

**MINUTES OF THE JULY 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, July 9, 2002, in Room 116, State Capitol, Des Moines, Iowa.
- Members present:** Senator Sheldon Rittmer, Chair, and Clyde Bradley, Vice chair; Senators Jeff Angelo, Patricia Harper, John P. Kibbie, and Paul McKinley; Representatives Marcella Frevert, Mark Kuhn and Janet Metcalf. Representative Danny Carroll was not present.
- Also present:** Joseph A. Royce, Legal Counsel; Kathleen K. Bates, Administrative Code Editor; Brian Gentry, Administrative Rules Coordinator; Andrew Fay, committee intern; caucus staff and other interested persons.
- Convened** Chair Rittmer convened the meeting at 8:30 a.m.
- HUMAN SERVICES DEPARTMENT** Mary Ellen Imlau and Cathy Anderson represented the department. Other interested parties included Ned Chiodo of Blank Children's Hospital and Stacey Cyphert of the University of Iowa Hospitals and Clinics.
- ARC 1764B** No action on proposed amendments to ch 65 regarding eligibility for food stamps.
- ARC 1765B** No questions on the proposed amendment relating to food stamp overissuance.
- ARC 1687B** No questions on proposed amendments relating to reimbursement criteria for hospital special units.
- ARC 1763B** No questions on proposed amendments pertaining to reimbursements for prescription drugs.
- ARC 1766B** No action on proposed child care center licensing amendments. Kibbie expressed disappointment that hearings were not scheduled in all areas of the state.
- ARC 1767B** Imlau reported that many comments have been received on the proposed amendments relating to registration of family and group child care homes.
- Special reviews** •Anderson reported that the department is seeking direction regarding implementation of HF 2487. Chiodo urged the department to proceed with an emergency adoption in order to expedite the disbursement of funds. Cyphert expressed a preference for the department to go through the normal rule-making procedures, allow for public comment and make disbursements based on accurate data. Anderson noted that HF 2487 did not authorize emergency rules and added that cost report information which DHS requested from hospitals in April is necessary for accurate disbursements. Anderson expressed concern that monthly disbursements may need to be adjusted and overpayments to hospitals may need to be recovered. Anderson reported that the Center for Medicare and Medicaid Services(CMS) has 90 days in which to approve the state plan, but that the approval is retroactive to the first day of the quarter in which the department submitted the state plan to CMS. Gentry summarized the department's options. Metcalf emphasized that the legislature intended the funds to be disbursed effective July 1, 2002.
- Motion** Metcalf made a motion that the committee send the department a letter acknowledging the need for emergency adoption of these rules.
- Motion carried** The motion carried; Royce will draft a letter.
- No questions on emergency filings pertaining to dental care for adults and a rate freeze affecting chs 150 and 185.
- A notice regarding significant changes in Medicaid methods and standards for setting payment rates for drugs will be published in the Bulletin.
- ARC 1243B** Gentry reported that the department consulted with the attorney general's office and the governor's office regarding Lutheran Hospital's request for written assurance of payment when hospitalization is no longer medically necessary but an appropriate placement is not available within the 14-day period provided for in the Iowa plan for behavioral health. Because such a letter might jeopardize federal funding, Gentry recommended that no letter be issued and that monitoring continue for an appropriate time. Bradley offered support for Gentry's recommendation.
- GENERAL SERVICES DEPARTMENT** Carol Stratemeyer and Shirley Walker represented the department.
- ARC 1730B** Proposed 3.4(14) would restrict use of amplified sound in public or common areas of capitol complex buildings. Several committee members expressed concern that the amendment would unduly restrict the public's access to their government, noting that the Capitol is more a center of political activity than an office building. Walker stated that the department already advises event applicants that amplified sound is prohibited. Royce contended that the department has no authority to regulate the second floor of the Capitol.
- In regard to the notice of publication rates, Rittmer suggested that both the existing rate and new rate be published so that the amount of increase can be more readily determined.

