

MINUTES OF THE REGULAR MEETING
OF THE
ADMINISTRATIVE RULES REVIEW COMMITTEE

Time of Meeting: Tuesday, December 8, 1981.

Place of Meeting: Senate Committee Room 24, Statehouse, Des Moines, Iowa.

Members Present: Representative Laverne W. Schroeder, Chairman; Senators Edgar Holden and Dale Tieden; Representatives Betty J. Clark and Ned Chiodo. Excused, having reported he would be on vacation in Florida: Senator Berl Priebe, Vice Chairman. Also present: Joseph Royce, Staff, and Brice Oakley, Coordinator.

Convened

Chairman Schroeder convened the meeting at 9:25 a.m. in Senate Committee Room 24. The following rules of the Social Services Department were considered:

SOCIAL SERVICES

SOCIAL SERVICES DEPARTMENT(770)		
Offices at state level, 1.3(9) ARC 2507	N	11/25/81
Gifts to inmates, 16.5(2)a, filed emergency ARC 2486	F.F.	11/11/81
ADC, 40.7(5)c, 41.4(1)a (1) and (4), 41.7(1)c to "2", 41.5(5), 41.6(1) to 41.6(4), 41.6(9), 41.7, 41.7(1)c, 41.7(2), 41.7(2)b, d, k, l, m, o, 41.7(7)a, 41.7(9)b, f, 41.7(10), 45.4, 45.4(2) to 45.4(4), 46.1(1)c, 46.1(8), 46.1(9), 46.2(1) and (3), 46.4(1), 46.4(3)a, 46.4(5), 46.5, 46.5(4), 46.6, 46.7(3), filed emergency ARC 2487	F.F.	11/11/81
ADC, 41.4(1)c, 41.5(5)c, 41.6(1)d and "c", 41.7(2)b (1), 41.7(2)c, 46.1(8), 46.1(9) ARC 2479	N	11/25/81
Medical assistance, dental services, 78.4(1)c (1) ARC 2508	N	11/11/81
Payment of medical services, 79.8 ARC 2480	N	11/11/81
Medical assistance, procedures for payment, 80.1, 80.2, 80.4, 80.5(2) ARC 2481	N	11/11/81
Homemaker-home health aide services, chore services, chs 144 and 149 ARC 2482	N	11/11/81
Residential services for adults, ch 162 ARC 2509	N	11/25/81
Jail facilities, ch 15 ARC 2488	F	11/11/81
Prison overcrowding, 16.10 ARC 2489	F	11/11/81
Iowa state industries, 23.1(4) ARC 2490	F	11/11/81
Admissions to hospital schools, catchment areas, 23.3(1) to 23.3(4), 23.1(6) ARC 2491	F	11/11/81
ADC, eligibility, 41.1(5)b ARC 2493	F	11/11/81
ADC, self-employment income, 41.7(9)c ARC 2492	F	11/11/81
State supplementary assistance, eligibility, 50.2(1)a and "b" ARC 2494	F	11/11/81
State supplementary assistance, resources, 51.4(2) ARC 2495	F	11/11/81
Food stamp program, 65.4(4), 65.16 ARC 2496	F	11/11/81
Medical assistance, 75.1(17)a (1), 75.1(17)b and "c" ARC 2497	F	11/11/81
Child support recovery collections, 95.6(6), 95.6(7) ARC 2498	F	11/11/81
Adoption services 139.4(2) ARC 2499	F	11/11/81
Homemaker-home health aide services, 144.1 to 144.3 ARC 2500	F	11/11/81
Child care centers, rescinds ch 147 ARC 2501	F	11/11/81
Chore services, 149.2(2) to 149.2(6) ARC 2502	F	11/11/81
Domestic abuse, 160.3 ARC 2503	F	11/11/81
Displaced homemaker, 161.3 ARC 2504	F	11/11/81

The Department was represented by Judith Welp, Rules and Manual Specialist; Mary Helen Cogley, Program Manager; Elizabeth Hagerty, ADC Specialist; Mary N. Reavely, Supervisor, Community Social Programs; Bill Turner, Program Manager; Paul Muller and Miriam Turnbull. Also present: John Wild and John W. DeBiak, Health Facilities, Department of Health; George Keiser and Gene Gardner, Adult Corrections, Department of Social Services; and Ted Yanacek, Iowa Farm Bureau.

16.5(2)a

According to Welp, 16.5(2)a was amended as a result of recent disturbances at the Ft. Madison Penitentiary. Amendments to chapters 40, 41, 45 and 46 were mandated by federal law--the Omnibus Reconciliation Act of 1981 and P.L. 96-265 and Welp summarized the provisions.

SOCIAL SERVICES Continued Schroeder questioned the limitation of \$1500 for equity in a motor vehicle in 41.6(1)d,e. He considered it to be unrealistic. Welp advised him that federal law allows a maximum of \$1500. Clark was assured that, in instances where a husband leaves a wife with a car that is worth more and payments remain, the payments could be deducted. Welp said that DSS chose to allow the maximum. Reserve for other property could be less than \$1000, but DSS chose the \$1000 maximum. She added that child care allowance was set for part-time employment and the federal law provided leeway for the state.

41.6(1)
d,e

41.4(1) In re 41.4(1), there was discussion of private religious schools which are not approved by the Department of Public Instruction. Tieden called attention to the fact there are pending court cases. Hagerty indicated DSS accepts the school's definition as to what is full-time or part-time attendance. She added the rules did not address DPI approval of a school. Tieden assured DSS officials that the question would be raised since there is controversy throughout the state.

