

# **MINUTES OF THE REGULAR MEETING OF THE ADMINISTRATIVE RULES REVIEW COMMITTEE**

Time of meeting      The regular meeting of the Administrative Rules Review Committee (ARRC) was held on Tuesday and Wednesday, August 9 and 10, 1994, in Room 22, State Capitol, Des Moines, Iowa.

Members present      Representative Janet Metcalf and Senator Berl E. Priebe, Co-chairs; Senators H. Kay Hedge, John P. Kibbie, William Palmer and Sheldon Rittmer; Representatives Horace Daggett, Minnette Doderer, Roger Halvorson, and David Schrader.

Also present          Joseph A. Royce, Legal Counsel; Phyllis Barry, Administrative Code Editor; Kimberly McKnight, Administrative Assistant; Caucus staff and other interested persons.

Convened              Senator Priebe convened the meeting at 10 a.m. and the following Agriculture and Land Stewardship Department agenda was considered:

## **AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]**

Dairy trade practices, 23.4(2)"b"(9) and (10), 23.4(2)"c"(2) to (5), 23.5(2), Notice ARC 4886A ..... 7/6/94

Infectious and contagious diseases — cattle and swine importation, 64.34(2), 64.43(1), 65.5, 65.6(1), 65.6(4), Notice ARC 4955A ..... 7/20/94

Livestock importation — poultry, 65.1(2), 65.11, 65.11(1)"a," Filed ARC 4934A ..... 7/6/94

Animal welfare — euthanasia, 67.9, Notice ARC 4968A ..... 7/20/94

Dairy — milk tests, 68.5, 68.11(1), 68.12, Notice ARC 4969A ..... 7/20/94

23.4(2) et al.          With respect to amendments to 23.4(2) et al., Lillian Moore stated that the agency had a letter of support from Mark Truesdall of the Iowa Dairy Association. No Committee action.

64.34(2) et al.          Dr. Walter Felker, State Veterinarian, reviewed the proposed amendments to 64.34 et al. and 67.9. The agency proposed to adopt the most recent CFR regulations on brucellosis which was an update from 1982.

Priebe questioned allowing the importation of cattle from Virginia even though they were not a free state. Dr. Felker replied that Virginia had one lesioned animal which was found in Pennsylvania. The herd was negative so the federal government lowered it from a class-free to a provisional class-free status. Since the herd of origin was tested, the agency saw no reason not to accept the cattle.

67.9                      Felker explained that new rule 21—67.9 was a Code mandated change. The agency adopted by reference the recommendation of the American Veterinary Medical Association Panel on Euthanasia. Felker provided a copy of the recommendations.

68.5 to 68.12          Jane Wakefield, chief of the Dairy Products Control Bureau, represented the Department for proposed revisions to Chapter 68.

Daggett recalled Amish concern over these rules. Wakefield stated that these amendments update existing rules and Priebe interjected the Amish had advised him that they were satisfied with the rules.

65.1(1) et al.

Felker explained amendments to Chapter 65. Daggett asked if the rules would have an impact on the big operations in his area. Felker replied that those operations would not be affected since their replacement layers were from NPIP-approved and qualified flocks. NPIP has surveillance over breeder's supply flocks—they do not have direct oversight of the egg flock. Dr. Felker added that the poultry industry was very supportive of the rules.

**VET. MEDICINE**

Dr. Felker also presented the following agenda:

**VETERINARY MEDICINE BOARD[811]**

Application for licensure, 6.1(1), 6.1(2)"e," 6.2, 6.5(2), 7.2(4), 8.3, 8.10(3), Notice ARC 4890A ..... 7/6/94

Felker described the amendments as essentially corrective. Priebe referred to 6.2 which set a \$10 fee for a returned check. He contended that the amount should be higher when the rule was adopted. Felker explained that "bounced checks" has been minimal—a half dozen or so.

Doderer questioned new language in 6.1(1) which stated that photographs of the applicants shall be passport size and quality photos. Priebe suggested provision for a 2 by 3 photo instead of passport size. No Committee action.

**SOIL CONSERV.**

Kenneth Tow and Bill McGill were present from the agency for the following:

**SOIL CONSERVATION DIVISION[27]****AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]"umbrella"**

Organic nutrient management program, 13.10, 13.20, 13.40, 13.63(2), 13.74, Notice ARC 4953A ..... 7/20/94

Financial incentive program for soil erosion control, 10.41, 10.41(2), 10.41(7),

Filed Emergency After Notice ARC 4985A ..... 8/3/94

Soil practices loan program, ch 15, Notice ARC 4994A, also Filed Emergency ARC 4995A ..... 8/3/94

13.10 et al.

Hedge requested more information on a new definition of "family farm limited liability company". McGill stated that the definition was in the appropriations bill. Hedge questioned the meaning of a "majority of members related to each other". He felt that the company could be owned by someone out of the country as long as two people in it were related. Doderer wanted to know if each person gets a vote or if they vote their stock. The agency agreed to research the matter.

10.41

No comments were received at the hearing and there were no questions on 10.41.

Ch 15

Tow indicated that new Chapter 15 was designed to complement the federal emergency conservation program—a followup from the 1993 floods. He quoted from Senate File 2314. No questions from the Committee.

**ECONOMIC DEV.**

Duane Leitch, Mike Miller, Bureau Chief, Rose Wazny, Mary Kay Baker, Ken Boyd, Melanie Johnson and Kathy Berry were present for the following:

**ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]**

Youth affairs — summer conservation projects, Iowa corps program, 14.3(9), 14.5(2), 14.5(5)"c," 14.5(7), Notice ARC 4925A ..... 7/6/94

Community economic betterment program, 22.2, 22.6(1), 22.6(2), 22.7, 22.8(3)"f," 22.9(3), 22.14, Filed Emergency After Notice ARC 4926A ..... 7/6/94

CDBG program guidelines, 23.2, 23.6, 23.6(1) to 23.6(6), 23.6(9)"b" and "c," 23.7(1)"a," 23.7(2), 23.8(1)"d" and "e," 23.11(1)"c" and "e," 23.11(4)"b" to "e," 23.11(5), 23.13(1), 23.13(3)"c" to "g," 23.13(4), Notice ARC 4921A ..... 7/6/94

Value-added agricultural products and processes financial assistance program, ch 29, Notice ARC 4927A ..... 7/6/94

Rural leadership development program, ch 68, Filed Emergency After Notice ARC 4928A ..... 7/6/94

Rural action training program, ch 69, Filed Emergency After Notice ARC 4929A ..... 7/6/94

Leitch stated that amendments to Chapter 14 propose an increase in grants and the matching funds. Application dates and fees relative to the Iowa Core Program were also addressed. The department expected to receive 500 applications for 25 grants—all applications would be on a competitive basis.

Priebe asked if this increase in maximum grant awards would eliminate any of the smaller projects. Leitch saw no problem and added that a number of the applicants do not seek the full amount. Priebe asked if, with the \$5,000 increase, the total appropriation for the full amount would be \$210,000. Priebe was not convinced that smaller projects would not be eliminated. He recalled intent was to spread the dollars to as many projects as possible. Leitch cited the increase in minimum wage and Iowa Core summer projects being limited to six to eight weeks, thus creating the need for larger crews to complete projects in that time period.

In response to Rittmer and Priebe Leitch said that two-thirds of the applications received were funded. This year they funded fourteen projects. The agency considers both a dollar amount and a target figure of projects.

Doderer requested explanation of the Iowa Core Program. Leitch explained that the program provides a \$500 tuition scholarship restricted to an Iowa post-secondary institution—the money goes to the college. Originally, the program was for students in grades 9 to 12 to provide 100 hours of voluntary service for a public agency or private nonprofit agency. The agency typically received 400 plus applications and \$500 was escrowed for the student to access within a three-year period. Projects included Human Services, Conservation, hospitals, library and United Way. Increase in the minimum wage and benefits had resulted in fewer youths being employed. Priebe asked if the grant amount was spelled out in the Code and Leitch replied that it was only in the Administrative Rules.

Halvorson indicated that his district favored the increase from \$17,500 to \$22,000.

Leitch informed Metcalf that the program had been discontinued for two years because of the Fisher Committee recommendation for funding deferral. Funding comes from the Iowa Conservation Core which allows the agency to authorize special projects for up to \$20,000. Doderer asked for clarification of the word "project". Leitch stated that many students worked for the Clayton County Conservation Board. Promotional videos and indexing a library were projects given as examples. Halvorson said that trail building and work with the animal zoo was done in his area.

Leitch advised Metcalf that 15 out of 100 points were based on financial need.

