

**MINUTES OF THE SPECIAL MEETING
OF THE
ADMINISTRATIVE RULES REVIEW COMMITTEE**

Time of meeting The special meeting of the Administrative Rules Review Committee (ARRC) was held on Monday, February 5, 1996, 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; Kimberly McKnight and Cathy Kelly, Administrative Assistants; Caucus staff and other interested persons.

Convened: Co-chair Priebe convened the meeting at 8 a.m.

Minutes Halvorson moved to approve the minutes of the January meeting as submitted and the motion carried.

INSURANCE Susan Voss, Jerry Wickersham and Jo Oldson represented the Division for the following:

INSURANCE DIVISION[191]
COMMERCE DEPARTMENT[181]"umbrella"
Medicare supplement insurance minimum standards, 37.2, 37.3, 37.6(1)"e"(4), 37.7(1)"e"(5), 37.7(1)"g"(1), 37.10, 37.12(1)"c," 37.12(2)"c" and "d," 37.15(1)"f," 37.15(3) charts, 37.15(4), 37.16(1), 37.16(5), Appendix A, Appendix C, Notice ARC 6162A 1/3/96

37.2 et al. Voss stated that amendments to Chapter 37 reflected changes to the federal requirements for Medicare supplemental policies. Providers were prohibited from selling an insurance policy to a Medicare beneficiary with the knowledge that the policy was a duplicate but could now do so with certain restrictions.

Priebe requested clarification on the policies that could be sold. Wickersham responded the beneficiary or the individual on Medicare was prohibited from buying coverage that duplicated both the policy and Medicare's benefits. With adequate disclosure, an individual could have a Medicare supplement policy and, as an example, a hospital indemnity policy. Disclosure would be done by the insurance company in accordance with federal regulations.

Kibbie evinced concern regarding precautions needed over insurance agents taking advantage of elderly living in apartment buildings and condominiums. He mentioned that in th past, agents had gone down the hallway, knocked on every door, and sold duplicate policies to people, many of whom did not understand what they were buying. Wickersham responded that the Division was trying to educate the elderly through the Senior Health Insurance Information Program. This program, staffed by volunteers, was presently in a majority of Iowa. A toll-free number to obtain information from the Insurance division would soon be available for seniors not having access to a volunteer in their county. The new regulation was designed to control marketing practices by disclosing to the elderly, at the time of application, that the purchase being considered did duplicate benefits and did indicate how those benefits would be duplicated. The decision to purchase was left to the senior.

INSURANCE (Cont.) When asked by Kibbie why a toll-free line was only now in existence, Wickersham replied it was primarily because of expense and lack of a person to answer the line. Kibbie inquired if the installation of a toll-free line indicated there was a problem. Voss responded it provided easier access when the Division had to get the volunteers throughout the state, as well as another way for the elderly to obtain immediate assistance. By examining the seniors' policies and explaining to them what they were receiving, the Division saved the elderly a considerable amount of money through this voluntary education.

Halvorson believed education directed toward the elderly in the past year and the state's use of uniform policy provisions and replacement forms had diminished shoddy sales practices. Voss stated that senior health people had information, based on the areas of the state, that could be sent to the elderly. The health people could visit and explain the different policies available, but the Division made no endorsements.

Hedge asked if a policy sold by mail included in writing that it was a duplicate policy coverage. Wickersham explained that in the solicitation of a Medicare supplement policy, each company was required to give notice of the Senior Health Insurance Information Program and this part of the regulation was already in Chapter 37 and had not changed.

Daggett commented that as he neared retirement age, he had received at least eight letters from companies selling these policies. Voss stated the Division encouraged people who received this solicitation in the mail to call the senior health people for help in sorting out this information. Wickersham added that in March or April the new premium guide would be forthcoming which would be helpful for anyone soon turning 65.

In a topic not formally before the Committee, Halvorson asked about the rules on individual health plans. Voss replied those would be filed by the Division this week and April 1 would be the effective date. Kibbie asked if there were changes from the Notice. Voss responded there were no changes from the basic plan.

