

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, April 7, 1997, in Senate Committee Room 22, State Capitol, Des Moines, Iowa.

Members present: Senator H. Kay Hedge and Representative Janet Metcalf, cochairs; Senators Merlin E. Bartz, John P. Kibbie, and Sheldon Rittmer; and Representatives Danny Carroll, Minnette Doderer, 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 •Cochair Metcalf convened the meeting at 7:35 a.m.

HUMAN SERVICES DEPARTMENT Mary Ann Walker, Mary Mohrhauser, and Darlene Clark represented DHS.

ARC 7091A There were no questions on proposed Chapter 24, Division II, mental health provider accreditation.

ARC 7136A •Metcalf inquired about a possible need to renote mental health provider accreditation, Chapter 24, Division I, in light of the extensive and substantive changes from the notice. Walker stated the revisions occurred in response to comments received, and Royce added that such changes are permissible as a logical outgrowth of public participation.

•Carroll asked about possible costs to counties and the state. Walker responded a two-year grant was received to fund the Chapter 24, Division II, pilot project; and funding is not needed for Division I.

•Walker replied to Kibbie that the average caseload of 45 consumers per case manager had not changed and a sufficient number of managers is available.

ARC 7084A There were no questions on SSI cost-of-living increases in Chapters 51, 52, and 75.

ARC 7092A •Bartz asked what additional costs would be incurred by the proposed consumer-directed attendant care services. Clark responded the service is mandated to be budget-neutral. Currently, some policy exceptions exist where people are given extra funding for home care and are 100 percent funded by the state. Because of inclusion of the service in the Medicaid Home- and Community-Based waivers, it is anticipated federal funding will provide approximately 64 percent of that amount. She noted not all providers will be trained at a skilled level of care and will require on-site supervised visits every two weeks by a registered nurse or therapist.

Regarding response to the notice, Walker stated that some agencies oppose the lack of training required for providers and client advocates oppose the provision that parents of children aged 17 or younger and spouses will not be paid. Representative William Brand of Tama favors emergency adoption to benefit quadriplegics who do not have ongoing medical problems but who require 24-hour care.

•Kibbie asked whether the proposed rules permit a parent to be paid for caring for a mentally retarded child over the age of 18. Clark answered it would be determined on a case-by-case basis; however, not all parents will elect to participate since they have access to respite care and other services. A caseworker or case manager working with an interdisciplinary team determines services, and a finite dollar amount is applied to the case plan. Walker added caps currently exist on elderly, ill and handicapped, brain injured, and AIDS/HIV waivers, but not on MR waivers.

June Agenda Following discussion regarding emergency adoption, the committee requested a special review in June, prior to the anticipated July 1 effective date.

ARC 7085A There were no questions regarding mental health outreach providers in subrules 77.33(10) and 79.1(2).

ARC 7093A No committee action on noticed family preservation treatment services amendments to Chapters 181 and 185.

ARC 7137A No committee action regarding family preservation skill building services proposed amendments to Chapter 185.

Committee Business •Metcalf moved approval of the minutes. Motion carried.

May meeting The May meeting was scheduled for Tuesday and Wednesday, May 13 and 14, 1997.

HUMAN INVESTMENT COUNCIL Jayne Jochem appeared on behalf of the council.

ARC 7051A There were no questions concerning Chapter 20 innovation zones.

ELDER AFFAIRS DEPARTMENT

Ron Beane and Beth Bahnson were present from the department. Others present included Ned Chiodo from PRI; Richard Parades and Jordana Zubkoff from MCHS; Mike Day from JS/Day; Rich Bond from B and Co.; Keith Paul and Richard Reel from GranCare, Inc.; Larry Breeding from the Iowa Association for Home Care; Ben and Barbara Shlaes; Doug Bunkers; and Karen Breeding from the Lutheran Social Service.

ARC 7151A

•In response to Metcalf, Bahnson stated the major differences between an elder group home and assisted living involve the amount of services provided and the number of persons who can live in the program structure. Bahnson continued that in an elder group home, the provider cannot furnish more than basic assistance with a daily living activity. Conversely, a provider in assisted living can furnish full service as long as the individual is not bedridden or does not require 24-hour skilled care. Individuals who are fairly independent and fully functional may also be admitted and may "age in place" with a service package tailored to specific needs.

•Carroll was informed that there currently are no organizations which offer voluntary accreditation of assisted living programs and that the certification fee could range from \$250 to \$500.

•Metcalf requested the actual amount of the fee be specified in the rule when it is adopted.

•Bahnson answered Hedge that tenant evaluations can be performed by staff of the assisted living program or case management for the frail elderly program.