Brief and infrequent absence was explained by Welp. The worker or supervisor will make the decision. She said DSS would be more explicit in the final rule. Committee members encouraged DSS to meet with DPI on the matter. Hagerty explained that the federal government does not recognize correspondence courses.

No questions regarding 78.4(1)g(1) or 79.8(1-5).

ch 80 With respect to amendments to chapter 80, Welp informed the Committee that the changes basically update functions of the fiscal agent.

Chiado arrived. Schroeder pointed out that under new language in 80.4(2), providers were being given extra time to have adjustments considered. Tieden viewed the reimbursement provision in 80.1(3) as being a very complicated process. He requested clarification. Welp said the rule addresses only the billing process. Clark requested deletion of "thereof" in 80.1(2) next to last sentence.

Oakley commented on the fiscal impact of the amendments to chapter 80.

chl62 Discussion of chapter 162. Wild raised question concerning 162.1(8), definition of "qualified professional." Wild was of the opinion it should read "qualifications of a professional." At the request of Schroeder, Welp was amenable to researching the matter. Wild wondered if the rule re termination of client's services was self serving. He was interested in knowing who would provide oversight and make determinations. Turner referred to 162.6(4).

ch 15 Muller opined there had been a good faith effort to adopt realistic jail standards -- ch 15.

Clark questioned 15.2(8) regarding barriers and was informed the Department's definition of "barrier" was a locked door.

SOCIAL
SERVICES
Continued

Clark recommended dividing portions of 15.4(2) into lettered paragraphs for clarity when the subrule is amended again. She favored addition of "by the Jail Administrator." Schroeder raised a question about possible improper use of "legislative body" in 15.5 and suggested that when the rules are modified, use of a different term.

Oakley observed that the jail standards issue was a classic example of "a misunderstood statute in the historical sense." Since 1965, DSS or its predecessors have had authority to close jails. The new Act deleted existing standards. There was little legislative guidance. What might have been the legislative process was transferred to the rulemaking process. In defense of the Department, he noted that they had taken a good deal of the "political heat" that might have otherwise occurred if that had been done during the legislature. Oakley emphasized he was not critical of the process. He added that interested persons had been very tenacious and the Department developed workable guidelines.

15.7(3)

Keiser informed Clark that the background on 15.7(3) was from case law. In discussing 16.10, prison overcrowding, Welp said very few comments had been submitted at two hearings. Prisoners spoke favorably for the most part.

16.10(2)

Oakley requested the Department to delete the last sentence of 16.10(2). He preferred that offenses be categorized by rule to provide legislative and gubernatorial oversight. The Committee concurred. Oakley apologized for not calling attention to the matter when the rules were under Notice.

Welp was unsure all the crimes could be listed. There was discussion of the right to bear arms being returned to former prisoners. Oakley indicated the Governor would be most reluctant to restore that right unless some considerable time has passed. Oakley continued there was some sense of therapy in restoring the right to vote and the right to hold public office. To wait on the "good and honor" time could be a long period.

23.1(4)

The change in 23.1(4) allows limited public sales to the public sector to justify continued operation of a shop. Schroeder asked Welp to check if there had been delays in scheduling materials into the shop resulting in late delivery of products. Welp was unaware of a problem but agreed to investigate.

There was discussion of buying and selling items from the prisons -- in the tire retread business, the attempt would be made to sell to dealers. Welp informed Holden an individual could not buy a set of tires at this time. Oakley interjected the prisons would not be competing with retailers. He favored review of the system in a year or so.

28.3(1)

Welp indicated that 28.3(1) procedure had been clarified. There was discussion of tests for paternity in 41.1(5)b. Oakley admitted there is some disparity in the acceptance of tests by Judges. Tieden wondered if the matter had been considered by the US Supreme Court but Oakley was unable to answer.

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SOCIAL
SERVICES
Continued

Welp noted that procedures for determining income when there is a change in self-employment were in 41.7(9)1. When DSS implements monthly reporting, the rule will be needed. Welp explained to Schroeder that DSS did not envision problems for those engaged in Agriculture. He was concerned that a farmer would have to file a daily report.

No substantive questions concerning 50.2(1), 51.4(2), 65.4(14), 65.16, 78.1(17)a(1), 78.1(17)b,c and 95.6(6,7).
A grammatical error was pointed out in 139.4(2)b and Barry agreed to make the correction editorially.

Oakley wanted assurance that with interstate private placement, the in-state adoption investigator would not be prevented from reporting information on the out-of-state family. Interstate compact must be observed,

144.1-
144.3

It was noted that 144.1 to 144.3 were published under notice and were filed emergency also. No major changes were made. Welp told Schroeder that the last sentence of 144.1(1) was basically explanatory. Oakley was interested in learning about the effectiveness of the rule. Cogley explained the number of homemaker services clients has been reduced and the chore clients have increased. Schroeder asked if the rule was providing the least amount of service that is necessary so the individual can remain in the home rather than having to be institutionalized. Cogley had no figures available but thought the program was accomplishing the intent.

No questions or comments regarding ch 147, 149.2(2) to 149.2(6), 160.3 and 161.3.

No formal action taken on Department of Social Services rules.

