

MINUTES OF THE REGULAR MEETING
of the
ADMINISTRATIVE RULES REVIEW COMMITTEE

Time of Meeting: Tuesday, February 13, 1979, 7:05 a.m.

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

Members Present: Senator Berl Priebe, Chairman, Senators Edgar Holden, Dale Tieden, Representatives Betty J. Clark, Donald Doyle and Laverne Schroeder.

*Holden + Tieden
replaced Kelly
+ Schroeder*

Also present: Brice Oakley, Administrative Rules Coordinator and Joseph Royce, Committee Staff.

Minutes: Schroeder moved to dispense with reading of minutes of the January meeting and that they stand approved.

Correction Senator Holden asked that the minutes be corrected to show his name as "Edgar". So ordered. *Schroeder motion carried.*

INSURANCE Herbert Anderson, Insurance Commissioner, was present for review of filed rules 15.90 to 15.93, IAB 1/10/79 re skilled nursing facilities coverage.

Skilled Nursing Facility Coverage

Paul Brown, President, Iowa Life Insurance Association, summarized their opposition to the rules from the following prepared statement furnished the Committee:

This is to express concern in behalf of the Iowa Life Insurance Association, the Health Insurance Association of America, and the American Council of Life Insurance over Administrative Rule pertaining to Skilled Nursing Facility Coverage issued by the Iowa Insurance Commissioner. Said Rule was published January 10, 1979, with an effective date of February 15, 1979.

The Rule would identify 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 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.

Insurance companies sell two types of products that, depending on how the Rule is interpreted, could be affected. The first is so-called Medicare supplement coverage which is designed to cover Medicare deductibles and other expenses not paid by Medicare. Some policies provide that they will pay only when the insured is in a facility certified by Medicare. Others will pay benefits as though the facility was certified if the facility provides 24 hour on duty nursing service under the supervision of a registered nurse.

The second type product includes an extended care benefit which typically pays a room and board charge of up to 50% of the maximum hospital room and board rate for a limited period (30-60 days) following hospitalization in a facility that provides 24 hour on duty nursing service under the supervision of a registered nurse. Some policies will pay if the 24 hour on duty nursing service is supervised by either a registered nurse or a licensed practical nurse.

The 24 hour on duty nursing service requirement is conceived as a meaningful way to assure that the care provided is curative or remedial and not custodial. The care provided by a facility not providing 24 hour on duty nursing service would most likely be custodial rather than remedial. The objective, in any event, is to not pay for custodial care.

INSURANCE Cont'd

Both the Medicare supplement coverage and the extended care benefits are meaningful. Medicare has been paying less and less of the cost of Medicare patients; I believe in some instances less than 50% of the cost. Extended care benefits are designed to reduce the cost of hospital insurance, since there is a savings if a patient can be transferred from the hospital to a less costly facility during the period of the patient's recovery.

We are not aware of policyholder misunderstanding or complaints directed toward extended care benefits. We do understand complaints have been directed toward Medicare supplement type products, particularly against those that will pay only for services provided by a certified Medicare facility. This is because there are only a limited number of such facilities and those purchasing such policies have not always understood that they were required to be in a Medicare-certified facility in order to receive benefits. This charge has been made nationally and in other states--and not just in Iowa.

As a result, the Health Insurance Association of America and the National Association of Insurance Commissioners have established task forces to study the problem. The consensus has been that there is a place for such products, but that greater care must be made in their marketing so that the public will know that there are only a limited number of facilities certified by Medicare. This means improved advertising and disclosure. An Insurance Department rule or law of this type would be supported by industry. The people I represent are as much interested in good marketing as anyone else. Ohio and Wisconsin have just adopted disclosure type rules, and one is pending in Colorado.

No other Department has issued a rule relating to the benefits. The use of the Unfair Trade Practices Act as authority for such a rule is subject to challenge because there is no underwriting classification of individuals involved. The requirement of Medicare certification or round-the-clock on duty nursing service applies to all equally. Discrimination does not exist as between individuals.

The benefits such policies pay are not conditioned on the type of license issued to the facility under section 135C.1 of the Code. It is our understanding that all skilled nursing licensed facilities must have 24 hour on duty nursing service under the supervision of a registered nurse. Intermediate licensed facilities need not have 24 hour on duty nursing service, except that the Department of Health has added this requirement for those having 75 or more beds. Most skilled nursing care licensees have been certified for Medicare, but not all, and then there are a few intermediate care facilities that have been certified. So there is no direct correlation between the type of license held by the facility and the payment of benefits under our products.

Consequently, we do not understand what is intended by the Insurance Commissioner's Rule. We would like to think that since our benefits are not conditioned on the type of license held by the facility that the Rule in no way affects the products described. Benefits will be paid to policyholders using skilled nursing facilities, and to some policyholders using intermediate care facilities, but not to those using either type facility, if the facility is not certified in the case of some Medicare supplements, or those for the purposes of other policies that do not have round-the-clock on duty nursing service.

Again, most intermediate care facilities do not have such nursing service.

At the October 26, 1978, hearing on the proposed rule called by the Insurance Commissioner, several witnesses who testified sought clarification of how the Commissioner would apply the rule. The question was would the rule apply to products that were not conditioned on the type of license held by a facility, but would pay a room and board benefit conditioned on 24 hour on duty nursing service, or conditioned on certification by Medicare. The Commissioner did not clarify how he would apply the rule then, nor has he since. His answer seemed to be the words speak for themselves.

