

MINUTES OF THE SPECIAL MEETING
of the
ADMINISTRATIVE RULES REVIEW COMMITTEE

Time of Meeting: Thursday, May 18, 1978, 9:05 a.m.

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

Members Present: Senator Berl E. Priebe, Chairman; Representative W. R. Monroe, Jr., Vice Chairman, Senator Minnette Doderer, and Representative Laverne Schroeder.

Out of town
engagements Not present Senator E. Kevin Kelly and Representative Donald V. Doyle, having notified the Chair prior to the meeting.

Also Present: Joseph Royce, Administrative Co-ordinator.

Minutes Schroeder moved for the adoption of the minutes of the April 14, 1978 meeting and the motion carried un-animously.

DEPARTMENT OF
PUBLIC INSTRUCTION
Iowa High School
Athletic Assoc.
Chapter 9 Schroeder suggested that the Committee request the Secretary to place the Department of Public Instruction, particularly the Iowa High School Athletic Association, on the agenda for the next meeting, the Committee concurred.

DEPARTMENT OF
ENVIRONMENTAL
QUALITY
Subrule 16.3(1)b
See Objection,
page 386 of the
minutes Schroeder inquired as to the department's resolving the restrictions imposed by subrule 16.3(1)b (to which the Committee objected 8-10-77, see page 386 of the minutes). Schroeder also questioned other provisions in the subrule, namely the use of "aesthetically objectionable conditions" (subrule 16.3(1)c) as this terminology defies objectivity. Schroeder questioned Royce about any proposed changes to these subrules and Royce said that the department had proposed amendments to 16.3(1)b for which they were going to hold public hearings. However, Royce did not know if the department was considering changes to 16.3(1)c of the subrule. Royce said that he would check into the situation.

SOCIAL SERVICES Judith Welp, Methods and Procedures, submitted the following rules to the Committee:

SOCIAL SERVICES[770] Carried over from April Meeting

Halfway houses, work release and furloughs, Ch 24	3/22/78
Supplementary assistance, facility participation, 54.1, 54.4—54.7	3/22/78
Medical assistance, 78.1	3/22/78
Resources, generally, 130.2(5), 130.3(1)"b", 130.3(5), 130.4, 130.4(2—44), 130.5	3/22/78
Foster care, 137.1, 137.1(1)"c", "g", 137.1(4), 137.8(1), 137.17	3/22/78
Child care centers, 145.1(8), also filed emergency	3/22/78
In-home health related care, 148.4(3), 148.4(6), 148.5(4), 148.7(1, 2)	3/22/78

SOCIAL SERVICES
(continued)

SOCIAL SERVICES[770] N

Procedures, 1.3(4)	4/19/78
Community based corrections, Ch 25	4/19/78
ADC, 41.4, 41.5(2), 41.7, 41.7(4)	4/19/78
Supplementary assistance, 52.1(3)"g"	4/19/78
Supplementary assistance, reports, 54.3(1, 11, 13), 54.8	4/19/78
Medical assistance, 75.4	4/19/78
Hearing aids, 78.14	4/19/78
Intermediate care facilities, 81.4(3), 81.6(1, 11, 15, 16), 81.14	4/19/78
Social security, 131.4	4/19/78
Rural rehabilitation student loans, 146.1(1), 146.2(2), 146.11(1)	4/19/78
Fair hearings and appeals, 7.1(14), 7.6(3) F	4/19/78
Correctional institutions, 17.2(17), 18.2(8), 19.2(16), 20.2(7), 21.2(22) F	4/19/78
Supplementary assistance, application, 50.2(1, 3), 50.4 F	4/19/78
Supplementary assistance, eligibility, 51.3(2) F	4/19/78
Supplementary assistance, payment, 52.1(1), 52.1(3)"a", "e", "f", 52.1(5, 6) F	4/19/78
Rural health clinics, 77.21, filed without notice	4/19/78
Medical assistance, 78.1(2), 78.2(4), 78.4(1)"f", 78.5(3) F	4/19/78
Rural health clinics, 78.21, filed without notice	4/19/78
Agencies eligible for purchase of services, 144.5 F	4/19/78
Adult protective services, Ch 156 F	4/19/78

Per the invitation of the Committee, three of the social services council members were in attendance, Lois Emmanuel, Madelene Townsend and Dolph Pulliam. Because of the presence of these council members, Welp presented the more controversial of the rules to the Committee first rather than strictly following the order as presented in the agenda.

Hearing aids, 78.14 Welp stated that this rule represented a change in procedure for those in need of this type of assistance. Niel Ver Hoef, Chairman of the Iowa board of examiners in speech pathology and audiology presented the Committee with comments, see attachment*, stating opposition to the proposed changes. Doderer questioned page 3 of Ver Hoef's comments, the indication that on 18 forms no signature was present and wondered what action was taken. Ver Hoef said that these patients were not considered cleared for hearing aid assistance.

In response to discussion, Lois Emmanuel responded that physicians can charge these Title XIX patients separately for these examinations to determine the necessity of hearing amplification, etc. But that the real thrust of the proposed amendment was to treat Title XIX patients like private patients. Welp said that the department had been requested to hold public hearings and will be scheduling same.

