

**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 9, 1998, in Room 118, State Capitol, Des Moines, Iowa.

Members present: Senator H. Kay Hedge, chair, and Representative Christopher Rants, vice chair; Senators Merlin E. Bartz, John P. Kibbie, William Palmer, and Sheldon Rittmer; Representatives Danny Carroll, Minnette Doderer, Janet Metcalf, and Keith Weigel.

Also present: Joseph A. Royce, Legal Counsel; Teresa Vander Linden and Bruce Carr, Administrative Code Division; Jackie Von Ekeren Romp, Administrative Rules Coordinator; caucus staff and other interested persons.

Convened •Chair Hedge convened the meeting at 9:32 a.m.

**HUMAN SERVICES DEPARTMENT** Mary Ann Walker, Candy Nardini, Dennis Janssen, Jeff Terrell, and Tony Montoya represented the department.

ARC 7965A No questions on FIP, RCA and food stamp policy amendments to chs 7, 11, and 65.

ARC 7969A No questions on ch 39 amendments regarding grants for homeless persons with mental illness.

ARC 7966A Proposed amendments to 40.27(5) and 41.22(6) provide consistency with Medicaid rules on lifting CSRU sanctions for noncooperation.  
•Walker assured Bartz that sanctions are maintained until an expressed intent to cooperate has resulted in actual cooperation.

ARC 7967A No questions on proposed increases in income eligibility guidelines for the emergency food assistance program, 73.4(3)"d"(2).

ARC 7970A No questions on statewide average cost for nursing care, 75.15(2), 75.24.

ARC 7971A No questions on HCBS MR and BI waiver amendments to chs 77, 79, and 83.

ARC 7972A No questions on amendments to ch 78 concerning medical and remedial services.

ARC 7968A No questions on the addition of five counties to the elderly waiver program, 83.22(1)"b."

ARC 8008A Proposed amendments to ch 88 implement the Iowa plan for behavioral health, a managed care plan for delivery of mental health and substance abuse services.  
•Nardini informed Bartz that the RFP allowed for regional or statewide contract bids but that the bidders submitted only statewide contract proposals. Nardini added that monitoring, performance indicators and penalty provisions are included in the RFP and contract.  
•Kibbie was told that the open panel provision ensures that current providers who meet credentialing criteria and agree to contract terms may continue as subcontractors under the new contract.  
•Nardini advised Weigel that the contract requires the contractor to maintain an internal review process and that enrollees may opt to pursue that review process, the department's existing appeal process, or both.

ARC 7973A Walker distributed a map showing the current status of Medicaid managed health care program coverage and summarized the amendments to ch 88.

ARC 7974A No questions on rescission of division I of ch 175, child abuse investigations program.

ARC 7975A Amendments to ch 175 revise the child abuse assessment process.  
•Terrell responded to Kibbie that the amendments will not affect child abuse registry additions or removals.  
•Doderer asked for clarification regarding the term "harm," specifically whether harm refers only to nonphysical abuse, and asserted that the difference between harm and abuse is not always clear. Walker responded that harm is defined as an emotional or nonphysical injury which has a damaging effect upon a child. Walker also offered to return with the program manager who could better explain the term and its use.  
•Palmer expressed the opinion that physical abuse is more easily recognizable than harm; and that mental health professionals should make determinations of harm and should supply supporting documentation.

Motion to delay Discussion resumed later in the morning when Walker returned with Tony Montoya.

Motion carried Palmer moved that ARC 7975A be delayed for 70 days.  
The motion carried.  
•Montoya informed Palmer that the department considers not only the potential for harm when making a determination, but also whether an incident is isolated or unlikely to recur.

June 9, 1998

Montoya stated that a retroactive review of 374 cases on the child abuse registry in which these criteria were considered resulted in the removal of 37 percent of the cases. Palmer encouraged the department to continue evaluating incidents on a case-by-case basis and to take steps to ensure that determinations are accurate.

- Rittmer expressed concern that the degree of damage to a child is not adequately addressed in the rules. Montoya stated that the Code limits the department's discretion regarding placements on the registry.