Rittmer stated that this was different than the Youth Core Program and wanted to know if they got paid directly. Leitch clarified that the Iowa Youth Core was now called the Iowa Conservation Core. When the young adult component was added, the name was changed.

Doderer requested that Royce get the language from the Fisher Commission as to why the program was discontinued. No Committee action.

22.2 et al.

Mike Miller explained five changes from the Notice to amend the CEBA Program. He clarified that companies which qualified under the "IPSCO Bill" would not be eligible for CEBA funding. Also, confinement feeding operations could be covered; but according to the rating system, it would be difficult for a project of that nature to qualify because of competition. Retail businesses usually do not score high enough to qualify.

There was discussion of average wage scales in selection criteria—22.7. In order to qualify for a CEBA project, the company must pay at least 85 percent of the average county wage. One or two counties have a county-wide average wage 75 percent of minimum wage. According to Miller, state-wide average wage for all CEBA projects was in the \$9 range. Palmer queried as to whether the lower tier of counties would be at a disadvantage. Miller said that the Noticed version would have placed them at a disadvantage because of \$11 an hour as an absolute floor for any project to receive more than \$500,000. The agency does not factor in indirect benefits. As part of the rating factor, fringe benefits would be included as a part of a consideration for the project. Projects that qualify for \$500,000 will be required to pay at least 80 percent of the standard medical and dental insurance package—the same as the new jobs and income program. No Committee Action

23.2 et al.

Rose Wazny, Bureau of Community Financing, addressed amendments to Chapter 23. Metcalf and Wazny discussed the point system which Wazny described as a comfort level for certain people. Wazny stated that the rules were targeted to low- and moderate-income individuals. Daggett wondered if schoolhouses being converted into apartments would be included and Wazny replied in the affirmative if this involved people at or below 80 percent of median income for the area.

Wazny discussed role of FEMA and it was noted that the agency and FEMA worked with the same application forms.

Ch 29

Miller represented the Department for new Chapter 29. Three groups spoke at the hearing and urged flexibility in the project funding, clarification of some of the definitions relating to new and innovative projects and changes in the rating system as proposed for the innovative agriculture products. Recommendations for the rating system would increase the emphasis on utilization of agricultural products. Raising of livestock or crops would not qualify. Hedge was informed that the definition of "renewable fuel" would be clarified.

Metcalf asked about the feasibility studies with respect to rating criteria. Miller stated that as a percentage of the total project, it was considered but wasn't included because there may be feasibility studies that would not be an exact percentage of a total project. The agency may contract with a third-party consultant to determine feasibility. Metcalf opined that any other state funds received should be included in 29.7(15E) to prevent "double-dipping".

Kibbie wanted an example of when a waiver would be granted. Miller explained that the Department reserves the right to grant any project a higher percentage of loan than indicated. With respect to federal assistance, Miller stated this could involve a project receiving funding from the Farmer's Home Association or EDA where there was conflict with these rules but not with state law.

Chs 68 and 69

Berry told the Committee that new Chapters 68 and 69 were filed emergency to allow communities and development groups extra time to file their proposals. No questions from the Committee.

**CIVIL RIGHTS**

Ronald Pothast represented the following:

**CIVIL RIGHTS COMMISSION[161]**

Fax number, meetings via telephone, civil rights complaints, 1.1(1)"b," 1.1(3), 3.16, Notice ARC 4956A ..... 7/20/94

1.1, 3.16

In response to Doderer, Pothast stated they were going to attempt to conduct meetings via ICN. There had been difficulty with scheduling, however.

Discussion focused on 3.16(2), procedure to reopen by the commission. Hedge questioned the fairness of (4) which would allow reopening as a result of gross and material error by the staff. Pothast said this language was intended for the protection of the person being investigated. Hedge favored a limit on the number of reopenings but Doderer took the position that one time should be sufficient. Hedge concluded that none would be preferable. No Committee action.

**CRIMINAL AND JUVENILE JUSTICE**

Richard Moore and Lori Rinehart were present for the following:

**CRIMINAL AND JUVENILE JUSTICE PLANNING DIVISION[428]**

HUMAN RIGHTS DEPARTMENT[421]"umbrella"

Juvenile crime prevention community grant fund, ch 4, Notice ARC 4931A,

also Filed Emergency ARC 4930A ..... 7/6/94

Ch 4

Moore stated that Chapter 4 would implement 1994 Acts, Senate File 2319. The Division reached 25 to 35 communities with the training initiative and applications were being drafted. Emergency rules would enable quick distribution of money to communities both large and small. No recommendations.

EPC

David Wornson, Keith Bridson, Anne Preziosi, Randy Clark and Mike Murphy were present for the following:

**ENVIRONMENTAL PROTECTION COMMISSION[567]**

NATURAL RESOURCES DEPARTMENT[561]"umbrella"

Emission standards for contaminants — open burning, 23.2(3)"d," "g," "h," and "i," 23.2(4),

Notice ARC 4963A ..... 7/20/94

Protected streams, 72.2(1)"d," 72.31(3), 72.32, 72.50(1), Filed ARC 4961A ..... 7/20/94

Financial assurance requirements for municipal solid waste landfills, 103.2(16), new ch 111,

Filed ARC 4962A ..... 7/20/94

Groundwater professionals — suspension, revocation and denial of registration, 134.4, Filed ARC 4964A ..... 7/20/94

23.2

In review of 23.2, Schrader suggested an exemption on burning structures if nearby neighbors agreed to the burning. Schrader asked for clarification of the words "... building inhabited by other than the landowner conducting the open burning, ..." since there may be a tenant involved. Kibbie suggested that the person in charge of the property (farm manager, operator, tenant) have the responsibility.

Priebe referred to 23.2(3)"h" and voiced opposition to any open burning of paper or plastic pesticide containers and seed corn bags. No action taken.

Ch 72

Clark stated that several public hearings were held concerning amendments to Chapter 72. There were comments pro and con. Revisions were made due to public comment. Priebe requested a copy of the responsive summary by Wednesday's meeting. Clark was amenable.

103.2, Ch 111

Murphy reviewed 103.2(16) and new Chapter 111. Many comments were received and most were favorable. The most adverse response came from representatives of private owners and operators of these systems. Metcalf asked about reaction from Polk County and Murphy stated that large counties were

pleased. Kibbie asked if these rules provided for a private landfill that contracts with counties or cities to pass any additional costs on to the contract owners. Murphy was unsure. No Committee action.

134.4

Wornson said that considerable comments were received on revised rule 134.4 and changes were made following the Notice. In response to Daggett, Wornson stated that the rule was based upon specific authorization in statute regarding registered groundwater professionals which by definition was limited to contaminated underground storage sites.

He also advised Kibbie that the owner/operator of the contaminated site was responsible for the monitoring costs. The underground storage tank fund included this until prioritization. The Department approves a monitoring plan submitted by the owner/operator. Bridson stated that the longest a site had been monitored was two years and frequency varied.

In response to Halvorson, Wornson said that there were about 200 groundwater professionals and the numbers were growing. They qualify by belonging to a professional organization that has some form of licensure provisions; they are registered professional engineers or have a grandfather clause of five years of combined educational and practical experience. Their fee structure was not controlled, but the underground storage tank fund has budget approval for fund-eligible owner/operators. Wornson suggested that Halvorson contact the UST Fund Board with complaints about billing. Halvorson and Wornson discussed the disclosure form for transfers of contaminated property. The buyer had potential liability for cleanup. Rittmer was concerned about the judgment calls and wondered if the rules were always applied uniformly. No action taken.

DNR

Richard Bishop was present from the department for the following:

**NATURAL RESOURCE COMMISSION[571]**

**NATURAL RESOURCES DEPARTMENT[561]"umbrella"**

State parks and recreation areas, 61.2, 61.6(5), Notice ARC 4933A ..... 7/6/94  
Deer population management areas, 105.2, 105.3(2), 105.3(3), 105.4(2), 105.4(3), Notice ARC 4932A ..... 7/6/94

61.2 and 61.6(5)

No questions on amendments to Chapter 61.

105.2 et al.

In review of amendments to 105.2, Priebe asked if the department had authority for 105.4(2)"f" and Bishop responded affirmatively. Priebe reasoned that any restrictions should apply to all bow hunters not just those in a specific area.

There was brief discussion on control of crows and damage to horticultural crops from deer. Halvorson spoke of a deer depredation fund which was tied to license fees in Michigan and Wisconsin. He asked if the Department has looked at anything like that. According to Bishop, the Department has considered this but it would be extremely expensive. No Committee action.

