

MINUTES OF THE SPECIAL MEETING
of the
ADMINISTRATIVE RULES REVIEW COMMITTEE

Time of Meeting: Tuesday, April 24, 1979, 7:05 a.m.

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

Members Present: Senator Berl E. Priebe, Chairman, Senators Edgar Holden, Dale Tieden, Representatives Betty J. Clark, Donald V. Doyle and Laverne Schroeder, all members present.
Also present: Joseph Royce, Committee Staff
Brice Oakley, Administrative Co-ordinator

Minutes: Moved by Tieden to dispense with reading of minutes of the April 10 meeting and that they stand approved.
Carried viva voce.

Chairman Priebe noted that today's meeting was being held basically to review rules published in the 4/4/79 IAB.

HEALTH DEPARTMENT
& MEDICAL EXAMINERS
Joint rules

Joint rules of the Health Department and Board of Medical Examiners pertaining to advanced emergency medical care were before the Committee. The rules, being Chapter 132, were published under Notice in 4/4/79 IAB. The following persons were in attendance: Peter Fox, Hearing Officer, Mike Guely, Acting Director, EMS Section, Health Department and Ronald Saf, Executive Director, Medical Examiners Board, Dr. James D. German, Chairman of Advanced Emergency Medical Care Council and Dr. Ronald Eckoff, Chief of Community Health Services.

Guely explained that the rules were intended to implement the emergency medical Act of last session [Chapter 147A of the Code].

Discussion of the definition of "Basic EMT"--[132.1(3)-- as being unclear and it was also pointed out that a date certain should be supplied. A major concern of the Committee was whether there was sufficient authority to certify basic EMT's and it was noted that an individual could function as an ambulance attendant without certification.

German indicated they had defined EMT as someone who has taken the 81-hour course or equivalent.

In response to Tieden as to who was the policy making body for the EMT program, Guely said the governing body would be the Governor's Advisory Council.

German reported that public hearings were held across the state and results were given to the Council. He emphasized that the basic EMT program is a voluntary one. Tieden was concerned as to lack of "overview."

Priebe thought that perhaps the Committee on Human Resources should be requested to review the law.

HEALTH Cont'd

Royce pointed out that the basic EMT is not regulated by law and to avoid misconception this fact should probably be clarified in the rules.

Schroeder found it "ridiculous" to require an applicant to possess a current "chauffeur's license--13.2(1)b. He stressed the importance of the services provided by basic EMT's when funds would not be available for a professional staff.

German assured the group that the "basics" will remain the backbone of the system." The advanced program is not mandatory.

Re 132.3(3), it was Schroeder's opinion that an individual who fails to pass the initial examination should be permitted to take a partial re-examination.

Clark took exception to 132.3(2)e which provided: "The passing score for each examination shall be determined by the board." This seemed to leave the matter "wide open" in her opinion. Guely indicated that varying tests are utilized and the scores could vary accordingly. The Board would have to make the final decision.

German noted that the paramedic program is not so "sophisticated" but is untested since the concept is entirely new throughout the country.

Schroeder could foresee possible problem with 132.3(8)d which he interpreted to be "a one-man censure." Guely said the word "or" had been added to avoid that type of situation. Eckoff added that the director referred to would be the local program director.

Doyle raised question in 132.9(2) re determination of proposed denial, suspension, or revocation being considered by two members of the council. It was his opinion the matter should be considered by the entire council,

Schroeder urged clarification as to intent of "and other health care professionals" as used in 132.5(5)b.

Fox sought guidance from the Committee re Council request to file the rules on emergency basis after the public hearing. Committee members were hesitant to sanction the request.

German pointed out that they were attempting to have the examination available as soon as possible. He noted that there was no mechanism for certifying persons who are already trained and practicing in the field.

In re 132.1(3), the following substitute language was offered by the Department and was acceptable to the Committee:

HEALTH Cont'd

132.1(3) "Basic EMT" means an individual not certified to perform any of the procedures listed in subrule 132.1(4), but who has satisfactorily completed the United States department of transportation's prescribed course for basic EMT's, as modified for this state and adopted by the board in the current "Basic EMT Policy and Procedure Manual" dated August, 1977, approved by the governor's emergency medical services advisory council and administered by the department. In addition, the individual shall also be certified as a basic EMT by the department.