•Weigel was advised couples can share a room and that some semi-private rooms are available.

Parades and Paul, concerned about exceptions in 27.6, requested more exacting rules to preclude injury or death and requested the inclusion of specific guidelines for level of care.

Breeding voiced concern that assisted living residents might be ineligible for Medicare benefits and requested that language be added to the occupancy agreement whereby the applicant would be required to note that the agreement will or will not jeopardize Medicare benefits. While the department wants to preserve maximum flexibility of choice, it intends to review the occupancy agreement to ensure it is clear on this issue.

Bahnson assured Shlaes that all senior housing must be handicapped accessible and that out-of-state organizations moving into Iowa will undergo investigations regarding quality of services, but not finances. The department defers to the fire marshal for fire safety requirements, and a background and qualifications review of a provider's employees is contingent upon pending legislation.

PUBLIC SAFETY DEPARTMENT Michael R. Coveyou, Roy Marshall, and Sam Knowles represented the department.

ARC 7157A Marshall informed Carroll that the proposed fire safety requirements for assisted living housing are applicable to all types of construction and facilities.

ARC 7155A There were no questions regarding private investigator continuing education in Chapter 2.

ARC 7156A There was no committee action on the ignition interlock amendments, 7.8(3) and 7.8(15).

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT Present from the department were Ron Rowland, John Metcalf in Chair

Whipple, and John Schiltz; Ken McNichols appeared for the Iowa Limestone Producers Association.

ARC 7144A Rowland explained changes from the notice pertain to waiver of the period of loss of licensure and clarification of the role of veterinarians. Rowland further clarified that a commercial license is required if an individual engaged in selling has four or more animals capable of breeding.

Selective Review

ARC 6881A

The review was at Royce's request. Whipple said meetings were held with the Iowa Limestone Producers Association and municipal waterworks, and a satisfactory agreement has been reached.

Motion to Lift

Motion Carried

Weigel moved to lift the committee's request for an economic impact statement. The motion carried.

CORRECTIONS DEPARTMENT Fred Scaletta was present from the department.

ARC 7158A There were no questions concerning inmate money orders in 20.5.

ARC 7160A There was no committee action regarding jail facilities in Chapter 50.

ARC 7159A There were no questions pertaining to temporary holding facilities in Chapter 51.

EDUCATION DEPARTMENT Ann Molis and Don Helvick represented the department for the following.

ARC 7086A There were no questions pertaining to grant criteria in Chapter 7.

ARC 7087A •Metcalf was informed by Helvick that home-schooled children participating in extracurricular sports can be assessed participation fees.

•In response to Rants, Helvick stated a home-schooled student participating in extracurricular activities is considered dual enrolled at a public school or nonaccredited nonpublic school and is not required to take a minimum number of other credits. Open enrollment is allowed if eligibility rules are followed.

ARC 7088A •Helvick told Metcalf the nonschool team participation rule was eliminated due to strong opposition.

•Weigel was advised the rules permit coaches to have contact with students for more than ten days during the summer as long as it does not conflict with sports in season.

ENVIRONMENTAL PROTECTION COMMISSION Scott Vander Hart and Larry Haage represented the commission.

- ARC 7108A There were no questions concerning proposed emission guidelines amendments in Chapters 22 and 23.
- ARC 7107A
- Haage told Metcalf the carcinogenic PAHs concentration in soil sent to landfills increased by 100 ppm.
 - Haage explained to Bartz that farm waste is governed by Chapter 101, adding that farmers are permitted to bury anything that comes from the farm. These amendments to Chapters 100 and 102 pertain to industrial waste, including out-of-state waste brought into Iowa landfills.
 - Weigel was told landfills do not have to accept special waste and it is the generator who must obtain authorization to take it to landfills.
 - Kibbie requested information be obtained for the committee on Minnesota's standards and the number of Minnesota industries requesting special authorization permits to bring waste into Iowa landfills.

NATURAL RESOURCE COMMISSION Scott J. Vander Hart, Janet Ott, Kevin Szcodronski, Steve Dermand, Terry Little, and Marion Conover appeared on behalf of the commission for the following.

