

**MINUTES OF THE DECEMBER 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, December 10, 2002, and Wednesday, December 11, 2002, in Room 116, State Capitol, Des Moines, Iowa.
- Members present: Senator Sheldon Rittmer, Chair, and Representative Clyde Bradley, Vice Chair; Senators Jeff Angelo, Patricia Harper, John P. Kibbie, and Paul McKinley; Representatives Danny Carroll, Marcella Frevert, Mark Kuhn and Janet Metcalf. Senator Harper was excused Wednesday, December 11, 2002.
- Also present: Joseph A. Royce, Legal Counsel; Kathleen K. Bates, Administrative Code Editor, and Teresa VanderLinden, Assistant; Brian Gentry, Administrative Rules Coordinator; caucus staff and other interested persons.
- Convened Chair Rittmer convened the meeting Tuesday, December 10, 2002, at 9:30 a.m.
- LOTTERY DIVISION** Ed Stanek represented the division.
- ARC 2086B No action on proposed new definitions. Stanek illustrated the process involved in printing scratch tickets and advised the committee of the potential for machines that would print upon dispensing a ticket in accordance with a computer-directed program.
- CAPITAL INVESTMENT BOARD** David Casey represented the board.
- ARC 2146B Casey reported that definitions for "person" and "professional services" have been added to the adopted rules. Casey informed the committee that information and forms are available at the Web site: [www.investiowa.com](http://www.investiowa.com).
- REVENUE AND FINANCE DEPARTMENT** David Casey, Dick Stradley, and Ed Henderson represented the department.
- ARC 2126B No questions on the proposed interest rate for 2003.
- ARC 2144B No action on amendments related to filing thresholds, consolidated returns, "livestock," exempt sales, tax on services, and filing deadlines. Casey advised Metcalf that the department would work with filers when the amendments go into effect in January.
- ARC 2145B No action on rules relating to investment tax credit for equity investment in qualifying business or community-based seed capital fund.
- ARC 2103B Casey reported that the department has responded to questions raised by the propane dealers association and petroleum marketers and advised Kuhn of increases made in accordance with HF 716.
- ARC 2102B No action on amendments to property tax rules.
- ARC 2104B No questions or comments on amendments affecting Section 42 property. Stradley reported that with the cooperation of taxpayers and assessors, the department has developed a uniform reporting form.
- RACING AND GAMING COMMISSION** Karyl Jones represented the commission.
- ARC 2092B Subrule 5.4(8) pertains to commission approval of contracts and business arrangements. Jones reported that the commission encourages use of Iowa vendors whenever possible and requires submission of bids. Jones stated that licensees hold an annual vendors fair and agreed to provide further information about how potential Iowa vendors are notified of the fair and how much business is awarded to Iowa vendors.
- COLLEGE STUDENT AID COMMISSION** Keith Greiner represented the commission.
- ARC 2091B No action on proposed 21.1 concerning approval of postsecondary schools.
- ETHICS AND CAMPAIGN DISCLOSURE BOARD** Charlie Smithson represented the board.
- ARC 2120B No questions on amendments related to county commissioners of elections and campaign disclosure procedures.
- ARC 2122B No questions on amendments to ch 4 concerning advocacy.
- ARC 2121B No action on amended statements of organization.
- ARC 2125B No questions on rules relating to committee funds.
- ARC 2123B No questions on disclosure of financial transactions.
- ARC 2124B No action on rules relating to contributions from an unknown source. Smithson indicated that records be must kept of donations over \$10, but only donations of \$25 or more must be reported.
- Smithson reported on accessibility of information whether filed electronically or on paper and the variety of ways information can be obtained.
- PROFESSIONAL LICENSURE DIVISION** Marge Bledsoe represented the division.
- ARC 2129B No action on proposed amendments affecting schools of barbering.
- ARC 2128B No questions on ch 22, concerning sanitation for barber shops and barber schools.
- ARC 2088B No questions on proposed amendments to ch 180 regarding reporting of mandatory reporting classes.
- ARC 2089B No questions on amendments to ch 325 concerning physician assistants.