Elaine Szymoniak of Vocational Rehabilitation, loaned to Title XIX hearing aid program, presented a brief history of the hearing program to the Committee. In response to inquiry by Royce, Szymoniak stated that the concern of

SOCIAL SERVICES
(continued)
Hearing aids,
78.14

those working with the Title XIX hearing aid program was the competence of the hearing aid dealers. There followed discussion on the frequency of audiologists dispensing hearing aids. Only audiologists who have a dual license in audiology and as hearing aid dealers are allowed to dispense hearing aids and the frequency of this occurrence increases among those who deal more regularly with children.

Larry Baker, member of the Iowa hearing aid society and a dealer for 17 years, stated that dealers wanted to maintain the same rights as dual licensed audiologists. He also expressed feelings that dealers should be allowed to continue to compete for Title XIX patients.

Penny Bernstead, Social Services Administration, clarified the status of Title XIX patients, stating that to qualify for Title XIX, patients have to do certain things and because of this they are treated differently than private patients especially in the area of specific services for which Title XIX will pay. In response to a question as to the economic impact of these proposed amendments, Bernstead said that there would probably be no difference in the cost per patient, but that there may be a significant change in the total numbers receiving such aid. This statement was concurred with by Howard Seeley, Department of Social Services Licensing.

Community Based
Corrections, Ch 25

Welp introduced George Kaiser, Director of Community Based Corrections, who presented background of chapter 25. He stated that these rules had been field tested in the 8 judicial districts throughout the state, and that staff from these districts are continuing meetings about these rules as they wish these standards to ensure specific results. At the present time these rules are being changed to meet this criteria.

Royce pointed out that 25.8(16) required that medications only be given by staff and that there had been a recent attorney general's opinion whereby injections could only be given by physician, nurse or other authorized medical personnel. Kaiser said that the intent was for medications prescribed for the inmates to be kept in a central location. Because of the sensitivity of these corrections facilities with members of the communities in which they are located, this rule was to prevent undue criticism about drug policies. Doderer suggested in light of the purpose of these facilities, to give inmates responsibility and ready them for return to the community, medications should be controlled as the individual circumstances dictate.

SOCIAL SERVICES
(continued)
Community Based
Corrections, Ch. 25

Kaiser asked that Royce send him a copy of the attorney general's opinion on the subject of administration of medications and Royce said that he would do so.

Doderer suggested that these rules should avoid being so specific in certain areas, such as the handling of waste disposal in that a simple statement that waste will be disposed of in a sanitary manner would suffice. Going into lengthy detail could curtail privileges of inmates if they so much as threw a piece of paper at a waste basket and missed. Doderer didn't think that the attention to detail was warranted in this instance.

Monroe stated that these rules were in violation of certain sections of SF 112. Section 4 of SF 112 sets out the duties of the district boards and states that they shall adopt bylaws and rules for the conduct of their own business. Section 7 of SF 112 sets out the duties of the department of social services and these rules are in violation in part of Section 4 and in violation in whole of Section 7. Monroe stated that the department of social services had in fact, by these rules, taken over the 8 judicial districts as the department went beyond its capacity of advisor and had mandated rules for the conduct of business within these judicial districts.

Phil Riley spoke to the same issue, agreeing with Monroe that the department was mandating these rules and definitely overstepping its obligation to guide the judicial districts in their rulemaking process.

Jim Wayne, Director of the 7th Judicial District, expressed his views that some of these rules are good management practices but should not necessarily be drafted as rules. He felt that some of these standards are too specific and that not all of them are cost effective in that to implement them too much money would be spent to reap insignificant gains.

Bud Killman, Director of the First Judicial District, said that these rules are too regulatory and that they are not performance oriented standards. He also felt that these rules increase significantly the load of paperwork.

Nursing Homes
52.1, 54.3,
& 8i

Welp presented the rules dealing with nursing homes, supplementary assistance, supplementary assistance reports and intermediate care facilities. Welp stated

SOCIAL SERVICES
(continued)
Nursing Homes

that to ensure the accuracy of the cost reporting required for nursing home records, personal tax returns would be used to substantiate eligibility and payment levels. Priebe questioned the legality of requesting such information. Cleo Green, of the department of social services, reported to the Committee that the department had no problems with requesting and getting personal tax returns as verifications of an individual's income. Priebe asked Royce to check out the legal aspects of this practice.

Francis Lackner, Executive Secretary of the Iowa Association of Homes for the Aging, presented the Committee with written comments, see attached*, concerning the continuing education procedures of nursing home personnel. Green said that these rules were promulgated because of the habitual abuse of out-of-state travel which has been traditionally allowed by the department. Schroeder questioned the limiting of out-of-state travel in view of the problems for counties bordering other states and the availability of continuing education programs. Monroe suggested that this problem should be handled on a case-by-case basis. Lackner said that the association of homes for the aging approves meeting all over the country for continuing education. Dolph Pulliam questioned how many personnel go if the state picks up the costs and how many go if they pay their own way. Lackner said that not all of the staff goes at any one time, but that the state picking up the cost would avail these meetings to more of the personnel.

Corrections
Comments
Prison Industries
Advisory Board

The Chair recognized Phil Riley who had comments to make on subject matter carried over from the last meeting, see minutes page 546, 549 through 552, on Mt. Pleasant Ch. 22 and Prison industries advisory board 23.2 and 23.3. Riley gave some background on the prison industries advisory board to the Committee. The board erroneously went through the social services council to draft their rules the first time, but little has changed as the board is now drafting rules as mandated by the department of social services and Riley feels that this board will be a nonentity even with the adoption of their new rules.

