

MINUTES OF THE REGULAR MEETING
OF THE
ADMINISTRATIVE RULES REVIEW COMMITTEE

Time of Meeting: Tuesday and Wednesday, May 8 and 9, 1984.

Place of Meeting: Committee Rooms 22 and 116, State Capitol,
Des Moines, Iowa.

Members Present: Senator Berl Priebe, Chairman; Representative Laverne Schroeder, Vice Chairman; Senator Dale Tieden; Representatives Ned Chiodo and James O'Kane. Not Present: Senator Donald Doyle, excused. Staff Present: Joseph Royce, Committee Counsel; Kathryn Graf, Governor's Coordinator; Phyllis Barry, Deputy Code Editor; Vivian Haag, Administrative Assistant; and Loanne Dodge.

Convened Chairman Priebe convened the meeting, 10:00 a.m. in Committee Room 22.

CONSERVATION COMMISSION Conservation Commission was represented by Stanley Kuhn for discussion of rules adopted re conservation and outdoor recreation employment for senior citizens, amendments to chapter 70, ARC 4615, IAB 4/25/84.

70.1 Tieden pointed to rule 70.1(601H) which limited wage payment to minimum wage established by federal law but seemed to conflict with other provision in the chapter. Kuhn admitted the rules could be clearer. No action taken.

CORRECTIONS DEPARTMENT The following agenda for Corrections Department was before the Committee:

CORRECTIONS DEPARTMENT OF [291] 4/11/84
State penitentiary, visiting, 21.2(2) ARC 4580 F
Institutions, 20.2, 20.3(6), 20.3(8), 20.3(9) "b" and "c", 20.6(1), 20.10(7) "b" and "c," jail facilities, 50.19(2) ARC 4616 A 4/25/84

Broxann Keigley appeared to review the above.

21.2(2) Amendment to subrule 21.2(2) was adopted because of a court order--Hagen case. According to Keigley, further changes were anticipated prior to adoption of Chapter 20 amendments, one being in 20.3(6).

In accordance with Doyle's request, the definition of "medical practitioner" will include chiropractor.

20.3(8) Keigley advised Chiodo re restriction on use of sunglasses in 20.3(8)--the inmates can be more closely observed if they are not wearing sunglasses.

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CORRECTIONS DEPARTMENT

O'Kane inquired if 50.19(2) resolved the problem in Woodbury County which Doyle had alluded to at the last meeting. Keigley indicated both city and county jails will be covered re telephone privileges--chapters 50 and 52 of their rules.

Discussion returned to chapter 20. Schroeder raised the possibility that 20.3(8) was restrictive. Keigley replied that visitors' attire was at the discretion of the warden.

COLLEGE AID COMMISSION

James E. Shay, Executive Secretary, represented the College Aid Commission for review of the following:

COLLEGE AID COMMISSION[245]
Iowa guaranteed student loan program, amendment to ch 10 ARC 4576...F..... 4/11/84
Organization and operations. 12.2(3)"c" ARC 4577...N..... 4/11/84

The new language in rule 245--10(261) was challenged by Schroeder. In his opinion, a decision should be made when adequate evidence of circumstances is presented. The appeal process could then be utilized if dissatisfaction continued. Shay explained their appeals process and he recognized the merit in Schroeder's idea. Schroeder contended that the staff was making the decisions and he voiced opposition.

12.2(3)c

Priebe and Tieden brought up the matter of quorum in 12.2(3)c and Shay was informed that in order for an issue to be passed with affirmative vote, a majority of the entire board must be present and vote--five votes needed. Also, the Committee recommended placing a period after "members" in the 4th line of paragraph "c". Shay was amenable to modification of the rule through the Notice process.

10:45 a.m

Committee was in recess for five minutes.

CIVIL RIGHTS COMMISSION

Chairman Priebe reconvened the meeting and called on Artis Reis to present the following:

CIVIL RIGHTS COMMISSION[240]
Rules of practice. 1.4(1) to 1.4(6) ARC 4594...F..... 4/11/84
Rules of practice, final actions. 1.1(6), 1.1(6)"c" ARC 4595...N..... 4/11/84
Affirmative action, ch 20, also notice ARC 3904 terminated ARC 4596...N.&NT..... 4/11/84

Also present: Ty Yu Yang, Administrative Division Director. Rules of practice were reviewed by Reis. It was pointed out that an individual cannot go to court until the administrative procedures process has been exhausted.

1.4(6)

Schroeder questioned 1.4(6) on anonymity of complaints. Reis advised a balance is needed--certain things cannot remain anonymous when the Commission is processing a case. However, the Commission cannot control speech of respondents and complainants. Reis assured Schroeder that information was not released unless the matter goes to a public hearing. O'Kane questioned last sentence of 1.4(6). Reis informed him that the decision to hold a public hearing becomes the trigger point in contested case proceeding.

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CIVIL RIGHTS
COMMISSION
Continued

In re 1.1(6)c, O'Kane had a problem with the Commission closing a case before adjustment is acceptable to complainant. Reis elaborated that, in rare circumstances, a complainant may make unreasonable demands or requests. After investigation and documentaion of damages, the Commission notifies the complainant with an offer from the respondent, good for X number of days. If the offer is not accepted, the case will be closed as "satisfactorily adjusted".

ch 20

Reis explained that chapter 20 will implement the Governor's Executive Order #46 and will provide state agencies with uniform affirmative action standards. Comment from the Merit Commission was considered. Reis indicated a public hearing had been held on the first Notice so none was set for this one. Tieden wanted assurance that comments received at that hearing were considered.