Our companies view this result with alarm, because it is believed possible to interpret the rule as requiring that since our products would pay a room and board benefit to a policyholder using a facility with a skilled nursing care license that we would have to pay the same benefit to those using intermediate care facilities, regardless of whether they had 24 hour on duty nursing service. To pay for services in all intermediate care facilities would go far beyond the concept of insurance which is to pay for remedial and curative care and not custodial care.

INSURANCE Cont'd

Our alarm is compounded because regardless of how the Commissioner intends to apply his Rule, how will it be understood by the public? Will the public appreciate the significance of Medicare certification or 24 hour on duty nursing service when the rule only identifies the facilities involved by the type of license they hold? We think not.

We have submitted our views as to an appropriate rule to Commissioner Anderson by Mr. Carroll Callaway's letter of November 2, 1978, and in turn to the Legislature in the form of a suggested bill, as set out in Mr. Callaway's second letter dated January 8, 1979. These are attached. Both approach the problem, like others have, as a matter of disclosure.

The Bankers Life has a current updated filing pending with the Insurance Department. This plan includes both Medicare supplemental benefits for those over 65 and an extended care benefit for those under 65. Attached is a letter from the Insurance Department asking the Company to explain how the Rule would affect the plan.

If the Insurance Department has to ask the companies for an application of the Rule, and we are not certain what is intended by the Rule, how can it be understood by the public?

We urge the Legislative Rules Review Committee to delay the effective date of the Rule as permitted by section 17A.4-5 of the Code or to otherwise delay or reject the Rule in order to give the Legislature time to study and examine the Rule in light of the disclosure bill that has been subjected by our industry for legislative consideration. The alternative could be long delayed litigation. Hopefully, all will agree this alternative should be avoided through a better resolution. We continue to offer our services to work with the Insurance Commissioner and the Legislature in an effort to more appropriately resolve the matter.

Anderson responded that the statutory basis for the rules is in the Insurance Trade Practice Act--Ch 507B of the Code. Section 507B.4(7)"b" declares an unfair trade practice by an insurer as "making or permitting any unfair discrimination between individuals of the same class and equal expectation of life in the rates charged for any contract of life insurance or life annuity or in the dividends or other benefits payable thereon..."

Rule 15.93 which requires that, if a policy pays a benefit for a person who is a resident in a skilled nursing facility, it must pay the same benefit, if the person receives the same service--the key being "same service"--in an intermediate care facility.

Anderson quoted the following by John Buckley, Health Facility Division, Health Department: "There are a number of intermediate care homes that offer fine, high level, quality care and these homes could participate if they chose to do so. They don't choose to do so for various reasons. The skilled nursing category is a voluntary one and even though an intermediate home could qualify, they aren't required to be licensed or certified if they do not choose to. It appears to us that where we have in the state 23 licensed skilled facilities principally located in the major metropolitan areas not readily accessible to a majority of the population from the standpoint of distance, nor available from the standpoint of availability of beds--we understand the

INSURANCE
Cont'd

occupancy runs quite high--that if a person can actually receive, in another type of facility with a different type of license, the same kind of service that the person would receive in a skilled facility and if that person has paid an insurance premium for that benefit, the availability of the insurance benefit should not be tied strictly to licensing but to the quality of care."

Anderson continued that after talking with several persons in the Health Department, including Commissioner Pawlewski, he was convinced that (1) many facilities in Iowa licensed for intermediate care have available a level of care equal to that required for skilled nursing; (2) the licensing requirements in Iowa, as opposed to those of other states, are much higher for skilled nursing care facilities. Policies or actuarial data figured on a strictly by-state basis are not known. People are paying for care which is paid for in other states and which is delivered in many intermediate care facilities in Iowa.

Tieden was concerned as to how a carrier could ascertain who would be covered when the law does not mandate "equal care, equal pay."

Anderson said this could be determined through claims administration as to the type of service which was rendered. He added that the rules are not intended to require changes in policies which contain certain qualifications, e.g. a patient must be in a facility certified for Medicare. The rules merely provide that, if the patient is receiving the same kind and quality of care for which services are paid in one facility, the patient should have the availability of insurance coverage in a facility licensed for intermediate care.

Schroeder recognized the problem of the insured who have older policies which were purchased prior to reclassification of facilities. He was interested in knowing the number of states which are paying in similar situations. Anderson indicated that such information had not been developed.

Anderson reported there are approximately 14,000 intermediate care beds in Iowa and 23 licensed skilled nursing care facilities. In addition, 6 hospitals are licensed for skilled care.

Richard Berglund, representing Iowa Hospital Association, Americana Health Care Corporation, and Iowa Association of Homes for the Aged, expressed concern as to insurance company reaction to the rules in that they may discontinue writing coverage for care in question. He pointed out that skilled

INSURANCE
Cont'd

nursing facilities were creatures of federal statute (Medicare) and ideally more of this type of facility is needed rather than leaving the qualifications of care facilities to insurance companies, as we seem to be doing." Berglund reasoned that licensing provisions determine the level of care and that the rule would tend to destroy this concept. He urged approval of pending legislation which would, to some extent, resolve the problem of the insurance policy which is not quite up to standard and the insured being misled as to the type of coverage they actually have. He further urged perusal of licensing requirements, both legislatively and administratively, in an attempt to make available additional skilled nursing care facilities in the state.

