

**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, May 10 and 11, 1994, as follows: Tuesday morning, Room 22; Tuesday afternoon, Room 116; and Wednesday morning, Room 24, State Capitol, Des Moines, Iowa.

Members present: Representative Janet Metcalf and Senator Berl E. Priebe, Co-chairs; Senators John P. Kibbie, H. Kay Hedge, 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; Mary Ann Scott, Administrative Assistant; Paula Dierenfeld, Administrative Rules Coordinator; Caucus staff and other interested persons.

Convened Representative Metcalf called the meeting to order at 10 a.m. and recognized Tim Waddell for the following Secretary of State agenda:

SEC. OF STATE

SECRETARY OF STATE[721]
Election forms and instructions — gambling games on excursion boats and pari-mutuel race tracks,
21.820(2) to 21.820(5), Filed Emergency ARC 4760A 4/27/94
Optical scan ballots, 22.53(2), 22.53(6)"e," Filed ARC 4754A 4/13/94

Ch 21, 22 No questions or recommendations by the Committee.

SOIL CONSERVATION

Kenneth Tow represented the Soil Conservation Division for revised Chapter 40, Coal Mining, appearing as adopted rules in ARC 4767A, IAB 4/27/94.

Schrader was advised of two operating mines in Iowa of which only one was producing coal. The Division has reclamation responsibility for 28 to 31 permitted sites. No Committee action.

AGRICULTURE

Representing the Department were Walter Felker, State Veterinarian; Charles Eckermann, Pesticide Division; Daryl D. Frey; Ronald Rowland and John D. Hinshaw. The following agenda was reviewed, the last item being first:

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]
Chemigation — use of pesticides and fertilizers in irrigation distribution systems, division I preamble, division II preamble, 45.80 to 45.87, Notice ARC 4719A 4/13/94
Pesticides — civil penalties for violations by commercial applicators, division III preamble, 45.100 to 45.105, Notice ARC 4720A 4/13/94
Registration of Iowa-foaled horses and Iowa-whelped dogs, 62.15(2)"d," 62.15(3) to 62.15(5), 62.25(2)"d," 62.25(3) to 62.25(5), 62.35(2)"d," 62.35(3) to 62.35(5), 62.43, Notice ARC 3789A Terminated, also Notice ARC 4767A 4/27/94
Revocation or denial of permit or license for feeder pig dealer, feeder pig dealer agent, livestock dealer, or livestock dealer agent, 66.20, Notice ARC 4755A, also Filed Emergency ARC 4756A 4/27/94

66.20 Felker explained these rules were filed emergency to protect livestock and feeder pig industries from potential unscrupulous dealers. In response to Kibbie, Felker acknowledged that these rules dealt with licensing of feeder pig dealers while other rules have dealt with the handling of feeder pigs. Discussion focused on reasons for denying a license.

AG. (Cont.)

Rowland further explained the emergency status—the Department was involved in extensive litigation and needed rules which would allow them to deny an application for a license. The Department was also aware of an application from a livestock dealer in Minnesota whose license had been revoked there.

Royce added that most licensing boards use similar language in their grounds for revocation or suspension.

Priebe asked about identification of hogs farrowing in Missouri and then moved to a confinement location. Felker responded that they would be handled as any other imported group of pigs which would include inspection, identification and permit.

45.80–45.87

Eckerman summarized proposed rules relating to chemigation. Frye added that in implementing this statute, problems were encountered relating to the overlapping jurisdiction between the Agriculture and Natural Resources Departments. He noted a posting of warning requirements for chemigated areas which is a duplication of EPC standards. Frye indicated that the Department would prefer to terminate this notice and ask the legislature to "clean up" the statute.

Daggett was told that legitimate concerns at the public hearing were voiced by producers who were chemigators.

In response to Priebe, Eckerman explained that the "withdrawal rates in excess of 200 gallons per minute from the Jordan Acquifer" (45.81(1)"e") was from a DNR restriction. Priebe questioned why the Jordan was singled out. Frye would seek an answer from the expertise of DNR. The fee structure and backflow protection were also discussed.

Kibbie suggested that public hearings on similar rules in the future be held in areas easily accessible for the irrigators of those affected by the rules. The Department agreed.

45:100–45.105

No questions or comments.

Ch 62

Brief explanation by Hinshaw after which Priebe agreed that amendments to Chapter 62 were a great improvement.

Rowland explained the Iowa-foaled status at Rittmer's request.

**LIVESTOCK
HEALTH ADV.
COUNCIL**

Jeff Schnell, Iowa Pork Producers Association, represented the Livestock Advisory Council for the Noticed rules relative to disease research recommendations for fiscal year 1994-1995, Chapter 1, published in IAB 4/27/94 as ARC 4766A.

Ch 1

Kibbie and Priebe took the position that funds should be set aside for unknown diseases that might appear. Schnell said these needs would be taken care of by ISU if necessary. Priebe suggested that these figures be reduced to allow \$25,000 to be carried over until January 1 for emergency purposes. Schnell agreed to refer the matter to Council at their June meeting.

PUBLIC HEALTH

Representing the Department were Carolyn Adams and Karen Fread for the following agenda:

PUBLIC HEALTH PUBLIC HEALTH DEPARTMENT[641]

Home care aide, ch 80, <u>Notice</u> ARC 4764A	4/27/94
Volunteer physician program, ch 88, <u>Filed</u> ARC 4747A	4/13/94
Approval of laboratories for employee drug testing, 12.1 to 12.7, 12.11 to 12.15, 12.17 to 12.23, <u>Notice</u> ARC 4681A Carried over from April agenda	3/30/94
Immunization of persons attending elementary or secondary schools or licensed child-care centers, 7.4, 7.7(1), <u>Notice</u> ARC 4653A Carried over from April agenda	3/2/94

Ch 80

Fread explained that proposed Chapter 80 was in response to state legislation as well as federal recommendations and would relax rules on supervision. Fread further explained that the federal regulations governed services ordered by a physician and paid for by Medicare or Medicaid which require a two-week supervision.

Kibbie contended that public hearings should be held "out in the state," in each congressional district, for example, rather than the counties sending people to Des Moines. Adams pointed out that the Department had provided the proposed changes to all local agencies. In addition, they were also utilizing the Iowa Communications Network for training purposes.

Kibbie opined that the fiber optics network would be an ideal use of classrooms for holding public hearings on rules. Adams agreed to communicate his suggestions to the staff.

Ch 88

Adams explained new Chapter 88 on the volunteer physician program. No questions.

Ch 12

Guely reviewed amendments to Chapter 12. No action.

7.4, 7.7(1)

In review of immunization amendments in Chapter 7, Adams mentioned that 1994 legislation passed regarding day care was being incorporated in this rule making, which would be up for adoption by the Board on May 11.

**SUBSTANCE
ABUSE**

Janet Zwick, G. Dean Austin, Jeff Gronstal and Mike Guely reviewed the standards for methadone treatment centers, filed as ARC 4674A, published in IAB 3/16/94, which were delayed 70 days by the ARRC at their April meeting.

Also present were D. Murphy, Cedar Falls physician, Michael Sellers, Attorney, West Des Moines; William Shepherd, George Porter, and Tracy Gilmore, Mid City Addiction Team, Des Moines; Arthur Deeke, Jr, Heartland Inner City Chairman; and Felicia S. Jackson, CADS-Methadone Program.

Austin commented that methadone was a very effective drug used in the treatment of narcotic addicts, although its use has been controversial. He added there could be some possible issues regarding diversion and take-home of methadone in these rules. The rules, which had been in development since the fall of 1992 in consultation with other states—Illinois, Michigan and Florida—reflected FDA methadone regulations. Austin spoke of three methadone treatment programs in Iowa which were represented in the audience—CADS in Davenport; Mid City Addiction Team, Des Moines; and Dr. Daniel J. Murphy, private practice in Cedar Falls.

