

**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 September 8 and 9, 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 Doyle, H. Kay Hedge, John P. Kibbie and Dale L. Tieden; Representatives Ruhl Maulsby, Janet Metcalf, David Schrader and Jane Teaford.

Also present: Joseph A. Royce, Legal Counsel; Phyllis Barry, Administrative Code Editor; Mary Ann Scott, Administrative Assistant; Caucus Staff and other interested persons. In attendance on September 9 was Paula Dierenfeld, Governor's Administrative Rules Coordinator.

Call to order Chairman Priebe convened the meeting at 10 a.m. with Corrections Department first on the agenda. Fred Scaletta represented the Department for the following:

CORRECTIONS

CORRECTIONS DEPARTMENT[201]

Personal clothing that can be purchased by or for inmates at the Iowa Correctional Institution

for Women, 20.5(2)"b," Filed ARC 3241A 8/5/92
OWI programs, 47.1 to 47.4, Filed ARC 3242A 8/5/92
Jail facilities, 50.1, 50.8(3), 50.8(8), 50.8(10), 50.9(12), 50.11(1)"d" and "e," 50.11(3), 50.13(2)"c"(3),
50.15(2), 50.15(6)"c," 50.15(8), Filed ARC 3240A 8/5/92

There were no recommendations by the Committee.

Minutes Pavich moved to approve the minutes of the August meeting. Motion carried.

A copy of objections to Agriculture rules still in place since 1975 were distributed for the Committee to review before being discussed later in the agenda.

Vice chairman Pavich in the Chair.

COLLEGE AID

Gary Nichols, Executive Director of the College Aid Commission, was present for the following agenda:

COLLEGE STUDENT AID COMMISSION[283]

EDUCATION DEPARTMENT[281]"umbrella"

Commission membership, 1.2(2), Notice ARC 3213A 8/5/92
Early disbursement of Stafford loans, 10.17(3), Filed ARC 3216A 8/5/92
Stafford loans — repayment requirements, 10.27, Notice ARC 3211A 8/5/92
Stafford loans — due diligence in collection, 10.33, Notice ARC 3215A 8/5/92
Stafford loans — offset against defaulted borrower's state income tax refund or rebate, 10.90 to 10.92,
Notice ARC 3217A 8/5/92
Eligibility for less-than-half-time students to receive prorated Iowa tuition grants, 12.1(3), 12.2(1),
Notice ARC 3214A 8/5/92
Iowa work-study program — off-campus employment, 18.13, Notice ARC 3212A 8/5/92

1.2(2) No questions or comments on ARC 3213A.

10.17(3), 10.27,
10.33, 10.90-10.92 Amendment to 10.17(3) relating to early disbursement of Stafford loans was before the Committee. Kibbie was advised of major changes made at the federal level in the Stafford, Supplemental, and Parents Loan Program. Nichols added

**COLLEGE AID
(cont.)**

that the next three rules on the agenda (ARCs 3211A, 3215A, and 3217A) had been submitted to the federal department for review. An extensive summary was being drafted by federal authorities as to how changes will be implemented in 1993.

Maulsby commented on the complicated loan process.

Tieden inquired about potential adverse effects on students now receiving the loans. Nichols suspected this would probably be the basis for the Commission's budget request for next year because federal changes will impact the state funded grant programs. There could be some redistribution of limited funds and the amount of federal funding should go up. The primary change was the exclusion of farm net worth and home equity in the calculation of student eligibility which should benefit Iowans.

12.1 et al.; 18.13

There were no questions on ARCs 3214A or 3212A.

Priebe in the chair.

INSURANCE

The Division was represented by Daniel Winegarden, Deputy Commissioner; Kimberlee Greiner, Attorney; Roger Strauss, Life and Death Bureau Chief; and Karen L. Hansen, Health Affairs Coordinator. Also present were Walter Tomenga, Vice President, Farm Bureau; David M. Morrifield, Executive Vice President, Iowa Chiropractic Society; Jerry Fitzgerald, Lobbyist, Iowa Chiropractic Society; Sandra Smitherman and Kevin Van Dyke, Blue Cross/Blue Shield. The following agenda was before the Committee:

INSURANCE DIVISION[191]

COMMERCE DEPARTMENT[181]"umbrella"

"Financial Review of This Policy" form — notice to applicants aged 60 or over, 15.69(5), 15.71,

Notice ARC 3219A 8/5/92

SPECIAL REVIEW—Chiropractic coverage in health insurance policy, generally IAC

15.69, 15.71

Winegarden gave a brief overview of amendments to 15.69(5) and 15.71.

Kibbie and Winegarden discussed claims filed by policyholders aged 60 years or older who switch companies and may or may not have preexisting conditions. Winegarden advised that over 65 years of age, Medicare supplemental insurance is in effect and for one year after, a person may obtain this insurance without any individual underwriting.

Special Review

The special review of BC/BS policy limitations in health insurance benefits created for Farm Bureau members was before the Committee.

Winegarden gave a lengthy presentation regarding the new limitation on benefits for treatment of musculoskeletal ailments. The limitation was initiated as a result of overutilization of the benefits. Royce raised question as to the definition of "overutilization." According to Winegarden, review of claims revealed 173 visits in one year by a patient receiving chiropractic care. Another patient made 73 such visits which Winegarden reasoned would be overutilization. The new policy developed by BC/BS at the request of Farm Bureau limits the number of visits to 15 per year.

Priebe opined the limitation was discriminatory and that all groups would benefit from cost reduction if this limitation were applied to them.

**INSURANCE
Special Review
(Cont.)**

Winegarden spoke of the extensive review of the matter on a factual basis in order for BC/BS to develop the policy form proposal. He elaborated on the applicable statute and quoted statistics and data to substantiate the decision by the Insurance Division to approve this policy. Winegarden emphasized that they found no evidence of discriminatory intent on either the part of BC/BS or Farm Bureau and that the policy was limited to the Farm Bureau program.

Schrader questioned the validity of statistics in Winegarden's letter to Kevin Van Dyke, BC/BS, dated July 10, 1992, and was also concerned about the discrimination aspect. Winegarden stated that musculoskeletal treatment was not unique to chiropractors. The Iowa Chiropractic Society was consulted regarding the process and decision on this matter. The Commission's actuary reviewed the statistics furnished by BC/BS. It was his professional opinion that there was evidence of overutilization creating reasonable basis for seeking cost containment. Schrader took the position that a case review would have been preferable to a blanket policy based on these small numbers. Winegarden reiterated that the Division found evidence of overutilization and that the limitation of 15 visits was reasonable.

Responding to Doyle, Winegarden said the premiums would not change due to the limitation. The Division applies a strict actuarial rule that savings must be demonstrated before premium changes.

Priebe recognized escalating health care costs but preferred a care review process in this situation.

Maulsby interjected that he thought the limitation should be reflected in lower premiums and he suggested limitation per "accident" or event rather than per year.

Hedge noted concerns expressed by Farm Bureau members regarding the two different policies they had been offered with a difference of approximately \$2,000 per year in premiums. Winegarden could not address this inquiry but explained the different types of policies being offered. He suggested that a complaint be filed with the Division of Insurance by the consumer to initiate an inquiry.

Kibbie asked if there were any basis that farmers file more claims than persons in other occupations. Winegarden was unsure about farmers, in particular, but mentioned that Iowans in general were more prone to seek chiropractic care. Kibbie suspected that other health care providers ultimately would be singled out on overutilization. Winegarden responded that other areas of care have been subjected to strict cost oversight. He also commented on the expanded use of "managed care" as cost saving because it avoids inappropriate and unnecessary care.

Priebe reasoned that the estimated "1,000 abusers" was a minimal number to have singled out this group of health care providers. He commented on "overutilization" by Title XIX recipients and recognized a need to address the problem in general.

Fitzgerald, representing the Iowa Chiropractic Society, reported that the Insurance Division had been very cooperative in allowing the procedure for appeals to take place. The Society does disagree fundamentally regarding the strict limitations.

**INSURANCE -
Special Review
(Cont.)**

Tomenga, Vice-president of Farm Bureau, reported that their health care premiums had increased 34 percent annually over the past few years and it was evident that something should be done. The chiropractic area was one of 19 different components that was modified to result in a considerable savings.

Doyle inquired about any major cuts in the 19 components mentioned and if other cuts were anticipated. Tomenga could foresee a 10 percent increase in premiums due to tobacco use. Obstetrics was another area of escalating costs.

There was consensus that the Committee await the District Court decision before taking any formal action. See also pages 5279 and 5288.

