

**MINUTES OF THE OCTOBER 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, October 8, and Wednesday, October 9, 2002, in Room 116, State Capitol, Des Moines, Iowa.
- Members present:** Senator Sheldon Rittmer, Chair, and Representative Clyde Bradley, Vice Chair; Senators Patricia Harper, John P. Kibbie, and Paul McKinley; Representatives Danny Carroll, Marcella Frevert, Mark Kuhn and Janet Metcalf. Senator Jeff Angelo was not present.
- Also present:** Joseph A. Royce, Legal Counsel; Kathleen K. Bates, Administrative Code Editor, and Bruce Carr, Assistant; Brian Gentry, Administrative Rules Coordinator; caucus staff and other interested persons.
- Convened** Chair Rittmer convened the meeting Tuesday, October 8, 2002, at 9:02 a.m.
- ELDER AFFAIRS DEPARTMENT** Mark Haverland represented the department. Steve Young represented the department of inspections and appeals.
- Special review** Rules in ch 27 regulate assisted living programs. Haverland reported on the progress made by a work group convened to address level of care issues affecting residents in assisted living facilities. Haverland distributed a draft of a proposed rule along with a statement from the department of inspections and appeals summarizing procedures to be followed when level of care issues arise. It was the consensus of the committee that the department should not proceed with an emergency rule making. Gentry recommended that the department of inspections and appeals advise all programs of the procedures to be implemented. Young agreed to forward to Royce and Gentry a copy of the letter that will be sent to all assisted living programs.
- ETHICS AND CAMPAIGN DISCLOSURE BOARD** Charlie Smithson represented the board.
- ARC 1920B No questions on amendments to replace "support or oppose" with "express advocacy."
- ARC 1917B No questions on amendments to combine requirements relating to disclosure reports.
- ARC 1919B No questions on the proposed prohibition of contributions from an unknown source.
- ARC 1985B No questions on request for inactive status by county central committees.
- ARC 1984B No questions on the rescission of 11.3.
- ARC 1986B No questions on ch 14, board procedures for rule making.
- Waiver report** Smithson reported that all waiver requests received by the board have resulted from assessment of civil penalties for late filings.
- TRANSPORTATION DEPARTMENT** Julie Fitzgerald, Steve Westvold, Tom Sever, Ruth Skluzacek, and David Titcomb represented the department.
- ARC 1923B No questions on amendments resulting from the Executive Order 8 review.
- ARC 1918B No action on amendments relating to outdoor advertising. Westvold reported that these amendments conform to federal regulations and prohibit new billboards on scenic byways. Discussion concerned penalties for removal of vegetation, nonconforming signage, political signs, and the definition of "inoperative motor vehicle."
- ARC 2013B No action on proposed amendments to ch 400, which include the requirement for product identification numbers on all fence-line feeders, grain carts, and tank wagons.
- ARC 2014B No questions on proposed ch 500, interstate registration and operation of vehicles.
- ARC 2015B Amendments to ch 505 reflect Iowa's participation in the International Fuel Tax Agreement. Skluzacek explained that the increase in the penalty for late filing or failure to file is necessary because the fee covers all participating jurisdictions, not just Iowa.
- ARC 1922B No action on motorcycle rider education, ch 635.
- PERSONNEL DEPARTMENT** Gregg Schochenmaier represented the department. Mike Coveyou of the department of public safety appeared later in the day for review of the peace officers' retirement system rules.
- ARC 2010B No questions on amendments pertaining to IPERS, ch 21. A clarification in subrule 21.19(1) was made in response to a suggestion from Rittmer. In addition, the proposed amendment to 21.22(1)"a" was not adopted.
- ARC 1968B Coveyou explained that the amendments to 24.26 clarify options of vested and nonvested members who terminate employment prior to retirement.
- PUBLIC SAFETY DEPARTMENT** Mike Coveyou represented the department.
- ARC 1996B Proposed amendments to ch 5 and new ch 51 concern flammable and combustible liquids and update NFPA standards. Kibbie asked the department to explore whether the definition of "unattended vehicle" might unintentionally apply to trucks parked while propane tanks are being filled.

INSPECTIONS AND APPEALS DEPARTMENT David Werning and Sherry Hopkins represented the department.

ARC 1987B No comments on amendments to chs 100 to 103 relating to raffles and bingo.
Committee business Metcalf moved approval of the minutes of the September 2002 meeting. The motion carried.

The next meeting was scheduled for November 12, 2002.

Royce reported that a review of the EPC matrix will be scheduled for next month. There was discussion about equal protection issues if counties were to exercise discretion in application of the matrix.

IOWA FINANCE AUTHORITY Loyd Ogle represented the authority.

ARC 1951B As a result of public comment, the 2003 QAP requirement for a title guaranty certificate was changed.