Mt. Pleasant

Riley stated that the correctional facility at Mt. Pleasant is supposed to be a medium security facility and treatment facility for inmates with alcohol and drug problems. However, one can tell from the amount of

SOCIAL SERVICES
(continued)
Corrections
Comments
Mt. Pleasant

security that it has been turned into a maximum security correctional facility, and this is in violation of the statute as this facility has been given appropriations on the basis of medium security criteria. The Committee discussed this obvious overstepping of the statute by the department of social services and other problems that the department has with the regulation of corrections facilities. Monroe suggested that at some future time, the Committee hold its monthly meeting at Ft. Madison in order to appreciate the full impact which the departmental rules have on the facility and to fully appreciate the problems with which the department has to deal. This suggestion met with the approval of the Committee, but no definite time was set when the Committee will so meet.

Nursing Homes

Lackner and Green discussed continuing education rules as they apply to small nursing care facility personnel, 81.6(11) and 81.6(16). Green stated that the department had to comply with federal regulations on ICF. However, the designation was no longer necessary as to the status of the nursing home facility as to whether it was a state or privately owned facility. Lackner said that Pennsylvania tried to differentiate between facilities on the basis of ownership and they received a letter from the department of HEW stating that funds would not be allocated them if they persisted in such differentiation.

Larry Bruning of the Health Department stated that pursuant to 81.6(16)c, which deals with health class cost ceiling methodology, there is adjudication pending against the department of social services and HEW.

Rules in Order
in which they
appeared on the
agenda

Welp said that she would discuss with the Committee the remainder of the rules in the order in which they appeared on the agenda, emphasizing rules held over from last meeting. Doderer left.

Ch. 24

Schroeder stated that 24.1(3) was too restrictive as if a person was in a pre-hearing position with a speeding ticket, they would not be considered having met the criteria of a responsible person. John Walton, Community Based Corrections, said that the rules implied an indictable offense or a felony. Priebe suggested that the wording be clarified in this chapter to avoid misinterpretation. Monroe asked how these rules changed from old rules. Walton stated that the rehabilitation objectives were expanded in three ways. 1) The rating categories were broadened, 2) the definition of contraband was

SOCIAL SERVICES
(continued)
Ch. 24

expanded, and 3) the restrictions on mail were lifted. Schroeder asked why the rating category point system was not equalized, why all categories not rated 10. Walton said that there was a weighted scale because of the differences in valuing of the categories and that some were objective evaluations while others were subjective evaluations and because of their very nature should be weighed differently.

Priebe suggested that 24.2(2) "Visiting privileges shall not be canceled" not use such limiting language. Walton said that this wording was intended to cover those instances when visitors would come from some distance, but that visitations could be limited to 15 minutes or one-half hour for violations of regulations.

54.1, 54.4-54.7

Welp said that subrule 54.1 distinguishes between maintenance and service of contracts. Schroeder said that the wording in 54.4(1) was confusing and should be clarified. Priebe questioned 54.5(5) in that he was unsure of the procedure which the department could take with recipient's funds in the event of recipient's death. Royce agreed that funds could only be obtained through probate through district court, but that he would verify this information and get back to Welp.

78.1

This amendment was to cover abortions, Welp said, but the legislature limited funding criteria so amendment was withdrawn.

130.2(5) etc.

Welp said that these rules were amended so that those with steady incomes derived from pensions, social security, etc. would be reviewed yearly.

137.1 etc.

Welp said that these amendments set up criteria for determining what funds would be used in determining parental liability.

145.1(8)

Welp said that these rules implemented federal funding obtained for certain services as part of the criteria which child care centers use for qualifying state clients for the same rates charged private pay clients.

148.4(3) etc.

Welp said that these subrules dealt with the continuity of care through funding.

Welp then spoke about the rules on notice, with a resumé of each change or addition and how these changes would affect the general public as well as clients of the social services department.

SOCIAL SERVICES
(continued)
Notice Rules
131.4

Welp stated that this subrule defined the geographical areas as set up by the department within the state. Priebe asked if the department was considering reducing the number of districts within the state as the General Assembly has been in favor of such a reduction for some time. Priebe expressed the viewpoint that as few as 4 districts might be a workable redistribution and that the department should consider purchase of services whenever possible rather than direct service as a more economical and practical means of providing services throughout the state. Welp said that the department has undertaken such considerations with serious intent to eliminate duplication and waste within the department.

Welp reviewed the filed rules and discussed them briefly with the Committee.

Filed Rules
17.2(17), etc.
Correctional
Institutions ,
Photos of
Visitors

These rules had been discussed at some length when they were on notice (see page 501 of the minutes) and the Committee still had reservations as to possible distribution of photographs of visitors to correctional institutions. Schroeder and Monroe questioned the filing system used to catalogue such photographs and who would be allowed access to them. The Committee decided to defer action on these rules until later in the meeting.

78.1(2)

Welp reported that these subrules brought these medical assistance rules into compliance with the statute. Priebe inquired if the department had intended to eliminate the pharmacist at Cherokee and in addition inquired if these changes made services provided for were competitive with prices and services obtainable on the open market. Lois Emmanuel interjected that she had heard of no changes for Cherokee, but that at Glenwood the department had gone to purchase of services of a pharmacist. The Committee also inquired as to the reason the department hadn't used more effectively the sharing of services between institutions which are within a close proximity of each other.

Ch. 156

Welp reported that changes in this chapter were initiated by requests of the Committee and per conference committee HF/SF 133 the commitment law revision.

NOON RECESS

Chairman Priebe recessed the meeting at 11:50 a.m.

RECONVENE

Priebe reconvened the meeting at 1:30 p.m., a quorum being present.

APPEAL BOARD

No representative was called as the changes in these rules involved desexing references.

HISTORICAL
DEPARTMENT

Fred Dean of the Historical Department presented the following rules to the Committee:

HISTORICAL DEPARTMENT[490] F

Historic preservation, 10.1, 10.3(1, 2, 5), 10.4—10.8, Chs 11, 16, 17, 18

5/3/78

Dean stated that these rules dealt with complaint procedures and historic preservation districts. These rules incorporated suggestions by the office of the state archaeologist. Priebe inquired how much time inventory took and whose responsibility this was. Dean said that a person hired through CETA was in charge of inventory but that the department was going to lose this individual. Dean stated that the department would be coming back to the legislature for a budget revision. Priebe asked why there was a full time person on inventory, Dean responded that volume dictated staff. However, Dean felt that the most important aspect of the department was grant administration.

Historic preservation district rules dealt with referendum issue and Dean concurred that questions of a definition of political subdivision and who would bear costs of elections warranted investigation.

HEALTH

Ron Master, Chiropractic Board of Examiners, presented the rules dealing with chiropractors to the Committee as follows: HEALTH[470] N

Chiropractors, disciplinary actions, 141.11(1)	4/19/78
Chiropractors, code of ethics, 141.50, 141.51	4/19/78
Cosmetology continuing education, Ch 151	5/3/78

HEALTH[470] F

Chiropractors, continuing education, 141.25—141.34	4/19/78
Hearings, 173.9(1)	5/3/78
Health facilities construction review program, Ch 201	5/3/78

Pursuant to 141.11(1) Doderer suggested that the probationary period be removed and remove subrule 141.50(2) or at least rephrase to "Honesty and integrity shall characterize all transactions with patients" as present wording is unnecessarily highflown. Doderer also suggested that rules should be desexed.

Schroeder and Masters discussed peer review committees, 141.51 with Schroeder suggesting ad hoc peer review committee 141.51(6) may be troublesome. Monroe asked how the board intends to generate a peer review committee from nowhere. Masters said that members would be drawn from the chiropractic society. Monroe and Masters discussed the setting of criteria for peer review committees. Monroe suggested that the board refer to Section 4, Ch. 95 of the 67 G.A. to establish guidelines of the operation

HEALTH
(continued)

of the committee in view of wording of 141.51(3)e and Monroe suggested that the board follow the criteria for this rule as set out in section 4.

Monroe and Masters discussed the chiropractors continuing education program with Masters explaining that the rules were tightened up because of some inequities which had come to light. Monroe asked if these rules were in compliance with S.F. 312 and Masters replied that the basis for these rules came from information provided by the health department.

Monroe suggested that the board in filed rule 141.33 rephrase wording as in fact they are not addressing the problem of waivers but that of invalid licenses. However, Masters pointed out that this rule deals primarily with obtaining a certificate of exemption, rather than waivers on existing licenses.

Cosmetology

Nancy Welter, chairman of the board, Barb Thaler, boardmember, and Grace West presented the continuing education rules to the Committee.

Welter stated that beginning January 1, 1979, cosmetologists shall have completed, during the previous calendar year, 8 hours of continuing education.

Monroe pointed out that these rules were in violation of S.F. 312,

The commissioner of health shall by December 31, 1978 examine the policies and rules of licensing boards funded by this subsection and shall determine whether the policies and rules are in compliance with applicable statutes. If the commissioner finds that the rules or policies of a licensing board are not in compliance with statutory requirements, the licensing board shall by February 15, 1979 change or amend the policies or rules to achieve compliance with the statute. If the commissioner determines that compliance with the statute has not been achieved within the time period prescribed by this paragraph the commissioner shall notify the state comptroller of the noncompliance and the state comptroller shall not issue any warrants to the licensing board for funds appropriated by this subsection.

and that by statute, appropriations could be cut and monies available would go into the general fund instead of to the board.

The Committee suggested that the board reduce the number of required hours so that their members could finish the required continuing education hours as

HEALTH
(continued)
Cosmetology

required by S.F. 312. The board was also questioned by the Committee as to the dues which they require of their membership, and reminded that these fees should only be enough to cover costs and the board is not supposed to realize a profit.

Doderer also reminded the board that the board needs to establish rules dealing with number of members of the board and the number of members which constitute a quorum.

173.9(1)
Hearings

Sarah Johnson presented this subrule to the Committee, there was no discussion and the subrule was accepted as filed.

LAW ENFORCEMENT
ACADEMY

John Callaghan and Major Metzger presented the following rules to the Committee:

LAW ENFORCEMENT ACADEMY[550] /
Council, definitions, organization, Chs 5 and 6

4/19/78

Callaghan stated that these rules were implementing council operations and pointed out to the Committee that 5.1(4) contained a typographical error and should read "Law enforcement officer".

Doderer and Callaghan discussed 6.5(4) quorum criteria as the council is made up of 8 members with quorum represented by 6 members and a simple majority needed to pass substantive measures and this is in keeping with the appropriate Code section dealing with this matter.

Schroeder suggested that to clarify the subrules 6.8(1) and 6.8(2), the words "In addition" be stricken.

REVENUE
Economic
Impact
(see p. 541
of the
minutes)

Vern Morgan presented the economic impact statement to the Committee as follows:

REVENUE[730]
Economic impact statement, sales and use tax, 16.50, 17.3

5/3/78

Morgan stated that the sales of businesses cannot be projected with any accuracy and the assets cannot be projected either. Doderer left.

Morgan could not answer questions on the assessors rules, the Committee requested that he ask a representative from the department to come speak to the Committee about these rules.

DEPARTMENT OF
ENVIRONMENTAL
QUALITY

Dave Bach and Keith Bridson presented the following rules to the Committee:

ENVIRONMENTAL QUALITY[400] N

Water quality standards, definitions, 15.1(8, 14, 15, 29), 19.1(5, 6),
19.2(1-4, 9-11), 19.3(1), 19.3(5)"d", 22.1(2-8, 14, 15, 20, 24, 25, 31, 32),
22.4(1)"a", 22.12(2)"a", "b", 22.12(4), 22.12(5-8), 22.13, 24.2, 24.8, 24.9

5/3/78

Surface water quality criteria, 16.3(1)"b"

5/3/78

Solid waste disposal projects, hazards to aircraft from birds,

27.12(3)"f", 28.2(1)"f"

4/19/78

PVC Pipe
Hearings

In addition, the department is holding additional hearings on the use of polyvinyl chloride pipe (PVC) in water systems, 22.12(2), see minutes page 483, and the Committee and Bridson briefly discussed the availability of the pipe to-date.

Schroeder questioned 15.1(29) in conjunction with the problems farmers often have in well construction, Bridson stated that these rules were to be applied only to public water supplies and not those of individuals.

The rules dealing with the hazards to aircraft from birds hovering over solid waste disposal projects were discussed by Bach and the Committee. Bach stated that these rules were patterned after FAA communication which was adopted by the EPA who in turn proposed certain standards. Monroe suggested that the department "dump" these rules on the Aeronautics division of the department of transportation. However, Bach stated that since there were EPA standards, the department had to address itself to the problem.

PUBLIC
INSTRUCTION

Orrin Nearhoof and Dr. Donald Cox presented the following rules to the Committee:

PUBLIC INSTRUCTION[670] N

Standards for graduate programs, Ch 20

5/3/78

Schroeder and Nearhoof and Cox discussed the self-evaluation process of institutions of their graduate programs, 20.6. This rule in conjunction with 20.15 and 20.16 evaluates the entire graduate program and provides adequate information for evaluation.

Royce questioned 20.11(1) travel included in the criteria for faculty competence. Nearhoof explained that the board felt it necessary to state travel as an aspect to stimulate interaction with the community and to combat that "ivory tower" concept which has been a problem with some collegiate faculty members.

PLANNING AND
PROGRAMMING

Dolores Abels presented the following rules to the Committee: PLANNING AND PROGRAMMING[630] N

Special crisis intervention program, 17.1, 17.2, 17.3(1), 17.4, filed emergency 5/3/78

These rules provide an emergency energy assistance program vehicle to implement federal aid funding.

CIVIL RIGHTS

Barbara Snethen, Hearing Officer, presented the following rules to the Committee:

CIVIL RIGHTS COMMISSION[240] N
Employers, discrimination in employment, 2.14

5/3/78

Snethen stated that these affirmative action rules concerning discrimination in employment were to help alleviate situations such as the reverse discrimination suit brought in the Bakke case.

1.1(8)
withdrawn

Snethen also stated that the commission, in view of the discussion held with the Committee and Royce concerning benefit program defined as retirement program, 1.1(8), see pages 540 and 541 of the minutes, has filed a notice of termination of intended action on 1.1(8) which will appear in the next IAC supplement.

NATURAL
RESOURCES

Gus Kerndt and Wayne Gieselman, Engineering division, presented the following rules to the Committee:

NATURAL RESOURCES COUNCIL[580] N
Definitions, channel changes, 2.1(28-35), 5.1(1)"b", 5.2, 5.15(4)

5.16, 5.29-5.32

4/19/78

Water permit hearings, 10.5(2)"a"(11), (12)

5/3/78

Sanctions for violation of ex parte rules, 13.6(1)"e", filed emergency

5/3/78

Monroe discussed with Kerndt and Gieselman subrule 5.16(8) landowner notification in that this subrule did not specify how far upstream and downstream landowners should be notified. Monroe contended that this type of rulemaking is not workable and suggested that the rule be rewritten. Doderer returned.

2.1(28-35),
5.1(1)b, 5.2,
5.15(4), 5.16 &
5.29-5.32

The Committee, Royce and Kerndt discussed the council's procedures in implementing these rules because of their method of using an amended notice of intended action, with extensive revisions of notice of intended action published in the March 8, 1978 IAC supplement, thereby circumventing the 35-day waiting period between publishing of notice and date of filing of the rules (the 35-day waiting period shortened by 11 days to 24-day waiting period). Kerndt argued that 17A of the Code does not prohibit amendment of notice of intended action in this manner and his contention was that in this manner the public was truly in on the rulemaking process and was advised of every step which the council took in arriving at the final form of the rule which was ultimately filed and implemented. Priebe suggested that this method did not in fact give the general public as much opportunity for input as it shortened the waiting period. Kerndt said that the public was notified in time for hearing on the subject matter and was not, in fact, excluded from any step of the process and the Committee's opportunity to review the rule was not affected. Royce was instructed by the Committee to

NATURAL
RESOURCES
(continued)

check this problem out with Prof. Bonfield and report to Kerndt and the Committee his findings.

NURSING BOARD

The following rules were presented to the Committee by Lynne Illes, Executive Director:

NURSING BOARD[590] N

Education, 1.1(1), 1.1(2)"a", 1.1(3), 1.1(7)"a", 1.1(8)"b"

4/19/78

NURSING BOARD[590] F

Continuing education, Ch 5

4/19/78

Illes summarized the rules before the Committee and the rules were acceptable to the Committee as presented with a reminder from Monroe of necessary compliance with S.F. 312 (see page 562 of the minutes), Illes said that she was aware of this necessity.

REAL ESTATE
COMMISSION

Ken Galvin presented the following rules to the Committee:

REAL ESTATE COMMISSION[700] N

Brokers and salesmen, 1.2—1.4, 1.6(1), 1.7(1) 1.8, 1.9, 1.21, 1.23(2), 1.24, 1.30, 2.2(2, 3), 2.3(1), 3.1(1), 3.6(3)"c", 3.6(5), 3.6(6), 3.7(3)"a", 3.7(5)

5/3/78

Galvin stated that these rules were clarifying and also dealt with continuing education. Preibe questioned the use of the terminology "broker salesman" in that in this instance a person was either a broker or a salesman. Galvin stated that there were many instances of licensed brokers also being licensed as sales personnel and acting as sales personnel, hence the term.

Monroe and Galvin discussed whether or not the forfeiture of fees, 1.2, was within the scope of the commission in the circumstances given in this rule.

Monroe suggested that the commission lobby the legislature to update the real estate law in general, Galvin agreed stating that the law had remained virtually unchanged since its implementation in 1930.

REVENUE
Assessor's rules

Mike Cox of the revenue department presented the following rules to the Committee:

REVENUE[730] F

Assessors and deputy assessors, 72.1(1), 72.2(3—5), 72.4, 72.7—72.13

5/3/78

Cox stated that these rules were in compliance with the suggested changes of the Committee. There was no further discussion by the Committee.

CONSERVATION

As no representative was called, discussion of this matter was deferred until the next meeting.

Conservation--Bureau of Recreation Funds

SOCIAL SERVICES
MOTION TO DELAY

Monroe moved to delay for seventy (70) days rules dealing with correctional institutions, 17.2(17), 18.2(8), 19.2(16), 20.2(7) and 21.2(22), and the practice of photographing visitors for identification purposes, to allow the Committee time to study the situation. Monroe's motion carried unanimously.

Meeting Scheduled

Time of the next meeting was scheduled for June 13, 1978, at 9:00 a.m. However, Priebe indicated that he would be on vacation and would not be able to be present for the meeting.

REGENTS
MOTION TO DELAY

REGENTS[720] F
Organization, 11.1(3, 4, 6)

Chairman Priebe asked for unanimous consent to delay for seven days for further study Board of Regents rule 11.1, subrules 3, 4 and 6. No objections were voiced.

The Committee indicated to the Secretary to notify a representative from Regents to enable them to discuss these rules at the next committee meeting.

5/3/78

AGRICULTURE,
COMMERCE COMMISSION,
COMPTROLLER, STATE,
LANDSCAPE
ARCHITECTURAL
EXAMINERS,
LIVESTOCK HEALTH
ADVISORY COUNCIL,
PUBLIC SAFETY, &
TRANSPORTATION.

The following rules were acceptable to the Committee as published:

AGRICULTURE[30] F
Dairy trade practice fees, 25.8

5/3/78

COMMERCE COMMISSION[250] N
Iowa electrical safety code, 11.1(1), 20.5(2)"a", 22.5(1),
24.11(2)"c", (2), Ch 25

5/3/78

COMPTROLLER, STATE[270] N
Declaratory rulings, 5.1

5/3/78

LANDSCAPE ARCHITECTURAL EXAMINERS[540] N
Address change, fee schedule, 1.3, 2.10, filed emergency

5/3/78

LIVESTOCK HEALTH ADVISORY COUNCIL[565]
Recommendation for use of appropriation, 1.1 N

5/3/78

PUBLIC SAFETY[680] F
Breath testing for alcohol content, 3.13(1)"a"

4/19/78

TRANSPORTATION[820] N
Appendix to rule [01, B] 2.8, see Appendix, p.17, filed emergency

4/19/78

TRANSPORTATION[820] F
Administrative rules, 1.2(1), 1.2(2)"a"(2), 1.2(2)"c", 1.2(4)"a",
1.2(4)"i", 1.2(5)"a", 1.3(1), 1.4(1, 6).

5/3/78

REGENTS

William W. Whitman, Director of Physical Plant, and Kenneth A. Brewer, Chairperson of ISU Traffic Committee presented the following rules to the Committee:

REGENTS[720] N

Iowa State University, parking, 4.25—4.27, 4.30—4.37, 4.28(3, 4), 4.29(3), 4.29(4)"a", 4.29(5)"a", "d", "e", 4.29(9), 4.30(5, 6), 4.31(5, 6), 4.32(2, 5, 8), 4.33(5, 8, 9, 14), 4.34(4, 5), 4.35(1, 3, 4), 4.36(5), 4.37(1)"c", 4.40(3), 4.41(1, 3, 4, 6), 4.42(2), 4.28(7), 4.29(1), 4.50(2)"m", "n", "r", 4.50(8, 9)

5/3/78

Schroeder and Doderer discussed visitor stickers with the representatives from regents.

COMMITTEE
ADMINISTRATIVE
CO-ORDINATOR
SALARY

Monroe brought up for discussion the matter of an increase in salary for the administrative co-ordinator. Doderer moved for a 10% raise (figured to the nearest step for the comptroller's office). Doderer's motion carried viva voce.

Priebe left, and Monroe assumed the chair.

SUBSTANCE ABUSE

The following rules were presented to the Committee by Gary Riedmann, Director:

SUBSTANCE ABUSE[805] N

Licensure standards, treatment programs, Ch 3

5/3/78

Monroe, Riedman and the Committee responded to inquiry by the Secretary about the rules of superseded agencies see minutes page 544, that no legislative action had been taken to clarify the Code Editor's obligation, but that the Code Editor should handle matter editorially.

In response to inquiries about department's appropriation, Riedmann stated that in the event the Governor vetoes their appropriations bill, they have secondary funds available.

Doderer discussed case record information consisting of lifestyle of peers and associates, 3.23(11)b9.

Schroeder questioned waiver of rule provision given to the director, 3.22, and wondered if the department wished to give this type of authority to the director.

Doderer suggested that personnel guidelines be tied to merit rules. However, it was pointed out that the department is attempting to offer personnel policies to outside agencies. Doderer suggested that if the department insisted on drafting guidelines they should still make them consistent with other state agency personnel procedures. Monroe also pointed out that this department only receives about 10% of its funding from the state.

SUBSTANCE ABUSE
(continued)

Schroeder questioned the witnessing of collection of urine specimens, 3.23(8)a, but Riedman stated that these rules were necessary to fulfill the requirement for federal funding.

ADJOURNMENT

Vice Chairman Monroe adjourned the meeting at 4:40 p.m., as there was no further business before the Committee, to be reconvened June 13, 1978, at 9:00 a.m.

Respectfully submitted

Phyllis Barry
(Mrs.) Phyllis Barry, Secretary
Assistance of Mary Applegate

APPROVED:

Chairman

DATE _____

Legislative Rules Committee

The proposed Rule 770-78.14(249A) has come to our attention as it apparently involves a change in the participation of audiologists licensed by our Board in the delivery of services to recipients of the Title XIX program.

In Section 78.14(1), physicians are designated as the sole professionals eligible to conduct examinations to both 1) determine that there are "no organic conditions which contraindicate the use of a hearing aid" and 2) "establish the existence of a hearing loss which can be corrected by the use of appropriate amplification."

The second part of the examination, "to establish the existence of a hearing loss" and to determine the "use of appropriate amplification", constitutes a definition, in part, of the practice of audiology, Chapter 147.151(5) Code of Iowa. While physicians are specifically excluded from having to have a license in audiology while practicing medicine, this proposed rule subrogates the legal prerogatives of licensed audiologists.

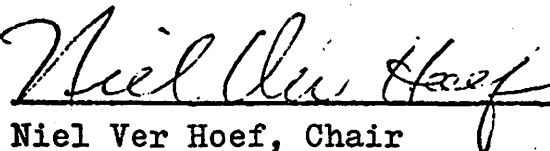
The expression, "can be corrected by", is contrary to the recent FDA rulings regarding the sale and use of hearing aids, and the expression is restricted from use by licensed hearing aid dealers by the Code of Iowa. The choice of wording as to the beneficial use of hearing aid amplification is unfortunately inappropriate, and perhaps illegal.

In Section 78.14(2), the procedure described as "hearing aid evaluation" has been defined, by use of our Board, as "Hearing Aid Selection":(Following the determination that a hearing aid is indicated, a series of measurements which may be taken to determine which of several aids would be most beneficial, and may include acoustic/electrical adjustments for a given aid.) Thus, the procedure results in a prescription of a specific brand and model of hearing aid to be fitted. Such a procedure is the legal prerogative of either licensed audiologists or licensed hearing aid dealers.

Hearing Aid Evaluation, as defined similarly by our Board; (Special procedures to evaluate the efficacy or feasibility of using hearing aid amplification; may include tests such as maximum tolerance for tones and speech, as well as tests in a sound field (through a loud speaker or similar system) with a sample or demonstration hearing aid.) Since this is part of the second portion of the examination in 78.14(1), determination of the usefulness of appropriate amplification, we point out that it is a process for which audiologists are professionally and legally qualified.

