

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 on Tuesday and Wednesday, July 14 and 15, 1992, in Senate Room 22, State Capitol, Des Moines, Iowa.

Members present Senator Berl E. Priebe, Chairman; Representative Emil S. Pavich, Vice Chairman; Senators Donald V. Doyle, H. Kay Hedge, John P. Kibbie, Dale L. Tieden; Representatives Ruhl Maulsby, Janet Metcalf, David Schrader and Jane Teaford.

Staff present: Joseph A. Royce, Legal Counsel; Phyllis Barry, Administrative Code Editor; Paula Dierenfeld, Administrative Rules Coordinator; Mary Ann Scott, Administrative Assistant; Caucus Staff and other interested persons.

Minutes The meeting was called to order by Chairman Priebe at 10:05 a.m. and he called for disposition of the minutes of the June meeting. Pavich moved to approve the minutes as submitted. Carried.

HUMAN SERVICES Present from the Department were Mary Ann Walker, Policy and Procedures, Kathy Ellithorpe, Anita Smith, Charlcie Parrish, Cynthia Tracy and Barbara Bosch. The following agenda was reviewed:

HUMAN SERVICES DEPARTMENT[441]

Closure of Des Moines district office, 1.3(2), 1.3(2)"f," 1.4, 3.5(2), 65.17, Notice ARC 3063A, also

Filed Emergency ARC 3064A 6/10/92
Application for ADC, 40.7(1), 40.7(3), Notice ARC 3074A 6/10/92
Emergency assistance applications, 58.3(1), 58.3(4), Filed ARC 3066A 6/10/92
Medicaid policies on transfer of resources and health insurance premium payment, 75.15(2), 75.21(1), 75.21(5), 75.21(8)"c," 75.21(9), 75.21(11) to 75.21(13), 86.14(2)"a," Filed ARC 3068A 6/10/92
Increase in average statewide nursing care cost, 75.15(2), Filed Emergency After Notice ARC 3067A ... 6/10/92
Accredited camps — respite care providers for ill and handicapped model waiver, 77.30(5)"e," 79.1(2), Filed Emergency After Notice ARC 3065A 6/10/92
Phototherapy bilirubin light added to list of durable medical equipment covered by Medicaid, 78.10(2)"b," Notice ARC 3114A 6/24/92
Nursing facilities — employees, 81.13(7)"c"(1), Filed Without Notice ARC 3069A 6/10/92
Training and discipline of foster children — corporal punishment, 113.18(2), Notice ARC 3113A 6/24/92
Child day care grants program, ch 168, Filed ARC 3070A 6/10/92
In-home health related care — termination of state supplementary assistance when terms of provider agreement not met, 177.11(6), Filed ARC 3071A 6/10/92

1.3(2) et al; 40.7; 58.3 Walker presented ARCS 3064A, 3074A and 3066A with no comments or Committee recommendations.

75.15(2) et al. In review of amendments to 75.15(2) et al. which revised Medicaid policies on transfer of resources and the Health Insurance Premium Payment (HIPP) Program, Priebe questioned the impact of stricken language in 75.21(5). Smith responded that if the policyholder were an absent parent, the Department would not pay the health insurance premiums even if they were court-ordered obligations. The matter would be referred to the Child Support Recovery Agency. Doyle saw the problem as one of jurisdiction and contended that parents should be responsible for insurance on their children. Smith stated the

- HUMAN SERVICES (Cont.)** Department was attempting to address all absent parents regardless of court-ordered obligations. Walker explained to Tieden transfer of resources in 75.15(2)"a."
- 75.15(2) No questions or comments regarding ARC 3067A, increase in average statewide nursing care costs.
- 77.30, 79.1 Walker told the Committee that amendments to 77.30(5) and 79.1(2) added camps accredited by the American Camping Association as a new category of respite care providers. The rules apply to persons eligible for the Ill and Handicapped Model Waiver. By federal regulations, 200 adults and children statewide are eligible for this waiver. Walker indicated there was a long waiting list. She spoke of the difficulty in finding available respite care in a nursing facility.
- 78.10(2) There were no questions on ARC 3114A.
- 81.13(7) Amendments to 81.13(7)"c"(1) were before the Committee. Considerable discussion focused on what constitutes a finding with respect to abuse or mistreatment of residents by staff in care facilities. The ARRC was concerned that the process of administrative findings would not provide the facility employee sufficient opportunity for defense.
- Motion** Pavich moved a 70-day delay on 81.13(7)"c"(1) to allow time for Royce to study the matter and report to the Committee prior to adjournment on Wednesday, July 15. Motion carried.
- Walker stressed that neither the Department nor the Council on Human Services was supportive of this rule, but it was a federal requirement. She added that the issue was being debated at the federal level which could result in a reversal of their position.
- 113.18(2) In explaining 113.18(2), Walker pointed out that the Department was following a legislative mandate.
- Ch 168 Bosch described the procedure followed by the Department to determine that 16 children would participate in wrap-around child care programs for a year.
- 177.11 No questions on new subrule 177.11(6).
- EDUCATIONAL EXAMINERS BOARD**
Chs 1, 11 Orrin Nearhoof, Executive Director of the Board, briefed the Committee on amendments to Chapters 1 and 11, filed in IAB 6/10/92 as ARC 3072A in regard to organizational procedures for meetings of the Board and expansion of their options to investigate potential violations of professional practices. No Committee recommendations.
- EDUCATION DEPARTMENT** Kathy L. Collins, Legal Consultant and Charlotte J. Burt, Consultant, School Health Services, were present for the following agenda:
- EDUCATION DEPARTMENT[281]**
- Open enrollment, 17.8(2), 17.8(2)"j," 17.8(7), 17.9(1), 17.10, Notice ARC 3115A 6/24/92
- Driver education, 26.1(3), 26.2(2)"b," Notice ARC 3118A 6/24/92
- Extracurricular interscholastic competition, 36.14(1), 36.15(4), Notice ARC 3117A 6/24/92
- Special health services, 41.23, Filed ARC 3116A 6/24/92
- Pupil transportation, 43.21, 43.22, 43.24, Filed ARC 3031A Carried over from June agenda 5/27/92

EDUCATION
(Cont.)
17.8-17.10

Collins briefed the ARRC on proposed amendments to Chapter 17 which were intended to implement 1992 Iowa Acts, House File 2384, §3 and 4. Collins pointed out that subrule 17.10(7) addressed late transfers of open enrollment students—a new concept. Tieden raised question in 17.8(2) as to use of "90 school days" and Collins agreed to review the statute.