**Prepublication review**

Walker summarized the emergency rules authorized by the legislature with the condition that the rules be reviewed by the committee prior to taking effect.

No questions on rehabilitative treatment services and Medicaid amendments.

No action on FIP, food stamp, Medicaid and child support amendments to chs 41, 65, 75, and 95.

- Walker clarified for Bartz that the increases are funded by a \$34 million federal appropriation.

No questions on Medicaid policy amendments in chs 79 and 81.

No questions on ICF/MR Medicaid policy changes.

No questions on amendments to 130.3 and 130.4.

No questions on 150.3(5)"p" and 150.22(7)"p" regarding purchase of service.

No questions on amendments to 156.6 and 202.17.

No questions on Medicaid work transition, 75.57(7)"af."

**AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT** Ronald Roland and Bob Cox represented the department. John Johnson represented the Iowa Honey Producers Association. Other interested parties included Pam Clark and John Duesing.

**ARC 7980A**

Rule 22.10 prohibits the transport of Varroa mite-infested honeybees from Florida into Iowa.

- In response to Metcalf's inquiry, Cox stated that the department has been successful in delaying the influx of infested bees and that honey production has increased over the past five years.

- Doderer was informed that Varroa mite infestations kill honeybees and that Florida honey producers bring their bees into Iowa because of Iowa's clover.

- Hedge added that mites have killed many wild bee colonies in Iowa.

**ARC 7978A**

Proposed 67.7(1)"f" pertains to locking devices for fork-type latches.

Clark, who lost two pets due to the use of unsecured fork latches at a licensed kennel, read a statement in support of the amendment.

- Roland confirmed for Doderer that the use of secured fork latches will be required for kennel licensure and that kennels can comply by making a simple modification to existing latches.

- Bartz was told that the requirement should not pose a significant burden on the estimated 200 kennels in Iowa. The department intends to notify kennel owners and operators of the requirement and to follow up during annual inspections.

**ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF** Allen Williams represented the department.

**ARC 7983A**

Williams outlined proposed amendments to the enterprise zone program.

- Williams informed Rittmer that 13 of the 16 counties with enterprise zones have formed commissions, as have 5 of the 6 cities with enterprise zones; Des Moines has not yet formed a commission.

- Weigel expressed concern that, although the project jobs definition may ensure that all new jobs in enterprise zones meet wage and benefit requirements, the definition does not address the problem of companies' creating a limited number of jobs and then reaping disproportionate tax benefits.

- Doderer suggested the enterprise zone program be further restricted to prevent companies from skirting program requirements.

- Bartz commended the department for its efforts to implement legislative intent and asked whether rules exist to prevent companies from phasing out existing jobs while adding new project jobs to qualify for tax benefits. Williams responded that the net increase in jobs created would have to be evaluated and pointed out that enterprise zone commissions may address the issue when reviewing an application. Williams also explained that, prior to accepting applications, commissions may establish requirements more stringent than those required by statute; no commission has yet done so.

June 9, 1998

- Williams responded to Doderer that local commission membership is defined by statute.
- Palmer was informed that project construction jobs would not qualify as project jobs because of the ten-year job term requirement.
- Williams informed Rittmer that so far all enterprise zone jobs are manufacturing jobs.

**PROFESSIONAL LICENSURE DIVISION** Marge Bledsoe represented the division.

- ARC 7988A No questions concerning proposed revisions to mortuary science licensure, renewal and continuing education requirements in chs 100 and 101.
- ARC 7987A No action on amendments to ch 280 implementing changes in social worker licensure and supervision requirements.

**PUBLIC HEALTH DEPARTMENT** Mike Marshall and Mike Guely represented the department.

- ARC 7990A No questions on reportable disease list, 1.2 (1)"a."
- ARC 7989A No questions on the termination of Notice to amend the reportable disease list.
- ARC 7982A Ch 12 outlines procedures and requirements for department approval of confirmatory laboratories for private sector drug-free workplace testing.
- Marshall explained to Weigel that although legislation does not specifically exclude hair samples, hair samples do not meet test sample reliability requirements.
  - Kibbie was informed that the personnel and equipment expenditures associated with establishing a testing laboratory would likely prohibit small or rural medical facilities from seeking to become approved testing laboratories.