General Services Department (continued)

ARC 1624B At the June meeting, a 70-day delay was imposed on rule 3.4.
Motion to lift delay Metcalf made a motion to lift the delay.
Motion carried The motion carried; the delay was lifted, effective July 10, 2002.

ETHICS AND CAMPAIGN DISCLOSURE BOARD Charlie Smithson represented the board.

ARC 1754B, ARC 1722B, ARC 1701B, ARC 1700B, ARC 1729B, ARC 1699B, ARC 1702B were reviewed as a group. Smithson agreed to McKinley's suggestion that the rules be amended so that a special meeting could be called at the request of four members of the board.

MEDICAL EXAMINERS BOARD Ann Mowery represented the board.

ARC 1733B, ARC 1734B, ARC 1735B, ARC 1732B, ARC 1736B were reviewed as a group. No action was taken.

CORRECTIONS DEPARTMENT Michael Savala represented the board. Other interested parties included Meredith Bruns, Nettie Jane Knierim, Robin Bennett and Ken Bennett of Iowa CURE, Betty Christensen of Friends of Iowa Women Prisoners, Patricia Gronewald, and a representative of Ex-Cons Inc.

ARC 1559B A special review was requested after visiting hours were revised in response to budget reductions. Christensen voiced opposition to reductions in visiting hours, revisions to the list of approved visitors, and the lack of opportunity for public input prior to the adoption of the rules. Savala responded that while the department recognizes the importance of visiting, budget cuts necessitated the reductions and noted that the department did consult the ombudsman's office, the civil liberties union, and the prison justice reform group prior to filing the rules. In addition, notice was posted at each of the institutions, all offenders were informed, and a public hearing was held in May. Bennett, Knierim, Gronewald, and Bruns expressed their opposition to the reduction in visiting hours and the definition of immediate family, which may exclude grandchildren, nieces, nephews, in-laws, aunts and uncles. An additional concern relates to the requirement that minors be accompanied by a parent. Savala responded that the requirement was added because of complaints from parents who indicated that their children had forged parental permission for visits. Savala noted that special visits can be arranged on a case-by-case basis.

Bradley suggested that the department reassess its allocation of personnel and report back to the committee next month any accommodations that can be made to address the concerns expressed by opponents of the amendments. Kibbie indicated that concerns related to budget cuts need to be expressed during the legislative session.

EDUCATIONAL EXAMINERS BOARD Susan Fischer represented the board.

ARC 1667B Proposed 14.143 pertains to the substitute authorization. Fischer agreed to report Frevert's interest in mentors for substitute teachers.

EDUCATION DEPARTMENT Ann McCarthy represented the department.

ARC 1742B No questions on proposed amendments to ch 6 regarding appeal procedures.
ARC 1741B No questions on proposed amendments to ch 17 concerning open enrollment.
ARC 1744B No questions on proposed fees for enrollment in the course for drinking drivers.
ARC 1743B No questions on the proposed rescission of ch 26.
ARC 1745B No questions on proposed amendment related to athletic eligibility for open-enrolled students.
ARC 1748B No questions on proposed fee for school bus inspections.
ARC 1747B No action on proposed ch 58 relating to school breakfast and lunch programs. McCarthy agreed to provide McKinley with the listing of federally approved foods.
ARC 1740B No questions on the proposed rescission of ch 68.
ARC 1746B No action on proposed ch 68 relating to charter schools. McKinley indicated a preference that more points be awarded for student achievement.
ARC 1739B No questions on the proposed rescission of ch 69.

ENVIRONMENTAL PROTECTION COMMISSION Randy Clark, Jon Tack, Corey McCoid, Marion Conover, Jack Riessen, Ralph Turkle, Jeff Myrom, Robin Puisner and Mike Murphy represented the commission.

