

MINUTES OF THE REGULAR MEETING OF THE ADMINISTRATIVE RULES REVIEW COMMITTEE

Time of Meeting: Tuesday and Wednesday, November 8 and 9, 1983.

Place of Meeting: Committee Rooms 22 and 116, State Capitol, Des Moines, Iowa.

Members Present: Senator Berl Priebe, Chairman; Representative Laverne W. Schroeder, Vice Chairman; Senators Donald V. Doyle and Dale L. Tieden; Representatives Ned F. Chiodo and James D. O'Kane.

Also present: Joseph Royce, Committee Counsel; Kathryn Graf, Governor's Coordinator; Phyllis Barry, Deputy Code Editor and Vivian Haag, Administrative Assistant.

Convened Chairman Priebe convened the Committee at 10:00 a.m.

HUMAN SERVICES The following Human Services agenda was before the Committee:

HUMAN SERVICES DEPARTMENT[498]		
Organization and procedures, 1.1, 1.2, 1.2(8), 1.3, 1.4(3) ARC 4136	F	10/12/83
Community mental health center standards, amendments to ch 33 ARC 4205	F	10/24/83
*Service programs, mandated budget reductions, 52.1(3), 77.24, 78.2(1), 79.1(2), 80.2(2), 78.3, 79.1(8), 81.6(16), 137.6(1), 137.7(1), 145.3(5) "q", 148.4(3), 148.4(7) "f", 148.4(8) "c", 160.9(3), 161.8(3) filed without notice ARC 4209	F	10/26/83
Intermediate care facilities, limitation of expenses, 81.6(1) "m" (1), 82.5(1) "f" (1) ARC 4109	F	10/12/83
Abuse of children, 135.1(9) to 135.1(15), 135.4, 135.8, 135.13 ARC 4137	F	10/12/83
Fair hearings and appeals, 7.1(1b), 7.2, 7.5(5), 7.7(2) "g", 7.7(5), 7.10(4) "a" ARC 4149	N	10/12/83
Fair hearings and appeals, 7.7(1) "b" ARC 4114	N	10/12/83
ADC, granting assistance, unemployed parent, (WIN), 41.4, 41.4(4), 41.4(6) to 41.4(8), 41.7(2) "c", 42.9(3), 42.10(5) "c", 42.4(6) ARC 4139, also filed emergency ARC 4138	N	10/12/83
ADC, granting assistance, unemployed parent, (JTPA), 41.7(6) "o" and "p", 41.7(7) "o" to "w", 42.1(8) ARC 4141	N	10/12/83
Recompment, procedural error, 36.1(10) ARC 4115	N	10/12/83
*Supplementary assistance, eligibility, payment, 51.4(1), 51.7, 52.7(1), 52.1(2) ARC 4116	N	10/12/83
*Service programs, mandated budget reductions, 52.1(3), 77.24, 78.2(1), 79.1(2), 80.2(2), 78.3, 79.1(8), 81.6(16), 137.6(1), 137.7(1), 145.3(5) "q", 148.4(3), 148.4(7) "f", 148.4(8) "c", 160.9(3), 161.8(3) filed emergency ARC 4207	N	10/26/83
*Service programs, chs 52, 131 to 133, 135 to 138, 140, 141, 145, 146, 148, 150, 151, 153 to 155, 155 to 162, 166 ARC 4163	N	10/12/83
*Supplementary assistance, residential care, 52.1(3) ARC 4150	N	10/12/83
Unemployed parent workfare program, ch 59 ARC 4296	N	10/26/83
Food stamp program, 65.8, 65.14 ARC 4143, also filed emergency ARC 4112	N	10/12/83
*Medical assistance, persons covered, 75.1(1), 75.1(1) ARC 4145, also filed emergency ARC 4144	N	10/12/83
*Medical and remedial care and services, ambulatory surgical centers, 77.24, 78.2(1), 79.1(2), 80.2(2) ARC 4151	N	10/12/83
*Medical and remedial services, retail pharmacies, 78.2(2) "a" and "c" ARC 4153	N	10/12/83
*Medical and remedial services, hospitals, 78.3 ARC 4152	N	10/12/83
*Medical assistance, chs 78 and 79 ARC 4151	N	10/12/83
*Medical and remedial care, 79.1(8) ARC 4155	N	10/12/83
*Intermediate care facilities, prospective payment rate, 31.6(16) ARC 4156	N	10/12/83
Work incentive program, ch 90 ARC 4147, also filed emergency ARC 4146	N	10/12/83
General provisions, application, eligibility, 130.3(1) "d" (2), 130.3(4) ARC 4208	N	10/26/83
General provisions, eligibility, 130.3(1) "d" (2), filed emergency ARC 4148	N	10/12/83
Foster care services, 136.6(2), 136.13 ARC 4117	N	10/12/83
*Payments for foster care, rate of payment, specialized care 137.6(1), 137.7(1) ARC 4157	N	10/12/83
*Purchase of service, 145.3(5) ARC 4158	N	10/12/83
*In-home health related care, 148.1(3), 148.4(7), 148.4(8) ARC 4159	N	10/12/83
Family centered services, ch 157, notice ARC 3722 terminated ARC 4160	N	10/12/83
*Domestic abuse, 160.9(3) ARC 4161	N	10/12/83
*Displaced homemaker, 161.8(3) ARC 4162	N	10/12/83

* Indicates rules affected by the budget reduction.

Department representatives present were Judy Welp, John Fairweather, Dan McKeever, Donald Kassar and Dan Gilbert, Bureau of Medical Services, Will Miller, Joe E. Smith, Appeals, Margaret O. Ward, Morris Gater, Gere Fitzsimmons, Kathi Kellen, Bette Murray, Mary Louise Filk, Joe Mahrenholz and Jim Hennessey.