Recess

Chairman Priebe recessed the Committee for lunch at 11:45 a.m. and Vice Chairman Pavich reconvened the meeting at 1 p.m. for the following Human Services agenda:

**HUMAN
SERVICES**

HUMAN SERVICES DEPARTMENT[441]

Closure of Des Moines district office, addition of regional office, 1.3(2), 1.3(2)"f," 1.4, 3.5(2), 65.17,
Filed ARC 3247A 8/5/92

Commission on children, youth and families, 1.9, rescind 425 — chs 2 and 7, Notice ARC 9185

Terminated, also Notice ARC 3277A 8/19/92

Application for aid, 40.7(1), 40.7(3), Filed ARC 3248A 8/5/92

Removal of requirement that residential care facilities submit six-month cost reports to department,
reinstatement of policy governing reimbursement to state-owned intermediate care facilities for the
mentally retarded, 54.3(3), 82.5(16)"h," Notice ARC 3261A 8/19/92

Administration of food stamp program, 65.1, 65.3, 65.9, 65.19(2)"c," 65.19(5) to 65.19(7), 65.19(11),
65.19(14), 65.19(21), 65.29(4) to 65.29(6), 65.30(3), 65.37 to 65.41, Notice ARC 3282A 8/19/92

Specified low-income Medicare beneficiaries, 75.1(34), Notice ARC 3280A 8/19/92

Implementation of changes in Medicaid policy, 76.9(7), 76.9(8), 78.1(2)"c," 78.1(3), 78.1(21), 78.21, 78.23,
78.39, 78.40, 86.1, 86.17, 86.18, Notice ARC 3239A, also Filed Emergency ARC 3243A 8/5/92

Consultation by pharmacist, 78.2(6), Notice ARC 3245A 8/5/92

Correction of form name and number used to bill Medicaid for oxygen services, removal of home health
agencies from copayment language, 78.10(2)"a"(1), 79.1(13)"c," Notice ARC 3278A 8/19/92

Rehabilitation agency services; maintenance therapy; diagnostic or trial therapy; reevaluation; periodicity
schedule for early and periodic screening, diagnosis and treatment health screens; periodicity schedule for
hearing, vision, and dental screens, 78.18(3), 78.19(1)"a"(2) to (7), 78.19(1)"b"(1), (5), (7), (8), (10), (12),
(15) and (16), 78.19(1)"c"(1) and (2), 78.19(1)"d"(2), (5) and (6), 78.19(2)"a," Filed ARC 3244A 8/5/92

Medicaid waiver services, 83.3(5), 83.4(1)"b," 83.23(5), 83.24(1)"b," Filed ARC 3249A 8/5/92

Medically needy application, 86.2, 86.2(5), Notice ARC 3246A 8/5/92

Family planning services, 173.1, 173.2, 173.4, Notice ARC 3250A, also Filed Emergency ARC 3251A 8/5/92

Release of child abuse information to subjects of child abuse investigations, 175.8(1), 175.8(3),
175.8(4)"b" and "c," 175.8(6) to 175.8(8), Filed Emergency After Notice ARC 3252A 8/5/92

Dependent adult abuse, 176.1, 176.2, 176.3(1)"b," 176.3(3), 176.6(1) to 176.6(6), 176.6(8), 176.7, 176.8,
176.10(1), 176.10(2), 176.10(3)"b," 176.10(3)"b"(2) to (4), 176.10(3)"e"(7), 176.10(4), 176.10(6),
176.10(9), 176.10(10), 176.13(4), 176.15(1), 176.15(2), 176.16(1)"b," Notice ARC 3281A 8/19/92

Medicaid policy and rates, including immunization replacement program, Medically Needy certification
period, phototherapy bilirubin lights, Iowa Veterans Home per diem, 54.3(15), 77.37(26)"d," 78.1(2)"e,"
78.1(3), 78.10(2)"b," 78.22, 78.23, 78.41(1)"c," 79.1(2), 79.1(7), 79.1(9)"d," 81.6(16)"a," "c," and "e,"
82.5(11)"e"(4), 82.5(16)"c" and "g," 83.67, 86.1, 86.17, 86.18, Filed ARC 3301A 9/2/92

Enhanced services for high-risk pregnancies, 78.1(22), 78.21, 78.23, 78.25, 78.25(2), 78.25(3), 78.29(2),
78.30, 78.39, Notice ARC 3299A, also Filed Emergency ARC 3300A 9/2/92

Child support recovery program, 95.1, 95.11, 96.2, 96.13, 96.15(5), 98.3(2)"a," Filed ARC 3296A 9/2/92

Licensing and regulation of foster family homes, 113.18(2), Filed ARC 3325A 9/2/92

**HUMAN
SERVICES (Cont.)**

Policy, rates, and income guidelines for social services, 130.3(1)"d"(2), 130.3(1)"e," 130.3(3)"z," 150.1, 150.2(3), 150.2(4), 150.3(5)"a"(8), 150.3(5)"p," 150.3(5)"r," 150.3(5)"u"(3), 150.6, ch 153 title, division I preamble, 153.1, 153.2(4), 153.3(1), 153.3(3), 153.4(2), 153.4(3), 153.5(2) to 153.5(6), 153.6, 153.11 to 153.59, ch 157, rescind ch 132, Filed ARC 3326A 9/2/92

Foster care, 156.6(1), 156.9(2), 156.12(1), 156.20, 202.1, 202.2(5), 202.2(5)"a," 202.3(1) to 202.3(4), 202.6(3), 202.6(5), 202.7, 202.8(1), 202.8(2), 202.8(5), 202.9(1)"a"(9) and "b," 202.9(2)"b," 202.9(3), 202.13(3), 202.16(1)"f," 202.17, Filed ARC 3306A 9/2/92

Family development and self-sufficiency program (FaDSS), 165.3(3), 165.3(4), Filed ARC 3298A 9/2/92

Subsidized adoptions, 201.5(9), Filed ARC 3297A 9/2/92

Those in attendance from the Department included Mary Ann Walker, Policy and Procedures; Gary Gesaman, Bureau Chief; Cindy Homan; Kathy Ellithorpe; and Sally Nadalsky.

1.3(2) et al.; 1.9;
40.7; 54.3, 82.5
Ch 65

Walker summarized rules in ARCs 3247A, 3277A, 3248A and 3261A.

Amendments to Chapter 65 relating to the food stamp program were reviewed.

Homan and Walker advised Teaford that federal regulations provide option to eliminate monthly reporting by certain households which include homeless or elderly residents.

75.1(34)

No comments on ARC 3280A.

76.9 et al.

In ARC 3243A, Tieden was advised why psychiatrists were excluded from the definition of physician for purposes of utilization review.

78.2(6)

Amendments to 78.2 relating to consultation by pharmacists were reviewed. Tieden opined that this made it mandatory for pharmacists to provide "doctor services." Walker reminded that optional consultation was contained in OBRA of 1990 in an attempt to eliminate complications resulting from the interaction with other drugs.

78.10, 79.1

In ARC 3278A, Maulsby was informed that oxygen is an optional service and there is still copayment on it.

78.18(3) et al.

Amendments to Chapter 78 in ARC 3244A were reviewed. Nadolsky shared with the Committee comments received from the Osteopathic Society.

83.3; 86.2; Ch 173;
175.8; Ch 176

ARCs 3249A, 3246A, 3251A, 3252A and 3281A were reviewed with no questions or recommendations.

54.3 et al.

In review of amendments in 54.3(15) et al. pertaining to changes in Medicaid policy and rates mandated by the General Assembly, Kibbie inquired about the monetary affect of excluding the Veterans Home in determining the seventieth percentile per diem rates. Gesaman responded that 436 nursing facilities were used in the compilation to establish the 70th percentile maximum. Exclusion of the Veterans Home would never increase the maximum rate, but it could decrease it somewhat.

Gesaman informed Tieden that the Consumer Price Index of 3.1 percent was followed in determining the spending but it varies each year. He added that some providers do not consider the CPI as a viable or valid basis in determining increases. Walker interjected that without the increases, the Department would be out of compliance and lose federal participation. The 70th percentile was \$52.31.