CONSERVA-
TION
COMMISSION

Robert Barratt, Superintendent, Wildlife, appeared on behalf of the Conservation Commission for review of wild turkey hunting, 111.1, 111.2, 111.4, ARC 2517, Filed IAB 11/25/81. In response to request by Tieden, he presented an Iowa map displaying the wild turkey hunting zones. According to Barratt, the turkey population has increased a great deal.

ATHLETIC
COMMISS-
SIONER

Walter Johnson, Deputy Commissioner, was present for review of 3.3, ARC 2518, rules of Athletics Commissioner, published IAB 11/25/81. He advised ARRC there had been no comments on the rule pertaining to bouts, rounds and rest periods. He apprised the Committee regarding the fact that the promoter who planned to organize an Iowa Toughman event in February decided against the competition because of uncertainty as to legality. If a rule is in place by 1983, a contest would probably be held in Iowa. Chiodo, questioning the weight restriction rules, said "The Commissioner can waive the weight differential rule if he so desires." Johnson agreed to provide the waiver information for Chiodo.

Recess
Reconvened

Chairman Schroeder declared a ten-minute recess at 10:45 a.m.
The committee reconvened at 11:00 a.m.

COMMERCE
COMMISSION

The following rules of Commerce Commission were before the Committee:

COMMERCE COMMISSION[250]

Restoration of agricultural lands, pipelines and underground gas storage, 9.4(1)"a", 9.4(2)"a",
10.1(6,7,10), 10.2, 10.3, 10.12, 10.14 ARC 2510 N 11/25/81
Treatment of advertising costs, ch 16 ARC 2528 N 11/25/81

Customer notification procedures, customer information, 7.4(1), 7.4(8), 7.4(9), 19.4(1), 20.4(1) ARC 2475 .F..... 11/11/81

Appearing on behalf of Commerce were Dan Fay, Alice Hyde and David Conn, Assistant Counsels. Also present: John M. Lewis, President, Iowa Utility Association; Susan M. Stewart, Attorney, Iowa Public Service; Todd Schulz and Kent Jerome, Iowa Telephone. Amendments to chapters 9 and 10 were before the Committee. Fay commented the rulemaking implements provisions of SF 531[69GA, ch 159].

10.1(10)

In re 10.1(10), Tieden raised question as to whether the phrase "latest edition" was acceptable. Fay said that had been bandied about for over 10 years. Schroeder pointed out ARRC had been mandating a specific date. Holden requested inclusion of a date certain in the 49 CFR Part 192 reference. The Committee requested Commerce to include dates wherever needed.

According to Fay, no comments were on file at this time. However, the staff will be filing comments and will ask that the \$250,000 bond provision in the law also be added to the rules. Staff considers it to be ambiguous as to application to all pipelines or just to new applications. They hope to clear up ambiguity.

Hyde and Barrier addressed the Committee on the Commission's intent to adopt rules pertaining to advertising expenses incurred by utilities. Clark wondered if the public would have opportunity to comment on the final draft of the rules before they are adopted. It was the consensus of the Committee that the Notice process should be utilized.

Conn reviewed changes in chapters 7, 19 and 20.

Chiodo brought up the matter of the method used by electric utilities of determining kilowatt usage for the average consumer. He favored considering the average-sized family usage rather than dividing number of meters into usage. Chiodo viewed the utilities' method as misleading and totally unrealistic.

Conn was cognizant of the problem but could see pitfalls in Chiodo's theory. He was amenable to having the utility notify the user with a written explanation of all existing and proposed rate schedules. Holden recommended providing examples to the consumers, e. g. 100 kilowatt hours per month would be an increase of \$.... per month, 500 kilowatt hours per month, increase of \$.... per month, 1000 kilowatt hours per month, increase of \$.... per month. Chiodo concurred with the concept.

7.4(1)f(1)

Tieden referred to use of "mailed or delivered" in 7.4(1)f(1). He pointed out the notification was to facilitate the law as passed by the GA and, in his opinion, the rule was an incorrect interpretation. Conn said the rationale behind that paragraph

COMMERCE
COMMISSION
Continued

was to allow the utility to notify customers in the least expensive way. Tiedcn agreed that should be a consideration, but not the primary concern. Chiodo added that if you interpret the law--when the notification is included in the monthly billing, it can be charged as an expense by the utility. Tieden complained that many people do not read inserts included with the monthly billing.

7.4(1)f(2) Chairman Schroeder noted that the Commission had agreed to a rehearing on 7.4(1)f(2) which was already adopted. Chiodo had problems understanding why the rules had been filed if there would be another hearing. In response to Chiodo, Conn said he was not in a good position to answer.

Motion to Delay Clark moved to delay for 70 days that portion of the rules which would be the subject of the rehearing--7.4(1)f(2) to permit further study. Royce advised that the 70-day delay preserved all Committee options. At any time during the 70 days, the Committee could meet and exercise its power. Chiodo asked Conn if the delay would create a problem. Schroeder interjected Commissioner Varley had indicated it would not. Oakley questioned Commission representatives as to how the Commission would change the rule. He pointed out the Governor's options expire on December 16 and doubted that, under the APA, the Commission had authority to rescind the rule under emergency process. Oakley was anxious to obtain details about the Committee's concerns.

Clark cited her major concern as the time schedule which, in her view, was not feasible. Schroeder thought an emergency amendment would be justified to provide a workable rule.