Also present: Candy Morgan, Assistant Attorney General; Dennis Jacobs, Iowa Public Employees Retirement System;

11/8/83

HUMAN
SERVICES
Cont'd

Mary O'Connor, House Democratic Caucus; Laura Murphy, House Republican Caucus; Ida Stanley, I.A.H.A., Larry Breeding, Iowa Health Care Association; Katy Gammack and Jim Carney, Iowa Council of Health Care Centers; Dan Schweiger; and Thomas Temple, Iowa Pharmacists Association.

chs 1 & 33 No questions re amendments to chapters 1 and 33. Fairweather distributed a summary of rules addressing mandated budget reductions to service programs by categories and effective dates. He called attention to similar items in various chapters of rules.

Fairweather referenced ARC 4163 which addresses the fact that because the 2.8 percent budget reduction was applied to the entire year's appropriation, each month's delay in effecting the cuts would result in a greater percentage reduction to meet the annual budget. In the event the emergency rules would not take effect on November 1, 1983, these amendments would reduce reimbursement to all service providers by various percentages.

Revenue

Gene Eich, Deputy Director, Revenue Department, arrived to brief the Committee on the status of the productivity formula which must be implemented by administrative rules as mandated by the 1983 General Assembly. It was consensus of the Committee that the proposed rules should be before them for review at the May 1984 meeting. July was a suggested alternative.

HUMAN
SERVICES

Review of Human Services Department rules resumed. Fairweather followed the summary where residential care facilities were listed--the per diem rate of each facility would be reduced 4.2 percent prior to payment.

In re ambulatory surgical centers, Fairweather stated that facilities other than hospitals would be reimbursed by medical assistance for ambulatory surgical procedures. Priebe was displeased with removal of the incentive factor [81.6(16)] and thought the matter would need legislative attention.

77.24
78.26
79.1(2)

Tieden raised question re lack of centers in NE Iowa. Fairweather admitted the centers which provide outpatient surgery were new to the state and more were anticipated. Des Moines has several and Fairweather pointed out they were very cost effective. The payment methodology is set by the Department.

Hospitals
and
Pharmacies

Fairweather explained that they would request the Council on Human Services to rescind controversial portions of ARC 4207 at their November meeting -- so amendment can be made to 78.3 and 79.1(8) as they relate to hospitals and pharmacies. According to Fairweather, a program change providing for preadmission screening would eliminate excessive hospitalization. The Associations involved have requested this approach on pre-screening as being cost effective. Revised rules would be incorporated under ARC 4209.

Responding to Schroeder, Fairweather said the 4.2 percent reduction would remain applicable to hospitals, but the program change -- preadmission screening -- was being requested to improve services and save funds. Morgan told Tieden that the

11/8/83

HUMAN
SERVICES
Cont'd

Iowa Foundation for Medical Care was designated by the federal government as their professional standards review organization -- private nonprofit corporation that contracts with Medicare, Medicaid, etc. to ensure that unnecessary funds are not expended. Fairweather said the initials PSRO would often be used in connection with the foundation.

79.1(8)

Subrule 79.1(8) provides that the "acquisition cost of prescribed drugs" be reduced by a factor of 4.2 percent and 1983 appropriations did not address product cost. The cost of the drug itself is called material acquisition cost -- MAC. This cost is frequently passed onto clients without inclusion of the ingredient cost -- that is included in the service charge.

Temple argued that 79.1(8) was discriminatory and inequitable in the 4.2 reduction in acquisition cost of prescribed drugs. He distributed material on the subject to ARRC members. Further, reimbursement for pharmacists professional fees would be reduced by a factor of 6.7 percent which he opposed. It was noted that optometrists were excluded from material acquisition cost. Gilbert said optometrists would have no cut for material supplies for eyeglasses, only the service fees. Fairweather apologized for lacking details in this area since the amendment had not been drafted. Chiodo thought the cuts should be identical. General discussion.

Morgan agreed that Temple's point was valid -- pharmacists and optometrists were treated differently. Schroeder was advised that an experimental program began 4 years ago--flat fee prescription concept--which has now been discontinued. Priebe supported equitable across-the-board cuts. Morgan insisted that any cuts must include cost of prescription since that is a large proportion of the Medicaid budget. Temple took the position that drug manufacturers should share the burden.

O'Kane was hopeful that a redraft of the rules would include ICF's. He quoted from the appropriations bill which he considered to be specific. Morgan reminded ARRC that the Department lacked funds to follow that language. O'Kane insisted the methodology had been developed over the years and the Department did not have authority for the action taken.

Graf interjected that since the question was raised at the October meeting with regard to appropriateness of an emergency filing when expenditures would exceed budget, she had talked with Professor Bonfield. He saw no problem in this situation. O'Kane had no problem with the reduction but he opined that methodology of reimbursement was being countered by this rule.

Graf advised that an objection should be based upon whether the ARRC agrees with that particular percentage cut, not as to emergency adoption. Priebe opined it was questionable whether or not the Department had the authority to "pick and choose" certain areas to be cut.

Fairweather saw the issue with ICF and pharmacists to be different. He thought Chiodo had raised a good point and the

11/8/83

HUMAN
SERVICES

Department will respond. He reasoned that the dollars involved in the different programs may not allow the same application, but the Department has been charged with balancing that budget. On ICF's, Fairweather agreed that the legislation included "shall not change reimbursement methodologies..." However, the position of the Department was that the intent language attaches to the appropriation. They planned to conform to methodology as the budget permits. O'Kane reiterated his concern.

In response to Tieden, Morgan said the attorney general's office had advised the Department to take each program topic. She opined that legally the Department was in a difficult situation--there was not a broad body of case law in this area. A previous budget cut affecting nursing homes and the resulting court case was recalled--the court upheld Department action. Two additional suits are pending.

