

**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 Monday, March 16, 1998, in Room 22, 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, and William Palmer; Representatives Danny Carroll, Minnette Doderer, Janet Metcalf, and Keith Weigel. Senator Sheldon Rittmer was excused.

Also present: Joseph A. Royce, Legal Counsel; Kathleen K. Bates, Administrative Code Editor; Jackie Von Ekeren Romp, Administrative Rules Coordinator; caucus staff and other interested persons.

Convened •Chair Hedge convened the meeting at 10:02 a.m.

HUMAN SERVICES DEPARTMENT Mary Ann Walker, Marcia Stark, and Don Kassar represented DHS. Brice Oakley appeared on behalf of a pharmaceutical manufacturer.

ARC 7840A No questions on amendments proposed for 39.21, 39.23 and 39.29 regarding grants for homeless persons with mental illness.

ARC 7791A No questions concerning income eligibility for FIP- and FMAP-related Medicaid coverage amendments to Chapters 40, 41 and 75.

ARC 7789A No questions on statewide average cost for nursing care, 75.15(2), 75.24.

ARC 7806A No questions on HCBS MR and brain injury waiver amendments to Chapters 77, 79 and 83.

ARC 7841A Oakley commented that although 78.1(2)"a"(3) and 78.28(2)"d"(7) are improved by the amendment, pharmaceutical manufacturers have concerns about prior authorization requirements.

Walker stated that no comments had been received on these amendments and the department was unaware of any objection to them.

•Doderer questioned the requirement for a sedating antihistamine to fail before a nonsedating antihistamine could be prescribed.

Stark indicated that the requirement is cost-effective because the sedating antihistamines are less expensive and added that exceptions are allowed in the case of extenuating circumstances.

ARC 7807A Medicaid approval for dental procedures amendments are proposed in Chapter 78.

•Walker responded to Bartz that age limits correspond to the growth period of permanent molars.

ARC 7792A Amendments to 78.8, 79.1 and 88.14 were adopted concerning Medicaid reimbursement for chiropractors, federally qualified health centers and rural health clinics.

On behalf of physician assistants, Oakley asked if reimbursement of rural health clinics would change under House File 2523. Walker was not familiar with the bill.

•Doderer reported a chiropractor's complaint about having to take X-rays in order to be reimbursed.

•Weigel asked which reimbursements might be made at less than 100 percent. Stark reported that the Balanced Budget Act allows reductions from the current 100 percent reimbursement level to 70 percent by the year 2002. The department has not yet decided on reductions.

ARC 7790A Walker said that no comments were received on 78.9, Medicaid home health agency policy.

•Walker responded to Kibbie's inquiry that although there was no public hearing, representatives of the association attend council meetings and advise the agencies.

ARC 7829A No questions on proposed Medicaid managed care amendments to Chapter 88.

ARC 7793A Walker stated that over 150 people attended the public hearings on Chapter 109, child care centers. Kassar summarized the changes.

•Kassar clarified for Metcalf that although unannounced visits to child care centers are not new, they are now required to be made annually. Kassar explained that educational requirements for directors of child care centers were expanded to include additional options. Metcalf commended the department for its willingness to work with centers.

ARC 7808A No committee action on proposed child abuse amendments to Chapter 175.

SSB 2208 •Hedge called the committee's attention to Senate Study Bill 2208 which would allow for exemptions to the rule-making provisions of Iowa Code chapter 17A.

Rants in chair

ATTORNEY GENERAL Doug Marek represented the Attorney General. Laverne Schroeder represented the chiefs of police association.

ARC 7825A Marek outlined differences between the current notice and the terminated one in the areas of maintenance and safeguarding of seized real property, disposition of seized cash, and definition of interest holder.

Schroeder voiced a concern of the chiefs of police that the rules do not specify the disposition of cash derived from the sale of seized vehicles. Marek responded that it has been the policy for the seizing agency to retain 100 percent of the proceeds from the sale of seized vehicles after payment of the title transfer fee.

- Rants suggested including the policy in the rules when they are adopted.

- Doderer asked if forfeitures are relative to the severity of the crime. Marek explained that seizures are restricted to indictable criminal offenses.

Schroeder expressed a further concern about 33.5(3) regarding possible exceptions in the case of large forfeitures.

- Carroll asked Schroeder if he knew of a time the department had abused the provision. Schroeder was not aware of any such instance.

DENTAL EXAMINERS BOARD Constance Price represented the board. Brice Oakley and Sue Ollman represented the Iowa dental hygienists' association.

ARC 7809A Proposed amendments to Chapter 29 were outlined by Price.