NURSING BOARD Lorinda Inman represented the board.

ARC 2003B No action on amendments to ch 2.

ARC 2006B No questions on the proposed definition of "unlicensed student."

ARC 2005B No questions on amendments to ch 3 regarding NCLEX examination.

ARC 2004B No action on training for mandatory reporters of child and dependent adult abuse.

Waiver report Inman summarized waiver requests received in the areas of educational requirements, fees, credentials, and practice. A report of waivers is posted on the Web site; waivers have been requested for rules in five chapters.

PHARMACY EXAMINERS BOARD Lloyd Jessen and Terry Witkowski represented the board. All of the following are the result of the review conducted under Executive Order 8.

ARC 1940B No questions on ch 1, purpose and organization of the board.

ARC 1939B No questions on ch 2 relating to licensure.

ARC 1938B No questions on ch 3 pertaining to pharmacy technicians.

ARC 1927B No action on ch 4 concerning pharmacist-interns. Witkowski explained fee changes.

ARC 1926B No questions on ch 6, general pharmacy practice.

ARC 1925B No questions on ch 7, hospital pharmacy practice.

ARC 1924B No questions on ch 8, universal practice standards.

ARC 1937B No questions on ch 10, controlled substances, or on the rescission of ch 18.

ARC 1936B No questions on amendments to ch 11 pertaining to drugs in emergency medical service programs.

ARC 1935B No questions on the rescission of ch 13.

ARC 1934B No questions on ch 15, correctional facility pharmacy practice.

ARC 1933B No questions on ch 16, nuclear pharmacy practice.

ARC 1932B No questions on ch 17, wholesale drug licenses.

ARC 1931B No action following discussion of nonresident pharmacy practice, ch 19.

ARC 1930B No questions on ch 21 concerning electronic data in pharmacy practice.

ARC 1929B No questions on ch 22 regarding unit dose, alternative packaging and emergency boxes.

ARC 1928B No questions on long-term care pharmacy practice, ch 23.

PROFESSIONAL LICENSURE DIVISION Marge Bledsoe represented the division.

ARC 1942B No questions on cosmetology sanitation rules.

ARC 2019B No questions relating to mortuary science, ch 99.

ARC 2018B No questions on massage therapy, ch 130.

ARC 1971B No action on ch 200 and 201.5(2)"b" regarding physical and occupational therapy.

ARC 1970B No questions on ch 205.

ARC 1957B No questions on amendments to ch 240.

ARC 1943B No questions on social work examiners.

ARC 1941B No questions on physician assistant examiners.

STATE PUBLIC DEFENDER Mark Smith represented the office of state public defender.

ARC 1965B Smith presented amendments relating to review and approval of attorney fee claims.

HUMAN SERVICES DEPARTMENT Mary Ellen Imlau and Jeanne Nesbit represented the department.

ARC 2035B Ch 36 implements HF 2625. Imlau reported that assessment of a fee for intermediate care facilities for the mentally retarded not operated by the state is expected to generate \$3.5 million in federal funds.

ARC 2032B No questions on amendments relating to applications for food stamps, FIP and Medicaid.

ARC 2036B No questions on proposed amendments to ch 45 pertaining to the FIP program.

ARC 2033B No questions on amendments to ch 58 concerning the emergency assistance program.

ARC 1963B No action on amendments to ch 65 relating to eligibility for food stamps.

Human Services Department (continued)

- ARC 1950B No action on 65.21(4) regarding the demand letter for repayment of food stamp overissuance.
- ARC 2021B No action on amendments restoring Medicaid coverage for dental services.
- ARC 1962B No questions on Medicaid payment for services provided by nurse-midwives.
- ARC 1946B No questions on amendments to ch 79 concerning Medicaid certification of hospital special units.
- ARC 2034B No questions on amendments to 79.1 made as a result of last month's special review concerning disproportionate share payments to children's hospitals.
- ARC 1947B These amendments pertain to reimbursement for prescription drugs based on state maximum allowable cost. Imlau reported that, due to input from the pharmacy association, a new rule making will be forthcoming.
- ARC 1944B No action on coverage under the HAWK-I program. Imlau agreed to check on the basis for the 30 miles or 30 minutes criteria.
- ARC 1948B Nesbit reported on electronic receipt of child support payments. So far, no bank has expressed interest in issuing access cards without charge.
- ARC 2031B No action on amendments relating to licensure standards for child care centers.
- ARC 2022B Amendments to chs 150 and 185 freeze reimbursement rates for RTSS providers.
- ARC 2037B No questions on amendments to ch 161, Iowa senior living trust fund.
- ARC 2023B No questions on ch 164, the Iowa hospital trust fund.
- Carroll requested that a review of the state contract with Merit Behavioral Health be scheduled for the November meeting.