- HUMAN SERVICES (Cont.)** Gesaman indicated that rates do not differ for rural or urban areas but the Department does analyze and research the differences for their own information.
- 78.1 et al. to 165.3 No recommendations, comments or questions were posed on ARCs 3300A, 3296A, 3325A, 3326A, 3306A, or 3298A.
- 201.5(9) Regarding subsidized adoptions in ARC 3297A, Kibbie was informed there was no change in the sibling allowance.
- PROFESSIONAL LICENSURE** In attendance from Professional Licensure for the following agenda were Susan Osmann, Barb Charls, and Harriett L. Miller:

PROFESSIONAL LICENSURE DIVISION[645]

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

Barber examiners — investigation of complaints or malpractice claims, alternative procedures and settlement, informal settlement, methods of discipline, 20.203, 20.204, 20.212, 20.212(1), Filed ARC 3266A 8/19/92

Licensure of marital and family therapists and mental health counselors, 30.2(6), Notice ARC 3275A, also Filed Emergency ARC 3276A 8/19/92

Chiropractic examiners, 40.11(1), 40.11(2), 40.11(3)"a," 40.12(7), 40.13(1)"e" and "h," 40.13(6), 40.14(7), 40.14(8), 40.16(1), 40.24(31), 40.24(32), 40.36(2), 40.38(3), 40.73(1)"b," Filed ARC 3269A 8/19/92

Chiropractic examiners — passing grade for practical examination, 40.13(8), Filed Emergency After Notice ARC 3270A 8/19/92

Cosmetology, chs 60 to 68, Notice ARC 3238A 8/5/92

Physical therapy examiners, physical therapist assistants, 200.2(2), 200.2(5) to 200.2(8), 200.3(1)"c," 200.7(1), 200.7(2)"a," 200.9(8), 202.2(2), 202.2(5) to 202.2(8), 202.3(1)"c," 202.8(1), 202.8(2)"a," 202.10(8), Filed ARC 3237A 8/5/92

Psychology examiners — fees, 240.10(2), 240.109(3), Notice ARC 3267A 8/19/92

Physician assistants, 325.2, 325.4(1)"b"(1), 325.4(2), 325.4(3)"e," 325.6(1)"t" and "z," 325.10(3)"w," 325.12(5)"a" and "c" to "e," 325.12(6)"b," 325.12(7), 325.12(8), Notice ARC 3268A 8/19/92

Hearing aid dealers, 120.1(4), 120.3, 120.6(4), 120.212(11)"d," Notice ARC 3302A 9/2/92

Psychology examiners, 240.10(1), Notice ARC 3303A 9/2/92

Speech pathology and audiology examiners — investigative and informal settlement procedures, 301.103, 301.110, Filed ARC 3304A 9/2/92

20.203, et al; 30.2(6) Osmann reviewed ARCs 3266A and 3276A with no comments or recommendations.

Chs 60-68 Chairman Priebe announced that ARCs 3269A and 3270A would be temporarily deferred and the proposed cosmetology rules in Chapters 60 to 68 (ARC 3238A) were discussed.

Osmann introduced James O'Neill, Chairman of the Cosmetology Board. O'Neill pointed out an omission in the statement regarding cosmetology in Royce's Rules of Interest. In the last paragraph, the course of study for a nail technologist should be 200 hours of theory in addition to 125 hours of practical course for a total of 325 hours.

Robert Kreamer, Attorney and Lobbyist for cosmetology schools, addressed the Committee concerning his involvement in passage of legislation (SF 3253) relating to cosmetology. He noted there was some uncertainty among practicing professionals and schools of cosmetology relating to the licensing requirements. The purpose of this legislation, in part, was to allow some to obtain a "sublicense" in a narrower field with fewer hours (less than the 2100 hours). He elaborated on the requirements of electrology in 60.5(3) for theory, demonstration and lectures to be 200 hours, yet in 60.2(2), under cosmetology Curriculum, electrology theory was listed as 50 hours. He thought this was

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LICENSURE
Ch 60-68 (Cont.)

more realistic. Kreamer then noted reference to 60.5(3) in subrule 60.2(2)"a" under Supervised Practical Instruction, electrology practice. He repeated that this sublicense should be an overview touching the particular subject matter and not lift, hour for hour, into the general license requirements. The same would be true for the other subject areas such as esthetics or nail technology.

Kreamer clarified for Metcalf that schools want to avoid a mandate to provide 325 hours of electrology, for example, if the student wants a 2100-hour cosmetology license. For a sublicense, this would be the requirement, but for the general degree, (2100 hours), the 325 hours in electrology would not be required.

Tieden failed to see why the number of hours should vary.

Marilyn Rentz, owner of La'James Colleges, used middle school as example of the concept, where a well-rounded education is provided. She contended that the core education should not be required to contain the specialist requirements.

O'Neill reported that the Board's position was that these rules reflect the law which has all of the disciplines described in the definition of cosmetology.

O'Neill continued that many comments were received at the public hearing on August 17 and minor changes will be made. The Board, however, wants to retain the requirements for instruction in all aspects of cosmetology. They recognize that the core curriculum requirements would be an extreme change in the current teaching practices but not unworkable.

Charles Fiegen, Capri College, Dubuque, elaborated on the core life science requirements. O'Neill explained composition of the Board—three licensed cosmetologists and two public members. In addition, the new law will allow a licensed instructor who has no financial interest in a school to sit on the Board as well as one person representing the minor disciplines license. There are 28 cosmetology schools in Iowa.

Kreamer spoke of the value of having a Board member from the educational profession.

Osmann clarified that the core life science curriculum was outlined in 60.9(1) and was the same for all areas.

Royce asked about the status of nail technologists who were currently practicing. O'Neill said the law provides documentation and waiver of curriculum for those practicing without benefit of a license on or before July 1, 1992.

Royce recommended inclusion of that status in the rules. O'Neill could see no purpose for this but Metcalf favored making this information more accessible to the public. Osmann interjected that 60 applications had been sent out under the waiver but very few had been returned.

Kibbie inquired as to the effect of these rules, if adopted. He wondered if tuition would increase and would there be higher costs to the educational institutions. He was also interested in the curriculum of surrounding states and how it compares to Iowa. Fiegen stated that 4,000 plus salons were licensed in the state and he estimated 11,000 to 12,000 licensed hairdressers, of which about 98 percent make their living dressing hair. Feigan stressed that the specialty course concept was intended to allow employment to people who

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Ch 60-68 (Cont.)

wanted the specialty, not to change the 2100-hour cosmetology course requirements.

Fiegen's remarks were echoed by Mary Jackson, Finesse Imagemakers; and Joyce Smith, Design Masters Salon, Spencer.

Ruth Cooperrider, Legal Counsel, Citizens Aide/Ombudsman, recalled previous rules made a disparity between licensed cosmetologists and those with specialties. She concurred with the Board's proposed rules which would allow everyone to be equally qualified. Cooperrider also voiced support for a waiver process for nail technology.

Brief remarks were also made by Glen Tull, Hair Tech, Creston and Kay Reinhardt, Manager, Bernel College of Cosmetology, Ames. Edna Troutman, Windsor Heights Styling Salon Institute, spoke of the importance of consumer protection.

Metcalf was supportive of "grandfathering" nail technologists.

Hedge pondered whether the law makes it impossible to sustain the quality of education that was expected.

O'Neill pointed out that the revised law states that the cosmetology course shall be 2100 hours—previously it stated "at least 2100 hours."

In response to Schrader, O'Neill emphasized that staffing requirements at the schools had not changed. The Board has been very lenient when inspections are made. For example, if one instructor left for lunch leaving only one on duty, a violation would not be written. Fiegen quoted from Code §157.8 [repealed and substituted; 1992 Acts, SF 2353, §7] which states "The number of instructors for a school shall be based upon total enrollment, with a minimum of two instructors employed on a full-time basis for up to 30 students and...." He was satisfied with the law as written but voiced opposition to the sentence in 61.4(2) which read: "At least 2 instructors shall be present at all times the school is open." Schrader would find this change from the law objectionable if it were reflected in the Filed rule.

Metcalf favored adjustment of the curriculum so that the basics are addressed first to ensure that cosmetology students can become professional with a minimum amount of time and money. O'Neill reiterated that the law now states that all of the disciplines must be incorporated within cosmetology and the Board has attempted to do this. They may need some direction from the legislature.

Priebe suggested the rules could be carried over until the next session of the legislature to allow review of possible problems with the law.

There was consensus that all factions should continue to work toward resolution of the problem. No action.

40.11(1) et al.

F. Dow Bates, Chairman of the Chiropractic Board, explained chiropractic rules Filed in ARC 3269A. In response to Tieden, Osmann explained disposition of fees which go automatically to the general fund. They work from an appropriation and every year fees exceed the appropriation. Board members pay their own expenses when attending regional or national meetings.

- PROFESSIONAL LICENSURE (Cont.)**
40.13(8) An amendment to 40.13(8) which changes the passing grade for the chiropractic examination was presented by Bates.
 Doyle brought up the earlier discussion regarding grievances on overutilization of chiropractic services for purposes of insurance. Bates replied that the Board has appointed a Utilization and Cost Review Committee for complaints.
- 200.2 et al.** In review of amendments to Chapters 200 and 202 pertaining to physical therapists, Tieden was advised that Iowa does not have reciprocity with other states but provides licensure by interstate endorsement.
- 240.10, 240.109** No questions or comments on ARC 3267A.
- Ch 325** Mary Frances Winegardner, Physician Assistant Examiners Board, explained amendments to Chapter 325. Discussion followed on how evidence was provided that a physician was eligible to supervise a physician assistant. Winegardner explained that under the proposal, the seven-member board would now perform the function of the discipline committee.
- 120.1(4) et al.** There was brief discussion of proposed amendments relating to hearing aid dealers.
- 1975 Objection lifted — 120.3** Barry distributed copies of two objections which were imposed on 120.3 and 120.11 in December 1975.
- Motion** Priebe moved to lift the objection on 645—120.3(154A) [Prior to 5/18/88, 470—145.3], relating to reciprocity since Iowa now honors higher standards of other states. Motion carried.
 Priebe suggested retention of objection to 645—120.11 [Prior to 5/18/88, 470—145.9] until the Board adopts a procedure to be used in an investigation. There was unanimous agreement of the Committee.
- 240.10; 301.103, 303.110** No questions or recommendations on ARCs 3303A or 3304A.
 Priebe in the chair.
- Committee Business – Rules Conference** Priebe noted that the Council on State Governments was sponsoring an Administrative Rules Review Conference in Des Moines on December 3, 1992, similar to the one held last year in Omaha.
- December meeting** There was unanimous agreement that the December ARRC meeting should be rescheduled for December 1 and 2 to avoid an extra trip. The Christmas party was also rescheduled to December 1.

