

**MINUTES OF THE FEBRUARY 2002 MEETING  
OF THE  
ADMINISTRATIVE RULES REVIEW COMMITTEE**

- Date of meeting: A special meeting of the Administrative Rules Review Committee (ARRC) was held Friday, February 8, 2002, in Room 116, State Capitol, Des Moines, Iowa.
- Members present: Senator Merlin E. Bartz, Chair; Representative Clyde Bradley, Vice Chair; Senators Jeff Angelo, Patricia Harper, John P. Kibbie, and Sheldon Rittmer; Representatives Danny Carroll, Marcella Frevert, Mark Kuhn and Janet Metcalf.
- Also present: Joseph A. Royce, Legal Counsel; Kathleen K. Bates, Administrative Code Editor, and Teresa VanderLinden, Assistant; Kristen Hart, Office of Administrative Rules Coordinator; caucus staff and other interested persons.
- Convened Chair Bartz convened the meeting at 8:15 a.m.
- HUMAN SERVICES DEPARTMENT** Mary Ellen Imlau represented the department. Other interested parties included Linda Goeldner of the Iowa Nurses Association and Lorelei Heisinger of the Iowa Psychiatric Society.
- ARC 1226B No questions on proposed amendments to chs 3 to 5 regarding procedures for rule making and declaratory orders.
- ARC 1227B No questions on proposed amendments to ch 11 concerning overpayments.
- ARC 1232B No action on amendments relating to the 60-month limit for FIP assistance.
- ARC 1234B No action on SSA and Medicaid cost-of-living adjustment.
- ARC 1299B No action on proposed amendment relating to collection of premiums for Medicaid coverage for employed persons with disabilities.
- ARC 1300B No questions on proposed amendments to ch 75 regarding persons with cervical and breast cancer.
- ARC 1235B No questions on amendments pertaining to audiology and hearing aid services.
- ARC 1236B No action on amendments relating to coverage for services of dental hygienists in screening centers. In response to Imlau's report that services have been covered as an exception to policy, Bartz expressed concern about the effect of waivers on program costs.
- ARC 1237B No questions on child welfare targeted case management services. Imlau noted that the department will not implement the rules until the federal government approves these services as part of the state plan.
- ARC 1301B Proposed amendments to chs 77 to 80 relate to enrollment of psychiatric nurses as Medicaid independent providers. Goeldner commented that the nurses association supports the spirit of the amendments but recommends inclusion of clinical nurse specialists in psychiatric mental health. Heisinger stated that the language regarding "administration of vaccines" is inappropriate to treatment of psychiatric illnesses. Goeldner agreed that language relevant to basic nursing practice does not need to appear in these rules and reported that in Iowa there are 15 certified psychiatric mental health nurse practitioners, 49 adult psychiatric clinical nurse specialists, and 6 child adolescent psychiatric clinical nurse specialists. Frevert asked that the responsible bureau chief provide the committee with the rationale for the decision to include one group of nurses and not the other.
- ARC 1238B No questions regarding Medicaid coverage for allogeneic bone marrow transplants.
- ARC 1239B Imlau reported that inclusion of liver, heart-lung and pancreas transplants in the state's Medicaid program would draw down additional federal dollars to offset payments previously made by the state as exceptions to policy.
- ARC 1228B No questions on proposed amendments to chs 78 and 79 regarding dental services.
- ARC 1229B No questions on proposed amendments to ch 78 pertaining to optometric and optical services.
- ARC 1240B No questions on amendments to ch 78 concerning rehabilitation agencies.
- ARC 1223B No questions on proposed amendments to ch 80 relating to provider claims.
- ARC 1241B No questions on the amendment to 81.6(16)"a"(1).
- ARC 1242B No questions on amendments to the EPSDT program.
- ARC 1224B Proposed amendments to ch 85 pertain to services in psychiatric institutions. Imlau noted that two additional accrediting groups will be added so that the rules match the statute.
- ARC 1243B No questions on amendments to the Iowa plan for behavioral health.
- ARC 1225B Proposed amendments to ch 153 relate to social services block grants. Imlau agreed to report back to Carroll about whether SSBG funds are included in the county mental health services allowable growth distribution formula.
- ARC 1244B Amendments to ch 168 relate to child care grants programs. Bradley requested a letter from the department to the committee and the appropriations chairs accounting for the savings that have resulted from reductions.

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**ETHICS AND CAMPAIGN DISCLOSURE BOARD** Charlie Smithson represented the board.

ARC 1272B No action on reduction of an unnecessary delay in contested case procedures.  
On an unrelated matter, Rittmer noted the need for improvement of the electronic filing system.