No formal action taken by the Committee.

NCSL
San Francisco

Discussion of the NCSL meeting which is scheduled to begin July 23, 1979, in San Francisco. It was noted that a number of the seminars to be held would be of value to this Committee.

Motion

Schroeder moved that members of the Administrative Rules Review Committee--present members, as well as newly appointed members--Joe Royce and Phyllis Barry be authorized to attend the NCSL meeting in San Francisco.
Motion carried unanimously.

CONSERVATION
Nursery
Stock

Gene Hertel, State Forester, explained proposed Rules 48.1 to 48.4 relating to sale of nursery stock to the public, published in 4/4/79 IAB. The rules set out the practice the Department has followed for many years.

Tieden questioned the authority for the Department to confiscate plantings made at variance with the rules [48.3]. Hertel indicated this had been done but agreed the rule might be "a bluff."

Inland Com-
mercial
Fishing

Rules 110.1 to 110.3 pertaining to inland commercial fishing were submitted by Marian Conover and were acceptable to the Committee as published.

7:50 a.m.

Clark was excused temporarily to attend an Appropriations Subcommittee meeting.

INSURANCE
Skilled
Nursing
Coverage

Herbert Anderson, Commissioner of Insurance, appeared before the Committee for special review of rules 15.90 to 15.93 pertaining to skilled nursing facility coverage. The rules were considered by this Committee on February 13, 1979, and the effective date was delayed for seventy days at that meeting.

Anderson briefly reiterated that the rules were designed to prohibit unfair discrimination between insureds of the same class. Rule 15.93 would require that, if a policy pays a benefit for a resident in a skilled nursing facility, it must pay the same benefit "for the same service" in an intermediate care facility.

Anderson pointed out that the statutory basis for the rules was found in Code §507B.4(7)b.

Paul Brown, President, Iowa Life Insurance Association, appeared before the Committee to restate their opposition to the rules. [See minutes of 2-13-79 for full statement] He was uncertain as to the application of the rules.

Anderson enumerated "nonissues" in the matter as being: Disclosure; 24-hour RN service (he cited Health rules to show they don't require this); convalescent care--not required; inferior care--nothing in the rule shows this; substantial expansion of coverage--it would not be since most policies don't determine payment on basis of type of license. The "real issue", in his opinion, was whether or not the Insurance Department has authority to regulate.

James West, Counsel, Iowa Life Insurance Association, was concerned that the rule exceeded the Department's authority in §507B.12. He was "confused" about services rendered to residents and how to ascertain numbers and costs in providing coverage.

Anderson made a point that the rules identify specific acts which are prohibited under §507B.4(7).

Holden thought it was unclear as to whether the problem was one of misrepresentation or a lack of performance under the terms of the policy. Anderson indicated both are problems but misrepresentation is more serious.

Oakley arrived.

Holden quoted from a policy and expressed the opinion that the average person doesn't read the "fine print."

Bruce Foudree, Assistant Attorney General, said that protection of the individual is an ultimate goal of the Insurance Department and the rules provide this.

Discussion of definitions of "intermediate care facility" and "skilled nursing facility" as set out in §135C.1 of the Code. Opponents to the rules argued there were significant differences between the care provided in the two facilities.

J. C. White, Vice President, Mutual of Omaha Insurance Company submitted the following prepared statement prior to the meeting and commented briefly on it:

This letter is to note our objections to the proposed Administrative Rules for the reasons hereinafter noted.

By way of background our Company does not issue a policy covering nursing home confinement only either limited or otherwise. Such coverages are ancillary to other basic coverages only.

The only limited coverage is under policies specifically designed to supplement Medicare. Under such policies eligibility for supplementary benefits is conditioned upon eligibility for Medicare.

Other coverages on general line policies define eligibility based on medical necessity and facilities available to eliminate the uninsurable risk of custodial care.

In response to bulletin number 78-1 interpreting House File 2273 we eliminated all nursing home coverages on 15,603 policies held by Iowa Insureds. In the absence of a clear cut policy we are unable to effect our standing offer to reinstate these coverages without new waiting periods, regardless of an element of anti-selection and additional cost.