There was brief discussion of Governor's Executive Order 11--Reis said that it refers to contract compliance and the affirmative action rules pertain to state government as an employer. Schroeder pointed out that EO#11 excluded General Services Department--one of the largest purchasers for the state.

Yang stated that it would be 3 to 5 months before EO#11 would be implemented by rules. He cited unavailability of staff and funding until after July 1. Reis interjected that federal rules must be considered and the Commission wants to make state rules as uniform as possible.

20.3(4)

Schroeder wondered if 20.3(4) would serve as a vehicle to request more state employees. Reis said that agencies already use the quantitative utilization analysis, which is not as complicated as it sounds--it compares the work force availability with the actual work force.

In response to Tieden's question re the previous Notice, Reis recalled that most comments were from state agencies. No formal action taken.

SOIL CON-
SERVATION
COMMISSION

Kenneth R. Tow, Deputy Director, and James Gulliford, Director, appeared on behalf of Soil Conservation Commission for review of:

SOIL CONSERVATION DEPARTMENT[780]	
Surface coal mining and reclamation operations. 4.42(1), 4.42(2), 4.322(3), 4.332(3), 4.41(1)	ARC 4633 ..F..... 4-25-84
Surface coal mining and reclamation operations, subsidence control. 4.522(63)	ARC 4632 ..F..... 4-25-84
Iowa financial incentives program for soil erosion control. 5.55(2) e. 5.55(3)	ARC 4634 ..F..... 4-25-84
Surface coal mining and reclamation operations. 4.322(14) d(2), filed emergency	ARC 4630 ..F..... 4-25-84
Blaster training, examination, and certification for coal mines. ch 23	ARC 4631 ..V..... 4-25-84

4.42(1)

Tieden questioned figures in 4.42(1) and Tow emphasized the goal was to return the land to its original contour. Schroeder wondered what consideration was given to adjacent landowners in diverting runoff water. Gulliford was willing to meet with Schroeder to discuss specifics. He reminded the Committee that ground water

SOIL CONSER-
VATION
COMMISSION
Continued

problems cannot be corrected overnight and, sometimes, source of the ground water must be removed. General discussion. Schroeder took the position that the performance bond provisions for reclamation were quite narrow.

4.523(63)

Amendment to 4.523(63) will allow the Department to shorten notice requirement to certain landowners. No comments were forthcoming at a hearing.

5.55

In re 5.55(3)b, Gulliford said the purpose of the rule was to set a limit on the amount of incentive payment to any landowner--one-time participation. The legislature set a limit on distance back from the road but Soil Conservation has set length eligibility as well. Tieden did not question the wisdom of this--only the statutory authority. Royce was asked to review the matter.

4.322(14)d(2)

Amendment to 4.322(14)d(2) was necessary when it was determined that the federal Act prevailed over Iowa's statute--no authority to claim a 10-acre exemption. No questions.

ch 23

Chapter 23, pertaining to blaster training, examination and certification for coal mines, will be considered at a public hearing in July. The blasting schedule was mentioned briefly. Tieden was interested in knowing how individuals would become certified blasters. Tow told Tieden that a program to certify blasters was being developed. Program grant funds will be used to hire outside consultants to administer tests.

4.42(1)

Schroeder returned to 4.42(1) and wondered if the Department was "getting into" DWAWM's area. The response was that the rules were copied from Indiana and they fit Iowa's circumstances. Tow had checked with geological survey and he agreed to contact DWAWM. The Farm Bureau had input at the public hearing.

No Agency Rep

The following agencies were not requested to appear before the Committee:

AGRICULTURE DEPARTMENT(30)			
Ethylene dibromide residue levels in food. 10.45	ARC 4622	F	4/25/84
AUDITOR OF STATE(130)			
Industrial loan companies. 1.15(5), 1.21	ARC 4603	N	4/11/84
Conversion from mutual to capital stock ownership. 6.10, 6.5	ARC 4604	N	4/11/84
ENGINEERING EXAMINERS(390)			
Buildings, structures, mechanical systems and electrical systems requiring professional services, <u>ch 5, notice</u>	ARC 3366		
terminated ARC 4605		NT	4/11/84
FAIR BOARD(430)			
Dismantling of concessions and exhibits. 4.17	ARC 4607	F	4/25/84
REGENTS, BOARD OF(720)			
Parasitism, 8.2(4), filed emergency	ARC 4587	FE	4/11/84

O'Kane asked that the Auditor be requested to appear at the June meeting.

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MINUTES Chair entertained motion to approve the minutes of the April meeting. O'Kane so moved. Minutes were approved as submitted.

Recess Chairman Priebe recessed the meeting for lunch at 11:45 a.m.

Reconvened The meeting was reconvened at 1:30 p.m. with Chairman Priebe presiding.

COMMERCE COMMISSION Commerce Commission representatives present were Ray Vawter, Jr., John Pearce, David Lynch, Diane Munns, and Bill Haas. Also present: Cindy Soorholtz, Iowa Power; Todd Schulz, Iowa Telephone Assn; Charles L. Wasker, HBC of Iowa; Jack B. Clark, Iowa Utility Association. The following agenda was considered:

COMMERCE COMMISSION[250]	
Public utilities, notice of rate or charge increase. 7.4(1)"b,""c,""d"(1), (3), (4), "f"(1); 7.4(4); 19.2(3)"c,""d;" 20.2(3)"c,""d;"	
21.2(4)"c;" 22.2(4) "d" ARC 4637	4/25/84
Uniform extension policy, 19.3(10)"a" and "b," 20.3(13)"a" to "c."	
21.2(12)"a," "b"(1) and (3),"c" ARC 4463 (Delay published [AB 3/28/84])	2/15/84
Cogeneration and small power production, amendments to ch 15 ARC 4635	4/25/84
Rates charged and service supplied by telephone utilities. 22.3(2)"d" ARC 4636	4/25/84

7.4(1)b There was brief mention of language in the preamble. In re 7.4(1)b, Lynch indicated the headings would be alternate, not all three would be used, depending upon the use of the Notice. The example was to indicate an increase in the rate.

