MINUTES OF THE REGULAR MEETING
OF THE
ADMINISTRATIVE RULES REVIEW COMMITTEE

Time of meeting — The regular meeting of the Administrative Rules Review Committee (ARRC) was held on Tuesday, October 10, 1995, in Room 22, State Capitol, Des Moines, Iowa.

Members present: — Senator Berl E. Priebe and Representative Janet Metcalf, Co-chairs; Senators H. Kay Hedge, John P. Kibbie, William Palmer and Sheldon Rittmer; Representatives Horace Daggett, Minnette Doderer, Roger Halvorson, and Keith Weigel.

Also present: — Joseph A. Royce, Legal Counsel; Phyllis Barry, Administrative Code Editor; Kimberly McKnight, Administrative Assistant; Caucus staff and other interested persons.

Convened: — Co-chair Priebe convened the meeting at 10 a.m.

HUMAN SERVICES — Mary Ann Walker, Gary Gesaman and Marno Cook, Human Services Department, and Kirk Norris, Iowa Hospitals and Health Systems, were present for the following:

HUMAN SERVICES DEPARTMENT[441]

Transitional child care assistance, 49.7(2), 49.9(4), 49.27(2), 49.29(4), Filed **ARC 5889A** 9/27/95
Emergency services for undocumented or illegal aliens — organ transplants, 75.11(1), 75.11(4), Notice **ARC 5896A** 9/27/95
Medicaid elderly waiver services, 77.33(8)"g," 77.33(12), 83.22(1)"b," Notice **ARC 5869A** 9/13/95
Payment to hospitals and nursing facilities, 78.3, 78.3(12), 78.3(12)"c," 78.3(13), 78.3(14), 79.1(9)"a" and "e," 81.1, 81.3(3), 81.4(1), 81.6, 81.6(11)"i" and "o," 81.6(13), 81.11(1), 81.13(1)"j" and "k," 81.16(2)"b"(2)"5" to "7," 81.16(2)"e"(2), 81.32(7), Notice **ARC 5888A** ... 9/27/95
Support enforcement services — income withholding order, 98.42, Notice **ARC 5898A** 9/27/95
Child abuse, chapter 175, division I title and preamble, new division II — 175.21 to 175.37, Notice **ARC 5870A** 9/13/95
Dependent adult abuse, 176.1, 176.6(11), 176.10(3)"c"(3) to (5), 176.16(2), Notice **ARC 5887A** ... 9/27/95
Economic Impact Statement, **ARC 5751A**, IAB 8/2/95, Community-based services 9/27/95

Update — Walker updated the Committee on rules contained in ARC 5613A[IAB 6/7/95] involving prohibition of rehabilitative treatment services while operating a motor vehicle. The amendments to 441—185.22, 185.42(3), 186.62 and 185.82 had been under a 70-day delay. The Department had submitted language to the Council which would remove this restriction but the Council voted unanimously to reject the revision. The Department would be working on a compromise rule to satisfy federal and provider concerns.

It was Halvorson's understanding that there was no federal conflict. Walker replied the Council felt strongly that therapy should not be provided while driving a motor vehicle.

DHS (Cont.)

Gesaman added the federal government had just completed an audit of the program and had expressed concern about providing rehabilitative services while operating a motor vehicle.

Hedge stated that the Department was not denying the right to visit with the patients while driving but the provider could not include this in their hours for reimbursement. Gesaman replied that the issue was whether the Department was getting their money's worth and were counselors really able to give their full, undivided attention while driving. If this happened occasionally it would not be a big issue for anyone but it appeared this was not the situation with some providers and HCFA had raised questions.

49.7(2) et al.; 75.11(1); 75.11(4)

No questions on 49.7(2) et al., 75.11(1) or 75.11(4).

77.33(8)"g" et al.

No questions on 77.33(8)"g" et al.

78.3 et al.

Discussion of amendments to 78.3 et al. focused on proposal to clarify that an assessment fee for use of the emergency room would not be made if the referring physician were an emergency room physician. Norris stated the assessment fee of between $12 and $15 currently was paid whenever a Medicaid recipient came to the emergency room. This fee did not begin to cover the triage costs.

Norris opined the revision was a substantive change—not clarification and was not appropriate. Federal law required that a Medicaid recipient coming into the emergency room must be screened and any required services offered by the facility must be provided. Costs would be transferred to the hospital.

Gesaman stated the Department wanted to avoid hospital emergency rooms being used as clinics. They were also concerned as to the extent cost of the emergency room physician was already built into the hospital's costs. Gesaman emphasized that the Department would be receptive to comments from all sources.

Daggett asked if the emergency room had any control over who was treated. Gesaman replied that the hospital had some control in terms of how they directed the person and that was the reason for the willingness to pay for the triage.

Daggett had heard comments that some recipients prefer emergency room treatment to avoid a long wait at a clinic.

Doderer saw the necessity of determining who's responsibility it was to turn away patients. Norris stated that hospitals were bound by federal law to screen and treat for services normally provided but the Department was making a decision as to whether or not they would pay for patients in the Medicaid program.

Gesaman reiterated they were attempting to control what the Department would pay for under the Medicaid program.

DHS (Cont.)

In response to Weigel, Norris said if the assessment was not done, there was a risk of being sued under COBRA law. When no emergency was found after an assessment, patients were referred to a clinic. The only issue being decided was whether to pay for the assessment and not management of the care of the individual by further educating the recipient on where to get care. Weigel wondered if most hospitals would determine an emergency if there was a question in order to cover themselves. He believed the assessment fee was an inexpensive way for the state to cover themselves.

