

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

Time of meeting: The special meeting of the Administrative Rules Review Committee (ARRC) was held Wednesday, September 15, 1999, in House Committee Room 1, State Capitol, Des Moines, Iowa.

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

Also present: Joseph A. Royce, Legal Counsel; Stephanie Pickens, Office of Administrative Rules Coordinator; Kathleen K. Bates, Administrative Code Editor, and Teresa Vander Linden, Assistant; caucus staff and other interested persons.

Convened •Chair Metcalf convened the meeting at 9:30 a.m.

TRANSPORTATION DEPARTMENT Carol Crouse, Kirsten Bandow, and Barbara Meeks represented the department.

ARC 9236A No comments were received and no changes made to the for-hire intrastate motor carrier authority rules, ch 524, and the rescission of chs 523, 525 and 528.

ARC 9240A No questions on ch 529 concerning for-hire interstate motor carrier authority.

ARC 9280A No action on 400.4 pertaining to titles from foreign jurisdictions.

HUMAN SERVICES DEPARTMENT Mary Ann Walker, Anita Smith and Terri Pollard represented the department. Bernie Nesbit, a payer of child support, was also present.

ARC 9278A Proposed amendments to ch 65 would require households to use the standard utility deduction.

•Walker responded to Harper that annual reporting of actual utilities based on several months of utility expenses is more prone to errors than use of the standard deduction.

ARC 9277A No questions on proposed amendment to 65.10, reporting changes in monthly income for food stamp households not subject to monthly reporting, which will be adopted emergency to conform to recent federal changes in the threshold for reporting.

ARC 9233A No action on amendments to ch 65 to reduce errors in the food stamp program.

•In response to Carroll, Walker speculated that errors are more likely to increase, rather than decrease, benefits.

ARC 9234A No questions on amendments updating form name and number in several chapters.

ARC 9235A No questions on amendments to 79.1 recalibrating DRG and APG weights.

ARC 9242A Proposed amendments to the HAWK-I program would allow a 20 percent deduction to earned income, would not require a social security number for children participating in the program, would allow participation of children voluntarily excluded from Medicaid due to financial reasons, and would allow persons on the clinical advisory committee to serve more than one term.

•Walker responded to Metcalf that the 20 percent deduction is a simplification of the way income is determined.

•Smith explained to Carroll that the 20 percent deduction is consistent with the Medicaid program and will allow more children to qualify for HAWK-I.

•Kibbie, pointing out that farm income may vary greatly from year to year, asked if a family could be denied because of the previous year's income. Smith explained that families are asked to provide information on the last 30 days' income or last year's tax report if it is representative of their current situation. Smith indicated that while depreciation on capital assets is not an allowable deduction in determining income for Medicaid or HAWK-I eligibility, payments on capital assets may be deducted.

•Bartz asserted that there is no requirement that income for the HAWK-I program be determined in the same way as income for the Medicaid program.

•Smith told Rittmer that eligibility is reviewed annually.

•Smith responded to Bradley that both Medicaid and HAWK-I use gross income minus the costs of producing the income. Bradley concluded that depreciation is not allowed because the total value of the asset is deducted as a cost of producing the income.

ARC 9237A No questions on 89.5 and 89.7 concerning debts due from transfer of assets.

ARC 9238A Ch 97 establishes the child support collections services center.

Nesbit opposed the use of the date the center receives the payment as the date of collection since several days may elapse between the date the amount is deducted from the paycheck and the date the center receives it. Nesbit also complained that no notice of the public hearing was posted on the child support Website.

Walker responded that the department will be posting the public hearings on the Website as a means of increasing public participation in the rule-making process.

Human Services Department (continued)

- Huser was informed that the state receives information from employers by mail rather than tape because the department of revenue and finance is unable to accept the transactions by tape. EFT and tape transactions occur at the same time, whereas the mail may be delayed several days. Huser expressed concern about courts being required to use the date that the child support unit receives the funds rather than the date that the funds were deducted from the payer's paycheck.
- Pollard indicated that the state disbursement unit is being developed to handle all of the cases enforced by the child support recovery unit and payments made through income withholding, which are currently being processed by clerks of court.
- Hedge was informed that currently only about 3 percent of employers provide the date of withholding. In addition, some employers withhold weekly, but remit monthly.
- Motion to delay Hedge moved a 70-day delay be imposed on the date of collection.
- Motion carried The motion to delay carried; the issue will be on the agenda for October.
- ARC 9276A No questions on proposed 156.12(1) for a child in independent living.
- ARC 9239A No action on amendments to ch 185 concerning behavioral health care therapy and skill development services provided by social workers.

HISTORICAL DIVISION Patricia Ohlerking represented the division.

- ARC 9265A Amendments to ch 50 pertain to the historic site preservation grant program.
- Ohlerking explained to Metcalf that the emergency adoption was necessary because of the time involved in assembling the advisory panel committee and presenting their recommendations to the board of trustees prior to the grant application deadline. The grant writing workshops held throughout the state included these amendments.