Ollman explained the use of nitrous oxide and expressed concern that dental hygienists and dental assistants are not differentiated in 29.6(4). Dental hygienists would like the board to clarify whether "monitoring" involves adjusting the level of nitrous oxide administered. Additionally, dental hygienists favor required inspections of the equipment used to administer nitrous oxide. The association intends to voice concerns in detail at the public hearing.

- Bartz requested the board take these concerns into consideration before the rules are adopted.

Hedge in chair

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF Monica Fischer represented IDIED.

ARC 7811A No action on CDBG housing set-aside program, 23.11.

ARC 7812A No questions on housing fund, Chapter 25.

PETROLEUM UNDERGROUND STORAGE TANK FUND BOARD, IOWA COMPREHENSIVE Pat Rounds represented the board.

ARC 7836A No action on continuation of financial responsibility coverage during a lapse when a good faith effort to maintain coverage can be shown, 11.1(3)"b."

- In response to Weigel, Rounds explained the sources for and uses of the remedial fund and the marketability fund and stated that remedial benefits and innocent landowner claims are both fully funded.

- Rounds told Kibbie that December 1, 1997, was the cut-off date for innocent landowner claims. Rounds further set out the steps taken by the board to inform landowners and encourage applications.

ARC 7834A Cash flow is taken into consideration in determining ability to pay in 11.1(3)"n"(3).

ARC 7835A No action on payments for RBCA analysis on monitor-only sites, 11.8.

- Rounds outlined eligibility of counties, cities and school districts for Kibbie.

- Weigel was informed there are approximately 2000 monitor-only sites in the state. A RBCA analysis is necessary in order for owners of such sites to obtain a "no further action" letter. Some monitor-only sites may be delaying the RBCA analysis because of the possibility that corrective action might be required; the board is considering setting a deadline on the benefit. Rounds indicated that monitoring fees have increased due to changes in monitoring requirements.

- Rounds explained the insurance premium rate criteria for Kibbie.

SUBSTANCE ABUSE COMMISSION Dean Austin represented the commission.

ARC 7823A No questions on Chapter 8, standards for programs and the OWI law.

TRANSPORTATION DEPARTMENT Dick Hendrickson, Tom Sever, Dave Titcomb and Dennis Ehlert represented the department.

- ARC 7799A When these amendments were Noticed, there was a question as to the department's authority to limit renewal by mail to those who had digital photographic licenses. After researching the issue, Royce was of the opinion that DOT has the statutory authority; the question to be addressed is whether this is a reasonable requirement.
- Motion to object Bartz moved to object to Item 12.
Motion failed. The motion failed.
•Kibbie requested that at a later time the committee review DOT's ability to seize a license for a failure on a driving test.
- ARC 7795A No action on proposed amendments to 415.3 and 415.4 concerning driver's privacy protection.
- ARC 7830A No action on 520.1(1)"a" and "b," regarding motor carrier safety.
•Weigel inquired about HF 2514's effect on the rules. Sever stated that pending federal action will determine whether the federal preemption of intrastate exceptions from hazardous materials regulations will be enforced.

REVENUE AND FINANCE DEPARTMENT Carl Castelda represented the department.


- ARC 7851A No questions on 50.1 regarding income apportionment for resident shareholders of S corporations.
- Special review Bartz requested a review of Chapter 17 concerning tax exemption for educational, religious and charitable institutions. Castelda reported that the issue arose when the department notified livestock producers selling sandwiches at a county fair without collecting sales tax that they had a responsibility for collecting the tax. Under a self-audit process the department is waiving the penalty upon payment of tax and interest. Pending legislation, however, would provide exemptions for agricultural organizations that are exempt from federal income tax under Chapter 501C of the Internal Revenue Code and principally promoting food or beverage products produced, grown or raised in the state for human consumption. The bill is retroactive to 1988, with refund claims to be filed by October 1, 1998. If claims exceed \$25,000, they will be prorated; the department is asking organizations not to send payment at this time, pending the results of the legislation. The current statute is difficult to administer because the receipts must be used entirely for educational, charitable or religious purposes and the Code does not define educational, religious and charitable activities.
- Committee business •Doderer moved the minutes be approved. The motion carried.
- April meeting •Following discussion of possible meeting times and dates, the committee requested Chair Hedge to exercise discretion in setting the April meeting.
- Adjourn The meeting was adjourned at 12:20 p.m.

Respectfully submitted,


Kathleen K. Bates

APPROVED:


Chair H. Kay Hedge


Vice chair Christopher Rants