26.1, 26.2

ARC 3118A relating to driver education was reviewed with no Committee recommendations.

36.14, 36.15

In reviewing proposed amendments to rules 36.14 and 36.15, Collins stated that they would not be implemented until an August rule making was final.

41.23

Burt and Collins summarized new rule 41.23 which was adopted to assist school districts in providing special health services and medication for disabled pupils in special education. Tieden was interested in costs to school districts and Collins said a fiscal note had been submitted. She was aware of cost for the services.

Metcalf and Collins discussed the detailed guidelines which would be available to parents, school nurses, school officials and boards. Collins wanted to ensure that schools would not be liable.

Kibbie commented on the amount of responsibility being placed on local school boards by the rules when school aid was being reduced.

Motion to Refer

Kibbie moved to refer rule 281—41.23(281) to the Speaker of the House and President of the Senate for consideration by the appropriate committees because of the additional cost, additional paperwork and potential liability to schools. Motion carried.

43.21, 43.22, 43.24

There was review of amendments to Chapter 43 regarding pupil transportation carried over from the June agenda. Priebe expressed concern about disclosure of names of those who file complaints against school bus drivers. Collins responded that a driver facing licensure revocation would have a right to knowledge of the complainant as well as a copy of the complaint. Responding to Doyle, Collins said if the hearing were waived, the Department would make a finding. No formal action.

EPC

Diana Hansen, Attorney; Dennis Alt, Supervisor; Ralph Turkle, Environmental Engineer; Michael Anderson, Environmental Specialist; Victor Kennedy, Attorney; Tom Blewett, Bureau Chief; and Michael Murphy, Bureau Chief, were in attendance from the Environmental Protection Commission for the following agenda:

ENVIRONMENTAL PROTECTION COMMISSION[567]

NATURAL RESOURCES DEPARTMENT[561]"umbrella"

Scope of division — definitions — forms — rules of practice; water supplies; water supply laboratory

certification; water supplies — design and operation, chs 40 to 43, Notice ARC 3084A 6/10/92

Water use designations, 61.3(5)"e," Filed ARC 3089A 6/10/92

Wastewater treatment loans, 92.11(2), Notice ARC 2953A Terminated ARC 3088A 6/10/92

Solid waste — comprehensive plans, submittal schedule, 101.5, 101.5(5)"b"(7)"3," 101.5(7), 110.3(1)"d,"

Filed ARC 3086A 6/10/92

Registry of hazardous waste or hazardous substance disposal sites, ch 148, Filed ARC 3087A 6/10/92

Chs 40-43

Hansen briefed the Committee on the Noticed rules, Chapters 40 to 43, as they appear in ARC 3084A. Alt advised Tieden that six hearings were held on the rules and about a dozen written comments were received—primarily on

EPC (Cont.) laboratory certification and the definition of public water supply. No Committee action.

61.3(5) Amendments to 61.3(5)"e" was reviewed by Murphy and Turkle. The Class A designated use (Primary Contact Recreation) for Big Creek near Mt. Pleasant was deleted leaving it with Class B status. Murphy advised Schrader that most of the major rivers with recreational use documentation were still classified as A.

Chairman Priebe recognized Steven Wilson, Environmental Safety Coordinator for Motorola in Mt. Pleasant, and Vice President of Mt. Pleasant Community Task Force, who expressed interest in the fate of Big Creek. He highlighted his pleasant experiences on this creek in a canoe where he had enjoyed the wildlife and scenic beauty as well as the abundance of fish. Wilson voiced opposition to the classification change for Big Creek. He disagreed with contention by the City of Mt. Pleasant that it was too expensive to meet the criteria for Class A. Wilson could foresee that the city would be forced to upgrade its sewage treatment facilities even with the downgrading of the classification. He noted that the city had not responded positively to the concerns of the Task Force. Wilson urged the highest level of protection possible for Big Creek.

Murphy responded that when the flow was up, the stream was used as Wilson described. He added that the city had upgraded its treatment plant and water quality was quite good. Further upgrading was planned and Murphy did not believe there would be degradation of the stream.

Motion to Refer Pavich moved that 567—61.3(5)"e" be referred to the Speaker of the House and President of the Senate for referral to the appropriate committees for further study. Motion carried.

There were no Committee recommendations for the remaining EPC agenda.

REVENUE AND FINANCE Carl Castelda, Deputy Director, and Melvin Hickman, Supervisor, presented the following agenda:

REVENUE AND FINANCE DEPARTMENT[701]

Sales and use tax on services, 18.34(3)"d," 26.21, 26.42, 26.71 to 26.80, <u>Filed</u> ARC 3108A	6/24/92
Automobile rental excise tax, ch 27, 32.11, 32.12, 34.10, <u>Notice</u> ARC 3085A	6/10/92
Composite returns, 48.6, 48.7, <u>Notice</u> ARC 3103A	6/24/92
Sales tax on horse show entry, 16.28 —Special Review	IAC

Also present were several persons interested in the special review.

18.34 et al.; Ch 27 et al. Castelda summarized amendments to 18.34 et al. and Chapter 27 et al. No questions.

Ch 48 In review of amendments to Chapter 48, Castelda and Hedge discussed a Minnesota court case with respect to taxation of federal pensions.

