change from the former rule.

- Kibbie reiterated the need for a report to the committee on the amount of past interest money spent and anticipated future interest money that would be spent.

ARC 6794A
ARC 6797A
ARC 6798A

No questions concerning the TIF amendments to Chapter 26.

No questions concerning Chapter 30, job opportunities for persons with disabilities program.

No questions concerning Chapter 58 amendments regarding new jobs and income program.

EDUCATION DEPARTMENT Ann Molis and Don Helvick represented the department and Tom Jeschke was present from the Des Moines Public Schools/UEN

ARC 6748A

Helvick explained that there was a change in application date and added that no one attended the hearing and no written comments were received concerning the amendments to Chapter 17.

- Kibbie inquired about kindergarten open enrollment. Helvick responded that phase III funds now follow the students.

- Hedge expressed concern that smaller schools districts with lower costs have to meet the state cost per pupil.

- Priebe and Rittmer concurred.

ARC 6749A
ARC 6750A

No questions on 36.15(3)"b"(3)"8" regarding extracurricular interscholastic competition.

- Metcalf asked if a local school board is notified when a complaint is issued against a bus driver for student abuse. Molis was uncertain whether level one complaints are forwarded but added the schools could check with the department regarding any complaints.

- Doderer raised the question of whether a person is fired following a founded complaint. Molis stated that a process exists, and that the complaint is not automatic grounds for dismissal.

- Priebe expressed the opinion that a safeguard should exist in the rules to expunge a record when the charges are invalid. Doderer agreed with the concept and added it is difficult to clear a falsely accused person of such charges.

Dierenfeld and Royce informed the committee that records can be expunged from the child abuse registry but not from criminal court.

December Agenda

- Priebe moved the matter regarding expunging a record be set for the December meeting.

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT Ron Rowland, Walter Felker, and Jake Wakefield were present from the department.

ARC 6777A

No questions concerning proposed amendments to 2.2 on contested case practice and procedure.

ARC 6817A

No committee action on the notice for 64.1 regarding reporting of infectious and contagious diseases.

ARC 6824A

No committee action concerning proposed subrule 65.11(2) on importation of turkeys and turkey eggs.

ARC 6823A

- Priebe inquired about the effect of the proposed amendments to Chapter 68 on the Amish. Rowland replied that all Grade B producers would be affected.

- Metcalf asked how Grade B producers would be notified of the change; Rowland said the department could send a mailing to the approximately 1,000 farmers involved.

- Doderer expressed her displeasure at the department's handling of the situation involving Seatons.

ARCHITECTURAL EXAMINING BOARD Glenda Loving and Kate Schwennsen represented the board.

ARC 6799A

No questions on amendments to the examination application and registration in Chapters 1, 2, and 3.

BANKING DIVISION Michael Guttau, Don Senneff, and Steve Moser appeared on behalf of the department and Julie Andersen was present from the Iowa Credit Union League.

ARC 6763A

No committee action on amendments resulting from the review of existing rules of the division.

Recess

The committee recessed at 11:45 a.m. and reconvened at 1:40 p.m. in the Speaker's Conference Room.

PROFESSIONAL LICENSURE DIVISION Carolyn Adams and Marge Bledsoe represented professional licensure, Bruce Buchanan and Erlene Veverka were present from the SSW board, and Leila Carlson appeared on behalf of the National Association of Social Workers.

ARC 6778A No questions concerning mortuary science impaired practitioner review amendments to Chapter 114.
ARC 6816A No questions on physical and occupational therapy amendments to Chapters 200, 201, and 202.
ARC 6779A •Metcalf noted confusion among social workers regarding validation of practice. Buchanan replied that only licensed independent social workers are able to validate practice for the required two years engaged in supervised social work.
•Kibbie was advised by Buchanan that an unlicensed social worker grandfathered in after July 1 is eligible for licensing as long as that person holds a bachelor's degree and validates two years of social practice. If social work practice can not be validated, the person has the option of updating the practice level by July 1, 1998.