PUBLIC HEALTH Carolyn Adams, Administrative Rules Coordinator and Michael Magnant, Environmental Engineer, were present for the following agenda:

PUBLIC HEALTH DEPARTMENT[641]
 Lead exposure, 1.2(1)"e," 3.5, 3.5(1)"a," Filed ARC 3257A 8/5/92
 State plumbing code, ch 25, Filed ARC 3222A 8/5/92
 General provisions, ch 38, Filed ARC 3224A 8/5/92
 Registration of radiation machine facilities, licensure and transportation of radioactive materials, ch 39,
Filed ARC 3225A 8/5/92
 Standards for protection against radiation, ch 40, Filed ARC 3226A 8/5/92
 Safety requirements for the use of radiation machines and certain uses of radioactive materials, ch 41,
Filed ARC 3221A 8/5/92
 Rule reference corrections in ch 42 to conform to new ch 38, 42.1(11)"f," 42.1(13), 42.2(4)"b," 42.2(7)"f,"
 42.2(10), 42.3(7)"f," 42.3(10), Notice ARC 3255A 8/5/92
 Rule reference corrections in chs 43 and 44 to conform to new ch 38, 43.4(5), 43.4(6), 44.4(1), 44.4(6),
Notice ARC 3254A 8/5/92
 Radiation safety requirements for industrial radiographic operations, ch 45, Filed ARC 3223A 8/5/92
 Rule reference corrections in ch 46 to conform to new ch 38, 46.4(2)"b," 46.4(3)"d," Notice ARC 3253A 8/5/92
 Certificate of need application fee, 202.4(3)"a," Notice ARC 3256A 8/5/92
 Radiation — general provisions, amendments to 38.9 and Appendix A, Filed Emergency ARC 3305A 9/2/92

1.2(1), 3.5

No questions re ARC 3257A relating to lead exposure.

Ch 25

Adams relayed that revised Chapter 25 would comply with the Uniform Plumbing Code, 1991 Edition.

It was noted that opposition had been expressed to the change to allow use of polybutylene pipe and tubing for potable water distribution—25.4(21). Magnant explained that the State Plumbing Code was minimum standards that could be followed by a city. A city can modify to make it more stringent. Magnant continued that all potable water pipe was tested third party and NSF International served as the primary testing agency. Magnant concluded that previous problems with plastic had been attributed to fittings and this has been corrected. No Committee action.

There were no recommendations on the remainder of the agenda.

Pavich in the Chair.

UTILITIES

Present from the Division were Diane Munns, Allan Kniep, Vicki Place, and Cindy Dilley from General Counsel's Office and Don Stursma, Engineer. The following agenda was discussed:

UTILITIES DIVISION[199]
COMMERCE DEPARTMENT[181]"umbrella"
 Accounting, bill form, and cost studies for AOS companies and other interexchange utilities, 16.5(2)"d,"
 22.4(3)"c"(5) and (6), 22.12(1), 22.13(1), 22.19(6), Notice ARC 3207A 8/5/92
 Electric utility service and safety, 25.2(1), 25.2(2)"b" to "d," Filed ARC 3208A 8/5/92
 Electric utility service and safety — grain bins, 25.2(3), Filed ARC 3209A 8/5/92
 Reorganization of functions, 1.5, 1.5(4), 1.5(6), 1.5(7), Filed Emergency ARC 3307A 9/2/92
 Statement of financial accounting standard no. 106, 16.9, Notice ARC 3308A 9/2/92

16.5(2) et al.

Kniep explained amendments regarding accounting and billing practices in ARC 3207A. Kniep agreed with Schrader that alternative operator services (AOS) would be predominantly by commercial credit cardholders such as Visa or Master Card.

25.2(1), (2)

With respect to amendments in 25.2 (1) and (2), Stursma elaborated on the relationship between clearances and field conditions understood by CIPCO and Iowa Power who recognize the need for adjustment of field measurements.

UTILITIES (Cont.) Dilley explained amendments regarding electric utility service and safety near grain bins in ARC 3209A. Stursma and Kibbie discussed the placement of the meters as well as location of the lines.

25.2(3)

1.5 No recommendations on ARC 3307A—revisions in 1.5.

16.9 Place briefed the Committee on new rule 16.9 pertaining to standards under which the Board would recognize accrual accounting for postretirement benefits other than pensions. Place pointed out that the rule making was commenced in response to petition filed. The Board was not necessarily in agreement. Questions were raised as to impact on the ratepayers. Place was willing to provide information.

Recess Pavich recessed the meeting at 3:35 p.m.

Reconvened Chairman Priebe reconvened the meeting Wednesday, September 9, 1992, at 8:45 a.m. All members and staff were in attendance. Chairman Priebe called on Diane Bolender, Director, and John Pollak, Communication Services Administrator, Legislative Service Bureau, to provide an update on the computerization of the Iowa Administrative Code, which comprises approximately 10,500 pages.

IAC Computerization

Bolender noted that Sheldon Cohen, the MMA Consultant, hired to advise the Bureau on this project had completed an RFP draft.

Pollak offered background on selection of the Consultant and noted that the administrative rules process involves the Executive as well as the Legislative branches of government. Cohen had no ties with vendors but worked full time with government and private, nonprofit entities. Pollak continued that the Consultant conducted a two-day workshop with Executive branch agencies, spoke with the Bar Association and private attorneys who were users of the system. He also spent time with those directly involved with the rules process. In his RFP, Cohen proposed a way to accomplish the goal and estimated \$2 to \$4 million for hardware and software costs and annual upkeep.

Pollak indicated that the Bureau asked for alternate approaches because of this high cost. The RFP which was distributed six or seven weeks ago was being reviewed by the different factions involved. Cohen has estimated a cost of \$250,000 for an entry-level system. Such a system would accommodate 30 to 60 users in the Legislative Branch and the Governor's Administrative Rules Coordinator. No decision has been made on whether to use the entry level system or the state government-wide approach that would make the same electronic capability available to all branches of government and probably encompass outside users as well.

Pollak concluded that accuracy of this process was of utmost importance and would probably take several months.

Tieden was advised that distribution of the IAC was less of a problem than the updating, which occurs every two weeks.

Bolender mentioned a CD Rom as one alternative to producing rules electronically and providing search capabilities.

IAC Computer-
ization (Cont.)

Bolender stressed that the Consultant was paid from money in the LSB printing account and the legislative Council authorized use of money received from Mead Data Central for two sets of the Code of Iowa in electronic format—about \$25,000.

It was anticipated that a charge would be made for researching done on the computer. Priebe viewed that approach as a must. Priebe wondered if state agencies could be required to pay and Bolender replied that the Administration Committee of the Legislative Council had studied this issue for both the Code of Iowa and Iowa Administrative Code.

Schrader suspected that the project was focused on disseminating information and less concerned about computerizing and compiling that information. He referred to the interactive system of all computers in the complex and hoped that the major portion of the cost was to set up this system. Pollak said that it was. Schrader was informed that the system called for in the RFP would not eliminate paper copy.

Dierenfeld asked Pollak to describe the entry-level system and the empire system. Pollak said the entry level system would improve public access, provide archiving and search and retrieval but would not fully automate the rules process.

Priebe inquired about the staff required for research and their responsibilities for accuracy of the information. He reasoned that it would be supplying another source of information at taxpayers expense.

Royce emphasized that many people have no access to any of this information. Computerization would simplify availability.

Dierenfeld interjected that the system would not be available to the key players in this process—the agencies.

Hedge asked if the entry-level system could be updated to the more extensive system. Pollak emphasized the utmost importance of this approach.

Maulsby opined that the new system would not reduce staff and that the consultant should close the gap between the \$2 and \$4 million.

Bolender interjected that much would depend upon the vendor and how they could utilize the existing equipment.

Schrader wondered about an outside entity selling subscription services. Bolender replied that the Consultant has asked that copywriting of the IAC be considered.

Question was raised as to impact the renumbering of many sections of the Code of Iowa would have on the rules. Barry said that changes in statutory authority and implementation statutes would constitute major revision in the IAC.

