

**MINUTES OF THE JANUARY 2001 MEETING
OF THE
ADMINISTRATIVE RULES REVIEW COMMITTEE**

Time of meeting: A special meeting of the Administrative Rules Review Committee (ARRC) was held Wednesday, January 3, 2001, in the Ronald Regan Committee Room (G19), State Capitol, Des Moines, Iowa.

Members present: Representative Clyde Bradley, chair, and Senator H. Kay Hedge, vice chair; Senators Merlin E. Bartz, Patricia M. Harper, John P. Kibbie, and Sheldon Rittmer; Representatives Minnette Doderer and Geri Huser. Representatives Danny Carroll and Janet Metcalf were absent.

Also present: Joseph A. Royce, Legal Counsel; Kathleen K. Bates, Administrative Code Editor, and Teresa Vander Linden, assistant; Brian Gentry, Administrative Rules Coordinator; Representative Marcella Frevert; caucus staff and other interested persons.

Convened Vice chair Hedge convened the meeting at 9:09 a.m.

Special review Gentry reviewed the executive department's response to the requirements of 2000 Iowa Acts, House File 2206. Paul Carlson presented an illustration of the system created by the information technology department for indexing and reporting agency responses to waiver requests. Gentry noted that agencies are at various stages in implementing their waiver rules due to the additional requirements for regulatory review and the plan for rule making and asked the committee to recommend the time period that the first six-month report should encompass. Royce suggested an initial report, covering the period January to July of 2001, which may be truncated because not all agencies have their waiver rules in place. Bartz asked that the report for waivers requested between January and June be due in August, and the report covering the period from July to December be due in February. Because several members expressed an interest in knowing the time period between receipt and disposition of waiver requests, Huser suggested the addition of "date received" to the index. Royce pointed out the option for users to make an on-line request for a waiver request form. Gentry added that a uniform waiver request form is being developed and will be submitted to agencies for their suggestions. Kathleen Uehling of the division of labor services differentiated between waivers requested under HF 2206 and waivers specific to other statutes and asked whether all waivers were to be included in the report or just the waivers granted under HF 2206. Royce and Gentry agreed that all waivers should be indexed and reported. Amy Christensen of the utilities division stated that the division's waiver procedures have been long established and a uniform request form may not be suitable.

EDUCATION DEPARTMENT Ann McCarthy represented the department.

ARC 0346B No questions on the proposed waiver rules, ch 4.

HUMAN SERVICES DEPARTMENT Karla Fultz McHenry and Dennis Headlee represented the department. Other interested parties included Scott Setzepfandt of HLR Service Corporation and Ruth Davison.

ARC 0338B No action on proposed amendments to chs 60 and 61 concerning refugee cash assistance and service programs.

ARC 0344B No action on proposed amendments to the HCBS waiver programs.

Special review Bartz requested a review of 78.1(2)"a"(2) pertaining to the department's denial of Medicaid payment for prescription drugs for obesity management, specifically Xenical. Bartz pointed out that the current rule, under which payment is denied, does not address lipase inhibitors or drugs used to cause weight loss. Headlee responded that the rule will be amended to clarify the department's intention to deny payment for drugs for weight loss and obesity management. The department bases its position on cost and the belief that use of the drug without life style changes, diet, and exercise will not have a long-term benefit. Bradley observed that many other covered drugs, such as those for high blood pressure, also require lifestyle changes, diet and exercise. In response to Bradley's inquiry, Bartz stated that 36 states currently cover obesity management drugs. Davison reported that, based on 40 years of experience at the university hospitals, nothing works if the patient is not motivated. Setzepfandt concurred that motivation is important and indicated that the drug can help a motivated patient lose weight and maintain the weight loss.

Motion to object Bartz moved an objection to 78.1(2)"a"(2) on the grounds that it is arbitrary since the department's policy does not match the rule. In addition, the denial letter that initiated the review, dated nearly 12 months ago, indicated that the rule would be revised, but that has not happened.

Gentry offered, in lieu of an objection, assurance that an amended rule will be forthcoming. Kibbie noted that the legislature gave the department the authority to determine which drugs to cover and cautioned that an objection by the committee would establish a precedent for drug manufacturers to ask ARRC to intervene whenever payment is denied.

Motion withdrawn Bartz disagreed with the view that the department is acting within its authority, but withdrew the motion to object and asked that the rule appear on next month's agenda.

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT Daryl Frey represented the department.

ARC 0362B No questions on ch 51 pertaining to remediation of agrichemical sites.

ECONOMIC DEVELOPMENT DEPARTMENT Rich Schloemer, Mary Lawyer, Amy Johnson and Alan Williams represented IDEED.

ARC 0343B No action on ACE program amendments to ch 20. Schloemer informed Harper that the list of demand occupations is being developed.

ARC 0342B No action on amendments to ch 42, rural resource coordination programs for fire services.