ARC 1705B No questions on exceptions to the construction permit requirement in 22.1.
ARC 1707B No questions on amendments to ch 22 relating to Title V insignificant activities.
ARC 1701B No questions on proposed 22.100 regarding fugitive emissions.
ARC 1709B No questions on amendments relating to drinking water and wastewater revolving loan funds.
ARC 1706B No questions on amendments relating to effluent and pretreatment standards.
ARC 1704B No questions on adjacency requirements affecting animal feedlots.
ARC 1712B No questions on amendments pertaining to recycling operations.

Environmental Protection Commission (continued)

ARC 1711B

Proposed amendments to require compensation for damage to natural resources were reviewed in conjunction with proposed 571—ch 113 (ARC 1708B) relating to restitution for pollution which causes injury to wild animals. Murphy indicated that comments have been supportive. Conover confirmed that fines are assessed in addition to charges for restitution. Frevert requested additional information regarding settlements after fishkills.

Special review

Pruisner distributed the proposed definition of critical public areas and the interim matrix, which is to be used from enactment of SF 2293 until March 1, 2003. Pruisner indicated that the department is considering an annual period for listing and de-listing public areas. Pruisner explained that while no minimum separation distance is specified, greater distances are awarded more points. Pruisner outlined which construction permit applications would be subject to the interim matrix.

ARC 1538B

Beverage container deposit rules in ch 107 are under a 70-day delay, pending receipt an opinion from the attorney general.

Motion to delay

Metcalf moved a session delay be imposed, with the understanding that the delay could be lifted after receipt of the requested opinion from the attorney general.

Motion carried

The motion carried. The rules are delayed until adjournment of the next legislative session or until the delay is lifted by the committee.

NATURAL RESOURCE COMMISSION Marion Conover represented the commission.

ARC 1708B

See EPC ARC 1711B above.

SUBSTANCE ABUSE COMMISSION Excused from review.

TRANSPORTATION DEPARTMENT Excused from review.

Committee business Angelo moved approval of the minutes of the June 2002 meeting. The motion carried; the minutes stand approved.

The meeting date was set for August 13, 2002.

Kibbie suggested that in the future special reviews be scheduled to take place after regular reviews.

IOWA FINANCE AUTHORITY Loyd Ogle represented the authority. Charles Wasker of the Homeowners Association of Iowa was also present.

ARC 1731B

No action on the proposed qualified allocation plan. Ogle summarized provisions of the plan and indicated that modifications are expected after comments are received. Wasker voiced opposition to the required use of title guaranty as opposed to title insurance. Metcalf expressed concern that Iowa is the only state that does not have title insurance.

ELDER AFFAIRS DEPARTMENT Mark Haverland represented the department. Dean Lerner represented the department of inspections and appeals. Other interested parties included Senator Larry McKibben and Representative Mark Smith of Marshalltown, Cindy Haverkamp of the Iowa Center for Assisted Living, and Becky Groff of Alzheimers Association Coalition.

Special review

McKibben requested a review of assisted living facility inspections after the inspection of Bickford Cottage in Marshalltown by the department of inspections and appeals found that some residents required a higher level of care than can be provided in assisted living. McKibben contended that the department of inspections and appeals was overly zealous in its inspection. The assisted living facility was advised that seven residents must be transferred within 45 days or the facility would be found to be operating as an unlicensed residential care facility. Smith maintained that a person has the right to choose where to live and expressed a concern about the lack of an appeal process for individuals. Haverland indicated that the rules provide specific measures for determining the appropriate level of care and are necessary to protect the safety of Iowans. Gentry asked that the committee consider whether the rules adequately reflect legislative intent for assisted living facilities. Bradley asserted that the final decision regarding appropriate level of care should be made by the resident, the resident's family, the physician and the facility. Lerner clarified that the department of elder affairs had been working with Bickford Cottage on the same issues as those found by the department of inspections and appeals. Lerner advised Harper that the law allows for up to two residents in an assisted living facility to exceed the level of care. Haverland reported that most assisted living facilities abide by the rules and prepare families when the needs of a resident can no longer be met in an assisted living arrangement. Discussion concerned relevant statutes, legislative intent, and determination of appropriate level of care. Haverkamp, speaking on behalf of Bickford Cottage, stressed the importance of preserving consumer choice. Groff emphasized the importance of addressing the needs of residents who suffer from dementia. Kibbie noted that the committee should examine both the rules and the existing statutes and decide whether statutory change may be needed.