PHARMACY

Terry Witkowski represented the Board for the following:

PHARMACY EXAMINERS BOARD[657]

PUBLIC HEALTH DEPARTMENT[641]"umbrella"
 Hospital pharmacy licenses, ch 7, Filed **ARC 6130A**..... 1/3/96
 Prescription drugs — coupons, rescind 8.5(10), Filed Emergency **ARC 6140A** 1/3/96
 Child support recovery — certificate of noncompliance, 9.1(4)"x," ch 25, Notice **ARC 6141A** 1/3/96
 Disposal of controlled substances, 10.10(7), Filed **ARC 6129A** 1/3/96

- Ch 7 No questions on Chapter 7.
- 8.5(10) Witkowski stated that based on negative comments received mostly from seniors, this rule was rescinded.
- 9.1(4)"x," and Ch 25 No questions on 9.1(4)"x,"and Chapter 25.
- 10.10(7) No questions on 10.10(7).

NO REPS. No agency representative was requested to appear for the following:

ACCOUNTANCY EXAMINING BOARD[193A]

Professional Licensing and Regulation Division[193]
 COMMERCE DEPARTMENT[181]"umbrella"
 Child support recovery — certificate of noncompliance, 9.11, 12.11, 16.9(3), Notice **ARC 6156A** ... 1/3/96

NO. REPS. (Cont.)

ARCHITECTURAL EXAMINING BOARD[193B]

Professional Licensing and Regulation Division[193]

COMMERCE DEPARTMENT[181]"umbrella"

Child support recovery — certificate of noncompliance, 2.5, 5.23, 6.9(3), Notice ARC 6157A..... 1/3/96**CIVIL RIGHTS COMMISSION[161]**

Issuance of decisions and other administrative action, 2.1(6), 3.13, 3.16(3)"e," "f," and "g,"

Filed ARC 6144A..... 1/3/96**DENTAL EXAMINERS BOARD[650]**

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

Child support recovery — certificate of noncompliance, 6.9(2)"h," 30.4"41," ch 33,

Notice ARC 6149A..... 1/3/96**EDUCATIONAL EXAMINERS BOARD[282]**

EDUCATION DEPARTMENT[281]"umbrella"

Child support noncompliance, ch 10, Notice ARC 6183A..... 1/17/96Hearings, special education endorsement, 11.2(3), 11.8(3)"a" and "e," 11.9 to 11.16, 15.2(12), 15.3(12), 15.3(13), Filed ARC 6213A, see text IAB 10/25/95, page 605..... 1/31/96

Duplicate license fees, provisional licenses, special education and secondary occupational endorsements, evaluator approval, special education supervisor, 14.8, 14.11, 14.14, 14.19(4), 14.23(1)"a" and "b," 14.23(2)"a" and "b," 14.23(3)"a" and "b," 14.23(4), 15.3(5)"b," 15.3(10)"b," 15.3(11)"b,"

16.8(1), 16.8(2), 17.8, Filed ARC 6212A, see text IAB 11/8/95, page 677..... 1/31/96**ELDER AFFAIRS DEPARTMENT[321]**

Area profile, deletion of 80 percent requirement for nutrition program for elderly, 4.22, 7.3(7)"a,"

Notice ARC 6217A..... 1/31/96**ENGINEERING AND LAND SURVEYING EXAMINING BOARD[193C]**

Professional Licensing and Regulation Division[193]

COMMERCE DEPARTMENT[181]"umbrella"

Child support recovery — certificate of noncompliance, 1.8, 4.30, 5.9(3), Notice ARC 6158A 1/3/96**GENERAL SERVICES DEPARTMENT[401]**Organization and operation of the department, 1.2(1), 1.2(3), Filed ARC 6222A 1/31/96Parking, ch 4, Filed ARC 6223A..... 1/31/96Appeals, ch 6, Filed ARC 6224A, see text IAB 12/6/95, page 901..... 1/31/96**INSURANCE DIVISION[191]**

COMMERCE DEPARTMENT[181]"umbrella"

Prearranged funeral contracts — denial, suspension or revocation of sales permit for failure to pay

child support, 19.25, Notice ARC 6186A..... 1/17/96

Denial, suspension or revocation of agent's license when the Iowa securities bureau receives a certificate

of noncompliance from the child support recovery unit, 50.11, Notice ARC 6187A..... 1/17/96**JOB SERVICE DIVISION[345]**

EMPLOYMENT SERVICES DEPARTMENT[341]"umbrella"

Employer's contributions and charges, claims and benefits, benefit payment control, 3.43(3)"b"(1),

3.43(5), 3.43(6), 3.43(8), 3.43(9), 3.43(13) to 3.43(17), 3.44(1) to 3.44(3), 3.44(7), 4.27, 4.28(5),