The proposed rule would not permit such reinstatement in that it proposes a new test of coverage namely Iowa Licensing Law rather than facilities and medical services.

INSURANCE Cont'd

We support the position expressed to the Committee by the Iowa Life Insurance Association and the Health Insurance Association of America. Resolution along the lines they recommend would permit an orderly reinstatement of benefits to Iowa policyowners. We have received a substantial number of complaints from our policyowners and are quite anxious to resolve this question.

Should any member of the Committee desire any further information we shall be pleased to provide any assistance we can.

Oakley observed the history of the rules and presumed the Committee "must be in agreement since there had been no legislative action". He indicated the Governor had no plans to object to the rules.

Priebe recommended that the Commerce Committee be consulted in an attempt to work out any differences.

Motion

Schroeder moved an objection as follows:

The committee objects to insurance rule 510-15.93, relating to unfair or discriminatory acts in the writing of skilled nursing facility insurance, on the grounds the provisions of that rule are unreasonable and beyond the authority of the department. The rule has been filed with the Governor's office and appears in 1 IAB 16 (1-10-79). On 2-13-79 the committee had invoked the provisions of §17A.4(5) and delayed the effective date of the rule for seventy days to allow time for further study.

Rule 510-15.93 defines as an act or practice constituting unfair discrimination between insureds of the same class:

"Providing, under a contract, any benefit for services received by a resident in a "skilled nursing facility" as defined in section 135C.1(3) of the Code if the same benefit is not also provided for the same services when received by a resident in an "intermediate care facility" as defined in section 135C.1(2) of the Code."

It is the opinion of the committee this rule is an unreasonable interpretation of section 507B.4(7)b, 1979 Code, which in pertinent part defines unfair discrimination as:

"b Making or permitting any unfair discrimination between insureds of the same class for essentially the same hazard...in any manner whatever." [emphasis added]

The committee believes that residents of skilled nursing facilities (SNF) or intermediate care facilities (ICF) are not members of the same class, and that services rendered in these facilities do not present essentially the same hazard; therefore discrimination between coverage in these types of facilities does not constitute unfair discrimination.

SNF's and ICF's cater to a significantly different type of clientele. The SNF is designed to provide an economical alternative to continued hospitalization of the patient, when a somewhat lower standard of care will suffice. The SNF appears to provide a recuperative and restorative type of care, with the goal of the eventual discharge of the patient. The emphasis in a ICF appears to be more custodial in nature, with recuperation and restoration playing a lesser role. Only about twenty-five per cent of the patients in an ICF are eventually discharged.

The most significant difference between the care in an SNF or an ICF is state §135C.1(3) requires that a SNF provide 24 hour nursing care, while health department rule 470-58.11(2)i imposes that requirement only upon ICF's of more than seventy-five beds, facilities under seventy-five beds need only provide a nurse four hours per week (58.11(2)j). Subrule 470-59.14(2) requires that SNF's provide discharge planning for all residents, no such requirement is placed upon ICF's. Rule 470-59.17 requires that a patient in a SNF be visited by a physician every thirty or sixty days, subrule 58.14(8) requires that a patient in an ICF be visited by a physician only every six months. Numerous other rules indicate that a higher licensing standard is indeed imposed upon a SNF.

INSURANCE
Cont'd
Objection

Since different licensing requirements are imposed upon these two types of facilities, it follows that residents are not "insureds of the same class", since different standards of care are imposed.

Services rendered to residents of either a SNF or an ICF do not present "essentially the same hazard", as required by §507B.4(7)b. The hazard is not the service rendered, rather, it is the likelihood of the need for that service, and the frequency of the need occurring. Patients who require a long convalescence after hospitalization are a relatively small and easily ascertainable group, using modern actuarial methods. Therefore insurers may reasonably approximate the numbers of people and the costs involved in providing SNF insurance. The ill and enfeebled residents in an ICF are a much larger group, who receive more-or-less permanent custodial care in addition to medical attention and medication. The likelihood are frequency of the need for services will be much more difficult to predict, since these people generally reside in the ICF until death.

Discussion followed. Oakley suggested that the Department be requested to issue a declaratory ruling on the matter. Foudree recommended that the rules be allowed to go into effect pending the declaratory ruling.

8:55 a.m.

Schroeder preferred to file the objection. Clark returned and a roll call was requested on the Schroeder motion to object. The following ayes were recorded: Tieden, Schroeder and Clark; naves--Holden; Doyle and Priebe "pass" [Priebe changed his vote to "aye"]. The motion to object was carried with 4 ayes.

Anderson indicated he would rescind the rules.

Holden wondered if there was any possibility of compromise. Anderson could foresee this only if the insurance industry were to draft the rules.

Committee members urged co-operation of all concerned. Schroeder thought there was a "middle ground to be addressed" and urged that his objection be allowed to stand.

Oakley knew of no "middle ground" but was of the opinion the declaratory ruling would aid in solving the problem. He considered the objection an unfortunate action.

Motion to
Reconsider

Schroeder took the Chair.

Clark moved to reconsider the vote by which the motion to object was adopted.

Roll call on the motion showed Tieden and Schroeder voting "no" and Doyle, Clark, Holden and Priebe voting "aye".

Motion to reconsider carried.

White indicated they had terminated nursing home coverage on approximately 15,000 policies since the matter had been "in limbo and they were unsure of which direction to take." In response to Schroeder, White said they were willing to reinstate the coverage when authorized to do so.

Anderson assured the group they could depend upon the Insurance Department to prepare the declaratory ruling today. Discussion as to purpose of declaratory rulings. The rulings

INSURANCE
Cont'd

would set out whether provisions of policies were in accordance with the law and rule.

Responding to Schroeder, Anderson said that a general ruling would not be possible--it would take many for specifics. Declaratory rulings should eliminate the uncertainty factor.

Schroeder questioned Royce as to what recourse the Committee would have in the event problems arise after the rules become effective. Royce responded that they could petition the Department for a change but if the petition were denied, there could be no further action by the Committee. Schroeder was inclined to favor the objection.

Motion

Doyle moved for unanimous consent to withdraw the objection. Carried viva voce.

PHARMACY
EXAMINERS

Angelo Palmer and Susan Lutz, Board of Pharmacy Examiners, were present for review of proposed Chapter 10--Discipline, Chapter 11--Drugs in emergency vehicles, and filed Chapter 9--Purpose and organization.

Holden took the position that the last sentence of 10.1(4)c --"Proof of actual injury need not be established."--would provide an excellent opportunity to harass someone. Oakley noted that with the language removed, it would be necessary to prove injury which would be a greater burden.

Doyle thought that 10.1(4)e--re conviction of a felony--should be limited to their own field. He noted that 9.1 which described the board was deficient in failing to include quorum and voting requirements. Further, Doyle raised question concerning 9.2(3) to 9.2(5) as to disposition of statements made outside the hearing.

No formal action taken by the Committee.

ARTS COUNCIL

Dwight Keller represented the Arts Council for review of proposed amendment to 2.1(5)h and g with respect to grants for organizations.

Royce called attention to 2.1(5)f which would establish a quorum as eight members. In the past, this Committee has recommended a majority of the entire board or commission to determine action which would require 10 members for the Arts Council.

Oakley did not concur. The Committee was inclined to agree with Royce.

ENVIRONMENTAL
QUALITY

The following rules of the Department of Environmental Quality were before the Committee, David Bach was Department representative:

ENVIRONMENTAL QUALITY[400]

Grants for construction of municipal sewage treatment works, 19.2(12).....N.....4/4/79

DEQ Cont'd

ENVIRONMENTAL QUALITY[400]

Air quality, definitions, effective date, 1.2(34) to 1.2(37).....F.....4/4/79
 Air quality, emission standards, effective date, 4.4(12), 4.5.....F.....4/4/79
 Air quality, odor complaints, effective date, 14.3(3).....F.....4/4/79
 Executive committee, change of address, regional offices, 50.4(5), 50.4(7), filed without notice.....4/4/79
 Executive committee, change of address, department, 51.1, filed without notice.....4/4/79
 Executive committee, change of address, department, 53.1(4), filed without notice.....4/4/79

There was brief discussion of the rules but no formal action was taken.

SOCIAL
SERVICES &
COMMERCE

The Committee requested the following rules of Social Services and Commerce Commission be placed on the May agenda:

SOCIAL SERVICES[770]

Community-based corrections, 25.1(17), 25.2(1), 25.4(6), (8) to (10), 25.5(2), 25.8(4), (7), (16).....N.....4/4/79
 Aid to dependent children, duplication of assistance, 41.5(2).....N.....4/4/79
 Food stamp program, ch 65, also filed emergency.....N.....4/4/79
 Medical assistance, right of subrogation, 75.4.....N.....4/4/79
 Intermediate care facilities, limitation of expenses, 81.6(11)"h"(4) to (6).....N.....4/4/79
 Family life homes, certification, 111.3(7).....N.....4/4/79
 Services, eligibility, 130.3(1)"b".....N.....4/4/79

Petition for adoption of rules, change of address, 4.1, filed without notice.....4/4/79
 Declaratory rulings, change of address, 5.1, filed without notice.....4/4/79

COMMERCE COMMISSION[250]

Gas and electric utilities, customer deposits, budget billing, discontinuing service, amends 19.4 and 20.4.....N.....4/4/79
 Certification of gas appliances, ch 26.....N.....4/4/79

D O T
Highway
Lighting

Tieden asked that the Secretary request a representative from the Department of Transportation to appear at the June meeting of this Committee to explain the criteria which is followed in determining placement of lighting where primary and secondary roads intersect.

REVENUE

Elliott Hibbs, Deputy Director of Revenue, represented the Department for review of the following:

REVENUE DEPARTMENT[730]

Hotel and motel tax, ch 103.....N.....4/4/79
 Practice and procedure, prehearing conference, 7.16.....F.....4/4/79
 Sales and use tax, amendments to chs 11, 12, 15 to 18, 20, 26.....F.....4/4/79
 Motor fuel and special tax, 18.37.....F.....4/4/79

Hibbs pointed out that out that some controversial areas of the hotel and motel tax law are being amended by the legislature this year.

Discussion of records required to kept by retailers [103.4]. Schroeder questioned the duplication of income tax records and Hibbs said there should be consistency in gross sales.

Re confidential information in 103.9, Hibbs responded to question by Clark that the examples of things to be disclosed are typical. Committee members concurred that the provision was vague. Hibbs indicated he would prefer to delete the examples rather than attempt to further clarify them.

Clark noted that item 8 of 104.9 was grammatically incorrect. She suggested placing parenthesis around the language beginning with "the department".

Doyle observed that it would be necessary to redraft the rules under the new law.

RECESS

Schroeder moved that the Committee recess until 4:00 p.m. to allow time for the Insurance Department to prepare the declaratory ruling concerning care facilities. Carried. Meeting was recessed at 10:05 a.m.

4:00 p.m.

The meeting was reconvened at 4:00 p.m. with Senator Berl Priebe and Representative Laverne Schroeder present. Also present were: Joseph Royce, Herbert Anderson and Kenneth Gingerich.

INSURANCE
15.93

The following amended version of Rule 15.93 was distributed by Schroeder:

510--15.93(507B) Unfair discriminatory acts or practices. The following is hereby identified as an act or practice which constitutes unfair discrimination between insureds of the same class: Providing, under a contract, any benefit for services received by an insured in a "skilled-nursing-facility"-as-defined-in-section-1356-1(3)-of-the-Code-if-the-same-benefit-is-not-also-provided-for-the-same-services-when-received-by-a-resident-in-an "intermediate-care-facility"-as-defined-in-section-135C-1(2)-of-the-Code; health care facility as defined in section 135.1, 1979 Code, which is medicare certified, or which provides continuous nursing care services and related medical services under the direction of a registered nurse or a licensed practical nurse on a twenty-four-hour-per-day basis in that facility, unless the same benefit is provided regardless of whether that facility is licensed as a "skilled nursing facility", or as an "intermediate care facility", as defined in section 135C.1, 1979 Code.

Schroder requested that the rule be forwarded to all interested persons present at this morning's session for their consideration. Anderson agreed to do so. No further action taken.

ADJOURNED

The meeting was adjourned at 4:20 p.m. for lack of a quorum. The next meeting is scheduled for May 15, 1979, one week later than the statutory date. [Later postponed to Monday, May 21]

Respectfully submitted,

Phyllis Barry
(Mrs.) Phyllis Barry, Secretary

APPROVED

Chairman.

DATE _____