ARC 6809A No questions concerning speech pathology and audiology amendments to Chapter 302.

NURSING BOARD Lorinda Inman represented the board for the following.

ARC 6810A No questions concerning disciplinary proceedings set out in Chapter 4.

MEDICAL EXAMINERS BOARD Ann Martino represented the board.

ARC 6821A Bob Witt, representing the physician assistants' board, raised concern about the title of form number "5" in rule 11.33, regarding application of supervising physician for physician assistants. Martino countered that the amendment is an attempt to reflect the actual title as it appears on the form, there is no substantive change, and no comments were received when the amendment was under notice.

•Halvorson was told by Martino this form had been changed three years ago.

Deferred to Nov. 13 •Priebe requested Martino provide the committee copies of the current and previous forms on the following day. The matter was deferred until then.

ARC 6820A Martino said licensing fees had not changed in ten years and these increases were proposed in an effort to cover the \$35,000 deficit caused by increased hearing costs.

•Kibbie asked if surplus nursing fees are used to subsidize costs from other boards and stated he would like a financial accounting of each board's deficit or surplus.

ARC 6822A Discussion ensued regarding Chapter 21 and whether former rules remain in effect when a new chapter is delayed. The committee expressed displeasure that its specific request had been ignored and that a meeting between the boards of medical examiners and physician assistants had not occurred.

Motion to Refer •Halvorson moved referral to the general assembly. Following discussion, the motion was withdrawn.
Motion Withdrawn

•Kibbie suggested this issue be addressed at either the December or January meeting. Both boards were again urged to work together in the next two months to resolve the existing differences.

PUBLIC HEALTH DEPARTMENT Carolyn Adams, Carol Hinton, Janet Beaman, Gary Ireland, Mary Jones, Dick Harmon, Dan McGhee, Ken Choquette, Rita Gergely, J. Kirk Norris, and Tim Peterson were present from the department of public health, Rose Vasquez was present from the attorney general's office, Judy Rutledge from Planned Parenthood, and Paul McLaughlin and Jennifer Kingland from the Iowa Association of Realtors.

ARC 6774A No questions concerning the outpatient diabetes education program, Chapter 9.

ARC 6756A No committee action on the radiation amendments to Chapters 38, 39, 40, 41, 42, 45, and 46.

ARC 6753A •Priebe expressed concern about the economic impact that Chapter 70 might have on homeowners of older homes with lead-based paint. Gergely responded that homeowners must disclose if they have had an inspection done, but they are not required to inspect for lead-based paint.

•Halvorson asked what cost would be incurred in lead inspector certification. Gergely replied the fee was \$50 for three years. A homeowner inspection fee had not been determined but could possibly be in the \$100 to \$150 range. Halvorson voiced concern that lenders would refuse to finance homes with lead-based paint.

•Rittmer pointed out that while disclosure is required, inspection is voluntary.

ARC 6755A No questions concerning the Chapter 73 amendments to the WIC program.

ARC 6770A Hinton reported that the video regarding various options available to a pregnant minor was prepared with the assistance of a committee composed from a broad spectrum, including legislators. Hinton stated comments received on proposed Chapter 89 requested clarification, e.g., on whether "attending physician" is one dealing with the pregnancy, or any physician seeing the minor.

•Doderer expressed concern over protecting confidentiality of the pregnant minor outside the physician/patient relationship in the area of parental notification. Hinton said the department had not addressed this issue since it had not been included in the legislation.

- Motion to Refer Deferred to December Meeting**
- ARC 6754A •Priebe moved the issue of confidentiality between the pregnant minor and other than a physician be referred to the general assembly.
 - ARC 6771A •Metcalf requested postponement of the referral until the board reviews the matter. Priebe acquiesced. No questions on emergency medical services amendments to subrules 132.4(4) and 132.11(1).
 - ARC 6772A No committee action on proposed Chapter 134, trauma care facility categorization and verification.
 - ARC 6773A No committee action on proposed Chapter 135, trauma triage and transfer protocols.
 - Priebe expressed the opinion that complaints should not be filed solely with the department.