Oakley stressed that it seemed to be the utility companies who were complaining, not the public. He opposed "cutting off" public participation and concluded that legislation was probably needed. Schroeder could see a problem if the Commission withdrew the rule and started over.

Holden noted this pointed out a serious defect in the rulemaking procedure--when "substantive change" can be made after the hearing. He considered it imperative to hold another hearing if changes are made following the first hearing. Oakley said there is a provision for that--that the subject matter be fairly noticed--and that any changes from notice be adopted fairly within the scope of the noticed rule--that may be a "point of some attack." Chiodo was interested in obtaining a commitment from Commerce to rescind the objectionable provision.

Royce reiterated that, aside from the fact that the Governor's veto power expires December 16, he saw no problem. Schroeder restated the Clark motion to delay 7.4(1)f(2) to allow for further study. Royce questioned the Committee as to whether they wanted to take a position on the rule and offer the Governor insight re their concerns. The Committee considered inclusion of subparagraph (1) in the Clark motion. It was pointed out that was a statutory requirement. Tieden called for the question on the motion.

COMMERCE
COMMISSION
Continued
Vote --
7.4(1)f(2)

The motion to delay 7.4(1)f(2) for 70 days was adopted viva voce. Concerning the last sentence -- "this subparagraph...once every fifty days," Tieden recalled his utility bill is sent to his bank and, under that practice, would he be considered receiving the notice? Conn responded in the negative and thought the language could be clarified. Holden thought that pointed out a weakness in the entire rule.

No further questions or comments concerning Commerce rules.

EMPLOYMENT
SECURITY
(Job
Service)

The following rules of Job Service were reviewed:

Employer records and reports, 2.5	ARC 2484	N	11/11/81
Employer's contributions and charges, 3.17, 3.70, 3.74	ARC 1880 terminated ARC 2520	N	11/25/81
Employer's contributions and charges, 3.26)c", 3.33)c", 3.29(2), 3.31(1)a"(1), 3.31(1)c" and "d", 3.31(4)a" and "c", 3.43(9)a", 3.43(16), 3.49(1)c" and "e", 3.70(6), 3.70(9), 3.71(5)	ARC 2514	F	11/25/81
Meals and lodging, when not taxable, 3.26)f", filed emergency	ARC 2485	F	11/11/81
Claims and benefits, 4.1(27), 4.1(48), 4.6(9)b", 4.13(2)n", 4.23(40), 4.24(15)b", 4.32(8), 4.43(5), 4.55	ARC 2515	N	11/25/81
Employer's contribution and charges, 3.36, 3.40(2), 3.40(5), 3.40(6), 3.41(3), 3.43(4)a", 3.47(3)	ARC 2521	F	11/25/81
Claims and benefits, 4.1(12), 4.1(11)" to "p" and "r", 4.23(40), 4.24(15), 4.37(2)	ARC 2522	F	11/25/81
Appeals and procedures, 6.3(2)	ARC 2523	F	11/25/81

The Department was represented by James A. Hunsaker, III, Assistant to the Director, Joseph Bervid, Legal Counsel, and Ralph Wilkinson, Chief of Benefits.

2.5 Responding to Schroeder, Bervid said change in rule 2.5 was grammatical only. Clark thought the first sentence was confusing and she requested deletion of "such" in several places. Bervid explained the voluntary report process.

ch 3

Discussion of chapter 3 amendments. Schroeder questioned major changes in 3.2(6)c, particularly meal allowances--he wondered if that were statutory. Bervid contended the Code requires Job Service to tax reasonable value of meals and lodging. The figures were unrealistic and had not been increased since the rules were first established. Because of inflation, they are no longer valid. General discussion of the successor's contribution rate in 3.29(2).

In re 3.70(6), Holden preferred addition of "The Code" after 501(c)(3). Bervid agreed.

3.2(6)f

Schroeder suspected a conflict existed between 3.2(6)f[ARC 2485] and 3.2(6)c in ARC 2514. Bervid explained the statute requires taxation of in-kind wages. The emergency rule was written pursuant to a US Supreme Court case -- the taxing of meals and wages in this particular area must be the same as under the Internal Revenue Service. If the employer provides meals on his premises and for his convenience, employees are not covered under the federal unemployment law. He concluded the last sentence of "f" basically exempts a lodging furnished by the employer on his premises if it is for his convenience. The Supreme Court has held that if the meals and lodging are for the employer's convenience, then it is not a benefit directly to the employee.

According to Bervid, "c" was directed to meals and lodging which are not provided on the employer's premise. They are taxable and those rates apply. Schroeder contended there was unfair application. Bervid contended most businesses in the state will be excluded.

EMPLOYMENT
SECURITY
Continued

In re 4.1(48), fact-finding interviews which are conducted by telephone, if either party requests the interview in person, that request is granted. Chiodo was of the opinion the rule stated just the opposite. He quoted from the rule and officials agreed to clarify. Chiodo raised question whether there was a provision when statements are made in writing, how each party would know what the other was saying. Bervid explained that each party would have an opportunity to review evidence. It is spelled out in terms of the fact-finding interview at the second level. Committee members requested that be included in this rule and Bervid was amenable.

- 4.24(15)b(1) Chiodo took the position the language in 4.24(15)b(1) deviated from the definition of "suitable work." Wilkinson responded that it was federal mandate. Bervid added that the Department was proposing statutory change to conform with federal law. Chiodo envisioned potential problems.