Oakley had trouble differentiating the benefit described in the rule and the facility to which it was applicable. He asked, "How does the department or the industry address the problem of the individual knowing beforehand--not afterward--whether they have adequate coverage for a specific type of care?"

Anderson referred to Chapter 135C of the Code which provides that a physician must certify the type of care and the insurance policy sets out qualifiers. The rule does not affect this. He added that the Department never intended that the rule deal with the disclosure issue. He pointed out that they have other rules governing advertising of accident and health policies to prevent deception. Further, they are developing additional kinds of disclosure through a task force of the National Association of Insurance Commissioners to require much more specific information.

Oakley commented that if the problem is one of disclosure, it should be fairly simple to correct. Anderson replied that on the contrary, a disclosure rule is difficult to enforce because of verbal misrepresentations of policy. People are led to believe as much by "omission as by commission." Basically, people are unwilling to testify at a hearing setting with the kind of evidence needed. Anderson concluded by saying that a goal of the department is to develop a "Buyer's Guide" which will set out detailed information as to type of coverage.

Holden referred to "any benefit for services" in 15.93 as being rather broad. He agreed that the statute was inadequate but thought a law should be written to provide that policies enumerate exactly which services would be covered.

Priebe reiterated that one problem was lack of uniformity in classification of facilities throughout the country.

Brown, in closing remarks, said the problem is "one of disclosure, particularly, in Medicaid pamphlets." It was his opinion the rule "does nothing but has some element of danger--the patient doesn't understand it."

INSURANCE
Cont'd
Delay
70 days

Schroeder moved to delay the effective date of Rules 15.90, 15.91, 15.92, and 15.93 for seventy days to allow the Committee further time for study. He also requested that the Committee on Human Resources and the Commerce Committee be notified of the problem and urged to prepare a better definition of care facilities.
Motion carried viva voce.

Holden asked if it would be possible to provide a list of homes which would be considered as "certified."
Anderson wanted to guard against a patient purchasing a policy under "assumption." He cautioned against legislation which would focus on only one particular problem.

In answer to Priebe as to whether patients could be adversely affected by the delay, Anderson stated that patients would continue to be paid for benefits they are currently receiving. He added that some insurance companies have been attempting to comply with the rule but with the delay, this practice may cease.

Amendments
2.2(2), 2.3
2.5

There was brief discussion of proposed amendments to Insurance rules 2.2(2), 2.3 and 2.5 pertaining to petition for adoption of rules, published IAB 1/10/79.

Clark pointed out a grammatical error in 2.5, paragraph e. She recommended that the sentence read as follows: "Rule on the relevance of an oral presentation or discussion."

REVENUE

Elliott Hibbs, Deputy Director, and Carl Castelda, Excise Tax Division, represented the Revenue Department for review of the following:

REVENUE DEPARTMENT[730]

- Real estate transfer forms, 8.1(8) N 1/24/79
- Electricity, tax exempt, 17.3 N 1/10/79
- Motor fuel and special fuel, 18.37 N 1/10/79
- Elderly and disabled, tax and rent reimbursement, amendments to ch 73 ..N..... 1/24/79

REVENUE DEPARTMENT[730]

- Sales and use tax, amendments to chs 11, 12, 15-18, 20, 26, 32-34 .F.,..... 1/24/79

Hibbs told the Committee that 8.1(8) describes, by rule, the real estate form (already in use by the Department) which was discussed at the January meeting of this Committee.
Schroeder advised the Department to follow the rulemaking process prior to their adoption of such forms.

Re 17.3, Hibbs stated that, as a result of Committee objection, the Department sought an expert opinion as to whether electricity could be included in the definition of "fuel". The Department was advised that the common interpretation is that electricity functions in the same way as fuel and that it was legislative intent to include it as "fuel". Therefore, electricity used as a fuel in agricultural production or in grain drying would be tax exempt. The rule would be retroactive five years for refunds.

REVENUE
Cont'd

Hibbs readily admitted that proposed 18.37, dealing with motor fuel and special fuel, was controversial and they would hold a public hearing on March 14.

Tieden wondered what was the basis for the proposed rule and Hibbs referred to §§422.25(11) and 422.45 of the Code. Hibbs noted there had been inconsistencies over the years.

Holden took the position the Department was "straining the meaning of the law to conclude this type of application--this fuel is ultimately taxable."

There was discussion as to whether the Department should have sought legislation rather than developing the rule. Oakley thought that situations such as this can be avoided now that his office will be working closely with agencies. It was noted that 17A.4(6) of the Code grants the Governor rescission power. Schroeder thought that statute should be amended to allow such rescission "35 days after the effective date" rather than "35 days after publication."

The following statement was submitted by Marlys Phipps on behalf of the Independent Truckers Association:

This paper is submitted on behalf of the Iowa Division, Independent Truckers Association - a non-profit organization. The Iowa Department of Revenue intends to file Rule 18.37 dealing with motor fuel and special fuel. Rule 18.37 (2) reads, in part, as follows:

"Claims for fuel tax which is refunded or credited under the provisions of Chapter 324 of the Code must be reduced by any sales or use tax owing the State unless a sales tax exemption is applicable."