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT John Schiltz and Donna Gwinn represented the department.

- ARC 9282A No questions on amendments to ch 64.
- ARC 9279A Licensed warehouse emergency storage space is authorized in 90.31.
- Metcalf was informed that this provision will expire April 1, 2000.

DENTAL EXAMINERS BOARD Constance Price and Theresa Weeg of the Attorney General's office represented the board. Other interested parties included dentists Gary Amerman and R. Bruce Cochrane, Don Avenson of the Iowa Dental Hygiene Association, and Sandra Leggett of DMACC.

- ARC 9274A The board received 286 responses from hygienists and 153 responses from dentists. Price emphasized that these amendments pertain only to monitoring of nitrous oxide inhalation analgesia by dental hygienists and do not address induction.
- Price informed Carroll that the board of dental examiners is composed of five dentists, two hygienists and two public members.
- Huser observed that 29.6(4) prevents hygienists from inducing nitrous oxide even though it has been common practice. Weeg responded that administration of anesthesia requires a permit. Provisions pertaining to anesthesia do not address dental hygienists, but state that a dentist may administer nitrous oxide on an outpatient basis without a permit, provided that the dentist meets certain requirements.
- Motion to delay Kibbie moved a session delay be imposed on ARC 9274A.
- Cochrane stated that it has been common practice for hygienists to induce nitrous oxide and estimated that 10 to 12 minutes of every hour of the dentist's practice would be lost if the dentist could not delegate this function to the hygienist. Cochrane stressed that this is not a safety issue. Anesthesiologists have confirmed that nitrous oxide is not dangerous.
- Cochrane responded to Bradley that four community colleges are providing dental hygienists training in administration of nitrous oxide inhalation analgesia which is equivalent to the training provided to dentists.
- Amerman expressed the opinion that the requirement for the dentist to induce the nitrous oxide is unnecessary, burdensome and costly.
- Leggett stated that dentists and hygienists have recommended that inducing, monitoring and deducing of nitrous oxide be the standard of care for dental hygienists.
- Metcalf asked why community colleges are teaching hygienists a procedure that they are not legally authorized to perform. Leggett responded that the Code allows dental hygienists to administer medicaments as prescribed by the dentist.
- Motion carried ARC 9274A was delayed until the end of the 2000 legislative session.
- ARC 9275A No questions on the proposed amendment to 25.3 concerning continuing education.

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF Roselyn Wazny represented the department.

ARC 9246A Amendments pertaining to the CDBG contingency fund were filed emergency in order to provide greater flexibility for this year's funding.

•Bartz was informed that the contingency fund for this fiscal year will be about \$1.5 million.

ARC 9247A No questions on proposed ch 41, the community planning and development fund, which consolidates five programs and simplifies applications for funds.

ENVIRONMENTAL PROTECTION COMMISSION Diane Moles, Michael Anderson and Randy Clark represented EPC.

ARC 9250A No questions on administrative procedure amendments.

ARC 9248A No questions on amendments to ch 40 concerning drinking water supply.

ARC 9249A Comments were received on the Standard 60 requirement for additives which establishes quality assurance standards. Repackaged chemicals are also required to meet the NSF Standard 60.

ARC 9255A No action on ch 42 pertaining to public notification, education, consumer confidence reports and records maintenance.

•In response to Hedge, Moles explained that sampling for lead and copper is conducted at the tap in homes and factories and outlined the sampling process and notification requirements.

ARC 9254A No questions on ch 43 amendments concerning design and operation of water supplies.

ARC 9252A Ch 55 pertains to aquifer storage and recovery.

•Anderson informed Huser that 21 people attended the public hearing, two oral comments and two written comments were received, and three changes were made. Huser stated that, in her opinion, all communities that receive water from the aquifer should be notified. Anderson responded that 55.6(1)"d" pertains to protection of nearby existing water uses, and subrules 55.5(3) and 55.5(4) require publication of testing and permitting in the largest newspaper in the county.

ARC 9251A No action on amendments to ch 83 concerning laboratory certification.

ATTORNEY GENERAL Deferred until October meeting**PETROLEUM UNDERGROUND STORAGE TANK FUND BOARD, IOWA COMPREHENSIVE**

Deferred until October meeting.

Committee business Meeting dates were set for Monday, October 11 at 9 a.m., Tuesday, November 9, and Tuesday, December 14.

UTILITIES DIVISION David Lynch and Vicki Place represented the board.

ARC 9272A No questions on proposed amendments concerning rule making.

ARC 9267A Proposed 6.8 and 22.23 pertain to unauthorized changes of telecommunication service.

ARC 9268A Emergency adopted rules 6.8 and 22.23 pertain to unauthorized changes of long distance carrier ("slamming") and addition of extra services ("cramming").

•Metcalf asked the board to prepare additional press releases and consider other means, such as working with AAAs, of informing the public about these rules.

•Bartz and Bradley related examples of problems caused by automatic dialing systems.