Clark requested deletion of "that" at the end of (2). She asked for explanation of "criteria" in (3) -- Bervid thought it meant extended benefit requirements but he would clarify it. No formal action taken on employment security rules.

ENERGY
POLICY
COUNCIL

Robert Tyson, Director, and his Secretary, Dolores Abels, were present for review of low-income home energy assistance program, ch 13 ARC 2526, also filed emergency, ARC 2525, IAB 11/25/81.

Abels explained, effective October 1, the Governor transferred the low-income energy assistance from OPP to EPC. Rules were filed emergency and under Notice as well. The OPP rules, which are identical to those being presented, will be withdrawn. She pointed out the changes: Authorization for the program was revised to Title XXVI of the Omnibus Reconciliation Act; eligibility guidelines were made to conform to the federal poverty income guidelines, and the form of payment, dual payee checks.

- 13.3(1) Tieden, in re 13.3(1), inquired as to who made application. Tyson responded the person who paid the fuel bill would be eligible for assistance. Tyson informed Tieden funds are disbursed on a first-come, first-served basis.

No further questions.

CAMPAIGN
FINANCE
DISCLOSURE

Robert D. Fulton, Commissioner, and Kay Williams, Commission Director, were present for discussion of the following:

CAMPAIGN FINANCE DISCLOSURE COMMISSION[190]

- General, civil penalties, 1.2, 1.4, 2.4, 2.6, 2.7, 2.12, 3.1, 4.1 to 4.6, 4.8, 4.9, 4.14, 4.15, 5.3, 5.4, 5.9, ch 6 ARC 2513, F..... 11/25/81

There was discussion of sales tax issue and late filings, 6.6. Williams wondered if the waiver of penalty section would resolve some of Schroeder's concerns. The Commission tried to allow latitude by considering different circumstances. Schroeder could foresee a problem when there was a change in treasurer.

Fulton thought Schroeder's point could apply if a different individual files the report, but declared the Commission is eager to have filings on time. Disclosure officials agreed to bring up the matter at the Commission meeting that afternoon. According to Williams, the first penalty deadline is January 4, 1982 and the Commission will be better able to report on late filings after that date.

CAMPAIGN
FINANCE
Continued

Fulton emphasized the Commission intended to be quite strict in enforcing a timely filing.

No further questions or comments.

Recess

Chairman Schroeder recessed the Committee for lunch at 12:20 p.m. to be reconvened at 1:30 p.m.

Reconvened

Schroeder reconvened the Committee at 1:35 p.m. The first order of business was the following Insurance Department rules:

INSURANCE
DEPARTMENT

INSURANCE DEPARTMENT(510)

Individual accident and health insurance, group Medicare supplement insurance, ch 36, 37.1 to 37.4, 15.8.

15.9, 15.31 ARC 2527

11/25/81

Appearing on behalf of the Department were Janet Griffin and Tony Schrader, Deputy Commissioners, and Richard Hurst, Staff.

Also present: Meg V. Mathews and Virginia Renier, Bankers Life; Paul E. Brown, Jim West and Keith Luchtel, Iowa Life Insurance Association; Stephen W. Robertson, Health Insurance Association of America; Jerry O'Leary, Amercian Council of Life Insurance, and Marvin Vandelune, Inter-State Assurance Company. Griffin gave a brief review of the rules which deal with individual accident and sickness insurance and group medicare supplement policies. They are designed to establish full and fair disclosure by setting out an outline of coverage, minimum levels of benefits and reasonable and creditable loss ratios. A public hearing was held where several representatives of the industry made statements. She called attention to the fact that consumer groups, health care providers and senior citizens were not represented at that hearing. In addition, extensive written comments were received by the Insurance Department--all from the insurance industry and none for the other groups. The staff has met 3 times with representatives of industry. Portions of the proposed rules have been substantially redrafted. Generally, changes incorporated the model National Association of Insurance Commissioners' language. Adopted changes do more closely track that model. Griffin discussed specific areas; limited benefit contracts, language with loss ratios and minimum limits. Much of the nonmodel language was deleted. Compliance date was changed and will be staggered. The federal supplemental health insurance panel recommended minor changes, which have been incorporated. Chapter 514D, The Code, is not the model NAIC language. The Department has received the most complaints relative to Medicare. If Iowa changes the regulation, it will have to be resubmitted to the federal government for approval.

Griffin addressed some specific objections -- the 65 percent loss ratio, that being the percentage of the premium which is returned to the insureds in the form of benefits under their policy. In the Department's judgment, the 65 percent ratio is adequate to provide the industry with a fair profit while providing fair return to the consumer. Some other states are using the 65 percent figure and, in the Department's opinion, it is not unrealistic. Griffin touched on the subject of nonduplication of coverage which is not in the model. The intent of the law was to address problems in Iowa, i.e. the abuse of sales in the senior citizens' market.

INSURANCE
DEPARTMENT
Continued

12-8-81

Griffin discussed a suggestion by the HIAA which in the judgment of the Department was not statutory. The Baucus language was suggested but was rejected because it addresses a problem nonexistent in Iowa.

Clark pondered if the Insurance Commissioner felt strongly that the National Association of Commissioners' language was important, why wasn't it incorporated in the first place. She questioned whether the notice was valid since extensive changes had been made. Griffin admitted the point was well taken. Initially the Department thought the law could be implemented with the rules as proposed. Clark thought the whole process was questionable.