Recess

Priebe recessed the Committee at 12:05 p.m. for lunch and reconvened it at 1:30 p.m. for the following Substance Abuse Commission agenda:

**SUBSTANCE  
ABUSE**

**SUBSTANCE ABUSE COMMISSION[643]**

**PUBLIC HEALTH DEPARTMENT[641]"umbrella"**

Methadone treatment centers, 3.35, Filed Emergency ARC 4949A ..... 7/20/94  
Methadone — central registry system, take-home medication, 3.35(1), 3.35(2), Notice ARC 4967A ..... 7/20/94

3.35

G. Dean Austin and Jeff Gronstal represented the department on these rules. Also present were Dan Murphy, M.D., Michael Sellers, Attorney, and Barb Schnetzer, Methadone Clinic.

Austin offered history on the rule making which began with a Notice in the 9/29/93 Iowa Administrative Bulletin and an adopted version in 3/16/94 IAB. A 70-day delay had been imposed by the ARRC in April 1994 and a Session delay was voted June 15, 1994. The Commission rescinded the objectionable version and adopted the federal regulations through emergency proceedings in IAB 7/20/94. At the same time the Commission proposed subrules 3.35(1) and (2) as a compromise.

3.35(1) and 3.35(2)

Austin stated that after September, the Commission and those with methadone programs would work with a consultant to develop specific methadone rules. Austin summarized sentiments expressed at the hearing held this morning. Murphy had reiterated his concerns about the "take home" medication restrictions in 3.35(2)"a"(1) to (7). He noted that federal regulations included only "consider" and not "apply" the following requirements. Murphy was willing to participate in the central registry system but he contended that patients living a long distance from a clinic would have no chance for treatment. Murphy continued that adding another layer of rules would discourage doctors. Austin took the position that the subrules would not change the allowance of take-home treatment. That privilege could and would be granted. Gronstal stated that both the FDA and the state could grant exceptions on a case-by-case basis for take-home medicine. Metcalf felt that the 90-day period was reasonable and she supported the amendments. Murphy maintained that 90 days were insufficient to clear up other addictions. He preferred to follow the federal regulations but Austin felt that stronger language would encourage the programs to look at the seven requirements more closely.

Doderer preferred that the state follow the federal provisions. Austin was willing to remove the word "apply" from paragraph "a." Sellers pointed out that his client, Dr. Murphy, was not a state-funded program. He could understand that state-funded programs would benefit from more restrictive rules. Sellers concluded that the rule making was an attempt to "cut Murphy out". Austin denied the allegations by Sellers. He and Gronstal spoke of the difficulty in balancing between the needs of the patient and protecting the public interest. There had been instances of double dosing and the rule was designed to prevent that.

Gronstal mentioned three other programs and medical directors in Davenport, Council Bluffs and Des Moines who have no problem with these rules. Priebe asked the Division to defer adoption of the amendments until January and take more time to work out details. Austin was willing to take Priebe's suggestion to the Commission.

In response to Rittmer, Gronstal stated that the Davenport program preferred no "take-home" provisions. He added that each program could adopt restrictions tighter than the rules. Kibbie stressed compromise before adoption of the amendments.

Session Delay Lifted There was unanimous consent to lift the Session delay imposed on the version of 3.35 which had been rescinded.

**PUBLIC HEALTH** Carolyn Adams, Barbara Nervig, Karen Fread and Gerd Clabaugh were present for the following:

**PUBLIC HEALTH DEPARTMENT[641]**

Organized delivery systems, ch 201, Notice ARC 4924A, also Filed Emergency ARC 4923A ..... 7/6/94  
 HIV-related tests for convicted sexual assault offenders and the victims, 11.70 to 11.73, Filed ARC 4981A .... 8/3/94  
 Central registry for brain and spinal cord injuries, ch 21, Notice ARC 4982A ..... 8/3/94  
 Radiation — incorporation of changes made at federal level, 38.2, 38.5, 38.8(1), 38.8(2), 38.8(3), 38.8(8), 38.9(6)"i,"  
 ch 38 Appendix A, 39.3(3)"a," 39.4(1), 39.4(22)"d"(3)"9," 39.4(22)"e"(2), 39.4(22)"i"(3)"5," 39.4(22)"i"(6),  
 39.4(22)"j"(2), 39.4(26)"a," "d" and "g," 39.4(29)"d"(1)"2," 39.4(29)"d"(3), 39.4(29)"h"(3)"2," 39.4(29)"h"(5),  
 39.4(29)"m"(1)"2," 39.5(15)"j"(4), 40.82(2)"c," 40.96(1)"c," 40.96(2)"c," 40.96(4), 41.1(1), 41.1(3)"a"(10),  
 41.1(3)"f," 41.1(8)"c"(3)"7," 41.1(8)"c"(4)"4," 41.1(10)"b," 41.1(10)"c"(3), 41.1(12)"a" to "g," 41.1(12) Appendix I,  
 41.2(7)"a," 41.2(14)"f," 41.2(30)"a," 41.2(35)"a" and "d," 41.2(38)"b"(6), 41.2(39)"a"(4), (7), and (8),  
 41.2(44)"b"(6), 41.2(45)"a"(1) and (4), 41.2(60)"a"(2)"1" and "2," 41.2(60)"c," 41.2(62), 41.2(65)"b"(6),  
 41.2(69)"b"(2)"3" to "5," 41.2(75), 41.3(5), 41.3(7)"b," 41.3(9)"c," 41.3(12)"b," 41.4(3)"d"(3), 41.4(4),  
 41.5(8)"a," 41.5(21), 45.1(2), 45.1(3)"a," 45.1(5)"a" and "b," 45.1(9), 45.1(14)"a," 45.1(15)"a," "b," and "d,"  
 45.1(18)"a," 45.2(5)"c," 45.2(6)"a"(1) and (2), 45.2(6)"b"(4), 45.3(3)"c," 45.3(7)"c," "g," and "h," 45.3(8)"b,"  
Filed ARC 4983A ..... 8/3/94  
 Home care aide, ch 80, Filed ARC 4984A ..... 8/3/94

Ch 201 Adams explained that in the development of Chapter 201 (ODS), the Department invited the Health Care Reform Subcommittee, Health Plans, to serve as advisors. A smaller work group was formed to assist. These committees met several times and provided recommendations. The Department used the fiber optics network for public hearings.

Nervig stated that the systems would be similar to HMOs or another health plan product—it was not state funded and would not fall under insurance regulations. The ODS would not replace an HMO but was another means of obtaining health care. Daggett asked about the governing body and Nervig replied that the Department had allowed some flexibility in exchange for accountability. One application was being reviewed—physicians and hospitals cooperating to develop their own delivery system. If risk becomes a factor, regulation as an ODS or as an insurance product would be necessary. The solvency and finance portions of the rules [201.12] were developed by the Insurance Division and would be their responsibility. Nervig explained that the emergency option was directed by legislation.

Priebe referred to rule 201.3, paragraph "3" and suggested listing fewer names.

11.70 to 11.73 No questions on rules 11.70 to 11.73.

Ch 21 Adams stated that a public hearing had not been held on Chapter 21 but verbal support was received from the Iowa Hospital Association and the advocacy groups for head-injured individuals. There were no questions.

38.2 et al. No questions on amendments to radiation rules.

Ch 80 Priebe questioned 80.5(4)"b" and noted visits would be increased. Fread, overseer of the home care aide program, explained that required visits would be reduced.

Daggett asked for explanation of 80.5(2)"b" relative to personnel management. Fread stated that steps would be identified which should prevent discrimination in wages. The agency would determine its own wage scale if they have one.



**PROFESSIONAL  
LICENSURE**

The following agenda was reviewed by Carolyn Adams:

**PROFESSIONAL LICENSURE DIVISION[645]****PUBLIC HEALTH DEPARTMENT[641]"umbrella"**

Mortuary science, 101.1(3), 101.1(4), 101.2(11), 101.4(3)"a," 101.100, Filed ARC 4922A ..... 7/6/94  
Physical and occupational therapy, 200.5(2), 200.8, 200.9(1), 200.10(7), 200.20(8)"d," 201.7(2), 201.8, 201.11(1),  
201.11(2)"c," 202.5, 202.6(2), 202.9, 202.10(1), 202.11(7), Filed ARC 4993A ..... 8/3/94  
Speech pathology and audiology, 301.1, 301.2(1), 301.2(2), 301.2(4), Notice ARC 4992A ..... 8/3/94

101.1(3) et al.

In review of amendments to Chapter 101, Adams agreed to provide information to Daggett regarding licensing of those responsible for cremation.

200.5(2) et al.;  
301.1 et al.