In response to question by Chiodo as to whether there was a difference in "median" and "median average," Department officials considered them synonymous. With respect to the uniform extension policy amendments, Haas explained that new rulemaking was commenced on May 4 and concerns expressed by this Committee and the Homebuilders Associations were addressed. Revenue credit will be increased to five times and a deposit in advance of construction is to be collected no more than 30 days prior to commencement of construction. Interested parties were asked to comment on use of irrevocable letter of credit in lieu of cash or bonds.

Wasker found the proposed action of the Commission somewhat gratifying and noted it does assuage any court action. A savings of about 8 points would be realized for the developer. HBC will recommend six instead of five for revenue credit. Brief discussion of irrevocable letter of credit.

Discussion of the 70-day delay imposed on the uniform extension policy rules at the March 12 meeting with Committee consensus being their action should stand. [Delayed rules will be effective May 30, 1984]

ch 15 Haas reviewed changes in chapter 15 since the first Notice. The Commission has established a minimum rate of 6½ cents per kilowatt hour for electricity produced by alternate energy producers. Discussion as to number of small generation setups in the state. Haas doubted there were 500.

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COMMERCE
COMMISSION
Concluded

One of the people who has been selling more wind generators than most had 50 or 60 customers.
Amendments to 22.3(2)d corrects a clerical error.
No formal action.

RACING
COMMISSION

Jack Ketterer appeared for Racing Commission to review:

RACING COMMISSION[693]

Organization and operation, ch 1: rulemaking, ch 2: declaratory rulings, ch 3 ARC 4591...*N*..... 4 11 84
Criteria for granting licenses and determining race dates, ch 6 ARC 4592...*N*..... 4 11 84

Questions were raised re 1.2(3) and 1.2(3)c with respect to advance notice of the meeting and requests to appear at same. Priebe suggested "five" days' notice of a meeting in 1.2(3), line 4. Tieden wanted assurance that there would be ample opportunity for public participation.

1.2(3)c

In 1.2(3)c, Schroeder thought there should be allowance for individuals to speak at the meetings without advance request. O'Kane expressed preference to eliminate the requirement that the public give advance notice of appearance at the public hearing. Schroeder thought a statement could be made to ask persons to notify the chair prior to the start of the meeting. Ketterer stressed that they were seeking some semblance of order for meetings but it was not their intent to exclude anyone.

Schroeder suggested language to precede last sentence of paragraph "c" of 1.2(3): "Persons wishing to make presentation should notify secretary of board prior to convening of the meeting." The Department was willing to clarify.

Chiodo received negative response when he asked if an organization could transfer a license after it had been issued. He opined the rules should be definitive in this area but Ketterer indicated this information would be found on the license. A license can be granted to a specific location for specific days. The statute has been amended to extend length of time for license from 1 year to 3 years [SF 2328,§8]. There are grounds for revocation.

6.1(16)

Schroeder viewed 6.1(16) as being quite broad and he saw no need for 6.2 Ketterer interpreted 6.2 to address the situation where there would be several different applicants in the same market areas but it would be considered to be in the best interests of the state to have only one track in that particular market area. Schroeder mentioned possibility of joint effort of counties to run one operation for a particular time. Ketterer doubted that would happen because counties would not want to risk loss by competing with the two larger tracks. As to the anticipated number of authorized tracks, Ketterer emphasized they will be limited to avoid financial problems. Priebe was hopeful that licenses would not be limited to county fairs who want to have a race. Brief discussion of "pick 6" racing in some states.

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PHARMACY BOARD Norman Johnson explained the following:

PHARMACY EXAMINERS(620)	
Prescription information and transfer. 2.5 ARC 4522 .N.....	3 11 84
Unethical conduct or practice. 6.5(3) ARC 4579 .N.....	4 11 84

In an opening statement, he voiced concern about drug use that would be generated at the race track.

2.5 Discussion of rule 2.5 which would permit a prescription to be transferred from one pharmacy to another in certain instances. This was intended to accommodate the patient. Johnson addressed a problem of abuse or misuse of prescriptions and stated that this rule would allow some control over the process. He advised O'Kane that rule 2.5 would not affect a pharmacy going out of business. Records are maintained for two years and must be readily retrievable so, technically, the pharmacy going out of business would not be relieved of responsibility for two years. However, if the Board knows where the records are kept, that is acceptable. General discussion of transfer of prescriptions.

6.5(3) In reviewing 6.5(3), Johnson said the revision was an effort to overcome committee objection to the existing rule. He continued that the Board still maintains that consumers must be protected and that ownership of a pharmacy by prescribers is not in the best economic interests of the patient. This rule grandfathers 7 prescriber-owned pharmacies in the state for 25 years and relieves pharmacists who work there of being in violation of unethical conduct rules. There is a potential for problems as far as the public is concerned but there is no evidence. Pharmacists employed by physicians in newly formed prescriber-owned pharmacies after April 23, 1981, would be subject to the unethical conduct rule.

Tieden pondered whether the Board were trying to "protect the consumer or the pharmacy?" Priebe said "both." It was Johnson's opinion the Board believes that if the pharmacist is there, that serves as a check and balance to protect the public. Hospitals cannot prescribe, physicians do. Tieden voiced his opposition to the rule. Schroeder suspected the Board was legislating with rules. Tieden asked for statutory authority. Royce advised that the Board has authority to promulgate rules to list acts of misconduct. He cited the US Supreme Court case Gibson v Berryhill in the mid 1950's. Priebe contended the Board was restricting employment which was discriminatory.

Graf likened the principle to attorneys who are unable to write wills for people where they would be the beneficiary. Royce and Graf agreed to study the legality of the rule. Johnson recommended that Tom McGrane, AG assistant, be contacted.

SF2277 Chairman Priebe suggested that members read information distributed relative to the special review of SF 2277

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Committee scheduled for tomorrow on Health Service Corporations.
Business Priebe summarized his interpretation of the law.

Recess Committee was recessed at 3:00 p.m. to be reconvened
Wednesday, May 9, 1984, 8:30 a.m.

Reconvened Chairman Priebe reconvened the meeting, Wednesday, May 9,
1984, 8:30 a.m. in Committee Room 22. All members were
present except Doyle, who was excused. All staff present.

INSURANCE The following rules of the Insurance Department were be-
DEPT. fore the Committee:

INSURANCE DEPARTMENT[510]	
Regulation of insurers, examination reports. 5.1	ARC 4613 .. F..... 4/25/84
Variable life insurance model regulation, ch 33	ARC 4586 F..... 4/11/84
Nonprofit health service corporations. 34.2, 34.7. filed emergency after notice	ARC 4590... F F A N..... 4/11/84
Workers' compensation group self-insurance, ch 55	ARC 4585 N..... 4/11/84
Workers' compensation self-insurance for individual employers, ch 57	ARC 4584 . N..... 4/11/84

Bruce Foudree, Insurance Commissioner, Denise Horner,
Deputy, Kim O'Hara, and Fred Haskins, Assistant Attorney
General, represented the Department.

No recommendations were offered for 5.1 or chapter 33.
Health service corporations were deferred temporarily.

ch 56 Discussion of chapter 56. O'Hara said that comments at the
public hearing basically concerned prerequisite for ap-
proval of service companies. She explained to Tieden that
56.1(4) was intended to make it clear that being under self-
insurance regulations would not preclude compliance with
the laws.

O'Hara continued that the rules were based on NAIC model
regulations. Essentially, the dollar amounts were deter-
mined from information received by examiners who have been
working with this area the last few years and after dis-
cussion with all of the groups. It had been recommended
that the net worth referenced in 56.3(2) be reduced from
\$1 million.

O'Hara noted that the annual filing fee of \$100 was
fixed by statute. She reported there were 4 or 5 self-
insured groups.

ch 57 In re chapter 57, O'Hara stated that the Insurance De-
partment and the Industrial Commissioner were working
together with a Committee of individual self-insurers
to finalize these rules.

Foudree discussed solvency requirements for self-insured
organizations compared to insurance companies providing
the same coverage. He indicated that the Department lacks
staff to audit the self-insured. Financial examiners are
occupied full time with insurance companies. The rules
are a first attempt to provide safeguards. He cited the
Rock Island Motor Transit Company bankruptcy which left
no protection for the employees. The Department is also

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INSURANCE receiving input from those who would be affected by the
DEPARTMENT Rath Packing Company closing. Chiodo opined that the
Continued absence of rules would be preferable to an unworkable
plan.

Department officials were aware of controversy over use
of the word "association" in the rules and it will be
eliminated.

Schroeder recalled that the Rock Island Railroad now has
\$80,000,000 and he wondered about the possibility of re-
covering unpaid liabilities resulting from their bank-
ruptcy. Foudree thought settlements had been worked
out to the satisfaction of most employees with the help
of the Insurance Department and lawyers hired by employees.
He opined that once the settlement was made, the right
to come back at a later time was also waived.

ch 34 No action taken re amendments to chapter 34.

Nonprofit Chairman Priebe announced a selective review of SF 2277,
Health relating to Board composition of nonprofit health service
Service corporations. Among those present were Representatives
Corpora- JoAnn Zimmerman and Bob Arnould; Ed Conlon, House Demo-
tions cratic Caucus; Eugene Sibery, President, Brice Oakley,
Senior Associate Counsel for Government Relations, Blue
Cross/Blue Shield; William Wimer, Counsel for Iowa
Pharmacy Service Corporation; Nolden Gentry, Counsel,
Delta Dental; Dick Stilley, Corporate Counsel, Janet
Griffin, legal staff, Floyd Millen, Legislative Consul-
tant, and L. Coll Dickinson, for The Plans; Charles
Johnson, Vice President, Pioneer Hi-Bred and Chairman of
Board of Health Policy Council (HPCI); Glenn Witt, Vice
President, Meredith Corporation and Chairman of Central
Iowa Health Association (CIHA); Don Rowen, Executive
Vice President, Iowa Federation of Labor, AFL-CIO, also
Board member and member of Internal Affairs Committee
of HPCI; and Ed McIntosh, Attorney.

Chairman Priebe called upon Insurance Commissioner Foudree
who asked Denise Horner to give a brief outline of what
the Department had done. Schroeder asked for a diagram
on the chalkboard for ease in interpreting and fol-
lowing the discussion.

Horner stated that since the last Administrative Rules
Review Committee meeting, the Department had several
meetings with officials from Blue Cross/Blue Shield,
Delta Dental and the Iowa Pharmacy Association, known as
the "Plans." She and Fred Haskins had spent several
hours subsequent to those meetings discussing the legal
arguments. They also spent several hours with repre-
sentatives from the Health Policy Corporation and other
interests whose interpretations differ from those ex-
pressed by the Plans. The Department took the position
that arguments put forth by HPC were probably the stronger

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Special
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Cont'd

on a strictly legal basis because of statutory interpretation. Horner reviewed legislative history of SF 2277 as amended by the House---it requires the Department to establish criteria for the nominees to the Boards, clarifies that providers nominate by petition for provider directors, subscribers nominate by petition for subscriber directors, clarifies that the nominating committees are not subject to 17A, clarifies there will be no per diem for the nominating committee and that the nomination by petition process will continue after the nominating committees cease to exist.

Horner continued that the House amendment provided: "These petitions," referring to the nomination petitions, "shall be considered only by the independent nominating committee during the duration of the committee." The Department has problems with interpretation of this amendment.

The Plans have suggested construing "considered" to mean that the nominating committees would review nomination petitions for the purpose of developing their own slate to demographically balance the slate of nominations for a particular board position. Horner added that B/C maintains there are two independent routes for nomination of individuals to the Board of Directors. Health Policy Corporation interpretation of the provision is that the nominating committee will receive the names and have the power to decide whether they are placed on the ballot--probably the word "consider" in its judicial sense.

Question was raised as to whether both subscriber and provider were included. Horner indicated the Department believes they understand what was intended by the amendment but B/C has a different interpretation.

Another problem was that the amendment goes further than Representative Zimmerman probably intended as it seems to require that the provider petitions also go through the independent nominating committee which does not seem to go along with the intent of the legislation. The Department was studying the issue.

Foudree welcomed the opportunity to appear before the ARRC. He agreed the language could be interpreted both ways and complicated legal arguments would be presented with strong points on each side. Foudree reasoned that the ultimate issue appeared to be whether the nominating committee has exclusive right to determine that slate. The Department believed that the issue should be resolved in favor of the general subscribers, giving their nominating committee the exclusive right to decide the slate. The statute is subject to different interpretations and the question remains--why was the amendment introduced? He cited problems if the independent committee does not have the exclusive right to determine nominees.

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INSURANCE
DEPARTMENT
Continued

The statute mandates that there be a geographic and demographic mix. How would that be determined if the process goes through the petition arrangement and the nominating committee? In addition, Foudree said there would be administrative problems if the Committee lacks exclusive right to determine the slate, e.g., what happens if there are twenty, thirty or one hundred petitions signed with nominees. He requested guidance from the ARRC to carry out the directives of the Legislature.

Oakley outlined the Plans' position and submitted a written statement. Under the law, the Plans can contract with certain providers of health care concerning charges and services; also, potential consumers of health care called subscribers. Those policies are referred to as "prepaid health certificates." Oakley continued that there is public interest in the future process for the selection of persons to serve on their Board of Directors.

Oakley stated that they had anticipated rules for this meeting. He continued that the Plans' request the ARRC to advise the Insurance Department to place rules under Notice, schedule the public hearings and solicit comments. The rulemaking could be terminated if SF 2277 were to be vetoed. Oakley observed that discussion was held between the various groups, however, that did not produce agreement as to the best approach with respect to recomposition of the boards. He reiterated that the policy position of the Plans favors an open, participatory nomination and election process--one that shares the right of nomination with all subscribers consistent with the concern expressed by Foudree.

Oakley suspected that their zeal in defending that policy position may have been "misinterpreted as a sign of provider protectionism, or a defense of the status quo." If that were the case, the providers who would influence the process, could have lived with HF 196 and its flaws. Without SF 2277, petition nominations would go directly to the ballot with providers having equal rights of signatures on those petitions. Senate File 2277 was designed by representatives of the Plans, HPCI's and others to be limited in scope and accomplish two things: 1) Relieve the ISNC's of rulemaking responsibility, 2) Clarify legislative intent by allowing permanent and separate petition nominating process as a check on a self-perpetuating board of subscriber directors. The Plans still contend the Committees should comply with the open meetings and public records law. He understood that the Attorney General had declined to render an opinion on the Department's request of last February concerning those issues. Oakley was hopeful the Insurance Department would include those subjects in their rules and that there would be public comment. Oakley concluded that the Plans: Believe in the long-term wisdom of the course of action they suggest; they have no quarrel with the good intentions of

INSURANCE those with differing views, but believe the course others
 DEPARTMENT suggest is fraught with uncertainties and possible delay;
 Continued finally, that a substantial policy decision remains to be
 made by the Insurance Department--and not by emergency
 measures.

Johnson, representing the HPC's, pointed out that as a
 subscriber of Blue Cross/Blue Shield, they were concerned
 that their interests would not be clearly represented.
 In the development of HF 196, the independents and rep-
 resentatives, on behalf of the subscribers, were concerned
 with the area of board composition and the fact that the
 two-thirds majority prevailed over a fifty-one percent
 majority. Johnson emphasized that they felt very strongly
 that the appropriate balanced position was to have the
 committee initially select the subscriber nominees, later
 the subscriber board, through whatever process the nomi-
 nation committee selects--more than one candidate for
 each open position and let the providers choose to elect
 among those candidates.

McIntosh explained his interpretation of the House amend-
 ment to SF 2277. The House amended SF 2277 to provide
 that nominating petitions be "considered only by the in-
 dependent nominating committee during the duration of the
 committee." "Nominations" are defined relative to nomi-
 nations by petition. Senate File 2277, as amended, pro-
 vided that the nominating committee has the authority to
 accept or reject potential nominees made by petition.
 He reminded ARRC that only providers vote for members
 of the board--that is, only hospitals under B/C, doctors
 under Blue Shield, dentists under Delta Dental, elect
 boards of directors of their respective service corpora-
 tions. Subscribers--persons paying the bills--do not vote
 for members of the board. The purpose of the independent
 subscriber nominating committee was to ensure represen-
 tation of a broad spectrum of subscribers to each board
 and establish criteria for the selection of nominees--
 ensure that subscribers have impact on the decision-making
 process of the service corporations.

McIntosh reviewed the provisions of Code Chapter 514 with
 respect to population factors being considered when making
 nominations to the board of directors. He reasoned that
 the diversity required by the statute could not be met
 if 50 persons could mandate the inclusion of a candidate
 for the Board. McIntosh stressed that the position taken
 as by HPCI would ensure that legislative intent in SF 2277
 was carried out. He concluded that the independent nom-
 inating committee must have a purpose--to ensure repre-
 sentation of subscriber interests. The Committee, in
 considering the independent nominating petitions, must
 have authority to accept or reject those petitions.

Foudree stated that the Department had prepared two ver-
 sions of rules: one that would conform with HPCI position;
 the other with Blue Cross. The Department favored the

INSURANCE draft which was essentially a revision of their original
DEPARTMENT rules--ARC 4590.
Continued

In response to Chiodo's question, Representative Arnould advised that the issue "goes to the heart of their corporate structure, and that is who will determine the ultimate control of that company." He opined it was critical to make some specific determination so that the Department could proceed. He explained that the two drafts basically reflect a different attitude about the power of independent subscriber nominating committees--the HPCI contending that the Committee has exclusive right to determine the slate of nominees and, in effect, the BC/BS group saying they must work in conjunction with the petition process. Chiodo was advised that the BC proposal would uphold for the petition nominations to bypass the nominating committee.

Zimmerman offered history on HF 196 and ensuing amendment. Her position was that the legislation was intended for subscribers' petition to go through the independent nominating committee--as a screening process. She estimated two years' time for existence of the nominating committee. After that, subscriber directors, according to HF 196 and SF 2277, would balance the slate from subscriber petitions.

It was noted that the Insurance Commissioner named the initial nominating committee by following statutory intent. Chiodo questioned Oakley as to whether his group had doubts that the Board was capable of picking responsible, diversified subscriber members. Sibery responded that a statesman job had been done in picking the independent subscriber nominating committees. However, they had concern about the broad representation since it was largely central Iowa. Also, they could foresee a self-perpetuating Board after the independent subscriber nominating committee ceases to exist. Chiodo wondered if a resolution would be to establish the nominating committee as a permanent organization. Sibery pointed out that many dedicated people serve on these boards. Although he felt the issue could be challenged from a constitutional standpoint, he suspected the public image tarnishment would make this unadvisable and should be avoided. Sibery was hopeful the independent subscriber nominating committee could become operative and, if the system proves to be unsuccessful, corrective steps would be taken.

In response to Arnould, Horner quoted from SF 2277: "Following the discontinuance of the committee (the nominating committee), the petition process shall be continued and the board of directors of the corporation shall consider the petitions"--the two-thirds, one-third Board. Subscriber members of that Board essentially replace the function of ISNC once ISNC goes out of operation and they continue to be a sifting committee providing the list of subscriber nominees to providers on the Board.

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DEPARTMENT
Continued

Foudree stated that the rules would clarify that. Horner added that there would continue to be two processes-- the subscriber directors would be able to develop a slate and there would be the petition process that would filter through the board, also. Arnould thought that was the intent.

Sibery reiterated their basic concern over a possible "self-perpetuating Board." Johnson had, essentially, the same concerns as expressed by Sibery and wanted competent Board members. Schroeder wondered if terms of the Board should be staggered. Sibery thought the intent was for the Board, this year, to elect all two-thirds through the election process and, by use of a "straw selection" through bylaws, stagger the terms. They were proposing that nine years be the maximum length of service--three, three-year terms. Previously, there were no limitations on service.

Zimmerman discussed with Sibery the impact of setting up other boards in the future as they "spin-off other corporations." Oakley referred to a suggestion in their draft rules that an anonymous ballot be created rather than having "A" running against "B," or "A," "B," and "C" running against each other. Hopefully, with this approach, qualified people would be willing to serve on boards.

Foudree explained that their rules would require the provider nominees produced by petition to go through the nominating committee. Schroeder utilized the blackboard to review the process. Priebe quoted "...procedures the board establishes shall also permit nomination by petition of at least fifty subscribers or providers" which allows them fifty each way. There was further discussion of the nomination process and the HPCI interpretation that the statute requires "...provider directors nominated by petition to go through the independent nominating committee for screening but the providers on the boards still have the opportunity to determine their own slate."

Gentry felt strongly that persons nominated by petition ought to have a right to be on the ballot. Arnould advised that providers would not be precluded from going ahead with their current system for getting the names to the providers on that committee.

Rowen thought a rule could provide that the "nominating committee just pass through all petitions of providers." Foudree was doubtful and Priebe concurred.

Discussion of action, if any, that the ARRC should take. Haskins pointed out that SF 2277 has a publication clause.

Motion Tieden moved that the Committee support the HPCI position and that the Insurance Department proceed with emergency adopted rules after the bill has been signed by the Governor and published. Discussion of the motion.

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INSURANCE
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Concluded

O'Kane inquired if there would also be Noticed rules and it was agreed the rules would be published under Notice to allow for public input. Tieden motion carried with 4 ayes and 1 nay.

10:45 a.m.

Chairman Priebe excused for dental appointment and Schroeder took the Chair.

PLANNING &
PROGRAMMING

Department representatives were Alan Collet, Jeffrey Pogolowitz and A. Thomas Wallace. The following was reviewed:

PLANNING AND PROGRAMMING[630]		
Iowa community development loan program, ch 25	ARC 4629	F..... 4/25/84
Iowa intergovernmental review system, ch 11	ARC 4628	M..... 4/25/84
Community development block grant technical assistance program, ch 24, notice ARC 3806 terminated	ARC 4606	NT... 4/11/84

ch 11

No questions re chapters 24 and 25. Department officials said that chapter 11 was intended to eliminate conflict between different branches of government and contains revisions to coincide with federal regulations. The Committee requested that the date of Executive Order 12372 be included in rule 11.1.

ARTS COUNCIL

Marilyn Parks represented the Council for the following:

ARTS COUNCIL[100]		
Literary awards, outstanding achievement awards, 2.3(14), 2.3(19)	ARC 4623	F..... 4/25/84
Outstanding achievement awards form, 3.12	ARC 4624	F..... 4/25/84

Parks noted that the Council planned to resubmit notice for literary awards. No recommendations.

INDUSTRIAL
COMMISSIONER

Mary Weibel and Barry Moranville appeared on behalf of the Industrial Commission to review settlements and commutations, 6.2(1), ARC 4624, Notice, IAB 4/25/84. Weibel said that in order for the agency to approve settlement in a noncontested case, establishment of liability must exist. In July 1982, the Legislature deleted the memorandum of agreement and Iowa became a direct pay state.

O'Kane asked who had to be a party to memorandum agreement if a case has gone to district court and Weibel responded that it was the document filed by the defendant or the employer insurance carrier. The case is remanded to the Industrial Commissioner for approval of settlement. Weibel advised O'Kane there would be no lump sum distributions.

It was noted the Commissioner cannot modify a judge's decision. O'Kane and Schroeder contended that once the court had decided, there was no need for the industrial commissioner to review the case and they recommended that the statute be amended next year. Royce was requested to follow up on this.

PUBLIC
SAFETY

Carroll Bidler, Director of Administration, and Connie White, Program and Policy, Wilbur Johnson, Fire Marshal appeared for the Department of Public Safety. The following agenda was before the Committee:

PUBLIC SAFETY
Continued

PUBLIC SAFETY DEPARTMENT(680)
 Fire marshal. 5.100(6). 5.305(1) "a" and "b." 5.40. 5.41 ARC 4621 *F*..... 4/25/84
 Weapons. 4.2(9) to 4.2(12). 4.4 ARC 4578*N*..... 4/11/84
 Fire marshal. 5.850. 5.230(5) ARC 4581*N*..... 4/11/84

Tieden, in re 5.100(6), asked for examples of specific occupancies where sprinklers would be required. Johnson cited a large assembly room below ground.

ch 4 According to Bidler, amendments to chapter 4 bring the rules into compliance with the statute. In response to Schroeder, Bidler said once an individual is no longer employed by the agency, the weapons permit becomes invalid and is to be returned. Otherwise, they would be considered permanent. If LEA revokes certification, they would have to be terminated as a peace officer by the agency which would be required to pick up that permit.

Tieden asked if a, b and c of 4.4(7) could be consolidated. Bidler indicated the forms originated at different places and this procedure had worked very well for 8 years, but he agreed to consider the point.

ch 5 White said that the most recent edition of the National FPA was included in 5.850 and 5.230(5) and new 5.230, paragraph "d" exempts open parking garages from sprinkler systems. Schroeder inquired as to what changes were in the Standard of Manufacture, Transportation, Storage and Use of Explosives and Blasting Agents Act. Johnson replied they had operated under No. 495 for many years. There are no significant changes to impact industry.

HEALTH

The Committee considered the following rules of the Health Department in Room 116:

Vital records. 96.4 ARC 4617*F*..... 4/25/84
 Physical and occupational therapy examiners. 137.2(8), 138.201(6) ARC 4627*F*..... 4/25/84
 Designated inpatient substance abuse treatment unit standards. 203.11 ARC 4582*F*..... 4/11/84
 Chiropractic examiners. license renewal fee. 141.16(2). filed emergency after notice ARC 4575 *FEAN*..... 4/11/84
 Optometry examiners. license renewal and continuing education. 144.1 ARC 4593*N*..... 4/11/84
 Special supplemental food program for women, infants and children. 73.5(1) ARC 4534*N*..... 3/14/84

Those in attendance included: Mark Wheeler, Peter Fox, Irene Howard, Harriet Miller, Laura Sands and John Goodrich. No recommendations were offered for 96.4, 137.2, 138.20, 141.16, 144.1, 203.11.

73.5 Discussion of 73.5(1) and the amendment to clarify competent professional authority. Sands described the program which is 100 percent federally funded. Only one-third of eligible Iowans could be served and the Department wanted the food distributed to those with the greatest nutrition deficiencies. Competent professionals play a key role in the program and additional coursework requirements will be mandated. According to Wheeler, three letters were received re the rule, 2 positive and 1 negative. Tieden opined extra hours required seemed excessive. No formal recommendation.

Recess

Committee was recessed at 11:50 a.m.

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GENERAL SERVICES DEPARTMENT

Jack Pitzer appeared on behalf of the General Services Department to review the following:

GENERAL SERVICES DEPARTMENT[450]
Purchasing procedures. 2.3(3), 2.4, 6.1(4), filed emergency [ARC 4583] 4-11-84

According to Pitzer, better latitude would be provided to state agencies in making purchases under \$500 and the 1.2 percent administrative charge would be eliminated. Priebe questioned Pitzer with regard to a sale at the Fairgrounds. It is being conducted by the Conservation Commission but it is an all-state property sale. No action taken.

REVENUE DEPARTMENT

Carl Castelda and Gene Eich were present for the Revenue Department to review:

REVENUE DEPARTMENT[730]
Exempt sales, water sales to farmers. 17.9(6) ARC 4588
Additional deduction for wages paid or accrued for work done in Iowa by certain individuals. 40.21, 53.11, 59.8 ARC 4589
Determination of value of railroad companies. ch 76 ARC 4625
Determination of value of utility companies. ch 77 ARC 4626

Productivity-Also present: Mark Truesdell, ANR Pipeline Co.; Don Gonerman, Williams Pipeline Co.
August

The Committee was informed that "productivity" rules would be published in June with an anticipated August review.

17.9

ARC 4589

Castelda reviewed the history of water sales to farmers, 17.9(6). The Department dealt with averages in determining that the first 4000 gallons of water would be exempt from tax. ARC 4589 implements 1983 Iowa Acts, ch 174, which provides for an additional deduction equal to 50 percent of the first 12 months' wages paid by certain employers if they hire handicapped, parolees, etc. The definition of handicapped was copied from the Department of Vocational Rehabilitation.

Chs 76,77

Eich reviewed the history of chapters 76 and 77 which are identical to those published under Notice. They will be followed in determining values of railroad and utility companies. One area of contention was in 76.1(7) where some argue that the Department places too much weight upon the stock and debt approach. No further comments.

HUMAN SERVICES

Mary Ann Walker appeared for review of the following:

HUMAN SERVICES DEPARTMENT[498]
Food stamp program, utility allowance. 65.8, 65.14 ARC 4609
General provisions, adverse service actions. 130.5(4) ARC 4610
Adoption services, foster parents, information to be released. 200.2, 200.13(1), 200.13(2) ARC 4611
Foster care services, out-of-district and out-of-state placements. 202.7(1), 202.5 ARC 4612
State supplementary assistance, medical assistance. 50.3(1), 76.5 ARC 4599
Service programs, amendments to chs 62, 131, etc., notice ARC 4163 terminated, ARC 4598
Food stamps. 65.25 ARC 4600
Federal surplus food program. 73.4(3)b ARC 4618
Medical assistance, chs 78 and 79, notice ARC 4154 terminated, ARC 4597
Medical assistance, submission of claims. 80.2(2) ARC 4601
Nonassistance child support recovery program. 96.3, 96.6 ARC 4602
General provisions, eligibility. 130.3(1) ARC 4620
Montic congregant meals, housing services. 770—chs 150 and 152, filed emergency ARC 4608
Child care center financial assistance. 154.3(1), 154.3(4) ARC 4619
Selective review--supervision of psychiatric workers, 78.1(13)

Walker said the federal regulations mandate households on food stamps to choose between standard utility allowance

HUMAN
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DEPT.
continued
ch 200

or actual utility expenses at time of certification--and every twelve months thereafter when annual standard is used.

No questions re 130.5(4). Amendments to chapter 200 change the provision that foster parents be given first consideration when deciding who should be the adoptive parents. Interest of the child was to be considered first.

In 200.13(1), Schroeder was informed that if required information were not provided, the Department conducts a search. Walker did not believe there were many requests, but was willing to check.

202.7(1) Amendments to 202.7(1) and 202.8 expand reasons for which the Department may place the child out of district--the interstate compact would be utilized. Walker explained that all states are supposed to participate, but there is varying degree of cooperation.

No recommendations re chapter 52 et al, 65.25, 73.4(3)b, 50.3(1), 76.5, chapters 78 and 79, 80.2(2). Re amendments to 96.3 and 96.6, Tieden wondered if it were much of a change and learned there was not. Hearings were held, no comments or objections, but Walker reminded ARRC there wasn't much of a lobby for absent parents. The Department complied with that request to remove "valid" when mentioning a court order.

Subrules 154.3(1)(4) eliminate requirement that child care centers furnish proof of nonprofit incorporation in order to get child care financial assistance. Rescission of chapters 150 and 152 will eliminate rules for programs which have not been operational for many years. No questions.

Walker agreed to recommend deletion of 96.3(1)f from ARC 4602.

Recess Committee in recess for 10 minutes.

Selective Review 78.1(13) There was selective review of psychiatric workers subrule 78.1(13). Schroeder suspected that rules on medicaid payment reimbursement were unclear. He cited "shall be under supervision" as being nebulous. He contended billing for reimbursement should not extend more than 90 days and that consistent application of the rules was essential.

Schroeder had learned of a problem experienced by Hans Glissman, psychiatric social worker, and his wife, who is a psychiatrist. Steve Roberts appeared for Human Services and Mark Lacey, Attorney, was present on behalf of Glissman.

Schroeder and Glissman reviewed the chain of events which ultimately resulted in Glissman paying \$16,000 to the state. The issue went through fair hearing process and the court rules against Glissman. That was appealed to the District Court. He is interested in preventing this from happening

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HUMAN
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Continued

to other people. Glissman voiced support of out-patient treatment. Sanctions which the Commissioner can impose are indeterminate and this should be corrected in his opinion. He opined there should be a limit to the retro-active liability for the provider. In conclusion, he thought the Department should be more accessible for guidance to the provider.

Roberts was willing to study the rules and propose corrections in some instances.

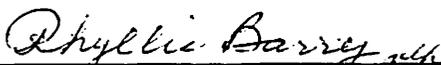
Royce pointed out that 78.1(13) and the Department's policy statement furnished to the provider differ somewhat--the rule makes it perfectly clear that the physician must be on the premises, but that was not found in the policy statement (Providers Manual). He posed the question, "How can the provider be held accountable in this situation?"

There was no formal action taken by the ARRC.

Adjourned The Committee was adjourned at 3:15 p.m.

Next Meeting The next meeting will be held Thursday and Friday, June 7 and 8, 1984, in lieu of the statutory date.

Respectfully submitted,



Phyllis Barry, Secretary
Assisted by Vivian Haag and
Loanne Dodge

APPROVED:



CHAIRMAN