- ARC 7114A No committee action concerning proposed REAP amendments to Chapter 33.
- ARC 7115A
- At Bartz's request, Dermand will provide information to the committee concerning whether use of special floatation devices proposed for exhibition performers may extend to the public.
- ARC 7116A
- Carroll asked the department's intent regarding waterfowl and coot seasons and limits. Little responded some season lengths are set by federal rules while other hunting seasons are tradition-based. With the exception of significantly liberalized deer limits, there has generally been relatively little change in the past 20 years.
- ARC 7109A There were no questions concerning proposed youth pheasant hunt, subrule 96.1(3).
- ARC 7110A There were no questions on noticed 97.3 and 97.4 amending woodcock and ruffed grouse seasons.
- ARC 7111A There was no committee action on the wild turkey fall hunting license quotas proposed in 99.5.
- ARC 7118A
- Weigel was informed that an additional 10 to 15 percent total new deer kill over the 1996 estimated record of 108,000 to 110,000 could be expected. The proposed rules are designed to take more does.
 - After inquiry by Bartz, Little responded that the January third-season is included in the estimated totals and a more liberal policy of taking antlerless deer might be considered.
 - Kibbie was apprised that the early muzzleloader season lasts nine days and the first regular gun season runs five days. To prevent overkill of antlerless deer, in some counties the first several days of each season are restricted to antlered deer; either sex may be hunted during the latter part of the season.
- ARC 7112A
- In response to Carroll, Little reported the department has received complaints about property destruction due to hunters trespassing on private property to retrieve wounded game. Those hunters must leave if requested to do so, but can return with a conservation officer to retrieve the game.
 - Bartz pointed out a difference in rules for northern and southern Iowa regarding shooting from road ditches. Little reported multiple problems and complaints occur in northern Iowa but are "extremely unusual" in southern Iowa. The department does not restrict an activity where problems do not exist.
- ARC 7113A There were no questions concerning game management areas in Chapters 51, 52, and 61.
- ARC 7117A There were no questions pertaining to mussel regulations in subrules 87.1(1) and 87.1(2).

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

- ARC 7134A There were no questions regarding hospital pharmaceutical services in 51.14.

INSURANCE DIVISION Jo Oldson and Craig Goettsch were present from the division.

- ARC 7121A
- Oldson assured Doderer that 27.8 and 40.22, which prevent HMOs and insurers from prohibiting providers from or penalizing them for discussing treatment options with covered persons, apply to any policy issued by an HMO or an insurer.
- ARC 7089A There were no questions on the securities rules 50.90 to 50.93.
- ARC 7135A No committee action on proposed 50.33 and 50.57(9) dealing with limited Canadian broker-dealer registration and incorporation of NASAA guidelines.

ATTORNEY GENERAL Doug Merritt appeared on behalf of the attorney general's office. Laverne Schroeder, William H. Moulder, and David Johnson represented the Iowa Association of Chiefs of Police.

- ARC 7106A
- Merritt presented proposed Chapter 33 to implement guidelines for disposition of cash, vehicles and, in rare instances, real property seized for forfeiture.
- Responding to Hedge, Merritt explained that the seizing agency retains titles to vehicles and generally 90 percent of the cash is distributed among agencies participating in the investigation and 10 percent is retained by the department of justice. Seizure of contaminated real property could potentially be an extreme liability; therefore, the department encourages a local assessment prior to seizure. The seizing agency maintains responsibility for maintenance of the property while forfeiture action is pending. Property used for an illegal purpose can be condemned through a nuisance abatement action that would not subject the state or local agency to liability.

ATTORNEY GENERAL (Cont'd)

- Rants was assured the 90-10 guideline will be delineated in the rules.
- Rittmer ascertained that a local entity may carry over forfeiture funds from one fiscal year to the next.
- Doderer observed that funds received through forfeiture are not subject to the budgeting process. Schroeder, Moulder, and Johnson presented concerns that the rules do not specify the forfeiture funds split of 90-10, but give broad discretion to the department in disposition of seized funds; require double transfer of motor vehicle titles; and might necessitate additional expenditures for required alarm systems in unoccupied structures and maintenance of seized property.

LAW ENFORCEMENT ACADEMY Gene Shepherd, Rodney Van Wyk, and Gary Anderson were present from the academy.

- ARC 7123A No committee action concerning reserve officer weapons certification in Chapter 10.
- ARC 7122A
- Metcalf requested the committee be provided with specifics on telecommunicator training funding.
 - Anderson informed Kibbie current employees hired prior to July 1, 1997, will be grandfathered in.
 - Anderson told Rittmer that the cost of training varies and indicated that agencies can conduct training locally with an instructor certified by ILEA.

PHARMACY EXAMINERS BOARD Lloyd Jessen represented the board for the following.