**REVENUE AND FINANCE DEPARTMENT** Mel Hickman represented the department.

- ARC 7991A No questions on chs 15, 17, and 18 amendments expanding exemptions for machinery, equipment, and computers used in processing by manufacturers.
- ARC 8030A No questions on amendments to 53.12(1) which provide for computation of federal tax deductions when there is a change in accounting methods.
- ARC 7992A No questions on 123.9 which requires that the director of revenue and finance be notified of appointments of assessors and deputy assessors.
- ARC 8058A The amendment to 26.45 clarifies tax rules regarding pest eradication services in agricultural production.
- In response to Bartz's inquiry concerning legislative authority, Hickman explained that the services enumerated in Iowa Code section 422.43(11), which include pest eradication services, are subject to tax.
- Motion to delay Bartz moved to delay ARC 8058A until July 16, 1998.
- Motion carried The motion to delay passed.
- ARC 8057A No questions on cleanup of income tax rules in chs 39, 40, 41, 43, and 46.

**SECRETARY OF STATE** Carol Olson, Lynette Donner, and Sandy Steinbach represented the Secretary of State's office.

- ARC 8021A No questions on rescission of 21.30 and 21.31 regarding adoption of local election ordinances by cities and counties.
- ARC 8024A Rule making in 21.200(4) regarding the proposed constitutional amendment is terminated.
- Doderer voiced opposition to changes made in the summary's wording after Notice publication and urged committee members to consult with the chair of the state government committee regarding the issue.
- ARC 8022A No questions on the proposed constitutional amendment, 21.200(5).
- ARC 8023A The emergency rule making establishes procedures for elections to be held this year for local sales and services tax for school infrastructure projects.
- Olson summarized upcoming plans for local sales and services tax elections for school infrastructure projects and confirmed for Rittmer that Woodbury County has scheduled such an election.
  - Metcalf expressed concern that county auditors are not receiving adequate information and guidance regarding the issues associated with these elections.
  - Olson informed Bartz that the ballot does not specify 1 percent as the tax rate because counties may opt for a lower rate.

**ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA** Kay Williams and Marie Thayer represented the board.

- ARC 8047A Amendments to ch 4 describe reimbursement requirements for use of corporate facilities. Williams informed the committee that, based on public comment, the reimbursement rate for phone banks has been reduced from \$5 to \$3 per hour per phone and the rate for use of corporate planes has been reduced from first-class rates to actual cost or charter rates.

June 9, 1998

•In response to Doderer, Williams confirmed that the statute has not changed, but the rules are being amended to mirror the federal interpretation of a substantially similar law.

•Kibbie expressed the opinion that campaign reform should be brought about by legislation rather than rule.

•Doderer questioned whether the amendments exceed legislative authority. Royce offered the opinion that the rules are within the law because they only reinterpret the meaning of corporate contribution and because the reimbursement requirements in the amended rules cancel out the contributions. Doderer expressed the opinion that the legislature should address the issue of corporate contributions in a nonelection year.

•Rittmer stated that phone bank reimbursement rates should be kept high enough to eliminate questions concerning adequate reimbursement for contributions. Williams responded that the board believes the \$3 rate is reasonable.

•Palmer voiced the opinion that the law should be addressed due to the number of innocent violations. Palmer stated that current law prohibits all corporate contributions and the rules should not change the intent of the law.

•In response to Carroll, Williams stated that the rules address a corporation's right to allow facility access to one candidate or party without having to allow access to the opposition candidate or party.

•Williams clarified for Hedge the conditions under which signs can be posted on property.

•In response to Weigel, Williams confirmed that the "incidental use" provisions apply to any level of corporate employee as long as time spent on an activity does not exceed one hour per week.

•Doderer noted that the rules do not address contributions by other business entities, such as limited-liability partnerships and solely owned businesses, or the use of public property.