4.52(10)"c" and "d," 5.7(6)"f," Filed ARC 6181A 1/17/96**LANDSCAPE ARCHITECTURAL EXAMINING BOARD[193D]**

Professional Licensing and Regulation Division[193]

COMMERCE DEPARTMENT[181]"umbrella"

Child support recovery — certificate of noncompliance, 2.11, 4.11, 5.9(3), Notice ARC 6159A 1/3/96**LAW ENFORCEMENT ACADEMY[501]**Petition for rule making, 1.11, Notice ARC 6179A, also Filed Emergency ARC 6180A..... 1/17/96Reserve officer weapons certification, 10.1(3)"d," Notice ARC 6178A 1/17/96Child support, ch 12, Filed Emergency ARC 6175A 1/17/96

NO REPS. (CONT.) LIBRARIES AND INFORMATION SERVICES DIVISION[286]	
EDUCATION DEPARTMENT[281]"umbrella"	
ICN classroom policy, ch 4, <u>Notice</u> ARC 6190A	1/31/96
LOTTERY DIVISION[705]	
REVENUE AND FINANCE DEPARTMENT[701]"umbrella"	
Child support noncompliance, 1.5, 2.1, 2.2, 2.4, 2.4(3), 2.4(7), 2.7, 2.12 to 2.15, <u>Notice</u> ARC 6167A.....	1/17/96
NURSING BOARD[655]	
PUBLIC HEALTH DEPARTMENT[641]"umbrella"	
Penalty fees for late and delinquent licensure renewals, 3.1, <u>Filed</u> ARC 6142A.....	1/3/96
Suspension, revocation, nonissuance, and nonrenewal of a license for failure to pay child support, 4.3"5," 4.21, <u>Filed</u> ARC 6143A	1/3/96
PETROLEUM UNDERGROUND STORAGE TANK FUND BOARD, IOWA COMPREHENSIVE[591]	
Environmental protection charge imposed upon petroleum diminution — child support noncompliance, 6.1, 6.5, 6.14, 6.15, <u>Notice</u> ARC 6171A.....	1/17/96
Environmental protection charge imposed upon petroleum diminution — child support noncompliance, 6.6, 6.7(3), <u>Filed</u> ARC 6170A	1/17/96
Financial responsibility coverage, 10.1(2)"i," 10.1(6)"a" and "d," <u>Filed</u> ARC 6176A.....	1/17/96
Remedial or insurance claims, 11.1(3)"d," <u>Filed Emergency</u> ARC 6177A	1/17/96
Rescission of environmental damage offset, 11.5, <u>Filed Emergency After Notice</u> ARC 6169A.....	1/17/96
Rescission of prioritization of remedial account claims, 11.7, <u>Filed Emergency After Notice</u> ARC 6168A	1/17/96
Installers and inspectors — child support noncompliance, 15.1, 15.3(1), 15.6(1)"f," 15.7(1)"e," 15.8(1)"f," 15.9(1)"e," 15.12(2)"g," 15.12(3), <u>Notice</u> ARC 6172A	1/17/96
Appeals—contested cases, child support noncompliance, 17.32(4), <u>Notice</u> ARC 6173A	1/17/96
PROFESSIONAL LICENSURE DIVISION[645]	
PUBLIC HEALTH DEPARTMENT[641]"umbrella"	
Cosmetology arts and sciences examination fee, 62.1(1), <u>Filed</u> ARC 6184A	1/17/96
Hearing aid dealers, 120.8(2) to 120.8(4), 120.9(3), <u>Filed</u> ARC 6211A	1/31/96
Board of social work examiners, 280.3(3), 280.4(1), 280.4(5)"c," 280.5(2), 280.5(4), <u>Notice</u> ARC 6150A.....	1/3/96
PUBLIC SAFETY DEPARTMENT[661]	
Handicapped parking, 18.3(4), 18.5, <u>Filed</u> ARC 6185A	1/17/96
REAL ESTATE APPRAISER EXAMINING BOARD[193F]	
Professional Licensing and Regulation Division[193]	
COMMERCE DEPARTMENT[181]"umbrella"	
Examinations, appraisal log, continuing education, prehearing conferences, stipulations, 1.1, 2.1, 2.8, 2.10, 2.12, 2.14, 3.2 to 3.4, 3.6, 4.2(6), 4.3(1), 4.4, 5.2, 6.1, 6.3(8), 7.1(5), 7.2(2), 8.9, <u>Filed</u> ARC 6138A, see text LAB 10/25/95, page 618	1/3/96
Child support recovery — certificate of noncompliance, 4.6, 7.6, 9.9(3), <u>Notice</u> ARC 6161A	1/3/96
REAL ESTATE COMMISSION[193E]	
Professional Licensing and Regulation Division[193]	
COMMERCE DEPARTMENT[181]"umbrella"	
Child support recovery — certificate of noncompliance, 2.18, 4.42, 5.18, <u>Notice</u> ARC 6160A	1/3/96
SECRETARY OF STATE[721]	
Primary election signatures — plan three supervisor candidates, 21.600, <u>Notice</u> ARC 6139A.....	1/3/96
Proposed constitutional amendment summary, 21.200(4), <u>Notice</u> ARC 6221A	1/31/96