The Iowa Board of Examiners in Speech Pathology and Audiology does not believe that it is appropriate for it to offer specific amendments to the proposed rule, but does question the need for change since the present rule does allow for participation in the hearing aid delivery program to Title XIX recipients by licensed audiologists.

On behalf of the Iowa Board of Examiners in Speech Pathology and Audiology:


Niel Ver Hoef, Chair

May 13, 1978

Summary of 75 XIX recipients

Results

"Normal"	6
High tone	5
Central	5
Unilateral/Normal	<u>3</u>
Sub-total	19
Mild/Moderate	42
Severe	10
Profound	3
Unable to determine	<u>1</u>
Sub-total	<u>56</u>
TOTAL	75

Medical Clearance

"Needs", should have	7
"May" (permissive)	10
Audiologist evaluate	5
No remarks	5
"None" (contra-indications)	4
Specific constraints	2
"Could use"	10
"OK", "Try aid"	<u>14</u>
	57
No clearance prior	<u>18</u>
	75

Recommendations

Aid NOT indicated	22
Won't accept/wear	5
Present aid adequate	4
Repair present aid	<u>3</u>
Sub total	34
Purchase new aid	36
... on trial basis	<u>5</u>
Sub-total	<u>41</u>
TOTAL	75

Clearance forms signed	49
Rubber stamp	8
None	<u>18</u>
	75

IOWA ASSOCIATION OF HOMES FOR THE AGING

Statement concerning proposed revision in rules of the Department of Social Services, relating to Chapter 52, Chapter 54 and Chapter 57.

52. 1 (3) e. lettering appears to be in error. New section should be lettered "g".

54. 3 (11) - paragraph (4.) Many worth-while educational meetings, accredited by Iowa boards and agencies for continuing education, are held outside of the state. These should be reimbursable for administrators and other personnel, since this education is required for all employees.

54. 8 (1) a. These penalties are too harsh, in view of the fact that there can be honest disagreement between auditors as to what is a proper expense. The facility should have the opportunity for fair hearings. The continued inclusion of an item of cost believed by the facility to be proper should not be penalized until a hearing has been held and the facility given an opportunity to state its reasons. The same reasoning applies to 54.8 (2) f.

81. 4 (3) This rule is not clear. If this means a separate checking account for each recipient, a vast amount of needless bookkeeping is engendered, and cost of bank charges. If it is intended that a single checking account for all such patient funds is intended, the rule should so state.

81. 6 (11) e (4) Limitation to "in-state" meetings is unreasonable, and unnecessarily deprives administrators and other personnel - for all of whom continuing education is required - of educational opportunities. Out-of-state meetings are approved for this education by the appropriate licensing and supervisory bodies. The rule should also be expanded to include all personnel - not only administrators.

81. 6 (11) e (7) The expense limitation of \$.08 per patient day is arbitrary, and its basis in reasonableness is unfathomable. Such limitation needlessly punishes the personnel of smaller homes, for whom education is also required.

81. 6 (16) This entire section will be treated herein as a unit. The division into state-owned and non-state owned facilities appears to have been done arbitrarily to produce a lower level of reimbursement for the non-state owned facilities. All facilities providing the same level of care and licensed (or licensable) by the State Health Department for the same level of care should be in one class, and all reimbursed on the same basis and subject to the same rates. Only if a particular facility provides a lower level of care, or fails to provide the mandated levels of care should its rate be different. Facilities providing care for a significantly higher proportion of Medicaid recipients should be considered for an extra payment, provided they can demonstrate additional costs for this reason.

There should be no maximum allowable cost ceiling. Only if the auditors of the Social Services Department find that demonstrable inefficiencies are present, or that services are provided which are not included in the service contract, should the payment be less than audited costs. To set the maximum level at a point where 26% of the facilities are forever barred from recovering costs is an unwarranted confiscation of property without due process.

The maximum daily reimbursement, as used in the past year, was used as the basis for the 74% figure. Looking at the last Unaudited Compilation of Costs and Statistical Data reveals that the 74% figure happens to coincide with the previous maximum - leading to the inevitable conclusion of parentage. This does not coincide with any possible interpretation of "reasonable cost reimbursement".

The cost figures in this Unaudited Compilation are well over a year old at the time of use. The basis of reimbursement is therefore based on artificially reduced figures. Furthermore, there have been, and will be, known cost increases mandated in advance by federal law - the minimum wage increase, which is not recognized although well-known in advance. This increased on January 1, 1978, and will increase again on January 1, 1979, with no allowance made, and not reflected in these Unaudited Compilations until many months after payments have been made.

We repeat our belief that state owned facilities and non-state owned facilities should be reimbursed on the same basis. All provide care for the same type of patients, attempt to provide the same care, are subject to the same rules and regulations. It could be argued only that the state-owned facilities, being subject to closer scrutiny by the Department of Social Services, should set the standards, and if they can provide care at a lesser cost, their costs should be considered the maximum, and the total payment to such a facility would be the maximum for all facilities. If those facilities are operated as efficiently as we should be, and provide as good care as we believe they do, the example they set should be followed by all.

Iowa Association of Homes for the Aging
11 Blake Court S. E.
Cedar Rapids, Iowa 52403
Francis Lackner
Executive Secretary