No questions regarding 200.5(2) et al or amendments to Chapter 301.

**HUMAN  
SERVICES**

Attending from DHS for the following agenda were Mary Ann Walker, Kathi Keller, Stan Monroe, Marcia Stark, John Fairweather, Kim McMiller, Pauline Walton, Glenna Clark, Maya Krogman, Barbara Bosch, P.C. Keen, Mike Murphy, Sally Nadolsky, Mary Roberts, and Mary Nelson. Also present were Penny Dicky and Mike Heller from Planned Parenthood and other interested persons.

**HUMAN SERVICES DEPARTMENT[441]**

Standard of need test, 41.26(1)"d," 41.27(2)"c," 41.27(8)"b"(6), 41.27(9)"a"(2) and (3), 46.24(3)"a,"  
60.5(5), Notice ARC 4887A ..... 7/6/94  
Child day care, 49.3, 49.23, 109.6(3)"f," 110.5(5)"b," 110.5(7), 130.2(7), 130.2(7)"c" and "d," 130.3(1)"d"(2),  
130.4(3), 130.7, 170.2(3)"h," 170.2(4)"a," "b," "d," "f," "g," 170.4(1), 170.4(6), 170.4(7)"a" and "f," 170.7,  
170.8, Notice ARC 4899A, also Filed Emergency ARC 4900A ..... 7/6/94  
In-home health related care — application for assistance, 50.2(2), 50.2(3), 50.3(2), 177.4(5), 177.4(10), 177.6(2)"b,"  
177.10, Filed ARC 4901A ..... 7/6/94  
SSA RCF and maximum in-home health-related care reimbursement rates, 52.1(3), 177.4(7), 177.4(8)"b,"  
Notice ARC 4902A, also Filed Emergency ARC 4903A ..... 7/6/94  
Food stamps — expedited benefits, 65.4(5), Filed Emergency ARC 4904A ..... 7/6/94  
Income eligibility guidelines for federal surplus food program, 73.4(3)"d"(2),  
Filed Emergency After Notice ARC 4905A ..... 7/6/94  
Transitional Medicaid benefits — fraud, 75.1(31)"f," Filed ARC 4906A ..... 7/6/94  
Vaccines for children program, 78.1(2)"e," 78.1(3), 78.1(3)"f," 78.3(5), 78.18(1), 78.21 to 78.23, 78.25,  
78.29(9), 78.30, 78.31(2)"h," 78.39, 78.40, 79.1(8)"d," 84.3(3), Notice ARC 4958A ..... 7/20/94  
Medicaid provider policy, 78.1(14), 78.3(12)"c," 78.18(7), 78.31(1)"n," 78.31(4)"h," 79.1(5)"u,"  
79.1(9)"d," 79.1(16), 81.6(16)"e," Notice ARC 4907A, also Filed Emergency ARC 4908A ..... 7/6/94  
ICF/MR admissions, conversion or construction, 82.6(4), 82.19(5), 82.19(6), Notice ARC 4909A, also  
Filed Emergency ARC 4910A ..... 7/6/94  
Managed health care providers, ch 88 preamble, 88.61 to 88.73, Notice ARC 4911A, also  
Filed Emergency ARC 4912A ..... 7/6/94  
Certification of adoption investigators, purchase of adoption services, 107.3(2), 107.8(1)"d," 157.1, 157.3(1)"d,"  
Filed ARC 4913A ..... 7/6/94  
Social service providers — new service, 150.3(5)"p"(2), Notice ARC 4914A, also  
Filed Emergency ARC 4915A ..... 7/6/94  
Foster care, 156.6(1), 156.8(2), 156.9(2)"a"(5), 156.9(2)"b," 156.11(3)"c," 156.20(1)"b"(3)"4," 185.11(2)"f"(9),  
185.11(6), 201.5(9), 202.8(5), 202.17(1)"a" and "b," 202.17(2), Notice ARC 4916A, also  
Filed Emergency ARC 4917A ..... 7/6/94  
Adolescent pregnancy prevention and services to pregnant and parenting adolescents programs, ch 163 title  
and preamble, 163.1, 163.2, 163.3(1), 163.3(3) to 163.3(11), 163.4(1), 163.4(2), Notice ARC 4918A,  
also Filed Emergency ARC 4919A ..... 7/6/94  
Determination of regional allocations — family-centered MR/DD respite funds and family-centered  
supportive service funds, 180.10, 182.11, Filed ARC 4920A ..... 7/6/94  
Unemployed parent, 42.24, Filed ARC 4979A ..... 8/3/94  
Commodity distribution — emergency food assistance program, ch 73 preamble, 73.1, 73.2, 73.3(3), 73.4(3)"d"(1),  
73.6(1), 73.11(2), 73.13, 73.13(2), 73.13(4)"d," 73.13(5)"a" to "c," 73.13(6)"a" and "b," 73.14, 73.27, 73.29(1),  
73.29(2), 73.42, 73.49, 73.51, 73.52(2), 73.53, 73.54(1), 73.54(2), 73.56(3), 73.57(4), 73.57(5), 73.58, 73.61,  
73.62, 73.62(2), 73.62(5)"a" to "c," Filed ARC 4980A ..... 8/3/94  
Medicaid reimbursement — medical assistance income trusts, 75.24(3)"b," Notice ARC 4977A ..... 8/3/94  
Consultant review of Medicaid reimbursement for psychologists, 78.24(4), 78.24(5), Notice ARC 4978A ..... 8/3/94  
Expansion of elderly waiver program to ten additional counties, 83.22(1)"b,"  
Filed Emergency After Notice ARC 4991A ..... 8/3/94

- 41.26(1)"d" et al. No questions.
- 49.3 et al. There was discussion of amendments relative to day care. Daggett asked if the rules would implement legislation regulating licensed day care and preschool. Bosch replied that school-operated day care was totally under the Department of Education and licensed day care requirements would not be applicable.
- Stacie Maass, House Research Analyst, recalled a change—kindergarten would be considered school-age. Daggett asked about fire safety and Bosch replied that operations in a school building would be subject to criteria for schools. The Department of Education was responsible for those rules.
- Rittmer raised question with respect to the unit for half days—170.4(7)"a." If care extended one half hour past a half day, would the charge be for the full day? Walker explained that the Department had changed to a standardized unit of billing by requiring the billing on a half-day basis which benefits some and hurts others. A provider is paid on a half-day basis but negotiates on an individual basis. The Department has a maximum rate.
- 50.2(2) et al. No questions.
- 52.1(3), 177.4 In review of amendments to 52.1(3) and 177.4 which increase maximum and flat SSA reimbursement rates, Murphy said the Department would fall \$400,000 short without the increase. He added that as a net result, in each calendar year, the Department must spend at least what was spent in the previous calendar year to avoid possible loss of all FFP for the Medicaid program. Walker stated that this requirement had been in effect since the Department converted old-age assistance, aid to the blind and aid to the disabled to the federal program. According to Murphy, the intent of the policy was to ensure that SSI recipients who receive increase in cost-of-living allowances actually benefit.
- 65.4(5);  
73.4(3)"d"(2);  
75.1(31)"f";  
78.1(2)"e" et al. Metcalf in the Chair. There were no questions on ARCs 4904A, 4905A, 4906A or 4958A.
- 78.1(14) Walker explained that segments of rules on Medicaid provider policies were controversial. Only one person attended the public hearing, but the Department had received several letters. With respect to nutritional counseling services, there was sentiment for the Department to also pay WIC-certified dietitians in addition to current providers. Many comments were received on the Ambulatory Patient Groups (APG), a new method of payment for outpatient services and on the reimbursement policy for emergency room services. A summary of the comments would be prepared for the Department to consider.
- Rittmer noted that the maximum per diem rate for nursing facility reimbursement would increase from \$54.77 to \$57.00. Murphy stated that the budget was based on \$59.17. Costs had increased more than the Department had anticipated when the compilation of costs was received early in July.
- 82.6(4) et al. In review of amendments to Chapter 82. Priebe asked about additional costs when transferring from group homes to ICF/MRs. Murphy stated that in 15 years there had been an increase of 400 to 500 persons who were served in ICF/MRs. Most of the shift had been from the state hospital schools to the community-based ICF/MRs. There was a minor shift from residential care to ICF/MR. A small number from group homes qualified but the large number came from state

institutions. The county was picking up 80 percent of the cost in the state institutions. They were not picking up one-third of the cost which exceeds the 80 percent. Rittmer and Murphy discussed foster care. As to whether the Department would recommend legislative changes, Murphy indicated they would continue to move in the direction of not encouraging growth in ICF/MRs. Rittmer asked how many people leave the ICF/MR facilities and Murphy stated that there was a turnover of about 25 to 30 persons a month. All counties have approved case management programs. No Committee action.

