

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, June 13, 2000, in House Committee Room 1, State Capitol, Des Moines, Iowa.
- Members present:** Senator H. Kay Hedge, vice chair; Senators Merlin E. Bartz, Patricia M. Harper, John P. Kibbie, and Sheldon Rittmer; Representatives Danny Carroll, Minnette Doderer, Geri Huser, and Janet Metcalf. Representative Clyde Bradley was absent.
- Also present:** Joseph A. Royce, Legal Counsel; Brian Gentry, Administrative Rules Coordinator, and Stephanie Pickens, Assistant; Kathleen K. Bates, Administrative Code Editor, and Teresa Vander Linden, Assistant; caucus staff and other interested persons.
- Convened** •Vice Chair Hedge convened the meeting at 9:45 a.m.
- HUMAN SERVICES DEPARTMENT** Mary Ann Walker, Carla Forcier, and Jim Pender represented the department.
- ARC 9829A No action on proposed 28.13 pertaining to county institutional credit balances.
- ARC 9846A No questions on amendments to chs 40, 41 and 75 concerning reporting of changes in income.
- ARC 9830A Proposed amendments to ch 99 are intended to implement the court's changes to the child support guidelines, including an extraordinary visitation adjustment, deduction for the cost of health insurance premiums and clarification of unreimbursed medical expenses of the parent.
- In response to Bartz's inquiry about how the health insurance deduction is applied, Forcier responded that either parent, the payor or the payee, is entitled to receive the deduction.
- ARC 9831A Proposed ch 100 implements the child support parental obligation pilot projects.
- Emergency Filings •Walker presented 11 emergency filings that will appear on the July agenda. Walker heard concerns from Huser about whether any of the emergency filings will affect an audit by HCFA; Metcalf about the excessive administrative burden for respite care providers; Bartz about the calculation of the 15 percent deduction in income for Medicaid eligibility; and Kibbie about whether more definitions of terms used should be included in the rules. Harper clarified the definition of "comprehensive in scope," as the term applies to pregnancy prevention programs.
- CRIMINAL AND JUVENILE JUSTICE PLANNING DIVISION** Richard Moore represented the division.
- ARC 9841A No questions on chs 1 and 3 which will be adopted and filed emergency after notice.
- DENTAL EXAMINERS BOARD** Jennifer Hart represented the board.
- ARC 9818A Proposed ch 27 pertains to standards of practice for patient record keeping.
- EDUCATION DEPARTMENT** Ann McCarthy and Ann Marie Brick represented the department; Bruce Anderson represented the Iowa High School Athletic Association.
- ARC 9855A No comments on amendments to 6.17, contested case appeal procedures.
- ARC 9854A The proposed amendment to ch 36 allows for sanctions against schools that allow participation by an ineligible student athlete who was granted a court injunction pending appeal if the period of ineligibility is subsequently upheld.
- Rittmer was informed that the boards of the Girls' High School Athletic Union and the Boys' High School Athletic Association have approved the amendment.
- Brick explained to Bartz that the department does not wish to restrict an individual's right to appeal; however, if the ruling is upheld, sanctions may deter abuses by schools that allow participation by students who are not eligible to play. Bartz expressed a preference that sanctions apply to the future rather than the past season.
- INSPECTIONS AND APPEALS DEPARTMENT** Jennifer Komos and Robert Haxton represented the department.
- ARC 9856A •Haxton explained to Metcalf that the proposed rules implement law that went into effect in July of last year. Exhibitors at farmers' markets are already in compliance with these proposed rules because they have been advised of the change in the law. Metcalf suggested that the wording in Item 6 be clarified.
- AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT** Ron Rowland and Dr. John Schiltz represented the department.
- ARC 9862A Proposed amendments intended to eradicate pseudorabies will be filed emergency after notice in compliance with the statute. Schiltz pointed out an omission from 64.151(3)"b" that will be corrected in the filed rule.
- Hedge, suspecting a shortage of veterinarians, was advised that veterinarians imported from Stage III areas are helping with the testing.
- ARC 9842A No action on 85.33 concerning MTBE in motor fuel.

ENVIRONMENTAL PROTECTION COMMISSION Jack Riessen represented the commission.

- ARC 9839A No action on proposed amendments to ch 61 concerning water quality standards.
- Committee business Huser moved the minutes be approved. The motion passed.
- ARRC meetings will be held July 11 and August 1, 2000.
- Rittmer called attention to a possible conflict for himself and Bradley on the statutory meeting date in October.
- On behalf of Representative Boggess, Metcalf requested a review of DHS interstate adoption rules.
- Royce announced that although he will be relocated to Room 24 for the next several months, his telephone number will remain the same.

NATURAL RESOURCE COMMISSION Richard Bishop, Mark Leoschke, and John Pearson represented the commission.