16.28 Chairman Priebe announced a special review of 701—16.28(422) regarding sales tax on horse show entries.

Castelda explained that a Department agent in Mason City had discovered that sales tax was not being collected on entry fees at a horse show there. He quoted from rule 16.28 and said the Agency had taken the position that if any part of the registration or entry fee was designated for prize money, it must be returned to

REVENUE (Cont.) the participants in the form of cash or prizes—no sales tax would be due. Castelda offered additional background on this rule.

Castelda said the Department had been contacted by legislators regarding the horse show issue and they met with the attorney for the horse industry. The Department had offered assistance to the industry by giving them written guidelines for the collection of sales tax.

Hickman interjected that assistance was also offered to the Iowa Horse Council.

Priebe took the position that a horse show or cattle show was not a game or amusement but was in fact a business. As a show animal gains points it becomes more valuable.

Schrader discussed application of the rule to car races. Castelda reminded that the Entry Fee Form should designate the portion of the fee which would be allotted for prize money.

Bob Smith, Attorney, represented Kris Rame, Midstates Horse Show Manager, and explained their position on this issue. It was their contention that the rule exceeded the statutory provision. The statute refers to tickets and admissions but the rule addresses participation fees. Smith pointed out that "amusement" was defined only in the rule and he suggested further review of the matter by the legislature.

Rame briefed the Committee from a prepared statement on her involvement with the horse industry and elaborated on her duties which did not include "amusement." She emphasized the importance of the horse industry to the state and quoted supporting statistics.

Castelda was unsure of the dollar figure involved in this issue. The Department was collecting tax from similar types of events around the state.

Smith and Schrader discussed the amount of entry fees for prize money or trophies and how this differed in the auto race industry and horse show business. The problems involved in figuring the amount of sales tax owed was debated. Rame indicated that business in general was down and she was concerned about payment of back taxes.

There was discussion of the 5-year statute of limitations for sales tax audits. Castelda suspected that the horse industry was a self-audit program

Castelda responded to Teafor that the Department was willing to work with the horse industry based on information provided. He was aware of four different portions of the statute (§422.43) which could address horse shows or similar events. Castelda cautioned that if the General Assembly chooses to add an exemption in the statute, other events such as golf tournaments should be addressed.

Motion to Refer

Kibbie made a motion to refer ⁷⁰¹⁻rule 16.28 to the Speaker of the House and President of the Senate for the appropriate committees to study all possible events, not just horse shows. Schrader spoke in favor of the motion.

Royce advised that addressing back taxes owed by a business was beyond the prerogative of the ARRC. Motion carried.

REVENUE (Cont.)
Motion to Object Priebe moved to object to rule 16.28 as exceeding the statute by inclusion of events that were not "games or amusement." Schrader spoke in opposition to the objection. Maulsby was supportive of the motion because of vagueness in the definitions.

Castelda responded to Kibbie that he did not know of any court cases or appeals in process at this time. He saw no basis to show that the rule was arbitrary or capricious or inconsistent with the statute. However, he admitted that the Department could be applying it incorrectly. He concurred with the referral to the General Assembly.

Motion Lost After closing remarks, Priebe's motion to object lost on a tie vote.

Lowell Wagoner, President of Iowa Horse Industry, expressed appreciation to the Committee for their consideration of this matter. Katy Elson, Manager of North Iowa Fair Association, gave brief remarks also.

Recess Chairman Priebe recessed the meeting at 12:25 p.m. for lunch and reconvened it at 1:30 p.m. for the following agenda:

RACING AND GAMING

RACING AND GAMING COMMISSION[491]

INSPECTIONS AND APPEALS DEPARTMENT[481]"umbrella"

Greyhound racing — occupational license fees; exotic wagering; simulcasting; manufacturer's, distributor's, vendor's and occupational licenses; riverboat minimum standards; minimum age for wagering, 7.3(5), 7.3(10)"a," 7.3(18)"d" and "k," 7.3(19)"g," 7.3(20)"d," 7.3(21)"d," 8.1, 8.2(4)"h," 8.2(4)"i" to "n," 8.12(2), 12.9, 22.10(3), 22.14(1), 22.14(3)"a" to "i," 22.18, 25.12, 26.10(6)"c," Filed ARC 3082A 6/10/92

7.3(5) et al. Representing the Commission were Charles Patton and Lorenzo Creighton. A brief overview of the amendments found in ARC 3082A were highlighted with no questions or comments.

ECONOMIC DEVELOPMENT

In attendance from the Department were Melanie Johnson, Michael Miller, Lane Palmer and Muhammad Abdullah for the following agenda:

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

Work force investment program, 18.3(1) to 18.3(4), 18.3(5)"c" and "d," 18.3(6), 18.5, 18.6(3), 18.8, Filed ARC 3091A 6/10/92

CDBG nonentitlement program — reduction of economic development set-aside/public facilities set-aside from 20 percent to 15 percent, 23.6(3), Filed ARC 3093A 6/10/92

HOME investment partnership program, ch 25, Filed Emergency After Notice ARC 3094A 6/10/92

Iowa targeted small business procurement program, 54.1 to 54.3, 54.5, 54.10, 54.12(3), 54.14, 54.15, Filed ARC 3092A 6/10/92

Ch 18 Amendments to Chapter 18, Work Force Investment Program, were before the Committee and Johnson advised Tieden that the changes from the Notice were very minor.

23.6(3); Ch 25 In review of 23.6(3) and Chapter 25, Tieden expressed preference for an increase in the number of awards granted rather than increase in the amount of the awards. Priebe shared this view.

Ch 54 ARC 3093A, amendments to Chapter 54, Iowa Targeted Small Business Procurement Program, were presented by Abdullah who noted changes from the Notice. The TSB Directory would be utilized to locate targeted small businesses and would be available for a fee on a quarterly basis. Abdullah explained how a decertification was determined and advised that rule 54.10 pertaining to solicitation for bids, would be rescinded to comply with 1992 legislation. Discussion of possible delay of the rule.

ECONOMIC DEVELOP. (Cont.)

