

**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, September 14 and 15, 1993, in Senate 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; Paula Dierenfeld, Administrative Rules Coordinator; Phyllis Barry, Iowa Administrative Code Editor; Mary Ann Scott, Administrative Assistant; Caucus Staff and other interested persons.

**Convened** Co-chair Metcalf called the meeting to order at 10 a.m. and the following Public Health agenda was reviewed:

**PUBLIC HEALTH**

<b>PUBLIC HEALTH DEPARTMENT[641]</b>	
Notification and surveillance of reportable diseases, 1.2(1)"a" and "b," <u>Filed</u> ARC 4155A .....	8/4/93
Acquired immune deficiency syndrome (AIDS), rescind 11.1 to 11.12 and 11.70 to 11.78, <u>Notice</u> ARC 4151A .....	8/4/93
341Swimming pools and spas — requirements for condominiums, apartments and homeowner associations with 25 or fewer living units, 15.4(3)"a"(2), 15.4(3)"b," 15.4(5)"c," 15.4(7)"a," 15.5(13)"f," 15.52(2)"a"(2), 15.52(2)"c," 15.52(5)"a," <u>Filed Emergency</u> ARC 4156A .....	8/4/93
Radiation — general provisions, 38.1 to 38.3, 38.4(4) to 38.4(6), 38.6, 38.7, <u>Notice</u> ARC 4149A .....	8/4/93
Standards for protection against radiation, ch 40, <u>Notice</u> ARC 4148A .....	8/4/93
Radiation — mammography, rescind 41.1(12)"b"(2)"4," <u>Filed Emergency</u> ARC 4153A .....	8/4/93
Radiation safety requirements for industrial radiographic operations, 45.1(2), 45.1(10)"b"(2) and (3), 45.1(12)"b"(6), 45.3(1)"a"(2), 45.3(3)"b," 45.3(4)"e," 45.3(8)"b," <u>Notice</u> ARC 4160A .....	8/4/93
Certificate of birth — registration fee, 95.1 to 95.10, <u>Filed Emergency</u> ARC 4157A .....	8/4/93
Vital records, 96.4, 96.6(3) to 96.6(5), 96.7, 96.8, <u>Filed Emergency</u> ARC 4158A .....	8/4/93
Forms uniform, 98.1 to 98.6, <u>Filed Emergency</u> ARC 4159A .....	8/4/93
Delayed birth registration — documentary evidence, 99.7, <u>Filed Emergency</u> ARC 4161A .....	8/4/93
Burial-transit permit, 101.4 to 101.6, 101.8, <u>Filed Emergency</u> ARC 4162A .....	8/4/93
AIDS — division of health protection, Centers for Disease Control and Prevention, 11.17, 11.18(2), 11.30(1), <u>Notice</u> ARC 4245A .....	9/1/93
Practice of tattooing, 22.1, 22.2, 22.3(1), 22.5(5), 22.7(2), 22.7(4), 22.9(1), 22.9(3), 22.9(11), <u>Notice</u> ARC 4235A .....	9/1/93

Present from the Department were Carolyn Adams, Administrative Rules Coordinator; Bill Permar and Charlene Craig, Environmental Specialists.

1.2; Ch 11

No questions on filed amendments to Chapter 1 or noticed amendments to Chapter 11.

Ch 15

In reviewing amendments to Chapter 15, there was brief discussion on the size of condos or apartment buildings where testing of swimming pools is required daily.

Ch 38

No comments on radiation amendments to Chapter 38.

Ch 40

With respect to proposed Chapter 40 on radiation, Department officials said there were no comments made at the public hearing.

**PUBLIC HEALTH  
(Cont.) 41.1; Ch 45**

No questions or recommendations on amendments to 41.1 or 45.1 et al.

Ch 95

In review of Chapter 95 relative to fees charged for birth certificates, Priebe was informed that the statute provides for a waiver of the registration fee for indigents who are unable to pay.

Daggett was informed that affidavits were not required in the cases of disagreement as to paternity.

Ch 96

Adams informed Hedge that legislation required modernization of vital records, thus, the reason for the emergency filings of relevant rules.

Kibbie was advised that registrations of out-of-wedlock births and those in institutions were sent to the state. Registrations of "normal" births would be sent to the county registrar.

Doderer voiced dismay at this procedure and asked for a proposed draft of legislation to provide identical registration procedures for all births. Adams agreed to refer the matter to the Department and report to the Committee.

Ch 98

Amendments to Chapter 98 were addressed. Doderer questioned wording in 98.1 and thought the words "except those that are mandated to remain in the county" should be included.

99.7

No questions on amendments to 99.7.

Ch 101

Adams explained that the statute governing burial-transit permits had been reenacted this year and the rules which had been in effect previously were adopted.

11.17 et al.

No questions or comments on amendments to 11.17 et al.

Ch 22

Amendments to Chapter 22 were reviewed. Metcalf observed that 22.5(5) had been amended to substitute "cleanliness" for "sterility." She took the position that "sterility" was preferable and requested that the subrule not be amended.

The definition of a "tattoo artist" was discussed briefly at Priebe's request.

**PROFESSIONAL  
LICENSURE**

Adams also presented the following rules

<b>PROFESSIONAL LICENSURE DIVISION</b> [645]	
<b>PUBLIC HEALTH DEPARTMENT</b> [641]"umbrella"	
Optometry — prescription, rescind 180.9, <u>Filed Emergency</u> ARC 4152A .....	8/4/93
Physical and occupational therapy, licensure application process, reduction of penalty fee for late renewal of PTA and OTA licenses, addition of penalty fee for late renewal of OT license, 200.9(3), 201.5(5)"a" and "b," 201.12(4), 201.12(10), 202.10(3), <u>Filed</u> ARC 4236A .....	9/1/93

180.9

Metcalf was advised that rule 180.9, pertaining to optometry prescriptions, was being rewritten.

Ch 200-202

The reduction in penalty fees for late license renewals was discussed. According to Adams, the Board's position was that the fee should be less for an assistant than a therapist.

**ECONOMIC DEVELOPMENT**

In attendance for the Department were Roselyn Wazny, Community Financing; Melanie Johnson, General Counsel; and Brice Nelson, Administration. The following agenda was reviewed:

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

Community development block grant nonentitlement program, 23.2, 23.4(3)"aa," 23.4(4), 23.5(1)"g,"

23.5(1)"k"(16) to (22), 23.5(2), 23.6(2) to 23.6(9), 23.7(1)"h," 23.7(2), 23.7(8)"a," 23.8(2), 23.8(4)"c," "g," and "i," 23.8(5)"a"(3), 23.8(6), 23.8(8), 23.8(8)"g," 23.8(9), 23.9(4)"d," 23.11(1)"c" and "d," 23.11(2), 23.13(3)"a" and "c," 23.13(3)"d"(1), 23.13(3)"e," 23.13(5)"a" to "d," 23.13(8),

Notice ARC 4166A ..... 8/18/93

HOME investment partnership program, 25.2, 25.4(1), 25.4(5)"a," 25.4(6), 25.5(1)"a" and "f," 25.5(2)"a,"

25.6(2)"b," 25.9(3), 25.9(4), 25.10(2), Notice ARC 4167A ..... 8/18/93

23.2 et al.

In reviewing amendments to 23.2 et al., Wazny advised that Item 9 [new 23.7(1)h] would not be implemented because it was too restrictive for communities to receive program funds.

In 23.11(2), Metcalf noted that the sentence relative to the program was stricken. Wazny indicated that there would be training periodically throughout the year—not at one set time. Questions would be answered on a one-on-one basis.

Hedge questioned the necessity for the name changes in Divisions under the Department and Wazny cited reorganization. Discussion of costs involved in these name changes.

Ch 25

No questions or comments on amendments to Chapter 25.

**PRODUCT DEVELOPMENT**

Greg Barcus, President, provided background on the development of the following:

**PRODUCT DEVELOPMENT CORPORATION[271]**

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]"umbrella"

Organization, procedures, industrial technology access program, rescind 636 — chs 1 to 5,

new 271 — chs 1 to 6, Notice ARC 4173A, also Filed Emergency ARC 4174A ..... 8/18/93

Chs 1-5

In rule 2.5(15E) relating to meetings, Priebe was advised that requirements of the open meetings law would be followed. Priebe also expressed concern that 24 hours' prior notice was insufficient time. Royce advised this was in the statute but Barcus would review the matter.

Metcalf raised question in 3.3(1) with respect to eligibility of an applicant for funds. She preferred that the applicant be an Iowa citizen and she questioned use of "proposed" before "business." Barcus explained that they sometimes try to help someone with an idea to create a business.

Metcalf also expressed concerns that the intent of the legislation did not "tie in" the oversight by Wallace Technology Foundation—6.9(2). She favored referral to the General Assembly.

Barcus indicated that transfer in an appropriations bill rather than changing the statute made it difficult for the Corporation to know how to proceed. He mentioned a possibility that the appropriation could go to the Wallace Foundation next year. He assured the Committee that rules would not hinder the Corporation's ability to handle the structure and efficiencies relating to seed capital. He urged some latitude in implementing the program.

**PRODUCT DEVELOPMENT (Cont.)** Priebe moved that 271—Chapter 6 be referred to the Speaker of the House and President of the Senate for referral to the appropriate committees. Doderer thought the motion should include Chapter 1. After further discussion there was unanimous consent to refer all of ARC 4164A. Motion carried.

**Motion to Refer**

**DNR**

In attendance from the Natural Resources Department were Randy Clark, Legal Services; Diana Hansen, Anne Preziosi, David Wornson, Attorneys; Pete Hamlin, Joseph Griffin, Tom Anderson, Brian Tormey, Reza Khosravi, Jeff Fiagli, Steve Dermand, Nancy Exline and Marion Conover. The following agenda was reviewed:

**EPC**

**ENVIRONMENTAL PROTECTION COMMISSION[567]**  
**NATURAL RESOURCES DEPARTMENT[561]"umbrella"**

Sales of goods and services, 1.11, <u>Filed</u> ARC 4196A .....	8/18/93
Sulfur dioxide emissions in Muscatine area, 22.7, <u>Notice</u> ARC 4201A .....	8/18/93
Unregulated contaminant defined; incorporation of EPA regulations for inorganic chemicals, volatile organic chemicals, and synthetic organic chemicals for MCLs, monitoring, analytical methods, and public notice; laboratory certification —performance evaluation samples; new source water monitoring, 40.2, 41.2(1)"e"(3)"4," 41.2(1)"c"(6) and (7), 41.3(1), 41.3(1)"a," 41.3(1)"b"(1), 41.3(1)"b"(2)"1," 41.3(1)"c"(2)"4," 41.3(1)"c"(4), 41.3(1)"c"(4)"1," 41.3(1)"d," 41.3(1)"e"(1) and (4), 41.4(1)"g"(1) footnote 9, 41.5(1)"b"(1) and (2), 41.5(1)"c"(2)"4," "6," and "9" to "11," 41.5(1)"c"(5), 41.5(1)"c"(5)"9," 41.5(1)"d," 41.5(1)"e"(2)"3," 41.5(1)"f"(2), 41.5(1)"f"(3)"2" to "4" and "6" to "14," 41.6, 41.10(1)"a," 41.10(2)"e"(53) to (75), 41.11, 41.11(1), 41.11(1)"b," 41.11(1)"c"(5) and (7), 41.11(1)"d"(1) and (2), 41.11(2)"b," 42.4(4), 42.4(6)"a," 42.4(6)"b"(2)"2," 42.4(6)"c," 43.3(7)"b"(2), 43.3(7)"c," 43.3(8), 43.7(1)"b"(3), 43.7(2)"a"(1), <u>Filed</u> ARC 4197A .....	8/18/93
Repair and maintenance of drainage district ditch, 61.2(2)"h," 70.2, <u>Notice</u> ARC 4198A .....	8/18/93
Protected stream designations, 72.50(2), 72.52, <u>Notice</u> ARC 4204A .....	8/18/93
Well contractor certification, 82.1 to 82.3, 82.6, 82.10(5), 82.10(8), 82.13(1)"g" and "h," <u>Notice</u> ARC 3910A <u>Terminated</u> ARC 4203A .....	8/18/93
Solid waste abatement table, 101.5(4), <u>Notice</u> ARC 4205A .....	8/18/93
Waste oil, use of recycled oils for road oiling, dust control, and weed control, rescind 119.3(2), ch 143, <u>Filed</u> ARC 4202A .....	8/18/93
Land application of wastes — flood plains, 121.3(3), <u>Filed</u> ARC 4200A .....	8/18/93
Regional collection centers of conditionally exempt small quantity generators and household hazardous wastes, 211.8(2)"c"(6), 211.8(2)"d," <u>Notice</u> ARC 4208A .....	8/18/93
Loans for waste reduction and recycling, ch 212, <u>Filed</u> ARC 4199A .....	8/18/93