Pollak estimated three or four months to complete the RFP process and receive competitive proposals and if authorized by the Legislative Council, another year after that to have an electronics system operational. It was noted that the Administrative Code Division has been producing the Iowa Administrative Bulletin electronically for over a year at a cost savings. Barry mentioned that 258 pages of Public Health rules on radiation were produced in her office for the IAC by utilizing the diskette furnished for the Bulletin.

IAC Computer-
ization (Cont.)

IAB Publication
of Memo

Motion

The Committee thanked Bolender and Pollak for their presentation.

Barry asked for ARRC authorization, pursuant to Iowa Code section 17A.6, to publish in the Iowa Administrative Bulletin a memo directed to all administrative rules coordinators. The memo would explain the PC system being used by the IAC Division and advise agencies of their role in ensuring timely publication of the IAB. Schrader moved that the Committee authorize publication in the IAB a memo to all administrative rules coordinators as outlined by Barry. Motion carried.

AGRICULTURE

Ron Rowland, Regulatory Director, and John Schlitz, Veterinarian, presented the following agenda:

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Pseudorabies disease — low-incidence state or area defined, movement of feeder pigs, 64.147, 64.154(4)"b,"

Notice ARC 3236A 8/5/92

Pseudorabies disease — controlled vaccinated herd, type of vaccine approved, program counties added, identification for feeder pigs, monitored herd test requirements, 64.147, 64.152, 64.153(1), 64.154(3)"b,"

64.156(2)"a," 64.160, 64.163, Filed ARC 3265A 8/19/92

64.147, 64.154(4)

Rowland reviewed the Noticed rule on pseudorabies disease in 64.147 and 64.154(4)"b." He noted that the new language in 64.154(4)"b" addressed the objection voted by the Committee at its May meeting. Rowland indicated that the Department would file the rule tomorrow if the Committee found it to be acceptable.

Priebe asked who would decide what is "little or no incidence of pseudorabies" in 64.147 and Rowland said this was basically a nationwide standard.

Doyle asked if the vacancy for a veterinarian in northwest Iowa had been filled. Rowland indicated that recently the Department laid off 21 employees and that position was not targeted to be filled. Rowland added that the Department was redefining the lines for staffing purposes so veterinarians would be assigned portions of that area.

Priebe was informed that the state currently employed five veterinarians. Rowland knew of no active brucellosis herds but there were two suspects. He saw a need for six veterinarians.

Motion
Objection lifted

Schrader moved to lift the objection voted on 64.154(4)"b." Doyle asked to clarify the motion that the objection be lifted when the revised rule becomes effective. Motion carried.

64.147 et al.

There was brief review of amendments to Chapter 64. No recommendations.

CIVIL RIGHTS

Ronald Pothast, Director of Administration, Civil Rights Commission, presented new 161—ch 9, "Discrimination in Housing," Filed as ARC 3220A in IAB 8/5/92. There were no Committee recommendations.

CREDIT UNION James Forney, Superintendent, reviewed the following agenda:

CREDIT UNION DIVISION[189]

COMMERCE DEPARTMENT[181]"umbrella"

Maintenance of allowance for loan losses account, 18.4(5), 18.5, 18.5(5), Notice ARC 3273A 8/19/92

Amend, modify or reverse acts of the board of directors — mailed ballot voting procedure, ch 19,

Notice ARC 3274A 8/19/92

18.4, 18.5 In ARC 3273A. Tieden asked for clarification as to the meaning "experienced method" in 18.4(5).

Forney explained that the adjustment method requires that they look at current delinquencies and other causes of problems in the loan portfolio. The experienced method allows them to take a historical look at loan losses. Credit unions currently use a combination of the two.

Ch 19 No questions regarding new Chapter 19.

Educ. Examiners The representative for Educational Examiner Board was unable to attend because of an emergency situation. Some members had questions for the Board and it was noted that the rules would go into effect before the October meeting.

Motion Kibbie moved a 70-day delay on ARC 3279A and that it be placed on the
Delayed 70 Days October agenda. Motion carried.

EPC In attendance were Diana Hansen, Attorney, and Ralph Turkle, DNR Engineer, to review the following agenda:

ENVIRONMENTAL PROTECTION COMMISSION[567]

NATURAL RESOURCES DEPARTMENT[561]"umbrella"

Water quality standards — date of rule-referenced document, water use designations, 61.2(5), 61.3(5)"e,"

Filed ARC 3271A 8/19/92

Water quality standards — certification for regional permits, 61.2(2)"h," Notice ARC 3324A 9/2/92

61.2(5), 61.3(5) Amendments to 61.2 and 61.3 were reviewed. Priebe and Turkle discussed recent legislation to require storm water monitoring.

61.2(2) No recommendations for revision in 61.2(2)"h."

NATURAL RESOURCE In attendance for the Commission were Arnie Sohn, Chief, Recreational Programs and Marion Conover, Chief, Fisheries Bureau. The following agenda was reviewed:

NATURAL RESOURCE COMMISSION[571]

NATURAL RESOURCES DEPARTMENT[561]"umbrella"

Lands and waters conservation fund program, 27.2(1), 27.5(6), 27.6(3), 27.7, 27.10, Filed ARC 3310A ... 9/2/92

Wildlife refuges, 52.1(1), 52.1(2)"b," Filed ARC 3323A 9/2/92

State parks and recreation areas — increase in sales tax rate for camping fees, 61.3(1),

Filed Emergency ARC 3287A 9/2/92

Fishing regulations — sport fishing, 81.2(2), 81.2(5), Notice ARC 3320A 9/2/92

Aquaculture, ch 89, Notice ARC 3319A 9/2/92

Scientific collecting and wildlife rehabilitation — educational project permits, 111.1, 111.4, 111.7 to 111.9,

Filed ARC 3311A 9/2/92

Chs 27, 52, 61, 111 Sohn summarized revisions in Chapter 27, rules 52.1, 61.3(1) and Chapter 111. No Committee action.

NRC (Cont.)
81.2; Ch 89

Conover reviewed amendments to fishing regulations in 81.2 and aquaculture in Chapter 89. Maulsby and Conover discussed a problem with dead fish along the spillway at south Twin Lakes. No formal action.

HISTORICAL DIVISION

In the absence of a Division representative, Chairman Priebe announced that Madelyn Priebe, Terrace Hill Commission member, would present the following:

HISTORICAL DIVISION[223]

CULTURAL AFFAIRS DEPARTMENT[221]"umbrella"

Terrace Hill endowment for the musical arts — first, second and third place scholarship awards, 57.2,

Filed Emergency ARC 3309A 9/2/92

M. Priebe offered background on the Iowa scholarship which must be used in an Iowa school.

In response to Tieden, M. Priebe explained that \$1,000 of the grant will be presented each year for a two-ear period to the school to pay the tuition. Nothing precludes increasing this amount.

There was brief discussion of the statutory status of Terrace Hill. The appropriation was included with the Governor's office but Iowa Code section 303.17, which places Terrace Hill within the Historical Division, was not amended.

Insurance – Chiro- practic Coverage

Priebe called for discussion of a proposed statement to be included in the minutes regarding the Farm Bureau BC/BS policy which places limitation on treatment for musculoskeletal ailments. Doyle noted that the limitation would not be exclusively for chiropractors. Royce agreed because only 49 percent of practitioners affected by the ruling were chiropractors.

Motion

Pavich moved that a clarifying statement regarding the limitation in health coverage be included in the minutes.

Substitute motion

Doyle made a substitute motion to defer the matter until the October meeting.

Priebe wanted to point out Committee opposition to discriminatory limitations in health care services.

Kibbie suggested including Priebe's comment in the minutes.

Metcalf declared that the motion on the floor was to defer and she would support that motion.

Motion to defer was defeated by a show of hands.

Motion

Kibbie moved to amend Pavich's motion to include a statement that the Committee's intention was to have all service providers treated equally and that an official statement would be prepared at the October meeting. Motion carried. (See also p. 5288)

INDUSTRIAL SERVICES

Byron K. Orton, Industrial Commission, presented the following agenda:

IND. SERVICES (Cont.)

INDUSTRIAL SERVICES DIVISION[343]

EMPLOYMENT SERVICES DEPARTMENT[341]"umbrella"

Contested cases — expedited proceeding, payroll tax tables, 4.8(2)"i," 4.44, 8.8, Filed ARC 3295A 9/2/92

Contested cases — informal dispute resolution procedures, 4.28(5), 4.33, 4.40(3) to 4.40(5), 4.45 to 4.47, 8.2, 10.1(3) to 10.1(8), 10.3, Filed ARC 3294A 9/2/92

4.8 et al.

Orton explained that the expedited hearing process would reduce the time to a maximum of 180 days to hear and decide a case from date of petition to date of deputy decision. He noted that in some instances it has reached 700 days.

The shorter time frame would be achieved by reducing discovery time for attorneys in regular cases. Also, they hope to make available telephone conference hearings in this type of contested case. The staff will be devoted to those cases that are heard as expedited hearings. Regarding a situation with one of Kibbie's constituents, Orton said it involved a different level of the Division's proceeding. He noted that a year ago when he was appointed industrial commissioner, there was a backlog of 388 cases. They have been reduced by 25 percent.