Ch 88

Priebe took the Chair and called up Chapter 88. Walker reported that approximately 55 persons attended public hearings held around the state and most wondered how individuals would be affected. Department officials reported that Medco Behavioral Care had petitioned for a stay on the program and this was in effect. Because of the stay the Department was unable to sign a contract with Valley Behavioral Health Care Corporation as anticipated. Hearings were scheduled for August 23 and 24.

Priebe returned to ICF/MR topic and asked if some of those residents would be shifted to different counties where they have facilities and Gesaman replied that it was very possible. New persons needing that level of care, would be served under home community-based labor rather than being admitted to an institution. Because of the building moratorium, Priebe was concerned about excessive shifting. No Committee action.

107.3(2) et al.

Adopted amendments to Chapters 107 and 157 were considered. Priebe asked if the one face-to-face visit had always been a requirement for the approved family. Department officials indicated the provision was not new. The rules have been amended frequently to respond to legislation and additional funding.

150.3(5)"p"(2)

No questions on 150.3.

156.6(1)

Walker explained the foster family monthly maintenance rate. Each child aged 0 through 5 years would receive \$341 unless there were a special need.

Ch 163

Amendments to Chapter 163 relative to Adolescent pregnancy prevention were before the Committee. Doderer was interested in the grant process and Nelson was willing to provide information. The grants for the prevention of initial pregnancy, second pregnancy and services to adolescent parents had been awarded. The grant letters for community prevention were in process. Neither the media campaign nor the evaluation grant had been awarded. Throughout the state, 30 groups had received one or more grants. Also, Waterloo and Des Moines had been recipients of previous grants. Grants had been awarded to rural and urban areas. Priebe announced that the rules would be placed on the Wednesday agenda to allow the Department time to provide the requested information.

Mike Heller spoke for Planned Parenthood in opposition to extending the time period for awarding the grants and to the amount of the actual awards going for direct services to sexually active teens. He contended that legislative intent was to assist both sexually active and nonactive teens in avoiding pregnancy. Nelson recalled discussion of grant extensions, rationale being that every year the Department has a gap in the delivery of services through the request for proposal process and any changes that occur in the legislation. This provided an opportunity to continue some ongoing services with a periodic opening up of the application process. In terms of the types of services funded, there were a number of grantees who provide services to sexually active teens as a component of a

larger package. Grants require provision of a comprehensive array of services which Nelson described.

Doderer asked why subrule 163.3(3), relative to pilot projects, was rescinded. Nelson indicated that detailed legislation did not include that requirement. Doderer noted Planned Parenthood stated that no funds had been granted for services in any of the most populated counties with the highest incidence of teen pregnancy. She expressed dissatisfaction with the Department's three-year period—163.3(1). Nelson explained that the third-year grant was contingent upon successfully completing goals identified in the grant application, so it was not a blanket three-year extension. Doderer favored some method of judging success of the program and she requested information focusing on areas with high incidence of teen pregnancies and also information on programs specifically for boys. Nelson commented on some pamphlets which had been positively received by high schools.

Schrader had reservations about the three-year noncompetitive program. Criteria as a focal point of a significant amount of grant money seemed to be lacking. Nelson called attention to 163.3(7) which listed criteria for other grants including workshops and informational programs for adolescents and parents of adolescents and 163.3(8) addressed criteria for second grants. The department was willing to review the process, however.

In response to Rittmer, Nelson admitted there was no mention of the three-year program in the appropriation language. Rittmer opined that the Committee should have had opportunity to address this issue before the rule making.

Metcalf expressed concern about the difference between urban and rural funding. Priebe concurred that the money should be spent where the greatest problems exist but percentages should also be considered.

Department officials agreed to return to the meeting at 11 a.m. on Wednesday with additional information.

180.10, 182.11; 42.24 Metcalf in the chair. There were no questions on amendments to 180.10, 182.11 or 42.24.

Ch 73 et al. There was brief discussion of the amendments to Chapter 73 relative to commodity distribution. Walker informed Metcalf that the Department was not following federal guidelines.

75.24(3)"b" Amendment to 75.24(3) would establish the Medicaid reimbursement rate for ICF/MRs and the average statewide charge for other levels of nursing care. Daggett asked if the rates take into account surviving spouse. Keen responded that one person would create a medical assistance income trust. The first \$10 would be paid out for administration fees, then the trust would pay \$1,338 to the beneficiary. Of the \$1,338 that person would keep \$30 for personal needs allowance and the rest could be diverted to the spouse to bring that community spouse's income up to the minimum monthly maintenance fees allowance. If there were dependent children, another diversion could be made. The amount paid to the beneficiary could be kept by the community survivors to meet their needs. Keen also explained use of annuities. If an annuity could be sold, it would count as a resource, not income to the client.

78.24(4), (5) No recommendations for 78.24.

83.22(1)"b"

Amendments to 83.22 would expand the Elderly Waiver Program to 10 additional counties. Walker stated that counties apply to the Department of Elder Affairs and the application would be processed through the Area Agency on Aging on a first-come, first-served basis. No Medicaid funds were available.

Schrader observed that 36 counties were being served—far more than the pilot project. He took the position that inequities exist and the program should be reviewed by the legislature next year. Walker stated that the program extended to all counties. She was unsure about any pending applications that had not been funded. Kibbie asked about proof by Session time that there were actual savings. Walker stressed that a prerequisite to get the waiver for program approval was submission of figures which justify cost savings. She contended that quality of life was also significant. Walker was unsure how the claim on the estate of Medicaid recipients would affect these elderly clients. No Committee action.

Committee Business  
Disposition of  
Session Delays

Barry called attention to a lack of statutory direction as to the disposition of rules delayed until adjournment of the General Assembly. As Administrative Code editor, Barry included appropriate notes to an agency's rule or rules which had been delayed but she took the position that Code Chapter 17A should include specific language for the process.

Motion

Kibbie moved that Royce draft a proposal to address the issue. The motion carried. Barry pointed out that there were various interpretations of effective dates. There was discussion of where the responsibility of notifying the editor and agency should rest. Daggett suggested placing the responsibility with the Committee to which the rules were referred. Priebe suggested the Research Staff. Schrader disagreed with Daggett's recommendation. Other members took the position that the burden should lie with the Speaker of the House and President of the Senate for a final report.

Mileage

There was brief discussion of mileage allowance. Barry reported that the House and Senate were paying 21 cents per mile. She also spoke with General Services about the statute and to their knowledge nothing had changed. Priebe heard that the DOT pays 24 cents. It was noted that counties and cities had no statutory restrictions. No Committee action.

**MEDICAL EXAM.**  
Special Review

Priebe requested that the Medical Examiners appear at the September meeting to discuss their disciplinary policies. So ordered.

Recess

Priebe recessed the meeting at 4:15 p.m. until 9 a.m. Wednesday, August 10, 1994.

8-10-94

Reconvened

Priebe reconvened the meeting at 9 a.m. for the following:

BANKING DIVISION[187]

COMMERCE DEPARTMENT[181]"umbrella"

State-chartered banks — leasing, 9.3, Filed ARC 4891A ..... 7/6/94

Dick Buenneke, Superintendent of Banking, and Don Senneff, Assistant Attorney General, represented the Division. Buenneke stated that rule 9.3 was intended to address state-chartered banks which purchase leases on out-of-state equipment. In several instances state banks lost substantial amounts of money because the

equipment did not exist. Substantial changes were made in the rule following the hearing. The rule was rewritten and another hearing in May resulted in further revisions which included the right of the superintendent to waive the inspection of the leased equipment. The purpose of the inspection was to actually see the equipment. Banks were relying entirely on the leasing company rather than on investigation of the lease.

Buenneke advised Priebe that livestock was excluded because there would be no recoverable collateral when they die. Priebe responded that most livestock was insured.

Neil Stanley spoke on behalf of Lauritzen Incorporation which has four state-chartered banks in Iowa and would be adding another one in Harlan. They also have a leasing company in Omaha, Nebraska, that generates leases of agricultural equipment and irrigation systems throughout the nation. Stanley stated that the Division had made some accommodations on affiliate relationships which had enhanced the program. However, Stanley maintained the inspection requirement was unworkable. He summarized contents of a letter to the Committee wherein he outlined concerns of the Corporation. [A copy is on file in the Administrative Code office.] After considerable discussion, Buenneke stated that 19 favorable comments were received at the hearing and they were satisfied with the rule. He suspected that Lauritzen would be eligible for a waiver. Buenneke emphasized that the Division was not talking about quality of the assets, but about preventing fraud. As far as the small threshold, the rule provided that any bank could place up to 25 percent of their total capital accounts into leases without any of the documentation. Buenneke concluded the Division was not trying to stifle Iowa economy or add another layer of regulation. No Committee action.