Metcalf requested Abdullah to explain the process after schools fulfill their requirements under the new legislation—consult with the Directory, follow bidding process and try to meet their goals. Abdullah clarified that IDED would review the annual reports of schools at the end of the year. AEAs and community colleges submit quarterly reports. The Department then reports to the General Assembly and Governor any recommendations necessary to enhance the program. School districts are encouraged to contact DED for assistance in reaching their goals. Abdullah stressed that the Department has no authority to impose sanctions on school districts.

Mary Gannon, Director of Policy Services of the Iowa Association of School Boards, stated they would have no problem with a delay on rule 54.10.

Motion to Delay 54.10

Pavich moved a 70-day delay on Item 5 (261—54.10(73)). Motion carried.

Gannon referred to her letter of April 6, 1992, to the Department and ARRC wherein she commented on problems with the rules. The letter is on file with the Administrative Code Editor. Of particular concern were subrules 54.3(4) and 54.5(3) which require the Departments of Economic Development and Management to review reports relative to targeted small business which are to be submitted by educational institutions. Gannon maintained that educational institutions were not addressed in the statute[§73.17].

Royce pointed out the vagueness of the statute in its requirements of schools and community colleges in establishing TSB goals. However, he suspected that legislative intent was to require the reports.

Representative Tom Baker of Des Moines commented that the Legislature tried to work with the IASB during the legislative session to reach an agreement. He opined that all state agencies were to be included under the statute.

Motion to Refer

Hedge moved to refer subrules 54.3(4) and 54.5(3) to the Speaker of the House and President of the Senate for study by the appropriate committees. Motion carried.

Gannon then outlined opposition to rules 261—54.14(73) and 54.15(73) by the School Boards.

After further discussion and clarification, Hedge's motion was reconsidered to include rules 54.14 and 54.15 in the referral to the General Assembly. Motion carried.

PHARMACY EXAMINERS BOARD

Therese Witkowski represented the Board for the following agenda:

PHARMACY EXAMINERS BOARD[657]

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

Duties for which prescribers may employ pharmacists which would not constitute unethical conduct or practice on the part of the pharmacist accepting employment, 8.5(2), Filed ARC 3079A 6/10/92
Controlled substances — registration and reregistration fee, 10.3, 10.3(2), 10.3(8), 10.3(9),
Filed ARC 3078A 6/10/92
Agency procedure for rule making, ch 28, Filed ARC 3077A 6/10/92

8.5(2)

In explaining amendment to 8.5(2), Witkowski indicated that the substance of this rule had been in force for some time, but the amendment was intended for clarification. Doyle inquired as to the affect on clinics in small cities. Witkowski responded that generally the pharmacist leases separate space from the owners of

**PHARMACY
(Cont.)**

the clinic. In response to inquiry by Tieden, Witkowski was not aware of regulation for distribution of samples.

Ch 10, 28

There were no Committee recommendations on ARCs 3078A and 3077A.

JOB SERVICE

William Yost and Joseph Bervid explained Filed amendments in 4.6(6), 4.46(5)"c"(5), Chapters 6 and 9, published in IAB 6/10/92 as ARC 3090A. There were no questions or comments by the Committee on the amendments relative to claims and benefits, contested case proceedings and petitions.

**COMMUNITY
ACTION
22.3(3)**

Rod Huenemann, Bureau Chief, briefed the Committee on ARC 3075A, Filed in IAB 6/10/92, relating to distribution of Community Services Block Grant funds to the 19 community action agencies. Historically, distribution has been made on the basis of the poverty population in the U. S. Census. Because of changes in the 1990 census, the Division was concerned about potential large shifts in allocation and distribution of these funds. According to Huenemann, a new funding allocation formula would be deferred until after the next legislative session.

Schrader asked if the federal government required distribution of the funds in accordance with the most recent census. Huenemann responded that the states do have a fair amount of flexibility over factors to be considered. He added that the recent report on poverty population in each county indicated a trend from rural to more urban parts of the state.

Teaford was advised that the latest figures were received in June.

Recess

Chairman Priebe announced a ten-minute recess.

**PUBLIC
DEFENDER**

The Committee reconvened at 2:45 p.m. and Chairman Priebe called on William Wegman, State Public Defender, to discuss their rules of organization. Also present were Rebecca Walsh, Department of Inspections and Appeals Administrative Rules Coordinator, and Lorelie Brewick representing the Iowa Bar Association.

Wegman distributed copies of a draft for proposed rules to govern contracts for indigent defense services. Doyle and Wegman exchanged questions and responses on the various portions of the draft. It was the consensus that public hearings should be scheduled throughout the state when the rules were published. There was also agreement that the Bar would work with Wegman.

Recess

The Committee was recessed at 3:15 p.m.

Reconvened
HUMAN
SERVICES

Chairman Priebe reconvened the ARRC meeting at 9 a.m. and called up Human Services rule on employees in nursing facilities—81.13(7)"c"(1) which had been delayed 70 days at the Tuesday ARRC meeting. Those in attendance included Mary Ann Walker, Gary Gesaman, and Kathleen Kellen, Human Services, and Mary Oliver, Department of Inspections and Appeals.

Royce summarized the provision which specifically provides that facility staff shall not be rehired if they have been found guilty of abuse or mistreatment of a resident or if a "finding" has been entered in the registry. Controversy had centered on the meaning of "finding" and the type of burden of proof required before such a finding could be made and who could make this finding. Question was posed as to what extent the federal government mandates the rule.

Oliver explained that a finding would not be entered in the nurse aide registry until there was opportunity for an administrative law judge hearing process or the matter could go to district court. Findings are made by Department of Inspections and Appeals and are subject to challenge.

Oliver described the "rather complex" federal mandate. She alluded to conflict with the federal law and a Supreme Court ruling but verbal and written communications with federal authorities had not resulted in a resolution of the matter. The DIA attorney had advised that rules regarding the employability of nurse aides and other employees in nursing facilities should pattern those for child abuse. Oliver could foresee loss of the entire state program if the Department fails to comply with federal mandates.