**PUBLIC HEALTH DEPARTMENT** Dennis Klein represented the department.

ARC 2136B Proposed 126.3 establishes fees for autopsies and services and reimbursement for related expenses. The fee for autopsies is proposed to increase from \$1000 to \$1200. In addition, the amendments allow the state, deputy or associate medical examiner to charge \$350 per hour for time spent reviewing case materials, preparing for deposition or court, testifying, and travel, a rate that, according to Klein, is comparable to what is charged in other states. The fee serves as an incentive to encourage use the telephone or ICN for testimony. Klein clarified that the county of appointment (the county where the death occurred) is billed for the autopsy and services, but the county of appointment may seek reimbursement from the county of residence.

ARC 2137B Proposed amendments to rule 127.3 specify when autopsies are required and when they are recommended. Klein explained why some deaths were moved from the category of recommended to required and how the information from an autopsy may be used. Klein noted that even when a cause of death appears obvious, an autopsy may reveal another cause. Klein offered assurance that all required autopsies are in line with nationally recognized standards. Royce indicated that counties have been notified of these proposed amendments.

**MEDICAL EXAMINERS BOARD** Ann Mowery represented the board.

ARC 2135B No questions on the proposed amendment to eliminate unlimited verification of licensure status.

ARC 2134B No questions on proposed amendments relating to standards of practice and principles of medical ethics.

**TRANSPORTATION DEPARTMENT** Carol Coates, Robert Hill, Kermit Wilson, Steve Westvold, and Mary Christy represented the department.

ARC 2118B Amendments to ch 20 pertain to procurement of equipment, materials, supplies and services. Coates explained that the amendments increase the dollar threshold for formal advertising for bids and increase the limit for negotiated purchases. These dollar amounts are more in line with those established by the department of general services and the board of regents. Coates noted that the department maintains a list of prequalified vendors and that applications are available online and added that the department awards ties in bidding contests to in-state bidders.

ARC 2132B No action on amendments to rules governing outdoor advertising, signage and junkyard control. As a result of comments received at the ARRC meeting, the department made changes pertaining to inoperative vehicles. Westvold explained criteria for tourist-oriented directional signing and private signage. The department worked in conjunction with the tourism division of the department of economic development and established a tourist signing committee.

ARC 2090B No questions on proposed ch 122, the keep Iowa beautiful program.

**HUMAN SERVICES DEPARTMENT** Mary Ellen Imlau, Nancy Freudenberg, Eileen Creager, Sue Stairs, and Cathy Anderson represented the department. Other interested parties included Lynn Ferrell of Polk County Health Services, Deb Westvold of Iowa State Association of Counties, and Craig Syata of Iowa Association of Community Providers.

Waivers Freudenberg distributed a summary of waivers and explained that anyone can request an exception to department policy in writing or online. Department staff make a recommendation to the director, who makes the final decision. Metcalf asked that the criteria used in determining whether to grant waiver requests be submitted in writing to Royce. Freudenberg confirmed that the department is reviewing rules that result in a high number of requests and is in the process of rewriting certain rules.

ARC 2139B No questions on proposed amendments to ch 53, rent subsidy program.

ARC 2141B No action on proposed amendments to ch 75 regarding procedures for determination of disability for SSI-related Medicaid.

ARC 2140B No action on proposed amendments to ch 75 related to attribution of resources appeals. Frevert voiced concern for persons in counties where the department does not have a physical presence and where telephone contact may be limited to recordings.

ARC 2138B No questions on proposed amendment to 78.15 regarding Medicaid coverage for orthopedic shoes.

ARC 2087B The amendment to 86.2(4) pertaining to the HAWK-I program is identical to the notice. Noting that the amendment appears to expand coverage, Metcalf questioned the department's authority for the amendment. The department estimates that the amendment will allow coverage for an additional 100 children per year and will cost about \$165,000, the federal share of which is \$123,000. McKinley requested feedback on the effect of the amendment.

Motion to refer Metcalf moved a referral to the general assembly.