Austin explained that methadone had been very beneficial in curbing narcotic use. Included in the treatment were ancillary services, consultation or services beneficial to job training or educational training. The rules provide for a central registry to allow the Division to administer and guard against potential dual

**SUBST. ABUSE
(Cont.)**

enrollment of patients in more than one treatment program. The rules also establish certain take-home medication requirements as well as a uniform clinical record-keeping system.

Hedge asked why a patient would dual enroll and Austin explained that the drug acquired from other programs could be used for personal gain—sale on the street, for instance.

Daggett was informed that this program was funded by a block grant through the federal government and approved by the state legislature for distribution. Two of the three programs mentioned were contracted and received funding through the Division. The third was a private physician.

Gronstal added that prior to the proposal, the Division relied on rules established by the FDA.

Rittmer was told that Iowa rules would be more restrictive than federal requirements relative to take-home medication.

Cost of treatment as well as cost and accessibility of methadone on the street was discussed.

Gronstal responded to Schrader that the purpose of these rules was not only to address issues of diversion but also to guarantee some rehabilitative services—the rules were applicable to all methadone treatment programs.

Daniel J. Murphy, M.D., Cedar Falls, told the Committee that he first became involved in a methadone treatment program nine years ago when a farmer moving back to Iowa asked if he would continue prescribing his methadone. At the time the state had no authority in this area, so Murphy obtained a federal license to administer the methadone. He now has 79 patients from all over Iowa.

Murphy felt that when Iowa Code Chapter 125, Chemical Substance Abuse, was written, the legislature anticipated the need for protection of the doctor-patient relationship but yet they addressed the necessary licensing requirements for state-operated programs. Murphy then read Code §125.13(2)"b" which seemed to clearly exempt him from these licensing requirements. He declared that the state should not be involved in clinical decisions or interfering with the doctor-patient relationship. He stressed that care for these patients who suffer from hepatitis, Aids, social diseases as well as addiction was very complicated. Murphy continued that physicians must follow the federal register which was written in consultation with patients, providers, experts in the field and regulators. He also followed a book entitled, "State Methadone Maintenance Treatment Guidelines" which had been reviewed by the Substance Abuse Commission. The proposed rules seemed to take the opposite direction and Murphy contended the state had exceeded its authority in rule making. Metcalf asked Murphy to itemize his main concerns with the rules. He responded that the restrictive and punitive rules would eliminate the flexibility necessary to attract and retain patients. If the patient would have a relapse, they would have to see the doctor daily because take out doses were not allowed. Murphy cited distance patients must travel as an argument against this requirement.

Murphy informed Priebe that methadone was prescribed for chronic pain and cancer patients and was number 17 on the list of "sought-after drugs."

SUBST. ABUSE
(Cont.)

Austin disagreed that their rules were punitive. The Federal rules establish criteria in reference to take-home medication and if there were some illicit drug use, there were recommendations to change the individual's treatment plan.

Gronstal spoke of built-in exceptions to the take-home requirements which were clearly outlined. There were exceptions in the federal rules as well.

Sellers, attorney representing Murphy, focused on the situations when Murphy wanted to impose a chemical, medical, physician's judgment, he would be required to contact the Substance Abuse Commission. There would be no qualified personnel to make the decision as to a request for an exception. At a national meeting on methadone treatment, Murphy learned that the trend was to move away from process-oriented reviews, outcome was the main objective.

Doderer reasoned that it should be determined if Murphy were exempt under the statute—(125.13(2)"b").

Austin opined that §125.21 of the Iowa Code authorized the Commission to license and approve all methadone treatment programs and Murphy fell into this category as determined by Polk County District Court. Marie McQuire, assistant AG, recalled discussions on this issue over the past few years and she offered interpretation of the law.

Doderer saw need for clarification of the Code.

Priebe noted that there was time under the 70-day delay for further research and suggested that all factions meet with Royce, who could report to the Committee in June.

Austin advised Doderer that all programs have medical directors. Gronstal suspected that there were other programs subject to these rules.

In response to Rittmer, Murphy indicated that he received no state or federal funds but was paid by a third party or from out-of-pocket.

William Shepherd, Mid City Addiction Team, spoke in favor of the rules. He clarified that methadone was combined with all the other services and rehabilitation in treating these addicts. He commended the Department and added that the take-home requirements and uniformity were necessary

Shepherd advised Priebe that 60 percent of their funds were from the state Department of Health and 40 percent from third-party payers or other means.

Tracy Gilmore, Administrator and Human Services Director of Mid City, had been a client of the program for the past seven years. She spoke against allowing six "take-home" doses at one time. She earned her dosage, one at a time, over a three-year period.

In discussing the distance clients must travel, Austin said that travel would not be considered if a treatment program existed within a 25-mile radius.

Shepherd responded to Schrader that Mid City treats all who ask regardless of ability to pay. He clarified that no new client would be given six "take-home" doses at one time. Schrader was less concerned about controlling methadone than he was about services to patients. Misuse of the drug and dual enrollment in the

SUBST. ABUSE
(Cont.)

program were discussed. Schrader observed two different practices serving different types of clientele well.

Felicia Jackson, CADS Methadone Program in Davenport, commented that about 77 percent of their clients were employed and about 10 percent were from outside the 25-mile geographic area. They have a bi-state program and also work under Illinois guidelines. They did not consider Iowa's proposed rules to be restrictive. Illinois also had a central registry which proved beneficial. Jackson noted that addicts would look for "the best deal." The average age of their clients was 35. Jackson pointed out that once stabilized, it was almost therapeutic for a client to see a counselor or familiar face. When the clinic suspects a problem, they can respond very quickly. It was not unusual to see clients with multiple addictions and it must be determined which one was heavier. If six-day a week take-home doses were given, a person already addicted to marijuana and cocaine would very likely take the methadone and divert it for cocaine. One of the primary reasons for the federal regulations was that the analysis be monitored. Jackson concluded that recovery and being a productive member of society were the ultimate goal.

Metcalf favored placing the rules on the June agenda.

Schrader urged all to work toward a possible compromise to develop rules which would mesh well for both types of clientele.

In response to Doderer, Murphy viewed the central registry as a bureaucratic encumbrance but opposed dual programs for a client.

Metcalf reminded that comments and information should be directed to Joe Royce at least one week prior to the June meeting for distribution to the Committee.

Priebe also requested information on the rate of recidivism and success rate from the programs. He considered the driving distance to be a problem.

There was discussion of changes following the Notice. Murphy had submitted comments which were taken under consideration and some compromise had been made.

Metcalf announced that rule 643—3.35 would be placed on the June 14 agenda as the last item of business.

Recess

Metcalf recessed the Committee at 12:20 p.m. for lunch.

Reconvened

Co-chair Metcalf reconvened the meeting at 1:40 p.m. in Room 116 for the following Human Services agenda:

HUMAN SERVICES

HUMAN SERVICES DEPARTMENT[441]
 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, Notice ARC 4721A 4/13/94
 Income eligibility guidelines for the federal surplus food program, 73.4(3)"d"(2), Notice ARC 4762A .. 4/27/94
 Transitional Medicaid benefits, 75.1(31)"f," Notice ARC 4763A 4/27/94
 Medicaid reimbursement of ICFs/MR, respite care, ventilator care rates, 77.30(5)"b," 77.34(5), 78.34(5)"c" and "d," 78.37(6)"c" and "d," 78.38(5)"c" and "d," 79.1(2), 79.1(9)"b," 82.5(11)"f" and "j," 82.5(14)"e" to "g," 82.5(16)"e," Filed ARC 4693A Carried over from April agenda 4/30/94
 Special Review - IQ level for "person with mental retardation," discrepancy in Ch 22 and Ch 24 IAC

Palmer arrived.