MEDICAL EXAMINERS

Ann Martino and Jennifer Hart were present from the Board and Becky Roorda, Iowa Medical Society, Greg Kolbryn, Iowa Physician Assistant Society, Bill Crews and Bill Case, Iowa Board of Physician Assistant Examiners, Ed Friedman, Iowa Association of Rural Health Clinics, and Jeanine Gazzo, IAFP, were present for the following:

MEDICAL EXAMINERS BOARD[653]

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

Child support recovery — certificate of noncompliance, 1.13(4), 12.4(30), ch 15,

<u>Notice</u> ARC 6146A.....	1/3/96
Category I activities, accreditation of sponsors, 11.10, 11.13, <u>Notice</u> ARC 6147A.....	1/3/96
Impaired physician review committee, 12.16, <u>Filed</u> ARC 6145A.....	1/3/96
Eligibility for physician assistant supervision, ch 21, <u>Notice</u> ARC 5609A <u>Terminated</u> , also	
<u>Notice</u> ARC 6148A.....	1/3/96

- 1.13(4) et al. No questions on 1.13(4) et al.

- 11.10 and 11.13 Daggett asked if primarily the amendments to Chapter 11 resulted in a name change and Martino replied that was correct, the name of the accreditation agency had changed.

- 12.16 Martino stated the purpose of the Impaired Physician Review Committee in 653—12.16(272C) was to afford physicians who self-report impairments to the Board the opportunity to correct the impairment before normal disciplinary procedures were commenced.

 When Kibbie asked if this was the first time there had been a rule regarding impaired physicians, Martino replied in the affirmative and noted the Board was not authorized to establish this particular committee since the statute had only passed last year. Kibbie asked if this statute was passed as a recommendation of the Board. Martino responded it was recommended collectively by Public Health and health professional licensing boards.

- Ch 21 Martino stated the rules concerning physician assistant supervision were revised in response to comments the Board had received from five groups. Martino had spoken with four of those groups. The Board changed the rules in accord with its intentions and took into consideration some of the comments received. One of these comments had been incorporated into subrule 21.4(4) after the Board received a letter from Bery Engebretsen, M.D., in which concern had been voiced about whether or not a physician who willingly entered a program to upgrade skills would be excluded from acting as a supervising physician.

 Martino referred to 21.4(5) and noted the Board expanded its discretion to make determinations about whether a doctor who had a problem in a particular field would be excluded from supervising in all areas of medicine.

 Martino pointed out the changes in 21.4(6) and (7) were a reaction to the reversal in District Court Judge Arthur Gamble's ruling. The Board previously was placed under a temporary injunction and prohibited from making information public about physicians against whom charges had been formally filed. Under this ruling a formal charge became part of the investigative process rather than a separate stage in the adjudication process. Facing that prohibition, the Board changed the language to treat formal charges as if they were part of the investigative process. The reversal subsequently allowed the Board to make that information public. Disciplinary action was taken in 98 percent of the cases in which the Board filed charges. Further, if the Board was aware a physician had been disciplined by another state authority, that person would not be permitted to supervise.

MEDICAL
EXAMINERS (Cont.) Halvorson expressed concern the judge's decision would have a deleterious effect on charges being brought. Martino believed the Board seemingly became more cautious during the period in which it could not make the information public. Martino noted this Board was composed largely of physicians of a basically conservative nature who would continue to be fair and rigorous in the enforcement of the law.