## IND. SERVICES

Byron Orton, Industrial Commissioner, presented the following and there was no action taken:

### INDUSTRIAL SERVICES DIVISION[343]

#### EMPLOYMENT SERVICES DEPARTMENT[341]"umbrella"

General amendments, 1.2, 2.2, 2.4, 2.5, 3.1(1) to 3.1(3), 3.1(7) to 3.1(14), 4.1, 4.4, 4.6, 4.8(1), 4.9(7), 4.9(8), 4.10, 4.15, 4.17, 4.18, 4.20, 4.23 to 4.25, 4.27, 4.41, 4.42(5), 4.42(6), 4.43, 4.48(9), 4.48(12), 6.2, 6.2(1), 6.2(6), 10.1, 10.1(4), 10.2(7), Notice ARC 4954A ..... 7/20/94

## LABOR SERVICES

Walter Johnson, Deputy, represented the Division for the following:

### LABOR SERVICES DIVISION[347]

#### EMPLOYMENT SERVICES DEPARTMENT[341]"umbrella"

Reporting of fatality or multiple hospitalization incidents, 4.8, 4.19"2," Notice ARC 4935A ..... 7/6/94  
 Personal protective equipment for general industry, 10.20, Filed Emergency After Notice ARC 4892A ..... 7/6/94  
 Permit-required confined spaces in general industry, 10.20, Notice ARC 4957A ..... 7/20/94  
 General industry — electric power generation, transmission, and distribution; electrical and personal protective equipment, 10.20, Notice ARC 4989A ..... 8/3/94

4.8 et al.

No questions regarding amendments to Chapter 4.

In review of 10.20, Johnson questioned the necessity of his appearance before the ARRC for rules which merely update federal references. There was consensus that Johnson would need not appear for those amendments but should be called to appear for anything implementing Iowa legislation.

**INSURANCE**

Susan Voss and Traci Weldon were present for the following:

**INSURANCE DIVISION[191]****COMMERCE DEPARTMENT[181]"umbrella"**

Health insurance purchasing cooperatives, ch 73, Notice ARC 4966A, also Filed Emergency ARC 4965A . 7/20/94  
 Medicare supplement insurance — transitional requirements, rescind ch 41, Filed Without Notice ARC 4987A 8/3/94  
 Securities — Iowa Code citation corrections, 50.6, 50.8(4), 50.15, 50.16(2)"a"(1), 50.25(5), 50.43(1), 50.43(2),  
 50.81 to 50.84, Notice ARC 4833A Terminated ARC 4975A ..... 8/3/94  
 Securities — Iowa Code citation corrections, examinations, commissions, 50.6, 50.8(1)"a"(1), 50.8(4), 50.15,  
 50.16(2)"a"(1), 50.25(5), 50.43(1), 50.43(2), 50.81 to 50.84 implementations, Notice ARC 4976A ..... 8/3/94

Ch 73

Voss told the Committee that Chapter 73 would implement 1993 Acts, Senate File 280, section 2, and provide a way of pooling small groups into a larger group for better purchasing power for health care insurance. Voss emphasized that it was not an insurance product—there was no risk with the HIPC. She stated that currently, the only active HIPC had 90 groups statewide—70 were going through the enrollment process. Most of these were smaller groups involving over 2,000 participants in the Independent Health Alliance of Iowa located in West Des Moines. This was the only voluntary HIPC in the U.S. California had one which was publicly owned.

Ch 41

No questions.

50.6 et al.

Weldon explained amendments to Chapter 50. No questions.

**NURSING BOARD** Lois Churchill and Lorinda Inman represented the following:

**NURSING BOARD[655]****PUBLIC HEALTH DEPARTMENT[641]"umbrella"**

RN/LPN — licensure verification, application requirements for individuals educated in another country,  
 3.1, 3.2(2)"d," 3.4(6), Notice ARC 4896A ..... 7/6/94  
 Elimination of self-study course addressing the role of the licensed practical nurse for individuals applying for  
 LPN licensure based on current or previous enrollment in RN program, 3.4(5)"a"(5), 3.4(5)"b"(5) to (7),  
 3.4(8)"c," Filed ARC 4895A ..... 7/6/94  
 Advanced registered nurse practitioners, 7.1, 7.2(1)"a" to "k," 7.2(5)"b," Notice ARC 4897A ..... 7/6/94

3.1 et al.

No questions on 3.1 et al.

3.4(5)"a"(5) et al.

Inman explained that revisions in rule 3.4 would provide that first-year RN students could take the LPN course. At the end of one year they would have learned critical thinking skills and be prepared to take on certain responsibilities. Inman added there was concern that the first-year RN students may not do an adequate job. She emphasized that the agency had not received many complaints. The rules would have no impact on the nursing program but would be on those who enter an RN program that had no exit for the LPN.

7.1 et al.

With respect to amendments in Chapter 7, which would allow advanced RNs to prescribe certain drugs and devices, Inman said the Board consulted with pharmacy and medical boards as required by law. Public comment would be considered at the Board's September meeting. A written comment concerned the elimination of protocol. Any protocol could be reviewed by the board. Inman stated that the definition of "protocol" was being eliminated. Royce explained that the medical board, pharmacy board and osteopathic board were protesting the elimination of protocols—written direction from a physician showing under what circumstances a particular drug would be indicated or should be prescribed by the nurse. Essentially this was a written declaration of how the prescription power was to be used and without it, the question would become to what extent was the nurse limited in prescribing. Inman explained that the definition of protocol had some legal liability issues. When the definition was written into a statute, there

had been some legal liability because of protocol. The other concern was that some nurses work with physicians who do not want to work with protocols. Doderer wasn't convinced about potential legal liability. She opined that lack of a definition of protocol would render the department subject to more lawsuits. Schrader took the position that the rules did not follow Senate File 2053 [1994 Acts] to allow prescription of controlled substances. By loading this other issue, it raises many concerns and Schrader indicated he would object when the rules were adopted. He advised paring back to comply with the legislature which gave a benefit to the agency. Rittmer concurred.

## INSPECTIONS AND APPEALS

Rebecca Walsh and Chris Smith were present for the following:

### PHARMACY EXAMINERS BOARD[657]

#### PUBLIC HEALTH DEPARTMENT[641]"umbrella"

Documentation of prescription refills, automated patient record-keeping systems, preparation of sterile products for home care patients, 8.2(1), 8.11, 8.12, 8.29, 8.30, Filed ARC 4940A ..... 7/20/94  
 Patient counseling, 8.20, Amended Notice ARC 4947A ..... 7/20/94  
 Hearing costs — funds for reimbursement, 9.3, 9.27(4), Filed ARC 4941A ..... 7/20/94  
 Controlled substances inventory, anabolic steroids, 10.18, 10.23, Filed ARC 4942A ..... 7/20/94  
 Emergency medical services, 11.1, 11.3(1), 11.3(4), Filed ARC 4943A ..... 7/20/94  
 Correctional facility pharmacy licenses, Code citations updated in ch 15, 15.3"5," 15.8(3) Filed ARC 4944A . 7/20/94  
 Wholesale drug licenses — reverse distributors, 17.1, Notice ARC 4948A ..... 7/20/94  
 Sales of goods and services, ch 29, Filed ARC 4946A ..... 7/20/94

- 8.2(1) No questions.
- 9.3 and 9.27(4) Witkowski explained rules which refer to the administrative disciplinary hearings.
- 10.18 and 10.23 No questions.
- 11.1 et al; Ch 15 et al. No questions.
- Ch 29 In review of Chapter 29, Witkowski stated that the new rules would effectively eliminate chance for conflict of interest by Pharmacy Board members. Any question raised about their activities would be before the full board for clarification.
- 8.20 Witkowski told the Committee that no action would be taken on rules relative to patient counseling on pharmaceutical care until after the hearing scheduled for September 14.
- 17.1 Witkowski stated that "reverse distributors" would be added to the definition of "wholesale distributors" in 17.1. Currently, there were only two in the nation that have been registered as reverse distributors. Without some kind of licensure, control would be lost over these outdated controlled substances. There was no hearing on this rule and no written or oral comments were received. If reverse distributors and wholesale distributors were one and the same, they would be considered as one entity. Witkowski was aware of companies who want to deal specifically with reverse distribution. No Committee action.
- Committee Business Priebe reported on the Rules Conference he had attended in Kalispell, Montana where he learned about rule making in other states. He noted that some states bill the agencies for printing costs of their rules. Some states have adopted Iowa's policy of omitting text of filed rules from the Bulletin when it is identical to the Noticed version. In conclusion, Priebe felt that Iowa had a system superior to many states.



441—24.1, IQ

There was brief discussion of the status of Human Services rule 24.1, definition of IQ for "persons with mental retardation". Priebe recalled that the following provision was objected to and referred to the General Assembly: "2. The criterion for significantly subaverage intellectual function is defined as . . . an IQ score of 70 to 75 or below." Royce advised that the rule remained in effect. The ARRC reiterated their concerns that the rule would result in dramatic increased costs to counties. Question was raised as to the position taken by ISAC. It was Royce's understanding that their membership was either neutral or in support of the change. Woodbury had not been joined by any other counties in opposition to the rule.

Recess

Priebe recessed the Committee for break at 10:25 a.m. and reconvened it at 10:35 a.m.

ARTS DIVISION

Mark Peitzman, Executive Officer of the Department of Cultural Affairs, and Julie Bailey, Arts Programmer with the Iowa Arts Council, represented the Division for the following:

## ARTS DIVISION[222]

## CULTURAL AFFAIRS DEPARTMENT[221]"umbrella"

Organization, 1.1 to 1.4, 2.1 to 2.3, 4.4 to 4.16, 5.1, 5.4 to 5.7, 5.11 to 5.13, 6.1 to 6.5, 6.7, 6.8, 6.11, 6.14, 7.6(3), 7.7, 8.3, 8.4(2), 8.6(1), 8.6(2), 8.8, 8.11 to 8.13, 11.1, 11.2, 11.4(3), 11.4(4), 11.4(12), 11.5 to 11.11, 12.2 to 12.4, 12.6 to 12.9, 12.11, 12.12, 13.1, 13.2, 13.6, 13.8 to 13.10, 14.2, 14.5 to 14.7, 14.9, 14.10, 14.12, new ch 18, 20.2, 20.7, 20.11, 20.12, 20.14, 20.16, 21.1, 21.3, 21.5 to 21.15, 22.1, 22.3, 22.5 to 22.19, 23.2 to 23.5, 25.1, 25.3, 25.4, 25.6 to 25.8, 25.12, 30.4, 30.6, 30.7, 30.11, 30.12; rescind chs 9, 10, 15 to 19, 24, 26 to 29,

Notice ARC 4939A ..... 7/20/94

Peitzman described the amendments as intended to accurately reflect the types of programs and the manner in which to access them. No one attended the hearing and no written comments were received on the rules. No formal action taken.

UTILITIES

Gary Stump and Vicki Place were present for the following:

## UTILITIES DIVISION[191]

## COMMERCE DEPARTMENT[181]"umbrella"

Energy adjustment clause, 20.9(2) to 20.9(4), Filed ARC 4951A ..... 7/20/94

Consolidated purchased gas adjustment filings, 19.10(1), 19.10(2), 19.10(3), 19.10(5)"a,"

Filed Emergency After Notice ARC 4988A ..... 8/3/94

Also in attendance was Jack Clark, Iowa Utility Association.

20.9(2) and 20.9(4)

Stump indicated that the Consumer Advocate supported the amendments to rule 20.9.

19.10(1)

Place reviewed amendments to 19.10 which would allow utilities the option of making their purchased gas adjustment filings on either a consolidated or a separate pipeline basis. The decision to allow this option was made in reaction to changes at the federal level. Supply and transportation activities have been separated and pipelines no longer sell directly to the utilities. The utilities price their supplies on a weighted average cost of gas and the disparity in the cost of gas supplied over a different pipeline has been reduced. The utilities may purchase from any pipeline which would create more competition.

CREDIT UNION

Jim Forney represented the following:

## CREDIT UNION DIVISION[189]

## COMMERCE DEPARTMENT[181]"umbrella"

Real estate lending, rescind chs 9 and 10; new ch 9, Filed ARC 4894A ..... 7/6/94

Corporate central credit union, ch 10, Filed ARC 4893A ..... 7/6/94

## CREDIT UNION(Continued)

Chs 9 and 10

In review of Chapters 9 and 10 there was discussion of loan-to-value limits in 9.2(4). With respect to Chapter 10, Forney stated that there were 5 federally chartered and 230 state-chartered credit unions. Nationally they average two to one. Forney noted that the state law for credit union chartering was instituted eight years prior to any federal ability to charter.

In response to Doderer, Forney stated that state credit unions pay sales taxes and real estate property taxes, but this was not true for federally chartered credit unions.

**PUBLIC SAFETY** Mike Coveyou and Gary Forshee were present for the following:

## PUBLIC SAFETY DEPARTMENT[661]

State of Iowa building code — energy efficiency in commercial construction, 16.800 to 16.802,

Notice ARC 4936A ..... 7/6/94

Ch 16

Coveyou explained that amendments to Chapter 16 would bring Iowa into compliance with a federal requirement regarding energy efficiency in construction. An ASHRAE standard specified in the federal law would be adopted. Several comments were received at the public hearing. There was a reference in the ASHRAE standard on energy conservation to another ASHRAE standard on ventilation. The Building Code Advisory Council did not feel comfortable with the ventilation portion which had not been codified or accepted by ASHRAE and that reference will be deleted.

Rittmer asked if the state building code applied in the cities and Coveyou stated that if the city had any kind of building code, the answer would be "yes". These rules would apply state wide. Energy conservation standards were specified in the code. The building code applies only in jurisdictions which adopt it or local building codes. Exceptions: the handicapped accessibility standards, energy efficiency standards and certain lighting efficiency. Forshee indicated that these rules had been reformatted, but the content was basically unchanged.

Dennis Hogan, ASHRAE Newspaper and Government Affairs and Executive Director of Sheet Metal Contractors Association, spoke on these rules. He explained that ASHRAE was a group of engineers from throughout the world who writes standards. The federal government has mandated states to adopt these standards. Lawsuits have been filed over the ventilation portion—Mahaska County went to the Supreme Court. This problem has existed for five years and there hasn't been a solution. Hogan contended building standards did not address ventilation and this should be addressed.

Craig Swartzbaugh, Building Official for the City of Clive, also spoke about ventilation and urged that those rules be deleted until a compromise could be reached.

It was noted that the energy conservation standard reads: "Ventilation systems shall be designed to be capable of reducing a supply of outdoor air to the minimum ventilation rate required by \_\_\_\_." This was not the adoption of the ventilation standard generally speaking, it was setting a requirement for being capable of minimizing the flow of air—not to require that the building owner actually reduce the ventilation.

Committee members asked if the Department intended to pursue the ventilation standard and Forshee responded that they had asked for an opinion from the federal Department of Energy since compliance could affect funds coming back to the state. Department staff was recommending a ventilation standard of some kind, but they were unclear as to which one at this time. It was Forshee's understanding that the federal government was requiring all states to be in compliance by October or to show a good-faith effort.

With respect to fiscal impact, Coveyou emphasized that the Department had very little flexibility. Coveyou mentioned that the Department had been working with the staff of the Energy Bureau of DNR as to any potential problem if the reference to ventilation standards were stricken. No Committee action.

## HUMAN SERVICES

Mary Ann Walker and Mary Nelson returned to discuss issues carried over from yesterday's agenda.

49.3 et al.

Walker responded to Rittmer's question regarding the half day rate for child day care. She stated that the Department authorized all of the day care on a certificate. They work with the mother and authorize only the period of time the mother works and her travel time back and forth. If only a half day were authorized and the mother arrived early or late, the center would charge her.

83.22(1)

Walker also responded to a question from Kibbie about funding for elderly waiver program. Elder Affairs have indicated that they lack funding to cover all counties that have expressed interest. However, they would be able to certify a few more before next year's budgeting process.

Discussion then focused on adolescent pregnancy prevention. Nelson distributed a packet of relevant material which is on file in Administrative Code editor's office. Doderer questioned Nelson as to who distributes the pregnancy grant money. Nelson responded that there was a Review committee which included representatives of the Department of Education, Health, Human Rights and field staff from the office and a DHS staff person assigned to this program. This group makes recommendations for grants to the administrator of the Division of Children and Family Services. Nelson reviewed the packet which included a summary of questions or issues; a copy of the two rules that were rescinded; fiscal year 1993 report which described the projects, the results, the services provided, area covered and some of the results; and grant recipients for 1994. Also included was a pamphlet targeted at males which had been well received at schools. the packet also included the response to the Planned Parenthood letter from the administrator of Adult, Children and Family Services.