Wednesday, October 9, 2002

SUBSTANCE ABUSE COMMISSION Dean Austin and Cynthia Kelly represented the commission.

- ARC 1978B Amendments to ch 3 pertain to licensure standards for substance abuse treatment programs. Austin noted that "deemed status" allows nationally accredited programs to become licensed in Iowa. Rittmer was advised that 28 of the 104 programs operating in Iowa have deemed status. There was general discussion about the need for programs for teens, program evaluation criteria, recidivism rates, and tracking of program participants.
- ARC 1977B Kelly reported that licensure standards for correctional facility programs incorporate a quality improvement process. Chemical dependency rehabilitation services include curriculum-based therapeutic approaches which address criminal behavior as well as addiction.

COLLEGE STUDENT AID COMMISSION Gary Nichols represented the commission.

- ARC 1999B No action on the proposed definition of "located in Iowa."
- ARC 1998B No action on 21.1 regarding criteria for approval of postsecondary schools.
- ARC 1997B Ch 37 pertains to the license sanction program. McKinley requested information about amounts outstanding in delinquent student loans.

ECONOMIC DEVELOPMENT DEPARTMENT Mike Fastenau and Sandy Ehrig represented the department.

- ARC 1992B No action on amendments to ch 23 regarding the CDBG program. Fastenau clarified that the starting wage must meet or exceed the lowest of 80 percent of the average county wage, 80 percent of the average regional wage, or the wage cap.
- ARC 1994B Proposed ch 24 pertains to the emergency shelter grants program. Ehrig confirmed that the department works with IFA in administering funds.
- ARC 1993B No action on amendments to ch 25 concerning the housing fund.
- ARC 1995B No action on proposed ch 29, homeless shelter operation grants program.

EDUCATIONAL EXAMINERS BOARD Susan Fischer represented the board.

- ARC 2038B No questions regarding the rescission of rules in ch 14 that are no longer in effect.
- ARC 1980B No questions on 14.106 which clarifies the process for adding an endorsement to a license and provides flexibility for individuals moving from the elementary to secondary level.
- ARC 1983B No action on ESL endorsement, 14.140(4).
- ARC 1982B No action on superintendent endorsement. Fischer clarified the experience requirements.
- ARC 1981B No action on amendments pertaining to mandatory training for reporting child and dependent adult abuse.
- ARC 1979B No questions on administrator and evaluator licenses.

EDUCATION DEPARTMENT Ann McCarthy and Beverly Bunker represented the department.

- ARC 2026B No action on proposed 21.3(4) pertaining to recommendations for the quality faculty plan to be implemented in transition from licensure to accreditation of community colleges.

Education Department (continued)

- ARC 2027B McCarthy reported that ch 68 pertaining to charter schools will be rescinded. The federal government declined funding Iowa's application due to language in the statute which made authorization contingent upon receipt of federal funds. McCarthy will forward to the committee the letter from the U.S. Department of Education.
- ARC 2025B No action on proposed amendments relating to criteria for and approval of teacher preparation programs.
- ARC 1900B After clarifying open enrollment procedures and good cause provisions for late enrollments, McCarthy reported that the department erred in withholding state aid in response to open enrollment complaints from resident districts. As a remedy, the department proposes suspending the rule, rescinding the language authorizing withholding of state aid, and restoring to six districts state aid that the department withheld.
- McCarthy distributed a draft of amendments to ch 1 pertaining to the state board of education and providing for a student member of the board. The department may file simultaneous emergency and notice documents in November.

ENVIRONMENTAL PROTECTION COMMISSION Anne Preziosi and Mike Murphy represented the commission. Marion Conover of the fisheries bureau was also present. Laverne Schraeder represented the Iowa Sportsmen's Federation.

- ARC 1990B No action on proposed 28.2 incorporating by reference an ambient air sampling manual.
- ARC 1989B Review was postponed until November.
- ARC 1988B Proposed reorganization of sanitary landfill rules makes no substantive changes.
- ARC 1991B Rules 133.2 and 133.6 relating to compensation for damages to natural resources were reviewed in conjunction with ch 113 of the natural resource commission. There was discussion of fines assessed for loss of threatened or endangered species. Schraeder suggested that damages be assessed for loss of game fish only. Conover pointed out that valuations are based on American Fisheries Society Publication 24 and noted that the \$1000 fine applies only to endangered fish.

NATURAL RESOURCE COMMISSION Gregory Jones, Mike Smith, Marion Conover, Richard Bishop and Janet Ott represented the commission. Laverne Schraeder represented the Iowa Sportsmen's Federation.