HUMAN SERVICES (Cont.) The Department was represented by Mary Ann Walker, Harold Templeman, Janet Shoeman, Ruth Schanke, Don Herman and Gary Gesaman. Myrna Langerud represented the Human Services Council. A complete list of other interested persons in the audience is on file in the office of Administrative Code Editor.

50.2 et al. No comments or questions.

73.4(3)"d"(2) Daggett was advised that amendment to 73.4(3) would have no impact on the WIC program.

75.1(31)"f" No questions.

77.30 et al. ICF/MR The filed rules on Medicaid reimbursement of ICF/MRs, carried over from the April agenda, were before the Committee.

After Walker gave a brief overview of the filed rule as set out in the preamble, Metcalf recognized Don Herman for comments.

Royce announced that Larry Lindhl, Inspections and Appeals, was present to answer any technical questions about the physical standards or requirements.

Three handouts were distributed by Herman—Compilation of Various Costs and Statistical Data ICF/MRs, State ICF/MR Rates and ICF/MR. He wished to clarify a related issue on reimbursement rates for Village Northwest in Sheldon. The information that was supplied the Committee indicated that facility had higher costs in a certain area than comparable facilities. In communicating with accountants at that facility, there were costs being placed on one area of their cost report that more appropriately would belong in another area. After these realignment of costs, that particular facility does not stand out as abnormal in that particular line item. Herman emphasized that at no time was the Department suggesting any wrongdoing about that particular facility.

Herman then provided background on the Medicaid reimbursement program for ICF/MRs. Congress authorized the Medicaid program in 1965 and 1966 the Iowa Legislature passed Chapter 249A—the legislation for Medicaid in Iowa. Congress also authorized Medicare in 1965 and it immediately started identifying coverage and reimbursement policies for providers participating in the Medicare program. So Iowa, like many other states, lacking resources, rather than replicate something in existence, looked at the Medicare program for coverage and reimbursement policies relating to Medicaid providers. He was speaking primarily of hospitals, skilled nursing facilities, physicians, and all other noninstitutional kinds of providers that the Medicaid and Medicare programs covered. It became apparent that reimbursement policies used by the Medicaid program were inflationary. Hospitals and skilled nursing facilities were allowed to submit all costs and Medicaid and Medicare made decisions about the liability of those costs, and those decisions were at a very high level. There were few restrictions on individual costs, so the hospitals and skilled nursing facilities were largely reimbursed for their costs. Herman spoke of policies in the hospitals and with physicians. He noted that in 1967, Iowa implemented a fee schedule for reimbursing physicians, regardless of their specialty or location. Medicare was now beginning to follow suit. In 1967, Iowa also implemented a diagnosis-related group system for hospitals where they were taken off the cost-related system and were told they would be paid X amount of dollars regardless of the length of stay or the amount of resources incurred. This approach has helped tremendously in cost containment among those providers. This background is being provided

HUMAN SERVICES
Special Review
ICF/MR (Cont.)

because ICF/MRs were confronted with reimbursement for the "gifted" child in the Medicaid program in Iowa. Congress passed the ICF/MR program in the mid-seventies and Iowa implemented a program in 1975. Initially, Woodward and Glenwood were operated by the Department of Human Services. Today approximately 2100 individuals receive care in ICF/MRs and about 1400 receive care in community-based facilities.

Herman continued that a growth level had been reached and steps should be taken to sustain this. The general assembly reflected this approach in imposing a moratorium on conversions or development of new ICF/MR beds and it is also reflected in the Department's approach to reimbursement.

Rules on reimbursement were implemented by the Department in 1972 which imposed some restrictions on the rate of increase in ICF/MR reimbursement. Specifically, administrative costs were limited to no more than 20 percent of total cost of a facility. Also, a limit on annual increase of reimbursement rates was tied to the consumer price index. Herman recalled a cap on nursing facilities in Iowa since their inception. Even though Iowa has been consistently low in terms of reimbursement rates for nursing facilities, those facilities were as good as any in the country and the quality of care had not suffered. Thus, Herman felt that a cap on reimbursement in an institutional setting could work—both for the payers as well as the providers. Herman pointed out that amendments before the Committee today would accomplish three goals not covered by current reimbursement methodology. They would further restrict administrative costs (from 20 to 18 percent), impose limits on allowable rent/lease expense and, most significantly, impose a cap at the 80th percentile on Medicaid reimbursement. A comparison with other states was used in determining this figure.

Herman continued with an overview of a handout relating to compilation of various costs and statistical data. He stressed that in speaking of a percentile, it meant a percentile of facilities. A cap of \$254.09 per day was proposed to be effective July 1, 1994. The Department would be open to discussion of the 80th percentile in the future as indicated in the preamble to the rules.

In reference to his handout titled "ICF/MR," Herman stated that the average annual cost was \$76,000 per person served. The daily cap of \$254.09 would average about \$90,000 per person, per year.

In conclusion, Herman cautioned that delay of the rules would be contrary to legislative intent in HF 2430.

Gesaman responded to Kibbie that these rules would not be extended to include the state institutions for a number of reasons. These institutions were licensed as hospitals and operate under different economic restraints than do the community facilities. Salaries were set by the Personnel Department, so they were not included in the compilation or the cost containment measures.

Herman added that these two institutions were operated under a different set of rules in terms of their costs.

In response to Kibbie, Herman said that costs in 1995 for the first 56 facilities (those under 80 percent) would be based on a cost report submitted to the Department. Gesaman interjected that a cost increase which would exceed the consumer price index would not be allowed.

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Special Review
ICF/MR (Cont.)

Halvorson inquired about the annual review. Herman said the rules required an annual cost report (cost review). He referred to Item 9, 82.5(14)"g." Herman and Gesaman explained reimbursement calculation—the CPI plus half the difference of their rate of increase as compared to the CPI. A number of the facilities found the incentive attractive enough last year to hold down their costs.

Halvorson and the Department discussed a new facility in Halvorson's area and how rates would be established.

Comparison with Nebraska and other surrounding states was discussed, as detailed in one of the handouts.

Schrader inquired about the differences in the facilities—128 beds compared to a four-bed facility and wondered if these differences were considered in developing this cap. Herman responded that peer grouping was a consideration when developing reimbursement methodologies but not a consideration when developing the ICF/MRs. Herman stressed that four-bed facilities were not necessarily more expensive to operate. He recognized that facility size was very controversial but believed that smaller ones could be very efficient. Schrader and Herman continued to discuss size and efficiency of facilities. Walker pointed out that some new four-bed facilities were below the cap but not on this list.

Doderer inquired about private-pay persons and Herman said there were few, if any, in ICF/MRs, since they qualify for Medicaid reimbursement. Herman advised that cost reports were received from facilities each year. Gesaman interjected that when these rules were being developed, facilities were analyzed relative to size, type of resident being served, and age of facility, for example. They concluded there was no common thread running through the program.

Priebe was advised that cost per day at Woodward was \$270.59 and at Glenwood, \$234.17 which included administrative costs. The ICF/MR costs of the states facilities was borne by the county, 37 percent and federal, 63 percent. The list of ICF/MR facilities was funded the same. Priebe inquired about the cost effectiveness of private facilities absorbing the residents at the two state schools.

It was Rittmer's opinion that most residents of Glenwood and Woodward were more difficult and costly to care for and Herman agreed.

Templeman thought there were community-based facilities that would be able to handle most types of patients. High cost of head injury patients was discussed. It was noted that nine new facilities that were not included on the list were small facilities. It was Committee's consensus that the smaller facilities would be less cost effective. Gesaman commented that the Department received legislative directive two years ago to limit new ICF/MR construction to family-size scale living environments. The Department interpreted that to be not more than eight beds as included in the rules.

Halvorson questioned why Iowa was so much higher than the national average. Herman said that cost reports had been reviewed for any improprieties but no limitations had been applied.