**Motion to object** Kibbie moved a motion to object to ARC 8047A.

**Motion to substitute** Doderer moved a substitute motion to impose a session delay. Following discussion, Kibbie agreed to the substitute motion.

**Substitute motion failed** The motion for session delay failed.

**Motion to object failed** A roll call vote on the motion to object was taken. Representatives Rants, Carroll, and Metcalf and Senators Hedge, Bartz and Rittmer voted against the motion; Representatives Doderer and Weigel and Senators Kibbie and Palmer voted for the motion. The motion failed.

**Motion to refer** Weigel moved a general referral to the legislature.

**Motion carried** The motion carried by unanimous vote.

Williams asked the committee also to consider the issue of contributions by other business entities during the next legislative session. Williams will send the committee and Senate and House leadership background information on this issue.

**ARC 8048A** Rule 5.10 pertains to the availability and copying of reports.

•Bartz was informed that political parties are not prohibited from reformatting and distributing mailing lists.

•Doderer was informed by Williams that fees charged for copying are based on General Services' guidelines.

**ARC 8049A** No action on amendments to chs 4 and 6 pertaining to independent expenditures to candidates or committees and disavowal of expenditures.

Williams explained that notice sent by fax or bearing a U.S.P.S. postmark dated within 24 hours of an independent expenditure meets the 24-hour notification requirement.

•Bartz was informed that notice does not have to be sent via certified mail but must be sent to both the candidate and the board. Williams added that a candidate's 72-hour response period begins once the candidate becomes aware of the independent expenditure.

•Weigel expressed the opinion that the regulations do not affect the impact of last-minute negative ads and that penalties for late-filed notices are not sufficient deterrents.

•In response to Hedge's inquiry concerning last-day ads placed by third parties, Williams explained that the board may only address the issues of proper notification and attribution.

**Rants in chair** •Kibbie added that a bill was proposed to prohibit new advertisements during the final five days before an election.

**PHARMACY EXAMINERS BOARD** Lloyd Jessen represented the board.

**ARC 7996A** No questions on ch 2 amendments updating examination requirements.

**ARC 7995A** No questions on 5.4 requiring applicants for reciprocity to pass the MPJE-IA examination.

- ARC 8000A No questions on 6.10 regarding training and utilization of pharmacy technicians.  
 ARC 8001A No questions on 7.13, hospital pharmacy biennial inventory of controlled substances requirements.  
 ARC 7997A No questions on 8.7(7)"b"(1) concerning the multistate pharmacy jurisprudence examination.  
 ARC 8002A No questions on patient med paks, 8.13(1).  
 ARC 7998A No questions on amendments to 9.23"2."  
 ARC 8003A No questions on 10.13 and 10.14 regarding electronic transmission of Schedule II controlled substance prescriptions.  
 ARC 7999A No questions on amendments to chs 10 and 21 regarding requirements for recording and maintaining records of controlled substance prescription refills and partial fills.  
 ARC 8004A No questions on ch 14 amendments regarding data, records, and information maintenance.  
 ARC 8005A No questions on reference library and record retention requirements in ch 15.  
 ARC 8006A No questions on 17.11(2) regarding biennial inventory of controlled substances.  
 ARC 8007A No questions on pharmacy technician requirements for taking new prescription drug orders or medication orders, 22.15.  
 ARC 8012A •Jessen informed Bartz that health care peer review organizations customarily assist with impairment recovery and confirmed that, due to pharmacy workers' access to drugs, the pharmacy profession is somewhat unique in providing such programs.

**UTILITIES DIVISION** Diane Munns and Gordon Dunn represented the division.

- ARC 7986A Amendments to ch 35 pertain to energy efficiency plans and standards.  
 •Dunn informed Rants that the division received comments from industrial customers, various Iowa utilities companies and the Iowa Utilities Association, the Department of Natural Resources, the Consumer Advocate's office, and the Isaac Walton League.  
 •In response to Weigel's inquiry about possible changes to the Notice based on public comment, Dunn explained that disagreement concerning certain proposed rules pertains mostly to the calculation methods used to determine cost-effectiveness. Dunn added that the meetings and working groups in which various groups stated their positions on the issues have enabled the board to develop rules that would satisfy some of the groups' concerns.