**GENERAL SERVICES DEPARTMENT** Carol Stratemeyer and Tim Brand represented the department.

ARC 1280B Proposed amendments to ch 10 pertain to agency reporting of inventory. Under the reporting guidelines of the federal Office of Management and Budget Circular A87 and Governmental Accounting Standards Board Statement 34, property valued at less than \$5000 does not need to be reported. Brand indicated that agencies may choose to maintain an inventory of equipment below that value. Some committee members expressed concern about security of property valued under \$5000.

**PHARMACY EXAMINERS BOARD** Lloyd Jessen and Terry Witkowski represented the board.

ARC 1304B Proposed rules for automated dispensing systems incorporate revisions based on comments received on previously proposed rules. Metcalf commended the board for the process followed in establishing these rules.

**Committee business** Metcalf moved approval of the minutes of the January meetings. The motion carried. Rittmer moved the March meeting be scheduled for 8 a.m. on March 8, 2002. The motion carried.

**UTILITIES DIVISION** Cecil Wright, Amy Christensen, Joan Conrad, Jennifer Johnson and Allen Kniep represented the board.

ARC 1275B No action on proposed amendment to ch 1 regarding confidential information.

ARC 1279B Proposed revisions to ch 17 implement statutory changes regarding assessment allocations. Christensen explained direct and remainder assessments and stated that the board is attempting to offset costs without discouraging participation of intervenors. An opportunity for oral comment is planned for April.

ARC 1276B Wright reported that based on comments on the notice, the board is not proceeding with proposed amendments relating to application of overpayments to level payment accounts.

ARC 1277B Proposed 22.2(7) pertains to a self-certification process for telecommunications carriers that wish to receive federal high-cost universal fund support.

ARC 1278B No action on 39.3(2)"b" pertaining to lifeline assistance rates.

**ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF** Melanie Johnson, Rose Wazny and Allen Williams represented the department.

ARC 1291B Amendments to ch 28 eliminate the preapplication process for local housing assistance programs and remove references to the formal housing needs assessment. Metcalf and Rittmer encouraged the department to avoid emergency rule makings.

ARC 1290B No action on amendments to ch 58 relating to the new jobs and income program. Williams advised Angelo of other programs that are intended to assist smaller ventures and explained that this program is for larger entities and higher paying jobs.

ARC 1289B Amendments to ch 59 relate to the enterprise zone program. Williams explained amendments to the housing tax credit made in accordance with statutory changes.

**ELDER AFFAIRS DEPARTMENT** Mary Ann Young and Joel Wulf represented the department. Other interested parties included Agency on Aging representative Linda McDonald, Stephanie Laudner of Elderbridge Agency on Aging and Jennifer O'Brien of Iowa Adult Day Service Association.

ARC 1274B No questions on proposed amendments to ch 1 pertaining to waivers.

ARC 1273B The proposed senior internship program merges a federally funded program with the state-funded program. Metcalf suggested that specific criteria for awards be incorporated.

ARC 1305B The department has proposed the rescission of chs 24 and 25. The attorney general's office recommended the rescission because the department has no statutory oversight authority and receives no appropriation for adult day care and facility-based respite care. Laudner and O'Brien submitted written comment opposing the rescission of these chapters. Laudner reported that adult day care can extend the period before a person requires nursing facility care, which is vastly more costly for individuals and the state. McDonald concurred with O'Brien and Laudner that the rules establish minimal standards and should not be rescinded. Wulf stated that Medicaid reimbursement for adult day care is provided by the department of human services and that DHS is comfortable with the proposed rescission since providers can become accredited through other channels. McDonald maintained that certification is too costly for smaller facilities.