- ARC 2044B Amendments to ch 16 prohibit roofing and enclosure of private docks. Smith clarified the authority and jurisdiction of the department and the army corps of engineers. The covered dock on Lake McBride that existed prior to these amendments was grandfathered in.
- ARC 2046B Bishop outlined amendments to ch 22 relating to wildlife habitat on private lands and indicated that language in subrule 22.9(1) represents compromise with private seed growers.
- ARC 1955B No action on amendments to ch 53, controlled waterfowl hunting.
- ARC 1952B No question on proposed amendments to ch 61 regarding camping.
- ARC 1953B Conover reported that the proposed catch and release rules for black bass will be terminated based on comments received.
- ARC 1964B No questions on coot and waterfowl hunting.
- ARC 1954B Proposed amendments to wild turkey hunting rules make bow hunting consistent with deer hunting rules. Schraeder voiced opposition to the arrow restrictions and pointed out that, without grandfathering, the restriction would make illegal a weapon that was legal last year. Bishop responded that the bow and arrow in question are not standard archery equipment. There was considerable discussion about the purpose of the rules and the interests of affected parties. Kibbie encouraged interested parties to participate in the public hearing process.
- ARC 2030B No action on ch 104 which restricts cervid importation from endemic areas. Frevert expressed concern about importation of roadkill by a processing operation in Clinton.
- ARC 1956B See Environmental Protection Commission, ARC 1991B above.

REVENUE AND FINANCE DEPARTMENT David Casey, Dick Stradley, and Ed Henderson represented the department.

- ARC 2041B No action on amendments relating to filing thresholds, consolidated tax returns, definition of "livestock," exempt sales, sales and use tax on services, and deadlines for estimates of local option tax. Casey reported that no refunds have been requested by elk breeders.
- ARC 1958B No questions on proposed amendments pertaining to individual, corporation, and franchise tax.
- ARC 1960B Proposed amendments extend investment tax credits to members of cooperatives.
- ARC 2040B No questions on proposed amendments relating to investment tax credits for equity investment in qualifying business or community-based seed capital fund.
- ARC 2000B No questions on computation of federal tax on S corporation income.

Revenue and Finance Department (continued)

- ARC 2039B No questions on deferment of income for start-up companies.
- ARC 1961B No action on proposed amendments relating to motor fuel. Casey reported that fuels derived from vegetable oils or animal fats are treated as special fuels for tax purposes.
- ARC 1959B Henderson explained changes in property tax rules and clarified merchant marine eligibility for the property tax exemption.
- ARC 2001B Stradley outlined Section 42 housing valuations and reported that the statewide reduction is a minimum of 20 percent. Stradley reported that the department has worked with assessors and taxpayers to develop a uniform reporting form.

CAPITAL INVESTMENT BOARD David Casey represented the board.

- ARC 2042B The department of revenue and finance provides administrative services to the board. Casey summarized proposed rules in chs 1 and 2.

PUBLIC HEALTH DEPARTMENT Barb Nervig, Tom Newton, Charlene Craig, Rita Gergely, and Julie McMahon represented the department.

- ARC 2008B Nervig noted that pursuant to committee request, the fee for newborn metabolic screening is now specified in the rules.
- ARC 2016B Newton reported that the department is contracting with local boards of health for inspections of tattooing facilities.
- ARC 2009B Craig indicated that the amendments are proposed to conform to federal changes.
- ARC 2007B Proposed ch 72 pertains to the childhood lead poisoning prevention program.
- ARC 2002B Rule 100.3 is in response to HF 2190. Carroll asked the department to determine whether the documentation required would impose undue hardships on adoptive parents. Carroll requested the department to check into why no birth certificate is issued to a birth parent who gives up a child for adoption.

- ARC 1862B McMahon responded to the committee's request for additional information about family planning services provided to adolescents. McMahon stated that the department cannot discriminate on the basis of age, but strongly encourages involvement of the family in the decision-making process. McKinley asked that McMahon provide the written protocol and the questions which would be asked to determine whether statutory rape or sexual abuse had occurred. McKinley also asked the department to determine whether federal funding would be denied if Iowa were to require parental permission in order for a prescription to be issued to a minor. Royce noted that the federal guidelines do require confidentiality, but indicated out that guidelines do not have the same effect as regulations or laws. McKinley asked the department to compile information which reflects the ages of clients served.

Committee business Due to a report that trade of Merit's stock has been suspended, Carroll requested that the department of human services reach an agreement with counties before adopting an emergency rule on case management services for mentally retarded and developmentally disabled persons which may have a significant impact on the counties. Royce agreed to put the matter on next month's agenda.

Adjourn The meeting was adjourned at 1:40 p.m.

Respectfully submitted,

Kathleen K. Bates

Kathleen K. Bates

Bruce Carr

APPROVED:

Sheldon Rittmer

Chair Sheldon Rittmer

Clyde Bradley

Vice Chair Clyde Bradley