Kassar informed Chiodo there was no way the Department could reimburse a pharmacy on actual invoice since invoice cost is not required. A provider is required to submit invoice with the billing on hearing aids, glasses, etc. Pharmacists are reimbursed on actual or average wholesale price which differs greatly from actual cost of the product because of quantity discounts, packaging, etc. Morgan contended if the 4.2 percent cut were applied to nursing homes on a claim by claim basis, it would drop below the 50th percentile placing the Department in a precarious position.

Morgan responded to Chiodo that it would be difficult to estimate dollar implications to the state. In other states, when a system is removed, courts usually remand the states to come up with a new system. Chiodo was interested in the state's liability as to reimbursement if a lawsuit were lost. Morgan said the state argues in federal court that retroactive relief is not possible. General discussion.

11:05 a.m. Doyle arrived. Breeding clarified that many costs in operating a nursing home are disallowed by the state "so we are not talking about actual costs." He also made the point that many of the very high cost facilities serve a low percentage of Title XIX clients.

Motion to Object O'Kane moved to object to ARC 4207, Item 8 (81.6(16)a, c and d) and any other related items that may be necessary to object to in order to prevent elimination of the incentive factor.

Chiodo expressed his opposition to across-the-board cuts as ordered by the Governor. His initial reaction was to agree with O'Kane 100 percent. However, he felt the Department's approach was the least objectionable of all the other possibilities and he would not concur in an objection.

Substitute Motion Failed Schroeder made a substitute motion to table the O'Kane motion. It was his opinion that an objection might compound the problems.

11/8/83

HUMAN
SERVICES
Cont'd

Chair announced that a motion to table was not debatable. Vote on the motion to table failed with 3 ayes by Tieden, Schroeder and Chiodo and 3 nays by Priebe, Doyle and O'Kane.

Motion to
Object
Lost

The O'Kane motion to object lost with tie vote as follows:
Ayes: Priebe, Doyle and O'Kane; nays: Schroeder, Tieden and Chiodo.

Tieden could not support objection to the complicated issue. He had served on the MAC committee where the procedure was passed by a majority. O'Kane emphasized his objection was technical--he saw no authority to eliminate methodologies of reimbursement.

78.2

Review of 78.2 which limits medical assistance reimbursement for the cost of drug products, etc. to the average wholesale price of the lower cost equivalent. Mahrenholz stressed that there would be little justification for the physician to prescribe the higher priced product. Tieden questioned whether a pharmacist could substitute generic drugs. Temple indicated they can exercise product selection unless the physician specifies a particular brand. This could result in a loss to the pharmacist.

Temple submitted a statement opposing the rule as written on the basis of legislative action two years ago. He addressed the positive incentive program and he requested delay of the premature rule. Mahrenholz contended that, by and large, pharmacists were not exercising the drug product selection required under current law. No further comments.

The following were briefly explained by Fairweather -- no substantive questions were raised. Physicians, ICFs, ICF/MRs, foster care, in-home health services, domestic abuse and displaced homemaker and home-based services. The remainder of Human Services rules were deferred until 1:00 p.m.

Recess

Committee was recessed at 11:40 a.m. Reconvened at 1:00 p.m. by Chairman Priebe.

HUMAN
SERVICES

Review of Human Services rules resumed. No recommendations for 81.6(11) and 82.5(11), ARC 4109. Welp explained that amendments to chapter 135 establish guidelines and eligibility standards; standards for availability of records and process for establishing multidisciplinary team with respect to child abuse.

No recommendations re chapters 7, 41, 42 and 46.1(10) amendments. Chapter 51 amendments reflect the SSI increase in standards required by federal law, effective January 1, 1984. Tieden wondered if it were affected by the budget reduction. Ballinger indicated the small program--approximately 100 people in family life home care--was not cut.

Unemployed workfare rules were explained by Welp. The issue had been renoticed because of several areas of concern.

11/8/83

HUMAN
SERVICES
Cont'd

O'Kane inquired if Senator Bruner's office had been contacted and he received affirmative response. No questions re 75.1(1) and 75.1(11).

ch 90

Welp described the new WIN program which will be administered by Human Services through a contract. No other discussion re Human Services rules.

GENERAL
SERVICES

Jack Walters, Director; Jack Pitzer, Chief Purchasing Officer; and Shirley Phillips, Chief, General Administration, appeared on behalf of Department of General Services. The following agenda was before the Committee:

GENERAL SERVICES DEPARTMENT[450]

Organization and operation, ch 1 ARC 4183 10/26/83

Walters told the Committee that he had directed that all General Services rules be reviewed for possible revision. Chapter 1 was the first step of several possible changes to be submitted.

1.1

One formal comment had been received from the Board of Regents with respect to the phrase "except those specifically exempted by law" which was incorporated in the description of the various divisions of the Department.

1.6

Priebe voiced opposition to rule 1.6 pertaining to use of rooms and facilities in the capitol by state agencies, boards and commissions. In his opinion, it could preclude the General Assembly. Royce suggested substituting "units of state government" since General Services has no jurisdiction over the GA. Doyle reasoned the Supreme Court should also be exempted. Pitzer was aware of the legislative prerogative in the Capitol complex. However, Priebe insisted the rule should reflect that and other members concurred. Walters was amenable.

Tieden was told that the purchasing division and surplus property division heads and the personnel officer were covered by Merit. Tieden spoke of his opposition to creating new departments. There was discussion of formation of a Department of Communications which concept Walters did not support.

Schroeder referred to rule 1.3 which would permit the Department to charge 50 cents per page to reproduce certain records. He declared the amount was beyond reasonable cost. Walters and Pitzer defended the rule and Pitzer emphasized that 50 cents barely covered the cost of labor and copying. Government personnel would not be charged for copies.