Holden raised a question as to whether industry complaints were raised at the hearing. Griffin replied in the affirmative. Schrader explained the method used in developing the version before the ARRC. The original language placed a burden on the industry. The Insurance Department preferred to avoid litigation and went to the model Act.

Schroeder commented that when the legislature passed the model Act, he did not envision these extensive rules. Griffin replied that was the Department's position. Brown, speaking on behalf of the industry, presented his views on the matter. He appreciated the major revisions in the first round of rules and the draft now being considered is close to the model, although there is editorializing re individual age policies and medicare supplements. Brown presented copies of his comments to Committee members and discussed the model legislation. He was supportive of controlling of excess selling of medicare coverage. Accident and Health policies were discussed. Deviations as seen by the industry included loss ratio for individual medicare supplement policies--a subject under great discussion in states and federal. Brown maintained 65% should be 60%. The Act directed the Commissioner to issue a rule pertaining to duplicate medicare supplement coverage. However, industry believes the rule would exceed the statute. For the sake of consistency, the industry prefers the federal language by Baucus. Brown favored the second draft which included language from the model Act with respect to skilled nursing, convalescent and custodial nursing care. He admitted the Commissioner is allowed discretion.

Brown expressed opposition to the Major Medical increase--\$200 per day was "too high and not realistic." He declared it was not in the public interest to fix a minimum that is higher than every day practical costs of this care. Brown pointed out in 36.6(5)g(2), the last word should be "facility" not "care." Further reference to 30 days should be changed to 14 days in the paragraph re posthospital skilled nursing care. [Line 6, 36.7(11)d]

The point was made that some states require a minimum loss ratio of 65%--Minnesota, New York, Kentucky, Wyoming and possibly Connecticut. Most states use the 60% figure with the extra 5% for operating expenses of the insurance company. Chiodo opined it was significant that Connecticut, known for its insurance industry, used the 65%.

INSURANCE
DEPARTMENT
Continued

Brown doubted that any states had acted since the Baucus decision. Robertson pointed out that the Insurance Commissioner was not overly influenced by anybody. Schrader, responding to the ratios noted that 60% was not a minimum. Percentages being discussed in A&H policies are at maturity. If sold today, 60% is not paid tomorrow--a five-year average is used. Schroeder raised a question about that assumption. The discrepancy in the amount of allowed coverage on duplication of coverage was of importance to Chiodo. As long as coverage is not duplicated, he did not see the need for restrictions. Griffin explained the process followed to develop the rule. One viewpoint is that a person on medicare needs only a medicare supplement policy. Others argue they should be allowed to buy only one medicare supplement policy. Duplication exists when someone is confused about insurance and buys several policies of 3 or 4 different types of coverage. Although it is possible to collect on all, the chances of that happening are slim and in the meantime, limited resources have been expended. Department believes their approach to be more rational and that buying more than one policy for any given type of coverage is unnecessary. General discussion of the problem.

Schrader said Insurance Department was concerned about companies that make a practice of selling again and again to the same people. Schroeder contended the state had laws to correct that practice.

Schroeder restated the stand on the part of the industry and inquired as to the view of the insurance commissioner. Department officials concurred that they followed the most lenient interpretation of the law.

Motion --
70-day
delay --
chapter 36

also
11/37
15.31
15.9

After further discussion, Clark moved to impose a 70-day delay on chapter 36 of the Insurance Department rules, published IAB 11/25/81. Royce questioned the March 31 effective date in 36.3. Griffin responded the intent was that it would apply to new form filings -- before the company could sell the product, the form would have to be approved by the Insurance Department. Griffin was concerned that a delay might allow federal pre-emption which the Department wanted to avoid. Rules would need to be in effect before July 1982.

Brown was willing to work with the Department to reach a compromise. He emphasized the importance of uniformity. Brown added that Bankers Life Company had opted to discontinue sale of Accident and Health Policies. Renier, Bankers Life Actuary, said the decision was made because of individual medical expense -- one big factor was variations, loss ratios, etc.

Chiodo was informed that people would not be placed in any kind of jeopardy because of the delay. Should the state fail to act, they will lose jurisdiction and federal law will prevail. Griffin was willing to work with all factions for resolution of the matter.

Vote

The Clark motion to delay chapter 36 for 70 days was adopted with 5 ayes. Schroeder encouraged the industry, whenever there are problems, to come forward earlier in the rulemaking process.

REVENUE
DEPARTMENT

The following rules of Revenue Department were before the ARRC:

REVENUE DEPARTMENT[730]

Interest rates, 9.1, 9.4, ch 10, 12.10, 39.2(2), 44.7, 44.8, 52.5(3), 52.5(4), 52.5(9), 52.5(10), 58.2(2), 58.5(4), 58.5(8), 58.5(9), 63.10, 75.2, 86.2(15), 86.2(18), 86.3(3), 87.3(9), 87.3(12), 88.3(14), 88.3(17), 89.7, 104.9 ARC 2516. N... 11/25/81

Carl Castelda, Deputy Director, appeared on behalf of the Department. He presented a brief explanation re amendments to chapter 10 which were intended for clarification. There was general discussion concerning proposed legislation.