Priebe viewed that as "almost federal blackmail."

Royce observed two radically different burdens of proof with the same application.

Oliver emphasized that the ultimate goal was to keep abusive employees out of nursing homes. She noted that there was no requirement for a facility to provide a criminal records check or similar investigation but appropriate questions would be included on applications.

Priebe reiterated his concern that employees could be unjustly accused.

Oliver explained that the Department would look for physical evidence and view the patients' charts. She continued that the hearing process would afford added protection for staff members.

Schrader cited the methodology involved with child abuse investigations which had come under scrutiny by some legislators and the State Ombudsman. Oliver indicated that investigations of nursing home personnel did not follow child abuse investigation guidelines.

Schrader asked if the documentation of a finding, evidence and decision making were all public record and Oliver said the final finding would be public record. Everything but the name of the complainant could be revealed in a court proceeding. Secrecy has been applied in some child abuse cases to allow extraordinary methods to protect children.

Gesaman did not disagree with comments being made. He added that the original rule allowed Inspections and Appeals considerable flexibility in researching a

**HUMAN
SERVICES (Cont.)**

situation and making a judgment. However, Human Services was concerned that the federal government was unwilling to grant that flexibility and funds could be withheld.

Kibbie wondered about the magnitude of the problem where thousands of people reside in Iowa nursing homes. Oliver recalled 800 plus complaints last year in skilled nursing facilities. Typically, one-third of them would be substantiated but Oliver had no breakdown as to the number of complaints of physical abuse, which would be a much smaller number.

According to Oliver, the nurse aide registry had been in place since 1990 and four or five names had been entered. The cases that do arise usually involve very atrocious situations or actual injuries.

Priebe suggested request for a federal representative to appear before the Committee at the August meeting. Oliver was doubtful the request would be honored but was willing to pursue the matter.

Responding to Maulsby, Oliver clarified that a name would not be placed on the registry until there had been a hearing process. Once on the registry, names cannot be expunged.

Doyle and Oliver discussed the relative 1974 Supreme Court case. Doyle also asked if the Iowa Attorney General had given any separate opinions regarding this controversy and Oliver replied there were no written opinions. However, the assistant Attorney General in their Department had written many letters to the federal government and offered opinions. Doyle suggested that the Department request a formal opinion of the Attorney General. Further, he recommended revision of 81.13(7)"c"(1) by adding "or plead guilty" after "found guilty." He also suggested separation of "findings" which would be criminal from the others listed in the new language, e.g., abuse would probably be criminal, neglect would not, mistreatment would depend upon whether there was assault, and misappropriation would be criminal. Findings that are criminal under Iowa law would have to be beyond a reasonable doubt and would affect the second two sets of registries. For offenses that are not criminal, Doyle recommended providing for the finding of preponderance of evidence. Doyle concluded that a clearer distinction between the words would be helpful in the appeal process.

Priebe announced that the delay would remain in place and he requested Staff to compose a letter to federal personnel in the Baltimore office expressing ARRC sentiments and that a copy of the letter be forwarded to Iowa's congressional delegation.

Schrader asked if the Department should document which system they would use for a "finding" if it does not mirror the child abuse system of findings. Oliver responded this was well documented in federal procedures but was not included in the rules.

Walker questioned Oliver regarding registries of the two departments. Oliver said that when a finding of abuse matches the level of abuse of the dependent adult abuse registry, the information would be given to Human Services.

Report at
Aug. meeting

Priebe suggested that caucus Staff of the House and Senate meet with the ARRC Staff on the issue and report at the August ARRC meeting.

**HUMAN
SERVICES (Cont.)**

Doyle asked Royce and Dierenfeld who served on the Task Force for uniform hearing procedures to review those procedures and determine whether proof of these kinds of cases could be changed from a preponderance to clear and convincing evidence. Royce knew of nothing "written in stone" in terms of burden of proof.

Oliver clarified that investigations would be done by appropriately trained nurses, not by social workers. Schrader pointed out that a nurse would not be trained in the jurisprudence where the preponderance of evidence occurred. No further Committee action.

AGRICULTURE

The Department was represented by Charles Eckermann, Larry Blunt, Walter Felker and Ron Rowland and the following agenda was reviewed:

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Public notification of pesticide application in urban areas, 45.50, Notice ARC 1617A Terminated

ARC 3099A 6/24/92

Bottled water and ice manufacturing, ch 59, Notice ARC 682A Terminated ARC 3101A 6/24/92

Pseudorabies disease, 64.147, 64.152, 64.153(1), 64.154(3)"b," 64.156(2)"a," 64.160, Notice ARC 3097A 6/24/92

45.50; Ch 59

There were no questions or comments on the Notices of Termination as found in ARCs 3099A and 3101A.

Ch 64

Felker gave a brief overview of amendments to Chapter 64 regarding pseudorabies disease. He discussed the gp1 gene deleted vaccine which will be used in Iowa and difference between nondifferentiable and differentiable—64.152. Priebe and Felker discussed tagging of native Iowa feeder pigs and testing of breeding swine. "Native Iowa" was added in 64.154(3)"b" to cover border pigs.

In 64.156(2)"a," Priebe questioned use of "14" finishers and Felker said this would provide a random statistical example. No formal action.

CIVIL RIGHTS

Ione Shadduck was in attendance to review the proposed new Chapter 9, relating to discrimination in housing, published in IAB 6/10/92 as ARC 3081A.

Ch 9

Shadduck advised Metcalf that language in subrule 9.3(5) was copied from federal law. The chapter essentially follows federal guidelines.

With respect to access to file information, Hedge thought 9.4(6)"c"(3) and 9.4(6)"d"(2), were contradictory. Shadduck stated that third-party witnesses were not actual parties but complainant respondents were the parties to a case. The first subparagraph was intended to protect witnesses who wish to remain anonymous.