PUBLIC SAFETY DEPARTMENT Michael Coveyou, Michael Rehberg, Carroll Bidler, and Cal Rayburn represented the department for the following.

- ARC 6776A No questions on proposed continuing education amendments for private investigators and employees.
- ARC 6751A •Metcalf questioned the department's authority to order a distributor or installer to cease operation as proposed in paragraph 7.8(15)"c."

PERSONNEL DEPARTMENT Clint Davis appeared on behalf of the department.

- ARC 6811A No committee action concerning Chapters 1 to 16, 18, 20, and 25.

Committee Business

- Minutes •Priebe moved the minutes be approved. Motion carried.
- Motion •Priebe moved that Horace Daggett and Roger Halvorson chair the December and January meetings.
- Motion carried The motion carried.
- Recess The committee recessed at 3:20 p.m. and reconvened Wednesday, November 13, 1996, at 9:05 a.m. in Room 118.

VETERANS AFFAIRS COMMISSION Randy Brown and Jerry L. Meek represented the commission.

- ARC 6807A •Kibbie asked if county boards of supervisors and county veteran affairs commissions were aware of a recent change regarding veterans' eligibility for food stamps. Royce was asked to provide information to Meek for forwarding to these groups.
- Weigel inquired about changes in record keeping. Brown said they are in the process of automation.
- Recess The committee recessed at 9:15 a.m. and reconvened at 9:20 a.m. in Senate Room 22.

TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION, IOWA Libby Nelson represented the commission.

- ARC 6762A •In response to Metcalf, Nelson explained that the vendor appeal period was changed from ten to five days to match general services appeal times and facilitate the commission's ability to let a contract.

TRANSPORTATION DEPARTMENT Vicki Dumdei, Thomas L. Reis, Tom Saury, Kirsten Bandon, Dennis Ehlert, Dwight L. Stevens, and Dennis Elderkirk were present from the department for the following.

- ARC 6746A Reis distributed copies of changes to the document adopted by reference. Priebe asked if DBEs were in agreement with the changes; Reis confirmed their accord.
- Rittmer inquired about the bidding process; Dumdei responded that a change was made in response to contractor complaints to avoid bid collusion.
- Metcalf requested an explanation for the reduction of the reimbursement amount for replacing pavement destroyed at heavy equipment crossings. Reis explained that \$7,500 reflects the current cost of replacing pavement in a normal 24-foot wide roadway. Reis pointed out that generally contractors volunteer to replace the pavement, rather than pay the set amount.
- Priebe voiced concern that \$7,500 may not be enough. Reis responded that the department engineer has the option of requiring the contractor to replace the pavement or pay the reimbursement amount.
- ARC 6818A No questions concerning primary road signing amendments to Chapter 131.
- ARC 6747A •Rittmer was informed by Elderkirk that proposed 480.3 and 480.4 have received broad support and will reduce to an estimated \$70,000 the approximately \$230,000 now spent from the road use tax fund for abandoned vehicles.
- Metcalf requested an explanation of the reduction; Elderkirk responded that abandoned vehicle costs previously included towing and \$5 per day police storage costs. The notification process requires storage up to 45 days. The only expense incurred when using a private entity to dispose of abandoned vehicles is the \$50 towing fee. Storage fees are covered by the private entity which recovers the fees on the sale of the vehicle.

Committee Business

Physician Assistants
January Agenda Martino provided requested copies of the current form "5" and one used from 1989 to 1993.
•Following discussion, Kibbie requested January ARRC review of this matter.

December Meeting
January Meeting The December meeting was scheduled for December 11 and 12, 1996.
The January meeting was scheduled for January 6 and 7, 1997. It was further decided that if business could be concluded in one day, the meeting would take place on January 7.

LABOR SERVICES DIVISION Walter Johnson appeared on behalf of the division.

