

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

- Time of meeting:** The regular meeting of the Administrative Rules Review Committee (ARRC) was held Tuesday, July 11, 2000, in House Committee Room 1, State Capitol, Des Moines, Iowa.
- Members present:** Representative Clyde Bradley, chair, and Senator H. Kay Hedge, vice chair; Senators Merlin E. Bartz and Sheldon Rittmer; Representatives Minnette Doderer, Geri Huser, and Janet Metcalf. Representative Danny Carroll and Senators John P. Kibbie and Patricia M. Harper were absent.
- Also present:** Joseph A. Royce, Legal Counsel; Brian Gentry, Administrative Rules Coordinator, and Stephanie Pickens, Assistant; Teresa Vander Linden and Bruce Carr, Administrative Code Office; caucus staff and other interested persons.
- Convened** Chair Bradley convened the meeting at 9:30 a.m.
- HUMAN SERVICES DEPARTMENT** Mary Ann Walker, Susan Bergwall, Mary Ellen Imlau, Susan Trotter, Martin Swartz, Debbie Johnson, Sally Nadolsky, Cindy Haverkamp, and Jo Lerberg represented the department. Dennis Dykstra represented the department of education. Other interested parties included Maja Rater of ACES and Larry Carl and Steve Halstead of the Iowa Chiropractic Society.
- ARC 9900A No action on census income exemption for food stamp recipients.
- ARC 9901A No questions on income eligibility guidelines for emergency food assistance program.
- ARC 9867A/
- ARC 9902A No questions concerning Medicaid eligibility for infants and pregnant women.
- ARC 9903A No action on amendments pertaining to average costs and charges for nursing care.
- ARC 9904A No action on amendments that eliminate the genetic consultation clinic provider category from the Medicaid program.
- ARC 9881A The amendments pertain to skilled nursing and home health aide services and home- and community-based services waivers.
- In response to Metcalf's concerns about excessive paperwork, Walker stated that the work group who designed the waiver services determined that additional documentation is necessary to ensure consumer health and safety and that most providers already keep the additional information, some of which has to be reported only on an annual basis.
 - Johnson informed Bartz that consumers have expressed concerns that although the increases benefit respite providers, they lower the amount of services consumers can buy since the overall limit per consumer was not increased. Johnson observed that the decrease in total services consumers can purchase is balanced by increased provider availability.
- ARC 9905A/
- ARC 9882A No action on Medicaid reimbursement rate increases.
- ARC 9906A The adopted amendments permit Medicaid reimbursement to chiropractors for x-rays and expand Medicaid coverage for AEA services to include social work, nursing and vision services.
- Huser was informed that the department intends to propose rules to allow school districts to provide and receive reimbursement for the services AEAs currently provide.
 - Nadolsky estimated for Bartz that the fiscal impact on the state will be \$20,000.
- ARC 9899A No questions on rescission of telemedicine pilot program rules.
- ARC 9869A The HAWK-I income limit is increased to 200 percent of the federal poverty level, the maximum allowable under federal law.
- Walker will inform Bartz of the funding source for HAWK-I program radio ads.
- ARC 9907A/
- ARC 9870A These amendments require the collections services center to continue to use the date of withholding as the date of credit for child support payments.
- Bradley asked Bergwall to follow up with Rater regarding her concerns about the length of time the state takes to process and distribute support payments.
- ARC 9871A/
- ARC 9908A No comments on income guidelines and fees for child care services.
- ARC 9872A/
- ARC 9909A No questions regarding reimbursement rate increases for adoption, independent living, home studies, and shelter care providers.
- ARC 9873A/
- ARC 9910A No action on foster family care and adoption payment rates.
- ARC 9883A/
- ARC 9911A New chs 161 and 162 pertain to the Iowa senior living trust fund and nursing facility conversion and long-term care services grants.

Human Services Department continued

- In response to Rittmer's concerns that larger projects may be favored over smaller ones, Havercamp stated that project size is not a criterion for determining selection and that all applicants may participate in training sessions on the application process.
- Havercamp informed Bradley that the department is working with the office of management and budget to ensure that funds can be carried over.

ARC 9874A/
ARC 9912A

These amendments change the criteria for awarding grants to pregnancy prevention programs to give priority to programs that serve areas of the state with the highest percentage of unplanned pregnancies for females aged 13 through 17.

- Lerberg concurred with Bartz' observation that some rural counties have higher unplanned pregnancy rates per capita, but stated that there is a need to improve urban participation. Lerberg added that funding for programs is increased and that over time further adjustments may be needed to ensure continued participation in rural areas.

Motion to refer
Motion failed

Hedge moved that the matter be referred to the general assembly.

The motion to refer failed.

- Huser reported that these issues were discussed extensively in the House.

ARC 9875A/
ARC 9913A
Walker retirement

No questions on rehabilitative treatment and support service provider rates.

On behalf of ARRC, Metcalf thanked Walker for her years of service and presented her with a gift from the committee.

UTILITIES DIVISION Cecil Wright, Cindy Munyon and Don Stursma represented the division.