Before the rule is presented and/or adopted, we urge that the present Office of Attorney General be requested for a formal opinion as to whether Code of Iowa 1977 - 422.45 (11) and 422.52 (4) mandate the imposition of the sales tax under the conditions set out in the example used by the Department of Revenue to illustrate the proposed rule.

We urge that the Attorney General be requested to furnish a formal opinion as to whether Code of Iowa 1977 - 324.50 governs the payment of the tax on motor fuel for highway use, and whether that act was intended to deal, in total, with such tax.

The tax now imposed by the State of Iowa on diesel fuel is high; and it is scheduled, by law, to be increased another one and one-half cent per gallon on July 1, 1979. This will place the excise tax at 11.5 cents per gallon. The industry is also facing increased costs at the pump, exclusive of taxes. We cannot stand paying more and more. While the consumer is fighting inflation, the states are adding fuel to the inflation fire by imposing taxes that increase our costs of operation.

REVENUE
18.37 Cont'd

Many truckers now purchase fuel in bulk from Iowa distributors; however, if this rule is adopted, the trucker will have no alternative except to closely watch fuel consumption and purchase fuel in each state where traveling. The impact on the Iowa fuel distributors is impossible to measure; however, it could be catastrophic. While the Governor of Iowa is encouraging industry to move to Iowa, the Department of Revenue is proposing a rule that will hurt industries now headquartered in Iowa. It is time to consider what is good for the current residents of Iowa. The money realized by the imposition of this sales tax would be minimal compared to the loss of revenue to the Iowa distributors. Would the financial gain to the Department of Revenue compensate for the increased cost to Iowa consumers and the loss of business to hundreds of Iowa residents?

How would such a tax be administered? The price of fuel fluctuates from station to station - even fluctuating at the same station depending upon the type of service given. The trucker who pumps his own fuel without the frills pays less than the company driver who has his rig fueled by an attendant. How would the State arrive at an average per gallon charge? The collection of such a tax would be an administrative and industry nightmare. The logic of such a tax is difficult to understand. No sales tax is collected on what is used in Iowa, but a tax is imposed on what is used outside the state.

We feel that the administrators involved could benefit by following the old adage - "Never mistake activity for achievement". We urge that the rule not be adopted.

It was noted that legislation had been drafted to resolve the issue in 18.37.

Ch 73

There was brief review of Chapter 73 amendments. No formal action.

Sales &
Use Tax

Re sales and use tax amendments to Chapters 11, 12, 15 to 18, 20, 26, 32 to 34, Elliott said changes had been, as suggested by the Committee when the amendments were reviewed under Notice. Rule 17.16 was changed to provide that other breeds of horses which might be considered draft horses, in addition to those previously enumerated by the Department, could possibly be included under the tax exemption.

Subrule 26.42(2) was clarified with respect to storage of raw agricultural products.

In answer to question by Schroeder regarding parking lots [26.35], Hibbs indicated the Department is following the Supreme Court decision--M. F. Sorg v. Revenue Department. He added that legislation is pending to include indoor parking lots in the definition of parking lots.

Clark raised question re 15.3--certificates of resale or processing, particularly, 15.3(1)b, c, d and e. Since the purchaser wants to avoid paying sales tax, the purchaser rather than the

REVENUE
Cont'd

seller should have proof. In her opinion, the rule should require the purchaser to have the certificate. Hibbs explained that prior to January 1, 1979, the seller had responsibility for the tax, regardless of exemption certificate. After January 1, 1979, 15.3(2) sets out a dual responsibility.

Clark called attention to the "Example" in 15.3(2) which seemed to her to be merely a restatement of the previous paragraph. Castelda agreed that it was repetitious but the "Example" was included in the rule upon recommendation of the Iowa Manufacturers Association.

Clark brought up the question of sales tax on a repossessed item. Castelda quoted from §422.46 which covers this type of transaction.

Clark also noted that the expression "span of years" in 18.28(1) seemed vague. Castelda said the language came from a Polk County District Court case regarding casual sale-- City of Des Moines v. Revenue Department.

Clark pointed to "predominately" which had been used profusely in 26.42(5) and suggested the correct spelling "predominantly" be substituted where necessary.

Acceptable The following items on the agenda were acceptable to the
as Published Committee as published:

COMPTROLLER[270]	
Personnel management information, 5.2	1/24/79
MERIT EMPLOYMENT[570]	
Pay plan, ch 4 amendments	1/10/79
EMPLOYMENT SECURITY[370]	
Employer's records and reports, 2.12(2)	1/10/79
Employer's contributions and charges, 3.29(1, 2), 3.47(3), 3.50, 3.51, 3.84(1)"c"	1/10/79
Claims and benefits, 4.22, 4.28(5), 4.34(11) 4.39(1)	1/10/79
Job orders and related areas, ch 7 amendments	1/10/79
Forms, ch 10 amendments	1/10/79
ENGINEERING EXAMINERS[390]	
Discipline and professional conduct, ch 4	1/24/79
PHARMACY[620]	
Continuing education, 6.8(9)	1/10/79
Nuclear pharmacy, 6.9	1/24/79

TRANSPORTATION

06K, 4.1 Don East, Office of Road Design, Transportation, explained
06Q, Ch 8 rules published under Notice, IAB 1/24/79, pertaining to high-
way lighting, being [06,K], 4.1 and rescission of [06,Q] Ch 8.
Two rules were combined into one to redefine desirable mounting
heights of roadway lighting above the road surface and they
recommended use of high pressure sodium light source rather
than mercury vapor.