ARC 6813A No questions on proposed 10.20 pertaining to general industry occupational exposure.
ARC 6814A No questions concerning rule 10.20 pertaining to general industry personal protective equipment.
ARC 6812A No questions on proposed 26.1 pertaining to construction occupational exposure and safety.
ARC 6815A No questions concerning the rule 26.1 construction amendment.

INSURANCE DIVISION Rosanne Mead, Roger Strauss, and John Leonhart represented the division for the following.

ARC 6825A No committee action concerning Chapter 14 life insurance illustrations.

INSPECTIONS AND APPEALS DEPARTMENT Rebecca Walsh, Larry J. Bryant, Nancy Ruzicka, and Jay Bennett represented the department. Other interested parties included Gwen Musick and Susan Janssen from All Care Home Health, Inc., Kristie Hirschman from Iowa Citizens' Aide/Ombudsman, and Janet Wilson and Jesse J. Rodriguez from Madison County In Home Health Care.

ARC 6808A •Priebe inquired about consent for oral argument. Bryant replied that to conform to standard appeal language, this emergency amendment allows the director or a designee to give such consent.

•In response to Doderer, Bryant explained that the volume of cases may require use of a designee.

Special Review Representative Dwight Dinkla requested review of certification of in-home health care providers.

Ruzicka stated Iowa has no licensure program but home health agencies can be certified to care for Medicare clients and receive reimbursement after meeting Medicare conditions of participation. Ruzicka recounted that on August 26, 1996, the department was notified by Health Care Finance Administration of a policy change which increased to ten the number of clients that an agency must have prior to the department's conducting a survey. Previous surveys could be completed if the agency had one client. The federal change was attributed to the difficulty of ascertaining whether an agency was in compliance with the rules and regulations when the survey was based on only one client record, the need for a minimum quality and health standard, and the initiative to cut down on fraud and waste in the Medicare system. On October 31, 1996, the HCFA notified the department that an initial certification survey could be done if the request for a survey had been made prior to October 11, 1996. Federal government sets eight priorities for state survey agency workload responsibilities and initial surveys rank seventh. Ruzicka stated the Madison County In Home Health Care submitted its application for Medicare certification but not the written request for a survey at the time of the change.

•Halvorson expressed concern both for small agencies and the risk of fraud since home health care agency billings submitted to Medicare are not seen by individuals and subject to review.

Hirschman appeared on behalf of home health care agencies who made investments based on parameters outlined in letters from DIA that they could schedule a survey once they had admitted their first patient. Services provided by agencies prior to certification are not reimbursed. She noted that between the August 26, 1996, telephone call to DIA stating the rule change was to be implemented immediately and the October 11, 1996, letter delineating written policy, no notification of the change was sent to the agencies. People were apprised of the policy change when they called requesting a survey. The number of Iowa agencies affected by this is low but, because it takes time to build the required clientele and initial surveys have a low priority, three to four months can elapse. During this time the agency has to absorb all costs incurred for patient care and there is no assurance of the quality of care provided.

Janssen reported her agency has spent \$25,000 on patient care that will never be reimbursed and estimated ten clients would cost the agency \$100,000. Her agency requested the survey the second week of August, but was not notified of the change until October 28. She said the ten-patient requirement favors large chains and might force her business to close.

•Weigel asked if an agency was grandfathered in if it did not meet the required ten clients but had the survey completed. Ruzicka said that an agency fell under the old rules if a survey had been completed prior to August 26, 1996. After the August 26 date, those agencies that had returned applications to the department were notified of the policy change. Weigel contended agencies ready to render service with one client should have been grandfathered in under the old rule.

•Halvorson asked if the survey could be expedited. Ruzicka pointed out the federal government sets both state funding and priorities for work, and it could take eight weeks or more for a survey to be completed.

Priebe in Chair

•Rittmer asked Janssen what percentage of her clients were Medicare patients. Janssen replied that all were on Medicare and none had the ability to privately pay costs, which averaged \$600 per day.