- ARC 7124A No committee action on proposed amendments regarding pharmaceutical care in Chapter 8.
- ARC 7125A There were no questions on registration denial, revocation, and suspension amendments in Chapter 1.
- ARC 7126A There were no questions pertaining to 2.1, 2.4, 2.6 to 2.9, 2.10(1), and 2.11 licensure amendments.
- ARC 7127A No committee action on amendments concerning pharmacist-interns in Chapter 4.
- ARC 7128A There were no questions concerning pharmacy technicians in Chapters 6, 7, 15, 16, and 19.
- ARC 7129A There were no questions regarding the practice of pharmacy as set forth in Chapter 8.
- ARC 7130A No committee action on the emergency/first dose drug supply amendments in 8.32.
- ARC 7131A There were no questions pertaining to discipline amendments in 9.4, 9.23, 9.25, and 9.26.
- ARC 7132A There were no questions on pharmacy compounding practices by pharmacy technicians in 20.4(3).
- ARC 7133A There were no questions regarding pharmacy technician amendments to Chapter 22.

PETROLEUM UNDERGROUND STORAGE TANK FUND BOARD, IOWA COMPREHENSIVE Pat Rounds was present from the board.

- ARC 7147A No committee action on the deadline extension to apply for benefits as amended in Chapter 11.
- ARC 7150A There were no questions concerning financial hardship benefits in paragraph 11.1(3)"n."
- ARC 7149A
- Individuals who acquired property after October 26, 1990, are eligible to receive benefits. In response to Kibbie, Rounds stated there are no restrictions on use of acquired property.
- ARC 7148A There were no questions on the rescission of 11.6(6) pertaining to soil remediation.

REVENUE AND FINANCE DEPARTMENT Carl Castelda represented the department.

- ARC 7145A There were no questions concerning confidential information amendments in Chapters 75 and 81.
- ARC 7146A
- Rittmer asked about enforcement of local option sales tax collections. Castelda stated few complaints are received and the department provides classes and information to retailers who have to collect taxes.
 - Rants was informed by Castelda the department is negotiating with direct sales catalog marketers who have agreed to collect both state and local option sales taxes.
 - Bartz inquired about how the department determines where a banking transaction transpires. Castelda explained the tax is imposed in the jurisdiction in which the service is performed, although the department is aware that banking transactions may occur outside state jurisdiction. He added the department would support exempting bank service charges from local option service tax and imposing bank service charges only when the customer's address is in a local option tax jurisdiction. Bartz asked Castelda to obtain information concerning how much is raised from taxing these charges.
- ARC 6997A Castelda indicated 18.20(5) and 18.20(6) pertaining to communication services will be withdrawn if the bill currently before the legislature addresses the exemptions, is passed, and is signed by the governor. If that does not occur, the subrules will become effective May 1, 1997.

TRANSPORTATION DEPARTMENT Present on behalf of the department were Thomas L. Reis, Jody Johnson, Pat Schnoor, Kirsten Bandou, Jan Hardy, Carol Crouse, and Elizabeth Baird.

- ARC 7140A No committee action on Chapter 125 amendments concerning general requirements and covenants for highway and bridge construction.
- ARC 7139A No committee action regarding motor vehicle amendments in Chapters 400, 425, and 450.
- ARC 7138A
- Crouse told Carroll the recent legislation passed by the House transportation committee will not affect Chapter 511 rules on special permits for vehicles and loads of excess size and weight.

UTILITIES DIVISION Vicki Place and Gary Stump appeared on behalf of the division.

- ARC 7120A •Weigel asked if utilities can send notices of the availability of winter energy assistance with billings, and Place confirmed that the option is available although some small utilities bill by postcard.
- ARC 7141A •Weigel noted the increase from \$1 million to \$10 million in the threshold for the sale or disposal of assets before board approval or a waiver is required. Stump stated the threshold, which had not increased in eight years, is 3 percent of revenue or \$10 million. He added transactions have not occurred in the \$10 million range, but should a utility sell assets for \$10 million and six months later dispose of assets again for \$10 million, each is then considered a separate sale and would require separate waivers.

PROFESSIONAL LICENSURE DIVISION Marge Bledsoe represented the division, and Ray Barker was present from the board of barber examiners for the following.

- ARC 7096A There were no questions concerning the barber amendments proposed for Chapter 20.
- ARC 7095A There were no questions on proposed marital and family therapist amendment to 30.3(1)"b"(1)"3".

PUBLIC HEALTH DEPARTMENT Carolyn Adams and Gary Ireland represented the department for the following.

- ARC 7094A •In response to Metcalf, Ireland stated law enforcement personnel indicated there is no need for two levels of first responders. The proposed rules reflect that change. Ireland will provide information to the committee regarding the cost of training.
- Adjourned The meeting was adjourned at 11:50 a.m.

Respectfully submitted,

Kathleen K. Bates
Kathleen K. Bates

Cathy Kelly
Cathy Kelly

APPROVED:

Rep Janet Metcalf
Representative Janet Metcalf, Cochair