ARC 9878A

Proposed ch 9 concerns the restoration of agricultural land during and after pipeline construction. Wright reported that the rule making initiated in October 1999 was terminated and new rule making proposed due to the complexity of the issue and the high level of public interest.

- Stursma clarified for Rittmer that county boards are responsible for enforcement and a registered professional engineer must oversee inspection.

- In response to Hedge's inquiry about liability, Stursma summarized recent provisions in the Code that address pipeline company responsibilities and liabilities.

- Metcalf cautioned that too many separate agreements could lead to inequitable application of the requirements.

Royce suggested that the division establish a central repository for all separate agreements and that it index the agreements by subject.

- Bradley was informed that a separate agreement is a public record because the agreement is filed with a government official, in this case, the county inspector, and that the rules apply only to projects commenced on or after June 1, 1999.

ELDER AFFAIRS DEPARTMENT Stephanie Laudner and Greg Anliker represented the department. Also present was Scott Hartsook of Legal Services Corporation of Iowa.

ARC 9892A
ARC 9864A

No action on proposed ch 16, senior living coordinating unit.

Ch 28 implements the Iowa senior living program.

Hartsook objected to the requirement that the names of legal services clients be registered with the department and asked that the requirement be removed from the rules. Hartsook explained that the requirement would adversely affect legal services to the elderly because it violates attorney-client privilege. Anliker agreed to file an amendment to implement an exemption for legal services.

- Huser noted increased public concern about privacy issues and expressed approval for the exemption.

IOWA FINANCE AUTHORITY Michael Tramontina, Libby Nelson, Loyd Ogle, David Binner, and Donna Davis represented IFA.

ARC 9811A

Tramontina updated the committee on the status of the tax credit awards process and reported on the public meeting in which for-profit and nonprofit developers, industry officials, advocates, and tenants engaged in dialogue with IFA and provided input. Numerous small changes were made as a result of the meeting.

- Metcalf asked about participation of nonprofit developers and the higher tax credit cap for projects located within qualified census tracts. Tramontina explained that IFA is making an effort to meet the housing needs of people with incomes at 50 percent of the poverty level and lower and that points will be awarded to any entity, whether nonprofit or for profit, that proposes a project to meet that goal. Tramontina observed that nonprofit developers traditionally have served this population, although through smaller projects. Regarding the cap, Tramontina expressed doubt that the higher cap, which is intended to entice developers to build in the inner city, will be met.

REVENUE AND FINANCE DEPARTMENT Carl Castelda represented the department.

ARC 9934A
ARC 9935A

No questions on an amendment to define "taxable use."

No action on proposed amendments pertaining to hotel and motel tax and local option sales and service tax.

Revenue and Finance Department continued

Royce asked Castelda to invite Bair to the August meeting since rules concerning the collection of fees for local option tax are on the agenda. The committee also requested information pertaining to the budget shortfall.

Special review The special review regarding remittance of sales tax receipts was rescheduled for the August meeting.

Committee business Metcalf moved the minutes be approved. The motion passed.

August meeting The next meeting was set for 9 a.m. on Wednesday, August 2, 2000.

RACING AND GAMING COMMISSION Jack Ketterer and Jean Davis, assistant attorney general, represented the commission.

ARC 9865A The proposed amendments reorganize chapters and eliminate duplicative rules. Ketterer pointed out that proposed subrule 5.4(9) contains provisions regarding the prohibition of credit terminals. Because Polk County district court issued a permanent injunction against enforcement of the prohibition, the commission intends either not to adopt this subrule or to rescind the subrule, once adopted, through the normal rule-making process or on an emergency basis.

REAL ESTATE COMMISSION Kay Chapman represented the commission.

ARC 9914A No action on amendments concerning referral or finder's fees.

SECRETARY OF STATE Sandy Steinbach and Rob Berntsen represented the secretary's office.

ARC 9889A No questions on competing nominations by nonparty political organizations.

ARC 9891A No action on amendments to rule 22.261 pertaining to electronic voting equipment.

ARC 9894A No action on implementation of the pilot project for refund of corporate filing fees.

TRANSPORTATION DEPARTMENT David Titcomb, Terry Dillinger and Andrew Lewis represented DOT.

ARC 9876A No action on amendments to ch 425 that require dealers and used vehicle wholesalers applying for licensure to provide proof of compliance with zoning requirements.

ARC 9866A No action on proposed amendments concerning license fees and the pilot project for waiver or refund of fees.

MEDICAL EXAMINERS BOARD Ann Mowery represented the board.

ARC 9933A No questions on termination of proposed uniform waiver rules.

ARC 9932A No questions regarding rule 10.11, selling of goods or services by board or impaired physician review committee members.

ARC 9924A No action on ch 14, licensure of acupuncturists. Mowery stated that the board intends to adopt the rules on an emergency after notice basis.

EDUCATION DEPARTMENT Ann McCarthy represented the department.

ARC 9936A Amendments to 26.1 concern qualifications for driver education instructors. McCarthy described the roles of the department, the department of transportation (DOT), and the board of educational examiners regarding this issue.

Royce said he will ask the board of educational examiners and DOT to attend the August meeting to discuss the status of their rules.

ARC 9937A The proposed amendments pertain to educational services for newly established juvenile homes.

- McCarthy told Bradley that concerns about the ability to charge rent raised during the review of an earlier, associated rule making will be revisited by interested parties after those rules have been in effect for one year.

ARC 9938A No questions on waiver of school breakfast program.

ARC 9939A No comments regarding grants for the beginning teacher induction program.

ARC 9940A No comments on calculation of sales tax capacity per pupil for vision Iowa program.

CORRECTIONS DEPARTMENT Michael Savala and Fred Scaletta represented the department. Also present were Marty Ryan of the Iowa Civil Liberties Union, Joe Kelly, who represented the Iowa Manufactured Housing Association, and Kathleen Uehling of the department of workforce development (IWD).

ARC 9918A Proposed rule 20.20 pertains to offender telephone communications.

- Metcalf expressed concern that funds are not directly deposited into each institution's separate account as required by law and asked that the adopted rule include specific language that sets out the distribution process.

- Following up on Metcalf's comment, Bartz suggested that the rule could include wording that funds are distributed to each account according to an activity report.

- Doderer expressed the view that the high call rates, in effect, punish inmates' families who must pay the high rates and observed that other states do not charge so much and do not use the revenue for infrastructure. Scaletta responded that rates and revenues have decreased substantially since the department contracted with ICN and explained that rates are higher because the calls are recorded and monitored to protect the public.

- Bradley urged the department to find ways to lower rates further.

Corrections Department continued

- ARC 9879A Responding to Ryan's concern that the monitoring of calls between inmates and counsel violates attorney-client privilege, Scaletta clarified that every inmate receives notification that calls are monitored and can submit a form that identifies the attorney's telephone number so calls to the number will not be recorded.
- ARC 9980A No comments on visiting hours at Newton correctional facility.
- ARC 9947A No comments on visiting hours at Fort Dodge correctional facility.
- ARC 9919A Rule 37.5 pertains to private sector employment projects. Savala reported that the adopted rule has been changed to require that the prevailing wage be posted in job listings and that IWD's dispute resolution recommendation be binding on all parties.
 - Bradley stated that factors such as workers' compensation and health care costs should be weighed when determining whether to award a contract to ensure that employers of inmate labor do not gain an unfair advantage over private sector employers.
 - Huser observed that while in her view the rule carries out legislative intent, the cost of employing prison labor cannot be equal to the cost of employing of civilians because the state meets health care and other needs for the inmate workforce.
 Kelly objected to inmate labor wage rates and read excerpts from a marketing plan to show that employment projects using inmate labor are intended to compete actively with private industry.
 - Bartz suggested that ARRC continue to monitor the rule.
 - Hedge noted that other sectors of state government, such as the state printing division and state nursery, compete with private industry.

- ARC 9919A No action on adopted rule 37.6 concerning use of offender labor in construction and maintenance projects.
 - Savala clarified for Huser that inmates are paid the wage posted in the job listing and assured that the department will file an emergency amendment to 37.6(5) to make it consistent with IWD's rule on OSHA training. Uehling confirmed that employers of inmate labor and private sector employers will receive the same training services.

ENVIRONMENTAL PROTECTION COMMISSION Mike Wiemann, Corey McCoid, Kelly Stone, Catharine Fitzsimmons, Diane Moles, Dennis Alt, Chris Schwake, and Monica Wnuk represented the department. Elizabeth Henderson represented the Iowa Association of Business and Industry.

- ARC 9885A McCoid summarized proposed amendments to chs 22 to 24 relating to air quality.
 - Bartz questioned whether the commission intended to implement several amendments pertaining to open burning that would affect activities such as recreational burning and leaf burning. McCoid responded that the department will review the rule to ensure that the amendments do not create any unintended restrictions.
 Henderson distributed a letter outlining industry objections to amendments in Items 1, 3, 5 and 23. McCoid expressed a willingness to work with industry in response to Henderson's concerns about new restrictions on excess emissions generated during startup and shutdown.
 - Bradley was informed that only Item 23 was mandated by the EPA.
 - Bartz asked for a fiscal impact statement.

- ARC 9888A No comments on proposed amendments concerning water supplies.
- ARC 9887A The amendment pertains to water quality certification for new and modified NWP's.
 - Bartz requested information regarding the 300 linear foot limit for the filling and excavation of stream beds and the circumstances under which the limit would apply.
- ARC 9886A No action regarding operator certification for public water supply systems and wastewater treatment plants.

PAROLE BOARD Jim Twedt represented the board.

- ARC 9897A No questions concerning commutation procedures for class "A" felons.

Adjourn The meeting was adjourned at 4:40 p.m.

Respectfully submitted,
Teresa Vander Linden
Teresa Vander Linden

Kathleen K. Bates
Kathleen K. Bates

APPROVED:

Clyde Bradley
Chair Clyde Bradley

H. Kay Hedge
Vice Chair H. Kay Hedge