Priebe interjected that when foster group homes were moved into ICF/MRs there was a dramatic increase—cost was shifted to the counties and federal government.

Discussion of financial burden to counties.

HUMAN SERVICES The Iowa State Association of Counties was represented by Gary Kuehnast, Humboldt County; Mary Dubert, Scott County; Lynn Ferrell, Polk County; and Linda Rouse, Decatur County.
Special Review
ICF/MR (Cont.)

Kuehnast indicated that the counties were very supportive of this proposed rule and favored the June 1 implementation date. He summarized the letter written to the ARRC by Paul Coates, Executive Director. Kuehnast stated that every month's delay would cost the counties \$50,000. ICF/MR costs are the biggest share of the county's mental health budgets (about 30 percent). In Humboldt County with a population of 10,000, 13 clients cost \$330,000 per year.

Dubert who served on the work group committee that studied the proposal concluded there was no one answer to the problem and solutions would be long-term. An attempt was being made to move forward on longer-term solutions. Dubert mentioned that ICF/MRs had operated for 15 years without any type of cost control and she felt that quality services could be administered within the limitations of the rules. She also believed that facilities would review their expenditures very carefully and exercise stringent cost control while offering quality services.

Ferrell gave brief background on the Polk County mental health program. He mentioned that the work group previously mentioned also received input from the state auditor's office as well as an independent accounting firm. The work group discussed costs, cost variations, and cost containment at great length. He noted that with these rules in effect on July 1, the cost per day for several facilities would decrease below the 80th percentile. Ferrell saw correlation between facility size and cost, but in the way the facility was developed—cost containment takes a great deal of creativity. Ferrell concluded that the rules were not perfect but addressed a long-standing problem and should be implemented.

Rouse echoed remarks of previous speakers from the counties relating to cost containment and county expenditures.

Priebe recalled the cap placed on the bill of rights bill in 1988, and contended that if this had remained in place, the county budgets would have been frozen on July 1, 1992.

Kuehnast reminded that this was part of the DHS restructuring negotiations.

Halvorson reiterated his opinion that the larger counties could utilize smaller facilities for less money than could be done in smaller rural counties. Farrell indicated that three- and four-bedroom houses were being purchased very reasonably in rural areas and made handicapped accessible.

Linda Hinton, Iowa Association of Residential Rehabilitative Facilities, commented on the myriad of factors which drive costs. She urged that problems be analyzed before trying to "fix" them.

Bob Hoogeveen, Executive Director of Village Northwest Unlimited, Sheldon, spoke against the implementation of the rules for reasons stated in his letter to the Committee. He indicated that they had the only certified accredited head trauma program in Iowa that was licensed as ICF/MR. They provided services for much less than other similar programs. With implementation of the 80 percentile his facility would lose \$230,000 in one year of which \$147,000 would be federal dollars. Hoogeveen urged a one-year delay.

HUMAN SERVICES
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ICF/MR (Cont.)

Lloyd VanderKwaak, President of Children's Habilitation Center in Johnson, distributed a document which explained that the facility provided ICF/MR services and skilled nursing services to children with severe disabilities and chronic health/medical conditions. Costs per day for a skilled nursing program was \$161.09 which was not inclusive of all the costs associated with providing skilled nursing services. Many ancillary services ranging from \$50 to \$100 per day were paid under the Title XIX program. Cost of ICF/MR program was \$280.10 per day, which was inclusive. VerderKwaak concluded that the proposed cost containment rules would place at risk current and future residents at the Center.

Shirley Gilmore spoke as a parent of a 21-year old daughter who had lived in foster care and then moved to an ICF/MR facility. The family lacked financial means to care for the child at home. She was severely and profoundly retarded as a result of a stroke before birth. Gilmore described the care and services provided at North Central Human Services which was superior to care at Woodward. She spoke of the physical and occupational therapy equipment and other services required. Gilmore reasoned that the 80 percent cap would be discriminatory in her daughter's case. She wondered which service or therapy would be discontinued.

Connie Harding, Cedar Falls, is a parent of a severely handicapped 15-year old son whom she cared for at home until he was 13 years old. At that time, Harding reluctantly placed her son in a small ICF/MR home. She emotionally expressed what it meant to have her son only 8 minutes from home where he could remain a part of their family and still receive all the services that they could not provide.

Dick Petersen, Clive, addressed the Committee regarding his son who has been cared for in the Johnston Rehabilitation facility for 11 years. Petersen wanted to ensure that the valuable services provided to his son would not be diminished. He urged delay of the rules for further study of the potential impact.

Ann Sexton, Executive Director, IARRF Bethpage Mission Midwest, introduced Mary Van Ahn, a resident of this facility, who briefly addressed the Committee with interpretation by Grant Rufer. Sexton reviewed the impact these rules would have on their facility and echoed remarks made previously. She asked that the rules be delayed for one year to allow opportunity for reevaluation of the effects of the 1992 cost containment rules and also to allow facilities time to respond to the percentile change.

Kibbie asked Department officials to review any changes as a result of the comments at the public hearing.

Gesaman cited a six-month lead time for facilities in terms of knowing what the maximum rate would be. Clarification was made regarding management fees—that home office costs also be addressed; defining what cost or rate figures would be used in setting the 80th percentile; and what was included in administrative costs.

Kibbie referred to reams of information on this subject but he had not seen comparisons made of Iowa's rules with federal and state rules.

Larry Lindblom, Inspections and Appeals, remarked that about four years ago legislation mandated Iowa, for the purpose of ICF/MR, to adopt a federal regulation. He also referenced statutory requirements—Iowa Code chapter 135C. With respect to involuntary transfer and discharge, the state and federal regulations were the same. Some states have not implemented a residential

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ICF/MR (Cont.)

program. A central data base contained survey results for ICF/MRs all over the country. This information showed that Iowa was higher than other parts of the nation in some aspects but lower in others. Lindblom referenced the meetings held with DHS, ISAC, I & A and regional office representatives from Kansas City, who indicated that Iowa was following intent of the law. He described the rules as "very soft, very outcome oriented." The amount of adverse action taken in the last year against providers had been minuscule compared to four years ago.

Myrna Langerud, DHS Council member for nine years, stated that she was proud that Iowa was providing quality care and services for the mentally retarded and mentally disabled. She recalled that cost containment had been a major concern of the legislature and she had seen costs increase 10 to 15 percent a year but the quality of service was not changed because Medicaid had paid for it. She stressed that abused children and adults and those on FIP program should also realize a fair share of the tax dollars. She believed that the needs of the ICF/MR were being met but hoped the system would not be bankrupt in doing so.

In response to the 10 to 15 percent increase, Petersen opined that some facilities were just "playing catch up."

Gesaman referred to a chart developed by the Department which illustrated an average increase of 10 percent in ICF/MR rates over the past 10 years. Cost containment measures mandated by the legislature in 1991 were implemented beginning 1992 and into 1993.

Gilmore cited cost of equipment and minimum wage increases as factors attributed to higher costs. Doderer disagreed that the minimum wage increase was of any consequence.

MOTION

Schrader moved to delay amendments to 77.30(5)"b" et al. in ARC 4693A until adjournment of the 1995 GA. This would allow time for a compromise. He was concerned that facilities had not been included in the rule-making process. A memo received from Management Department stated that this cost containment measure would be necessary to remain within the 2.5 percent maximum funding increase. Schrader was not convinced that increase would not be generated with implementation of these rules.

Metcalf informed Doderer that the 80 percentile was a Department ruling and was not designated by Code.

Royce explained that the rule would automatically go into effect unless the ARRC took formal action to postpone the effective date. The purpose of a delay was not necessarily intended to kill the rules but to refer them to the legislature for further study and action. The legislature has veto power over any administrative rule.

Metcalf advised that the Schrader motion would require seven affirmative votes.

Royce noted that another Committee option would be a 70-day delay.

It was noted that Items 6 and 8 to 10 would be included in the motion.

Motion failed

Motion failed on voice vote.

Special Review - IQ
Level of MR

Metcalf announced special review of 441—Chapters 22 and 24 with respect to the definition of the IQ level of mentally retarded persons.

Special Review -
IQ level of MR

Discussion focused on 24.1, the definition of "persons with mental retardation," which had been revised in September 1993, by substituting "70 to 75" for "approximately 70" IQ. Harold Templeman, Acting Administrator of the Division of Mental Health/Developmental Disabilities stated that the definition of mental retardation in the Iowa Code was very broad. Therefore, the Department made it more specific by rule. He added that the term was defined by the American Association of Mental Retardation and it was recognized and followed by other states and would probably be used in court. Iowa has adopted their definition. He pointed out that the definition encompasses more than just an IQ number, it was also a measure of adaptive skills. Templeman offered an example: A person with a measured IQ level of 65 but without deficits in any of the skill areas would not be considered mentally retarded.

Patty Erickson-Puttmann, Social Services Coordinator, Woodbury County, declared this increase would have drastic financial implications on her county. She noted that the Social Security Administration has just raised the IQ level from 67 to 70 as the cutoff to receive SS disability benefits. Woodbury County had used this number as a determining factor also—above 70 individuals were not funded. Erickson-Puttmann was aware of 11 individuals in Woodbury County who would be eligible for mental retardation services amounting to an additional cost of \$180,125.00. Erickson-Puttmann questioned why an Economic Impact Statement had not been requested when these rules were proposed. She referred to a letter to the ARRC from James O'Kane, Chairman of the Woodbury County Board of Supervisors, who had requested the Committee to place an objection on the change and refer it to the 1995 Legislature.

Royce advised that the provision in question went into effect last fall.

Metcalf opined that the matter should be referred to the General Assembly.

Motion

Kibbie moved that an impact statement be prepared on 441—Chapter 24. Motion carried.

Hedge wondered if the 11 people in Woodbury County would be placed in the system.

Metcalf recommended that the issue be placed on a subsequent agenda after the Impact Statement had been prepared.

Templeman pointed out that the Department would need cooperation from the counties to gather information for the Statement.

Royce clarified that this would not be an "official" request for an Economic Impact Statement because under Code §17A.4, this could only be requested during the Notice process. This would be an informal request for information and it would not be published in the IAB.

Hedge was concerned about some relief to the counties.

Metcalf explained that the ARRC lacked authority to stop a rule which was already in effect. She suggested gathering this information as soon as possible for the Committee. Metcalf concluded that an option would be to ask the agency to implement a new rule.

Motion

Halvorson preferred to review the information before making a decision and he moved to place this subject and the impact statement on the June agenda. Carried.

Special Review
IQ level of MR

Linda Rouse, Decatur County Supervisor, offered history on the rule making and stated that she had written a "minority opinion" in opposition to the process followed. She had also requested the ARRC to seek an impact statement. She was doubtful that all counties could submit an accurate report in a month but suspected the Department could provide information.

Templeman reiterated that the time factor rested with the counties since the Department had no access to the information.

Schrader recalled that the Mental Health and Mental Retardation Commission was not unanimous with its decision several months ago. Rouse pointed out that only 9 of the 15 members of the Commission were present.

Royce advised Kibbie that the Committee could object to a rule in effect but could not delay it.

Recess

Metcalf recessed the meeting at 5:45 p.m. and announced that tomorrow's meeting would be held in Room 24 at 8:30 a.m.

05-11-94

Reconvened

Metcalf reconvened the meeting at 8:30 a.m. and called up the Economic Development agenda as follows:

**ECONOMIC
DEVELOPMENT**

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]
Economic development/public facilities set-aside, 23.6(4), Filed Emergency ARC 4718A 4/13/94
New jobs and income program, ch 62, Notice ARC 4717A 4/13/94

Melanie Johnson, Roselyn McKie Wazney and Bob Henningsen represented the Department.

23.6

In review of amendment to 23.6(4), Priebe was informed that unallocated funds would be reallocated in the general competitive program the following year.

Halvorson asked about the backlog for setaside requests for public facility work and Henningsen did not think there were more than two pending.

Ch 62

Johnson reviewed proposed new Chapter 62, New Jobs and Income Program. She mentioned that they had worked closely with the Department of Revenue and Finance to avoid conflict with tax provisions.

In response to Priebe's inquiry in 62.4(3), Johnson said that subchapter S was a provision in the law.

Henningsen and Daggett briefly discussed the 20-year exemption from taxation for machinery, equipment and computers in 62.4(4). Rittmer and Johnson discussed "material action" included in definition of "eligible project" and the implication of initiation of production.

Halvorson noted that qualifiers for this program would not be eligible for CEBA—legislative intent to eliminate "double-dipping."

DED (Cont.)

Discussion of IPSCO and the fact that projects now must be approved by the local community, not the state.

At Metcalf's request, discussion again focused on definition of "eligible project." She said the purpose of incentives was to bring in new production, new jobs, new companies and expansion—not incentives for those who already had plans to expand, for example. She had concerns about the "fine line." Metcalf also inquired about the effective date used in determining eligibility. Johnson thought it would be the effective date of the rules.

Halvorson disagreed and recalled the bill stated that the IPSCO portion was effective immediately. The second phase contained a study of the incentive programs and the New Jobs Income Program for which qualifying was to be effective May 1.

Johnson read from the bill and concurred with Halvorson.

The status of the IPSCO project was discussed and Henningsen said that an environmental impact study had not been requested at this point.

Rittmer was told that, although there were no oral comments at the public hearing, a few written ones requested clarification, e.g., Association of Business and Industry wanted information on criteria to qualify and others wanted the definition of "eligible project" expanded.

Johnson advised that the legislation did not define "eligible project"—thus, the rule.

Priebe referred to the last line of this definition which he described as "wide open." It read: "Material action includes the initiation of production or service operations."

Metcalf suggested that the Department consider alternative language and contact the ARRC prior to adopting the rules.

Discussion focused on possible deletion of the last sentence or reference to material action in second sentence. The Department was quite comfortable with the language as it existed. The eligibility of PMX was discussed.

Halvorson felt this language was needed to enable the Department to entice industry to expand in Iowa. He viewed the state's ultimate goal as getting the jobs and investment in Iowa.

Metcalf wanted assurance that her concerns were unjustified and Henningsen took the position that the language in question would not provide eligibility for any past activities—only a new project. He advised that the matter would be handled as a separate action before the Board.

MEDICAL EXAMINERS

Ann Martino, Executive Director, reviewed the following agenda with no Committee recommendations:

MEDICAL EXAMINERS BOARD[653]

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

Medical examiners, 10.1 to 10.3, 10.3(1), 10.3(5)"a" and "b," Filed ARC 4758A	4/27/94
Licensure requirements, 11.1 to 11.9, 11.31, 11.31(10), 11.31(14), 11.32(2), Filed ARC 4759A	4/27/94
Discipline — HIV and hepatitis B, definitions, fees, recovery of hearing costs, 12.4(29), 12.51, Filed ARC 4757A	4/27/94

REVENUE AND FINANCE

The following Notice was reviewed by Carl Castelda, Deputy Director:

REVENUE AND FINANCE DEPARTMENT[701]
Individual income tax, 38.10(10) to 38.10(14), 40.4, 40.9, 40.10(2), 40.21(4), 40.26, 41.8(1), 42.1, 46.3(2)"b"(4),
46.4(2)"8" and "12," 46.4(6)"b"(5), Notice ARC 4748A 4/13/94
Vehicles used in interstate commerce exempt from use tax, 32.4, Special review IAC

38.10(10) et al.

Castelda advised that these changes were technical in nature and, therefore, no public hearing was held.

Special Review 32.4

Regarding the special review, Castelda reported that the Department recommended a compromise position to compute the tax on the fair market value of the vehicle based on the blue book price. This would apply only to cabs, not the trailers they pull. Proposed legislation would be drafted later this year to utilize market value. Another option to consider: Exempt these cabs totally and raise the reciprocity agreement fees. The Department's position letter directed to the Iowa Motor Truck Association is on file in the Administrative Code Office.

REAL ESTATE

Roger Hanson and K. Marie Thayer were present for the following:

REAL ESTATE COMMISSION[193E]
Professional Licensing and Regulation Division[193]
COMMERCE DEPARTMENT[181]"umbrella"
Listings, property condition disclosure requirement, release of earnest money, 1.23, 1.27(7), 1.39,
Filed ARC 4761A 4/27/94

1.23 et al.

Hanson discussed the process followed in making changes from the Notice which implemented 1993 legislation. The Commission wrote at least four drafts before these rules were noticed. Metcalf observed numerous changes and was concerned as to whether adequate time was allowed for the public to react. Hanson said that basically, the major changes were in the model Disclosure Statement Form.

Priebe favored another hearing process. Discussion of new language in 1.23(2) which, according to Hanson, was intended to clarify the meaning of a new listing. Halvorson interjected that this had never been allowed in Iowa. In reference to numbers 11, 12 and 13 of the Disclosure Statement, Royce informed Metcalf that the statute did not require disclosure relative to the presence of asbestos, radon or lead-based paint. This information would not be known to the seller and Royce wondered if the seller would be held responsible. Hanson felt that would be up to the courts to decide. He said the Commission discussed these items at length and it was decided that they were very important material factors that could adversely affect the value of the property. Hanson reasoned that disclosure in these areas would be up to the individual if they felt they could be held liable.

Hanson reminded that the Disclosure Statement must be filed by anyone transferring property after July 1. It should be given before acceptance of an offer to provide buyer an option of withdrawing the offer. Halvorson wondered if the public were aware of this "major piece of consumer protection." The buyer would have the option of voiding the contract if the Statement followed an offer. Halvorson heard from an attorney who intended to record this Disclosure Statement along with the deed although nothing in the statement required recording. Hanson had been in contact with the Bar Association, banking associations and association of municipalities with respect to potential impact on abstracting.

REAL ESTATE
(Cont.)

Hanson advised that a cover letter along with the model language was being drafted to be sent to over 300 newspapers. An attempt would be made to notify everyone concerned.

Rittmer inquired about disclosure regarding location in a flood plain and Hanson suggested this should be disclosed if known. Hanson emphasized that this Statement would not relieve the licensee of normal duties and responsibilities.

Rittmer suspected the Statement could be a "job opportunity" for attorneys. Hanson explained the time frame involved in voiding a contract after a Disclosure Statement was received.

Palmer maintained the form was intended for those people who intentionally attempt to deceive the buyer. He suggested another column in the answer section regarding "information unknown or not available." Hanson said "unknown" was added in the instructions even though the law did not require it. Thayer interjected that the first draft included an "unknown" column but the AG's office considered it to be unnecessary.

Hanson advised Daggett that the Iowa law does not contain a provision for selling property "as is." It did require the Commission to develop the items to be included on this Disclosure Form.

Martin Lee, President of Iowa Association of Realtors, explained that items on this form were not intended to force the seller to answer a "yes" or "no" question but to alert the buyer into asking questions and finding answers before a transaction. He added that the Board of Realtors was using a much more detailed form which might be recommended but was not mandatory.

Priebe inquired why lead paint, for example, was included since the law doesn't require disclosure. Lee responded that this agreement would be used in a negotiated transaction between buyer and seller.

Matt Eide, an attorney with the Iowa Association of Realtors, again pointed out that "unknown" was included in the instructions on the form.

Metcalf favored a delay of the rules.

Halvorson would resist a delay because of the time frame involved and the proposed effective date of these rules.

Jo Kline Cebuhar, IAR, pointed out that law required the Statement for transfers on or after July 1. She added that radon, asbestos, and lead-based paint were very important characteristics in terms of environmental issues.

After further discussion, it was Committee consensus to take no formal action.

INSURANCE

Susan Voss was present to review the following Insurance Division agenda:

INSURANCE DIVISION[191]

COMMERCE DEPARTMENT[181]"umbrella"

Long-term care asset preservation program, ch 72, Filed ARC 4769A 4/27/94

Preferred provider arrangements — mental health services, 27.3(4), Notice ARC 4746A 4/13/94

Ch 72

Voss was unable to answer Palmer's inquiry about the model or profile used in developing these rules. He asked for some estimates on costs as they relate to the

INSURANCE (Cont.) the consumer. Voss was aware of a meeting between the Departments of Management, Human Services and Insurance Division regarding cost of this program and number of participants.

70-day delay Palmer moved that a 70-day delay be placed on these rules and that it be on the June agenda to allow time for the requested information. Motion carried.

27.3(4) No comments on amendment to 27.3(4).

RACING AND GAMING

Jack Ketterer, Director, reviewed the following Notice which was carried over from the 3/30/94 IAB:

RACING AND GAMING COMMISSION[491]
INSPECTIONS AND APPEALS DEPARTMENT[481]"umbrella"

Exotic wagering minimum wagers, uncoupling of horses with same trainer for wagering purposes, 8.2(20), 8.3(13)"h," 10.1, 10.5(2)"c"(1), (3), and (4), Notice ARC 4686A Carried over from April agenda 3/30/94

8.2(20) et al. Review focused on 10.5(2)"c" pertaining to coupling of horses. Ketterer emphasized that the amendment would remove the requirement that horses be coupled and leave this to the discretion of the stewards.

On another subject, Ketterer agreed to research fingerprinting requirements for Priebe.

Ketterer informed the ARRC that with passage of House File 2179, a number of the Racing and Gaming rules now conflict with the statute. As many as possible would be reviewed at the next Commission meeting and emergency rule making would be necessary.

LOTTERY

Nichole Schissel gave a brief overview of the following:

LOTTERY DIVISION[705]

REVENUE AND FINANCE DEPARTMENT[701]"umbrella"

Prizes payable after death of winner, 1.22, Filed Emergency ARC 4765A 4/27/94

1.22 No Committee recommendations.

EMERGENCY MANAGEMENT

David Miller briefly reviewed the termination of Notice of Intended Action on Chapter 8.

EMERGENCY MANAGEMENT DIVISION[605]

PUBLIC DEFENSE DEPARTMENT[601]"umbrella"

Criteria for awards or grants, ch 8, Notice ARC 3977A Terminated ARC 4740A 4/13/94

Ch 8 The rules had been adopted under emergency provisions also, and there were no changes. No Committee action.

EPC

The Environmental Protection Commission was represented by Ann Preziosi, Christine Spackman, Tom Anderson, Darrell McAllister and Michael Murphy for the following:

ENVIRONMENTAL PROTECTION COMMISSION[567]
 NATURAL RESOURCES DEPARTMENT[561]"umbrella"
 Air quality construction permit, 22.1(2), Notice ARC 4119A Terminated ARC 4751A 4/13/94
 Voluntary operating permit program, 22.200 to 22.207, Notice ARC 4750A 4/13/94
 Variance criteria for protected streams, 72.2(1)"d," 72.31(3), 72.32, 72.50(1), Notice ARC 4749A 4/13/94
 Sanitary landfills, 100.2, 103.2(1)"r" to "u," 103.2(15), Filed ARC 4739A 4/13/94
 Used foundry sand, 108.1, 108.2, 108.4, Filed ARC 4753A 4/13/94
 Landfill alternatives financial assistance program, ch 209, Filed ARC 4752A 4/13/94

- 22.1 No questions.
- 22.200-22.207 Priebe was advised that these permits would be issued for a term of five years. Sources must be below a certain rate of emissions in order to qualify for this program which would be less demanding than the Title V program.
- Ch 72 In review of amendments to Chapter 72 which extended variance criteria for protected streams, Metcalf expressed appreciation with new language in 72.2(1)"d." Kibbie and Daggett expressed thanks to the Department for holding hearings throughout the state.
- 100.2 et al. Murphy noted that minor changes were made from the Noticed version on sanitary landfills. No action.
- Ch 108 No recommendations.
- Ch 200 Anderson advised that one comment was received at the public hearing regarding the cost share definition. No Committee Action.

Palmer excused to attend Administration Committee meeting.

GENERAL SERVICES

Representing the Department for the Terrace Hill Commission rules were Barbara Filer, Administrator, Melinda Prince, Kathleen Gaugion, James Windsor, Madelyn Priebe and other interested persons. The following from the Terrace Hill Society were also present: Elaine Estes, Maurice Barringer and Ruth Van Note. The following agenda was reviewed:

GENERAL SERVICES DEPARTMENT[401]
 Terrace Hill commission, transfer 223— chs 55 to 57 to 401—chs 14 to 16, Filed Emergency ARC 4741A/4/13/94
 Terrace Hill commission, weddings, receptions, fees, 14.1, 14.2, 14.3(2), 14.7(3), 14.7(8), 16.4,
Notice ARC 4622A Terminated, also Notice ARC 4742A 4/13/94
 Terrace Hill — weddings, wedding receptions, fees, Iowa Code citation corrections in chs 14 and 16, 14.7(8),
 16.4, Notice ARC 4622A - Carried over from April agenda 3/2/94

- Ch 14 to 16 It was noted that rules of the Commission were amended and transferred from the Historical Division to the Department of General Services to implement Iowa Code Supplement section 18.8A.

The Notice of Intended Action published in March 2, 1994, IAB as ARC 4622A was terminated and amendments were renoticed in 4/13/94 IAB as ARC 4742A.

Discussion focused on proposed revision in 14.7(8) which would allow weddings and wedding receptions in the Terrace Hill mansion as approved by the

Terrace Hill (Cont.) Commission. Under existing rules those events were prohibited except for the immediate family of the current governor.

Filer read a prepared statement from the Terrace Hill Commission wherein they indicated their unanimous decision not to pursue revision of the administrative rules to allow weddings or wedding receptions at Terrace Hill. At a public hearing, the Commission met with several members of the Terrace Hill Society who concurred in this decision which the Commission believed to be in the best interest of the people of Iowa, to whom Terrace Hill belongs. Filer continued that the Commission pledged to continue to work for the betterment of Terrace Hill by responsible management, by providing educational opportunities for school children and the general public, and by providing an elegant historic atmosphere for official functions and limited special events. They would continue efforts with ongoing restoration, capital improvement projects, and preventive maintenance in conjunction with the Terrace Hill Society and the Foundation. In conclusion, Filer stated that the Commission would continue to explore additional sources for funding to maintain and preserve "this spectacular Iowa treasure."

Kibbie observed that the Governor's recommendation and the appropriation by the '94 GA totaled \$235,000.00. He asked how much more money was needed and, if more was needed, why wasn't it asked for?

Filer thought additional money had been sought in the past, e.g., capital improvements for which they requested special appropriation over the last few years. With all the budget cuts and all the careful consideration, the Commission wanted to do their part to hold down costs. Because of the budget cuts over the last two years, the preventive maintenance program was eliminated and they continue to strive to get money for it. In addition, there was some pressing need for capital and the Commission was working with General Services in this area.

Kibbie recalled that the legislature passed what the Governor had recommended. He also noted that existing rules strictly prohibited weddings and wedding receptions at Terrace Hill except for the immediate family of the current governor, yet there were other weddings at the mansion. It was Filer's understanding that the Commission could review those requests on a case-by-case basis. They believed they were within their legal boundary in approving two weddings. The Commission had been given legal advice that special requests could be reviewed and special stipulation made because a change in the administrative rules was in process.

Kibbie expressed frustration at the Commission's apparent disregard for the administrative rules which have the force and effect of law.

Filer responded that the Commission was merely trying to act in the best interest of the public and to serve different audiences with Terrace Hill.

It was Kibbie's understanding that some Commission members did not consider the rules to be binding.

Filer stressed that such a position was never verbalized at a meeting she attended.

Kibbie questioned Royce as to the effect of rules when they are finalized.

Royce responded that he had always maintained that a rule, in fact, could be waived under narrow circumstances if an individual could show that a particular rule imposed undue hardship and the individual could demonstrate that some

Terrace Hill (Cont.) alternative would accomplish the same result. A waiver could be granted based on a particular fact or circumstance. In other cases, agencies might waive a rule on the grounds of undue hardship on an individual on a case-by-case basis. He cited the Labor Division and OSHA regulations as an example. Royce emphasized that Iowa has no formal policy on waivers—there were no court cases or statutes that address the matter.

Filer stressed that it was never the Commission's intent to violate the law—they considered a wedding to be a special event.

In response to Halvorson, Filer stated that for many years special events had been allowed in addition to the official functions. Halvorson asked for figures on the Commission's request for an appropriation.

Filer did not have the exact amount but estimated \$166,758—similar to the previous year. Priebe provided the following: The Commission requested \$166,756, the Governor recommended \$165,575 and they were appropriated \$165,575 for operations. The Governor requested \$49,858 for quarters, exactly what the Department requested, and it was appropriated. At Priebe's request, an extra \$20,000 was included for a sprinkler system and a fire alarm system—the Commission received \$235,433.

Halvorson was supportive of the Commission's position to discontinue weddings at the mansion because of public sentiment.

Doderer was sorry that the Commission had changed their position.

It was clarified that the Notice in ARC 4742A (4/13/94 IAB) would have to be formally terminated by submitting a document for publication in the IAB. The end result would prohibit weddings at the mansion except for the Governor's family.

Schrader had heard from several legislators who had received complaints that the costs for weddings at the mansion were very exclusive and only approved people could participate. The other camp was those who were concerned about preserving and protecting the fine antiques that furnish Terrace Hill. He was supportive of the termination. Schrader then asked for definition of special events.

Filer described the official calendar set by the Governor's scheduler and cited a recent request for dinner for 20 in the dining room as an example of a special event. A five-page contract contains a liability clause for any damages to the mansion or furnishings. The person signing the contract must be present at the event. The special events policy was implemented in an attempt to control groups and any potential damage. Filer indicated that special events would average four per month.

The hourly fee was \$50 for 20 people and catering costs, etc. would be the responsibility of the group which contracted. Filer was willing to share the policy followed by the Commission.

There was further discussion of the fee structure which was based on the number in a group—1 to 30, 30 to 50, 50 to 100, etc. Filer indicated that proceeds from special events had always been placed with the Terrace Hill Society and then the Commission and the Society work together.

Terrace Hill (Cont.) Kibbie took the position that fees were reasonable.

Filer clarified that no charge would be made for an official event.

Priebe raised further question with respect to the budget and asked why \$16,654 from the Terrace Hill quarters and \$11,019 from the Terrace Hill Commission were reverted in 1993. Filer explained that the Commission has no control over the quarters budget—\$49,000. However, she was unsure as to who was responsible for this budget item.

Priebe asked who had recommended that it not be used for repairs and Filer stressed that quarters were never a part of the Terrace Hill budget.

With respect to reversion of funds of Terrace Hill Commission, Filer said they were transferred to a different area.

Dierenfeld interjected that it was her understanding that the money was transferred to the Department of Inspections and Appeals.

Priebe had information that \$17,725 went to the Governor's general office—\$16,654 from Terrace Hill quarters and \$2,304 came from administrative rules coordinator budget.

Priebe expressed his frustration that the state had received negative publicity on national radio and television concerning Terrace Hill funding. This in turn generated many calls from his constituents. He recalled his support of Terrace Hill over the years.

Filer advised Priebe that the money realized from the four weddings was placed in the Society account to be used for repairs such as the east porch of the mansion. Priebe asked who made the decision as to whether an event was "special" or "official."

Filer responded that her experience helped make the distinction.

Priebe asked if a fund raiser were considered an official function. Filer responded that a fund raiser for Terrace Hill would be a cooperative effort of the Society and the Commission. Any political fund raisers would be considered "official." Priebe wanted to make the point that this was probably a gray area.

Filer commented that requests for appropriations were normally handled by the head of the Department, e.g., General Services.

Priebe recommended that rules be adopted which would govern specific functions at Terrace Hill.

Royce concurred and he suggested rules applicable to the Historical Building as examples.

Filer stated that Terrace Hill rules had been patterned after those of the Historical Building with less specificity. Priebe pointed out that the existing rules governing use of Terrace Hill for weddings did not allow for a waiver. He asked how the decision was made to deviate from the rules. According to Filer, anyone requesting a wedding was asked to submit a letter which was referred to the Commission for final decision.

Terrace Hill (Cont.) Metcalf commented that this issue had generated much interest because of a shared concern for that beautiful facility. She urged both groups to continue to work together. Metcalf agreed that specific rules should be drafted and she requested the Commission to start the process.

Dierenfeld defended the Commission in that they began the process by proposing changes for the public to consider. They listened to input at the public hearing and decided to terminate the proposal because of lack of support.

Dierenfeld reasoned that clear directions should be provided to agencies. Priebe suggested a letter to the Commission reminding that rules have the effect of law.

Steve Robinson, Terrace Hill Society Board of Directors, spoke of his concern that the Commission had violated its own rule. He took the position that Iowa Code section 66.1 should be amended to include violation of their rules as grounds for removal of council, commission or board members. Robinson suspected that this problem extended beyond Terrace Hill.

Robinson clarified that a vote for a policy which was clearly contrary to a rule adopted by a board, council or commission under the administrative procedure act would be grounds for removal from office. Alleged violations would go into the court system. The filing fee would be borne by whomever brought the suit and this would provide a deterrent for arbitrary charges.

Doderer reasoned that the law should not be any harsher for board or commission members than for state legislators.

Elaine Estes, Vice President, Terrace Hill Society, addressed the Committee on behalf of the Society and urged that the rules not be amended and remain as originally written. Estes presented a packet of material relative to the issue and asked that it become a part of the permanent file for reference.

Motion

Priebe moved that the packet be made a permanent part of the minutes of today's meeting. Motion carried unanimously.

Metcalf recognized Sharon Otte who wondered if her plans for a December 10 wedding at Terrace Hill were in jeopardy. Otte indicated that the event had been approved by the Commission and she had a contract. Filer pointed out that the deposit was never paid so the contract would be void. There was Committee consensus that this matter was beyond their purview.

No other action.

PHARMACY

Lloyd Jessen, Executive Secretary, was present to review the following agenda:

PHARMACY EXAMINERS BOARD[657]
PUBLIC HEALTH DEPARTMENT[641]"umbrella"

License renewal dates, fees, limited use license, 3.1, 3.4, 3.4(2), 3.5, <u>Filed</u> ARC 4723A	4/13/94
General pharmacy — minimum equipment, 6.4"1," <u>Filed</u> ARC 4724A	4/13/94
Hospital pharmacy — minimum equipment, 7.4"1," <u>Filed</u> ARC 4725A	4/13/94
Prescription refill documentation, sterile products for home care patients, 8.2(1), 8.11, 8.12, 8.29, 8.30,	
<u>Notice</u> ARC 4731A	4/13/94
Use of generic and brand name on prescription label, 8.14(1)"g," <u>Filed</u> ARC 4726A	4/13/94
Allocation of funds from hearing costs, 9.3, 9.27(4), <u>Notice</u> ARC 4732A	4/13/94
Controlled substances — registration of physician assistants, 10.2, <u>Filed</u> ARC 4727A	4/13/94

PHARMACY (Cont.)

Controlled substance inventory; exempt anabolic steroid products, 10.18, 10.23, <u>Notice</u> ARC 4733A ...	4/13/94
Controlled substances — temporary designations, 10.20(3), 10.20(4), <u>Filed Emergency</u> ARC 4730A ...	4/13/94
Drugs in emergency medical service programs, 11.1, 11.3(1), 11.3(4), <u>Notice</u> ARC 4734A	4/13/94
Correctional facility pharmacy — reference library publication option, 15.3"5," <u>Notice</u> ARC 4735A	4/13/94
Nuclear pharmacy — equipment requirements, 16.6, <u>Filed</u> ARC 4728A	4/13/94
Renewal of wholesale drug license, 17.2(3), <u>Filed</u> ARC 4729A	4/13/94
Sales of goods and services, ch 29, <u>Notice</u> ARC 4736A	4/13/94

Priebe in the Chair.

8.14(1)"g" Brief review of ARC 4726A, the dispensing of sample drugs.

Metcalf in the Chair.

No questions or comments on ARCs 4732A or 4727A.

10.18, 10.23 In discussing controlled substance inventory, 657—10.18, Metcalf thought the language was convoluted and Jessen was willing to reword it for clarification. Hedge was assured that changing the references to physician assistants would not be costly.

No questions or recommendations on the remainder of the Pharmacy agenda.

NO REPS No agency representative was requested to appear for the following:

BANKING DIVISION[187]

COMMERCE DEPARTMENT[181]"umbrella"

State-chartered banks — leasing, 9.3, Notice ARC 4538A Terminated, also Notice ARC 4722A 4/13/94

NURSING BOARD[655]

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

Licensure to practice — RN/LPN, 3.4(5)"a"(5), 3.4(5)"b"(5) to (7), 3.4(8)"c," Notice ARC 4738A 4/13/94

PROFESSIONAL LICENSURE DIVISION[645]

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

Physical and occupational therapy — renewals and fees, 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),

Notice ARC 4743A 4/13/94

TRANSPORTATION DEPARTMENT[761]

Administrative and declaratory rulings — corrective amendments, 10.1(3), 10.3(1), 10.3(1)"c" and "d," 10.4(1),

10.4(1)"b" and "c," Notice ARC 4745A 4/13/94

State transit assistance, 920.5(5), Filed ARC 4744A 4/13/94

UTILITIES DIVISION[199]

COMMERCE DEPARTMENT[181]"umbrella"

Energy adjustment clause, 20.9(2) to 20.9(4), Notice ARC 4502A Terminated, also Notice ARC 4737A4/13/94

Committee Business Minutes Upon motion by Priebe, the minutes of the April meeting were approved by voice vote.

Computer virus Due to a virus in the text processing computer, Barry asked permission to publish in the IAB a notice to all agencies regarding instructions and handling. So moved by Doderer. Motion carried.

- Banking objection Upon motion by Doderer, the objection to 186—9.2 was lifted as this rule has been amended [5-11-94 IAB]. Motion carried.
- ICN for Public Hearings Metcalf asked that the ARRC pursue the use of ICN for public hearings around the state.
- Chicago meeting NAAR Priebe requested approval for expenses for Royce and him to attend a planning meeting of the National Association on Administrative Rules Review to be held in Chicago on May 21. Kibbie so moved. Motion carried.
- Meeting dates The dates for next ARRC meetings were scheduled for June 14 and 15, July 12 and 13 and, tentatively, August 9 and 10.
- Adjournment Priebe moved that the Committee adjourn at 12:15 p.m.

Respectfully submitted,

Phyllis Barry, Secretary
Assisted by Mary Ann Scott

APPROVED:

Representative Janet Metcalf, Co-chair