Daggett asked Martino's assessment of the working relationship between the Board of Medical Examiners and the PA Board. It was her belief the two boards had developed a more cooperative relationship. She noted the University of Iowa surveyed all the physicians in the state for the Board, and it was found the relationships between PAs and their supervisors were quite good. Martino stated there was confusion over whose rules should be observed. She received five calls from major facilities since these rules were Noticed asking if these fundamentally changed the responsibilities of the supervising physician. She pointed out these were not changes but clarifications of rules already in place and certain paperwork required to approve a supervising physician was eliminated.

Rittmer asked if there were continued disagreements between the boards. Martino indicated two fundamental differences remained. 1. Why should a doctor have to conform to supervise a PA but not a nurse practitioner? 2. Why should a PA's license be "tied" to a doctor's license? In the first instance, the Board felt very strongly that if it had reason to doubt the clinical judgment of a physician, then that physician's ability to supervise was also in questions. Nurses were governed by their own board. PA's did not have a separate scope of practice. In the latter instance, the Board of Medical Examiners believed the licenses should be separate but the Board strongly believed it should have the discretion to say no.

Martino stated the Board had set up physician eligibility to run contiguously with the license. If fees were unpaid, questions not answered accurately, and the Board found the physician was in trouble elsewhere, the license would no longer be valid. The Board intended to set up a roster of supervising physicians maintained on a current basis through both the application and the renewal process. The Board had appeared before different legislative committees and agreed to prepare a roster and have the rules in place by the start of session. She believed there was a misunderstanding about what the intent and focus of the roster should be.

Crews asked if a doctor determined eligible to supervise a physician assistant would also be eligible to supervise another physician assistant without going through all currently required paperwork. Martino replied they would not but the PA Board would need to review the situation to ensure a match between the doctor and the physician assistant.

Crews stated the only real objection concerned paragraph 21.4(6)"b" and subrules 21.4(7) and rule 21.5. In each instance, cooperation between the two Boards was spoken of and the words "in consultation" or "upon consultation" were used. The PA Board suggested this be changed to "after consultation" with the PA Board so it was clear these actions occurred after the PA Board had been consulted. Martino stated she was advised not to do this by the Board's attorney.

Friedman stated his organization was concerned about the lack of due process guaranteed to the physician and the PA in these rules and the likely adverse affect on access to care this would have in the rural areas. He explained that a PA in a rural health care clinic, the only source of health care in the town, was accused of not wearing a name tag and using a presigned prescription. The supervising physician left to go to another practice and the PA had to change to another supervising physician. That physician was not approved by the Medical Examiners Board until the PA was cleared of those charges, which subsequently

MEDICAL EXAMINERS (Cont.) occurred. This meant the rural health clinic was closed for five weeks, the people had no health care, and the PA had no income.

Friedman stated subrule 21.7(1) was a source of significant concern. He questioned whether this list of new requirements actually protected the public or increased the regulatory burden and cost and discouraged more PAs and physicians from coming to rural Iowa. Martino responded that the Board conducted a survey in which 85 percent had not read the rules and did not know there were rules governing the PA/physician relationship nor that these rules had changed. The Board had an obligation to require reading and understanding the rules as implicit in renewing the license.

Kibbie referred to 21.4(1) and asked about the distinction of the physician not actively engaged in practice. Martino replied that under the Board's rules, inactive status of the license meant an individual was not engaged in the practice of medicine and active status meant that the license was current and valid. A physician could supervise a PA as long as an active license was maintained.

Priebe asked if a clinic could theoretically be shut down if there was no supervising physician. Crews responded that it could if the physician assistant did not have a supervising physician. Martino stated the law required the PA's license be attached to the supervising physician and felt the roster would make such a transition easier.

Metcalf expressed concern about the continued supervision of someone who had formal charges brought.

Priebe asked about supervision restrictions against those people formally charged. Martino replied there were certain circumstances under which the Board would not allow a physician, against whom formal charges had been filed, to supervise. If a physician had been convicted in another state, the Board could defer judgment on eligibility if that physician had been deemed by the Board to pose an imminent threat to the public.

Kibbie asked if any of the comments received at the hearing on January 23 were incorporated into these rules. Martino spoke with four of the five people who commented and sent copies of the new rules to three of those, who approved of them. Martino was uncertain whether the Filed rules would remain the same as the Noticed rules. Kibbie asked when the Committee would see the Filed rules. Martino replied that the board would meet at the end of the month and the rules would be filed shortly thereafter. Royce stated this rule would be before the ARRC in April at the earliest.