INSPECTIONS AND APPEALS DEPARTMENT Jan Curtis and Bob Haxton represented the department.

ARC 1760B No action on amendments related to potentially hazardous foods at farmers markets. Metcalf asserted that 30.3(4), which requires separate licenses for multiple locations operated simultaneously, is not in accordance with legislation. Haxton agreed to review the provisions.

PUBLIC SAFETY DEPARTMENT Mike Coveyou, Sam Knowles, Jerry Brown, Steve Conlon, Joanne Tinker, and Bob Monserrate represented the department. Other interested parties included Pat Deveny.

ARC 1762B No questions on amendments relating to fingerprinting of applicants for private investigative, private security and bail enforcement agency licenses and ID cards.

ARC 1727B No action on amendments relating to calibration of breath testing equipment. Deveny distributed written comments and expressed opposition to the rules, asserting that the results of the tests are not scientifically reliable. Deveny maintained that the department does not calibrate instruments in accordance with manufacturers' recommendations. Monserrate justified the state standard and clarified that the recommendations referenced by Deveny do not apply to state programs. That quality assurance program was intended for federal breath testing administered by nonscientific personnel. Monserrate agreed to provide Deveny with a written statement of approval for the Iowa program.

ARC 1761B No questions on amendments pertaining to the sex offender registry.

PHARMACY EXAMINERS BOARD Terry Witkowski represented the board.

- ARC 1683B No questions on proposed ch 1.
- ARC 1676B No questions on proposed ch 2 and rescission of ch 5.
- ARC 1684B No questions on proposed ch 3.
- ARC 1685B No questions on proposed amendments to ch 4.
- ARC 1675B No questions on proposed ch 6.
- ARC 1672B No questions on proposed ch 7.
- ARC 1673B No questions on proposed ch 8.
- ARC 1674B No questions on proposed ch 10 and rescission of ch 18.
- ARC 1686B No questions on proposed amendments to ch 11.
- ARC 1681B No questions on proposed rescission of ch 13.
- ARC 1682B No questions on proposed ch 15.
- ARC 1670B No questions on proposed ch 16.
- ARC 1671B No questions on proposed ch 17.
- ARC 1679B No action on proposed ch 19 relating to nonresident pharmacy practice.
- ARC 1680B No questions on proposed ch 21.
- ARC 1677B No questions on proposed ch 22.
- ARC 1678B No questions on proposed ch 23.

PROFESSIONAL LICENSURE DIVISION Marge Bledsoe represented the division.

- ARC 1756B No questions on amendments related to the board of dietetic examiners.
- ARC 1715B No questions on proposed ch 130 concerning the board of massage therapy examiners.
- ARC 1714B No action on amendments related to massage therapy. Bledsoe clarified that reflexology is included in the practice of massage therapy.
- ARC 1689B No questions on proposed amendments pertaining to physical and occupational therapy.
- ARC 1690B No questions on proposed ch 205.
- ARC 1693B No questions on proposed amendments to ch 240.
- ARC 1688B No questions on proposed amendments relating to social workers.
- ARC 1691B No questions on amendments to ch 280.

REAL ESTATE COMMISSION Roger Hansen represented the commission.

ARC 1738B No action on the reorganization of existing rules into proposed new chapters 1 to 20. Hansen summarized changes relating to referrals and fees.

Adjourn The meeting was adjourned at 3:40 p.m.

Respectfully submitted,

Kathleen K. Bates
Kathleen K. Bates

APPROVED:

Sheldon Rittmer
Chair Sheldon Rittmer

Clyde Bradley
Vice Chair Clyde Bradley