PLANNING &
PROGRAMMING

Don Appell was present for discussion of the following Building Code rules:

PLANNING AND PROGRAMMING[630]

Building code, 5.200, 5.400(1), 5.620, 5.624(3), 5.626(1), 5.626(2), 5.700, 5.704(5) ARC 2506 F..... 11/25/81

Responding to Schroeder, Appell said requested changes had been made. Appell noted that the purpose was to have the Building Code Advisory Council and the Health Department's plumbing code committee coordinate efforts to produce an acceptable code.

Appell reviewed the four changes for ARRC members. He assured Schroeder that the 65 pounds per square foot of unit for footing sizes and pier spacing was a uniform standard of the industry. Schroeder reasoned a state code should supersede all city codes. Holden preferred removal of the state code.

TRANSPOR-
TATION
DEPART-
MENT

Jane Phillips and Conrad Amend, Transportation Regulation Board, were present for review of motor carriers and charter carriers, (07,F)4.7(1) to 4.7(5), ARC 2511, IAB 11/25/81. Phillips said the rulemaking had been implemented in response to a request by the Iowa Intercity Bus Assn. The Association desired more uniform schedules to coincide with those of other states. In checking, the Transportation Regulation Authority verified the matter but were interested in avoiding prejudice on the part of the public. The main impact of the rule would allow the 30-day waiting period for change of schedules but, at the same time, require the carrier to provide information to the Regulation Board, who in turn would apprise the public, thus allowing time for any protest.

The industry is now faced with the commuter carrier and more background is needed for compliance. Thus, the rule pertaining to that area was clarified. Holden wondered if there were adequate flexibility. He was inclined to favor less regulation, and failed to understand how the public would be served by the rule. Phillips indicated they did not view the rule as "more regulation" but a clarification of existing law. If problems develop, changes will be made.

In response to Tieden, Phillips said requests for schedule change are filed with the TRB and if no protests are submitted and if it is decided no investigation is necessary, the schedule would go into effect 60 days after the filing date and 30 days after publication of notice.

Amend told Tieden that if complaints are received, the TRB investigates immediately. Phillips pointed out there are provisions which allow the carrier to place schedule into effect before the statutory time period. No further questions.

ENVIRONMENTAL QUALITY The following rules of the Environmental Quality Department were before the Committee:

ENVIRONMENTAL QUALITY DEPARTMENT(400)

Waste water construction, grants, 19.2(12)"b" ARC 2483F..... 11/11/81

Appearing on behalf of DEQ were Pete Hamlin, Patty Allen and Joe Obr. Schroeder inquired if comments were received at the public hearing. Allen responded in the negative on this rule, because it merely extends the 1981 priority system. There was funding for 1982 projects.

Holden spoke of the naivete of the state in allowing the federal government to enforce our water standards. Hamlin pointed out that the EPA rules being enforced in Iowa are identical to those which went into effect one year ago. Schroeder declared DEQ's last rules were in anticipation of federal standards which demanded extensive tests that cost more money. Hamlin emphasized testing has not changed in two years and he addressed the issue of increased costs. Discussion of the problem faced by Representative Kenneth Miller and costs for water tests he is required to make in his mobile home court. According to Hamlin, the Federal Safe Water Drinking Act, in Iowa, is administered by the federal government. The tests are submitted by the suppliers. Committee members were interested in the vehicle to alleviate the problem. Hamlin reported that DEQ focuses their attention on municipal systems, public water supplies and schools. General discussion of unsafe samples of water and procedure followed by DEQ. Hamlin was unable to advise ARRC as to how many cases of unsafe water had been investigated but Obr estimated less than 5%. Department officials emphasized most communities are very anxious to correct any problems.

SOIL CONSERVATION

Kenneth Tow appeared on behalf of Soil Conservation for review of the following:

SOIL CONSERVATION DEPARTMENT(780)

Soil erosion control, financial incentives program, 5.73(4), 5.73(6), 5.74(1), 5.74(5)"e"(6), 5.81(4) ARC 2524 ...F..... 11/25/81

According to Tow, the filed rules contain some remedial changes but no substantive changes since the notice. The Department had received one comment. Schroeder raised question re the 20-year life expectancy in 5.81(4) and responded that it coincides with specifications the Soil Conservation Service uses in small watershed programs, etc. The object was to allow heavier pipe. Any project such as a terrace should last 20 years and would be required to be constructed of 20-year material.

Schroeder inquired if there had been trouble with contract sales where there was a long term program. He wondered if 5.74(5)e was enforceable. Tow replied the application to do cost share work has to be signed by the contract seller as well as the buyer. The maintenance agreement is also signed. Tow admitted there could be a problem. He added, "There are twice as many applicants in the program as the funds will accommodate." Schroeder could envision problems.

NATURAL The following rules of Natural Resources Council were before the
RESOURCES Committee:
COUNCIL

NATURAL RESOURCES COUNCIL[580]

Permits to divert, store or withdraw water; floodplain or floodway construction, 3.1(4).

3.1(8), 3.2, 3.3, 3.7(5)"b", 3.11 to 3.13, 5.5-1(3)"d", 5.6(2)"c" ARC 2505 11/11/81

Appearing on behalf of Natural Resources were Mike Smith, Deputy Water Commissioner, Carol Hough, Council Member and Jim Wiegand, Deputy Water Commissioner. Also present: Ken McNichols and Carol Bolton, Iowa Limestone Producers Assn. Smith contended it was difficult to summarize the package of rules because different classes of water users are affected. He quoted from the preamble that the proposed rules generally relate to "the potential effects of water uses or flood plain projects on water quality."

A hearing was held at 1:00 p.m. today and the only objection voiced was from the Iowa Limestone Producers. Smith requested permission to confine himself to their concern since that seemed to be the only controversy.

Smith had worked with Valmont Industries, which was interested in irrigation, and tried to submit acceptable rules. He recognized "a basic difference of philosophy" with McNichols. In his opinion, McNichols conveyed the fact that the rules would ruin the good relationship the Limestone Producers had with the Council.

Schroeder referenced a case at Ames where an individual had pumped water out of a quarry to maintain a steady flow. Smith had no knowledge of that. Wiegand maintained the Council had worked with Ames to recharge their well field. Under the governor's drought disaster proclamation, temporary dams were constructed on the Skunk River by emergency permit. The Hallett Gravel Quarry had a permit to discharge water into the river and allow the city to pump water under that permit. Wiegand would be interested in doing research on the matter if Schroeder could provide specifics. Schroeder had heard generalities.

Smith stressed the reason for regulating pumping from limestone quarries was because of water "quantity," not "quality." The level of ground water is lowered in surrounding areas, which could cause well problems. Tieden wanted verification that aquifers would not be affected.

There was general discussion of methods used in pumping water out of pits and resulting impact on the aquifer. Smith called attention to the fact that as much as 5000 gallons of water per minute are being pumped by operators to lower quarry levels.

Schroeder posed questions about building berms around quarries when water is pumped out to keep it from flowing into the quarry. Also, what about the economic impact--has research been conducted? What is the gain for the cost involved? What about building interstates? Smith responded, "If water is not diked, it will need to be pumped." He continued study has been made on the matter and surface water should be kept out of quarries. According to Smith, Marvin Ross, Chief, Mines & Minerals Division, Soil Conservation, was supportive of the rule. Also, the Iowa Geological Survey reviewed the rules and found them acceptable. McNichols interpreted the rules to require berming of every limestone quarry in the state. Smith disagreed saying berm would be required in cases where there

12-8-81

NATURAL
RESOURCES
COUNCIL
Cont'd

is evidence of pollution of the aquifer from ground water surface run off. Schroeder asked what major problems had occurred during the last two years to necessitate the change. Smith had no specific "horror story" to report but indicated that pollution would be irreversible. The rule alerts the quarry operators and any good manager would comply without government requirement. McNichols distributed copies of a statement wherein he set out objections to the rules and labeled them as discriminatory; 3.2(c) which would result in "astronomical costs for ditching and berming." Also, he argued that 3.7(5)b was unnecessary. His firm supports proposed legislation and a study committee as suggested by the Governor's Study Committee and Interim Committee. In their opinion, Resources Council has been "insensitive to problems regarding water in Iowa as evidenced by this eleventh hour patchwork regulation." Further, he thought it was unfortunate that the Council and the ARRC review were scheduled for the same day. McNichols urged more study of the matter and supported an economic impact statement. Schroeder clarified the fact that both hearings were held the same day was coincidental.

Discussion of sump pumps in quarries and problems which occur if the pumps are shut off. Particularly, in the case of limestone since it is not mined continuously.

In response to Tieden's question, Wiegand described aquifers generally. He pointed out that dye tracers have proved that it is possible to pollute an aquifer through a sinkhole. Smith added that Northeast and North Central Iowa are primary concerns. Holden wondered why Limestone Producers had not been contacted by the Council. Smith stated he had sought suggestions from McNichols when the rules were in draft form but he felt McNichols preferred no rules. Holden was not aware that Resources Council had ever cited a problem. However, Smith indicated that complaints had prompted them to develop the proposed rules. Chiodo could see no point in pursuing the issue until there was further study. Schroeder was hopeful a middle ground could be reached.

NO AGENCY
REPRESENTATIVES

The following agencies were not requested to appear for rules review:

AGRICULTURE DEPARTMENT[30]
Standards for shell eggs, 35.1 ARC 2512 N 11/25/81
CIVIL RIGHTS COMMISSION[240]
Investigation and conciliation, 1.511rc ARC 2474 N 11/11/81
AUDITOR OF STATE[130]
Graduated payment adjustable mortgages, ch 10. ARC 1739 terminated ARC 2472 11/11/81
HEALTH DEPARTMENT[470]
Chiropractor examiners, license fees, schools, 141.11(2), 141.11(2) ARC 2476 N 11/11/81
PHARMACY EXAMINERS, BOARD OF[620]
Description and organization, 9.11(1), 9.11(5) b, 9.11(5) b, 9.11(5) b, 9.11(5) b, filed emergency ARC 2477 F.E. 11/11/81
Peer review committee, 10.2, 10.3 ARC 2473 N 11/11/81
PRISON INDUSTRIES ADVISORY BOARD[635]
Board meetings, 1.1(4) ARC 2478 N 11/11/81
PROFESSIONAL AND OCCUPATIONAL REGULATION COMMISSION[637]
Evaluation, day care providers, 5.3(2) ARC 2519 F 11/25/81


MINUTES

The November minutes stood approved as submitted.
It was agreed the Committee would convene January 11, 14 and 15, 1982
Adjourned at 4:15 p.m. until Monday, January 11, 1982.

Respectfully submitted,

APPROVED:


Chairman


Phyllis Barry, Secretary
Assisted by Vivian L. Haag