Weigel inquired who the groups were that commented. Martino replied: Dr. Engebretsen from Broadlawns; a physician at Acute Care, which used many PAs; Dr. Carlisle, who represented the Iowa Academy of Physicians; the PA Board; and a law firm.

Metcalf in Chair.

ECONOMIC DEVELOPMENT

Mary Lawyer, Kathy Beery and Melanie Johnson represented the Department for the following:

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

Mailing address for RFP, selection criteria and matching requirements for grant funding, 10.5(2), 10.5(4), 10.5(4)"f," 10.7(1) to 10.7(4), Filed ARC 6152A, see text IAB 11/8/95, page 674 1/3/96
 High technology apprenticeship program, 17.2 to 17.7, Notice ARC 5731A
 Terminated ARC 6151A 1/3/96
 Rural action development program, ch 48, Filed Emergency After Notice ARC 6153A 1/3/96

DED (Cont.)
10.5(2) et al.

No questions on 10.5(2) et al.

17.2 to 17.7

No questions on 17.2 to 17.7.

Ch 48

In order to benefit the local communities, the agriculture producers and the economic development groups, the Department filed Emergency the new Chapter 48, Rural Action Development Program. This benefited the communities by allowing an extra 30 days to make application. The Department was also able to publicize this program with six other rural programs which included a mailing to 2500 different entities and four public meetings were held around the state to publicize it.

Metcalf asked if there were any significant differences between these rules and the ones that were changed. Beery replied the Department added a second phase. Phase I consisted of doing feasibility studies and examining what agriculture strategies might work in the counties. The Department found that in piloting this program they did not have sufficient time to start implementation, thus Phase II was added allowing an additional \$8500 which would see the group through another six to nine months so they could start implementing strategies.

Metcalf asked if the VAAPFAP program meshed into this. Beery replied that it did. This program supported the local agriculture producers and gave them a part-time coordinator. Many of these groups made application to the VAAPFAP program and many had applied to the Iowa Department of Agriculture for the revamped dollars which helped them purchase services of a consultant. The Department's dollars supported the local groups so there was a part-time person at the county development office to continue maintaining the activities.

Metcalf asked if the Department had pursued taking some money out of the VAAPFAP to support this program. Beery responded currently the rules and intent would not allow this. The Department's dollars were small and they worked well that way.

EDUCATION

Erik Eriksen, Lee Wolf, Ann Molis and Ann Marie Brick were present from the Department and Colleen Moeller and Mary Syversen were present from Niche for the following:

EDUCATION DEPARTMENT[281]

School fees, ch 18, Notice ARC 6155A 1/3/96
Competent private instruction and dual enrollment, 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, Filed ARC 6220A 1/31/96

Ch 18

Molis stated that in 1992, Legal Services of Iowa petitioned the Department asking them to make rules waiving school fees for indigent families. At that time the Department developed rules, sent them to the ARRC, and there was a question of statutory authority. The Department terminated the Notice. In 1994 the legislature added in Iowa Code section 256.7(20) under the duties of the state board that the board had to adopt rules requiring the board of directors of a school district to waive fees for indigent families. These rules proposed three types of waivers—a full waiver for students whose family met certain criteria, a partial waiver, the rule suggested a sliding scale based on the ability to pay at minimum of the reduced price lunch, and temporary waiver that would be at the discretion of the school district if the family had temporary financial hardship. Applications would be received at any time during the school year but renewed at the beginning of a school year. The confidential application process would be similar to the free and reduced priced lunch application.

EDUCATION (Cont.) Molis referred to a handout detailing a fiscal impact study. This study was based on a sample of 30 school districts within each of the seven size categories ranging from the very small to the very largest school districts participating. This handout listed types of fees that were currently being collected, fees that had authorization, other fees that were being charged, and the amount of fees that were currently being waived.

Daggett had been contacted by several Area 14 superintendents, who were very concerned about the fees, percent of fees and budget problems. Molis replied the Code required the Department to waive fees for indigent families. The types of waivers were based on other recognized standards for financial aid for indigent families. She was unaware of any other way to minimize the fiscal impact of a waiver system. Brick stated that she attended the fee waiver meeting in Daggett's area and noted that the superintendents were upset about the loss of revenue this would engender and the lack of guidance about what was authorized and what was not. The superintendents were aware they may be charging fees not authorized. Brick told them these fees would have to be authorized by statute or they could not legally charge them nor could the Department give them this authority to do so.