•Lynch explained to Huser situations which necessitate 10-digit dialing and stated that wireless carriers that choose to participate in the universal service fund would become subject to the board's rules.

INSURANCE DIVISION Craig Goettsch and Jeanie Vaudt represented the division.

ARC 9273A No action on proposed 50.120 to 50.124 regulating viatical settlement contracts, including a process for approval of advertising, examination and licensing of agents, and risk disclosure requirements.

REVENUE AND FINANCE DEPARTMENT Carl Castelda, Dick Stradley and Ed Henderson represented the department.

ARC 9262A No questions on updating of contested case references.

ARC 9283A Proposed 77.7 pertains to valuation of pipelines.

•Stradley outlined for Rittmer the unit value approach used by the department.

•Hedge questioned the use of the expression "notwithstanding the foregoing provisions" and Metcalf suggested the department consider a more specific reference.

•Stradley explained to Bradley that for new installations with construction work in progress the value of materials is factored in.

Committee business The minutes of the August meeting were approved.

A video prepared by the American Insurance Association was distributed to members.

LABOR SERVICES DIVISION Walter Johnson represented the division.

ARC 9287A No questions on proposed amendments to ch 4.

ARC 9286A No questions on proposed amendment to 9.4 to reference, rather than quote, the Code.

ARC 9288A No questions on proposed adoption by reference of OSHA regulations.

SEPTEMBER 15, 1999

Labor Services Division (continued)

- ARC 9290A No question on proposed adoption by reference in 26.1.
ARC 9289A Proposed amendments to ch 38 pertain to employment agency licensing.
•Huser noted that the \$75 application fee is not mentioned in the rules.

TREASURER OF STATE Karen Sinclair represented the treasurer's office.

- ARC 9210A Rule 4.10 pertains to applicants with farm income between \$50,000 and \$300,000, at least 50 percent of which is derived from livestock sales.
•Sinclair told Metcalf that funds were prorated rather than awarded on a first-come, first-served basis. The treasurer received 825 applications requesting nearly \$70 million. Requests under \$10,000 were funded in full; requests under \$28,000 received \$10,000; requests for \$100,000 were funded at 28.8 percent.
•Hedge requested a listing, by county, of funding awarded.
•Sinclair informed Rittmer that information about the program was mailed to financial institutions as well as disseminated at the state fair and through a press conference.

IOWA FINANCE AUTHORITY Darlene Jeris, Loyd Ogle, Margaret Collison and Libby Nelson represented the authority. Other interested parties included Roxanne Conlin, Larry Tuel, Charles Krogmeier, Bob Simons, Russell Kaney, and Debbie Fisher.

- ARC 9271A Jeris reviewed the history and purpose of low-income housing tax credits. Nelson summarized past agency practice and outlined IFA's plans for the contested 1999 round of tax credit reservations. Reservations awarded under the invalid plan were withdrawn and Notice of Intended Action was published on August 11, 1999, for emergency rules for a plan applicable only to this year. IFA proposed the following schedule to provide developers as much time as possible to expend the funds necessary to receive the tax credits (10 percent by December 31). Applications are to be filed by October 7 and amendments by October 22; scoring will be completed between October 23 and November 5; reservations will be awarded November 11; appeal time will run on November 15; HOME money extensions will terminate on November 16. IFA has incorporated several of the technical corrections and changes in wording offered by commenters; others will be incorporated into the 2000 plan.

Conlin, asserting that scoring was unfair and several funded projects did not meet threshold requirements, proposed forward-funding as a settlement option.

Tuel of the Iowa Housing Corporation requested that funds for this year be held over and included with next year's allocation as there is not sufficient time for projects awarded reservations to complete the required spending this year. Tuel stressed opposition to rule 12.10.

Krogmeier expressed the hope that no delay will be imposed so that reservations can be awarded this year.

Simons, who represents developer Bob Burns, urged IFA to amend 12.4(3)"b" to allow for a change in sites and suggested other technical corrections.

Kaney, director of housing investment for Heartland Properties, a subsidiary of Alliant Energy, supported the revised version of the rules and suggested four other changes, including, at least for this year, allowing for a change in sites.

Fisher of Newbury Development Company reported that expending the required 10 percent before the end of the year will present difficulties.

Conlin suggested that IFA could resolve the contested cases by granting forward funding and could proceed with projects which had been previously awarded reservations in exchange for a release from liability.

Krogmeier confirmed that several of the projects have already expended moneys.

•Bradley and Huser urged the board to negotiate a way to allow projects to proceed.

•Carroll recommended that IFA honor the reservations that were awarded.

•Metcalf asked for an opportunity to review the rules before they are filed.

ICN meeting The committee will hold a special meeting over the ICN on September 30, 1999, for the purpose of reviewing revisions to IFA rules in response to concerns raised.

Adjourn The meeting was adjourned at 4:50 p.m.

Respectfully submitted,


Kathleen K. Bates

APPROVED:


Chair Janet Metcalf