- ARC 9858A No question on 51.9 regarding use of nontoxic shot.
- ARC 9859A The proposed amendment to 76.1(2) would remove the common garter snake and the timber rattlesnake from the list of unprotected nongame species. Bishop clarified the difference between the protection afforded species on the protected and endangered species lists and the protection afforded species that are not threatened or endangered.
- Bartz suggested that the two species be addressed in separate amendments; Metcalf and Carroll concurred.
 - Rittmer offered the suggestion that the rule address only commercial harvesters.
- ARC 9860A No action on proposed amendments to reporting requirements for ginseng dealers.
- ARC 9857A No questions on amendments to ch 99 concerning wild turkey fall hunting.
- ARC 9861A No action on amendments to ch 106 pertaining to deer hunting.

IOWA FINANCE AUTHORITY Libby Nelson and Margaret Collison represented IFA. Other interested parties that addressed the committee included Jim Cain of the Iowa Coalition for Housing and the Homeless, Keith Denner of PPM Inc., Jerry Crawford, appearing on behalf of a number of developers, and Roxanne Conlin.

- ARC 9811A Proposed ch 12 incorporates by reference the qualified allocation plan, application, and compliance manual for this year's low-income housing tax credit allocations. Nelson reported that hearings were held on May 17, May 18 and May 25 and that although IFA had intended to adopt ch 12 today, they have agreed to meet with developers on June 22 and intend to proceed with adoption of rules on July 7.
- Metcalf reported meeting with concerned developers and IFA. Metcalf requested that parties be allowed further opportunity to discuss the rules and that ARRC and interested parties be provided final drafts of the rules prior to their adoption. Nelson agreed to these requests; and Collison clarified that the June 22 meeting, rather than the July 7 meeting, would be the time for public participation.
 - Nelson summarized for Carroll that developers believe the caps are unfair, the plan has a nonprofit bias, there are workability issues, and zoning and cost questions. Consistent with Section 42, the board directed the staff to encourage more affordable rents and participation by local tax-exempt organizations. Projects for people at lower income levels are preferred over projects geared to the 60 percent income level.
 - In response to Rittmer, Nelson explained that caps encourage spreading out the resource and diffusing the credit more widely throughout the state. Only 12 of the 382 projects in IFA's portfolio have ever exceeded the caps.
- Cain expressed support for the rules and stated that the plan is perceived as slanted toward nonprofit agencies because of the federal requirement to reserve 10 percent of the credits for nonprofit entities. The mandate of Section 42 of the IRS Code is to serve the lowest-income people, whom Cain asserted cannot afford rents targeted for those at 60 percent of the area median income. Cain also voiced concern that the rule-making process is being used to delay the awarding of tax credits and reminded the committee that the real affected parties are the 191,000 Iowa households in need of low-income housing.
- Crawford expressed appreciation to the IFA board for agreeing to meet with developers to discuss workability issues of the proposed plan and compliance manual.
- Gentry reminded the committee that the IFA board has the authority and responsibility to determine policy and adopt rules; and in following the prescribed process, the IFA board has received comments and has responded to them. Gentry asked the committee to recognize that this unusual request for IFA to provide additional meetings places further constraints on the allocation of this year's tax credits. Gentry further asked the committee to distinguish between genuine policy disagreements that may continue to exist and concerns about the need for additional public comment opportunities.

Iowa Finance Authority continued

Conlin expressed the need for continued discussion.

Denner distributed a letter summarizing compliance concerns and added that some of the concerns have already been addressed.

•Kibbie requested further review at the July meeting.

WORKFORCE DEVELOPMENT DEPARTMENT Joann Callison represented the department. Michael Savala of the department of corrections was also present.

ARC 9816A Changes in ch 1 include language requiring consultation with the department of corrections and involvement of regional advisory boards.

•Savala responded to Metcalf that the corrections department rules require compliance with the recommendation of the workforce development department.

•Huser was informed that the 10-hour OSHA training will be offered at no cost to offenders working on construction projects. The same training is also available at no cost to private-sector entities with 250 or fewer employees.

Royce pointed out that the appeals process worked out by the departments of corrections and workforce development is not required by statute.

ARC 9815A No action on ch 7 which implements the Iowa workforce investment Act.

PUBLIC SAFETY DEPARTMENT Mike Coveyou and George Howe represented the department. Coveyou announced that Roy Marshall is retiring on June 30 after serving for 12 years as state fire marshal.

ARC 9840A Proposed ch 18 pertains to parking for persons with disabilities. Coveyou stated that the amendments conform the rules to changes in statutory language. Coveyou pointed out that the height requirement applies to new signs only and that existing signs may continue to be used. While no change in sign wording is required, signs that include a fine must specify the current fine. The international symbol of accessibility is sufficient to designate a parking space for persons with disabilities.