**NRC**

**NATURAL RESOURCE COMMISSION[571]**  
**NATURAL RESOURCES DEPARTMENT[561]"umbrella"**

Boating speed and distance zoning, 40.9(2), <u>Notice</u> ARC 4142A .....	8/4/93
Controlled hunting areas, 53.3(1)"a" and "b," <u>Notice</u> ARC 4143A .....	8/4/93
General license regulations, 15.6, 15.6(1), 15.6(2)"a," 15.6(3), 15.6(3)"a"(7) and (18) to (21), 15.6(3)"b"(4) and (20) to (24), 15.6(5), 15.6(7), <u>Filed</u> ARC 4244A .....	9/1/93
Speed restriction on Crystal Lake in Hancock County, 40.37, <u>Filed</u> ARC 4243A .....	9/1/93
Boat motor regulations, 45.4, <u>Notice</u> ARC 4242A .....	9/1/93
State parks and recreation areas, state forest camping, 61.2, 61.3(1)"a," "b," "c," "i," 61.3(3), 61.3(5)"b," .... 61.4(1)"a," 61.4(2), 61.5(9)"g," 61.5(10), 62.5(4), 62.5(5), <u>Filed</u> ARC 4232A .....	9/1/93
Fishing regulations, 81.2(1) to 81.2(3), 81.2(5), <u>Notice</u> ARC 4241A .....	9/1/93
Trotlines, 85.1, <u>Notice</u> ARC 4240A .....	9/1/93
Falconry regulations for hunting game, 102.3(2)"a" and "b," <u>Notice</u> ARC 4239A .....	9/1/93

**1.11**

In review of 1.11, Clark pointed out that this rule implements recent conflicts of interest of statutory requirements that department officials obtain consent for sale of goods and services by individual members.

Preziosi, Hamlin and Griffin reviewed proposed rule 22.7 regarding sulfur dioxide emissions in the Muscatine area.

EPC (Cont.)

Hamlin advised Daggett there were three facilities in that area which the EPC suspects as contributors to the problem—Monsanto plant, Grain Processing Corporation and Muscatine Power and Water (generating station in the area). He stated that the Department has air quality monitors placed throughout the state. Monitoring is done on a regular basis and the Muscatine area has violated five federal health standards. As to the impact of this rule, Hamlin advised that it delineates a portion of Muscatine county and if a company wants to emit new sources of sulfur dioxide, they must reduce by an equivalent amount an existing source in that area.

Halvorson was informed there had been hearings on this proposed rule and its earliest effective date would be November 17. Comments received would be taken back to the Commission. Halvorson had received information that Muscatine's economic development would be affected because emissions would have to be cut nearly 30 percent. Hamlin agreed with this assessment but also pointed out that if left to the federal government to intervene, the sanctions would be much more severe than those proposed by the state. He emphasized that the Department had been working with Muscatine to resolve the problem. Hamlin spoke of sanctions—the "feds" have withheld half the funding for air quality to the state EPC—about \$250,000. Other sanctions could include reduction of highway money. Schrader observed that these sanctions could affect the entire state, not just Muscatine.

40.2 et al.

Hanson reviewed amendments to 40.2 et al. regarding water standards and monitoring.

Responding to Metcalf, Hanson said there were concerns because monitoring costs would be increased for public water supplies but the EPC must have stringent rules in order to maintain control over the water supply program and to administer it. Costs would range from \$2500 to approximately \$7000 over a three-year period.

Kibbie expressed concern for the affect on small, rural communities. The Department was hopeful monitoring could be reduced within three years.

61.2, 70.2

Clark reviewed proposed changes to 61.2 and 70.2 regarding drainage ditches and responded to Priebe that by the Department's interpretation, the rules would not violate the antidegradation policy.

Priebe referred to the definition of "Repair and maintenance of a drainage ditch" and pointed out that there are private ditches which are not classified as drainage districts. He contended they should also be included in this definition. Clark noted this would be a policy-making decision and he would convey Priebe's concerns to the Commission.

Education  
Rescheduled

Metcalf announced that the Education agenda would be moved to 8:45 a.m. tomorrow (Wednesday).

72.50, 72.52

Clark highlighted amendments to 72.50(2) and 72.52 regarding protected stream designations and channel changes.

Halvorson was advised that under these rules, certain types of construction would be allowed on the flood plains but the proposed rules would deal primarily with channel changing of the listed streams and rivers. Many comments at the three public hearings focused on channel changing—nothing on grazing.

EPC (Cont.)

Kibbie viewed the proposed amendments as very controversial. He noted there were many creeks and streams that drain into the west bank of the Des Moines River that are drainage districts as well as the west bank itself. He continued that because of flooding, the river had changed course in two areas and erosion was a problem as well. Without dredging, there would be no drainage in years to come.

Clark admitted that the Commission had big decisions to make. Different factors to be considered were spelled out in the preamble to the rules. As to notification of landowners regarding rule making, Clark stated that notice was mailed to several newspapers around the state. Conover informed Kibbie that changes would be made in the final rules to address concerns of Palo Alto County residents regarding the West Fork.

Daggett pointed out that the Thompson River in Decatur, Madison, Ringgold and Union counties had been renamed to the Grand River. He said there were no hearings in southwest Iowa where flooding last fall and this year had created many problems.

Rittmer thought the rules exceeded Code sections cited in the preamble which deal with flooding. He was concerned about lack of hearings in some areas and of the allegations that agriculture had taken a "back seat." Clark mentioned the Code provision dealing with impact on fish and wildlife. Hearings were held to identify all areas where there would be an impact. Final decisions had not been made.

Hedge inquired as to the status of land which had been under water for some time and where the river was making a natural channel change, leaving trees and debris in the middle of fields—would this be considered wetland and could the land around it be farmed? Clark said these questions were beyond what the EPC would regulate. He was not aware of any particular restrictions on this type of land.

Priebe echoed concerns expressed by Hedge and Rittmer.

At Halvorson's request, the Department agreed to apprise the Commission of the need for other hearings, particularly in southwest Iowa.

Ch 82; 101.5

No questions or recommendations on ARCs 4203A or 4205A.

On another subject, Priebe asked Wornson if tests had even been conducted on new blacktop seepage. He recalled that legislation on the issue had been passed and he requested that Department officials be reminded.

119.3, Ch 143

In regard to ARC 4202A, Schrader was advised that use of waste oil was limited to dust suppression on roads. It was noted that the federal government has taken over the regulation of used oil distribution and recycling.

No questions on ARCs 4200A, 4208A or 4199A.

**NATURAL RE-  
SOURCE COMM.**  
40.9(2)  
53.3

Terry Little, Wildlife Bureau, presented amendments to 40.9(2) with no comments or questions.

Controlled hunting areas, 53.3, were reviewed and discussion focused on the number of stakes and how they are issued to a hunting party.

- NRC (Cont.)  
15.6                   Dermard presented filed amendments to 15.6. Brief discussion on changing "habitual" to "multiple" when used with "offender". Some members expressed preference to retain "habitual". No action.
- 40.37                   No questions on ARC 4243A.
- 45.4                    In review of proposed housekeeping amendment to 45.4, Department officials indicated there were no substantive changes.
- Ch 61                   Exline summarized filed amendments to 61.2 et al. and addressed concerns expressed by Metcalf and Schrader when the amendments regarding handicapped camping and picnic sites were under Notice. On a ratio of 1:5, picnic sites would be handicapped accessible and camping would be on 1:4 basis. Metcalf suggested monitoring these sites for nonuse.
- 81.2                    In review of fishing regulations by Conover, Priebe suggested uniformity in the minimum size for walleye. Conover responded that variance was due to the growth rate of the fish in different lakes.  
  
Schrader and Conover discussed the "catch and release" requirement. Schrader voiced opposition to this practice since he did not think of fishing as a competitive sport. He concluded that the rule would cater to a particular group. Conover stated that DNR takes the position that all types of fishermen can be accommodated by the number of lakes in Iowa. Conover explained there were no limits on farm ponds because they are the very best habitat for large mouth bass and these ponds have limited access.
- 85.1                    No recommendations for rule 85.1
- 102.3                   There was brief discussion of rule 102.3 pertaining to falconry.
- Recess                   Co-chair Metcalf recessed the Committee at 12:55 p.m. and reconvened it at 1:30 p.m.

**HUMAN SERVICES**

The following agenda was before the Committee:

**HUMAN SERVICES DEPARTMENT[441]**

- Procedures for payments to new residential care facilities and new owners of residential care facilities, 54.3(11)"e"(3), 54.3(11)"n," 54.3(13), 54.3(14), 54.4, Filed ARC 4136A ..... 8/4/93
- Medicaid — SSI program's conditional eligibility, 75.13(2), 76.2(3), Filed ARC 4137A ..... 8/4/93
- Waiver programs — ill and handicapped, elderly, AIDS/HIV, 77.33(7) to 77.33(11), 78.37(7) to 78.37(11), 79.1(2), 83.2(1)"e"(1), 83.3(4)"b," 83.3(5), 83.4(1), 83.22(1)"b," 83.22(1)"g"(1), 83.22(2)"b," 83.23(4)"a," 83.23(5), 83.24(1), 83.26, 83.43(5), 83.44(1), 83.62(5), 83.63(1), Filed Emergency After Notice ARC 4130A ... 8/4/93
- Amendments relative to elderly waiver service program and model waiver program, 77.33(7)"e," 78.34(2), 78.37(3), 79.1(2), 83.4(2), Notice ARC 4186A ..... 8/18/93
- New classes of drugs added to prior authorization process, 78.1(2)"a"(3), 78.28(1)"d," 78.28(1)"d"(5) to (11), Notice ARC 4140A, also Filed Emergency ARC 4141A ..... 8/4/93
- Intermediate care facilities for the mentally retarded, 82.5(3), 82.5(5), 82.5(14), 82.5(15), 82.5(16)"c" to "e" and "i," 82.17(1)"a" and "b," Filed ARC 4131A ..... 8/4/93
- Termination of case management services delivered by the department, 130.5(2)"j," Filed ARC 4139A ... 8/4/93
- Abuse of children — multidisciplinary teams, 175.1, 175.13(1), 175.13(2), Filed ARC 4138A ..... 8/4/93
- Dependent adult abuse, 176.1, Notice ARC 4188A ..... 8/18/93

(Continued on next page)

DHS (Cont.)

Rehabilitative treatment and supportive services program, 7.1, 77.38, 78.28(7), 78.42, 79.1(2), 79.6, 79.14(1)"h," 80.2(2)"an," 80.4(1), 80.4(2), 86.15(4), 88.5(3), 88.25(3), 130.1, 130.2(8), 130.3(1)"f," 130.4, 130.6(1), 130.9, 150.3(4), 150.3(4)"b"(1), 150.3(5)"n," 150.3(5)"p"(1), ch 152, 156.1, 156.6(4), 156.6(4)"a" and "d" to "g," 156.6(5), 156.7, 156.8(7), 156.8(8), 156.9(1) to 156.9(3), 156.10(1), 156.11(3), 156.19, 156.20(1)"a"(2), 156.20(2), ch 181, ch 182 preamble, 182.1, 182.2(1), 182.2(1)"d," 182.2(2), 182.3, 182.3(2), 182.4 to 182.6, 182.7, 182.7(1), 182.7(2), 182.7(5) to 182.7(7), 182.8, 182.9(1), 182.10, 182.11, ch 185, 202.2(2), 202.2(5), 202.2(5)"a" and "h," 202.4(5)"f," 202.6(1), 202.6(5), 202.11, 202.12(1) to 202.12(3), Notice ARC 4219A, also  
Filed Without Notice ARC 4223A ..... 9/1/93

Child support, 9.10(10), 9.11, 95.11, 96.8, 96.13, ch 98 preamble, 98.22(2), 98.24(4)  
 98.32(2)"a," 98.39, 98.40, 98.44, 98.44(1), 98.44(2), 98.61, 98.62, ch 99, Filed ARC 4218A ..... 9/1/93

Mental illness, mental retardation, developmental disabilities, and brain injury community services, ch 23 title,  
 23.1, 23.2(1), 23.2(1)"b" and "d," 23.3, 23.3(2)"a"(1) and (6), 23.3(3), 23.4(2)"b"(1), 23.4(2)"c," 23.4(3),  
 153.40(2), Filed ARC 4210A ..... 9/1/93  
 for text see 6/23/93

Medicaid rates, HCBS/MR and HCBS/MR/OBRA waiver services, 52.1(3), amendments to 77.37, 78.1(2)"f,"  
 78.3(12)"c," amendments to 78.41, 79.1(1)"c," 79.1(2), 79.1(5)"u," 79.1(9)"d," 79.1(15), 81.6(16)"e,"  
 83.60, 83.61(1), 83.61(2)"a" and "b," 83.62(3)"c," "e," and "f," 83.62(4)"d," 83.63, 83.63(1), 83.65, 83.67,  
 83.68(3)"c," "f" to "h," 83.69, 83.70, Filed ARC 4220A ..... 9/1/93

Relief for needy Indians, rescind ch 64, Filed ARC 4224A ..... 9/1/93

Medical assistance lien, 75.4, 75.4(1), 75.4(2), 75.4(4)"c," 75.4(5), 75.4(7), Filed ARC 4225A ..... 9/1/93  
 for text see 7/7/93

Record check evaluation: day care providers, foster parents, adoptive parents, 107.4(5), 107.8(1)"c," 109.2(1)"g,"  
 109.4(7), 109.9(4)"c," 109.9(5)"c," 110.5(10), 110.7(3), 110.9(3)"a" and "b," 113.13, 157.3(1)"b,"  
Notice ARC 4211A ..... 9/1/93

Licensing and regulation of child-placing agencies, ch 108, Filed ARC 4217A ..... 9/1/93

Crisis child care providers, ch 118, Filed ARC 4229A ..... 9/1/93  
 for text see 7/7/93

Child day care program, 130.2(6), 130.2(7), 130.3(1)"d"(1) and (2), 130.3(6), 130.4(3), 130.4(3)"e," 130.5(3)"d,"  
 153.5(2)"d," 170.2(4), 170.2(5), 170.4(3), 170.4(7), 170.8, Filed ARC 4226A ..... 9/1/93  
 for text see 7/7/93

Purchase of independent living services, foster care — reimbursement for service providers, regional group care  
 targets, 150.3(5)"p" and "r," 156.6(1), 156.9(1) to 156.9(3), 156.11(3)"c," 156.12(1), 156.12(2), 202.9, 202.9(1)  
 to 202.9(3), 202.9(4)"a" and "d," 202.9(5), 202.9(6)"a"(2), 202.17, Filed ARC 4227A ..... 9/1/93

Contracting, clinical assessment and consultation teams, client appeals during transition to rehabilitative treatment  
 services, interim provider certification standards, ch 152, 185.4, 185.8(4), 185.9, Filed Emergency ARC 4223A 9/1/93

Social services block grant and funding for local services, 153.53(4), 153.56(1)"c," 153.56(3),  
Filed ARC 4209A ..... 9/1/93

Wrap-around funding program, ch 179 preamble, 179.1, 179.2, 179.2(3), 179.3, 179.4, 179.4(1), 179.4(2),  
 179.5, 179.6, 179.8(1), 179.9(1)"b" and "c," 179.11, 179.12(1), 179.12(2)"f," 179.13(1)"a,"  
 179.13(2)"a," "c," and "e," 179.14, Filed ARC 4228A ..... 9/1/93  
 for text see 7/7/93

Funding for state cases—progress report

Representatives of the Department included: Mary Ann Walker, Sally Titus Cunningham, Joan Anderson, Mary Nelson, Harold Templeman, Susan Bergwall, Robert Krebs, Doug Howard, Connie Banks, Candice Nardini, P. C. Keen, Sue Stairs, Joe Mahrenholz, Gary Gesaman, Barry Bennett, Don Hermann and Jean Nesbitt. A complete list of the Department attendance and other interested persons in on file in the IAC Office.

Walker gave an overview of the following with no questions or recommendations: ARCs 4136A, 4210A, 4225A, 4229A, 4226A, and 4228A.

75.13, 76.2 Deferred Because of questions raised by Daggett and Hedge, ARC 4137A was deferred until Wednesday.

DHS (Cont.)

Ch 78

Amendments to Chapter 78 in ARC 4141A, new classes of drugs, were addressed. Daggett asked about the fiscal impact. Walker estimated that state savings would be \$141,389 and federal savings \$242,611 for a total of \$384,000 in this fiscal year.

Milton Smith, Chairperson, Pharmaceutical Manufacturer's Association (PMA) addressed the Committee. The text of his remarks is on file in the IAC Office.

Motion

Kibbie asked that the Fiscal Committee of the Council be apprised of the savings to the state and federal and he so moved. Motion carried.

Mahrenholz noted that the committee was advised of the savings and a mechanism was in place to measure cost savings from this program.

Doderer asked how this money would be saved—by not giving prescriptions. Mahrenholz said the standards for authorizing the particular products were in the rule. The savings would come from denying these products where they were not indicated. As to frequency of calls, Doderer was advised they have over 200 calls a day requesting prior authorization and 73 percent are approved. She concluded that either doctors were overprescribing, the drug was not necessary or the drug was new.

In reviewing the legislation, Schrader reported that the Department was required to submit a report to the fiscal committee prior to implementing rules. Walker interjected that Kibbie was interested in the ongoing savings.

7.1 et al.

The next item on the agenda for discussion was amendments to 7.1 et al. relating to the rehabilitative treatment and supportive services program (foster care), Filed Without Notice in ARC 4223A to be effective November 1.

Chapter 152, rules 185.4, subrule 185.8(4) and rule 185.9 were filed emergency to be effective August 12, 1993.

Metcalf announced that the remainder of the Human Services agenda would be reviewed at the end of the day tomorrow (Wednesday).

Walker summarized the rule making and noted that these rules had been placed under Notice also and public hearings had been scheduled for September 22 to 28. The rules dealing with contracting, Clinical Assessment and Consultation Teams (CACT), appeals during the transition, and interim certification for providers were effective August 12.

Sally Cunningham, Deputy Director of the Department, presented a succinct overview of the rules and pointed out key areas of controversy, after which she responded to questions.

Cunningham offered background on the budgeting process and the Department's goal to expand services to children and families within the state by use of federal funding, i.e., the Medicaid program which was slated to begin November 1. The Department set out a plan and worked with their Appropriations Subcommittee.

The Department wanted to avoid a "two-track system" for providers—different kinds of billings and reimbursement mechanisms, for example, and create a seamless service delivery system. Most importantly, they did not want children to be treated differently because of income level. The Department hired a contractor

DHS (Cont.)  
7.1 et al.

and named a number of committees with representatives from the coalition of providers, field staff from the agency, juvenile court office staff, and other key players on the child welfare task force to help in the fairly massive effort. Cunningham defended the 160-page rule making document which would conform existing programs with their ability to leverage new funding and ultimately simplify the process. The outcome would be better for children and it would be easier for providers. Cunningham emphasized that Department officials had met with foster parent associations and foster parents and it was their intent to continue that policy as refinements were made. She added that the Department had been directed by the Council on Human Services to maintain an "open and two-way street communication." The rules and any revisions would be submitted to the Council at their December meeting.

Cummingham noted that each month of delay from November 1 means \$2.3 million of lost revenue on a budget that they started on July 1. She then categorized the three main issues. The first area related specifically to foster parents and issues raised by them. The Department intended to make it clear through arrangements with clinical assessment and consultation teams (CACT) that they would be available at any hour for delivery of emergency services.

The second issue was "a very problematic oversight" in the rules to require a parent in the home at all times for the most difficult level of child care. Cunningham agreed that many foster parents must work outside the home and the Department did not want to preclude employment. She continued that Director Palmer shared with the Council on Human Services yesterday that the Department perceived this as an implementation issue that would present an unnecessary barrier. There was consensus by Palmer and the Council that the Department would issue a blanket exception policy to this specific requirement and the matter would be before the Council at its December meeting. The Council wants to ensure that foster parents who serve extremely difficult children would be "accessible" during the day. Other important issues raised by foster parents would be reviewed as well.

The last area related to the kind of training required for caretakers in the home. For example, the Department did not intend to require extensive level of training for baby-sitters. This could be addressed in the Manual with clarification of the rules in December.

Cunningham referred to materials which the Department had sent to the ARRC wherein they relayed issues which had been raised. These included reimbursement and what would be expected of contractors. Cunningham spoke of the old Purchase of Service (POS) system where, in essence, providers were reimbursed actual and allowable costs. When funds were depleted, waiting lists were created. Oftentimes they had supplement issues in the foster care program and waiting lists in the other programs. The Department had now moved into an entitlement program. Under the Medicaid program, the Department must operate under the concept of reasonable and necessary, not actual and allowable. Cunningham continued that questions had been raised regarding a new reimbursement methodology. For example, the rules provide for limits on the state's reimbursement for certain salaries. Their intent was to load as many of the dollars as possible into service staff providing direct services and they believed they had done a fairly good job. Cunningham stressed that the potential problem could not be analyzed until the first-cost reports were in. The bottom line was that by using the information available, the rates established seemed imminently reasonable. The Department has shared with providers that the rules would not preclude higher salaries but merely set parameters for Department participation.

DHS (Cont.)  
7.1 et al.

Cunningham addressed donated assets depreciation which was a prohibition under the previous POS system. After much discussion, it was agreed that since donated assets were not counted as revenue, depreciation could not be considered an expense. Cunningham pointed out many similarities between the "old system" and the "new system."

With respect to contracting expectations, for the most part, the Department would use the contract followed for a number of years under the old POS system. Cunningham stated that providers had raised concerns about a number of areas which were in their old contracts. She stressed the importance of reading contracts carefully. She added that questions about indemnity, related party costs, etc. were covered in the rules.

Cunningham concluded that the Department was in a high level of transition and there was no doubt that changes would be made. However, at this juncture, they must move ahead to avoid the risk of losing dollars.

Responding to Daggett's question on the definition of family, Nelson stated that "family" was defined in various chapters which govern different programs. The Department was striving to be consistent with the definition when a program was solely directed toward children and family. The one exception would be Chapter 130 which also applies to the adult programs. Nelson further clarified that when a child was placed in a foster care family or a group care facility, the income and resource requirements for Medicaid would be met in most cases. Nelson was not familiar with the definition of "family" in the Medicaid program.

Jean Nesbitt interjected that no change had occurred as to the financial eligibility and definition of a family—a "family program" had been defined.

Daggett referred to 130.1"3" and asked if the residence of the child changed from the home where the parents lived would the child be eligible for Medicaid.

Walker pointed out that these rules were limited to service and were not relative to Medicaid eligibility. Daggett was concerned about possible additional costs to counties.

Cunningham stated that additional children would be served through the overall initiative built into the budget with state dollars and the leveraged Title XIX money. She added that the rule would not affect counties in the same way that counties have responsibility for persons with mental retardation—typically adults.

Nesbitt added that the rules would apply to the four services authorized by the clinical assessment and consultation team (CACT) provided under the children's service budget using a mix of funds.

Metcalf then offered an opportunity for those in the audience to speak to the rules. She requested that speakers try to avoid repetition.

Linda Rouse, Decatur County Board of Supervisors, spoke first. She had only recently looked at these rules and was concerned about the financial impact on counties by the definition of "family" throughout the various chapters which cover many service areas. She cited a case in her county where a family who was not eligible for Medicaid had a mentally retarded child placed in a rehabilitation center. The county was being billed for 37 percent of the cost which amounts to about \$36,000 for one year. Rouse referred to subrule 182.2(1) which would require respite care services for families of MR/DD children to be provided

DHS (Cont.)  
7.1 et al.

without regard to family income. Counties would be billed through the home and community-based waiver program. Rouse wanted assurance there would be no new fiscal mandates for counties.

Cunningham reiterated that the definitions in the rules apply to the following services: Group foster care, family foster care, family centered and family preservation which were in the DHS budget. The CACT that authorizes the four sets of services may not authorize placement in an ICF/MR or may not authorize Title XIX case management.

Hermann confirmed that these rules would not change the process for determining Medicaid eligibility. In order for a county to be held responsible for services, the individual would have to qualify for the ICF/MR level of care. The 37 percent mentioned by Rouse was the nonfederal share for services provided in an ICF for the mentally retarded who were eligible for Medicaid. The CACT could not authorize an ICF/MR level of care.

Doderer was surprised at the \$36,000 cost to a county for a mentally retarded child and Hermann stated that the range for ICF/MR care was \$140 to \$300 per day. Priebe knew of a case where the cost exceeded \$300,000 per year.

Joan Discher, Executive Director, Coalition for Family and Children's Services in Iowa, distributed a handout which is on file with the IAC Office. She called attention to what she believed to be three areas of major importance: Rate-setting, contracting and, most importantly, foster family care. Discher indicated that provider groups had concern about rate setting and the mechanism used by the Department. She highlighted the differences in salaries, occupancy, administration, and transportation. Provider agencies (which are nonprofit) realized the state could set limits but they wanted flexibility of transferring more money into certain areas. By pooling salaries, providers could retain staff with expertise in certain areas and they wanted to recognize education levels.

Regarding depreciation, Discher reasoned that the rules would discourage fund raising. She also saw a need for more discussion with respect to treatment of foster family care. Her coalition had worked very hard with DHS but was of the opinion that more time was needed to resolve differences. Cunningham responded that the Department wanted to review cost reports. They had heard many potential issues and wanted to compare with actual information the first part of October. Limitations under the new methodology may result in providers not being able to do business or allocate their resources or energies in the same manner as previously. Cunningham stressed that the Department does not want to discourage fund raising but they would not participate in the decision as to how the funds would be used.

Priebe mentioned the possibility of a separate fund to set aside for depreciation. Cunningham had not heard of such a proposal but would review the matter.

Regarding transportation, Cunningham said they were using the state rate.

In response to Discher's contention that contracts were outdated, Cunningham said their agency had not terminated a contract or failed to reimburse for services rendered. She had not reviewed contract language but was unaware of clarity problems previously.

Priebe asked about refusal to sign a contract and Cunningham stated providers have an option to do business with the state.

DHS (Cont.)  
7.1 et al.

Cunningham stressed the importance of a good contract since the Department must be accountable to their Appropriations Subcommittee, the Legislature and the Governor.

With respect to staff qualifications, Cunningham indicated an awareness that some of the agencies may have hired staff very recently who lack the experience base but have the education qualifications. The Department would be willing to consider an exception policy on a case-by-case basis. Cunningham reasoned that reimbursement methodologies would inevitably trigger debate. She was confident, however, that all factions shared similar values for providing quality services to children.

Doderer asked for examples of the salary structure and Department officials were willing to provide information. There was considerable discussion on salary and rate-setting methodology.

Nesbitt offered an example—divide allowable costs by the number of units to be provided to establish a rate for the provider.

Nelson explained the unit might be a day in group care and the daily rate would be paid. If the child required counseling, the unit rate might be on a half-hour basis.

Walker interjected that the procedure was similar to that followed in nursing homes. The Department sets allowable costs (she referred to rule 185.105 on page 560 for an example) and participates only in what they set as reasonable and necessary for delivery of service. Cunningham added that overages could not be made up on another category—the principle would not hold up.

Schrader cited an example of a 20-bed facility with only 15 children where salaries would not fluctuate regardless of occupancy.

Department officials responded that the state would pay only for the number of children—they would not pay for empty beds. Routinely, providers average 80 percent occupancy.

Cunningham said they had covered fluctuation with built-in reimbursement, in part, as if 100 percent of the services would be delivered, but counting only 80 percent.

Priebe took the position that modifications were needed in the rules. He suggested allowing the rules to remain in place with the understanding that those modifications would be submitted as emergency amendments in November or December. An alternative for the ARRC would be referral to the General Assembly.

George Estle, CEO of Tanager Place in Cedar Rapids, spoke from prepared text on file in the IAC Office. Estle disagreed with the contention of DHS that the rules illustrate a reasonable and necessary approach to services. He questioned what was "reasonable" and displayed visual aids to support his position. He displayed the two-page cost reports used presently and the complex, lengthy one to replace it. Estle also used a visual aid chart to highlight concerns with the salary structure. He argued that under these rules salaries would have to be cut making it difficult to be competitive. The average length of employment at Tanager Place was eight years which would seem to confirm their success in recruiting and retaining staff. Estle stated that foster parents must have locally

DHS (Cont.)  
7.1 et al.

controlled agencies such as Tanager to help them in dealing with increasingly difficult children. He questioned use of \$1.7 million on CACT. He suggested exploring ways to use qualified licensed practitioners of the healing arts for authorized services and thereby qualifying for Medicaid dollars.

In closing, Estle said Tanager Place was founded 114 years ago by a group of concerned women in Cedar Rapids. Volunteer commitment kept this organization strong and creative for over a century and he hoped this commitment would not be damaged by these rules. He urged complete and open dialogue among all interested parties and the Department before the rules were final.

Dale and Eleanor Uehling, Ottumwa, said they had been foster parents for five years. Their concerns focused on the future for foster children and the system. They urged the ARRC to consider the overall picture on the long-term basis. Uehlings viewed the CACT as "another layer of bureaucracy." They understood the demands by Medicaid for oversight by licensed persons but suspected there were less expensive alternatives.

Doderer asked Uehlings for suggestions re oversight. They recommended one CACT within DHS to oversee and review the form as it has been developed to meet federal requirements.

Bob Sheehan, President of Boys and Girls Family Services, Sioux City, and President of the Coalition Board wished to applaud the Department for moving in this direction. He spoke of diversity as the strength of the child welfare system in Iowa. Sheehan stressed that every area of the state had different needs and he urged continued negotiations between state and private agencies.

Victor Elias, Child Welfare Task Force, addressed the ARRC and read from a prepared statement on file with the IAC Office. The Task Force places a high value on family-driven services flexible enough to meet the needs of children and families. Their initial observation was that these rules reflect these values.

A concern was that the cost principles would serve as barriers to the delivery of flexible services set out in the service description rules. The 25-member Task Force planned to submit comments on these rules at the public hearing September 28 in Cedar Rapids and information would be shared with the ARRC. In response to Doderer, Elias said the Task Force was struggling with the value placed on keeping families together. A balance must be determined as to when it was safe to leave a child in the home. Metcalf viewed the Task Force as a vital link to the ARRC.

Sue Williams, Cedar Rapids foster parent, represented Lynn, Cedar, Johnson and Tama Counties. She encouraged an open-door approach for much negotiating to attain the best possible care for children. Williams disagreed with any assumption that all foster parents wanted was more money. A major concern for her was caring for the children and receiving support service from crisis staff—sometimes immediately. Williams spoke of the importance of rebuilding self esteem in the children.

Less money for the support services and private agencies was also a concern and Williams urged cooperation for the benefit of the children. Williams responded to question by Doderer by saying that the system had failed the 28 foster children she had cared for.

DHS (Cont.)  
7.1 et al.

David Wise, a foster parent from Cedar Rapids, took the position that support was vital to foster parents and was definitely missing in the rules. He also pointed to lack of a time limit for CACT to make a decision and no provision had been made for foster family input when the CACT makes an evaluation after six months. The only input was a 6-page checklist submitted by the "already overburdened" DHS worker.

Wise concluded that the only way a case would go to the Foster Care Review Board was by recommendation of the regional administrator. He declared that the rules would reverse Iowa's lead in foster care.

Carol Wood, President and CEO of Children's Square in Council Bluffs, addressed the ARRC from a prepared statement which is on file in the IAC Office. She shared concerns expressed today. Wood was appreciative of the DHS's attempt to draw additional dollars for support services to children and families. Wood urged the ARRC to allow them to continue the dialogue. She represented an agency that was 110 years old and had weathered many changes. They too wanted to provide quality services and not just those that were budget driven. Children's Square was committed to national accreditations and national membership because of their interest in understanding what appeared to be defined as important quality standards of care for children. Wood pointed out that costs associated with joint commission accreditation or other national memberships that assist in planning, promoting or designing cost effective and quality care systems were not allowable costs. It was important for their board of directors to review standards that were less than those required by their accrediting body and to make a decision as to which services they could continue to fund.

Metcalf asked about accreditation costs. Wood responded that a three-year joint commission survey was just completed which cost \$15,000 and based on recommendations that might come out of that, follow-up surveys may result. Council on Accreditation runs several thousand dollars a year, also. Other memberships range from \$2,000 to \$4,000 based on the agency budget.

William McCarty, Executive Director, Youth Homes, Inc., submitted a prepared statement on file with the IAC Office. He made the following observations of which most had already been identified: Rate setting was overly rigid, intrusive and costly to administer; staff qualifications were too simplistic and salary limits too low; CAC teams were a waste of money; utilization rules would punish providers for circumstances beyond control; legal language in the POS contract should be updated.

Doderer asked if there were any private pay patients and McCarty replied that most agencies did not have significant numbers of private paying patients or clients. His agency serves 350 to 400 clients a year. Daggett questioned McCarty as to his opinion on Iowa's system. McCarty had worked in the child welfare and juvenile justice system for 23 years and believed it was failing. He reminded that for the third year in a row major changes were being made in Iowa's child welfare system without adequate time to consider the ramifications.

#### **Motion**

Priebe concluded they had heard a lot of good testimony but he was not ready to make a decision. He reasoned there were areas for compromise. Priebe then moved that Department officials review the testimony and return tomorrow with recommendations to submit to the Council. These recommendations could be adopted as emergency rules in December. Discussion followed.

DHS (Cont.)  
7.1 et al.

Halvorson spoke in favor of the motion. He viewed the \$19 million going into the system as a big issue but not the only one—the best interests of the children was very significant.

Metcalf wanted to avoid obligating the Department with a definitive list so she would review the rules again.

There was discussion of the options available to the ARRC regarding the rules in ARC 4223A.

Cunningham stated that the Council would take action at its December meeting based on the public hearing comments. She noted that one of the major concerns related to cost principles and definitive data would not be available until mid-October.

Kibbie had concerns about CACT. Cunningham admitted that technically the CAC team was not required but it was inaccurate to say that those functions would not have to be performed.

Regarding salaries, Kibbie wondered about the number of people who work in the child care business who were being used as measuring sticks to determine the 70 or 80 percent of midpoint.

Cunningham responded that she did not have a breakdown but that they looked at comparable positions—people doing the same kind of job in services offered through the institutions. She said that many of the DHS employees performing those functions did not necessarily have degrees.

Kibbie suspected that young students would hesitate to enter social work. He cited higher education requirements with lower pay and more "burnout." There was considerable discussion of qualifications and salaries in general.

Schrader was not opposed to deferring decision making until Wednesday. He was pleased that the Department planned to address the restriction on requiring one foster parent to be present in the home full time. Schrader and Nelson discussed limitations as to the number of treatment children in a household. There was a general limit of five for a foster parent license. The regional administrator could grant a waiver under certain circumstances.

The rule [185.10(8)"b"(4)] limiting the foster home to two children and then providing exceptions was a result of a work group which focused on developing standards for treatment foster care. Nelson said the Department wanted a general standard that recognized that core three children were more difficult to care for and thus discourage any tendency to overload a foster parent. At the same time, they recognized that experienced foster families could exceed the number and still provide group quality care. Clearly, they wanted to keep sibling groups together when one or more needed this level of care.

Schrader favored revision of the rule so that the cap of two with waivers was more of a goal. He was unsure what the criteria should be for demonstrating this and wanted to discuss the matter on Wednesday. He emphasized importance for the Department to move ahead and it was not his intent to put that at risk. On the issues that he had raised it was his intent to move an objection with the proviso that negotiations continue.

DHS (Cont.)  
7.1 et al.

Schrader expressed support of the Department on the issue of "other adult caretakers." He interpreted the rule as applying to someone who was a part of that household in the home.

Schrader had received letters from foster families who have concerns about interaction with natural families. It was his understanding there would never be a foster parent forced into dealing with natural parents without previous agreement.

The salary and benefit limits were issues that troubled Schrader—just on philosophical grounds. The analogy of reimbursement to nursing homes seemed to be completely "apples and oranges" to him. He reasoned that in nursing homes, reimbursement was provided for allowable costs to a company contracting with the state. In this situation, the state would provide a limit on reimbursement for the costs that a private company negotiating with the state was incurring to a private individual.

Doderer and Williams discussed compensation for foster parents. Under the new rules, some foster families will receive an increase while others may be decreased. Rates for existing placements were "grandfathered."

Cunningham indicated that with leveraging \$19 million there would be increases for many, if not for most providers. More children would be served and their quality of care would be enhanced.

Rittmer was supportive of the overall plan and commended the Department for their willingness to make some changes.

Daggett was interested in a breakdown of funding for different categories. Cunningham agreed to share information with the ARRC.

**Motion to Defer**

Metcalf called up Priebe's motion to defer on ARC 4223A until tomorrow which passed unanimously. Metcalf announced that the Human Services agenda would be continued on Wednesday at 2:30 p.m.

There was agreement to reconvene the meeting at 8:45 a.m. on Wednesday to review the Education agenda.

**Recess**

Metcalf recessed the meeting at 5:25 p.m.

Reconvened

The Wednesday meeting was reconvened at 8:45 a.m. and Co-chair Metcalf announced that a quorum was present.

**EDUCATION**

Kathy L. Collins, Legal Consultant; Jeananne Hagen, Assistant Bureau Chief, Special Education; and Joe Freilinger, Special Education, were present for the following agenda:

**EDUCATION DEPARTMENT[281] (CARRIED OVER FROM AUGUST AGENDA)**

Special education — autism, head injury, rehabilitation counseling, transition services, individualized education program, 41.2(3), 41.3, 41.4(1), 41.18(2)"d," 41.33(4), 41.33(6), Filed

ARC 4064A 70-day delay ..... 7/7/93 ...  
 Chapter 18 — School fees, ARC 4005A ..... 5/26/93

41.2(3) et al.

There was discussion of amendments to 41.2(3) et al. which were under a 70-day delay. Hagen advised that the revisions were added as a result of "head injury" and "autism" being added to the federal definitions of disabled children. Metcalf then announced temporary deferral on the amendments until Priebe returned.

Ch 18 - Fees

Metcalf recognized Collins who recalled that Daggett had requested information on the fiscal impact that waiver of student fees would have on school districts. The Department conducted an informal survey of several schools—18 small, medium and large school districts were selected and they received varying degrees of reports. Collins referred the Committee to the background information on school fees which she had distributed to them. She called attention to the Student Fee Survey Chart and noted the Creston school as an example. Collins said the figure of \$8,710 was Creston's estimate of fiscal impact on their school district.

According to Collins, the survey merely confirmed that some districts with a high number of children who qualify for free and reduced price lunches would expend extra dollars under the mandatory waiver provision. Collins cited dignity for children as the impetus for these rules, initially. She spoke of "rather strong arm tactics" used by some to intimidate families who could not afford to pay the fees. Collins suspected the rules would generate more questions than answers and more requests for declaratory rulings. She touched on nebulous terminology in the statute, e.g., four places allow specific authority to charge fees—text books, eye and ear protective devices, and driver educational costs; a fifth one allows "all other necessary supplies" which some districts interpret broadly. Nobody has formally challenged the charges. Collins was concerned that problems could develop if the rules were not explicit.

In visiting with some superintendents, Daggett discovered that some very poor families do pay fees while others do not. He pondered whether the legislature could be more definitive.

Although Collins would prefer to avoid a lawsuit, she declared that might be the best approach.

Hedge suggested guidance from the state level with local districts governing. Doderer suggested the Department initiate corrective action.

Kelly Rice, Legal Services Corporation of Iowa, addressed the ARRC in support of the comments by Collins. Rice noted that Collins had set up a task force to examine the school fees issue, after which new rules could be drafted.

DOE (Cont.)

Mary Gannon, Iowa Association of School Boards, admitted they had a "nonposition" on the rules but had consulted with Collins on workable definitions. In lieu of rules, her association proposed drafting model policies and guidelines to be presented to all 397 school districts for their adoption. They were concerned with local control and viewed this approach as a means to provide uniformity.

Collins interjected that most often when this association offers model policies, the local school boards adopt them, whether they were read or implemented was another question.

The Committee briefly discussed their options. Kibbie agreed that the issue should be addressed by the legislature.

Rittmer could see benefit in drafting a model and would support this concept.

Ch 41. Resumed

Review of amendments to Chapter 41 was resumed and focused on autism. Hagen explained that federal language was used to define "autism" and "head injury." She clarified that the individualized education program (IEP) and services of IEP were not the same as federal because Iowa had already adopted those rules 20 years ago. Iowa had been adding required parts as the federal regulations changed. Royce and Priebe inquired about the possibility of adopting the federal version. Hagen responded that a Committee was reviewing both federal and state rules and it would probably suggest that approach.

Priebe was aware of dissatisfaction of the Autism Committee because they contended portions of federal regulations were not included. Hagen assured him that Iowa's rules must be as inclusive as the federal government or the state plan would not be approved.

Metcalf noted the 70-day delay would expire on October 20. Priebe preferred to allow the delay to run out.

Hagen had worked with the autism group and thought there was an understanding.

**Motion to Lift Delay**

Schrader moved to lift the 70-day delay on amendments to Chapter 41.

Royce reminded Hagen of disagreement among the three autism groups. This had prompted the decision to adopt the federal definitions.

Hagen stated that the Department had a "temporary approval" from the federal government based on the fact that these rules would be adopted. She was unsure about money flow in the absence of the rules.

**Motion Carried**

The Schrader motion was passed 7 to 1 with Priebe voting "no." The delay would be lifted effective September 16.

**INSURANCE**

Representing the Insurance Division were Jo Page, Roger Strauss and Klete Geren for the following agenda:

INSURANCE DIVISION[191]	
COMMERCE DEPARTMENT[181]"umbrella"	
Long-term care insurance, 39.6(6), 39.15(1)"g," 39.22, <u>Notice</u> ARC 4187A .....	8/18/93
Regulation of insurers — submission of quarterly financial information, diskette filing, 5.3, 5.26(6), <u>Filed</u> ARC 4230A .....	9/1/93
Life and health reinsurance agreements, ch 17, <u>Filed</u> ARC 4231A .....	9/1/93
for text see ...	7/7/93

**INSURANCE(Cont.)** In review of amendments to Chapter 39, there was discussion of the terms Ch 39 "noncancelable" and "guaranteed renewable."

Palmer wondered about cost impact and suspected that actuarially it would be higher because these rates could not be increased. He viewed reinstatement privilege after a five-month lapse of policy as very generous but should be "cost-itemed in." Palmer favored consumer protection as long as this protection would not add to the cost. He recommended review of the rules by an actuary.

There was discussion as to the fact that only a certain segment of the population would benefit from the long-term care coverage.

5.3 et al.; Ch 17 No questions or recommendations on amendments to 5.3 et al. and Chapter 17.

**PETROLEUM UST FUND BOARD** Robb Hubbard, Program Administrator, and Robert Galbraith, Assistant Attorney General, were present for the following agenda:

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

Eligibility for insurance, 10.1(5), 10.1(6), 10.5, <u>Notice</u> ARC 3200A <u>Terminated</u> , <u>Notice</u> ARC 4185A	8/18/93
Remedial or insurance claims, 11.1(3)"l," <u>Notice</u> ARC 4183A .....	8/18/93
Guaranteed loan program, 12.2(1)"c," 12.4(6), 12.10(6), <u>Notice</u> ARC 4184A .....	8/18/93
Installers and inspectors, ch 15, <u>Notice</u> ARC 3201A <u>Terminated</u> , <u>Notice</u> ARC 4182A .....	8/18/93

Chs 10, 11 No questions on ARC 4184A or 4183A.

12.2 Amendments to 12.2 et al. were reviewed. Halvorson referred to 12.2(1)c and asked how many tank owners would qualify in going from \$200,000 to \$400,000. Hubbard responded that the number of owner/operators was increased by 20 to 25 percent—20 to 25 loans have been approved and there were 6 pending.

Priebe in the Chair.

Ch 15 In response to Kibbie, Hubbard advised that when these rules were first implemented, there were over 400 licensed installers and inspectors but because of lack of work being done in Iowa, many of them allowed licenses to lapse. He estimated 25 to 30 percent below that number now. These rules were intended to assure that work was done appropriately at a reasonable price.

Priebe was interested in learning about the level of pollution created by new asphalt and asked if tests had ever been conducted. Hubbard said to date no tests had been done but he was aware of highly contaminated sites.

There was lengthy discussion on remedial benefits and qualification for insurance.

Metcalf in the Chair.

**ATTORNEY GENERAL**

An emergency filing of 61—Chapter 31, "Price Gouging," published in IAB 8/4/93 as ARC 4128A was reviewed by Bill Brauch, Julie Fleming, Elizabeth Osenbaugh, Curtis Bell and Charles Krogmeier, Attorney General's Office.

Ch 31 Metcalf took the position that the "subsequent recovery period," in the first sentence, was rather vague and asked if there were a date certain. Osenbaugh said this language was included because the Governor's declaration of emergency was limited to 30 days—a time would have to be factually established in a court for the rule to apply. Metcalf expressed concern about emergency filing since there was

AG (Cont.)

no ending date. She reasoned that people could suffer effects from the flood for two years or more.

Royce asked if the rule would be submitted as a Notice and Osenbaugh was willing to follow the normal process. She emphasized that this rule would be triggered only by a disaster. No suggestions had been received from businesses, etc. for changes in the rule which was adopted during a crisis period.

Metcalf pointed out that the rule would, in essence, be Iowa law even though it had not gone through the legislature. She favored rescission in a few months.

Priebe indicated opposition to the rule and said it could be corrected if, in the last sentence, the words "the onset of the flood" following "prior to", were stricken and the word "an" substituted. The rule then would apply only when the governor declared an emergency.

Osenbaugh agreed to this and Priebe requested an emergency amendment.

Rittmer and Halvorson suggested a definition of "subsequent recovery period."

Responding to Palmer, Osenbaugh explained remedies in the Consumer Fraud Act. A court would have to impose the penalty.

Osenbaugh continued that Code chapter 17A (APA) requires agencies to indicate in the preamble to rulemaking whether there could be an impact on small business. Theoretically, the impact in rule 31.1 could be on big or small business, either positive or negative.

Palmer suspected the rule would generate many calls from people who had different ideas about "price gouging." Osenbaugh contended the rule was clear with respect to economic justification in terms of increased cost.

Rittmer asked about excessive inventory purchased specifically for the disaster recovery, e.g. Kybos. Osenbaugh responded that the terms excessive, reasonable, and justified were used for this reason.

Priebe also requested that the words "for flood cleanup or repair" be stricken. Osenbaugh agreed that the inclusion of the word "flood" was a mistake.

Responding to Daggett, Osenbaugh said that it would be necessary to show that charging of excessive prices was tied to the flood emergency.

**Motion**

Metcalf moved that Chapter 31 be referred to the Speaker of the House and President of the Senate for review by the appropriate committee.

Schrader maintained there should be a permanent rule to address all "price gouging" and he would not support any motion.

Osenbaugh indicated that support for this rule came from small businesses, contractor associations, etc. In the Florida disaster, the concern was with big wholesale distributors increasing the prices to the retailer.

Priebe spoke against the Metcalf motion.

**Motion Withdrawn** Metcalf withdrew her motion to refer Chapter 31 to the GA.

AG (Cont.)

Osenbaugh agreed to prepare an emergency filing to address ARRC concerns. Rittmer asked that a definition for "subsequent recovery period" be included.

**COMMUNITY ACTION**  
Ch 22

Rod Huenemann explained changes found in proposed amendments to 427—22.3 and 22.4, relating to community services block grant, published in IAB 8/4/93 as ARC 4135A. No questions or comments.

**DENTAL EXAMINERS**

Constance Price reviewed the following agenda:

DENTAL EXAMINERS BOARD[650]  
PUBLIC HEALTH DEPARTMENT[641]"umbrella"

Auxiliary personnel, 20.1, 20.2(1)"c" and "d," 20.2(2), 20.2(3), 20.3, <u>Amended Notice</u> ARC 4193A .....	8/18/93
Professional ethics, 27.7(7), <u>Filed</u> ARC 4190A .....	8/18/93
Discipline, 30.4"39" and "40," <u>Filed</u> ARC 4191A .....	8/18/93
Procedural rules, ch 51, <u>Filed</u> ARC 4192A .....	8/18/93

There was no Committee action.

**CIVIL RIGHTS**

The Commission was represented by Ronald Pothast for the following:

CIVIL RIGHTS COMMISSION[161]

Arbitration, 3.17, <u>Filed Emergency After Notice</u> ARC 4247A .....	9/1/93
Contested cases, 4.1 to 4.35, <u>Notice</u> ARC 3750A <u>Terminated</u> ARC 4246A .....	9/1/93

There was brief discussion but no recommendations.

**REVENUE AND FINANCE**

Carl Castelda, Deputy Director; Melvin Hickman, Supervisor of Policy Staff; and Ed Henderson, Property Tax and Property Tax Credits, were in attendance to review the following agenda:

REVENUE AND FINANCE DEPARTMENT[701]

Amendments to correct Iowa Code references and rescind outdated or invalid language, 7.27, 7.27(1)"f," 11.11, 12.6, 12.14(4), 13.7, 13.17, 15.3(1), 15.14, 16.13, 16.32, 16.38, 16.52, 17.4, 17.6, 17.13, 17.21, 18.5(3), 18.5(3)"c," 18.7(3), 18.11, 18.23, 18.33(3), 18.37(5), 18.44, 18.44(4), 18.45, 18.45(6), 18.46, 18.48, 18.48(2), 18.48(3), 18.49, 26.42(3)"c," 26.45, 26.56, 26.74, 31.4, 32.3, 32.9, 34.5(9)"a," 34.5(11), 86.2(2)"a," 86.2(3) to 86.2(5), 86.2(10)"c" to "e," 86.2(12)"a," 87.3(13), 89.7(2)"b" to "e," 89.7(3)"a," "b," and "d," 89.8(1), <u>Notice</u> ARC 4169A .....	8/18/93
Individual income tax and withholding — minimum income requirements for filing, individual development accounts, child and dependent care credits, checkoffs, retirement plan withholding, 39.1(1), 39.1(2)"b" and "c," 39.1(3)"b" and "c," 39.1(5), 39.1(7), 40.45, 42.9(1), 42.9(2), 42.9(4), 43.4(3), 43.4(5), 43.4(6), 46.1(2)"f," <u>Notice</u> ARC 4146A .....	8/4/93
Taxation of nonresidents' pensions and annuities, rescind 40.44, <u>Filed Emergency</u> ARC 4145A .....	8/4/93
Tax exemption for wind energy conversion property, 18.56, <u>Notice</u> ARC 4233A .....	9/1/93
Age limit for low-income property tax credit and rent reimbursement, computation of claimant's income, mobile home conversion to real estate, payment of subsequent year taxes by tax sale purchaser, tax exemption for methane gas and wind energy conversion property and property used in recycling, 73.1, 73.6, 73.11, 73.16, 73.27(4), 74.5, 74.6(2), 74.8(2)"a" and "c," 75.4, 80.3, 80.12, 80.13, <u>Notice</u> ARC 4234A ...	9/1/93
Special Review—capital gains deductions, 40.38 .....	IAC

7.27 et al.

Rittmer was advised there was no change in policy in the Noticed rule to 7.27 et al. No further questions.

39.1 et al.

Castelda explained that amendments found in ARC 4146A were basically implementing changes passed by the 1993 GA.

- Revenue (Cont.)  
40.44 Castelda advised that the rescission of 40.44, pertaining to nonresident pensions, resulted from all the controversy generated by this rule making. The issue will be studied before a new rule is proposed.
- 18.56 No questions on ARC 4233A.
- 73.1 et al. Amendments to 73.1 et al. were discussed. In response to Schrader re 73.6, Henderson said the law on determining qualification for property tax credit was changed this year.
- Daggett was advised that delinquency would be considered on each half.
- Special Review  
40.38 Castelda offered background on the special review of 701—40.38, capital gains deductions. He stated they had reviewed about 9,200 tax returns with capital gains and have assessed about 1,150—an average error rate of 12.5 percent. Castelda cited key problems which arise with individuals who have sold their farms prior to 1990 when the exclusion took effect and they receive payments on an installment basis. He pointed out that the year the sale occurs determines entitlement to the capital gains benefit.
- Basic issues related to whether crop sharing and CRP payments qualified. Initially, they were disqualified because Revenue put them under the umbrella of rental as opposed to active participation. Castelda said their policy had changed on this, however.
- The other issue was straight rental agreement and whether that falls under the umbrella of the passive issue. Revenue's policy, generally, has been if it is indicated on the tax return that the sale was following a rental, it was not included.
- Over \$700,000 in revenue was generated from the 1,100 returns audited. The Department estimated that, to this point, about 10 percent had actually related to farmers. They have received contacts through the GA and Governor's office and through practitioners basically saying the procedure was unfair rather than challenging the statutory requirement.
- Castelda reported on their review of federal rules on "material participation." A special exception relates to farmers and ranchers which is tied to special use valuation in an inheritance tax section. It basically says that if a farmer rents a farm five out of eight years prior to drawing social security or disability income, it would be considered material participation. This same benefit is provided to the spouse. In addition, a provision in the Internal Revenue Code allows the material participation benefit from a crop-share type of agreement. Castelda reported on their plan to file an emergency rule to address this matter. He explained their plan for auditing and refunding on a retroactive basis to 1990 to those who are entitled.
- Castelda called attention to the "Clinton tax plan" with a capital gains provision effective for tax years beginning January 1, 1994 for small business (defined as having gross receipts of less than \$40 million). If Iowa law is not amended a double benefit may be allowed. Capital gains provisions in the Iowa Code could be repealed and the federal provisions relating to small business adopted. Most farming operations would fall under the criteria of small business.

**REAL ESTATE**

K. Marie Thayer and Roger Hansen, Professional Licensing and Jerry Duggan, Russ Nading, John E. Knapp and Susan Griffel, members of the Commission were present for the following:

**REAL ESTATE COMMISSION[193E]**

Professional Licensing and Regulation Division[193]

COMMERCE DEPARTMENT[181]"umbrella"

Prelicense education and continuing education, 3.2, 3.2(1), 3.2(2), 3.2(4), 3.2(5), 3.3(5), 3.3(9), 3.3(9)"a,"

3.4(1)"c," Amended Notice ARC 4154A ..... 8/4/93 ...

Prohibited practices, 1.31 ARC 4048A, 70-day delay ..... 6/23/93

**Ch 3**

Nading, Commission Chair, reported on public hearings, on the proposed amendments to Chapter 3, which were held at request of the ARRC. News releases were also sent to 345 newspapers.

Griffel added that the 8 people who attended the Des Moines hearing on September 9 made four basic statements: (1) All expressed a need for more prelicense education. (2) Consumers expressed dismay that many new real estate agents were giving misinformation—for example, inability to properly fill out an offer and acceptance contract. (3) Basically, instructors said they were unable to cover the content in 30 hours—not enough time to focus on the really important issues. (4) Iowa had always been very respected for their excellent education system and they did not want real estate education to be an exception.

In response to Palmer, Nading stated that the broker had no responsibility to provide additional education for the salesmen. However, 3.2(2) addressed this with the requirement for an additional 36 hours in the first three years. Nading added that the broker does have legal responsibility for the new agent. Palmer took the position that the Real Estate Board should take some action when incidents occur.

Commission officials stressed that the purpose of the rules was to expand education for new agents and in turn protect the public. Palmer clarified that he was not opposed to requiring the 36 hours of education. However, he expressed dissatisfaction with the effectiveness of most continuing education programs—in many courses there is no testing or evaluation.

Doderer and Palmer suggested a rule to delegate responsibility for their new agents to brokers for a year or so.

Hansen reiterated that the rules state a broker has responsibility for the supervision of any sales person or broker associate assigned to that broker. Likewise that licensee is responsible to keep the broker informed. The Commission would take action against a firm in violation of these rules.

Hedge could see advantage in an internship (on the job training) rather than a classroom setting. Hansen recalled that this procedure had been in effect several years ago.

No Committee action.

**1.31**

Hansen then reviewed filed amendment to 1.31 on prohibited practices under 70-day delay. He said the Commission was in no way avoiding the disclosure issue and it would be addressed. Hansen advised that Colorado was a leader in

**REAL ESTATE  
(Cont.)**

this endeavor and the Commission would gather more information at a national meeting next month.

Nading indicated they would have a recommendation either through the Commission or through the Iowa Association to the legislature in January.

It was agreed that the 70-day delay would be allowed to expire.

**IAC Computerization Update**

Metcalf recognized Diane Bolender, Director, Legislative Service Bureau, who apprised the Committee of the status of computerization of the Iowa Administrative Code—approximately 11,500 pages. The legislative council authorized use of funds for a contract with Compass Data, Salt Lake City, who was scanning the rules. Test data had been received, read and reviewed and some recommendations for change were made. Because of frequency of updating rules of Human Services, those rules will be scanned last. Additional equipment will be needed as the project progresses.

**Committee Business**

There was review of meeting dates and the Committee concurred in the following: November 9 and 10; December 14 and 15 and January 4 and 5. Barry reminded that the September Bulletins would be reviewed at the October meeting and she would mail advance copies of the September 29 issue to the members. There was Committee consensus that all agencies with rules should be called in for review.

A Christmas party at Noah's Ark was planned for the 14th of December.

**Minutes**

Kibbie moved approval of the minutes of the meeting held August 2 and 3. Carried.

**Recess**

The Committee was in recess at 12:10 p.m. Co-chair Metcalf reconvened the meeting at 1 p.m. and called up the following:

**MANAGEMENT**

Ronald Amosson, Executive Secretary, State Appeal Board, and Linda Hurst were in attendance for the following:

**MANAGEMENT DEPARTMENT[541]**

State appeal board — fees, 1.5(1), 1.5(2), 1.5(5), Notice ARC 4221A, also Filed Emergency ARC 4222A 9/1/93

**1.5**

The different types of claims filed with the Appeal Board were reviewed by Amosson. Questions were raised regarding the requirement to pay the \$5 processing fee quarterly. Amosson explained a billing would be sent on a quarterly basis rather than each time a claim was filed. The Committee thought this should be clarified in an emergency rule making.

**PERSONNEL  
1.1; 14.4**

Nancy Berggren represented DOP for an emergency filing to 581—14.4 regarding family and medical leave published in IAB 9/1/93 as ARC 4212A. No Committee recommendations.

**RACING AND  
GAMING**

Lou Baranello was present to review the following agenda:

**RACING AND GAMING COMMISSION[491]**

**INSPECTIONS AND APPEALS DEPARTMENT[481]"umbrella"**

Racing — authority of stewards, first-aid room, 4.3"1," 7.8(4)"e," 10.2(6)"a"(1), 10.2(6)"b"(2),(4), (6),

and (8) to (11), 10.6(1)"g," 10.6(2)"i," 12.12, Filed ARC 4164A ..... 8/18/93

Thoroughbred racing — weight limitation on jockeys, 10.4(19)"i"(2) and (3), Notice ARC 4165A ..... 8/18/93

There was no Committee action.

**SESQUICENTEN-  
NIAL COMM.**

Scott Raecker, Executive Director, reviewed the following:

SESQUICENTENNIAL COMMISSION, IOWA STATEHOOD[731]  
 County sesquicentennial commission certification, criteria for grant proposals and awards, chs 1, 2,  
Notice ARC 4163A, also Filed Emergency ARC 4150A ..... 8/4/93

Raecker explained that the state commission was comprised of 25 bipartisan members chaired by former Governor Robert D. Ray and co-chaired by C. J. Niles from Carroll.

Raecker had met with the Mormon Trails group and would meet with other similar groups in preparation of the celebration.

**TRANSPORTA-  
TION**

Will Zitterich represented the Department for 761—Chapter 105 pertaining to Holiday rest stops Adopted and Filed in the 9/1/93 IAB as ARC 4214A.

Zitterich advised that no one attended the public hearing but comments confirmed support of the original changes. The voluntary donations and distribution of literature was briefly discussed.

The complaints on the cleanliness of rest stops was also discussed briefly. No Committee action.

**UTILITIES**

The Division was represented by Diane Munns, Allan Kniep, Gary Stump and Vicki Place for the following agenda:

UTILITIES DIVISION[199]  
 COMMERCE DEPARTMENT[181]"umbrella"  
 Deferral of SFAS 106 expenses and transition costs, 7.11(5), 7.11(6), Filed ARC 4170A ..... 8/18/93  
 Clean air Act — emission allowances, 20.1(3), 20.1(4), 20.17, 24.2, 24.4(1)"e,"  
Filed ARC 4171A ..... 8/18/93  
 North American numbering plan change — toll dialing patterns, 22.21, Filed ARC 4134A ..... 8/4/93  
 Nonutility activities — record keeping and cost allocations, ch 33, Notice ARC 4133A ..... 8/4/93  
 Societal test, 35.2, Notice ARC 4172A ..... 8/18/93  
 Interest on customer deposits, 19.4(3), 20.4(4), 21.4(2)"c," 22.4(2)"b," Filed ARC 4215A ..... 9/1/93

7.11

Responding to Palmer, Munns stated that subrules 71.5 and 7.11(6) allow a deferral of a specific expense on utility records if there were a rate case. The Commission does have the authority to initiate rate cases but it is usually done by the Consumer Advocate Division. The average return on investment was about 12 percent and has been as high as 14 percent. Munns agreed to send Palmer the formula used by the Commission in making this determination. He declared that utilities seemed "very lucrative" compared to the economy in general. No Committee recommendations on amendments to 7.11.

20.1 et al.

Schrader was informed that amendments to 20.1 et al. merely defined terms and how allowances would be valued. The recovery mechanism was covered under other rule making.

22.21

Amendments to 22.21 were reviewed and in response to Priebe and Rittmer, Kniep said the amendments were the result of a national numbering system to provide additional area code numbers. All companies would probably implement the system at the same time.

Ch 33; 35.2

No questions on Chapter 33 or 35.2

UTILITIES (Cont.)  
19.4(3) et al.

Interest on customer deposits was before the Committee. Schrader thought that since this was an involuntary deposit, it would usually be made by buyers of money, not the investors. He disagreed with the Board's conclusions and asked why they chose to change the methodology. Kneip responded that most states had adopted a floating rate based on short-term deposits. However, Iowa's Board wanted to recognize that this was an involuntary deposit and wanted to pay something above the short-term deposit rate and compromised with 7.5 percent. Schrader stressed that no one was able to oppose this rule under Notice because the percentage had not been determined which he argued was unfair.

**Motion**

Schrader moved to delay amendments in ARC 4215A until adjournment of the 1994 General Assembly. Motion carried.

**INSPECTIONS AND APPEALS**

Rebecca Walsh, Mary Oliver and Jeff Voskans represented the Department for the following:

INSPECTIONS AND APPEALS DEPARTMENT[481]

Overpayment recovery—distress warrants, ADC name change, data processing systems correction, 71.1, 71.5(1),

71.5(1)"a," 71.5(1)"d"(2), 71.5(1)"e"(2), 71.5(2)"a," 71.6"7," 71.8"4" to "6," Filed Emergency ARC 4144A 8/4/93

Staffing in residential care facilities, 57.12(2) ARC 4026A, 70-day delay ..... 6/9/93

Ch 71

In discussing amendments to Chapter 71, Priebe asked if this resulted from the legislation to change ADC to Family Investment Program (FIP). He asked if it were mandated because he thought the House had deleted the change when costs were estimated at \$30,000. It was noted that legislation did change the name of the program but not the name of Department of Human Services as had been proposed. He asked what a delay would do to their dollars. Barry had been told that the term ADC would still be used in some instances because of federal references. There was discussion of costs generally to make name changes, renumber statutes, etc. Conway explained that when this legislation was drafted, those involved thought it was more appropriate to substitute "investing in families" and eliminate a negative connotation. He admitted the cost involved was not discussed. No Committee recommendations.

57.12(2)

The 70-day delay on 57.12(2), staffing in residential care facilities, was before the Committee. Mary Oliver reported that they were hard pressed for additional information on situations where this rule might be utilized. She said examples were provided in the Economic Impact Statement but the increased staffing would not necessarily result because of these situations—only if residents were at risk. After giving brief history of residential care facilities, she stated they had not abused this rule by overstaffing at this level of care.

The Committee decided to allow the delay to expire.

**JOB SERVICE**

William Yost explained the following agenda:

JOB SERVICE DIVISION[345]

EMPLOYMENT SERVICES DEPARTMENT[341]"umbrella"

Claims and benefits — voice response, method of reporting and payment of benefits, eligibility review form,

4.1(25)"b"(22), 4.2(1)"b"(9) and (10), 4.2(1)"e," 4.2(1)"g," 4.2(1)"g"(2), (3), and (6), 4.23(39),

Notice ARC 4147A ..... 8/4/93

4.1 et al.

Yost noted this Notice was published following emergency filing to allow for the comment period. No questions.

**LIVESTOCK  
HEALTH ADV.  
COUNCIL**

Mark Truesdell, Attorney, explained the following:

LIVESTOCK HEALTH ADVISORY COUNCIL[521]

Recommendation for fiscal year 1992-1993, ch 1, Notice ARC 3206A Terminated ARC 4129A ..... 8/4/93

Recommendation for fiscal year 1993-1994, ch 1, Filed ARC 4132A ..... 8/4/93

Ch 1

Priebe had no problem with these recommendations, but would reiterate his recommendation of last year for \$20,000 of the appropriation to be set aside for emergency research. Truesdell responded the Council discussed this and would feel more comfortable doing it if there were a nonreverter clause.

Responding to Hedge, Truesdell said they receive reports at the end of the year on expenditure of these funds, down to the last dollar. No action.

**HUMAN  
SERVICES**

The Committee resumed review of the DHS agenda carried over from Tuesday. Those present included Sally Cunningham, Mary Ann Walker, Sally Nadolsky, Dan Gilbert, Gary Gesaman, Mike Murphy, John Fairweather, Douglas Howard, Susan Bergwall, Bob Krebs and Candice Nardini.

75.13(2)

There was further discussion on ARC 4137A, Medicaid—SSI conditional eligibility, in particular, Daggett's concern about sale of a home before entering a care facility. Walker reminded that the federal government no longer considers the home in determining Medicaid. Department officials advised that application for assistance should be made before all the equity in a home was spent.

No questions on ARCs 4130A, 4186A, 4131A, 4138A, or 4188A.

No action on ARC 4218A.

130.5

Metcalf called up ARC 4139A, relative to termination of case management services delivered by the Department, which had been temporarily deferred.

Priebe wondered if cost would be shifted to the county when the services were terminated. Nardini responded there was no mandate from Medicaid for the county to pay the spenddown amount on the client's behalf and there was no obligation under the county's poor fund. Cunningham interjected that in Title XIX case management, the nonfederal share was split between the county and state. If that service were terminated, the local DHS office would provide social work—not paid for by the counties. DHS case workers absorb that case load under the DHS field operation budget.

Priebe had heard complaints from supervisors about excessive caseloads for the social workers. No Committee action.

**Children's Services  
ARC 4223A**

Discussion of ARC 4223A resumed. Cunningham distributed two sets of information for the Committee—one, regarding Daggett's concern about refinancing of children's services and second, a letter responding to her assignment yesterday to review questions raised on Tuesday and identify those areas where DHS would continue to focus. She had met with the Council on Human Services this morning and they were very interested in yesterday's proceedings. They reminded that the \$19 million was contingent upon moving ahead with rules and implementing the program by November 1. Hearings would be held and comments from interested persons would be considered.

DHS (Cont.)

Cunningham read from the following:

The areas of public comment are:

- 1) **Foster Care:** We have had several discussions with foster parents on issues related to the family foster care program. In order to address the area of immediate concern for November 1 implementation (i.e., the requirement that a treatment foster family have one parent in the home full time), the Council on Human Services has requested that we bring a proposed rule change to them for adoption at their October meeting.

A number of the other issues that have been raised (e.g., training requirements for other adult caretakers in the home, need for emergency CACT authorization in crisis, foster parent input to CACT, and foster parent supervision of birth parent visits) will be clarified initially in the Employees' Manual, and later through proposed rule changes at the Council's December meeting.

Two final issues (e.g., limits to the number of treatment family foster care children in the home, and the development of a third level of difficulty of care payment) are still under discussion. We will need to review the latter issue in light of the funds appropriated for child and family services and the provider rates that result from the new cost principles.

- 2) **Impact on county expenditure:** We believe there is no direct impact on counties, however we will continue to examine the rules to determine whether there is an unintended impact on county funding.
- 3) **Cost Principles:** Providers will begin to submit cost reports on October 1 - although they may wait until October 15. If the majority of the cost reports are submitted on October 1, the department will be able to better project the impact of the cost principles on the appropriation.

The Coalition and the department have agreed to continue to review the cost principles in light of the goals for providing quality services, meeting the needs of children who are waiting for service, and staying within the funds appropriated. Once we have received the cost reports we will be able to more fully review the specific issues that have been raised.

- 3) **Staff qualifications:** Because of this newly stated concern about current provider staff meeting certification requirements, the Director has agreed to review case by case all requests for exceptions. We believe this will provide the opportunity for a full review of instances in which there may be problems.
- 4) **Contracts:** As we have discussed the proposed contract requirements are very similar to the current contract utilized by the Department in purchasing services. We have agreed to meet with our respective attorneys to further review specific issues that have been raised.

DHS (Cont.)

- 5) **CACT Teams:** We have had extensive discussion and review of the purpose and the model for the proposed CACT teams throughout this past year. The role and proposed use of ten regional teams to determine service necessity, to authorize amount, scope and duration of service, and to provide consultation and technical assistance to field staff was thoroughly discussed by our Appropriations Subcommittee. The issues of duplication of effort and the concept of and "additional layers of bureaucracy" were taken into account.

We recognize that there are concerns about the CACT teams and will closely monitor the quality and effectiveness of this model. We believe that we need to give this model an opportunity to work before we determine whether another approach is warranted. We believe that we will have adequate information to fully review the CACT operations with our Appropriations Subcommittee during the upcoming session.

In closing, Cunningham assured the Committee of the Department's commitment to listen very carefully to concerns raised. She was aware of the need for fine tuning but she was convinced the program would be a success. Cunningham advised that new employees would perform quality assurance monitoring and work with the data system. Ten staff would serve as CACT coordinators. No new criteria must be met, only that existing under the Medicaid program.

Schrader narrowed his list of objections to three items and he would move to object to each on the grounds it would be unreasonable to maintain these emergency rules indefinitely when there are controversial provisions.

**Motion to Object**

1. Schrader moved to object to 185.10(8)"b"(6)"1" which requires that one parent be in the home full time. Priebe asked if Schrader would include in his motion that the objection would be automatically lifted if an emergency amendment corrected the paragraph. Schrader agreed. Barry was given authority to automatically remove the objection from the IAC when the Department's emergency rule was filed.

**Motion to Object**

2. Schrader moved to object to 185.10(8)"b"(4), the limit on number of children.

**Motion to Object**

3. Schrader also moved to object to subrules 185.105(1) and 185.105(2) regarding salaries.

Metcalf stated she would not support the motions since concerns of the ARRC and the public had been expressed and there would be opportunity to continue to monitor progress.

**Failed**

Schrader's motion to object to 185.10(8)"b"(6)"1" (first motion) failed on a show hands 5 to 3.

Hedge noted his opposition to Schrader's second motion to object since he did not consider it unreasonable for the Department to place limitations on the number of children.

Schrader pointed out that the limitation was a significant change from the present and requires the regional administrator to grant an exception, even though the exemption was generous.

- DHS (Cont.) Roll call was requested on the second motion (185.10(8)"b"(4) and Priebe asked for a roll call on the first objection as well. Metcalf agreed. Roll call on the second objection showed motion failed seven to two.
- Failed
- Motion Carried Roll call on the first motion to object was called. Motion carried six to three.
- On Schrader's third motion to object, Priebe moved as a substitute motion to refer 441—185.105(1) and 185.105(2), without recommendation, to the Speaker of the House and President of the Senate for referral to the general assembly.
- Kibbie interpreted the salaries as the opposite of merit pay which would leave these institutions without this privilege. Cunningham said the Department set reasonable limits on state reimbursement, focusing on direct care staff.
- Responding to Hedge, Cunningham said endowments, gifts, etc. could be used by the agency as they saw fit.
- Priebe clarified with Cunningham that these rules state what the state will pay but the provider can pay more or less than stated.
- Doderer asked for clarification of Schrader's motion and Priebe's substitute motion and it was noted that neither motion would delay the effectiveness of the rules.
- Substitute Motion to Refer Carried The substitute motion by Priebe was before the Committee and roll call was unanimous in favor of referring subrules 185.105(1) and (2) to the GA.
- Motion to Refer Carried Priebe had reservations about CAC teams and moved that the issue be referred to the Speaker of the House and President of the Senate for referral to the appropriate committee. Motion carried.
- State Cases Upon suggestion by Walker, Cunningham provided an update on state cases. The appropriation for DHS this year was short in terms of funding to cover all expected demands in the state case program. Concerns had been expressed by counties as to impact if state does not pay for state cases for persons with mental illness or developmental disabilities. DHS had been in contact with the counties and continued to seek alternative operations. No action had been taken to deny services to current state cases. There would be a projected shortfall within the agency's budget if action were not taken for cost containment. The budget recommendation to the Governor includes a 61 percent increase to cover all state cases for FY 95.
- In conclusion, Cunningham said the Department had talked with counties on cost containment strategies. She was hopeful for a joint proposal in the next GA applicable to county expenditures and state cases.
- Kibbie was advised that the counties would not be billed for the shortfall.
- ARCs 4220A, 4224A, 4211A, 4217A, 4227A and 4209A were presented with no recommendations.
- 441—Ch 24 Motion Barry distributed copies of an objection which was imposed on 441—Chapter 24 on 1/4/89. This chapter has been rescinded and rewritten. Doderer moved that Barry be authorized to delete the objection from the Iowa Administrative Code.

DHS (Cont.)  
Madrid Home

The letter from William Thayer, President of the Madrid Home would be placed on next month's agenda.

Priebe excused.

## AGRICULTURE

Rollie McCubbin, Ronald Rowland and John Whipple were present for the following agenda:

### AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Grade B milk, Grade A dairy farms, 68.12, 68.26, Notice ARC 4206A ..... 8/18/93 ...  
Renewable fuel, ch 12, Filed ARC 4059A, 70-day delay ..... 6/23/93

Ch 12

The 70-day delay on chapter 12, renewable fuel, was taken up first and concerns were answered.

Motion—Delay lifted

Halvorson moved to lift the delay, which motion passed unanimously.

Rowland explained amendments to 68.12 and 68.26 which related to minimum standards for Grade A dairy farms and reduction of the somatic cell count permissible in Grade B milk. He noted that the lighting system provisions and minimum of 15 inches (existing) and 24 inches (new construction) discharge pipe on all gravity flow manure removal systems were somewhat controversial—68.12(192). However, the Department would be working to resolve these issues.

Rowland explained that revision in 68.12 was governed by the Pasteurized Milk Ordinance administered by the Federal Food and Drug Administration. Some of the language had come from the FDA Kansas City office and they have changed their position somewhat. Rowland indicated that the Department wanted to be fair to everyone but also work in conjunction with the Ordinance so as not to jeopardize milk shipments out of the state. He was confident that compromise could be reached.

Rowland clarified that Grade A milk was governed by the Pasteurized Milk Ordinance—the umbrella organization being the Food and Drug Administration. Rule 68.12 addresses Grade A products and 68.26 deals with Grade B products which are governed by the U. S. Department of Agriculture.

Steve Exley, Assistant Citizens' Aide/Ombudsman, represented concerned dairy farmers and requested that the FDA submit in writing their interpretation on the size of the discharge pipe. He was also hopeful of an agreement on the lighting system as well. Exley stated that a particular application was denied partially on the basis of rules not yet written and he questioned the fairness of this. Application was also denied because they did not meet required sanitation rating. Exley wanted to resolve the regulatory part and leave the inspections and sanitation rating to the experts. He distributed copies of comments, summaries and from FDA officials (on file with the IAC Office).

Mark Truesdell spoke in behalf of the Iowa Dairy Foods Association. He confirmed remarks made by Rowland. He said a significant amount of Iowa's Grade A milk does go out of state by interstate commerce and must comply with PMO. He explained the procedure for inspections and regulations.

John Roetlin, operator of a cheese plant in Kalona, spoke of the regulations that would allow the Amish to be certified for Grade A. He agreed with Daggett that he was confident as to the quality of the Amish product.

AG (Cont.)

Hedge wondered how Iowa compared to other states in fairness to the producers. Exley was aware that Wisconsin, Illinois, Kansas and Oklahoma allow dairy producers to operate with gas lighting systems. He also understood that an Amish dairy farm had never been approved for a Grade A dairy permit in Iowa. The question was—can they meet PMO without electricity? The potential compromise would allow some type of fuel-powered lighting. In the latest interpretation from Kansas City, Exley believed a 15-inch discharge pipe should be the minimum for new construction. The Iowa rule would address newly constructed barns and the Kansas City specialist was willing to sign off in writing to that statement. The application before the Department involved a 10-inch discharge pipe. Roetlin had indicated he would accept grandfathering of smaller discharge pipes as long as there was no problem. The minimum size would be required for replacements.

Kibbie was informed that the Grade A was reduced to 750,000 somatic cells/ml on July 1 and very little comment was received at the public hearing.

David Shtapkohl, DMV, Kolona, stated he had worked with many of the farmers in that area and was very encouraged by Rowland's remarks and appreciated being heard.

Alvin Graber, Farmer Milk Producer, Kalona area, was one of the first to apply for Grade A status and was also encouraged by progress made on this. He expressed concerns about the pipe requirements.

Joe Graber, Kalona, echoed previous remarks and said their system had been working very well for them in the past. He said they were small-time farmers and the money generated from Grade A versus Grade B status could mean the difference in being able to remain in business.

Ivan Miller, a farmer and milk producer, expressed concern about changing a system which works well.

Don Davis, Twin County Dairy, wanted prompt action taken on an issue which had been pending too long.

Rowland assured the Committee they would work toward resolution of differences.

**NO REPS**

No agency representative requested to appear for the following:

ACCOUNTANCY EXAMINING BOARD[193A]  
Professional Licensing and Regulation Division[193]  
COMMERCE DEPARTMENT[181]"umbrella"  
Sales of goods and services, ch 18, Notice ARC 4207A, also Filed Emergency ARC 4189A ..... 8/18/93

ALCOHOLIC BEVERAGES DIVISION[185]  
COMMERCE DEPARTMENT[181]"umbrella"  
Organization, licenses, permits, complaints, procedures, forms, 1.5, 1.5(2), 4.2(4), 4.23(4), 4.39, 5.2, 10.14,  
ch 11, 12.2(14), Notice ARC 4180A, also Filed Emergency ARC 4181A ..... 8/18/93

BANKING DIVISION[187]  
COMMERCE DEPARTMENT[181]"umbrella"  
Real estate lending, 9.2, Filed Emergency After Notice ARC 4213A ..... 9/1/93

ENGINEERING AND LAND SURVEYING EXAMINING BOARD[193C]  
 Professional Licensing and Regulation Division[193]  
 COMMERCE DEPARTMENT[181]"umbrella"  
 Declaratory rulings, petitions for rule making, 1.2, 1.3, Filed ARC 4194A ..... 8/18/93  
 Sales of goods and services, ch 6, Notice ARC 4195A ..... 8/18/93

HISTORICAL DIVISION[223]  
 CULTURAL AFFAIRS DEPARTMENT[221]"umbrella"  
 Emergency grant applications and review, 49.5(4)"c" and "d," Filed Emergency ARC 4216A ..... 9/1/93

LABOR SERVICES DIVISION[347]  
 EMPLOYMENT SERVICES DEPARTMENT[341]"umbrella"  
 General industry safety and health — permit-required confined spaces, safety standards, air contaminants,  
 10.20, Notice ARC 4178A ..... 8/18/93  
 General industry — exposure to cadmium, 10.20, Filed Emergency After Notice ARC 4175A ..... 8/18/93  
 Construction safety and health, 26.1, Notice ARC 4179A ..... 8/18/93  
 Construction — exposure to cadmium and lead, 26.1, Filed Emergency After Notice ARC 4176A ..... 8/18/93  
 Agriculture — exposure to cadmium, 28.1, Filed Emergency After Notice ARC 4177A ..... 8/18/93  
 General industry — air contaminants, 10.20, Notice ARC 4248A ..... 9/1/93  
 Construction safety and health, 26.1, Notice ARC 4237A ..... 9/1/93

REGENTS BOARD[681]  
 Admission rules common to the three state universities — two-year college transfer credits, 1.3(1),  
Filed ARC 4168A ..... 8/18/93

SECRETARY OF STATE[721]  
 Election forms, 4.3, Filed ARC 4238A ..... 9/1/93  
 for text see .. 6/23/93

TRANSPORTATION DEPARTMENT[761]  
 Regulations applicable to carriers — emergency relief, 520.1(1)"a," Filed Emergency ARC 4127A ..... 8/4/93

WALLACE TECHNOLOGY TRANSFER FOUNDATION[851]  
 Manufacturing modernization implementation fund, ch 12, Filed ARC 4126A ..... 8/4/93

Adjournment

Co-chair Metcalf adjourned the meeting at 5:10 p.m.

Next meeting was scheduled for Monday and Tuesday, October 4 and 5.

Respectfully submitted;

  
 Phyllis Barry, Secretary  
 Assisted by Mary Ann Scott

APPROVED BY;

  
 Janet Metcalf, Co-chair

COMMITTEE ROLL CALL

ADMINISTRATIVE RULES REVIEW COMMITTEE

Co-Chair Metcalf

Co-Chair \_\_\_\_\_

Committee Secretary Barry Room 22

Date 9-15-93 Rule \_\_\_\_\_

Title of bill or description of amendment or motion: Object to  
Human Services ARC 4223 A 441-185.10(8) & (6) "1"

	AYE	NAY	PRESENT
PRIEBE, Co-Chairman	✓		
METCALF, Co-Chairman		✓	
HEDGE	✓		
KIBBIE	✓		
PALMER	✓		
RITTMER	✓		
DAGGETT		✓	
DODERER			<i>out of room not present</i>
HALVORSON		✓	
SCHRADER	✓		

AYES 6 NAYS 3 PRESENT \_\_\_\_\_ ABSENT (or not voting) 1

Committee Action objection carried

COMMITTEE ROLL CALL

ADMINISTRATIVE RULES REVIEW COMMITTEE

Co-Chair Metcalf

Co-Chair \_\_\_\_\_

Committee Secretary Barry Room 22 (2)

Date 9-15-93 Rule 441-185.10(8) "b" (4)

Title of bill or description of amendment or motion:

*Human Services ARC 4223 A*

	AYE	NAY	PRESENT
PRIEBE, Co-Chairman		✓	
METCALF, Co-Chairman		✓	
HEDGE		✓	
KIBBIE	✓		
PALMER		✓	
RITTMER		✓	
DAGGETT		✓	
DODERER			<i>Out of Room not voting</i>
HALVORSON		✓	
SCHRADER	✓		
	2	7	

AYES 2 NAYS 7 PRESENT \_\_\_\_\_ ABSENT (or not voting) \_\_\_\_\_

Committee Action Failed

COMMITTEE ROLL CALL

ADMINISTRATIVE RULES REVIEW COMMITTEE

Co-Chair Metcalf

Co-Chair \_\_\_\_\_

Committee Secretary Barry Room 22

Date 9-15-93 Rule \_\_\_\_\_

Title of bill or description of amendment or motion: <sup>objct</sup> 441-185.105 (1) + (2)  
Human Services ARC 4223A

Per P. Sub Motion to Refer to HA

	AYE	NAY	PRESENT
PRIEBE, Co-Chairman	✓		
METCALF, Co-Chairman	✓		
HEDGE	✓		
KIBBIE	✓		
PALMER	✓		
RITTMER	✓		
DAGGETT	✓		
DODERER	✓		
HALVORSON	✓		
SCHRADER	✓		
	10		

AYES 10 NAYS 0 PRESENT \_\_\_\_\_ ABSENT (or not voting) \_\_\_\_\_

Committee Action Carried