Doderer expressed disappointment in the booklets and declared that the one entitled "Young Fathers" was "obscene." She viewed it as portraying teen males as "macho." She observed that all the materials placed a "happy face on teen pregnancy—happy mothers, proud fathers" which was not reality. Doderer was critical of the lack of information to address the seriousness of a 15-year old having a child or the responsibility for the young male. She noted there was no evidence of even one teen pregnancy being prevented. Further, there was no report on results following the grant money. Information on medical services and HIV were also missing. Nelson concurred that there should be more consistent evaluation.

Metcalf asked what the Department intended to do about the three-year grant period. Nelson replied that all of the grants were being made by a competitive process. Next year's grantees who were successful in meeting their objectives and

to the extent that money was available, those grantees could recontract for a second and third year. Current contracts were still one-year contracts but the rules would allow them to continue their grants. Metcalf suspected this would result in no new grants. Nelson indicated the Department had considered language for new grantees contingent on legislative appropriations. Metcalf favored stronger language than "contingent." She took the position that a program should "prove itself" and should not be promised a second or third year. Starting next July, certain grantees would not have to compete. Rittmer opined the rule was inappropriate since the legislature was silent about multiple years.

Royce advised that any contracts granted on a three-year basis under the Emergency rules would remain in effect even if the rule were changed following Notice. Nelson clarified that any contracts issued now were for one year with no reference to renewal. Schrader agreed with Metcalf that the three-year grant provision should be rescinded. Royce suggested that the Department renote the rules because of substantial change and Nelson stated there was sufficient time to follow that procedure.

After further discussion, Priebe asked for the minutes to show that it was Committee consensus for the three-year grant to be dropped. Doderer requested that the Committee responsible for drafting the rules be comprised of members who have dealt with teenagers. Nelson stated that the Committee members were appointed by the various agencies. One of the problems was that those closest to the issue were ineligible for appointment because they apply for the grants. Priebe suggested that Doderer submit names of potential members.

## DOT

Nancy Burns, Trails Coordinator, Ruth Skluzacek, Shirley Andre, Peter Hallock, Mike Winfrey, John Hocker, Specifications Engineer, and Will Zitterich from the Department, Roger Erpelding and Joe Van Lent from the Iowa Department for the Blind, Maynard Jayne from Iowa Cattlemen, Bob Blomme from Audubon County T-Bone Committee and Representative Jack Drake were present for the following:

### TRANSPORTATION DEPARTMENT[761]

|   |         |
|---|---------|
| Highway and bridge construction, 125.1 to 125.3, <u>Filed</u> ARC 4952A .....   | 7/20/94 |
| Recreational trails program — exception to funding requirement, 165.5(2)"a," <u>Notice</u> ARC 4950A, also  |         |
| <u>Filed Emergency</u> ARC 4945A .....  | 7/20/94 |
| Disadvantaged business enterprise participation goals; state transit funding; capital match revolving loan fund, rescind ch 900; amend 920.5(2)"a," 923.4(1)"d" and "e," 923.5(1), 923.5(2)"b," 923.5(3), 923.5(4), |         |
| <u>Notice</u> ARC 4938A .....   | 7/20/94 |
| Public transit liability insurance, 910.1, 910.4(1), 910.4(3), 910.5(1), 910.4 Appendix, <u>Notice</u> ARC 4959A ...  | 7/20/94 |
| Safety lighting requirements for overdimensional vehicles and loads between sunset and sunrise; roadway widths, 511.3(7), <u>Notice</u> ARC 4973A, also <u>Filed Emergency</u> ARC 4972A .....                      | 8/3/94  |
| Regulations applicable to carriers, 520.1(1)"a" and "b," <u>Notice</u> ARC 4974A .....  | 8/3/94  |
| Special Review - Holiday Rest Stops - Promotional Giveaway, Ch 105 .....  | LAC     |

125.1 to 125.3

Hocker explained amendments to Chapter 125. There were no recommendations.

165.5(2)"a"

Burns described emergency amendments to 165.5(2) as legalizing a project which was completed prior to funding authorization from federal highways. The rule would allow the department to expedite payment from the state trails fund.

Priebe voiced opposition to this approach. Other members concurred that new language "and may grant an exception to a specific requirement" would provide an open end for variances.

Metcalf suggested another filing to limit the exception to the trail in question. Burns commented that this project was approved for funding from the National Trails Fund which was part of the ISTA legislation. Because the sponsors (a

snowmobile club) completed the project without federal authorization, the federal highway administration disallowed the project. Schrader asked if the Snowmobiler's Association agreed with the rule, but Burns had not been in contact with them. The department believed the project warranted funding but there was no intent to use the exception again.

Rittmer opined that legislative action would be more appropriate. Burns stated that there was no deadline on when the project had to be funded. It would be paid out of state funds. The sponsor had already paid for it. Hedge took the position that this issue could wait until the legislature meets. In response to Kibbie, Burns replied that the Transportation Commission had approved the payment for \$20,400 but an agreement must first be executed. Priebe wants assurance from the Department that as soon as these funds were paid, they would rescind this rule. Burns agreed to refer the matter to the staff. Rittmer voiced opposition to use of Emergency provisions for the filing. No formal action.

Ch 900 et al.

Hallock summarized amendments in Chapters 900 et al. Priebe observed use of the word "different" before "small business . . ." in the preamble language relative to request for issuance of a regulatory flexibility analysis. He quoted from Code section 17A.31(3) which provides ". . . at least 25 persons signing the request . . . who qualify as a small business . . ." Hallock agreed to refer the question to the Department.

910.1 et al.

In review of amendments to 910.1 et al. Priebe requested deletion of the word "different" from the preamble language.

511.3(7)

Shirley Andre explained 511.3(7) and 520.1(1). There were no questions.

Special Review  
Ch 105

Will Zitterich was present for the special review of Chapter 105 relating to promotional give-aways at holiday rest stops. Royce recalled an earlier discussion about whether various groups should be allowed to sponsor coffee and cookie give-aways at rest stops at certain holidays during the year. The Lions, Kiwanis and other groups wanted to sponsor this and would not solicit funds but would accept donations. After negotiations, they were allowed to do this. Today the discussion focused on expanding this to promotion only, no donations, by a group such as the Iowa Beef Association who would give samples.

Dr. Bob Blomme, Veterinarian, spoke on behalf of the Audubon County T-Bone Committee, an organization of ten local businesses along with ten farmers/feeders whose goal was to promote the beef industry in general and Audubon Beef specifically. The organization proposed a sample give-away at one of the rest stops once or twice yearly. Blomme described a sample as one-inch cubed, marinated sirloin tips or something similar on toothpicks. Royce advised that current rules were specific in allowing free coffee and cookies.

Erpelding addressed the position taken by the blind. They were concerned with setting a precedent and where would it stop. Van Lent stated that last year, the Department for the Blind worked with the ARRC and the Legislature for acceptable rules and he believed that was accomplished. He continued that the agreement should be complied with. Van Lent had talked with people from other states who say that their rest stops resemble a farmer's market. Priebe took the position that a rule change would be needed to include beef.

There was discussion of possible give-aways at Welcome Centers. Halvorson maintained that the rest stop concept should be adhered to whether or not it should be expanded. Jayne had been informed by the Department of Economic that any

**DOT (Continued)**


promotion at a Welcome Center would have to include all 8 centers on the same day. The Department of Economic Development would have advertising available to the group but Jayne indicated that was not the course the Association wanted to pursue. Priebe suggested that this promotion not be allowed this year but that legislation should be drafted and a committee appointed to review the issue.

Schrader suggested a special review of the rules on the welcome centers. He declared that it was too arbitrary to preclude access to only one welcome center.

Kibbie favored an emergency rule to promote Iowa beef. Doderer concurred. She reminded that the blind have exclusive rights for the food service at the capitol and yet service clubs and businesses are permitted to come in and give away items such as ice cream and orange juice. She concluded that this actually improves business for the blind. Priebe disagreed that this issue was an emergency. No formal action.

|               |   |
|---------------|---|
| Minutes       | Doderer moved to approve the minutes of the July meeting as submitted. Carried. |
| Adjournment   | The meeting was adjourned at 12:40 p.m.   |
| Meeting Dates | The next meeting was scheduled for September 13 and 14.                         |

Respectfully submitted,

  
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 Phyllis Barry, Secretary  
 Assisted by Kimberly McKnight

APPROVED:

  
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 Senator Berl E. Priebe, Co-chair