•In response to comments by Metcalf and Kibbie concerning signage in parking ramps, Coveyou indicated that compliance with the rules is required in plan reviews by the building code bureau and is subject to local law enforcement in the case of complaints, but the department does not go out and inspect facilities for compliance.

•Huser requested copies of forthcoming emergency rules on fire service before they are adopted.

ECONOMIC DEVELOPMENT DEPARTMENT Melanie Johnson, Ken Boyd and Rose Wazny represented the department.

ARC 9820A No action on proposed amendments to ch 25 concerning the joint review process with the Iowa finance authority for the housing fund and low-income housing tax credits.

ARC 9821A No questions on amendments to ch 25 regarding funds allocated to rental activities funded by the housing fund and low-income housing tax credits.

ARC 9819A No questions on proposed amendments to ch 28.

ARC 9822A These amendments to ch 53 pertain to calculation of the CEBA wage threshold annually rather than quarterly and consideration of "starting wage" rather than "average wage."

ARC 9823A No questions on amendments to ch 68 concerning the export trade assistance program.

UTILITIES DIVISION David Lynch and Cynthia Munyon represented the division.

ARC 9835A Amendments to chs 6 and 22 pertain to unauthorized changes to a customer's account, also known as "slamming" and "cramming."

•Carroll inquired about authorization and was informed that written authorization can include endorsement of a check which states that in endorsing, the individual agrees to change carriers. Third-party authorization, which involves recorded telephone verification by a third party that the individual agrees to the change in service, and electronic authorization at a carrier's web page are also allowed.

ARC 9850A No questions on amendments to chs 19 and 20 concerning payment agreements.

MEDICAL EXAMINERS BOARD Ann Mowery represented the board. Brice Oakley appeared on behalf of physician assistants. Jeanine Freeman represented the Iowa Medical Society. Linda Goeldner of the Iowa Nurses Association was also present.

ARC 9794A Special review of proposed ch 21 pertaining to physician assistant (PA) supervision. Mowery stated that two public hearings have been held and comments have been received from physicians and PAs. Mowery is working with the application committee of the PA board on expediting applications. It is anticipated that some changes will be made to ch 21 as a result of the comments received.

Freeman distributed a letter from the Iowa Medical Society, expressed support for the rules and referenced language changes which the society has suggested to the board to allow a physician within the same practice to supervise a PA in a directly related area of medical practice and to allow PAs in a hospital setting to be supervised consistent with the rules and the credentialing criteria of the hospital.

Medical Examiners Board continued

•In response to Metcalf's inquiry regarding a group of PAs that may wish to hire a supervising physician, Freeman stated that the criteria would still apply. The physician would need to prove to the board that the physician is practicing in an area directly related to the practices of the PAs for the services the PAs are providing under that physician's supervision. Metcalf suggested that the rules define terms that are subject to interpretation.

Goeldner commented that ARNPs function within a limited area of practice.

Oakley noted that a physician's license does not restrict the physician to an area of practice.

EMERGENCY MANAGEMENT DIVISION David Miller represented the division.

ARC 9828A No questions on proposed amendments to ch 1.

ARC 9827A No questions on proposed adoption of the uniform rules.

ARC 9824A No action on ch 7, which pertains to local emergency management. Counties are required to have a comprehensive countywide emergency operations plan that meets state standards in order to receive the state's 10 percent share in a federally declared disaster. This chapter establishes those standards. As a result of comments received at the public hearing, changes will be made to the rules. Changing "shall" to "should" in several instances will lessen the financial impact on local emergency management commissions.

ARC 9825A No questions on proposed ch 8, criteria for awards or grants.

REVENUE AND FINANCE DEPARTMENT Carl Castelda represented the department.

Special review Collection of fees for local option tax.

The department has opted to exercise the legislatively granted one-year authority to charge local governments for administration of the local option taxes. The department estimated that administration of the taxes, which includes costs associated with presentations and mailings for local jurisdictions, data entry and processing of tax returns, distribution of funds and a portion of the audit costs, will amount to \$396,636. Castelda distributed materials to illustrate that, in order for the department to recover that amount, counties will pay less than one-tenth of one percent of the revenue they will receive from the taxes. Cities and counties have been informed of the policy decision which, in accordance with Iowa Code chapter 17A, must be adopted as a rule.

•In response to Metcalf's request that the department not file an emergency rule, Castelda indicated that the costs will be incurred starting July 1.

•Kibbie asked whether the department could follow normal rule-making procedures, but make the rule effective retroactive to July 1. Royce suggested that an emergency after notice filing with a retroactive fee might be the solution.

Adjourn The meeting was adjourned at 4:03 p.m.

Respectfully submitted,

Kathleen K Bates
Kathleen K. Bates

Teresa VanderLinden
Teresa Vander Linden

APPROVED:

Clyde Bradley
Chair Clyde Bradley

H. Kay Hedge
Vice Chair H. Kay Hedge