Priebe was concered that energy is wasted by excessive lighting
in many areas. East responded that yellow (sodium) lighting
cuts the use of energy in half. Holden expressed a definite
need for good lighting at the radius.

TRANSPORTATION Tieden asked what guidelines are used to select intersection
Cont'd lighting. East replied that the county makes request to
DOT and the request is reviewed under their rules and, if
approved, they work with the county.

Harold Shiel, Director of Office of Urban Systems, DOT, appeared for review of filed emergency rules published IAB 1/10/79, being [06,P], 5.1, 5.2 and [06,Q], 18.1, 18.2, dealing with improvement of off-system roads and streets which is a federal-aid program. The department was notified in November that the funds would run out this year. The Committee was concerned there would be extravagance in use of funds. Clark cited as example of bridge construction. It was her opinion, standards should vary with the location and use.

Responding to question by Tieden, Shiel said that mailings were made to apprise cities and counties of available funds. Money will be allotted to those who have need and have requested help with projects.

RECESS

Chairman Priebe recessed the meeting at 9:05.
Meeting was reconvened at 9:20 a.m. Priebe in the Chair.

SOCIAL SERVICES The following rules were before the Committee for review:

SOCIAL SERVICES[770]

Hearings and appeals, 1.2(8)	F.....	1/24/79
ADC assistance payments, 40.7(5)	F.....	1/24/79
ADC school attendance, 41.1(4)	F.....	1/24/79
ADC conditions for granting assistance, 43.1(2), 43.2(1), 43.2(7), 43.3(4), 43.4.....	F.....	1/24/79
ADC Payment, ch 45	F.....	1/24/79
Medical assistance, 78.6(13), 78.7(4).....	F.....	1/24/79
Girl's training school, 102.1(1)	F.....	1/24/79
Boy's training school, 103.1(1)	F.....	1/24/79
Social Security Act, 131.1(2)	F.....	1/24/79
Sheltered work/work activity, ch 155.....	F.....	1/10/79

Representing the Social Services Department were:
Judith Welp, ACT Unit; Roger Herr, Bureau of Financial Assistance; Joe Mahrenholz, Bureau of Medical Services; Bob Stickel, Past President of Iowa Association of Rehabilitation Facilities; and Harold Poore, Bureau of Family Support Services.

Amendment to 1.2(8) was acceptable to the Committee as published

Re 40.7(5), Priebe wondered if anything could be done to avoid "manipulation to gain another month's assistance." Welp pointed out that the Department must make "timely notice before discontinuance of payment."

No recommendation was made for 41.1(4).

Oakley raised question concerning Chapter 43 amendments as to who pays costs for appointment of conservator. Welp explained that the Department does not pay the initial fee but would allow \$10 monthly after that. Herr said the Department has no specific stipulation as to who the conservator would be. In most instances, it is a family member. Department officials agreed to provide the Committee and the Governor's office additional information on the subject.

- SOCIAL SERVICES Discussion of Chapter 45, ADC payments.
 Cont'd Clark referred to 45.4(1) which listed circumstances when "underpayment may be attributed to the local office."
 Ch 45 It seemed to be an unusual practice to limit, by rule, the kinds of errors, in her opinion. Further, she questioned the rationale of 45.4(2) which provided: "Retroactive corrective payments shall be made only for the 12 months preceding the month in which the underpayment is discovered." Herr stated this is based on federal regulation.
- 78.6, 78.7 In re medical assistance^{for} reading glasses--78.6(13) and 78.7(4), Schroeder was doubtful that frames could be purchased for \$11. Mahrenholz explained that the Department allows actual laboratory cost on lenses but only \$11 is allowed for frames. Clark recommended that next to the last sentence of 78.7(4) be corrected grammatically to read: "The actual laboratory cost for frames shall not exceed eleven dollars."
- Chs. 102, 103 Clark, in noting amendments to rules relating to training schools for children, suggested that legislation should be initiated to rename said schools to conform to the co-educational programs being offered there.
- 131.1(2) Amendment to 131.1(2) would allow expenses for Title XX advisory committees to encourage more client participation. Committee members were of the consensus that the rule should provide limitation for expenses to coincide with amounts allowed other state officials. Question was raised, however, as to the legality of allowing expenses.
- In response to question by Priebe, Welp said there are 32 committee members and under federal law, they are required to meet four times each year.
- Holden thought it might be in order to seek legislation to clarify per diem and expenses for advisory boards, in general.
- Priebe suggested possible delay of the subrule before them. Schroeder quoted from Comptroller rules which set out maximums allowed state employees for meals and lodging.
- Holden reiterated that the Legislature should act on the matter to include all boards and agencies under jurisdiction of the state.
- Oakley offered a suggestion that the Auditor of State be asked to assist in collecting data as to procedures of various boards and commissions. He was hopeful the matter could be resolved without needless delay since he considered it very important to have citizen participation on the various advisory committees.
- Schroeder recommended letting the rule stand but that the Department advise the committees to stay within certain guide-

SOCIAL SERVICES lines as those set out by the Comptroller--lodging and
 Cont'd meals not to exceed \$22 per day (\$10 for meals, \$12 for
 131.1(2) lodging).
 No further committee action.

Ch 155

Welp said that Chapter 155 had been rewritten for clarity and a substantive change was the addition of a second accrediting body for the purchase of service programs.

Stickel, responding to question by Tieden, stated there are approximately 70 work/shelter programs in the state. With the exception of the Marshalltown area, no one need travel further than 30 miles to participate in a program. The purchased services are approximately 75 percent locally funded with matching Title XX funds. Many have workshops in conjunction with the programs which helps to reduce costs.

78.2

At the request of Chairman Priebe there was special review of Social Services Rule 78.2 pertaining to dispensing of drugs by retail pharmacies for medical assistance recipients.

An Algona doctor had complained about excessive paper work in connection with prescription records. Dana Petrowsky, Health Care Facilities Services, Department of Health, told the Committee she had contacted the doctor and the matter had been resolved.

Schroeder raised question about a so-called "delivery fee" of \$2.50 added to the cost of each prescription. Welp explained the fee in question would be a "professional fee" which the Department pays along with the actual cost of the drug. The Department limits a prescription to a 30-day supply except for certain "maintenance drugs" for which 90 days is allowed. Mahrenholz pointed out there are exceptions, as in the case of antibiotics needed for only a few days.

The Committee favored a 60-day maximum with the doctor having some discretion. However, Tieden did not want to jeopardize the patient.

Mahrenholz pointed out that eligibility of an ADC recipient is determined on a monthly basis so the state could be paying for an extra month of medical benefits.

Holden offered a suggestion that the requirement could be to mandate that the physician write the prescription for the maximum amount of time the patient is expected to need a particular drug up to the maximum of 60 days. Department officials agreed to study the matter, in particular, as it would apply to health care facilities.

CIVIL RIGHTS
 1.3(5)
 2.15

Representing the Civil Rights Commission for review of 1.3(5) and 2.15 under Notice, IAB 1/10/79, were Ed Detlie and Bill Stansbery.

Stansbery summarized 1.3(5) as requiring that all records relevant to a complaint or investigation of discrimination be preserved by the respondent until such complaint or investigation is adjudicated.

In answer to Priebe as to the backlog of cases, Detlie estimated 60.. He continued that 22 decisions were handed

CIVIL RIGHTS
Cont'd

down last year. There are now three hearing officers for this year and by the end of that time, the Commission anticipates they will be caught up.

Committee members could see a problem if records had to be kept for long periods of time.

Motion

Holden moved that the Commission be requested to place a time limitation on preservation of the materials relevant to a complaint or notice of investigation, thus encouraging the investigator to extract pertinent data from employment records so that said records could then be disposed of as the employer sees fit.

Discussion of the motion.

Oakley could see no problem since the word "adjudication" includes dismissal--all kinds of disposition, and there were procedures under the Act, as well as regular judicial and hearing procedure, in which persons persons complained against could ask for dismissal. It was his opinion, there should be equal obligation on the part of the plaintiff and defendant.

It was noted that a public hearing was scheduled for March 13.

Priebe recalled "strictly harassment cases" and the record storage problem in those instances.

Motion
Carried

The Holden motion was approved unanimously.

Detlie reviewed proposed Rule 2.15 with respect to employment practices. Said rule would put into rule form the basic requirements of Executive Order No. 15 which placed certain requirements on departments and officials responsible to the Governor.

Detlie conceded that question had been raised as to who is responsible to the Governor; for example, would elected officials be included. It was anticipated that this issue would be revealed at the March 13 public hearing concerning the rule.

Detlie continued that the rule which also implements the Civil Rights Act addresses the state as an employer and that would be inclusive under the 14th Amendment of U.S. Const. as to what state action would be considered discriminatory.

Schroeder questioned reporting requirements in 2.15(9). He wondered about exemption status granted to first deputies and certain other positions in the executive branch.

Detlie quoted from Article IX of the Executive Order which read in part "...each state agency shall report to Civil Rights each year...." This language would not seem to indicate exceptions, in his opinion.

Oakley emphasized that the import of the rules was quite extensive. He indicated his office, as well as the Governor,

CIVIL RIGHTS
Continued

is interested in reviewing the Executive Order in light of passage of Chapter 1179, 67GA. Currently, they are examining the legal status of executive orders, the coverage of executive orders with regard to various departments, the status of affirmative action programs in the state because this raises some basic questions--among them, the question of the relationship of state licensing boards and commissions. There is scarcely a department that it is not responsible for some type of licensing. Oakley continued by pointing out there is a broad delegation by the legislative branch in Chapter 601A of the Code and Chapter 1179, 67GA. Therefore, the executive order only somewhat expands upon that and is not merely "bottomline executive order."

Oakley informed the Committee of his plan to attend the hearing scheduled for the Civil Rights amendment. In addition, he will attend many of the hearings scheduled by various agencies.

In response to question by Holden as to what impact the rules would have on the Commission work load, Detlie replied that if the rules are followed "in good faith" there should be no major change. Holden pointed to many areas which would require "monitoring."

Oakley offered an opinion that, if the job is handled properly there would be a great amount of time and expense involved, since many agencies have not attempted to be in compliance. He concurred with a remark by Holden that some duplication of effort would be inevitable.