•Palmer asked if the department could request a waiver from the requirement; Ruzicka replied that waiver provisions do not exist. Palmer advised contacting U.S. Senators and Congressmen.

Metcalf in Chair

•Doderer suggested the committee send a letter to President Clinton and to Health and Human Services Director Donna Shalala with copies to our Senators and Congressmen to apprise them of the problem.

•Kibbie expressed the opinion that other states must also be encountering this problem.

Dierenfeld stated the federal policy change is a guideline and, as such, is subject to change; therefore, a communication should be sent to HFCA requesting grandfathering for the affected agencies.

•In response to Rittmer, Wilson summarized her situation and stated that approximately 98 percent or more in rural areas were unable to privately pay for home health care. She also pointed out that secondary insurance could not be used until Medicare reimbursed the caregiver.

Motion

•Priebe moved that Royce draft a letter on behalf of the committee to request a reduction in the minimum number of clients from ten to possibly three for the survey and that consideration be given to a change from a 60-mile to a 30-mile radius so that more time is available for patients.

•Halvorson requested a letter also be prepared by the governor's office. Dierenfeld suggested the ombudsman's office additionally contact the Kansas City regional office or the Washington office.

•Rittmer suggested the letter be reviewed and signed by the cochairs and be sent immediately.

Motion Carried

The motion for Royce to draft the committee letter carried.

NATURAL RESOURCE COMMISSION Richard Bishop and Bill Farris represented the natural resource commission.

ARC 6784A No questions on subrule 45.4(2) concerning the no-wake speed at Fogle Lake in Ringgold County.

ARC 6781A No action on proposed incidental use by bicycles on service roads on state lands in 67.2, 67.8(1).

ARC 6789A No committee action concerning timber buyer amendments to Chapter 72.

ARC 6782A No committee action on amendments to Chapter 98 concerning spring hunting of wild turkeys.

ARC 6783A No questions concerning Chapter 105 amendments on the deer population management areas.

ENVIRONMENTAL PROTECTION COMMISSION Pete Hamlin, Scott Vander Hart, M. R. Clover, Joseph E. Obr, Bob Drustrup, Anne Preziosi, Jack Riessen, Mel Pins, and Brian Tormey represented EPC.

ARC 6790A No committee action on proposed emergency generator emission amendments in Chapters 20 and 22.

ARC 6795A No questions concerning the open burning amendment to paragraph 23.2(3)"b."

ARC 6791A No changes were made to 53.7(1) after receipt of comments on the Ralston Site protected water source.

•In response to Priebe, Drustrup stated that anyone withdrawing more than 25,000 gallons of water per day is required to have a state permit and that large hog facilities are obtaining permits.

ARC 6788A No committee action regarding Chapters 60, 62, and 63 concerning effluent and pretreatment standards.

Committee Business Royce asked to attend a meeting in Cleveland; after discussion, Royce withdrew the request.

Priebe in Chair It was decided to hold a party the evening of the January 6, 1997, meeting in lieu of a Christmas party.

ARC 6785A No questions on proposed paragraph 61.2(2)"h" concerning water quality standards.

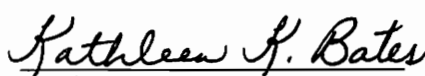
ARC 6786A No action on manure management amendments to Chapter 65 navigable rivers, streams, and lakes.

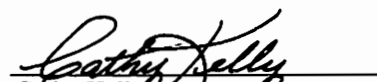
ARC 6787A No questions concerning Chapter 103 amendments regarding sanitary landfills.

ARC 6780A •Priebe expressed displeasure that \$50,000 from the waste tire management fund had been granted to Rosebar after the budget committee specifically requested no additional moneys be granted Rosebar until something was done about the tires. Tormey stated a pending \$82,000 grant had been withdrawn.

Adjourned The meeting was adjourned at 12:07 p.m.

Respectfully submitted,


Kathleen K. Bates


Cathy Kelly

APPROVED:


Representative Janet Metcalf, Cochair