Doyle commented on high costs of depositions by the medical profession and asked Orton if there were ways to reduce these expenses. Orton indicated that the legislature could address limitations and he was willing to draft a proposal, if requested.

Doyle also expressed concern about poor communication regarding eligibility for workers' compensation. Orton suspected that Iowa's Workers' Compensation agency had become a "reactive agency" rather than a "proactive" one which could be attributed to lack of staff and resources.

4.28(5) et al.

There were no recommendations regarding amendments to 4.28(5) et al.

LABOR SERVICES

Walter Johnson, Deputy Commissioner, and Marta Day, Attorney, were in attendance for the following:

LABOR SERVICES DIVISION[347]

EMPLOYMENT SERVICES DEPARTMENT[341]"umbrella"

General industry safety and health rules, 10.7, 10.19(1), 10.19(6), 10.19(9), Filed Emergency ARC 3231A 8/5/92

Occupational exposure to formaldehyde; addresses for obtaining technical manuals; air contaminants;

occupational exposure to bloodborne pathogens, 10.20, Notice ARC 3234A 8/5/92

Occupational exposure to formaldehyde, 10.20, Filed Emergency After Notice ARC 3262A 8/19/92

Occupational exposure to asbestos, tremolite, anthophyllite and actinolite, 26.1, Notice ARC 3233A 8/5/92

Construction safety and health rules, 26.1, Filed Emergency ARC 3232A 8/5/92

Fees for elevator inspections and permits, 75.1 to 75.5, Notice ARC 3235A 8/5/92

OSHA rules for general industry — 4,4' methylenedianiline (MDA), 10.20, Notice ARC 3313A 9/2/92

OSHA rules for general industry — asbestos, tremolite, anthophyllite, actinolite, and formaldehyde,

10.20, Filed Emergency After Notice ARC 3315A 9/2/92

OSHA rules for construction safety and health — 4,4' methylenedianiline (MDA), 26.1, Notice ARC 3321A 9/2/92

OSHA rules for construction safety and health — asbestos, tremolite, anthophyllite, and actinolite, 26.1,

Filed Emergency After Notice ARC 3314A 9/2/92

10.7 et al.

No questions or recommendations on ARC 3231A.

10.20

In review of 10.20, there was discussion as to availability of formaldehyde for agricultural use. Johnson would provide information.

LABOR (Cont.)

Johnson indicated that the public hearing was requested by the Dental Association to bring out issues raised at the national level with respect to bloodborne pathogens.

75.1-75.5

In review of 75.3, relating to elevator inspections and permits, Priebe questioned why the full amount was not charged for reinspection. Johnson replied that reinspection was less involved.

The remainder of the agenda was acceptable to the Committee.

**LIVESTOCK
HEALTH ADVI-
SORY COUNCIL**

The Council was represented by Mark Tresdell, Attorney, for review of Chapter 1 "Recommendations," appearing under Notice in ARC 3206A, IAB 8/5/92. The rule addressed recommended expenditures of an annual appropriation for livestock disease research. Tresdell reported on the mystery swine disease research project. The ISU College of Veterinary Medicine received a \$200,000 grant from Miles Laboratory for research on this disease. The Lelystand virus was isolated in the Netherlands in 1991. ISU concluded this disease was not present in Iowa in 1980. However, in 1985, their survey showed 3.8 percent of their samples were positive and in 1992, 43 percent of the Iowa herds tested positive for mystery swine disease. A vaccine was not yet developed.

Priebe suggested that the proposed \$18,000 for pseudorabies in paragraph 10 be reduced and the \$5,601 reserve in paragraph 21 be reduced so that \$20,000 could be carried over in an emergency reserve.

There was Committee consensus that renote was unnecessary to reflect this change.

**PETROLEUM
UNDERGROUND
STORAGE TANK
FUND BOARD**

Robert Hubbard, UST Administrator, and Robert Galbraith, Assistant Attorney General, were present for the following agenda:

PETROLEUM UNDERGROUND STORAGE TANK FUND BOARD, IOWA COMPREHENSIVE[591]

Eligibility for insurance, ch 10 title, 10.1(1)"d," 10.1(2)"e," 10.2(4), 10.3(1), 10.3(3), 10.3(5),

Filed ARC 3328A 9/2/92

Guaranteed loan program, 12.1(2), Filed ARC 3329A 9/2/92

Community remediation, ch 13, Filed ARC 3327A 9/2/92

Ch 10

There were no recommendations for amendments to Chapter 10.

12.1

Priebe inquired about leakage and Hubbard responded that the Board receives reports of 5 to 10 locations per month. Hubbard added that many cases of contamination have been found through testing required by banks in the sale of real estate. He displayed a map of Waterloo where a community remediation project was pending. The map depicted reported leaks, the active tanks, and the ones that have been removed. The problem with abandoned wells as sources of contamination was discussed.

Ch 13

Hubbard reviewed the remediation process set out in new Chapter 13. He attributed reduction in the average cost of community remediation to \$7,000 a site to the Board's effective effort in cost controls.

Hubbard responded to Metcalf that the site locations are 95 percent accurate. Both aerial photographs and record searches for a site cleanup report are viewed.

No Committee action.

PHARMACY EXAMINERS BOARD

Representing the Board was Lloyd Jessen, Executive Secretary/Director, who presented the following:

PHARMACY EXAMINERS BOARD[657]

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

Wholesale drug license — renewal and fees, 3.5, <u>Notice</u> ARC 3289A	9/2/92
Minimum standards for the practice of pharmacy, 8.7(3)"a," 8.7(4), 8.7(7)"b," 8.13(1), 8.16, 8.18 to 8.24, <u>Notice</u> ARC 3290A	9/2/92
Discipline, 9.1(4)"q," 9.27, <u>Notice</u> ARC 3291A	9/2/92
Controlled substances, 10.10(6), 10.11, <u>Notice</u> ARC 3292A	9/2/92
Controlled substances — methcathinone, 10.20(1), <u>Filed Emergency</u> ARC 3288A	9/2/92
Wholesale drug licenses, 17.2(3), <u>Notice</u> ARC 3293A	9/2/92

3.5

In review of rule 3.5, Doyle inquired if the \$100 increase in fees would create a surplus. Jessen responded that it would make the surplus larger to enable them to improve on inspections. It was Priebe's understanding that the statute precluded fees in excess of the amount necessary to operate. Royce was asked to research the statute on the question. Jessen reported a surplus of approximately \$90,000 and there were about 300 licensees.

8.7(3) et al.

Amendments to Chapter 8 were considered.

Although the rules were intended to comply with federal regulations, Tieden viewed them as "almost a license to practice medicine." Jessen agreed that federal regulations were very demanding for the Medicaid patient.

Jessen advised that these rules which will apply to all patients were taken from a model draft from the National Association and most states are following them. The Iowa Pharmaceutical Association has had input on these proposals.

Doyle commented that the continuing education requirements were somewhat high—8.7.

There were no recommendations on the remaining Pharmacy agenda.

Pavich in the Chair.

STATE PUBLIC DEFENDER

Rebecca Walsh, Administrative Rules Coordinator, Inspections and Appeals, and William Wegman, State Public Defender, were present to review the following:

STATE PUBLIC DEFENDER[493]

INSPECTIONS AND APPEALS DEPARTMENT[481]"umbrella"

Administration, petitions for rule making, declaratory rulings, public records and fair information practices, contracts for indigent defense services, chs 1 to 4, 10, Notice ARC 3259A

8/19/92

Walsh summarized the proposed rules which include requirements for private attorneys desiring to contract with the State Public Defender to provide indigent defense services—a two-year pilot project.

Chs 1-4, 10

Doyle referred to rule 4.12 and reports by Wegman's investigators would be considered confidential. Wegman thought that by law those reports would be part of the work of the office. Doyle also asked if attorneys under contract could utilize Wegman's investigators or was there a procedure for private investigators. Wegman stated that his office would assist when they weren't involved with other duties.

In 10.4(4), Doyle questioned the use of "credible sources." Wegman responded that he would not deny a contract for frivolous reasons.

**PUBLIC
DEFENDER**

Doyle quoted from rule 10.6(136B) regarding payment to contracting attorneys. The rule provided for 12 equal monthly installments or an hourly rate. Paragraph 10.6(2)"a" stated that compensation would not be made in months when no cases were handled. Doyle suggested clarification.

Doyle then referred to contract termination in 10.8(136B) and noted that some cases may take eight months to two years to get to court. Doyle suggested language to address inability of an attorney to complete a case.

Metcalf referred to Royce's Rules of Interest where he addressed contract renewal. Royce had interpreted the rules to provide that a contract would be renewed without continuous rebidding if the attorney met standards of the Public Defender.