ARC 0340B Proposed amendments to ch 58 pertain to the new jobs and income program. Johnson responded to Bartz that the department of revenue and finance advised IDEED that 501 co-ops are eligible for the program, but cannot receive refunds. Bartz encouraged IDEED to propose legislation if the statute needs to be amended.

ARC 0341B No action on proposed amendments to ch 59 concerning enterprise zones.

ENVIRONMENTAL PROTECTION COMMISSION Wayne Gieselman, Dennis Alt, Mike Wiemann and Jon Tack represented the commission.

ARC 0348B The emergency amendment to 65.16(3) extends the deadline to June 30, 2002, for approval of manure management plans. Kibbie observed that the deadline was extended last year and expressed the opinion that the legislature needs to provide the resources for the department to approve the plans.

Motion to object Kibbie moved an objection to the emergency adoption of 65.16(3). Such an objection terminates the amendment in 180 days, but allows sufficient time for the department to adopt an amendment through the normal rule-making process.

Huser was informed that 893 plans have been approved and approximately 1100 plans are waiting for review and approval. Gieselman advised Frevert that the department intends to require earlier submission of plans.

Motion carried The motion to object to the emergency adoption of the amendment to 65.16(3) carried.

Motion to refer Kibbie also moved a referral of 65.16(3) to the General Assembly.

Motion carried The motion to refer carried.

ARC 0349B No action on ch 81.

ARC 0365B No questions on proposed ch 111, financial assurance for municipal solid waste landfills.

NATURAL RESOURCE COMMISSION Arnie Sohn and Richard Bishop represented the commission.

ARC 0363B No action on 27.5(5) pertaining to applications for cost-sharing grants.

ARC 0364B No action on proposed amendments to ch 94, nonresident deer hunting.

PUBLIC SAFETY DEPARTMENT Mike Coveyou, Sam Knowles and George Howe represented the department.

ARC 0355B The emergency amendment to 2.11, resulting from the regulatory review process, strikes the requirement for a social security number on ID cards issued to licensed bail enforcement agents, private investigators and those in private security businesses.

ARC 0350B No action on ch 18 pertaining to parking for persons with disabilities. The department received a comment concerning accessible routes, which will be addressed in a separate rule making.

PROFESSIONAL LICENSURE DIVISION Rosalie Steele represented the division.

ARC 0367B Steele outlined amendments to the rules of the board of chiropractic examiners. Rittmer commented that the term "chiropractic physician" is not used in the Code; Steele responded that chiropractors are included in the definition of physician.

ARC 0368B No questions on the amendments to rules of the board of respiratory care examiners.

CORRECTIONS DEPARTMENT Michael Savala, Anne Brown and Dr. Luis Rosell represented the department. Larry Mullin of the department of public safety was also present.

ARC 0339B Proposed amendments to ch 38 pertain to risk assessment for sex offenders. Savala explained that crimes of a sexual nature against a minor require a risk assessment; Mullin added that parental kidnapping is not included.

INSURANCE DIVISION Susan Voss represented the division.

ARC 0334B

Ch 90 pertains to financial information regulation. To comply with federal regulations effective July 1, 2001, carriers must disclose what personal financial information will be shared and with whom. The insured must be given an opportunity to refuse the sharing of financial information with unaffiliated third parties; however, there is no option in the case of entities that have a business relationship with the carrier. Carriers must send notices initially, annually and whenever a change occurs. When a consumer opts out, the nonallowance continues until the consumer gives permission for information to be shared. Voss assured Bartz that there can be no penalty, such as higher rates, for opting out; and any violation would be considered an unfair trade practice. Bradley suggested that a form and postage-paid, addressed envelope be included with the notification and that carriers be required to maintain a list of entities to whom information is disseminated. Huser expressed the view that information should not be shared unless the consumer gives permission to do so and that carriers should have to disclose the names of entities with whom they are sharing information.

INSPECTIONS AND APPEALS DEPARTMENT Jennifer Fiihr, Judy Harrison, and Marvin Tooman represented the department.

ARC 0369B

Proposed amendments to ch 30 establish eligibility requirements, nomination procedures and evaluation criteria for the excellence in food safety award. Doderer and Kibbie questioned the wisdom of awarding a single winner, particularly since such an award was not directed by the legislature, when there may be several qualified food establishments.

ARC 0345B

No questions on proposed ch 66 concerning quality-based inspections for state-licensed health care facilities.

Committee business

The next meeting was scheduled for Friday, February 9, 2001.

Bartz moved approval of the minutes. The motion carried.

Kibbie expressed an interest in reconsidering the local option sales tax administration fee, which is under a session delay. Bradley stated that discussions have been taking place and a special review may be scheduled.

Bradley presented gifts to retiring ARRC members, Senator H. Kay Hedge and Representative Minnette Doderer, who reminisced and reflected on their years of service.

Adjourn

The meeting was adjourned at 12:55 p.m.

Respectfully submitted,

Kathleen K. Bates
Kathleen K. Bates

Teresa Vander Linden
Teresa Vander Linden

APPROVED:

Clyde E. Bradley
Chair Clyde Bradley