1.4(3)

Doyle called attention to a reference to Code Chapter 96 in 1.4(3). Pitzer thought that was in error. At the suggestion of Doyle, Walters agreed to delete the last sentence.

1.7(1)

Chiodo envisioned problems with proposed 1.7(1) since the Commission for the Blind has no control over vending machines used by the Legislature. Royce cited Code section 17A.3 and advised Department officials to adopt by rule their hearing procedures for parking violations. Pitzer responded that the procedures would be included in chapter 10.

Parking

11/8/83

GENERAL
SERVICES
Cont'd

Priebe inquired about a list of surplus items. Schroeder re-called that he had asked that all legislators receive a copy. No other comments.

COMMERCE
COMMISSION

Ray Vawter, Director, Support Staff; David Lynch, Assistant General Counsel; and C. Munyon, Law Clerk, were present on be-half of the Commerce Commission for the following agenda:

COMMERCE COMMISSION(250)
Rulemaking, 3.3(2), 3.6(1) ARC 4203 F..... 10/26/83
Notification of customers, telephone utilities - interstate access charges, 7.4(1)"b" and "c", 22.1(1), 22.1(3), 22.2(3),
22.3, 22.3(2)"d", 22.14 to 22.16, filed without notice ARC 4164 (also notice ARC 4165, 1A) 10/12/83 F, N..... 10/12/83
Telephone utilities, basic local service, 22.1(3), 22.2(5)"v", 22.3(14) ARC 4201 F..... 10/26/83
Notification of customers, telephone utilities - intrastate access charges, 7.4(1)"b" and "c", 22.1(1), 22.1(3), 22.2(3), 22.3,
22.3(2)"d", 22.14 to 22.16 ARC 4165 (also filed without notice ARC 4164) N, F, N, N 10/12/83

No recommendations for amendments to chapter 3. Lynch told the Committee that amendments to chapters 7 and 22 relate to access to intrastate interexchange network. The \$2 and \$6 enduser charges have been delayed since the FCC delayed their user charges. Chiodo was told that the carrier would be AT&T, MCI, etc. but there was no definition of "carrier." Chiodo inquired if Teleconnect would be a carrier, reseller or cus-tomer. Lynch said that in Colorado, they were carriers, but Iowa has not made a decision. He anticipated there would be a declaratory ruling on the matter. Chiodo requested a defi-nition of "reseller." Vawter interjected that it was unlikely the rules would become effective.

ch 22

Rules on basic local telephone service, amendments to chapter 22, were postponed by the Commission last Friday. [11/4/83] O'Kane questioned how local charge would be contingent on the interstate call charges as decided by FCC. Lynch stated that access charge is to be paid to local companies to defray costs in providing access to the toll member. A telephone subscriber who does not access the toll network should not pay those fees.

Motion to
Delay

Schroeder moved to place a 70-day delay on 22.1(3), 22.2(5)y and 22.3(14) for further study.

Substitute
Motion

Priebe moved a substitute motion that the subrules be delayed 45 days into the next General Assembly. Lynch pointed out that the Commerce Commission could not respond to FCC action without the subrules. O'Kane favored a 70-day delay so it would be before the Committee another time.

Motion ro
Refer -
Withdrawn
Vote on
Delay

Priebe withdrew his motion to delay into the next General Assembly.

Motion to delay 70 days carried by voice vote.

PLANNING &
PROGRAMMING

Lane Palmer, Jude Conway, Phil Smith, Dave Patton and Dolores Abels-Farmer were present to review:

PLANNING AND PROGRAMMING(630)
Community development block grant nonentitlement program, 23.4, 23.4(2)"q", 23.6(1)"d", 23.6(2)"e" and "f", 23.7(2)
to 23.7(4), 23.8(2)"a" and "d"(1), 23.8(3)"b", 23.8(4), 23.8(5), 23.8(8) ARC 4131 F..... 10/12/83
Developmental disabilities program, ch 10, filed emergency ARC 4168 F, F..... 10/26/83
Iowa job training partnership Act program, 19.11, 19.7(5) ARC 4133 N..... 10/12/83

11/8/83

PLANNING &
PROGRAMMING
Cont'd

Also present: Jerry Dumke and Lyle E. Zieman, constituents of Senator Tieden.

No questions re chapters 23 or 10. Patton commented that 19.11, 19.7(5) had created much interest. Controversy centers on the fact that county boards of supervisors would be prohibited from serving on private industry councils. Patton said the Department took the position that there would be a conflict of interest for the supervisors if they were to serve on the Private Industry Council. Twenty other states have addressed the problem in the same matter. The Department of Labor opined the matter should be addressed at state level.

Schroeder opined that supervisors might be the best qualified people. He was informed that OPP had not requested an AG opinion re the conflict of interest. Tieden had asked for a written statement with regard to the intent of the law but Department officials had misunderstood the request. He introduced two of his constituents who were afforded opportunity to comment on the subject. They asked Royce to read their letter requesting clarification on 102A, 102A.1(a), public law 97-300, Job Training Partnership Act, dated October 13, 1982.

AG opinion
Requested

Schroeder asked Royce to request an AG opinion as to whether a conflict of interest existed. If so, the Committee should request corrective legislation. Tieden pointed out that many conflicting responses had been forthcoming from Washington, D.C.

Patton, in a final point, said that while under CETA, local elected officials were to design job training programs. The JPTAct provides for two sectors; one private and one local. Elected officials cannot be on both sides of the partnership. Patton was doubtful that the intent of the law would be cleared up by an AG opinion. General discussion.

Tieden moved that the ARRC request a statement from Department of Labor on the issue. Motion carried. OPP was willing to make a formal request also.