Tieden wondered if 2.15(2) would be interpreted to require each agency, regardless of size, to prepare an affirmative action plan. Oakley could see no alternative. He added that an attempt is being made to identify those departments, boards and commissions that are required to file rules under Chapter 17A--there are approximately 200.

Tieden referred to the last sentence of 2.15(5) pertaining to state employment services: "All such agencies shall report to the civil rights commission any violations by state agencies and any private employers or unions which are known to persist in restrictive hiring practices." It would seem to require "tattling", in his opinion.

Detlie said this would basically apply to Job Services.

Clark questioned the last sentence of 2.15(7) and was informed that it was set out by §601A.14(12)b(1) of the Code.

CIVIL RIGHTS Schroeder took the Chair.
Cont'd

Clark wondered if report forms mentioned in 2.15(9) should be submitted under Chapter 17A since it deals with an area which is of concern to the public.

Oakley agreed this would create questions. The Executive Order of 1973 provided that, in the area of licensing, any licensing agency responsible to the Governor "shall" institute such disciplinary action, including revocation. The legislation passed last year uses the word "may"--a very important distinction. The Executive Order will be reviewed to conform with legislation and applicable provisions.

No formal action taken by the Committee.

HEALTH
Care
Facilities

Dana Petrowsky represented the Health Department for review of the following amendments carried over from the February meeting:

HEALTH DEPARTMENT[470]

Care facilities. 57.23(2)"b", 58.11(1)"f", 58.14(8), 58.26(2)"b", 59.13(1)"f", 59.31(2)"b", 63.21(3)"b",

Said amendments were filed emergency and published in IAB 12/13/78. Some Committee members had expressed concern as to the economic impact of the rules which govern activity co-ordinators in licensed health care facilities.

Petrowsky said that staffing for the activity program had been 30 minutes per licensed bed per week. As a result of suggestion by the Iowa Association on Aging, the Department published Notice of intended action to allow 25 percent of the time to be provided by volunteers. Most persons who attended the August public hearing on the proposal expressed opposition. The Department decided against adoption of the proposal but it was inadvertently included in another submission of adopted rules. Petrowsky continued that the amendments before this Committee are merely to delete the objectionable language.

Petrowsky estimated a savings of 37 cents per bed per week if the 25 percent figure was implemented.

Priebe took the Chair.

Clark questioned Petrowsky as to the basis for the opposition to the 25 percent volunteer program. Petrowsky indicated there was concern there would not be an effective activity program with someone working less than 30 minutes per bed. The average facility in Iowa has 74 beds which would basically require one full-time person (40 hours per week).

Clark commented that the rules seemed to require paid volunteers. Since expenses are high, she favored a program with volunteer supervisors directing other volunteers.

HEALTH Cont'd Clark and Schroeder wondered if a program could be mandated without stipulating there be paid personnel.

Petrowsky responded that Iowa is minimal with the 30-minute requirement. She made a point that no nursing home administrator had spoken against their proposal. She concluded, "The Department feels the rule is important since the quality of life of the patient is affected.

Tieden rationalized that the mere fact an individual is being paid does not guarantee quality of the project.

Motion

Schroeder moved the following objection:

The Committee objects to the amendments to 470 IAC 57.23(2)b, 58.26(2)b, 59.31(2)b and 63.21(3)b, which strike the phrase "Twenty-five percent of the staffing may be provided by qualified volunteers. The time shall be spent in working with the organized program activity.", on the grounds these provisions are unreasonable. It is the understanding of the committee these deletions in effect require facilities to employ a person to coordinate recreation activities. It is the feeling of the committee this would result in higher per bed costs without demonstrably improving the services rendered to the patient. Volunteers have always played a major role in health care institutions, and no evidence has been submitted indicating a decline in that role or in public interest in donating time and energy.

Clark offered a suggestion that each volunteer could be responsible for maintaining a daily record of his or her activity.

Committee asked that the Department draft rules to define the activity program and leave to the care facility the responsibility of determining how best to utilize volunteers.

Objection

The Schroeder motion carried unanimously. The rules would cease to be effective 180 days after the objection was filed with the Code Editor. [§17A.4(2)]

COMMERCE
COMMERCE

Filed emergency amendments to Rules 19.4 and 20.4 regarding gas and electric utilities budget billing, IAB 1/10/79, were before the Committee. Those present from the Commerce Commission were: Fred Moore, General Administration, Diane McIntire, Legal Counsel, John Hensel, Executive Secretary, and Leroy Baatz, Utilities Division.

Moore led the discussion on the rules which were filed emergency "in an attempt to expeditiously resolve a problem of electricity and gas disconnection due to nonpayment of bills and deposits, especially during cold weather." The Commission was aware of the highly emotional issue but were confident undue hardship on the utilities could be avoided while the matter was being resolved.

Moore said that beginning in October last year, hearings were conducted in six cities in Iowa, including Des Moines. Moore summarized the purpose of the amendments:

1. The residential customer who has been unable to pay in full and faces "disconnect" must be offered a reasonable

COMMERCE
Cont'd

payment plan which should take into consideration the customer's finances.

2. During the period between November 1 and April 1, no disconnection may take place if it would be especially dangerous to health.

3. Disconnection of residential customers may not take place on a weekend, holiday or after 2:00 p.m., unless the utility is prepared to reconnect the same day. Disconnection may not take place if the temperature is predicted to be less than 20°F. or on a day before the utility business office will be closed.

4. The customer must be offered a budget billing plan and be allowed to enroll in such a plan at any time without initial payments.

5. No residential customer may be disconnected for failure to provide a deposit between November 1 and April.

6. With the notice of disconnection, the utility must include a written summary of rights and remedies available to the customer to avoid disconnection. The utility must also attempt to personally contact the customer to impart the same information.

Schroeder quoted from Item 1, new language to be added to 19.4(2) as follows: "A new or additional deposit may be required upon reasonable notice of the need for such a requirement in any case where a deposit has been refunded or is found to be inadequate or where a customer's credit standing is not satisfactory to the utility."

It was his sentiment that the sentence would nullify the remainder of the rules.

Department officials pointed out that this language was merely transferred from another rule.

Priebe viewed the matter "realistically" in that "someone would have to pay" and he considered it "wrong to make the utility a scapegoat."

Moore spoke of the proposition of a complete moratorium between November and April as being considered "too extreme" by the Commission.

Holden was concerned as to how the plan was working even though he was aware it would probably be May before definite facts would be available.

Baatz reported that the Commission had monitored REC's municipals and investor-owned utilities last week. Utility

COMMERCE
Cont'd

reaction was that it was basically too early to know the impact. Some isolated examples indicated some customers took advantage of the billing procedure or were misinformed.

Holden preferred to approach the problem legislatively. He recommended a short moratorium to allow a utility to notify the appropriate welfare authorities who would make the determination as to whether or not public assistance was needed and justified. A determination that assistance was not authorized would then relieve the utility to take action it deemed necessary.

Priebe declared funds should be appropriated to avoid "passing the extra burden to those who are borderline indigents."

Holden thought two provisions were needed: Emergency assistance for the first 24 hours and then provide long-term determination for the duration of winter.

Motion

Schroeder moved to object to Item 1 of Commerce rules as being arbitrary.

Tieden asked if the Commission was able to determine the number of customers actually "cut off." Figures were not available. Gus Scovgaard, Iowa Utility Association, said that out of approximately 10,000 disconnect notices sent, very few customers were cut off.

Moore commented that some utilities reported increased rates and adverse weather conditions had more affect on collection than did the moratorium.

Gus remarked that it was his understanding that at the last hearing, it was more or less understood that the rules would be only temporary to allow for monitoring and gathering more facts. He urged further review in the summer.

Holden could foresee a long-term implication--persons not paying bills in anticipation of receipt of federal funds. He agreed a permanent solution is needed but supported the present attempt since the burden should not be borne entirely by the utility.

Discussion of Social Services budgeting. Tieden recognized the difficulty of determining amounts needed without facts to justify them. Priebe suggested a possibility of emergency fund being reverted rather than allowing transfer of the Social Services funds. It was agreed that "abusers figure out angles quickly."

It was consensus of most Committee members that an objection should be filed to ensure termination of the emergency rules within 180 days.

Commission officials urged implementation of the rules. The National Energy Act mandates the Commission to do something

COMMERCE

with respect to moratorium. There are eleven standards to be addressed, one being the service standard moratorium.

Discussion of advantage of budget billing and whether legislation is necessary to mandate it.

Priebe reiterated the need of appropriation to Social Services with a provision for matching federal funds.

Clark would stipulate that in order to be a recipient of funds, you must be on the budget billing plan.

Motion
Restated

Schroeder moved the following substitute motion:

The Committee objects to items 1 through 17 inclusive of the proposed amendments to Commerce Commission rules; these amendments are filed under the emergency provisions of §§17A.4(2) and 17A.5(2)b and appear in the 1-10-79 issue of the IAB.

The Committee specifically objects to item 1 and item 10, which empowers a utility to require a new or additional deposit "upon reasonable notice", on the grounds the provision is unreasonable. The current provisions (250-19.4(2) and 250-20.4(3)) both limit the maximum deposit to the "maximum estimated charge for service for two consecutive billing periods or ninety days". It is unclear whether the amendments are subject to these provisions, as they clearly must be to prevent utilities from "culling" unsatisfactory customers by simply requiring an impossibly high deposit.

The remainder of the items limit a utilities authority to disconnect service on the grounds of non-payment, and are objected to as being unreasonable, since there is currently no way to accurately assess the impact these provisions will have on either utility rates or on energy consumption. Under the provisions of §17A.4(2) these "emergency filed" provisions will expire 180 days after the date of February 14 1979., and must again be promulgated under the provisions of Chapter 17A if they are to remain effective. It is hoped by the committee that these provisions will be carefully reevaluated at that time in the light of the impact these provisions have had on the 1979-1980 winter season.

Holden observed that the rules encourage, by failure to mandate a budget plan, a person to accumulate an unreasonable utility bill and therefore make a claim unjustly.

The Schroeder motion to object was carried with 5 ayes.
Doyle passed.

ADJOURNMENT Schroeder moved to adjourn at 11:35 a.m. Carried unanimously.
Next regular meeting will be held Tuesday, March 13, 7:00 a.m.

Respectfully submitted,

Phyllis Barry

(Mrs.) Phyllis Barry, Secretary

APPROVED

Chairman

Date _____