Motion carried Royce noted that in some cases in which the noncustodial parent is responsible for providing insurance, this amendment could shift responsibility to the state.

ARC 2116B The motion to refer the matter to the general assembly carried.

Proposed amendments to ch 99 are the result of the Executive Order 8 review.

## Human Services Department (continued)

ARC 1840B

A session delay was previously placed on 79.1(15)"d"(4). The consensus of the committee was that the delay remain in place. HF 2416 instructed the department to use the employment cost index as the basis for determining the annual inflation factor for services provided under the HCBS waiver. Instead, a reference to the consumer price index appears in the rules.

ARC 2060B

Proposed amendments pertaining to case management for persons with mental retardation, chronic mental illness or developmental disabilities were reviewed in November. The department noted that Representative Heaton is now in accord with the amendments. Freudenberg distributed a fact sheet summarizing and responding to concerns raised in regard to these amendments. The department maintained that without these rules, federal Medicaid dollars would be at risk. Freudenberg reported that CMS has indicated that prior authorization is the best practice. The department has been advised that the Office of the Inspector General will begin auditing state programs in January and will be focusing on targeted case management. Freudenberg stated that the rules ensure that the same criteria for determining need would be used by the Iowa Plan contractor and Medicaid. Existing clients would all be grandfathered in, and prior authorization would become a factor at the time of the annual review. The department expressed its intention to have the rules go into effect January 1, 2003. Bradley concurred that a process for accountability should be in place prior to an audit. Westvold disagreed with the department's assertions regarding the need for the rules and with provisions regarding prior authorization. In addition, Westvold expressed concern about the department's lack of communication with counties and about possible conflicts of interest with the managed care provider.

Freudenberg maintained that the department expects case management services to be approved for prior authorization at the same rate as under retrospective review. Kathy Lord and Brenda Jackson in the Kansas City office have advised the department that authorities in Baltimore believe prior authorization is the best practice.

Ferrell contended that while Polk County is not necessarily opposed to prior authorization, it fears that the managed care provider will not authorize targeted case management services for all clients that need the services. Further, while the rules specify that Magellan has the authority to authorize targeted case management services, the rules do not specify that Magellan use the department's standards. Ferrell maintained that prior authorization is not required by the federal government. Ferrell expressed a concern that written comments were submitted, but no response was received from the department.

Imlau responded that responses to comments received are posted on the department's Web site.

Carroll expressed disappointment that the department did not pursue meaningful dialog with affected constituents prior to proceeding with the rules. Furthermore, Carroll stated the intention of requesting a special meeting to impose a session delay if the rules are adopted. Gentry echoed Carroll's concern about the department's need to communicate with Polk County and observed that the county's suspicion of Magellan is at the core of the problem. Gentry asked the department to incorporate language to ensure that Magellan use the department's criteria for prior authorization.

Freudenberg agreed that the department was remiss in its communications with Polk County and agreed to include language to require the managed care provider to use the department's criteria for prior authorizations.

Special review

Carroll reported that three housing projects may be jeopardized by rules relating to requirements for supported community living services under the Medicaid HCBS mental retardation and brain injury waivers. Imlau responded that Medicaid and HUD have different views regarding the needs of the disabled and the need to integrate the disabled into the community. Carroll asked the department to confer with Julie Dixon, John Romaine and Rick Jones to determine whether the housing projects will be shut down.

Syata stated that he reported in May that projects would be jeopardized. Syata asked the department to find out how other states get around this issue.

Gentry questioned the department's authority to adopt the rules in light of the legislature's action. In addition, Gentry encouraged the department to seek an opinion from the attorney general.

In response to McKinley's questions about compromise language suggested by the federal government, Imlau reported that advocacy groups for the clients served are not in favor of larger living units.

Motion to delay

Bradley moved, and Metcalf seconded, a 70-day delay.

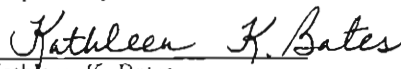
Motion carried

The December 15, 2002, effective date of ARC 2161B was delayed for 70 days.


Gentry asked the committee to provide questions and recommendations to the department.