IOWA FAMILY
FARM
DEVELOPMENT
AUTHORITY

Soil conservation laons, conservation farm equipment, 4.2(7), 4.7, ARC 4134, Notice, IAB 10/12/83, was before the Committee with William Greiner in attendance. According to Greiner, new language in 4.2(7) would be amended. He reviewed the November 2 hearing where representatives from John Deere Co. presented relevant information.

There was brief discussion of sod rotation and Greiner agreed to follow Priebe and Tieden's suggestion to amend the third paragraph of 4.2(7) by substituting "beans to corn or sod into corn or beans" for "corn following corn and corn following sod."

REAL ESTATE
COMMISSION

Gene Johnson and Ken Smith, as well as Frank Thomas, assistant attorney general for Real Estate, appeared for review of:

Discipline and hearing procedure, 4.18, 4.20 ARC 4194F..... 10/26/83
Brokers and salespersons, 1.9, 1.19, 1.20, 1.34, 1.35 ARC 4193N..... 10/26/83

11/8/83

REAL ESTATE
COMMISSION
Ch 1

There was brief overview of 4.18 and 4.30 but no questions.

In reviewing chapter 1 amendments, Doyle raised question with respect to disclosure to a seller or buyer of an interest of friends or relatives. Johnson was unsure as to how far the rule should go in spelling out the fiduciary responsibilities owed to the client.

He observed that many real estate licensees seemed to have a "warped sense of responsibility" as to whether it is the buyer or seller to whom they owe primary responsibility.

O'Kane agreed with Doyle that the Board should address disclosure.

BOARD OF
VETERINARY
MEDICINE

Bette Duncan, Legal Counsel, Agriculture Department, and Dr. Merle H. Lang, State Veterinarian, appeared on behalf of the Veterinary Medicine Board for the following review:

VETERINARY MEDICINE, BOARD OF[842]

Organization, licensure, examinations, auxiliary personnel, continuing education. 1.1, 1.3, 2.2, 2.3, 3.1, 1.1(5).
4.4 to 4.7, 8.3, 3.2, 4.1(1), 6.1(2), 6.1(4) ARC 4191M..... 10/26/83

Duncan explained that the amendments were intended to implement 1983 Acts, SF 444. Further, the Board determined the minimum score on the Clinical Competency Test should be raised from 70 to 75; veterinary assistants will be added and discriminatory language eliminated.

Tieden wanted to know if the bill allowed for temporary permits. Lang answered that the original chapter allowed them but there was no charge.

3.1 Re examinations--3.1(169)--Lang said that the professional examining service had made the CCT available on a trial basis for the last few years. The Board decided to incorporate the test and included minimum standards. Lang described the testing process briefly and assured Tieden that judges had no knowledge of whose test they scored.

4.6 Discussion of 4.6 relative to illegal use of drugs and alcohol by animal technicians. No further comments.

COMMISSION
FOR THE
BLIND

The following rules were before the Committee:

BLIND, COMMISSION FOR[160]

Services, vocational training, 2.5(4) ARC 4196E..... 10/26/83
Vending facilities, termination of licenses, 4.4 ARC 4197E..... 10/26/83

Commission for the Blind was represented by Nancy Norman, Director, and Tony Cobb, Deputy. Also present: William Pearce and Joseph Van Lent, Chairman, National Federation of Blind.

2.5(4) Norman reviewed changes in the tuition rule, 2.5(4) and stated that the intent was unchanged. Procedure for payment of tuition was clarified. She emphasized the rule should not discourage a client from attending a private or out-of-state institution.

11/8/83

COMMISSION
FOR THE
BLIND
Cont'd

Royce, at Tieden's request, opined the changes were minimal and the thrust of the rule was identical to the Notice. Pearce saw no real necessity for the rule at this time. He viewed it as a hindrance to freedom of choice of university. Van Lent expressed the Federation's disfavor with the rule.

Norman reminded that the rule would be utilized only in case of a dire financial situation. Consensus of the Committee that there were no grounds for an objection.

No recommendations were offered for 4.4.

COMMITTEE
BUSINESS

Schroeder moved that the item veto concept be made an ARRC venture to be compiled as a Senate File to be introduced in the Senate. Motion carried. Chiodo did not favor a constitutional convention.

NCSL
Expenses

There was unanimous consent to approve expenses and per diem for Chairman Priebe and Vice Chairman Schroeder to attend the National Conference on State Legislatures to be held in Tallahassee November 10 and 11, 1983. Motion carried.

LAW
ENFORCEMENT

Special review of training requirements for law enforcement officers was rescheduled for the December meeting.

Schroeder moved that an attorney general's opinion be requested with respect to presently employed officers who were hired prior to 1968. Motion carried.

Recess

Committee was recessed at 3:45 p.m.

11/9/83

Reconvened The Committee was reconvened at 8:45 a.m. in Room 116, State Capitol. All members and staff were present.

CONSERVATION COMMISSION The following agenda was reviewed:

CONSERVATION COMMISSION[290]
Zoning and watercraft, horsepower-political subdivision waters, 30.3 ARC 4172 F..... 10/26/83
Blinds and decoys on game management areas, ch 1 ARC 4173 N..... 10/26/83
Legal residency, 5.1 ARC 4174 N..... 10/26/83
Scuba and skin spearing of rough fish, 6.2, 6.4 ARC 4175 N..... 10/26/83
Motor vehicle restrictions, 9.1, 9.2 ARC 4176 N..... 10/26/83
Mussels-methods and seasons, 12.1(1) ARC 4177 N..... 10/26/83
Motor regulations, propulsion mechanism not in use, 40.3 ARC 4178 N..... 10/26/83
Examination and copying of public records, 63.2(2), 63.2(4) ARC 4179 N..... 10/26/83
License depositories, 66.5(3)"i", 66.6 ARC 4180 N..... 10/26/83

Conservation Commission was represented by Bob Barratt, James Mayhew, Stanley Kuhn, Judy Pawell and Roy Downing.

ch 1 Chapter 1 was taken out of order and there was brief discussion of portable blinds. No recommendations were offered for 6.2 and 6.4.

9.2(1)b Schroeder raised question as to the thousand pound limit in 9.2(1)b. According to Barratt, Conservation could not accommodate four-wheel vehicles, pickups or all-terrain types. Schroeder envisioned the rule as giving preferential treatment.

12.1(1) No questions raised re 12.1(1), 40.3. Kuhn explained 63.2(2),
40.3 (4) which sets out Commission policy and fees for copying
63.2(2) public records. No recommendations for 63.2 or amendments
to chapter 66.

30.3 Downing noted that rule 30.3 allows the Commission to change the horsepower limit on political subdivision waters.

CITY FINANCE COMMITTEE Ron Amosson and Darol Schweer, Comptrollers Office, were present on behalf of City Finance Committee to review:

CITY FINANCE COMMITTEE[230]
Detailed budget, 2.1(7) ARC 4192 N..... 10/26/83

Amosson reported that the City Finance Committee reviewed statutes and rules and they have endorsed a manual provided by League of Iowa Municipalities--dated 1981.

2.1(7) In re 2.1(7), O'Kane requested revision by using the plural form for "source, fund, etc." Schroeder thought the definition should be expanded to include "...and transfers to and from funds." Amosson responded that would fall under the sources, e.g., property taxes, road use tax money and another source would be a transfer. He added that there would be provisions in the budget documents for cities for transfers in and out. Schroeder favored a special block to designate that. Although Amosson thought it was unnecessary, he was amenable to ARRC request. Amosson also agreed to provide Schroeder with a list of transfers from municipals' general power and water funds.

11/9/83

MERIT
EMPLOYMENT
DEPARTMENT

Clint Davis was present to review Merit Employment rules as follows:

MERIT EMPLOYMENT DEPARTMENT[570]

Reduction in force, 11.3(1) ARC 4171, also filed emergency ARC 4170 N? F.E. 10/26/83
Confidential positions, 2.4 ARC 4135 F. 10/12/83

11.3(1)b

Davis told the Committee that 11.3(1)b dealt only with three situations which would not constitute a layoff. This would eliminate an agency's obligation to process a reduction in force or have a layoff for Christmas, Easter or other seasonal interruptions. O'Kane referred to use of "recesses" in 11.3(1)b and expressed a preference for "breaks."

HEALTH
DEPARTMENT

Health Department was represented by Mark Wheeler, Mike Guely, Larry Hazelwood, Ken Choquette, John A. Eure, T. D. Scurletis, John Goodrich, Peter Fox, Irene A. Howard, Carson E. Whitlow and Harriett Miller. The agenda follows:

HEALTH DEPARTMENT[470]

Required immunizations, 7.4(4) ARC 4123 F. 10/12/83
Vital records, definitions, out-of-wedlock birth records, 96.1, 96.6(1) ARC 4124 F. 10/12/83
Correction and amendment of vital records, amendment of birth certificate by paternity affidavit, 102.6 ARC 4125 F. 10/12/83
Advanced emergency medical care, Iowa ambulance standards, 132.6(1)"b", 132.6(7) ARC 4105 F. 10/12/83
Occupational therapy assistants, license, 138.206(5) ARC 4183 F. 10/26/83
Psychology examinations, 140.8(8) ARC 4199 F. 10/26/83
Cosmetology instructors, 142.2(5) ARC 4154 F. 10/26/83
Cosmetology continuing education, 151.3(4) ARC 4185 F. 10/26/83
Barbers, continuing education and disciplinary procedures, 152.105, 152.106, 152.109(2), 152.201, 512.203 ARC 4187 F. 10/26/83
Barbers, reinstatement of lapsed license, 152.110 ARC 4186 F. 10/26/83
Birth defects institute, 4.6 to 4.9 ARC 4166, also filed emergency ARC 4122 N? F.E. 10/12/83
State plumbing code, applicability, 25.1, 25.2 ARC 4200 N. 10/26/83
Licensing of mobile home parks, 71.6(6), 71.7(2), 71.12, 71.13 ARC 4201 N. 10/26/83
Temporary pilot program for an advanced EMT-D study, 132.12, filed emergency ARC 4112 F.E. 10/12/83
Psychology examiners, 140.4(3), 140.4(9), 140.8(3), 140.9(1) to 140.9(3), 146.10 ARC 4132 N. 10/12/83
Chiropractic examiners, 141.1(1), 141.1(2), 141.1(3)"a", 141.12(6), 141.36 ARC 4107 N. 10/12/83
Funeral directors, communicable diseases; mortuary science examiners, fees, 146.1(2), 147.98 ARC 4195 N. 10/26/83

4.6, 4.9

Rules 4.6 to 4.9 were taken up out of order. According to Scurletis, the rules were filed emergency in order to implement a sliding fee schedule for genetic counseling. Service is provided to an average of 900-1000 families a year.

96.1
96.6

No action re 7.4(4). Whitlow reported that as a result of revisions after Notice, records will be more accessible at the local level. Definitions were also clarified with exception of out-of-wedlock records. Whitlow provided background on rule 102.6. Tieden raised question as to scientific capability for determining paternity and Wheeler indicated that was voluntary between the mother and person claiming to be the natural father--they must sign an affidavit that they are the parents. Blood tests are inconclusive.

ch 132

O'Kane inquired as to sufficiency of the 130 amp alternator system and Guely opined it was adequate. He emphasized that the rules would be applicable only to advanced care service programs. Schroeder was told that the dual battery system had not created problems. No questions re 138.206(5).