Wegman indicated it was not his intent to have only one contract. Instead, he would contract on a reasonable fee basis and then allow the district judges and district associate judges decide appointment to the case. He thought there would always be ample numbers of lawyers to handle these cases. Metcalf wanted to avoid favoritism.

Royce asked how Wegman would guard against favoritism and determine that the higher contract rate was the result of more experience. Wegman was unsure except that the judges would make the actual appointments. He saw an advantage to contracting for attorneys who specialize in certain areas.

Doyle recommended clarification in 10.5(5) with respect to the type of insurance required.

Noon recess

Vice Chairman Pavich recessed the meeting for lunch at 11:55 a.m.

Reconvene

Chairman Priebe called the meeting to order at 1 p.m. for review of the following Revenue and Finance agenda:

**REVENUE AND
FINANCE**

REVENUE AND FINANCE DEPARTMENT[701]

Jeopardy assessments and bonding procedures in lieu of summary collection, ch 10 title, 10.116 to 10.126,

Notice ARC 3228A 8/5/92

Newspapers, free newspapers and shoppers guides, 18.42, Notice ARC 3283A 8/19/92

Automobile rental excise tax, ch 27, 32.11, 32.12, 34.10, Filed ARC 3227A 8/5/92

Depreciation of speculative shell buildings, deduction of multipurpose vehicle registration fee, 40.42, 41.5(7),

53.17, 53.18, 59.18, 59.19, Notice ARC 3229A 8/5/92

Composite returns, 48.6, 48.7, Filed ARC 3285A 8/19/92

Determination of net income — affiliated group of corporations, 53.15(1)"a," Notice ARC 3284A 8/19/92

Allocation and apportionment, determination of net income, 54.2(2), 54.2(2)"f" to "h," 54.4, 54.7(2),

59.27(1), Notice ARC 3230A 8/5/92

Property tax amendments, 73.1, 73.12, 73.19, 73.22, 73.27(4), 74.4(1), 74.8(1), 74.8(2)"a" to "d," 75.2,

75.3, 78.2, 78.3, 78.4(1), 78.4(2) to 78.4(4), 78.7, 79.1(5), 79.5(1), 80.1(1)"a," 80.5(1), 80.5(3)"a,"

Notice ARC 3286A 8/19/92

Inheritance, estate, and generation skipping transfer tax returns — confidentiality, 5.13(2)"cc" and "dd,"

86.1(3), 86.1(4), 87.2, 88.2, Notice ARC 3317A 9/2/92

Prescription drugs and medical equipment — exemptions from sales and use tax, 20.7, 20.7(1), 20.8,

20.9(3)"a" and "e," 20.10, 20.11, Notice ARC 3316A 9/2/92

Individual income tax and withholding tax, 39.1(1), 39.1(2)"b," 39.1(3)"b," 39.1(7), 39.3(5), 39.5(8) to 39.5(11),

39.9, 40.43, 43.3(13), 46.1(1)"d"(1), 46.1(1)"e"(1), 46.1(1)"f"(1), 46.1(1)"g," Notice ARC 3318A 9/2/92

Fiduciary income tax, 89.8(1), Notice ARC 3322A 9/2/92

Local option taxes, collection of bank service charges, **GENERAL REVIEW**

- REVENUE AND FINANCE (Cont.)** Representing the Department were Mel Hickman, John Christensen and Ed Henderson. Also present were Representatives John Groninga and Merlin Bartz; Jeannine Freeman, Iowa Hospital Association; and Kent Johnson, CEO from Hammer Medical Supply.
- Ch 10** Hickman explained that jeopardy assessment rules were drafted primarily by the Office of Attorney General for use in cases where there is a lack of drug stamps in drug raids.
- 18.42** Proposed rule 18.42 was considered and suggestion was made to substitute "distributed" for "sent." Doyle was advised that school publications (student newspapers or newsletters) could be involved. According to Hickman, comments had just been received from Iowa Newspaper Association offering suggested language in 18.42(3), regarding subscriptions to wire services. The Department would review the request.
- Ch 27 et al.** No questions or recommendations on ARC 3227A.
- Ch 40 et al.** Hickman noted that the 60 percent deduction in 41.5(7) would implement 1992 Acts, House File 2477.
- 48.6, 48.7; 53.15, 54.2 et al.** No recommendations on 48.6, 48.7; 53.15, 54.2 et al.
- Chs 73 to 75, 68 to 80** In discussing property tax amendments, Kibbie reported concerns of his constituents regarding delinquent property tax. He had heard that buyers from out of state were anxious to purchase everything agricultural that was delinquent. The person buying those taxes can collect two percent per month. Henderson stated that property could be sold in June for the delinquent taxes that were payable in September and March of that year. He continued that 24 percent interest would apply only when the property was sold for delinquent taxes and the next year's taxes could not be bought in advance.
- Kibbie had different interpretations from county treasurers and he wanted corrective legislation.
- Henderson declared that Revenue and Finance was not involved in the collection of taxes but they would review Kibbie's concerns. Any questions of interpretation of the law by county treasurers should be clarified.
- October Agenda** Priebe announced this issue would be placed on the October ARRC agenda as a special review.
- 5.13 et al.** Amendments in ARC 3317A were before the Committee. Hickman clarified that the words "inheritance tax return" were added as confidential documents when in the Department—87.2(1).
- 20.7 et al.** Sales and use tax exemptions on prescription drugs and medical equipment were before the Committee in ARC 3316A.
- Chairman Priebe recognized Freeman, whose interest involved nonprofit hospitals in Iowa which, unlike most states, pay sales tax. Their association has an informal Sales Tax Task Force who has worked with Revenue Department relative to exemptions that hospitals would enjoy from that sales tax. The area of prescription drugs and devices has always been an area of tremendous uncertainty for hospitals and auditors of the Revenue Department and several years ago clarifying rules were developed.

REVENUE (Cont.) Freeman focused on rule 20.10 which defined "covered sales or rental." The Department indicated that House File 2294 provided exemption for drugs and devices that are also exempt under the Medicaid and Medicare programs. Her association interpreted the law to read that if these programs considered that particular drug or device to be cost-reimbursable, it was exempt from sales tax under Iowa law. Freeman pointed out that rule 20.10 allows the exemption only to Medicaid/Medicare recipients. She contended the rule was more restrictive than the legislation.

Representative Groninga recalled that in Ways and Means Committee when the statute was drafted, one of the decisions made was in behalf of equipment and supply sales persons so they would not have to make a distinction between Medicare or Medicaid recipients. Tax was on the item based on federal rule, not on the status of the purchaser.

Johnson said that he was one of the group associated with Iowa Midwest Association of Medical Equipment Suppliers who tracked this legislation. He agreed that intent was to simplify the procedure.

Hickman said the word "covered" or "coverage," in terms of the insurance field, means that insurance would pay the bill. He continued that if "covered" were not tied into recipients or payment by Medicaid or Medicare, every item, regardless of who buys, sells or uses it, would be exempt from tax.

Johnson referred to the nonexclusive list of medical devices in 20.9(3)"e" which included items exempt under law, e.g., ostomy devices.

Tieden recalled pharmacist rules discussed earlier. The federal law they were complying with was limited to Medicaid and Medicare patients but all the public was included for efficiency of operation. He urged consistency.

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The Committee offered no comments on ARC 3318A or 3322A.

Local Option

Priebe then called for the special review on local option taxes and collection of bank service charges.

Hickman said the Department's position on bank service charge was based on the Sturtz case which held that delivery must be considered in sales on tangible personal property. The question was raised in 1988 with respect to a main bank with branches. A policy statement was issued by the Department to their in-house staff which stated that the tax should be charged where the service was performed without consideration of the customers' location. Priebe spoke of general confusion in this area which was not limited to banking.

Groninga had been approached by his constituents who complained about the tax in their area. After inquiring with Revenue on this, Groninga was mailed a copy of the 1988 ruling relating to a Dubuque bank and a Dyersville branch. He questioned this ruling and asked for an Attorney General's Opinion on that particular application. It was noted that Dubuque had adopted local option but other cities in the county had not. Groninga spoke with Boatman Bank officials who indicated they were not charging the tax but were waiting for specific written directive from the Department. He concluded that inconsistency exists in application or lack of uniform definition and lack of clarity.

Bartz echoed remarks made by Groninga and offered additional information on the banks located in Worth and Cerro Gordo Counties.

Local Option
(Cont.)

Royce summarized the problem—in 1985 the Sturtz case stated that when tangible personal property was held, the tax imposed was based on point of delivery because it had a physical existence. Secondly, tax laws evolved that relate to when goods are delivered and the Department has drafted that law onto the concept of services. In the main, that works well since service is performed on a tangible piece of property. Royce used examples of lawn care or car cleaning. He referred to the banking service in question as an electronic service which differs in that it has no physical existence. It was his opinion that a statutory solution was necessary.

Priebe thought there was also an administrative question on the Department's decision as to the appropriate place of exchange of this service. He concluded that the Committee could object to the decision that has been made by the Department.