Regarding 9.4(4)"f," Dierenfeld and Shadduck clarified the term "probable cause." Shadduck said this was a standard used in all cases. If they find probable cause and conciliation fails, then the Commission has litigation of word and review by the Assistants Attorney General who use this standard. Shadduck advised Tieden that the attorney appointed under 9.3(5) was paid for by the court system and criteria followed for appointment of attorneys for indigent persons would be used in this case as well. No action.

ENGINEERING - Special Review

Priebe called up the special review of requirements for surveys and plating in 193C—Chapter 2 of the Iowa Administrative Code. In attendance from the Engineering and Land Surveying Examining Board were Patricia Peters, Executive Secretary, David Scott, Dwayne C. Garber, and Dale Wight. Marie Thayer was present from Professional Licensing and Regulation Division.

Priebe questioned Board officials as to sale of a small piece of property worth less than the cost of a survey. Wight offered an example: If someone divides off a piece of property and it is described as "south three hundred feet of the west four hundred feet," a survey could be avoided. However, once it is described as "that portion of the quarter lying south of the creek or north of the creek," it would be considered a meets and bounds description requiring a plat.

Doyle agreed that a small piece of land could be described by measurements and quitclaimed to an individual for a sum of money. He concluded there was no prohibition against filing a quitclaim on a piece of property.

Garber interjected that as a land surveyor he would not care if the property were surveyed but as a property owner in a community, the assessor and the auditor have an obligation to determine ownership. When a lender is not involved, land can be conveyed between parties without surveying. There was discussion of aerial photos which Garber said would not be precise.

Pavich in the Chair.

INDUSTRIAL SERVICES

Byron Orton, Industrial Commissioner, Clair Cramer, Chief Deputy, and Michael Trier, Deputy, represented the Division. Also present were Frank Harrison, Iowa Workers Compensation Advisory Committee; Marvin E. Duckworth, Iowa State Bar Association, Workers Compensation Section; Cecil Goettsch and Barry Moranville, Iowa Association of Workers Compensation, Inc.

4.8, et al.

Amendments to 343—4.8(2)"i," 4.44, and 8.8, relating to contested cases—expedited proceeding and payroll tax tables, published in IAB 6/24/92 as ARC 3109A, were discussed.

Royce explained to Tieden that these rules attempt to create a speedy and efficient hearing process for minor matters. This particular process would not be applied to a full-blown hearing for major questions in workers' compensation cases.

Orton remarked that regular arbitration proceedings currently average 475 days from the date the petition is filed until the date a deputy decision is issued.

Schrader questioned emergency procedures and Orton said that he and Trier had contacted every conceivable organization that would be interested in these rules and the rules had been enthusiastically received. The rules had also been published under Notice.

LABOR SERVICES 10.20

Walter Johnson, Deputy Commissioner, briefed the Committee on a Noticed rule to amend 347—10.20, occupational exposure to formaldehyde, appearing in 6/24/92 IAB as ARC 3102A. Johnson explained to Tieden that formaldehyde was a cancer-causing agent, a carcinogen, and a preservative used in the undertaking profession.

Priebe in the Chair.

LAW ENFORCE-
MENT ACADEMY

The Academy was represented by Ben Yarrington, Director, and Bill Callaghan, Legal Counsel, for amendments to 501—3.3, 3.4, and 3.6, relating to certification of law enforcement officers, published under Notice in IAB 6/24/92 as ARC 3098A.

Ch 3

Yarrington offered background on training requirements for law enforcement officers since the inception of the Academy and he cited reasons for elimination of the short course. Yarrington also explained the testing process. At the public hearing held July 14, three people opposed the rules and nine opponents had sent letters. Yarrington emphasized that this was a small number compared to the number of people and agencies served.

Priebe wondered if city councils would complain about the additional 74 hours. Yarrington did not anticipate problems. He estimated \$300 difference in cost. Priebe had heard complaints from small cities where the cost represents a large part of their budgets. Also, many smaller departments consider themselves training grounds for larger ones which can offer higher salaries. The Academy recognized this problem.

Priebe asked what the Committee could recommend and Yarrington spoke of the limit on available funds for reimbursement since the Penalty Assessment money was being used for other appropriate and needy areas.

Schrader echoed the complaints that Priebe had been hearing but would pass on information regarding the testing since many people were unaware of the procedure.

Yarrington informed Maulsby that training must be taken in 10 consecutive weeks unless there was good reason to drop out. Exceptions would be made for injury or similar reason. He emphasized that one of the points of the original penalty assessment law was that they could claim reimbursement for the cost of a replacement officer.

Yarrington clarified for Teafor that the long course was 10 weeks and the shorter one was 8 weeks. Because of fiscal problems in the state, the Academy Council chose not to extend the course to 12 weeks as had been recommended. Yarrington advised that Hawkeye Institute of Technology was the only other institution approved to offer the short course. An average number of 34 students attend the long course. The test may be retaken (the parts that are failed once) and then the student must attend the Academy for the retraining. No Committee action.

NATURAL
RESOURCE

Steven Derrand and Kevin Szcodronski were present for the following agenda:

NATURAL RESOURCE COMMISSION[571]

NATURAL RESOURCES DEPARTMENT[561]"umbrella"

General license regulations, 15.6(1), 15.6(2), 15.6(3), 15.6(4), Filed ARC 3107A 6/24/92
Resource enhancement and protection program — county and private grants, 33.30(5), 33.30(6), 33.50(4),
Filed ARC 3104A 6/24/92
Boating speed and distance zoning — Harpers Slough, 40.27(1), Filed ARC 3106A 6/24/92
Trapping limitations, 110.5, 110.6, Filed ARC 3105A 6/24/92

15.6

Derrand presented amendments to rule 15.6 and explained that 15.6(3)"b"(4) was stricken since any over-limit violation would be a three-point offense.