Doderer could not foresee litigation by someone who was receiving aid. Norris noted that under the same statute, they were subject to civil monetary penalties from HCFA of $50,000 and could be excluded from the Medicare program. Gesaman responded to Doderer that the Department was concerned about giving hospitals any incentive to serve persons in the emergency room who were not there for an emergency and billing the Medicaid program. He added that the real focus was if the emergency room physician should be able to refer persons to the emergency room.

Priebe pointed out that not all rural hospitals had a physician in the emergency room.

Halvorson questioned Norris with respect to hospitals contracting for reimbursement levels for third-party payers. Norris replied that Medicare and Medicaid did not cover the cost for care. Because of new payment programs, hospitals were not sure whether they were receiving 80 or 75 percent of costs. In terms of transferring costs, state and federal government were the biggest in their inability to pay for the people for whom they were responsible.

Norris concluded this rule making did nothing to educate the recipient as to where to go for care and the entity with no control over who came in the door would be punished.

98.42; Chapter 175; 176.1 et al.

No questions on 98.42, Chapter 175 or 176.1 et al.

Economic Impact HCBS Waivers

Royce stated that last week the Fiscal Bureau completed an analysis of proposed revisions in chapters 77 to 79 and 83 relative to the four HCBS waiver programs. This analysis was independent of the Economic Impact Statement.

Walker recalled concerns of the Committee was the fiscal impact on the counties and lifting of the cap on the ill and handicapped waiver. Since July 1 no county had been billed for any client for services provided for the ill and handicapped waiver. Counties no longer pay for services to children and there were no adults on the waiver waiting list identified as having mental retardation. Lifting the cap from the waiver would not have an economic impact on the county. With respect to increase from $9.27 to $12 per hour for respite care, the MR waiver was providing respite to 250 adults. Some providers planned to discontinue this care

DHS (Cont.) contending $9.27 per hour was insufficient. The Statement concluded it would be more costly to counties and the state if the maximum were not increased. There would be cost shifting to more expensive services.

Gesaman clarified that only providers who could justify a higher rate would receive an increase. In defense of respite care, Gesaman stated this was the most basic, essential service provided under the home and community-based waivers. It was a service which allowed and encouraged care for a handicapped child or adult at home and provided some temporary relief for the caregiver. Many counties had been very supportive of use and payment of the service under the waiver. No Committee action.

No Reps. Priebe requested that General Services rules be moved from the "No Rep." portion of the agenda and a Department representative be asked to appear before the Committee today at 2:30 p.m. No opposition voiced.

AGRICULTURE Charles Eckermann, Daryl Frey, Ronald Rowland, Jerry Bane and Darryl Brown represented the Department for the following:

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Pesticides — wood-destroying insects, 45.1(1), 45.22(2)"d," Filed **ARC 5894A** 9/27/95
Pesticide applications — prior notification, 45.50(7)"c" and "d," 45.50(8), 45.50(9), Filed **ARC 5895A** 9/27/95
Voluntary inspection of ratites, 76.14, Notice **ARC 5902A** 9/27/95
Weights and measures, 85.39, Filed **ARC 5901A** 9/27/95

45.1(1) et al. In response to Hedge, Eckermann replied that there were no requirements for insect inspections. However, a mortgage company would require a firm or person to have a commercial pesticide applicator license before they would accept their report but employees of a licensed pest control company, who perform inspections only would not have to be certified. Hedge wondered if a shortage of inspectors would result and Eckermann was unsure but did not believe there would be a problem. Frey pointed out that all applicators who were currently certified for termite control would be qualified for this work.

Frey offered background on the revisions in the rules. Concerns had been expressed regarding qualifications of inspectors for real estate transactions. The Department had a more comprehensive rule but the industry was divided as to whether or not it was appropriate. The Department sought recommendations and the industry concurred ARC 5894A was the most effective way to address the issue.

Rittmer wondered about the necessity for everyone to be licensed and certified. Frey reported that termite infested properties had passed inspections so the Department saw a need for this "fairly low-level regulatory action" for a certification process.

AGRICULTURE (Cont.)

Eckermann advised Rittmer that bonding was not required for inspectors. He added that the law required proof of financial responsibility before a license was issued. Indirectly there would be the minimum of $50,000 of public liability and property damage coverage for anyone doing inspections. Rittmer reasoned that certified inspectors would not necessarily be better than someone not certified.

Frey estimated two hours of study for preparation for the certification.

45.50(7) et al.

Discussion of amendment to rule 45.50. Priebe referred to 45.50(8)"c" and wondered about notification if the owner of the property did not reside where the application was done. Eckermann explained that only the person occupying the property would be eligible for prenotification. Priebe cited an example of a vacant lot where kids played and wondered if the notice would have to be served to the owner of the property. He believed this should be clarified. Frey thought such circumstances would be rare. Priebe raised question as the liability of the pesticide operator if they did not deliver the notice to the owner. Frey replied that depending on the company's regulatory history, a fine could be levied. Priebe viewed this as providing a loophole.

In response to Hedge, Frey said owners who desired notification were responsible under this rule to notify the pesticide applicators of their desire to be notified when pesticides were to be applied to adjoining properties. Hedge and Frey discussed problems with communication to the general public that this authority was available to them. The burden had always been with the person wanting to be notified. The Department intended to issue a press release to inform homeowners. In larger communities, notification would be more burdensome because of many applicator companies.

Hedge gave an example of an area where seed corn was grown and it was unclear who applied the pesticide. Bees were also raised in this area and in the past the bee owners had asked the seed corn company for advance warning of application. Hedge wondered if they could continue to notify the seed corn company or if they would have to notify the pesticide company. Eckermann clarified that the prenotification requirement applied only to urban areas—the rules had not changed for the rural areas.