- ENVIRONMENTAL PROTECTION COMMISSION** Cory McCoid, Jon Tack, Theresa Stiner, Wayne Gieselman, Sara Smith, and Dave Wornson represented the commission. Other interested parties included Jim West of the Iowa Grocery Association and Bill Wimmer of the Iowa Soft Drink Association
- ARC 1250B Proposed rules for hot mix asphalt facilities, concrete batch plants and aggregate processing plants are terminated due to expiration of the 180-day period because of delays at the federal level.
- ARC 1260B No questions on amendments to ch 22 relating to Title V permits.
- ARC 1245B No committee action on amendments related to water quality standards.
- ARC 1249B Amendments to ch 65 require facilities to submit manure management plans to the county board of supervisors as well as the department of natural resources 30 days before starting construction.
- ARC 1246B Proposed amendments to ch 107 pertain to beverage container deposits. Stiner summarized the issues addressed by the advisory committee which the department assembled: labeling requirements; redemption center limits on the number of containers returned at a single time and time frames for pickups and payments; retailer limits on the number of returns per person per day, limits on hours during which containers may be returned, and rejection of containers with liquids; requirements for distributors to notify redemption centers of new and discontinued products; and consumer education. Stiner also outlined questions raised at the hearings about placement of the stamps on the label, agreements between redemption centers and dealers, acceptance of partially crushed plastic containers, record-keeping requirements, and the department's authority.
- West submitted written comments from the Iowa Grocery Association and emphasized concerns of grocers about food safety and the requirement to accept crushed plastic containers. Wimmer explained that if crushed plastic containers were to be accepted, returns that are currently measured by volume would have to be counted. The soft drink association is concerned about the requirement for sharing information the distributors consider proprietary and about the seven-day payment requirement. After extended discussion, Royce commented on delegated authority and interpretive rules. Metcalf asked the department to supply the committee with the names of those on the advisory committee. Kibbie encouraged the department and industry representatives to continue discussions and resolve these issues.
- ARC 1263B No questions on proposed amendments to ch 111 regarding financial assurance for municipal solid waste landfills.
- ARC 1248B No questions on amendments to ch 134 relating to certification of groundwater professionals.
- ARC 1247B No questions on UST notification requirements.
- ARC 1262B No questions on proposed amendments to ch 136 pertaining to financial responsibility for underground storage tanks.
- NATURAL RESOURCE COMMISSION** Dale Garner represented the commission.
- ARC 1257B No action on ch 104 developed in consultation with the department of agriculture and land stewardship and the state veterinarian.
- INSPECTIONS AND APPEALS DEPARTMENT** Jan Curtis represented the department.
- ARC 1270B No action on amendments to ch 25 regarding targeted small business certification.
- ARC 1269B No questions on ch 71 amendments pertaining to collection of overpayments for the child care assistance program.
- PUBLIC SAFETY DEPARTMENT** Mike Coveyou, Jen Worthington and Jim Kenkel represented the department.
- ARC 1297B Fire safety rules for bed and breakfast inns represent compromise among concerned parties. Coveyou clarified that these rules do not apply to bed and breakfast homes.
- Motion Carroll moved the session delay imposed June 5, 2001, on amendments to 5.800 to 5.810 and rule 5.820 be lifted.
- Motion carried The motion carried; the delay is lifted effective February 9, 2002.
- REVENUE AND FINANCE DEPARTMENT** David Casey represented the department.
- ARC 1302B No questions on proposed amendments relating to individual income tax, withholding tax, and corporate income tax.
- ARC 1281B No action on rules 15.13 and 17.38 pertaining to the phase-out of tax on delivery of electricity and natural gas.
- ARC 1283B No questions on proposed corporation and franchise tax amendments resulting from the Executive Order 8 review.
- ARC 1282B No action on amendments to property tax rules.

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**TRANSPORTATION DEPARTMENT** Sarah Weldon addressed the committee. David Titcomb represented the department.

Special review Although the rules provide alternatives for those who cannot pass the vision screening test, Weldon, who has macular degeneration, has been unable to obtain a driver's license. Weldon maintained that she is a safe driver and has driven for 12 years without a license. Weldon also held that people with this disability know their own limits and abilities and should be issued limited licenses, perhaps restricted to in-town driving. The current vision standard is based on the recommendations of the Iowa Medical Society and federal guidelines. In response to Weldon's assertion that Nebraska, Missouri and New York have a different standard, Bradley asked the department to check with other states about vision standards for licensure.


**LOTTERY DIVISION** Ed Stanek and Andy Anderson represented the board.

Special review As a result of a newspaper article which questioned the legality of a lottery game, Bradley invited Stanek to advise the committee about the machine referenced in the article. Stanek responded that the lottery regularly reviews new games and machines and that the press had not contacted the lottery board or examined the machine that was the subject of the article. The machine in question dispenses pull-tab lottery tickets and, as it does so, it reads the bar code on the ticket and, in about five seconds, displays the results. Pull-tab tickets are legal in Iowa. Iowa law prohibits interactive video lottery machines that, upon winning, dispense a ticket which is redeemable for cash or a prize. Anderson distributed summaries of relevant case law and differentiated between the pull-tab ticket-dispensing machine and interactive video machines. Carroll and Bartz expressed appreciation for the cautious manner in which the lottery was proceeding. Stanek advised Angelo that, if approved, the machines would be deployed in adult locations rather than grocery or convenience stores.

Committee business Bradley presented a gift on behalf of the committee to Senator Merlin Bartz who, after serving as chair of the administrative rules review committee since May 2001, has accepted a position with the U.S. Department of Agriculture.

Adjourn The meeting was adjourned at 1:30 p.m.

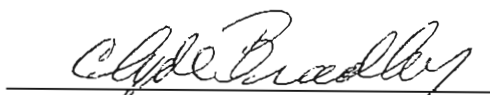
Respectfully submitted,

  
Kathleen K. Bates

  
Teresa VanderLinden

APPROVED:

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Chair Merlin E. Bartz

  
Vice Chair Clyde Bradley