138.206(5)

140.8

It was explained that psychology examiners may apply for re-examination no more than three times. The Department's position was that two failures would indicate need for additional education. Priebe thought the rule to be restrictive. Schroeder suggested a paragraph to cover extenuating circumstances. Howard interjected that the person knows in

HEALTH
DEPARTMENT
Cont'd

advance how many times the test may be taken. Priebe thought those willing to take further education should be allowed to retake the exam and O'Kane concurred.

149.2

No questions re 149.2(5), 151.3(4) or chapter 152. Schroeder suggested that barbers include language contained in cosmetology rule 151.3(4) which prohibits continuing education to be provided by persons or companies primarily engaged in the sale of barber products. Fox stated that would be the Board's prerogative. O'Kane supported the suggestion.

Discussion of whether it would be appropriate for the union to conduct CE seminars.

Plumbing
Code

Choquette summarized the purpose of proposed amendments to the plumbing code. A primary concern was in the area of utilization of plastic pipe. Schroeder had a problem with 25.2k which would require an air-gap fitting on the discharge side of a dishwasher. Choquette indicated there had been problems with waste backing up into dishwashers, especially with commercial operations. Schroeder had no quarrel with that requirement for commercial ventures but contended it would apply to homes as well. He reiterated his opposition to the fact that plastic pipe is prohibited above two stories.

Schroeder took the chair. O'Kane noted that plastic pipe was readily available and was used in surrounding states also. Choquette assured him that plastic pipe was allowed by the state building code. However, city codes allow options. Wheeler told Tieden that no comments had been received as yet.

ch 71

Discussion moved to amendments re licensing of mobile home parks. Amendments to clarify responsibilities of mobile home park owners were applicable to new hookups for electrical and gas connections, according to Choquette. Wheeler spoke of concern for safety of individuals in those parks. He recalled accidents, including an electrocution in Council Bluffs. Schroeder envisioned problems with the amendments. O'Kane agreed that the burden should be on the person digging for installation. Tieden concurred with the Department.

71.6(6)

Schroeder referred to 71.6(6) and recommended "shall advise of proximity of location of buried lines..." as opposed to "exact location..." Doyle was told that "unsecured gas bottles" contain LP--71.12. Doyle's major concern was the fiscal impact in shifting burden and almost certain liability to park owners. Chiodo arrived--10:18 a.m.

ch 140
ch 141

No questions re chapter 140. Miller gave a brief comment re amendments to chapter 141, chiropractic examiners. In review of 141.11(3), Schroeder thought it was an "open-door policy." Miller recalled that Schroeder had made that suggestion previously. However, standards are set by Council on Chiropractic Education. Schroeder saw no need for language "or exceeding those published and utilized by...". Miller indicated that the Board would need to respond to his concern.

11/9/83

HEALTH
DEPARTMENT
Cont'd

O'Kane referenced scope of practice law passed by the General Assembly and was advised these rules have no relevancy to it. Brief discussion of 146.1 and 147.98 but no recommendation.

Recess

Vice Chairman Schroeder recessed the Committee for 5 minutes. Reconvened at 9:36 a.m.

NURSING
HOME
ADMIN.

Irene Howard, Health Department, appeared for the following:

NURSING HOME ADMINISTRATORS, BOARD OF EXAMINERS[600]
License renewal, provisional administrator, licensure by equivalency, 2.4(1), 2.6(3), 2.7 ARC 4182 F..... 10/26/83
License fees, 2.5 ARC 4181 M..... 10/26/83

Katy Gammack, representing Iowa Council of Health Care Centers, expressed concern re limitations for appointment of a provisional administrator. Howard stressed that as long as a facility is making an honest attempt to hire an administrator, an application may be filed for extension. Iowa has no reciprocity with other states. According to Howard, the equivalency standards will be a vast improvement and should eliminate many problems for out-of-state licensees coming to Iowa. Priebe resumed the chair.

PUBLIC
INSTRUCTION

The following agenda was before the Committee:

PUBLIC INSTRUCTION DEPARTMENT[670]
Area vocational schools and community colleges, faculty, 5.3(1) ARC 4106 F..... 10/12/83
Special education, 12.3(4)(c) and "f", 12.19(3) ARC 4189 F..... 10/26/83

DPI representatives present were Charles Moench, Carol Bradley, and Carl Smith. Moench gave an overview of 5.3(1). No recommendation.

Special education rules contain definition of "behavioral disorders", according to Smith. Schroeder had been contacted by constituents who wanted guidelines for each category. Smith was willing to work with Schroeder on the matter. Tieden was interested in the advantage of these rules. Smith said, the advantage would be several sources of information as opposed to one professional opinion. Bradley pointed out that due process was available in the event a parent disagrees with a decision. No formal action taken.

HEALTH DATA
COMMISSION

Denise Horner, Attorney, Insurance Department, appeared on behalf of the Health Data Commission to review the following:

HEALTH DATA COMMISSION[465]
Organization and operation, ch 1; Administrative hearings, ch 2; Administrative rules, ch 3;
Declaratory rulings, ch 4 ARC 4189 F..... 10/23/83
Uniform hospital billing form, ch 5; Submission of data, ch 6; Data accessibility and confidentiality,
ch 7 ARC 4190 M..... 10/26/83

Also in attendance: Brice Oakley, Blue Cross.

Horner briefed the Committee on the rules intended to implement 1983 Iowa Acts, HF 196. After July 1, 1984, all third party payers will be required to submit data that is listed under the rules. Presently, all data in the rules is specifically mentioned in the statute with one exception--asking third party payers to provide information as to what group carrier the data comes from. Controversy is anticipated and a public hearing will be held November 17.

11/9/83

HEALTH DATA
COMMISSION
Concluded

Tieden asked Royce if changes were in line with 17A and he did not envision problems. Horner agreed that providers of data can review that data which they submit.

In response to Graf, Horner indicated the the Departments of Health, Insurance and Human Services have access to health data because it is compiled through those departments. It then goes to the Data Commission which transmits it to the Health Policy Corporation. No formal action.

EMPLOYMENT
SECURITY

James A. Hunsaker, III, Paul Moran, Joseph Bervid and Rosa Ervin, IPERS, represented Iowa Department of Job Service. The following agenda was before the ARRC:

EMPLOYMENT SECURITY[370]

Employer's contribution and charges, experience rate and negative balance surcharge, 3.40(2)"a" ARC 4121, also filed emergency ARC 4129 *N.F.F.* 10/12/83
Federal social security, contributions by employers, 9.7(1), 9.7(3) ARC 1128 *N.* 10/12/83

According to Bervid, the changes involve procedural matters. O'Kane referenced the preamble to 3.40(2) with respect to the "9.0 percent cap." Bervid responded that was spelled out in the legislation. This subrule addresses the differentiation in the rate itself. Employers have been notified pertaining to the 1984 rate.

In response to O'Kane, Moran said the Department tracks those who have bought extra ranks since 1978. He was willing to provide more information. No further questions.

WATER, AIR & WASTE DEPT Mark Landa was present to review the following:

WATER, AIR AND WASTE MANAGEMENT DEPARTMENT[900]

Waste water construction and operation permits, hazardous waste, 64.6(5)"b", 64.11, 141.1(1), 141.2 to 141.16 ARC 4130 *F.* 10/12/83

Landa highlighted changes which were made after the public hearing. Federal requirements were implemented; the Department will incur cost of public notice rather than the permit applicant.

Chiodo was told DWAWM is enforcing federal rules interpreted by the EPA--both have enforcement authority, but different interpretations. DWAWM has authority to adopt rules but not necessarily to interpret them.

O'Kane referenced a problem faced by a legislative colleague in attempting to get DWAWM to investigate possible pollution of a creek. Landa was unaware of the situation but pointed out the Department was understaffed in this area. He did not have information as to the breakdown of cost by federal-state. Tieden was told that Iowa has one hazardous waste disposal site in Black Hawk County but a move was in process to prohibit states from owning such sites.

AUDITOR OF
STATE

John Pringle appeared to review mutual deposits, 4.2(4), 4.2(5), ARC 4127, Notice, also filed emergency, ARC 4126 and 4127, IAB 10/12/83. Pringle noted the amendments address changes to early withdrawal penalties for state-chartered S&L's insured by the federal Savings and Loan Insurance Corp.

11/9/83

AUDITOR OF STATE Pringle restated what the new penalties will be for all insured associations across the country.

O'Kane was advised that the Auditor of State is directly responsible for regulating 25 state-chartered S&L's--from examination supervision to approval of branch offices.

Minutes O'Kane moved to dispense with reading of the minutes of the October meeting and that they stand approved. Motion carried.

Next Meeting The next meeting was scheduled for Monday, December 12.

No Reps No agency representatives were requested to appear for the following:

- COLLEGE AID COMMISSION[245]
Iowa science and mathematics grant program, ch 16 ARC 4111N..... 10/12/83
- ENERGY POLICY COUNCIL[380]
Contested case proceedings, 11.15 to 11.18 ARC 4108N..... 10/12/83
- LANDSCAPE ARCHITECTURAL EXAMINERS BOARD[540]
Agency address, examinations, fee schedule, 1.3, 2.1, 2.10 ARC 4202N..... 10/26/83
- PUBLIC BROADCASTING DEPARTMENT[645]
Organization, 1.1(2) ARC 4119N..... 10/12/83
- PROFESSIONAL AND OCCUPATIONAL RELATIONS COMMISSION[637]
Organization and administration, 2.1(2), 2.1(5), 2.2(3), 2.3(1), 5.2, filed emergency ARC 4167FE..... 10/26/83
- PUBLIC SAFETY DEPARTMENT[680]
Crime victim reparation, hearings, 17.16 ARC 4118F..... 10/12/83
- REGENTS, BOARD OF[720]
Personnel administration, 2.14(16), 3.90(2), 3.25, 3.39(16), 3.55, 3.69(1), 3.82, 3.33, 3.129, 3.127, 3.39(4) ARC 4129 ..F..... 10/12/83
- SECRETARY OF STATE[750]
Deputy commissioners of elections, forms, organization, complaints, manner of voting, 3.2, 4.2(2), 6.12(3), 7.2, 10.4(5) ARC 4110N..... 10/12/83

Open Records Graf brought up the matter of confidentiality of correspondence to and from elected officials. The Open Records Committee was considering this issue. It was Committee consensus that correspondence should be kept private.

Tapes The matter of availability of tapes of ARRC meetings to the public was discussed. After discussion, it was basically agreed that the tapes were public records. Schroeder moved that, in the future, anyone desiring to listen to or copy tapes of ARRC meetings must receive permission through the Chairperson or Vice Chairperson and be required to reimburse the actual cost involved as determined by the Chair. Motion carried.

Motion It was agreed that the motion should be included in the ARRC Rules of Procedure as published in the Iowa Administrative Code.

January Meeting The ARRC meeting was tentatively set for January 3 and 4, 1984. [Later changed to January 5 and 6]

Adjourned O'Kane moved to adjourn at 11:50 a.m. Motion carried.

Respectfully submitted,

APPROVED:

Barry & Rich

CHAIRMAN

Phyllis Barry
Phyllis Barry
Assisted by Vivian Haag