**RACING AND GAMING COMMISSION** Jack Ketterer represented the commission.

- ARC 7985A No questions on administration of Lasix to racehorses, 10.6(2)"i" and 10.6(4)"d" to "g."

**NATURAL RESOURCE COMMISSION** Mike Carrier represented the commission.

- ARC 7993A No questions on 28.13(2)"a," cost share program for snowmobile clubs.

**ENVIRONMENTAL PROTECTION COMMISSION** Mike Murphy, Wayne Farrand and Lavoy Haage represented the commission.

- ARC 8027A No questions on amendments to ch 92 updating rules for administration of the revolving fund loans for wastewater treatment.

- ARC 8026A Proposed 103.7 outlines design, operation and closure requirements for coal combustion residue landfills.

Royce asked if a financial responsibility provision needed to be included. Mark Truesdell of Alliant Utilities responded that statute permits the department to adopt less stringent rules for monofill waste treatment landfills than for municipal sanitary landfills. Mark Douglas of the Iowa Utilities Association added that there are only two permitted sites in Iowa.

•Rants was informed by Haage that coal ash is less harmful to the environment than other nonmunicipal solid waste and that groundwater monitoring is required. Haage also indicated that some municipally owned utilities operate coal combustion residue landfills in Iowa.

**Special review**

Kibbie requested a special review of the tax certification provisions for pollution control in ch 11 and explained that the review concerned property tax exemptions for manure management equipment at large livestock facilities.

•Kibbie introduced Donald Heerdt, a farmer and member of the Emmet County board of supervisors, who voiced opposition to the exemptions which lower the amount of taxes counties can collect on the total valuation of livestock facilities. Speaking on the board's behalf, Heerdt expressed the opinion that the exemptions are unfair to county governments and taxpayers. Heerdt estimated that Emmet County loses approximately \$30,000 in taxes annually due to the exemptions.

June 9, 1998

Mike Murphy explained that the rules have not changed significantly since their initiation in 1975 and that over the years both large and small agriculture facilities have requested certifications. Murphy stated that the department issued 321 certifications last year and that, although the total dollar value of the tax exemption is unknown, certifications have increased annually over the past five years. The department estimated that 90 to 95 percent of current certifications are for feedlot operations.

•Doderer asked whether county assessors have discretion in granting the tax exemptions. Murphy responded that the department is not involved with the exemptions after certifications have been completed but speculated that assessors would have discretion regarding property valuation. Jim Maloney, Polk County assessor, offered the opinion that his office is required to grant exemptions but may use discretion in determining property valuation.

•Kibbie pointed out that the department certifies the equipment but does not assess valuations or grant property tax exemptions. Revenue and Finance rule 80.3 states that assessors cannot refuse to accept timely filed and certified tax exemption applications. Kibbie added that the public should be informed of the availability of the exemptions and questioned whether manure control property should be eligible for pollution control exemptions.

•Bartz was informed that certification eligibility was retroactive only in the year the rules were first implemented. Murphy agreed that farmers could possibly request certification for the current tax year for previously installed equipment. Murphy also confirmed that windbreaks could perhaps be considered air pollution control equipment under the rules. Murphy added that windbreaks are not mentioned in the rule examples.

•Weigel asked if the exemption could be taken in addition to the 50 percent rollback in agricultural land valuations. Heerdts offered the opinion that both exemptions can be taken in Emmet County.

Motion to refer  
Motion carried

Kibbie moved a general referral to the legislature.  
The motion carried.

•Weigel suggested the rules committee notify the interim tax committee scheduled to meet this summer.

•Kibbie asked that LSB notify the tax committee of the committee action.

**EDUCATION DEPARTMENT** Dwight Carlson represented the department.

ARC 7977A

Following discussion about whether a statewide policy would be preferred, no action on proposed 36.15(7) which would require local school boards to develop policy to address the issue of nonschool team participation.