Royce questioned the impact of an objection when there was no rule. Schrader reasoned there was financial impact if banks were losing customers.

Royce suggested three possible options: (1) request the rule and address it in more detail; (2) impose an objection on the basis that the policy should be in rule form and let the courts decide whether they want to consider the objection; (3) a general referral to the legislature.

Motion to Object
and Refer

Schrader moved to object to the Department policy that was not outlined in rule form relating to a point at which a local option sales tax was determined to be in effect on delivery of services in that the Committee believes the Department policy is unreasonable as it has been applied to the banking industry in Iowa. In addition, he moved to submit the entire issue to the appropriate committees of the general assembly for possible legislative action.

Barry sought guidance as to placement of the Objection in the Iowa Administrative Code and it was agreed that it should be published in 701—Chapter 107.

Groninga concurred with the Committee action but inquired as to how the Department would address unequal application in the meantime. Hickman knew of only two inquiries about the matter but he would confer with the Department's taxpayer service staff.

Metcalf asked the Department to report to the ARRC in October on the matter.

There was speculation that if an Attorney General Opinion were issued, it would probably be based on the Sturtz case.

Motion amended

Schrader asked to amend his motion to state that the Committee sees this "nonrule" as unreasonable because the customer who ultimately pays the local option tax has no way of knowing how their bank is structured internally.

Royce advised the Committee further on the objection and there was unanimous consent to authorize Royce to prepare the text of the objection without further review.

Motion carried

The Schrader motion as amended to object to the Department of Revenue policy carried unanimously.

REVENUE (Cont.) Royce prepared the following:

At its meeting held September 9, 1992, the Administrative Rules Review Committee voted to object to the interpretation of the Department of Revenue and Finance which holds that bank services are performed at the location of the customer's account (generally at the bank's main office computer) as opposed to the branch location which the customer patronizes. The result of this decision is that the applicability of any local option sales tax on the bank service charge is determined by the location of the bank's main office, not the location of the branch. In support of this interpretation the department offers the Iowa case Sturtz v. Iowa Department of Revenue, 373 N.W.2d 131 (Iowa, 1985). In essence that case holds that a taxable sale occurs when the goods are delivered to the purchaser. Under this logic the bank service is actually delivered at the customer's account, which is in the bank's computer in the main office, therefore, the tax imposed on that transaction is determined by the location of that main office. The committee believes this interpretation is beyond the authority of the department and unreasonable, based on the following reasons:

(1) This interpretation is beyond the authority of the department because it has not been adopted as an administrative rule, following the procedures set out in Iowa Code chapter 17A. An administrative rule is defined in Iowa Code section 17A.2(7) as "...each agency statement of general applicability that implements, interprets or prescribes law or policy...". The department's interpretation clearly falls within this definition. Although it is based on a rather narrow fact situation, it applies generally to all persons in that fact situation; in addition, it also interprets existing law. Moreover, this interpretation is not directly based on the existing law. Neither the statute nor the existing rules are explicit on this particular point. The provisions of 701 IAC Chapter 107 does apply the principles of the Sturtz case to goods or services; but those examples do not clearly establish the principle as it applies to bank services—that "delivery" of the services takes place where the customer's account is maintained, which is the main office. Since this principle is not set out in existing statute or rules, it is the opinion of the committee that it cannot be implemented as a general policy until it has been adopted as a rule.

(2) The interpretation is unreasonable because it unfairly results in the imposition of local option taxes on persons who are not physically located in a local option tax jurisdiction or doing business in that jurisdiction or who could reasonably expect to owe local option tax. In essence the doctrine is based on the concept that tax liability is determined at the location where the goods or service is delivered. The doctrine was designed for sales of tangible personal property. Such property has a physical existence which makes it a relatively simple matter to determine where delivery occurs. The doctrine also works well for most services, since most taxable services are in some way connected with real or tangible personal property, such as lawn care, dry cleaning or car detailing. In those cases it is readily apparent where the service was delivered—the location of the real or personal property also establishes the location of the service.

Bank services are significantly different. An intangible service is performed on an intangible account. Applying the traditional doctrine of delivery in this case yields an unreasonable result. The customer and the bank employee transact business in one location, but the service is actually "delivered" in a different location, when that transaction is recorded to the customer's account, inside the bowels of the bank's computer. Such a result may be a logical extension of the Sturtz doctrine, but it is illogical from the viewpoint of the average person, who is assessed a local option sales tax for the benefit of county or municipality perhaps many miles away. To the average person a bank service is delivered when the bank officer enters the transaction and hands a receipt to the customer.

The committee understands the value in maintaining uniform policies; by and large, uniformity means fairness and simplicity. However, in this case, extending the Sturtz doctrine to electronic bank transactions yields the opposite result. Taking the doctrine to its logical extreme, if the customer banks at the local branch of a Missouri bank, possibly the customer must pay Missouri sales tax. The real solution is to develop a specific rule dealing with banking services which imposes the tax based on the branch office where the customer transacts his or her business.

Motion Reconsidered - Insurance Kibbie asked to reconsider the vote on his motion made during the morning session relative to limitation of insurance benefits for musculoskeletal treatment. Motion to reconsider passed with one "no" vote.

Motion Kibbie moved that the vote by which his motion passed this morning be reconsidered and he asked the Committee to vote "no." Carried.

Motion Kibbie then moved that the following statement be included in the minutes:

At its September meeting the Administrative Rules Review Committee reviewed a decision by the Division of Insurance, approving certain limitations in coverage for the Blue Cross/Blue Shield group policy covering Farm Bureau members. The limitation at issue restricted treatment for musculoskeletal ailments to 15 treatments per year. It was the conclusion of the committee that this limitation is contrary to the manifest intent of Iowa Code section 514.7 enacted as 1986 Iowa Acts Chapter 1180, in that:

1. The limitation does not provide equality of coverage for those subscribers who choose certain types of health care providers over others as the provider of choice for certain ailments.
2. The limitation does not impose equal limitations on more costly health care treatments provided by other types of providers for the same ailment.

Motion carried Motion carried with Metcalf voting "no."

NO REPS No agency representatives were requested for the following:

BANKING DIVISION[187]
COMMERCE DEPARTMENT[181]"umbrella"
 Securities activities — state-chartered banks, 2.15, 2.15(1)"a," "g," and "h," 2.15(4)"d" and "e," 2.15(6), 2.15(6)"c" and "d," Filed ARC 3312A 9/2/92

DEAF SERVICES DIVISION[429]
HUMAN RIGHTS DEPARTMENT[421]"umbrella"
 Organization, services and procedures, forms, 1.1, 1.2(1), 1.2(2), 1.2(3)"b" and "c," 1.3(2)"h," 2.1, 2.2, 2.3(2), 2.3(2)"d" and "e," 2.3(3)"a" to "c," 2.3(5), 2.3(7)"i," 2.3(9), 2.3(11), 2.4, 2.4(1), 2.4(2), 2.4(3)"b" to "e," 4.1(1), 4.1(11), 4.1(14), 4.1(15)"g," 4.1(17), 4.1(18), Filed ARC 3218A 8/5/92

ENGINEERING AND LAND SURVEYING EXAMINING BOARD[193C]
 Professional Licensing and Regulation Division[193]
COMMERCE DEPARTMENT[181]"umbrella"
 Changes in format and length of national professional land surveying examination, fee adjustment, 1.4(4), 1.4(5), 1.9(2), Filed ARC 3263A 8/19/92

INSPECTIONS AND APPEALS DEPARTMENT[481]
 Requirements for health care facilities regarding disclosure of names, addresses and telephone numbers of residents' family members to care review committee members, 57.24(3), 58.27(3), 59.32(3), 62.22(3), 63.22(3), 64.35(3), 65.24(3), Notice ARC 3260A 8/19/92

REGENTS BOARD[681]
 Bonus pay for exceptional performance, 3.39(2), Notice ARC 3258A 8/5/92

SECRETARY OF STATE[721]
 Proposed constitutional amendment, 21.1(4), Notice ARC 3014A Terminated ARC 3264A 8/19/92

TRANSPORTATION DEPARTMENT[761]
 Recreational trails program, 165.12(2)"c," 165.19, 165.22(1)"c," Notice ARC 3210A 8/5/92

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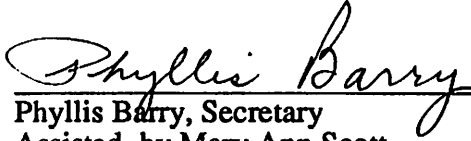
NO REPS (CONT.) WALLACE TECHNOLOGY TRANSFER FOUNDATION[851]

Small business innovation research (SBIR) grant assistance program, ch 9, Filed ARC 3272A 8/19/92

Adjournment

The next meeting will be held October 13 and 14, 1992. Meeting adjourned at 2:45 p.m.

Respectfully submitted,



Phyllis Barry, Secretary

Assisted by Mary Ann Scott

APPROVED:

