

MINUTES OF THE REGULAR MEETING
of the
ADMINISTRATIVE RULES REVIEW COMMITTEE

Time of Meeting: Tuesday, May 10, 1977 at 7:40 a.m.

Place of Meeting: Senate Committee Room 322, Statehouse, Des Moines, Iowa.

Members Present: Senator Berl E. Priebe, Chairman; Representative W. R. Monroe, Jr., Vice Chairman; Senator E. Kevin Kelly; Representative Laverne Schroeder. Not present for roll call, Senator Minnette Doderer.
Not present: Representative Donald V. Doyle.
Also present: Joseph Royce, Administrative Co-ordinator.

MINUTES Moved by Kelly to dispense with reading of minutes of the April 12 meeting and that they stand approved. Carried.

HEALTH Rick Middleton, Director, and Dana Petrowsky, Assistant,
Care Facilities Health Care Facilities Licensure Division, represented the Health Department for review of Chapters 57, 58, 59, 60, 61, 63 and 64 published under Notice and carried over from the March and April meetings of this Committee. Copies of the rules in revised form were distributed to Committee members on May 5. It was noted that Chapters 60, 63 and 64 were new.

Middleton explained that 57, 58, 59 and 61--physical standards for intermediate facilities --were basically the same as those before the Committee previously and public hearings were held. However, the rules were rewritten to comply with 66GA, Chapter 119, §§23 and 27 which provided that substantive changes in existing rules be made in a proceeding separate from those to classify violations. Changes recommended by this Committee were incorporated in the rules according to Middleton. Staff ratios for residential care is still a problem area. The Health Facilities Advisory Committee was unanimous in accepting the rules before the Rules Committee today.

Monroe commented that an amendment to HF 464, 67GA, would increase from \$19 to \$19.50 reimbursement for ICF services under Medicaid.

Priebe recommended that the Committee delay Chapters 57 to 59, 61 and request an economic impact statement on Chapters 60, 63 and 64.

Schroeder thought all the rules should be delayed.

HEALTH
Cont'd

Larry Breeding, Executive Vice President of Health Facilities Association of Iowa, commented briefly that a problem was funding mechanism on one hand to pay for one level of care but the rules could increase cost that would not be covered by \$19.50.

Schroeder asked if the Association had petitioned for a rule change on the matter with suggestions for amendment.

Priebe noted that there is time for the Department to amend the rules since they are under notice. He emphasized the need to be aware of costs and have specific figures before the Committee could make a decision.

Middleton stated that a reimbursement mechanism was implemented over three years ago that would provide this information on cost of care and impact of the rules but that the plan was not being used.

Middleton said very few changes had been made in the intermediate care rules.

Royce indicated he would research the rules for areas related to cost.

Priebe reiterated he would prefer an economic impact statement on Chapters 60, 63 and 64.

Monroe commented that a delay of 70 days to study the rules would not preclude the impact statement.

Priebe noted that he had observed through work on appropriations committee that there is quite a spread of cost for care in different parts of the state--\$27.84 in Davenport to as little as \$14.60 in Sioux County.

Motion

Schroeder moved to delay all the rules for seventy days. Discussion followed.

Middleton emphasized importance of knowing which areas they should include in an economic impact statement.

Kelly suggested that an alternative would be to have Royce select specific areas for such a statement.

Breeding concluded that employee costs is the main concern of the industry.

Priebe suggested that Breeding, Middleton and Royce work together to determine which rules should be included in the impact statement.

HEALTH
Cont'd

Middleton stated that since staffing is the main concern, he would prepare an economic impact statement covering that area in Chapters 57, 58 and 59.

Monroe pointed out that the budget for ICF care had been cut considerably.

Middleton reminded the Committee that it would be unfair to limit the review to the three persons suggested by Priebe since there are other interested persons and associations, in addition to Breeding's group.

Middleton said staffing expenses would be lower under the new rules than they were previously.

Monroe asked the Department to agree to wait at least one week before filing the rules and work with the Association. Middleton responded they could not be ready to file within that time but he agreed to work with the Advisory Committee and notify the Rules Committee before anything is filed.

Delay
Withdrawn

Schroeder asked for unanimous consent to withdraw his motion to delay the rules. No objections.

Economic
Advisory
Committee

Discussion of correspondence from Ronald Sagraves, Director of Economic Affairs, as to whether Chapter 17A would be applicable to the Governor's Economic Advisory Committee. Committee members concurred it would not be necessary for that group to draft rules since technically they are not an administrative agency.

SOCIAL
SERVICES

Judith Welp, Methods and Procedures, Linda Cooper, Medical Services and George Jeck, Administrator of Student Loan Program, appeared for review of the following rules of Social Services:

SOCIAL SERVICES[770]

Direct medical services, 29.2	5/4/77
Food stamp program, 65.2	5/4/77
Medical assistance, transportation, 78.13, filed emergency	5/4/77
Remedial assistance, records, 79.3	5/4/77
Intermediate care facilities, Ch 81, (81.1 to 81.5, 81.7 to 81.13)	5/4/77
Monitoring and evaluation, 130.6	5/4/77
Payments for foster care, Ch 137, amendments	5/4/77
Notice of adoption hearing, 139.8	5/4/77
Rural Rehabilitation loan program, Ch 146	5/4/77
Mobile/congregate meals, Ch 150	5/4/77

SOCIAL SERVICES[770] F

Penitentiary, mail and packages, 17.4(4)	4/20/77
Men's reformatory, mail and packages, 18.4(6)	4/20/77
Aid to dependent children, resources, 41.6(1), (5)	5/4/77
Child in foster care, 41.8(5)	5/4/77
Intermediate care facilities, mentally retarded, 75.1(10)	5/4/77
Prohibition against reassignment of claims, 79.1	4/20/77
Intermediate care facility, handbook, Ch 82, amendments	5/4/77
Subsidized adoptions, 138.1, 138.3	5/4/77
Children in need of assistance, Ch 141	5/4/77

SOCIAL
SERVICES
Cont'd

Amendments under Notice to 29.2, 65.2, 78.13 and 79.3 were acceptable as published.

Discussion of criteria for social worker--81.1(9) and possible legislation to set up a licensing board.

In answer to question by Schroeder, Linda Cooper, Medical Services, indicated the department has been liberal in approving social workers for employment, particularly in areas where there are acute shortages.

8:20 a.m.

Doderer arrived.

Priebe excused and Monroe took the Chair.

Doderer raised question as to the authority for setting standards in 81.1(9) but thought the Committee should take no action pending possible legislation on the matter.

Cooper responded that the Department is required to set standards for nursing homes and the rules merely define what constitutes a person who may provide social services in said homes.

Breeding thought the Exception provision in 81.10(5) needed clarification. Cooper commented that the exception was not intended to apply to private paying individuals but agreed to rewrite the language before filing the rules.

In answer to Doderer, Cooper said "supplementation" is not defined in these rules. However, a series of rules on the subject is being prepared.

No recommendations for 130.6

Discussion of amendments to Chapter 137 which basically set out rules on parental liability in re payment for foster care. Monroe wondered "when you include the child in placement who is already being supplemented, doesn't it shift too far." Judy said this was only to determine how much of the income is exempt before they assess the amount.

Schroeder expressed concern as to liability for foster children who perform certain tasks on the farm. Monroe thought legislation would be necessary.

No recommendation for 139.8.

In re Chapter 146, Committee members took the position that 146.2(2) was discriminatory as to the 75% farm income requirement. George Jeck, Administrator of the Iowa Loan program stated the intent of the rules was to aid low income families.

Monroe voiced opposition to 146.1(5) defining college and school as being an illegal delegation of power. He said an objection would be in order if the provision did not contain a date certain.

SOCIAL
SERVICES
Cont'd

Monroe wondered if there was flexibility concerning federal interest benefits as to the \$25,000 adjusted gross family income. He asked to be provided a copy of the federal rules governing the program.

Discussion of Chapter 150. Monroe noted that 150.1 refers to "hot" meals but elsewhere in the rules [150.4] the contents of a meal includes lunch meat. Committee suggested possible clarification would be in order.

Amendments to 17.4(4) and 184.(6) were acceptable as filed. No recommendations were made concerning 41.6(1), (5).

Monroe raised question as to possible dual payment for foster child care when the child visits away from the foster home--41.8(5). Welp commented that there are not many visits away from the foster home but in the event the child would be away more than two weeks the department would make adjustment accordingly. Schroeder suggested "dropping extended fund for the first week any way or perhaps for two weeks." No formal action taken.

Pribe returned and took the Chair.

Amendments to 75.1(10), 79.1, Ch 82 and 138.1, 138.3 were acceptable.

In re Chapter 141 relating to children in need of assistance,
Objection Kelly moved the following objection:

The committee objects to chapter 141 on the grounds that the chapter is arbitrary, capricious and unreasonable in that there is a total lack of due process in the hearing procedure established for placement contract violations. The committee notes that no provision for adult representation or advise unless the youth provides it.

Motion carried with 5 ayes.

Kelly called attention to the fact that the Economic Impact Statement which the Committee had asked the Department of Social Services to prepare on a voluntary basis concerning adoption rules had not been submitted.

Welp responded that they are waiting for approval of fee schedules which would have the greatest fiscal impact.

HEALTH

The following rules of Health Department were before the Committee:

HEALTH[470] F

Optometry examiners board, license renewal, Chs 143, 144
Funeral directors examiners board, code of ethics, rescinds 147.6
Optometry, license fees, 160.4(3)

4/20/77
5/1/77
4/20/77

HEALTH
Cont'd

John McClintock and Claude Nichols, Chairman, represented the Board of Optometry.

Monroe questioned the lack of provision for administering a partial examination.

Nichols said applicants must take the national examination but are not required to pass it.

In re reciprocity--143.6(154), Doderer voiced opposition to sub-rule 5 requiring each applicant to furnish certified evidence of three or more years' practice in the state from which the applicant desires to reciprocate. It was pointed out they have authority to require this under the law.

Monroe recommended that 143.5(3)a should contain a date certain.

Committee members took the position generally that 143.6 did not conform with existing law and asked the Board to review the Code and revise the rules accordingly.

Schroeder moved to object to Chapter 143 as being arbitrary in requiring three years experience.

McClintock quoted from section 147.47 in re reciprocity.

Schroeder then withdrew his motion.

Doderer thought consideration on an individual basis should be provided in 143.6(1). She recommended that reasons established by the Code be set out.

No objections were voiced concerning 160.4(3).

Amendment to 147.6 was acceptable as filed.

AGRICULTURE
Pesticides

Betty Duncan, Consultant for the Department of Agriculture, explained the following rules:

AGRICULTURE[30] N
Pesticides, Ch 10, amendments
Poultry, Ch 11, 16.34

4/20/77
4/20/77

AGRICULTURE[30] F
Rule change, declaratory rulings, 1.4, 1.5
Livestock exhibition health certificate, Ch 16 (16.18, 16.19)

4/20/77
4/20/77

Duncan responded to question concerning 10.28 wherein it provided: "Those pesticides which have one or more uses classified as restricted use by the Administrator of the U.S. EPA pursuant to section 3(d)(1)(c) of FIFRA as amended; and section 4(c)(2) of FEPCA, are classified by the secretary as restricted use pesticides."

Schroeder noted the provision did not contain date certain. Duncan commented that EPA had not completed classification but state legislation mandated the department to promulgate rules on the subject. The department was proposing to adopt the restricted use pesticide rules which EPA had indicated would be in their final draft.

AGRICULTURE
Cont'd

Committee members questioned the legality of this approach. However, they recognized the problem and Priebe recommended that the Department wait until EPA makes a final decision and then promulgate the rules on an emergency basis. Duncan responded that EPA had indicated they would make their decision in the late summer. She added that the Department would not include 10.28(206) when they filed amendments to Chapter 10. Discussion of Item 2 which would add a new rule, being 10.29(206) relating to application of general use pesticide by nonlicensed commercial applicators.

Schroeder asked what constituted "direct supervision" of an applicator and Duncan responded that this is set out in the Code and further clarified in subrule 10.22(5).

Poultry

Discussion of rules relating to poultry, being Chapter 11. Duncan explained that the new chapter rephrases language in former rules which were in 16.34 under livestock diseases. Dr. John Slauter, Assistant Chief, Animal Industry also appeared. Question was raised as to reference to "National Poultry Improvement Plan or other state agency." They recommended that a date certain be inserted following the word "Plan" and further that the nebulous phrase "or other state agency" be deleted.

It was noted that Chapter 168 of the Code defines "baby chicks" to be "all domestic fowls six weeks or under." Duncan agreed to modify the rules accordingly. She pointed out that public hearing on the rules was set for May 11.

No further recommendations were made concerning Agriculture rules on today's agenda.

BANKING

The following amendments to rules of the Banking Department were acceptable: Chapter 4, Banking Board, Interest on deposits, 8.2(2) and 8.5(4) published 5/4/77.

ENGINEERING
EXAMINERS

Tom Hanson, Counsel for the Board of Engineering Examiners, appeared to answer questions concerning amendments to Chapters 1 and 2 of the Board which were published 4/20/77. Priebe raised question on 1.2(2) which was not officially before the Committee. He took the position the words "increase or decrease" the number of years experience ..." was arbitrary. Hanson responded that the Code provides for four years experience. Committee asked the Board to re-examine the provision and consider clarifying the rule.

REGENTS

Amendments to Chapter 3 of rules of the Board of Regents were acceptable. Said rules were published 4/20/77.

NURSING The following rules published under Notice were acceptable:

NURSING BOARD[590]	
Temporary license, 3.1(4)	4/20/77
Licensing, nurses educated in another country, 3.1(6)	4/20/77
Temporary license, 4.1(4)	4/20/77
Qualifications, 4.1(7)	4/20/77

CONSERVATION Kenneth Kakac, Superintendent of Law Enforcement, Robert Barrett, and Stanley Kuhn, Administration, represented the Conservation Commission for review of the following:

CONSERVATION[290] N	
Waterfowl hunting, 14.1	5/4/77
Falconry regulations, Ch 18, amendments, filed emergency	5/4/77
Contracts for public improvements, Ch 62	5/4/77

Discussion centered on 14.1(1) concerning limitations on reservations for duck blinds.

In response to question by Priebe, Barrett said the revenue will not be reduced but the rule will provide more equitable distribution of the blinds. When questioned by Kelly, Barrett stated that all blinds will be reserved.

Committee members could foresee a problem of the same four individuals using a blind for four weeks. Department officials did not anticipate a problem, however.

Falconry rules were acceptable as filed.

In re Chapter 62, Kuhn told the Committee the Department has put into rule form what has been past policy for tracts for public improvements.

Monroe noted that 62.2(1) provided for bids on projects estimated to cost in excess of \$15,000. He indicated that the Code required bids for \$10,000 projects. Kuhn commented that is difficult to maintain competitive bidding for such small jobs but at this time it is necessary to let contracts to find expertise outside of the regular conservation staff. He concluded that an increase in the engineering staff of the department would mean a great saving to the state.

Committee recommended that appropriate legislation be initiated to correct the problem.

Fishing & Swimming

John Stokes, representing the Conservation Commission, appeared before the Committee and was prepared to discuss the matter of nighttime fishing and swimming regulations in state parks. The Committee decided to postpone the discussion until the June meeting.

CAMPAIGN
FINANCE

Rules of Campaign Finance Disclosure Commission--3.3 amending the summary report form--were acceptable.

ENVIRONMENTAL Amendments to rules of DEQ were acceptable as published 4/20/77,
QUALITY being 50.4(1), 51.1(4), Ch 52.

TRANSPORTATION

James Graham, Assistant Right of Way Director, Transportation Department, appeared for review of the following:

TRANSPORTATION[820] N

Relocation assistance, [06,F] Ch 8, amendments

5/4/77

Primary road extensions, [06,J] Ch 1

5/4/77

Amendments to [06,F], Chapter 8, were intended to conform to standard language used throughout the country. Graham pointed out the substantive changes.

Darrell Campbell told the Committee that Chapter 1 of 06,J merely set out policies implemented in the past as to the procedure to be followed in closing of primary extensions to facilitate civic activities, i.e., parades.

Schroeder challenged 1.1(2) which provided that "adequate detour over 'paved' road shall be provided..." Such a mandate seemed unreasonable to him.

In re 1.1(5), Priebe could see no need to show a number on the request for closure form.

No formal objections were made to DOT rules.

LANDSCAPE ARCHITECTS

Tom Barton, Vice Chairman, Board of Landscape Architectural Examiners, explained a proposed increase in renewal fees from \$50 to \$60. The changes were published under Notice 4/20/77 IAC Supplement--rules 2.8 and 2.10.

In answer to Schroeder, Barton said there are 175 registered landscape architects.

No recommendations were made by Committee.

PLANNING AND PROGRAMMING Building Code

Donald Appel, State Building Code Commissioner, was present for review of amendments to Chapter 5 of rules relating to the building code authorized under Chapter 103A of the Code.

Committee members indicated they had not had sufficient time to study the copious amendments and asked that the rules be placed on the June agenda. Appel agreed to withhold filing of the rules until after the June meeting of this Committee.

FAIR BOARD

James Taylor, Fair Board Secretary, appeared to answer questions concerning proposed rules concerning 1.9--functions and new Chapter 23--grandstand entertainment, published 4/20/77.

5-10-77

FAIR BOARD
Cont'd

Monroe commented on 1.9 that it seemed to be repetitious of the statute. He pointed out that the sixth item made reference to "regulations as the board may prescribe." He added that the Board is not obligated to repeat the law in their rules.

Discussion of the last sentence of 23.3 which read: "The fair board grants to each director of the Iowa state fair board two tickets for each track event and two tickets for a stage show of each performance to establish quality of attractions."

Priebe recommended that said sentence be deleted. Monroe thought it probably would be in violation of §68B.5 of the Code. Taylor said they had requested an Attorney General opinion as to the legality of the proposal.

Committee
Co-ordina-
tor Salary

Doderer brought up the matter of an increase in salary for the Committee co-ordinator and moved to increase his salary from \$11,206 to 14,066, Grade 29, step 1.

Joe Royce

Kelly moved to amend the Doderer motion by substituting Grade 30 for Grade 29.

Discussion followed and Kelly withdrew his motion. Doderer motion carried viva voce.

ADJOURN

Chairman Priebe adjourned the meeting at 11:15 a.m. Next regular meeting to be held Tuesday, June 14, 1977, at 10:00 a.m.

Respectfully submitted,

Phyllis Barry

(Mrs) Phyllis Barry, Secretary

APPROVED

Chairman

DATED _____