- DNR (Cont.) Brief discussion focused on difference between hunting and shooting and when arrests could be made—15.6(3)"b"(7).
- 33.30, 33.50 No questions or recommendations on ARC 3104A, amendments to Chapter 33.
- 40.27(1) Dermand explained amendment to 40.27(1) governing Harpers Slough. Doyle inquired about speed laws on Browns Lake and Dermand agreed to provide information.
- 110.5, 110.6 Dermand provided background on changes made in trapping rules 110.5 and 110.6.
- PROFESSIONAL LICENSURE** The Division was represented by Susan Osmann, Bureau Chief, and Janelle Cowles, President of the Board of Behavioral Science Examiners, for the following agenda:
- PROFESSIONAL LICENSURE DIVISION[645]**
PUBLIC HEALTH DEPARTMENT[641]"umbrella"
 Licensure of marital and family therapists and mental health counselors, ch 30, Filed ARC 3112A 6/24/92
 Physical therapy examiners, physical therapist assistants, 200.4(4)"c," 202.4(4)"c," Notice ARC 3111A .. 6/24/92
- Ch 30 Chapter 30 was before the Committee. Cowles responded to Tieden that Iowa universities offer master's degree programs for marital and family therapists and mental health counselors. She described the enabling legislation as "title protection" so a minister would not be precluded from practicing but the minister could not advertise as a licensed practitioner.
- Cowles acknowledged that the examination was new but she did not anticipate change in the test scoring. Osmann interjected that many licensing boards do not have a prescribed percentage for passage of examinations and some will adopt the national standard. Passing scores for oral and some written examinations will be Board-determined. Osmann noted that Boards have been flexible in allowing retesting.
- 200.4, 202.4 The Committee had no questions or comments on ARC 3111A.
- Pavich in the Chair.
- PUBLIC HEALTH** In attendance from the Department were Carolyn Adams, Rules Coordinator; Donald Flater, Chief, BEH; Ronald Eckoff, Medical Director, Substance Abuse and Health Program; Allen Vander Linden, Contract Administrator; Mike Guely, Bureau Chief; and Rose Vasquez, Assistant Attorney General.
- PUBLIC HEALTH DEPARTMENT[641]**
 Emergency information system on pesticides for use by health care providers during medical emergencies,
 71.3(1)"a," 71.3(1)"b," 71.3(1)"g"(5), Filed ARC 3096A 6/24/92
 IAB - Possible inclusion of notice of availability of funds for awards or grants - General discussion
 Local substitute medical decision-making boards, ch 85, Filed ARC 3025A, delayed 70 days at June
 meeting 5/27/92
- 71.3 Adams briefed the Committee on amendments to 71.3 and Flater announced that the Agriculture Department would be sending out the emergency information on pesticides to health care providers.

**PUBLIC HEALTH
(Cont.)
IAB - Grants and
Awards**

Royce reviewed the Department's recent request to publish in the Iowa Administrative Bulletin Notice of Availability of Funds for Awards or Grants. The Department currently publishes this Notice in newspapers.

Metcalf expressed concern about limited distribution of the IAB. Eckoff indicated that they would continue notification through newsletters and other mailings but the Bulletin would be a source of consolidated information.

Barry advised Tieden that publication costs for the Bulletin had decreased considerably since all text processing was done by Administrative Code staff. Cost per page averages \$27.50.

Motion

Tieden moved to authorize the publication of this information in the Iowa Administrative Bulletin pursuant to Iowa Code Supplement section 17A.6(1)c. Motion carried.

**Motion - Ch 85
Delay lifted**

Metcalf moved to lift the 70-day delay voted on ARC 3025A, Chapter 85, at the June ARRC meeting. Motion carried.

UST BOARD

The Petroleum Underground Storage Tank Fund Board was represented by Robb Hubbard, Administrator, and Robert Galbraith, Assistant Attorney General, who briefed the Committee on revised rules 591—11.1(455G) to 11.3(455G) relating to remedial or insurance claims. The proposed rules were published under Notice in IAB 6/10/92 as ARC 3083A.

Hubbard summarized the process used for reviewing claims for benefits and subsequent payment. He spoke of the data bases maintained by the Board and DNR. Roughly 240 releases reported to DNR were not reported to the Board. Most represent those who are no longer in business, or abandoned property in counties, etc. No Committee action.

DOT

Fred Walker, Acting Director of Transportation Safety, was in attendance for the following:

TRANSPORTATION DEPARTMENT[761]

Recovery of damages to highways or highway structures, ch 40 title, 40.1, 40.6, Notice ARC 3095A 6/24/92
Definition of "farm trailer," 400.1(3), Notice ARC 2960A Terminated ARC 3073A 6/10/92
Selective Review - Adopt -A-Highway Program, Chapter 121

Ch 40

Walker gave a brief overview of amendments to Chapter 40. Doyle and Schrader recalled the Citizens' Aide interest in the rules. Royce anticipated that comments would be forthcoming from that office.

400.1

No comments on the termination of proposed 400.1(3) which had been superseded by statutory change.

Ch 121

Schrader reported that his concerns on the Adopt-A-Highway Program had been addressed and clarified and there was no discussion.

Recess

Priebe took the chair and recessed the Committee for 20 minutes. The meeting was reconvened for the selective review of rules relating to funding of local substance abuse centers, being 643—Chapter 2. Representing the Division were Carolyn Adams, Michael Coverdale, Legislative Liaison for Public Health, Allen Vander Linden, David Fries and other interested persons..

**SUBSTANCE
ABUSE**

**SUBSTANCE
ABUSE (Cont.)**

Priebe recalled that over \$8 million had been appropriated for substance abuse treatment since 1984. Complaints have been voiced regarding allocation of the funds. A facility in Priebe's area had never been afforded an opportunity to bid on a treatment program.

