

**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, June 10, 1997, in Room 1, State Capitol, Des Moines, Iowa.

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

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

Convened •Chair Hedge convened the meeting at 10:10 a.m.

HUMAN SERVICES DEPARTMENT Present from the department were Mary Ann Walker, Sally Nadolsky, Rosemary Norlin, Barb Bosch, Eric Sage, Debborah Ozga, Maya Krogman, Marcia Stark, and Jim Chesnik.

ARC 7205A No questions concerning Chapter 2 department contracts and use arrangements.
 ARC 7206A No questions on FIP amendments to Chapters 40 to 43, 45, 46, 48, 49, 58, and 93.
 ARC 7207A No questions regarding SSA amendments 50.3 and 177.4(9)"c."
 ARC 7208A No committee action on Medicaid amendments to Chapters 52, 54, 79, 81, 82, and 86.
 ARC 7209A •Walker and Krogman pointed out that due to changes in the federal law, the 1993 federal waivers that permitted state FIP and food stamp programs to move families from public assistance to self-sufficiency can no longer continue to operate in the same manner. In response to Weigel, Walker stated elimination of the control groups and waiver policies will result in a loss of federal money of approximately \$70,000 per month for foodstamps to households.

ARC 7217A No questions on 73.4(3), Federal Surplus Food Program income eligibility guidelines.
 ARC 7210A No questions pertaining to proposed private pay health care amendments.
 ARC 7234A •Responding to Rittmer, Walker explained that separate heart and lung transplants are proposed to be covered by Medicaid; a single heart-lung transplant is not.
 •Metcalf was informed by Nadolsky that two lung transplant procedures are anticipated yearly at a cost of \$100,000 each.

ARC 7211A No questions regarding dental provider amendments 78.18(6)"b"(2)"2" and 80.2(2)"e."
 ARC 7212A •Bartz requested clarification concerning differences in county health care service. Stark stated the department is seeking to have MediPASS and HMOs represented in all 99 counties. The 16 counties that do not have both entities are considered optional rather than mandatory managed health care for purposes of Medicaid.
 •In response to Weigel, Stark stated two types of managed care exist, commercially-based HMO and primary care case management in which the Medicaid program contracts individually with physicians. She added that every hospital in Iowa contracts with Medicaid.

•Stark indicated to Rittmer that Medicaid rates for FIP and FIP-related recipients have remained stable for the past three years, but an increase is anticipated next year.

ARC 7213A No questions concerning 170.4(7) day care payment rates. As requested by the committee when the amendment was under notice, Walker provided the legislative authority for the department to encourage registration of day care providers.

ARC 7214A No questions on 185.1, regarding rehabilitative treatment services.

ARC 7215A •Carroll was advised by Walker and Sage an adoptive parent must complete 12 hours of adoptive training and 12 hours of foster parent training at state expense.
 •Walker indicated to Kibbie a foster care parent who adopts may waive the foster care training.

Emergency implemented rules special review:

FIP amendments to Chapters 9, 41, and 95.

•Bartz questioned the use of the term "second cousins" and pointed out that first cousins are children of siblings and second cousins are the grandchildren of those siblings. Whenever a generational line is crossed, the term "removed" is added to the word cousin.

•Metcalf requested clarification concerning whether truancy will be considered as of the rules January 1, 1998, implementation date or from the start of the 1997 school year. Krogman said truancy will be determined by the department of education and DHS will be notified once a truant child has been identified as a FIP applicant or recipient. Metcalf cautioned that given the severity of a family sanction the date for figuring truancy should be clearly stated in writing.

Medicaid providers amendments to Chapters 78, 79, and 81.

•In response to Carroll, Stark stated nursing homes will receive the maximum Medicaid nursing facility rate at the end of July or the beginning of August. The anticipated rate of increase to \$71.03 per day is expected on July 1, 1997.

Family and group day care registration amendments to Chapter 110.

Day care income guidelines and fee schedules, 130.3(1)"d"(2), 130.4(3), and 170.2(4)"d" amendments.

General Referral

Motion carried

•Walker noted that 1993 legislation provided a more lenient 150 percent eligibility for transitional child care than the current 125 percent. Ozga reported approximately 12 families continue to receive care at the 150 percent level. The department seeks a standard 125 percent level but current legislation could perpetuate multiple tiers. Metcalf moved a general referral to the appropriate committees of the legislature. The motion carried.

Purchase of service contracting on behalf of counties, amendments pertaining to Chapter 150 and 153.57(3).

Service provider changes, amendments to 156.6 and 202.17.

Protective service investigation and child abuse registry changes, amendments to Chapter 175.

•Sage indicated to Doderer policy dictates that a second offense is cause for listing on the registry. Royce pointed out this should appear in the rules rather than the department manual.

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT John Whipple and Ron Rowland were

Rants in chair present from the department.

ARC 7225A No questions on agricultural lime rules 43.25 to 43.39.

ARC 7226A No questions pertaining to proposed 85.39, weights and measures.

BLIND, DEPARTMENT FOR THE Appearing on behalf of the department were R. Creig Slayton, Diann Weinman, and Louise Duvall.

ARC 7221A No questions on proposed organization and procedure amendments to 1.3 and 1.4.

ARC 7222A No action concerning vocational rehabilitation services amendments to Chapter 10.

PUBLIC SAFETY DEPARTMENT Michael Coveyou and Tim McDonald were present from the department.

Hedge in chair

ARC 7253A •Rittmer was advised by McDonald the department, which has authority over dependent adult abuse, proposes entering into a 28E agreement with DHS, the holder of such records. It is anticipated access to all criminal history data records will be available through one center.

PROFESSIONAL LICENSURE DIVISION Marge Bledsoe, Ruth Ohde, and Mike Marshall represented the division, and John Bethel appeared on behalf of the Association of Iowa Cemeteries

ARC 7250A No committee action on barber examiners, amendments to Chapter 20.

ARC 7247A No questions on behavioral science examiners, amendment 30.3(1)"b"(1)"3."

ARC 7249A No questions on proposed amendments to optometry rules 180.6 and 180.12.

ARC 7248A No questions on physical and occupational therapy examiners proposed amendments.

ARC 7224A No committee action on proposed amendments pertaining to respiratory care examiners.

ARC 7251A No committee action on mortuary science amendments to Chapter 100.

ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA Kay Williams and Lynette Donner represented the board for the following Notice of Intended Action.

ARC 7203A •In response to Rants, Donner indicated the largest assessed penalty was \$1,000 resulting from extreme delinquency of more than one year in the filing of a series of reports. Discussion ensued regarding means of deterring late filings.

•Hedge asked whether any worker hired during a campaign was precluded from receiving up to \$250 for recognition of service. Williams replied there were no exclusions and workers could receive in excess of that amount retroactive to the last campaign.

ENVIRONMENTAL PROTECTION COMMISSION Present from the division were Brian Tormey, Mel Pins and Vic Kennedy. Also present were Ferman Milster and Garry Bleckwend from

EPC (continued)

the University of Iowa, as well as Joan Racki and Frank Stork from the board of regents.

ARC 7242A

Racki stated the 25 percent reimbursement cap for labor and maintenance costs associated with blending tire-derived fuel is a concern to the board of regents. The amount recouped is dependent upon the differential between the purchase prices of tire-derived fuel and primary fossil fuel and not related to actual mixing and preparation costs of the fuels.

70-day delay

- Metcalf moved that Chapter 216, the tire-derived fuel program, be delayed 70 days.
 - In response to Carroll, Tormey indicated the Btu equivalency basis is applicable only to the purchase cost of fuel and not to operational costs.
 - Bartz asked the derivation of the 25 percent figure. Tormey said it was based on comments received from the regents. Only the University of Iowa supplied actual figures, which corresponded to an additional operation and maintenance cost of approximately 75 percent of the fuel cost. It was subsequently determined that an increase to 75 percent of the fuel cost would be a "worst-case scenario" and would not be the most effective and efficient way of dealing with the tires. Tormey further responded it is not mandated that tire-derived fuel be used at state institutions.
 - Milster indicated to Carroll the premise of tire-derived fuel is good for the state but the university prefers not using limited resources to pay for operations and maintenance. Additional expenses are incurred when suppliers leave loose wire in the product and more effort is required to keep it moving through the system.
 - Responding to Weigel, Milster said that since contracts are bid annually, the possibility exists that there would be no operation and maintenance reimbursement if the price of tires equals or is lower than the price of coal.
- Dierenfeld suggested a delay would permit the two agencies to meet and reach an accord on an appropriate level of reimbursement.
- In response to Metcalf, Milster said that rather than paying lowered prices for tire material containing foreign objects, Iowa tire-derived fuel suppliers submit bids. The low bid is accepted and the university works with that supplier to obtain a product suitable for the system.

Motion carried

The motion came to a vote and carried.

ARC 7241A

No questions on amendments to Chapter 217, waste tire processor incentive program.

ELDER AFFAIRS DEPARTMENT Betty Grandquist, Ron Beane, and Beth Bahnson represented the department. Others present included James Barr and Carlton Peterson from BMSE; Linda Goeldner from the Iowa Nurses Association; Rich Schuar from Manor Care; Donna Brown, Steven Ehrhardt, and Patrice Etherington from Friendship Haven; Susan Boesen Copple from IAHSa; Robin K. Mixdorf, Joanne Lien, Kelly Flege from the Cedar Falls Lutheran Home, and Barbara Shlaes.

ARC 7254A

- Carroll was advised there is no list of organizations recognized for voluntary accreditation at this time. Bohnson stated an assisted living program in operation prior to July 1, 1996, must be voluntarily accredited or certified by August 1. Those in operation subsequent to July 1, 1996, were granted a three-month window to apply for a regular certificate. It is anticipated that by the end of 1997, the assisted living programs will either be certified or will have applied for certification.
 - Bohnson explained to Metcalf that rules governing assisted living programs begin when there are six tenants in a living facility and are not applicable to five tenants or less. On-site inspections are carried out prior to the start of an assisted living dwelling operation. Metcalf questioned what occurs when a person's health deteriorates and was informed that application for exception can be granted in certain instances. Should an owner of a unit need extended service, that person cannot be evicted but will be responsible for hiring health care service.
- Copple and Mixdorf voiced concern over converting existing units to meet the required 190 square feet of floor area. Some existing facilities do not meet the size requirements for assisted living programs and are no longer licensed as a residential care facilities.
- In response to Rants, Bohnson said those instances would be reviewed on a case-by-case basis.

REVENUE AND FINANCE DEPARTMENT Carl A. Castelda appeared on behalf of the department.

ARC 7223A

No committee action concerning amendments to 15.20 and 34.13, determining taxable sales in statutory corporate mergers.

ARC 7252A

- Bartz was advised local option sales tax implementation occurs once the board of supervisors passes an ordinance and the board notifies the department within the required time period. The department then notifies area retailers and the tax is imposed the first day of a calendar quarter.

Revenue (continued) Castelda indicated to Rittmer that as of July 1, 1997, money will be distributed to the counties based on a 95 percent estimate. Approximately one-half of the counties have local option sales tax with \$83 million collected per year.

UTILITIES DIVISION Vicki Place, Phyllis Finn, Don Stursma, and Edmund Schlak, Jr. were present from the division.

ARC 7220A No committee action on electric and pipeline standards and odorization standards.
ARC 7218A No questions on termination of notice to amend 19.9(5) and 20.12.
ARC 7219A •Schlak confirmed for Metcalf that severe weather is taken into account in determining the average three-month service repair compliance.
ARC 7240A No questions on energy efficiency amendments in rules 35.12 and 35.13.
ARC 7239A No questions on rule 38.8 concerning universal service—schools and libraries.

WORKFORCE DEVELOPMENT BOARD AND WORKFORCE DEVELOPMENT CENTER

Rants in chair **ADMINISTRATION DIVISION** JoAnn Callison appeared on behalf of the division.

ARC 7233A No questions pertaining to Chapters 1 and 2, mission and structure amendments.
ARC 7231A No committee action on regional advisory boards and the amendments to Chapter 6.
ARC 7232A No committee action concerning voter registration amendment and transfer of 345—1.3 to 877—Chapter 24.
ARC 7230A No questions on public records and fair information practices.
ARC 7229A No questions concerning amending and transferring 345—Chapter 9 to 877—Chapter 26.
ARC 7228A No questions concerning amending and transferring 345—Chapter 10 to 877—Chapter 28.

WORKFORCE DEVELOPMENT DEPARTMENT/EMPLOYMENT APPEALS BOARD Appearing

Special review for the board were Joseph Bervid, Russ Coleman, and Dan Anderson. Others present included Senator Steve King; William Whitten and Earl W. Seymour from EAB; Jan Law from AFL-CIO; Marcia Nichols from AFSCME; Matt Eide from the Association of Business and Industry; Doug Ireland from Capital Sanitary; and David Brasher from NFIB.

King stated the potential exists to intentionally subvert the employment appeals board process when a party to the process fails to participate in the fact-finding hearing and raises new allegations that shift the burden of proof at the appeals hearing.

Bervid, Whitten, and Anderson explained the board has no subpoena powers at the federally required initial hearing and the employee cannot be forced to give information at that time. The burden is on the employer to show the individual voluntarily quit without good cause attributable to the employer. The appellee is entitled to a review of the administrative file, which includes notes from the fact-finding interview and copies of submitted documents. If new allegations are presented at the ALJ hearing and witnesses are unavailable for rebuttal, a continuance may be requested by the other side or an opportunity is given to provide written affidavits. An appeal from the ALJ hearing result will be heard in district court.

King also raised the issue of difficulty in identifying and accessing information about prospective employees through workforce development. It was stated that provisions are underway to provide a one-stop talent bank over the Internet.

•Bartz requested the department issue a memo delineating the intent of the legislature and any possible conflicts between policy procedures and rules.

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

Hedge in chair

July and August meetings The meetings were scheduled for Tuesday and Wednesday, July 9 and 10, 1997, and Tuesday and Wednesday, August 19 and 20, 1997.

July Agenda Metcalf requested inclusion in the July agenda of the committee rule concerning review by standing committees of rules referred by ARRC.

Adjourned The meeting was adjourned at 3:30 p.m.

Respectfully submitted,

Kathleen K. Bates
Kathleen K. Bates

Cathy Kelly
Cathy Kelly

APPROVED:

H. Kay Hedge
Chair H. Kay Hedge

Christopher Rants
Vice chair Christopher Rants