In response to Palmer, Eckermann said that if one person requested notification, the applicator would be provided with the list of addresses of adjoining properties. Most companies kept records.

Palmer wondered who he should call if he wanted to be notified when any adjoining properties were to be sprayed. Eckermann replied that the companies that provide the service should be called. Palmer noted there were many companies in Des Moines and he took the position the rules were not enforceable and provided no element of protection. He suspected that the majority of Iowans were unaware of the rules. Frey stated notification requirements were in the law. The rules allow cities to create a registry but it had not been used widely. The

AGRICULTURE (Cont.)

registry eliminated some of the problems in that a person desiring notification need only contact the registry and it was the commercial applicator's responsibility to see who was on the registry.

Eckermann advised Doderer that any city ordinance was preempted by state law. No Committee action.

76.14 and 85.39

No questions on 76.14 or 85.39.

ECONOMIC DEVELOPMENT

Mike Miller, Ken Boyd, Bob Henningsen and Melanie Johnson were present from the Department for the following:

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

CDBG — threshold wage criteria, 23.8(1)"d" and "e," 23.9(5)"a"(8) and (9), Notice **ARC 5860A** 9/13/95

Self-employment loan program — low -income, 51.2, Notice **ARC 5861A** 9/13/95

CEBA — wage requirements, maximum award, forgivable loan awards, float loans, 53.2, 53.5(2), 53.6(1), 53.6(2)"e," 53.7(2), 53.13(1), 53.13(4), 53.13(5), Notice **ARC 5862A** 9/13/95

Value-added agricultural products and processes financial assistance program(VAAPFAP), 57.2, 57.5(5), 57.6(1), 57.6(2)"a," Filed **ARC 5863A** 9/13/95

23.8(1), 23.9(5); 53.2 et al.

In review of amendments to the CDBG program, Rittmer stated he had received complaints from development groups. Miller explained that the legislature mandated the Department to plan for funds to last through the year without requesting a supplemental. These amendments were one part of a package which would include shifting a company's request to other programs such as Economic Development set aside or the value-added agricultural program and developing innovative ways to better utilize funds.

Daggett wondered if the wage changes would allow a firm to pay a below-average wage. Miller replied that previously, the Department looked at what the company paid upon start of the project. These rules would allow two years to reach the required wage.

In response to Doderer, Miller stated the statute specified that if the company paid significantly below the average for the county, the Department could not fund them but it did not specify an amount. The minimum wage law was irrelevant at this point since none were below $5 per hour. The very lowest county wage was in the range of $6 per hour.

Halvorson was interested in comparison between proposed and past projects—the 90 percent criteria versus 75 percent. Miller estimated that statewide, in the past two years, 10 to 15 projects out of 70 (20 percent of the projects) would not have qualified.

Halvorson indicated developers were concerned that many projects would be eliminated. He advocated a revolving low-interest loan program rather than a forgivable grant fund. Miller suspected this approach would actually greatly increase the need for an appropriation. If the Department provided a grant or

DED (Cont.) forgivable loan of $500,000 to a company for a project in Iowa the cost would be $500,000. With a 0 percent loan, the company would require $2 to $3 million to realize the same benefit. Part of this entire package was to allow the flexibility for forgivable loans where that particular project required it. A greatly increased appropriation would be needed to continue with the current practice.

Miller advised Kibbie that the Department used Employment Services figures which were calculated county by county. Governmental and agricultural/mining employment were not used since such operations would not be funded.

57.2 et al. No Committee action.

51.2 No questions on 51.2.

EDUCATION Don Helvick, Ann Marie Brick, Leland Wolf and Ann Molis were present from the Department and Mary Gannon and Susan Donovan representing Iowa Association of School Boards; Colleen Moeller, Network of Iowa Christian Home Educators, Kathy Collins, School Administrators of Iowa, and Clarence Townsend, GPBS Home Satellite, were present for the following:

EDUCATION DEPARTMENT[281]
Open enrollment applications, 17.8(5), Notice **ARC 5867A** 9/13/95
Home schooling, 31.3(1), 31.3(2)"a," 31.3(2)"b," 31.4(2)"c," 31.6(1), 31.7(4)"a" to "d," 31.8(3), 31.9, Notice **ARC 5866A** 9/13/95

17.8(5) No questions on 17.8(5).

31.3(1) et al. Wolf told the Committee that the Department appointed a Task Force last January to review home schooling rules and make suggestions to the Department. A number of suggestions were made and some of them were included in the rules. This was done to comply with the ARRC request two years ago for the Department to consult with home schoolers before proposing rules which have an impact on this group.

Wolf informed Daggett that ten people were in attendance at the public hearing. Of the five who spoke, four supported the proposed changes. Five written comments were received. Daggett had received no opposition to the rules. Wolf cited one concern of Dr. Ramirez was to reduce the administrative burden on schools and strive for compromise between the Department and home schoolers.

According to Wolf, the Task Force included area education agency contacts, two public school superintendents, three school district home school assistance program staff and a number of home schoolers. Kibbie asked if an open enrolled student, where state aid and property tax followed the student, would participate in another school district in an individual education program through home schooling. Wolf said this was possible with interpretation that a special education child would be counted if they were under an Individualized Education Plan (IEP) in receiving services. They could still take advantage of home schooling. Kibbie

EDUCATION (Cont.)took the position the current rules, which had been in place for two and one half years, had been working fine and the proposed amendments were liberalizing. Brick pointed out the Superintendent's Advisory Committee, comprised of elected representatives of all the superintendents in the state, were consulted for input. Most comments were minor and some involved the IEP requirement for special education. The law allows the Department to accept what home schoolers may provide for evidence of achievement. The statute was liberal in that it stated that achievement tests were one way to evaluate but there were five or six assessments that could be submitted. Brick continued the Department had received complaints from parents of special education students who wanted to home school that requirements were unworkable, e.g., a severely handicapped person would be required to submit a standardized test for evaluation.

Metcalf in Chair.

Gannon referred to a handout outlining concerns of the Iowa Association of School Boards. They asked that the last sentence of 31.6(1) not be stricken or clarified to ensure that the resident district could count the open enrolled, competent instruction students.

Gannon referred to 31.7(4)"c" and expressed concern regarding IEPs not only in the area of ensuring they were met by the school district and the parents but also the issue of assessments. In conclusion, Gannon cautioned against deregulation of home schooling and cited many questions raised by administrators on how to ensure high school diplomas for these children.

Brick pointed out this rule making did not address this issue. Gannon disagreed because of the lessening of the standards of the portfolio. Wolf interjected that standards did not speak to method of evaluation of portfolios but to who would evaluate.

Wolf referred to 31.6(1) and possible misunderstanding about open enrollment and dual enrollment. She cited an example of parents of kindergartners next year who could apply to open enroll their child in another district without enrollment in the resident school district. Parents who move their children into a school district from another district in which their children were to continue at the previous district never have to enroll their child in the new resident district before they could open enroll. The only category of people who were required under current rules to dual enroll before they open enroll were the children of home schoolers. In every year subsequent to the first year the Department's rules had been silent about whether the child had to do any enrollment in the district they were open enrolled to. This had never been required and there was no change.

Metcalf asked if a hook into some public school system would be required by these children at some point. Wolf replied in the affirmative when parents chose to open enroll to another district. The parent would need to apply to their resident district, however, nothing in the statute required enrollment in any school as long

EDUCATION (Cont.)

as home schooling was provided and there was an annual assessment or supervision by a licensed teacher.

Molis added that the loss of revenue for the school district was $360 the first year. If the district could count the student in the dual enrollment on September 15, they would receive the $360. Every year after that, if the student was dual enrolled for home school assistance, the district would continue to receive the revenue generated.

In reply to Metcalf, Collins explained school districts were offering incentives to home schooling students and parents then realized financial incentives, such as buying books for the student who was open enrolled. The Department did not want this to be at the expense of the sending district. Collins believed this was a money issue and disagreed that it was limited to the first year. She saw potential for loss greater than $360.

Brick reasoned this was more of an open enrollment issue than one of home schooling. The home school dual enrolled student should be treated the same as the student who never attended the resident district but open enrolled to another. Brick noted problems with a dual enrollment deadline of September 15 and the open enrollment deadline of October 30.

Metcalf opined the issue should be referred to the legislature

Collins stressed that she was not appearing on behalf of the SAI since they had not yet reviewed the rules. She expressed surprise that a task force had been initiated because she had heard no complaints on the rules which had been in effect 2 ½ years. Collins cautioned against rules which would abrogate the state's oversight of home schools through the Department of Education.

Doderer inquired as to the number of home schoolers in the state. Wolf did not have an active count but estimated approximately 3,000 students were home schooled in Iowa. Doderer believed the Department should be advocates for raising the standards for and supervision of home schooling. Brick pointed out that this was a legislative issue. She added that the Department had no evidence of negative impact by this rule making.

As a service organization to home schooling families, Moeller had a compelling interest in representing the individuals who live under the umbrella of these rules. She referred to a handout wherein she enumerated several recommended changes to the rules. Moeller cautioned it was not the best use of the creativity and individuality alternative educational methods to conform home school education into public school education at home. She believed the success track record of home schooling spoke for itself when Harvard and Yale endorse these students by their admission. Moeller concluded three years of satisfactory compliance by the home school community had proven the viability and success of this education alternative. A new era of trust and mutual respect must begin the Department of

EDUCATION (Cont.)

Education and the home schooling community as these rules were expanded to allow for the freedom of innovative, multidisciplinary education. It was Moeller's understanding that the role of the ARRC was to determine whether these changes fell within the parameters of the law.

Townsend referred to a handout and stated he had served with Grandview Park Baptist School which had a home satellite ministry working with several families and children. He contended that existing rules had been tried and it was time to eliminate excessive and unnecessarily restrictive encumbrances.

Priebe pointed out that these rules were just under Notice and he appreciated everyone's input.

INSPECTIONS

Rebecca Walsh represented the Department and there were no questions on the following:

INSPECTIONS AND APPEALS DEPARTMENT[481]
Egg handlers, 30.2, 30.4(9) 30.8(5), ch 36, Filed **ARC 5890A, see text IAB 7/5/95, page 18** 9/27/95
Hospitals — pediatric services, emergency care for persons of all ages, 51.30(1)"b," 51.34 Notice **ARC 5864A** 9/13/95
Licensing requirements of respite care services in health care facilities, 59.60, 62.26, 63.50, 64.63, 65.30, Notice **ARC 5865A** 9/13/95

RACING

Linda Vanderloo was present from the Commission for the following:

RACING AND GAMING COMMISSION[491]
INSPECTIONS AND APPEALS DEPARTMENT[481]"umbrella"
Employee retention of occupational license, 4.29(6), 13.9, Notice **ARC 5859A** 9/13/95
Thoroughbred racing — locked claim box, 10.5(17)"b"(2), 10.5(17)"c"(1), Filed **ARC 5858A** 9/13/95

4.29(6) and 13.9

No questions on 4.29(6) and 13.9.

10.5(17)

No questions on 10.5(17)"b"(2) and 10.5(17)"c"(1).

REVENUE

Carl Castelda, Co-administrator for the Compliance Division, and Mel Hickman, Supervisor of Policy Staff, represented the Department for the following:

REVENUE AND FINANCE DEPARTMENT[701]
Motor fuel — forms, penalty and enforcement provisions, 8.3(4)"c" to "e," 8.4(1)"n," 10.71, Notice **ARC 5892A** 9/27/95
Noncompliance with child support recovery unit — denial or revocation of permits and licenses, 13.7, 13.16, 13.17, 30.1(3), 30.1(4), 81.12, 81.13(2) to 81.13(4), Notice **ARC 5880A** 9/13/95
Vehicles subject to registration — exemptions, 34.5, 34.5(2), 34.5(3), 34.5(6), 34.5(9), 34.5(10), Notice **ARC 5891A** 9/27/95
Motor fuel — new chs 67 to 69 effective January 1, 1996; chs 63 to 65 in effect for periods prior to January 1, 1996, Notice **ARC 5893A** 9/27/95

8.3(4)"c" et al.

No questions on 8.3(4)"c" et al.

Objection to Ch 107

Barry explained that the Department had filed an adopted rule to rewrite Chapter 107 of their rules. An objection on the existing chapter was still in place and she requested that it be lifted to avoid confusion.

REVENUE (Cont.) Motion to Lift Objection

Metcalf moved to lift the objection on 701—Chapter 107 and the motion carried.

13.7 et al.; 34.5 et al. Chs 67 to 69

No questions on 13.7 et al; 34.5 et al. or Chapters 67 to 69.

UTILITIES

Vicki Place, Allan Kniep and Curt Stamp represented the Division and John Flannery and Mike Anderson, GTE, Larry Toll, US West, and Todd Schulz, Iowa Telephone Association, were present for the following:

UTILITIES DIVISION[199]
COMMERCE DEPARTMENT[181]"umbrella"
Local exchange competition, ch 38, Notice **ARC 5885A** 9/27/95

Ch 38

Kniep gave a brief overview of the rules. Weigel asked about the cost recovery mechanism and Kniep stated the money would flow from company to company. For example, if US West provided number portability for McLeod customers, McLeod would have money flowing to US West and how McLeod recovered the money would be up to McLeod. He assumed it would be built into McLeod's rates. There would be costs involved with local competition. Number portability created a new set of costs which would ultimately be borne by the customer.

Weigel asked when the universal service fund rules were to be expected and Kniep replied the Division had already announced to the industry that a workshop on this topic would be held in early November with anticipated proposed rules in early 1996.

Recess

The Committee was recessed at 12:15 p.m. and was reconvened at 1:30 p.m.

NATURAL RESOURCE

Steve Dermand, Terry Little and Darrell McAllister represented the Commission for the following:

NATURAL RESOURCE COMMISSION[571]
NATURAL RESOURCES DEPARTMENT[561]"umbrella"
Use of crossbows with pistol grips by handicapped individuals for deer and turkey hunting, 15.5(5), Notice **ARC 5904A** 9/27/95
Volunteer bow and fur harvester education instructors, snowmobile and ATV safety instructors and boating safety instructors, 15.9, Filed **ARC 5903A** 9/27/95
Boating —Three Mile Lake in Union County, 40.44, Notice **ARC 5910A** 9/27/95
ATV and snowmobile safety-education classes, 50.3, Filed **ARC 5909A** 9/27/95
Waterfowl and coot hunting seasons, 91.1 to 91.3, 91.4(2)"d," "g," "h," "p," Filed Emergency After Notice **ARC 5908A** 9/27/95
Canada goose hunting, 91.5, Filed Emergency After Notice **ARC 5907A** 9/27/95
Pheasant, quail and gray (Hungarian) partridge hunting seasons, 96.1(1), 96.2, 96.3, Filed Emergency After Notice **ARC 5906A** 9/27/95
Wild turkey spring hunting, 98.1(1), 98.2(5), 98.3(1) to 98.3(3), 98.10(2), 98.12, 98.14, Notice **ARC 5905A** 9/27/95

NRC (Cont.) 15.5(5) In review of 15.5(5), Dermand described different sizes of crossbows. Some crossbows have pistol grips as well as a shouldering apparatus and by substituting "and" for "or," the Commission was including these to be legal for handicapped hunters who have permits to use crossbows. The Commission did not anticipate any opposition.

15.9 No questions on 15.9.

40.44 Dermand explained new rule 40.44 would set boating regulations on Three Mile Lake, a newly constructed lake of approximately 880 surface acres.

50.3; 91.1 et al. No questions on 50.3 or 91.1 et al.

91.5; 96.1(1) et al.; 98.1(1) et al. There was brief review of the remaining agenda and there were no recommendations.

EPC Anne Preziosi, Peter Hamlin, Darrell McAllister, Catharine Fitzsimmons and John Miller were present from the Commission. Also present: Tracy Kasson, Iowa League of Cities, and Dawn Goodrich, Des Moines Water Works, for the following:

ENVIRONMENTAL PROTECTION COMMISSION[567]
NATURAL RESOURCES DEPARTMENT[561]"umbrella"
Voluntary operating permit program — 12-month rolling period, 20.2, 22.100, 22.200, 22.201(1)"a" and "b," 22.201(2)"a," 22.206(2)"c," Filed **ARC 5875A** 9/13/95
Hazardous air pollutants for source categories, 22.5(2)"a" and "b," 22.100, 22.103(2)"a"(1), 22.105(3), 22.107(1)"c," 22.107(5), 23.1(4), 23.1(5), Filed **ARC 5874A** 9/13/95
Assessment of fees for water supply operation, 40.2, 40.5, 43.2(3)"b," 43.3(3)"b"(2), Notice **ARC 5878A**, also Filed Emergency **ARC 5877A** 9/13/95
Water quality — Section 401 certification for the Rock Island district corps of engineers' regional permit 7, 61.2(2)"h," Filed **ARC 5876A** 9/13/95

20.2 et al. In review of amendments to 20.2 et al., Metcalf commented on the significant changes and opposition from some industry groups. Hamlin replied the issue was the definition of a "12-month rolling period" which meant that every month it starts a new 12-month year. The Commission had extensive communication with EPA and EPA had insisted on this language which was in the state implementation plan. The EPA was unwilling to make any changes and the Commission's position was that it would be very difficult to change to a calendar year because facilities would be in jeopardy of EPA forcing a 12-month rolling period. The Commission had no resolution at this time.

Motion for a 70-Day Delay Metcalf moved a 70-day delay on 20.2 et al. in ARC 5875A. Daggett would support the motion and wondered if the legislature could pass a law to strengthen the position of year round. With a change to a calendar year, the Commission would have one tier reporting for the calendar year and a second tier reporting for EPA which could result in future problems. Hamlin was willing to work with the private sector on this matter.

Rittmer voiced support for a delay.

EPC (Cont.)
70-Day Delay

The motion for the 70-day delay of ARC 5875A carried.

Chs 22, 23

In review of amendments in Chapters 22 and 23, it was Priebe's understanding that freon was not to be used after January 1 and Hamlin replied the Clean Air Act contained a separate section on freon and other similar chemical compounds. The state of Iowa had no jurisdiction in this area. Priebe was concerned about the fiscal impact of changing over equipment—$800 to $900. He wondered if the state could pass legislation to grandfather equipment until the freon was used. Hamlin agreed to pursue the matter. He also agreed to research a question by Hedge as to whether freon produced and used within the state was exempt from federal guidelines.

40.2 et al.

There was discussion of fees for water suppliers. Palmer asked if any consideration was given to the relationship of the regulatory expense to the fee. McAllister recalled that last year the Department had proposed a cost of service method for calculating the fees but those rules were placed on hold until the legislative session. New legislation directed the Department to calculate the fees based on the per capita served. McAllister added that under the initial proposal, the bulk of the fees would have been paid by small water supplies now a large portion of fees will be paid by large water supplies which object to this.

In response to Palmer, McAllister stated small water supplies receive more attention since they are the sources of a majority of the drinking water violations.

General Referral

Metcalf moved that ARC 5877A be referred to the General Assembly.

On behalf of the Des Moines Water Works, Goodrich contended it was inappropriate for the fees for water supply operations to be adopted as Emergency rules. The Water Works believed the fees were disproportionate to the services provided. The large utilities would shoulder the majority of the fees needed to support the Commission's drinking water program yet they would receive less than 10 percent of the technical services. She continued that large water utilities incur numerous expenses not passed on to small water systems. Goodrich estimated $1.3 million annually for the Des Moines Water Works. She urged delay of the rules.

Daggett spoke of financial burden for small communities of people on very low income.

Rittmer noted the Commission went from one extreme to the other and he would have preferred a middle ground.

Priebe had served on the budget committee and believed the Commission had followed legislative intent.

EPC (Cont.) Palmer believed there were other alternatives and he supported the motion for a referral.

Halvorson pointed out that population was the determining factor for legislation in many instances.

Metcalf noted that the Des Moines water system was required to perform more tests initially which was double taxation.

Motion Failed The motion for referral of ARC 5877A to the Speaker of the House and the President of the Senate failed.

61.2(2)"h" There was brief discussion of 61.2(2) but no recommendations.

DOT Dean House, Norris Davis and Dick Hendrickson represented the Department for the following:

TRANSPORTATION DEPARTMENT[761]
Regulations applicable to carriers, 520.1(1)"a" and "b," Filed **ARC 5857A** 9/13/95
Driver licensing, commercial driver licensing, sanctions, OWI and implied consent, nonoperator's identification, financial responsibility, 600.4(1), 600.4(8), 601.2, 607.16(2)"j," 615.4, 615.9, 615.15, 615.23 to 615.25, 615.29(3)"c," 615.36, 615.37, 615.38(1), 615.39, 615.45(1)"j" and "k," 620.3(1)"a," 620.3(3)"c," 620.4(1)"c" to "f," 620.4(2), 620.10, 630.2(4), 630.2(5), 640.6(2)"a," Notice **ARC 5886A** 9/27/95

520.1(1)"a" and "b" No recommendations for 520.1.

600.4(1) et al. Priebe questioned use of the words "or its predecessor statute" in 615.9(1). It appeared to him the Department could go back indefinitely. Norris stated that the habitual offender statute was a two-level sanction. The first one, if the person committed three of certain types of violations within a six-year period, they would be barred two to six years and the lesser sanction would be six of a certain type of violations committed within the two-year period.

Norris believed the language was copied from the habitual offender statute and it could be stricken.

Weigel was advised that a seat belt violation would not accrue points since it was a nonmoving violation.

Metcalf in Chair.

SUBSTANCE ABUSE G. Dean Austin represented the Commission for the following:

SUBSTANCE ABUSE COMMISSION[643]
PUBLIC HEALTH DEPARTMENT[641]"umbrella"
Licensure standards for substance abuse treatment programs, 3.1 to 3.26, Filed **ARC 5912A** 9/27/95
Standards for the use of methadone, 3.35(1) to 3.35(14), Filed **ARC 5884A** 9/13/95

3.1 to 3.26 No recommendations.

SUBSTANCE ABUSE (Cont.) 3.35(1) et al.

According to Austin a national expert had worked with the Commission in developing the revised methadone rules which were acceptable to all concerned. No Committee action.

In response to Hedge, Austin said he had no statistics to substantiate possible birth defects from methadone use. No Committee action.

MEDICAL EXAMINERS

Ann Martino was present from the Board of Medical Examiners and Robert Sharp, Iowa Board of Optometry Examiners, and Steven Jacobs, M.D., were present for the following:

MEDICAL EXAMINERS BOARD[653]
PUBLIC HEALTH DEPARTMENT[641]"umbrella"
Licensure requirements, discipline, standards of practice and professional ethics, 11.3(1)"d" and "e," 11.4(4)"b," 12.50(2) to 12.50(4), 13.2, Notice **ARC 5900A** 9/27/95

11.3(1) et al.

Martino stated that the proposed rules should expand the number of physicians who were qualified to practice in the state of Iowa.

In response to Rittmer, Martino stated the Board had not heard from insurance companies with respect to any of these rules and that under the rules of surgery, physician assistants and advanced registered nurse practitioners would not be affected. The rules were essentially designed to address how physicians delegate certain kinds of operatives, post-operative and pre-operative services to other physicians. Martino referred to 13.2(2)"c" and stated that (1) applied to PAs and ARNPs and neither changed the status quo and had been included so there could be no question that these rules were not directed toward them.

Rittmer was concerned with the language on prohibiting splitting of fees. Martino explained the Board was concerned with physicians entering into unethical arrangements with respect to referrals of patients.

Martino advised Kibbie these rules did not address discipline of physicians in another state. The Board had changed some of their licensure requirements to allow them to look more seriously at physicians with fine records who had been practicing in other states but, under the current rules, would be prohibited from obtaining a license in Iowa. A state structured exam which many physicians took in the 1960s and 1970s would be accepted.

Doderer suggested clarification of the words "health care practitioner" in 13.2(3).

Sharp urged clarification with respect to scope of practice, e.g., postoperative care which could interfere with care of patients.

Halvorson asked if, in the normal referral process between an optometrist and an ophthalmologist, splitting a fee or giving or receiving a referral fee or other form of compensation would take place. Sharp replied that was a violation of codes and ethics and should be handled disciplinarily. In the standards of care and the

MEDICAL EXAMINERS (Cont.)

methodology of postoperative care, if this were done according to the guidelines set up throughout the insurance system, fees could be apportioned appropriately, legally, and for the benefit of everyone.

Martino observed that cases of "kick-back" were often more subtle, i.e., "if you do not refer patients to me for postoperative care, I won't refer patients to you."

Doderer had received calls from several physician assistants who were concerned about the wording of 13.2 standards of practice—surgical care. Martino replied the rule placed no restraints on physician assistants. She stated the Board would reference the definition of "supervision" as it was used under their statute.

Jacobs, ophthalmologist and past president of the state society, addressed the issue of kick-backs and 1991 Medicare mechanism for dividing fees. Nearly 99 percent of the 15 specialties which used the mechanism were ophthalmology and optometry with regard to cataract surgery. Jacobs continued that it had become rampant in the state, if the ophthalmologist did not refer a patient to an optometrist and allow them to collect up to 20 percent for menial postoperative care, the ophthalmologist had no referrals. He quoted from letters to ophthalmologist from optometrists to support his statements.

Martino pointed out an existing rule on this issue warranted some clarification as to third-party payers.

Martino stated that the Board had heard both sides of the story but these rules were not intended to address another scope of practice conflict. They were trying to respond to a series of complaints and some national trends in dealing with issues similar to this. No action.

GENERAL SERVICES

Jerry Gamble represented the Department for the following:

GENERAL SERVICES DEPARTMENT[401]

Inventory guidelines for state personal and real property for use by state agencies, 10.2, 10.3, 10.5(1), 10.5(2), 10.6, 10.7, Filed **ARC 5871A** 9/13/95

10.2 et al.

Gamble told the Committee the Department was responsible for general guidelines for state assets. He explained in detail the process for agencies to follow in maintaining their inventories.

Palmer wondered about the motivation for rule changes and how excess inventory was handled. Gamble stated that surplusing of state property was currently under study and would be addressed in the future. Previously, all surplus property had to be sold at auction but the Department saw a need for more latitude.

In response to Kibbie, Gamble stated these rules were minimum guidelines and the state departments could implement additional rules—approximately 60 percent had their own inventory system currently.

GEN. SERVICES (Cont.) Kibbie and Priebe emphasized the importance of utilizing surplus to a good advantage.

PROFESSIONAL LICENSURE Carolyn Adams, Marge Bledsoe and Barbara Charls were present from the Division and Robert Sharp, Iowa Board of Optometry Examiners, Carla Pope and Paul Romans, Iowa Health Care Association, Ed Friedmann, Iowa Association of Rural Health Clinics, Robert Witt and Bill Crews, Board of Physician Assistant Examiners, Jeanine Gazzo, Iowa Academy of Family Physicians, and Becky Roorda, Iowa Medical Society, were present for the following:

PROFESSIONAL LICENSURE DIVISION[645]
PUBLIC HEALTH DEPARTMENT[641]"umbrella"
Cosmetology arts and sciences examiners, 60.2(4), 60.4(4), 60.4(4)"a," 60.6(5), 60.8(5), 60.11(2)"a," 61.6(12), 63.5(5), 63.12(8), 64.1(2), 64.8, Notice **ARC 5883A** 9/13/95
Nursing home administrators, chs 140 to 143, 146 to 149, Filed **ARC 5879A, see text IAB 3/15/95, page 1383** 9/13/95
Optometry examiners — prescriptions, 180.9, Notice **ARC 5881A** 9/13/95
Optometry examiners — continuing education, 180.12(1)"d," 180.12(3)"c," "d," and "i," 180.13(5), Notice **ARC 5882A** 9/13/95
Podiatry, 221.9(3), Notice **ARC 5911A** 9/27/95
Physician assistants, 325.7(3), 325.7(4), Filed **ARC 5771A, 70-Day Delay** 8/2/95

60.2(4) et al. Adams gave a brief overview of 60.2 et al. Metcalf asked about deletion of the grandfathering clause and Charls referred to a new law in place to require a short course of study for nail technology, electrology and nail extension. Charls stated that 2,100 hours were needed to obtain a cosmetology license.

Metcalf referred to 61.6(12) which indicated that the Division was no longer reporting to the College Aid Commission the numbers of enrolled students of cosmetology. Bledsoe replied that schools reported directly to the Commission.

Metcalf suggested substituting "shall" for "will" in 60.2(4).

Ch 140 et al. Pope, Director of Governmental and Regulatory Affairs for the Iowa Health Care Association, suspected the primary purpose for revisions in Chapters 140 et al. was to implement a proposed federal rule which would require a bachelor's degree for nursing home administrators. It was her organization's belief that the requirements of this position should dictate the level of education and not licensure. Pope declared it was probably much more important for the administrator of a small rural facility to relate well to the residents, families and community and to understand nursing home business than it was to hold a bachelor's degree. She knew of no problems relative to the current level of education for administrators and noted they did rely on other licensed health care professionals to provide the actual care to nursing home residents.

Pope opined the Division should wait for the federal government to act before proceeding with the rules.

Motion for 70-Day Delay Metcalf moved for a 70-day delay on amendments in ARC 5879A.

LICENSURE (Cont.) Discussion continued. Pope could foresee increased costs to the Medicaid program if the state were to require the bachelor's degree. Approximately 60 percent of nursing home administrators hold bachelors' degrees. In response to Metcalf, Pope was concerned with the future employment of the 40 percent without the degree.

Barry asked if this 70-day delay should include all of the chapters in ARC 5879A. Bledsoe clarified that the rules were intended to apply to administrators licensed after January 1, 1999.

Metcalf was willing to limit the delay to rules involving the educational requirements of administrators.

Session Delay Motion — Hedge questioned what would be accomplished by a delay of 70 days. Hedge and Priebe suggested a Session Delay would be more effective and Priebe moved a substitute motion to Delay 141.3(2) in ARC 5879A until adjournment of the 1996 General Assembly.

Bledsoe informed Weigel the Board thought given the number of years, most administrators could meet the requirements or would be grandfathered in. The Board felt strongly there should be a certain level of education for an administrator.

According to Pope, three community colleges offer associate degree programs for nursing home administrators and with course work a bachelor's degree could be earned. Weigel was concerned with the impact on smaller, rural nursing homes. Bledsoe reiterated the Board's preference for a bachelor's degree as a minimum level.

Motion Session Delay — Metcalf withdrew her motion for a 70-day delay. The Priebe motion for Session Delay of subrule 141.3(2), ARC 5879A [text in Notice 5477A] carried. Metcalf stated for the record that this was really an issue involving small, rural facilities.

180.9 — Sharp stated that new rule 180.9(154) would provide a timeframe for periodic evaluation based upon the literature and the standards of practice published in the "Preferred Practice Patterns in Ophthalmology and the Adult Patient Examination in Optometry." Sharp advised Metcalf there was no restriction from filling interstate prescriptions for eyeglasses.

180.12(1)"d" et al.; 221.9(3) — No questions on 180.12(1)"d" et al. or 221.9(3).

LICENSURE (Cont.) 325.7(3) and 325.7(4)

Crews told the Committee the Board, on September 20, met with their administrative rules review group comprised of the three-member PA Board and two-member Medical Examiners Board. At that time they considered the issues under delay and unanimously agreed on the proposals published in the October 11, 1995, IAB as ARC 5934A. [These proposals would be included in the ARRC agenda for November.]

Gazzo stated that the IAFP needed more time to review these proposed rules and it was noted the 70-day delay would expire November 15.

Crews indicated the Board intended to adopt the three provisions under Emergency provisions on November 15. He expressed confidence that the family physicians would approve of the rules upon review.

Priebe stated the ARRC would be meeting on November 13 and would be able to review the rules, if necessary.

Roorda had reviewed the proposed rules and approved of them.

NO REPS.

No agency representative was requested to appear for the following:

BANKING DIVISION[187]
COMMERCE DEPARTMENT[181]"umbrella"
General definition of bank, 8.9, Filed **ARC 5868A** 9/13/95

INSURANCE DIVISION[191]
COMMERCE DEPARTMENT[181]"umbrella"
Actuarial opinion and memorandum, 5.34, Notice **ARC 5873A** 9/13/95

SECRETARY OF STATE[721]
Election forms, 4.3, Filed **ARC 5872A** 9/13/95

Minutes

Halvorson moved to approve the August minutes and the motion carried. Weigel moved to approve the September minutes and the motion carried.

Meeting Dates

The next meeting was scheduled for November 13 and 14, 1995.

Royce Travel

Royce stated that on December 1 the Council of State Governments would be meeting with the National Rules Review Association in Puerto Rico and he requested permission to attend. The travel would be from November 30 to December 2. No formal action taken.

Adjourned

The meeting was adjourned at 3:45 p.m.

Respectfully submitted,

Phyllis Barry

Phyllis Barry, Secretary
Assisted by Kimberly McKnight

APPROVED:

Berl E Priebe

Senator Berl Priebe, Co-chair