Royce advised that Chapter 2 lacked adequate rules to describe this particular program. Essentially, the substance abuse program involves contracting to fund treatment in various centers around the state. Royce continued that this, in essence, was similar to grant programs operated by other state agencies under administrative rules. Such rules must set out eligibility requirements, criteria to be used for judging competence and an appeals process for those aggrieved or adversely affected by an agency. It was noted that the Substance Abuse Division was an autonomous agency under the umbrella of the Public Health Department with independent rule-making authority.

Fries described operation of the substance abuse treatment program through the contractual process. A press release is sent throughout the state annually to announce the RFP when funds are available. Basically, newspapers publish the notices at their own expense. At the same time, letters are sent to all individuals, associations, parties, or treatment centers on the Division's mailing list. The state has been divided into "catchment areas" and between one and ten counties in an area provide services within that region. It has been the Commission's decision to fund only one facility per catchment area to eliminate duplication of services.

Fries referred to 641—Chapter 176, rules of the Public Health Department, effective May 6, 1992, which set out criteria for awards or grants. According to Fries, those rules reflect previous policy of the Department and were intended to cover the Substance Abuse Division as well.

Royce reasoned that Chapter 176 was appropriate but should be adopted by the Substance Abuse Commission and published in their rules. This could be accomplished by adoption by reference or setting out full text of the rules. Royce also commented that Substance Abuse might need more detail than Chapter 176 contains.

Fries explained to Tieden that the Division had four different types of programs. The regions were determined by the Commission about 15 years ago following research of patient treatment locations. Fries stated that programs were assessed and audited annually by the Department. He was willing to work with Royce and Dierenfeld for resolution of the matter.

Committee members suspected that the Board would be reluctant to consider another program for a particular catchment area where an existing program was successful. Fries stressed that any contract by the Department had been handled as a competitive process and this would continue.

Schrader recognized that needs could vary in different catchment areas and he suggested review of present delivery of services.

Fries agreed to relay Committee concerns to the Commission. He pointed out that administrative costs would accelerate if the catchment areas were increased from 24 to 36. Funds available for patient treatment would decrease and all catchment areas have waiting lists. Priebe indicated that his caucus staff was researching costs of present programs and a pilot program.

**SUBSTANCE
ABUSE (Cont.)**

Coverdale agreed that the General Assembly, as well as people around the state, favor convenient locations for treatment. He said that catchment areas were basically designed to accommodate community-based service areas but admitted they require additional examination.

Hedge was advised that approximately 29 contracts were awarded for comprehensive treatment but there were eight different grant programs in the Division of Substance Abuse and Health Promotion which include comprehensive treatment, residential and outpatient comprehensive prevention, innovative prevention, and special grants for health promotion.

Vander Linden informed Hedge of one competitive application for outpatient treatment in one catchment area this past year.

Priebe inquired about the number of contractor changes during the last ten years and Vander Linden recalled two different areas. Fries clarified that a prerequisite for funding was a licensed treatment program. Licensed entities have equal opportunity to compete for grants.

Priebe requested details on costs involved in the different areas and Kibbie asked that the location of the 24 centers be included in the report.

Patsy Shors, Director of Development, House of Mercy, Des Moines, stated that the House of Mercy was licensed two years and offered the only treatment program for mothers and children. She spoke of frustration in attempting to obtain funding. Fries commented on the three programs under contract to provide After-Care Services. The House of Mercy qualifies for this program but there are no funds.

Linda Goeldner, Vice President, Government Relations, Iowa Hospital Association, urged specific criteria. She questioned why hospital-based treatment facilities had been excluded from application for funds.

Cheryl Rammelsberg, Program Coordinator, Horizons at Covenant medical Center in Waterloo, addressed the competitive process and questioned funding only one agency in a catchment area.

Marlene Walsh, Executive Director, Forest City Treatment Center, echoed concerns as stated previously.

Art Schut, Executive Director of MECCA in Iowa City, took the position that interested vendors should continue to apply for funds.

John Garringer, Director of Area Substance Abuse in Cedar Rapids, had applied for a comprehensive provision contract which was awarded to another program in the community through competitive process in 1985.

Coverdale explained that all programs represented today were private—some community-based and some hospital-based and they differ. He noted that former Health Director, Mary Ellis had convinced third-party payers to reimburse for outpatient treatment at the substance abuse community-based programs.

Priebe opined that contracts should not be awarded until rules were in place. Because of many conflicting views expressed at this meeting, Schrader did not share Priebe's sentiment.

07-15-92

**SUBSTANCE
ABUSE (Cont.)**

Coverdale reiterated that public hearings were held annually and the Commission approves the contracts for grants. He expressed a willingness to follow ARRC advice.

There was discussion about what some persons considered a conscious effort on the part of insurance companies to cease payment for substance abuse treatment.

Orville Coleman, Executive Director of NCARF in Ft. Dodge, cited budgeting problems.

Department officials were unsure of the detail to be included in the rules. Schrader advised that an outline of criteria for awards should be included along with a statement that the criteria must be included in the RFP. Fries stressed that this was current procedure. Priebe urged the Department and staff to work together.

NO REPS

No agency representatives were requested to appear for the following:

EGG COUNCIL[301]

Excise tax on egg sales, 4.1, Filed Emergency ARC 3080A 6/10/92

HEALTH DATA COMMISSION[411]

Submission of data, rescind 6.6, Filed ARC 3076A 6/10/92

INSURANCE DIVISION[191]

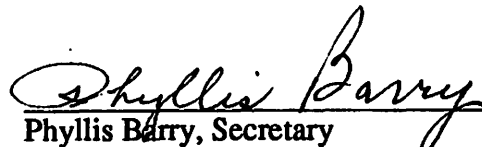
COMMERCE DEPARTMENT[181]"umbrella"

Notice of senior insurance counseling program, 37.18(1)"f," Filed ARC 3100A 6/24/92

Adjournment

Chairman Priebe adjourned the meeting at 12:30 p.m. The next meeting will be held on Tuesday and Wednesday, August 11 and 12.

Respectfully submitted,


Phyllis Barry, Secretary
Assisted by Mary Ann Scott

APPROVED:

