

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

**Time of meeting:** The regular meeting of the Administrative Rules Review Committee (ARC) was held Tuesday, August 11, 1998, in Room 118, State Capitol, Des Moines, Iowa, and Wednesday, August 12, 1998, in Room 19, 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, William Palmer, and Sheldon Rittmer; Representatives Danny Carroll, Minnette Doderer, Janet Metcalf, and Keith Weigel.

**Also present:** Joseph A. Royce, Legal Counsel; Teresa Vander Linden and Bruce Carr, Administrative Code Office; Jackie Van Ekeren Romp, Administrative Rules Coordinator; caucus staff and other interested persons.

**Convened** •Chair Hedge convened the meeting at 10:03 a.m.

**HUMAN SERVICES DEPARTMENT** Mary Ann Walker, Cindy Havercamp, Harold Templeman and Bill Connet represented the department.

ARC 8147A No questions on rescission of 1.9, commission on children, youth and families.

ARC 8185A No questions on 1.10 regarding the HAWK-I board.

ARC 8149A No action on amendments to ch 25 establishing requirements for county funding from the incentive and efficiency pool created by House File 2545.

ARC 8151A No questions on reinstatement of the 4-month work transition period for Medicaid.

ARC 8152A Proposed amendments to 78.36 and 79.1(14) revise Medicaid policy governing payment for hospice services to mirror federal certification periods.

ARC 8216A No questions on proposed amendments to ch 81 establishing conditions for DIA exceptions to allow nurse aide training programs in nursing facilities which have been assessed penalties under a Medicare or Medicaid program.

**Special review** Amended 81.6(16) implements an increase in the reimbursement rate for nursing facilities retroactive to January 1, 1998.

- Walker responded to Metcalf that the retroactive, one-time payment increase will not affect the base rate used to calculate rates for the next fiscal year.
- Havercamp informed Bartz that the state's estimated cost for the retroactive reimbursement is \$435,000; the federal cost is 1.2 million.
- Kibbie requested that public hearings on the proposed empowerment grants rules be scheduled at multiple sites statewide due to the high level of public interest.

**ARTS DIVISION** Mark Peitzman and Julie Bailey represented the division; Brice Oakley was present from the Iowa Arts Council.

ARC 8193A Proposed amendments are the result of a major review and restructuring process that included extensive strategic planning and citizen involvement. Peitzman added that 17 grants programs with 24 deadlines will be streamlined into two programs with four deadlines thus simplifying the application and review process.

- Metcalf suggested that requirements concerning an applicant organization's viability and credentials should be addressed in the rules as well as in the grant application. In response to Metcalf's concerns about stricken language in rule 2.3, Bailey stated that those provisions are no longer general requirements and are now included only in rules for applicable programs.
- Peitzman told Rants that stricken definitions are terms already defined in statute.
- Peitzman explained to Kibbie that following a federal funding decrease in 1996 the division began a strategic review and that programs have been consolidated into the access to the arts funding program with standardized application forms and deadlines.

Oakley offered the opinion that arts division programs will be healthier due to the proposed changes.

**ATTORNEY GENERAL** Doug Marek represented the Attorney General's office.

ARC 8183A New ch 33 sets out guidelines for the administration of forfeited property. Marek stated that based on public comment 33.5(3) was rewritten to clarify that a very large forfeiture means a cash forfeiture over \$400,000 with the amount apportioned to a seizing agency capped at 45 percent.

- Marek told Rittmer that all past cash forfeitures over \$400,000 have been adjudicated through the federal courts.
- Marek informed Palmer that the Iowa Code does not permit seizure of rental property if the owner is unaware that the renter engaged in illegal activities on the property. In the case of a home owned by a family member, Marek explained that the home may be subject to seizure only if the owner knew of and acquiesced in the illegal activity of the resident, but added that no such seizures have been made.

•Bartz expressed concern about the possibility of a civil forfeiture taking place before the related criminal case verdict has been reached, especially in cases resulting in acquittal. Marek stated that ethical considerations of seizing agencies and county prosecuting attorneys, possible differences in the civil and criminal charges, and burden-of-proof requirements serve as safeguards against wrongful seizure and added that in many cases when a criminal charge is pending, there is an agreement to resolve the criminal charges before proceeding with forfeiture.

•Marek responded to Doderer that lienholders may be appointed as agents to dispose of forfeited property with proceeds from the disposal of the property first being used to satisfy an outstanding lien and remaining funds being forwarded to the seizing agency. In response to Doderer's concern about the relationship between the severity of the crime and the seizure, Marek explained that the statute requires that forfeitures be based on felony drug-dealing charges or on crimes punishable by a year in jail or longer and that ethical guidelines dictate that county attorneys balance the severity of the forfeiture to the severity of the offense.

•Palmer voiced concern that youth in possession of illegal substances may be charged with the more serious charge of possession with intent to distribute rather than with possession, and that more serious charge may result in seizure of parents' property. Marek will send Palmer information on property forfeitures statewide.

•Marek told Doderer that proceeds from forfeitures must be used to enhance law enforcement, and the funds are not intended to replace appropriations. Doderer expressed the view that appropriating agencies should at least be informed of how forfeiture funds were used.

•Marek responded to Kibbie that county drug task forces have 28E agreements that specify how forfeiture proceeds may be used. Marek speculated that a small county or city might receive between \$5,000 and \$10,000 of the estimated \$1 million in annual cash forfeitures statewide.

**REVENUE AND FINANCE DEPARTMENT** Carl Castelda represented the department.

ARC 8195A New rule 42.3 pertains to nonresident and part-year tax credit.

•Castelda informed Rittmer that Iowa has a reciprocal tax agreement only with Illinois. Nonresidents and part-year residents are taxed the same as residents; income from all sources is reported to Iowa and expenses from all sources are deducted in computing the Iowa tax.

•Bartz was advised that any person who receives income from an Iowa source must file an Iowa return regardless of residency. The department uses third-party sources to determine whether a nonresident or part-year resident must file an income tax return in Iowa.

•Doderer requested information on Florida's taxes, such as the tax on intangibles.

ARC 8167A No questions on proposed amendments to 50.5 and 50.7.

**ENGINEERING AND LAND SURVEYING EXAMINING BOARD** Roger Halvorson represented the board.

ARC 8181A No questions on proposed amendment to 1.4(5) concerning licensure by comity.

ARC 8182A Proposed amendments to 2.5(5) and 2.5(6) relate to property surveys.

ARC 8180A No questions on new ch 7, waivers or variances from rules.

Rants in chair

**ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF** Monica Fisher, Allen Williams, Kim Statler, Carol Stuart, and Melanie Johnson represented the department.

ARC 8137A Proposed ch 23 updates Iowa community development block grant requirements.

ARC 8139A Williams explained that "equivalent" was removed from the definition of "full-time" in the enterprise zone rules to ensure that employers not equate a full-time position with two part-time positions.

•Weigel asked Williams to convey to the department his concern about allowing an enterprise zone commission to determine the fair market value of a vacant building when an appraisal is required for determining the fair market value of an existing business's building. In response to Weigel's inquiry about 59.10(3), Williams pointed out that if a business fails to meet provisions of Iowa Code Supplement section 15E.193(1), it could be subject to repayment of all of that year's incentives, but local commissions have the option to grant a one-year extension.

•Williams informed Rittmer that 74 enterprise zones have been certified to date; 17 of the 28 eligible counties and 6 of the 18 eligible cities have established enterprise zones. As of July, seven businesses have been approved for enterprise zone benefits resulting in approximately \$83 million in capital expenditures and 191 new jobs with an average wage of \$13.02. Williams confirmed that a city or county may create multiple enterprise zones as long as the zones equal less than 1 percent of the total county area. Rittmer requested that Williams provide Royce with a list of eligible and established enterprise zones.

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•Williams responded to Palmer that the average regional wage in Des Moines would be in the \$11 range, whereas the average county wage range would be between \$13 and \$14. Palmer expressed the opinion that a wage floor is needed, and Williams agreed to provide wage threshold information to the committee.

•Weigel confirmed that the statute includes regional wage language and noted inconsistencies in percentages of the average county wage for urban and rural areas.

•Bartz suggested that the definition of "full-time position" specify a 40-hour workweek, but not be restricted to 5 days a week, 8 hours per day.

ARC 8138A

Amendments to ch 68 pertain to the export trade assistance program.

•Stuart indicated to Metcalf that assistance is provided on a first-come, first-served basis and that 28 new companies received assistance this year.

•Bartz requested that Stuart send Royce a list of the companies participating in the program. Stuart confirmed that most of the companies participating in the program have far fewer than 500 employees.

**ENVIRONMENTAL PROTECTION COMMISSION** Anne Preziosi, Mel Pins, and Doug Campbell represented the commission.

ARC 8173A No questions on 22.1(3) and 22.3 concerning air quality construction permits.

ARC 8172A No action on ch 217 pertaining to the waste tire end-user incentive program which allocates moneys to eligible end users of waste tire products processed in Iowa.

Committee business

Minutes

Minutes were approved as corrected.

Hedge in chair

**ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA** Kay Williams and Charlie Smithson represented the board.

Williams provided the committee with a statewide survey of county auditors pertaining to the use of public funds for political purposes.

ARC 8194A

Smithson outlined amendments to ch 4 regarding campaign disclosure provisions.

•Williams explained to Rants that a candidate is now required only to confirm that a donation is from a living trust and record the donation as a living trust donation.

•Rittmer was told that three to four dozen contributions annually come from trusts.

•Metcalf asked about oversight of funds of a political committee that has disbanded but later reorganizes. Williams responded that a zero account balance is necessary before a notice of dissolution can be filed, and funds may be returned to a committee's sponsor or parent entity.

•In response to Kibbie's question about obsolete accounts, Williams offered reasons why candidates may choose to leave accounts open and outlined the disposition of accounts in the event of a candidate's death.

**INDUSTRIAL SERVICES DIVISION** Clair Cramer represented the division.

ARC 8190A No questions on change of titles for division and commissioner.

ARC 8143A No questions on terminated Notice regarding legal services liens.

ARC 8189A No questions on proposed amendments pertaining to electronic data.

ARC 8142A No questions on amendments to 8.8, payroll tax tables.

ARC 8188A New rule 8.10 provides procedures for calculating age-related hearing loss based on NIOSH standards for workers' compensation occupational hearing loss claims.

•Cramer explained to Weigel that the apportioned amount depends on the age-related hearing loss during the time of employment based on the age of the worker at the time of employment and the total hearing loss after leaving the noisy environment. Weigel suggested the agency provide examples to show the changes in calculations.

**INSPECTIONS AND APPEALS DEPARTMENT** Rebecca Walsh and Larry Bryant represented the department.

ARC 8191A Ch 11 is rescinded because it duplicates the hearing provisions in ch 10.

•Kibbie requested information on nursing home inspections and fines.

ARC 8192A No questions on infection control amendments for care facilities.

**NURSING BOARD** Lois Churchill, Eileen Gloor and Lorinda Inman represented the board.

ARC 8146A No action on amendments to ch 2 pertaining to nursing education programs.

ARC 8145A Proposed amendments to LPN scope of practice are intended to allow residents to receive intravenous therapy in nursing facilities.

•Metcalf was advised that changes related to intravenous therapy will be implemented only after the course of study is developed as the rules specify that LPNs must complete the program before performing the additional duties.

•In response to Bartz's inquiry on liability, Inman explained that since intravenous therapy is a delegated duty, the RN would also be accountable to the board.

**EDUCATION DEPARTMENT** Donald Wederquist, Ann Molis, and Janice Friedel represented the department.

- ARC 8179A Proposed amendments to ch 21 describe a course for DWI offenders about the causes and symptoms of their behavior and provide solutions.
- Metcalf suggested that language in rule 21.31 be less subjective and asked Wederquist to confer with Royce about standard language use in writing rules.
  - Rants concurred with Metcalf. Wederquist responded that the department changed the rule in an attempt to match the language used in the course curriculum.
  - Wederquist told Doderer that a study evaluating the success of the program is being conducted. Doderer suggested the rules not be changed until the study evaluating the effectiveness of the course has been completed.
  - Kibbie requested that Wederquist provide a copy of the study to the committee.
  - Rants asked Wederquist to also provide Royce a copy of the student course guide.
  - Bartz questioned whether the department developed the weekend course on its own initiative or in response to legislative directive and whether the fees for the program had ever been reviewed by the rules committee.
- ARC 8178A Proposed 21.45 describes distribution of state financial aid to community colleges.
- Hedge questioned the rationale for setting a 2 percent funding floor for inflation when actual inflation may be less. Freidel responded that the department felt it was necessary to ensure that community colleges could meet operating expenses.
  - Rants expressed concern that the funding formula will penalize colleges with large enrollments.
  - Kibbie asserted that the formula protects funding for small districts that cannot rely on increases in local taxes based on increased property values.

**PHARMACY EXAMINERS BOARD** Terry Witkowski represented the board.

- ARC 8210A Proposed amendments to 6.9 prohibit the return of controlled substances.
- Witkowski set out for Kibbie circumstances under which dispensed drugs may be returned, but stressed that returned drugs cannot be redispensed.
- ARC 8211A No questions on proposed amendments to chs 8, 9, and 15.
- ARC 8212A Rules for long-term care pharmacies are being reorganized in new ch 23.
- Witkowski clarified for Bartz the difference between a consultant pharmacist and a provider pharmacist and confirmed that the board would take action to invalidate any contractual arrangements that do not uphold the freedom-of-choice provisions in the rules.

**PROFESSIONAL LICENSURE DIVISION** Marge Bledsoe represented the division.

- ARC 8155A Proposed amendments to chs 30 and 31 relate to licensure of marital and family therapists and mental health counselors.
- ARC 8156A Amendments to ch 141 implement a 4-year-degree licensure requirement for nursing home administrators and set limits on the use of provisional administrators.
- Bledsoe reported to Metcalf that 248 administrators currently licensed and 78 administrators with pending licensures will be grandfathered in under the amendments and that there are 431 nursing facilities in Iowa.
- ARC 8205A No questions on amendments to ch 201 for occupational therapists.
- ARC 8154A No action on continuing education requirements for podiatrists, ch 200.
- ARC 8153A No questions on proposed amendments concerning athletic trainers.

Hedge in chair

**DENTAL EXAMINERS BOARD** Connie Price, Fred Riddle and Ann Zimmerman represented the board. Brice Oakley represented the Iowa dental hygienists' association.

- ARC 8014A Amendments to ch 29 pertain to deep sedation/general anesthesia, parenteral conscious sedation, and nitrous oxide inhalation analgesia. The board has rescinded 29.6(4) to 29.6(6), which were delayed by the committee in June.
- Riddle stated that the board intends to propose legislation to address scope of practice for dental assistants and emphasized that scope of practice reviews are intended only for recognized professions.
- Oakley asserted that the scope of practice review process should propose the legislation rather than the board of dental examiners, but urged the board to proceed with rules regarding administration of anesthesia by dental hygienists.
- Doderer agreed that dental assistants must be addressed in the Iowa Code before administrative rules can be promulgated.
  - Hedge reiterated the oversight role of the rules committee.
  - Rants added that competing bills from the board and from the public health department can both be forwarded to the legislature.

**PUBLIC HEALTH DEPARTMENT** Mike Marshall, John Katz, Carol Barnhill, and Cheryl Christie represented the department.

- ARC 8201A No action on 1.2(1)"a" updating the list of reportable infectious diseases.
- ARC 8168A Rules 11.70 to 11.74 address HIV testing of convicted or alleged sexual assault offenders and provision of support services to sexual assault victims.
- Carroll was informed that the testing takes into consideration the amount of time that can elapse between an HIV exposure and its detection in testing.
- ARC 8203A No questions on ch 12 regarding confirmatory laboratories for private sector drug-free workplace testing.
- ARC 8171A No questions on proposed new ch 79, public health nursing.
- ARC 8170A No questions on proposed new ch 80, home care aide.
- ARC 8169A No questions on proposed new ch 83, Iowa senior health program.
- ARC 8199A No questions on ch 87, healthy families Iowa (HFI).
- ARC 8198A No action on amendments to ch 88 expanding the volunteer health care provider program to include other health care providers and services.
- ARC 8200A No questions on amendments concerning the child death review team.
- ARC 8204A Ch 111 pertains to financial assistance for eligible end-stage renal disease patients.
- Metcalf asked why an 18-month time period was specified for previous transfer and disposal of funds rather than the customary 30 or 36 months. Marshall responded that the time period is being increased from 6 months and indicated that it is not likely that applicants would be aware of the need for dialysis 18 months in advance.
- Bartz voiced concern about exempt financial resources and the lack of a cap on the homestead exemption.
- Marshall indicated to Rittmer that many of the program's clients have insurance and program funds reimburse clients for all or part of the cost of their premiums.
- Kibbie was informed that the program currently serves 610 clients, 70 percent of whom have gross income and assets that fall below 150 percent of the federal poverty level or \$16,275. Christie also stated that 95 percent of program clients have Medicare and Medicare supplement.
- Christie confirmed for Bartz that exempt financial resources are not counted as assets when determining a client's eligibility.
- When Christie reported that the program budget is approximately \$750,000, Palmer noted that the amount spent per client is modest.
- Rittmer summarized recent discussion in the legislature concerning the program.
- Motion to refer Bartz moved a general referral of the issue to the legislature.
- Motion carried The motion to refer carried.
- ARC 8202A Amendments to ch 194 pertain to scope of practice review committee program.
- Marshall agreed with Carroll that dental assistants might be included in the definition of "applicant."
- Oakley informed the committee that the department director has stated that the department would accept an application from the dental assistants.

**CORRECTIONS DEPARTMENT** Fred Scaletta represented the department.

- ARC 8215A No action on new rule 20.14, offender transportation.
- Scaletta will send Weigel information on employee training standards for the offender transportation company currently under contract with the department.
- ARC 8214A Ch 38 pertains to sex offender management and treatment.
- In response to Rants, Scaletta estimated that hormonal intervention therapy injections will cost approximately \$20 per person per week. The department received \$500,000 in seed money for the program; Scaletta does not anticipate a need for supplemental funding from the legislature this year.
- Bartz suggested the department clarify language in 38.4(1) to ensure that the phrase "younger offenders" is not misinterpreted as referring to the age of the offender but rather to an offender who preys upon juveniles.

Rants in chair

**WORKFORCE DEVELOPMENT BOARD** JoAnn Callison represented the board.

- ARC 8162A No questions on new ch 4, coordinating service provider.
- ARC 8164A No questions on amendments to ch 10.
- ARC 8160A No questions on amendments to ch 11 regarding the workforce investment program.
- ARC 8166A No action on new ch 14, Iowa welfare-to-work program.
- ARC 8158A No questions on new ch 15, strategic workforce development fund.



**PUBLIC SAFETY DEPARTMENT**

- Mike Coveyou, Mike Rehberg, Steven Conlon, Larry Mullen, and Carroll Bidler represented the department. Marty Ryan represented the Iowa civil liberties union. Robert Anderson represented the Iowa sportsmen's federation and the VFW.
- ARC 8175A Rule 7.9 pertains to the detection of drugs other than alcohol. Coveyou stated that in addition to the federal guidelines adopted in the emergency rule making, the notice proposes testing drugs not included in the federal guidelines. Committee members received a handout describing the classes of drugs in more detail. Ryan objected to 7.9(2) in which standards are designated by manufacturers.
- Carroll was informed that there is no nationally recognized standard for detecting the presence of toluene.
  - Royce agreed with Weigel's assertion that 7.9(2) does not meet the statutory requirement that nationally accepted standards be used and questioned the agency's authority to substitute another standard when a nationally recognized standard does not exist for a particular substance.
- Rehberg stated that the manufacturer's standard is only used in the initial screening test to determine whether further confirmatory testing may be required. Subrule 7.9(2) is an attempt to include other substances that can cause driver impairment.
- Rehberg advised Bartz that although some over-the-counter and prescription drugs containing codeine can trigger a positive initial screening test, other evidence such as specific symptoms and additional positive tests are required before a possible OWI case would be pursued.
- ARC 8141A No questions on amendments to ch 2 regarding bail enforcement, private investigation and private security businesses.
- ARC 8206A Amendments to ch 4 prescribe the forms for applications and permits to acquire and carry weapons. Coveyou distributed copies of the forms and indicated that some had been modified in response to public comment.
- Bidler informed Metcalf that although the consent clause regarding disclosure of psychiatric or substance abuse treatment records was also on the previous version of the form, it has been modified to encompass only those conditions which may affect whether an applicant would be granted a permit.
- Anderson commended the department and the committee for addressing the majority of the federation's concerns and summarized minor concerns that remain.
- ARC 8177A No action on amendments to ch 8 pertaining to the Iowa sex offender registry.
- Noting that recent legislation has increased public access to registry information, Conlon told Metcalf that the department has scheduled training for local law enforcement officials responsible for assisting in the administration of the registry and that lists of at-risk offenders are available at police departments and sheriffs offices in the counties where offenders reside.
- Special review The special review concerning mobile home hook-ups was postponed. Rants was informed by the department that mobile home hook-ups refer to the permanent connection of the home to water, sewer, electrical, and gas lines and that cities are not required to inspect the connections.
- COMMITTEE BUSINESS**
- September meeting The next meeting was set for Tuesday, September 8.
- Adjourn The meeting was adjourned at 11:35 a.m.

Respectfully submitted,

Teresa Vander Linden for Kathleen K. Bates  
Teresa Vander Linden Kathleen K. Bates

APPROVED:

Chair H. Kay Hedge  
Chair H. Kay Hedge

Vice chair Christopher Rants  
Vice chair Christopher Rants