**DENTAL EXAMINERS BOARD** Connie Price and Fred Riddle represented the board. Jan Brown and Brice Oakley represented the Iowa Dental Hygienists' Association.

ARC 8014A

Price outlined the amendments and changes made since Notice and reported that, after conducting hearings and considering public comment, the board voted unanimously to adopt amendments to ch 29 regarding deep sedation/general anesthesia, parenteral conscious sedation, and nitrous oxide inhalation analgesia.

•Metcalf expressed concern about the dental assistant duties in Item 8 and about the lack of educational and licensure requirements for dental assistants.

Riddle read a statement in support of the amendments and in response to the June 9, 1998, letter from the Iowa Dental Hygienists' Association to the committee.

Brice Oakley and Jan Brown explained their opposition to the amendments, particularly to the term "direct supervision" and to the dental assistant education requirements. Oakley asked that ARC 8014A and the Noticed amendments be delayed until S.F. 2075, which creates a dental hygiene committee, has been implemented and until the public health department has completed its scope-of-practice review for dental assistants.

•Palmer was informed that board members are selected by the Governor with input from the board.

•Brown concurred with Doderer's assertion that the rules seem to treat dental assistants and dental hygienists similarly and to assign them similar responsibilities. Brown explained that some dental assistants receive on-the-job training while others receive formal training; Brown stated that dental hygienists complete at minimum three to four years of college education.



June 9, 1998

Riddle explained that education requirements for dental assistants were added due to the board's concern about the lack of training standards for dental assistants.

- Riddle responded to Rittmer that, under current rules, it is not legal for dental hygienists and dental assistants to administer nitrous oxide analgesia. Riddle explained the difference between induction and monitoring and stated that induction is the dentist's responsibility.

- Brown indicated to Rittmer that the hygienists' association opposes the definition of duties for dental assistants without legislative direction.

- In response to Rants' question regarding authority, Price asserted that dentists have statutory authority to delegate and define employee responsibilities and that the rules set educational and training requirements for employees. Rants expressed concern that dental assistant duties are being defined without direction from the Code and without licensure requirements.

- Price concurred with Metcalf's characterization of the amendments in Item 8 as an attempt by the board to ensure that personnel who assist with the anesthesia process have adequate training and that public health is protected.

- Riddle assured Rants and Royce that the board will define the terms "office" and "dental treatment setting," especially as the terms apply to supervision.

- Hedge expressed the opinion that dentists should be present during the administration of nitrous oxide analgesia since they may be held legally responsible. Brown indicated that dental hygienists may also be held legally responsible in the event of an accident.

- Riddle informed Wiegel that the amendments allow both dental assistants and dental hygienists to monitor nitrous oxide. Weigel questioned the rationale for allowing dental assistants to monitor nitrous oxide when a dental assistant scope of practice does not yet exist.

Motion to delay  
Motion to substitute

Weigel moved to delay ARC 8014A *70 days*  
Following discussion, Kibbie moved a substitute motion to delay Item 8 of ARC 8014A, subrules 29.6(4), 29.6(5) and 29.6(6). Weigel agreed to the substitute motion.

Motion carried

The substitute motion carried.

ARC 8015A

No questions on amendments to rule 1.1.

ARC 8016A

No questions on ch 10 amendments regarding administration of anesthesia.

ARC 8017A

No questions on 11.10, application for authority of a dental hygienist to administer local anesthesia.

ARC 8018A

No questions on amendments to ch 15.

ARC 8019A

No questions on ch 20 amendments.

Committee business

Minutes

Bartz moved the minutes be approved. The motion carried.

July meeting

The committee will meet Tuesday, July 14, 1998, and Wednesday, July 15, 1998.

Adjourn

The meeting was adjourned at 4:17 p.m.

Respectfully submitted,

Teresa Vander Linden  
Teresa Vander Linden

Kathleen K. Bates  
for Kathleen K. Bates

APPROVED:

H. Kay Hedge  
Chair H. Kay Hedge

Christopher Rants  
Vice chair Christopher Rants