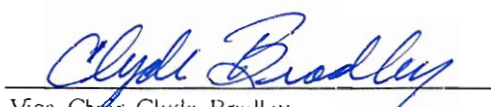
- Committee business Frevert moved, and Bradley seconded approval of the minutes of the November meeting. The motion carried.  
Royce distributed an attorney general's opinion on removal of dental amalgam.  
The meeting recessed Tuesday, December 10, 2002, at 4:40 p.m. and reconvened Wednesday, December 11, 2002, at 9 a.m.
- Waiver report Kristen Hart distributed a summary of waivers as reported by all agencies and advised members on how to obtain waiver information on the Internet.
- DENTAL EXAMINERS BOARD Jennifer Hart and Connie Price represented the board. Pam Griebel represented the attorney general's office. Joyce VanHaften of Defense Against Mercury Syndrome was also present.
- ARC 2115B No questions on cross reference corrections filed without notice.
- ARC 2114B No questions on proposed amendments to ch 20 concerning dental assistant trainee status.  
Griebel reviewed the opinion issued by the attorney general's office. The attorney general's office recommended rescission of subrule 27.7(8) as the subrule may be in conflict with the first amendment rights of dentists and is not necessary because the board has authority to establish standards of practice and standards of care. VanHaften distributed materials to committee members and expressed a concern that dentists who promote removal of amalgams will be disciplined.
- PUBLIC SAFETY DEPARTMENT Mike Coveyou, Ljerka Vasiljevic, and Jim Kenkel represented the department.
- ARC 2143B No action on ch 51 pertaining to flammable and combustible liquids.
- ARC 2142B Proposed amendments to ch 16 concern accessibility standards. The department proposes adopting, with some amendments to maintain current Iowa standards, the federal ADA standards. Coveyou noted that the building code applies to state-owned buildings and local jurisdictions which adopt the state building code and that parts of the building code dealing with accessibility for persons with disabilities, manufactured housing, energy efficiency, and lighting of large facilities have statewide effect. Coveyou emphasized that all amendments maintain current Iowa law in instances in which Iowa law is more stringent than federal requirements.
- ENVIRONMENTAL PROTECTION COMMISSION Mike Murphy, Brent Parker, Dennis Alt, Robin Puisner, and Mel Pins represented the commission.
- ARC 2097B No action on proposed 2.1 concerning public records and fair information practices.
- ARC 2099B No questions regarding rules of practice in contested cases.
- ARC 2096B No action on amendments to ch 38 pertaining to private water well construction permits. There was discussion about monitoring wells; however, no uniform rules governing monitoring wells exist. Bradley suggested a rule to require monitoring wells to be registered so that there would be a record of where they are located.
- ARC 2101B Puisner explained that proposed amendments to ch 65 apply to all permitted facilities and that the matrix would apply to new large facilities or expansions to facilities in counties that elect to use the matrix. Puisner noted that the department will disregard the recommendation of a county that elects to use the matrix and then fails to do so, and the county will lose appeal rights.  
The department advised the committee of its intention to file the rules emergency after notice with a February 1, 2003, effective date, which would afford the committee an opportunity for review in January.  
Kuhn offered his views on what the matrix is, what it is not, and what it could be.
- ARC 2098B Ch 82 pertains to well contractor registration. Certification of well plugging contractors is intended to alleviate the problem of finding contractors to plug large diameter shallow wells. The department has been working with Land Improvement Contractors of America (LICA) to establish training and certification for certified well plugging contractors. Most enforcement is by county sanitarians. Discussion related to cisterns and sand points.
- ARC 2100B No questions on proposed amendments to ch 117 concerning waste tire management.
- NATURAL RESOURCES DEPARTMENT Mike Murphy represented the department.
- ARC 2095B No questions on rules of practice in contested cases.
- Adjourned The meeting was adjourned Wednesday, December 11, 2002, at 11:50 a.m.

Respectfully submitted,

  
Kathleen K. Bates

APPROVED:

  
Chair Sheldon Rittner

  
Vice Chair Clyde Bradley