Daggett asked if the Department could work on language that would represent the superintendent's viewpoint. Molis stated the Department had taken the position that they wanted to get the fee waiver rules through first and then continue discussion on what type of fees were legal. She was aware of discussions with various associations and legislators on possibly authorizing some fees this session. It was not the Department's intent to come to the legislature with a list of fees to authorize, but rather wait for the rules to be implemented and then come to the legislature with some suggestions next session.

Hedge asked if attendance at these meetings had been mostly superintendents. Molis replied that at the Cedar Rapids meeting there were representatives of indigent families and also legal services. In response to Hedge, Molis stated there were 500,000 students in the state which would be approximately \$20 charged per student. She further added there was a wide fee variance from district to district and often within a district.

Metcalf said the Des Moines schools had stated the free and reduced lunch lists were confidential and wondered how many more individuals would have access to these lists to implement the proposed rules. Molis replied that if the district put a box on the free and reduced price lunch application that said this information could be used for fee waiver purposes, it served as an affirmative release of this information by the parent and could automatically be used for fee waivers. Metcalf believed that 40 percent of Des Moines children were eligible for the free lunch, a significant number.

Kibbie asked why rules on waivers were just now being written. Molis responded that in 1994 the legislature authorized the Department to prepare the fee waiver rules. This had been an evolutionary process which had taken until now to get the rules prepared. Molis noted the legislation had been prompted because some school districts were not providing waivers and Legal Services of Iowa in Iowa City had brought a petition on behalf of two indigent families. Kibbie asked if school districts with an instructional support levy would be able to use those funds to offset waivers. Molis did not know if this could be used for that purpose.

Rittmer asked if fees for driver education or a band trip would be included. Molis replied that although a driver license fee was not covered, a driver course fee would be covered. A band trip was not considered an authorized fee.

EDUCATION (Cont.)
31.3(1) et al.

Wolf stated that when the rule concerning home schooling was under Notice, ten people attended the public hearing, nine of whom spoke in favor of the proposed rules and one in opposition. The Department also received five letters in opposition, one of them from a person who spoke at the hearing. The Department opted to make changes in the rules because of some of the objections that had been received.

Priebe asked why the words "nonaccredited school" were removed and "nonpublic school" added in 31.4(2) paragraph "c." Wolf replied this section related to which institutions could provide testing to a youngster subject to the testing requirement in home schooling. Nonaccredited nonpublic schools and accredited nonpublic schools were subsets of the nonpublic schools. This latter was a larger set than the group of nonaccredited nonpublic schools. The Department and the task force felt that allowing only nonaccredited schools to administer tests to individuals subject to the assessment requirement omitted the accredited nonpublic schools.

Metcalf spoke to subrule 31.3(1). It was her understanding that anyone who had a teacher's license updated and validated would be eligible even if a lapse in actual classroom experience had occurred. Wolf replied a classroom teacher license was a subset of all teacher licenses which specifically excluded art, music and PE licensed teachers. Removal of that phrase would permit supervision by anyone with a valid Iowa teaching license appropriate for the age and grade of the youngster.

Metcalf asked why 31.3(2) paragraph "a" reduced the amount of face-to-face contact that a teacher had with a home schooled student to twice instead of four and changed the words "shall meet" to "have contact." Wolf replied the Department continued to require a total of four contacts, only two of which had to be face-to-face. Under this, the district was not required but permitted to reduce its supervision.

Metcalf noted a permissive description of courses that could be in a portfolio included language arts, reading, mathematics, science and social studies. She believed the Department was eliminating all of these suggested parameters to what a portfolio could include. Molis stated there had been controversy over the interpretation involving whether this was a required list. Students were still required to be assessed in each of these areas. Metcalf asked where the list of what should be included in a portfolio could be reviewed. Wolf replied it was in the statute and repeated in the rules.

Priebe in Chair.

REVENUE

Carl A. Castelda, Administrator for the Compliance Division, represented the Department, Harry Griger, Attorney General's Office and Mike Ralston represented the Iowa Taxpayers Association for the following:

REVENUE AND FINANCE DEPARTMENT[701]

Exemption certificate for beer and wine resale, 15.3(6), Filed ARC 6215A.....	1/31/96
Taxable and exempt sales — agricultural production, 17.3(1)"d," 18.10(2), 18.48, 18.57, Notice ARC 6164A.....	1/3/96
Corporate income, franchise, individual income and withholding tax, 38.2(3), 40.47 to 40.49, 41.5(8), 42.2(2), 42.2(6), 46.1(2), 46.1(2)"a," "b," and "d" to "g," 46.3(2)"a," 46.3(4), 46.6, 51.2(4), 52.7, 57.2(4), Filed ARC 6216A, see text IAB 12/6/95, page 923	1/31/96
Electronic filing of Iowa individual income tax returns, 39.13(1)"c," 39.13(2)"c," 39.13(5), Filed ARC 6163A, see text IAB 11/8/95, page 774	1/3/96
Corporation income tax, 52.1, 52.1(1)"d," 52.1(4) to 52.1(8), 54.1(4), 54.2(3), 54.2(4), 54.4, 54.6(5), Notice ARC 6165A.....	1/3/96
Assessment of computers and industrial machinery and equipment, 80.7, Filed ARC 6131A.....	1/3/96
Challenges to administrative levies and publication of names of debtors, ch 154, Notice ARC 6214A.....	1/31/96

REVENUE (Cont.)

- 15.3(6) No questions on 15.3(6).
- 17.3(1)"d" et al. No questions on 17.3(1)"d" et al.
- 38.2(3) et al. Castelda stated the Department worked with Principal Insurance and the John Deere pension people on creating exemption certificates. Since these rules were Noticed, the Department received no public comment and the rules remained identical.
- Weigel asked if the health insurance premium or the pension was dependent on itemizing. Castelda replied that neither was and if an individual did itemize, it could not be taken twice. When the Department designed the 1996 tax return, it would be noted that if 100 percent was taken as an adjustment to income, it could not then be retaken as an itemized deduction.
- 39.13(1)"c" et al. Castelda stated the amendments to Chapter 39 made revisions in the rules for the electronic filing of Iowa individual income tax returns. He noted that last year 40,000 tax returns were filed electronically with the Department and this year the Department anticipated 100,000 tax returns. Department rules reflected changes in procedures required by electronic filing for federal and state purposes.
- Daggett expressed concern over confidentiality when returns were filed electronically. Castelda enumerated various protections the Department had implemented and noted computer "hackers" were not a problem at this time.
- Rittmer asked if the section regarding tips and social security had any effect on the amount that was declared for tips. Castelda replied it did not since that was a federal provision and the employer was allowed to take a credit for the adjustment. Taking the credit required the employer to reduce business expense. The Department coupled deductions but not credits for Iowa purposes. If a credit was taken for federal purposes, the Department allowed the expense as a deduction for state purposes.
- 52.1 et al. Castelda stated the Department received public comment concerning taxation of corporations, especially in the area of intangible property. The Department worked with the Iowa Association of Business and Industry and the Iowa Taxpayers Association to make certain they were in basic agreement with the rules and regulations. Clarifying language would be added in Example 4 under 52.1(4). The Department received letters from the International Franchise Association in Washington, D.C. and the local office of Deloitte and Touche stating the rules exceeded the statute since the former did not require physical presence in the state in order to establish nexus. Toys R Us was involved in a South Carolina Supreme Court case in which economic nexus was enough to establish nexus in the state of South Carolina. Toys R Us appealed to the U.S. Supreme Court for review, which was denied. Based on this case, the Department felt they were legally on solid ground. The Department received no public comment pertaining to taxation of gains or losses from a property used operationally in the taxpayers trade or business.
- 80.7 No questions on 80.7.
- Ch 154 Chapter 154 was designed to implement the establishment of administrative review and allow the director of Revenue and Finance to publish names as part of a collection process as it related to central collection activity. Publication of names was at the discretionary authority of the director of Revenue and Finance. Names would not be published unless a person owed less than \$100 or a threshold amount established by the director. The Department received no public comments on these rules.

REVENUE (Cont.) Rittmer asked if the \$100 was collective or a single incident. Castelda assumed it would be collective for the debt certified to the central collection unit.

PUBLIC HEALTH Carolyn Adams represented the Department for the following:

PUBLIC HEALTH DEPARTMENT[641]

Reportable diseases, 1.2, 1.2(1)"a," Notice ARC 6209A..... 1/31/96
 Reporting of agricultural injuries, 1.2(1)"d," Filed Emergency After Notice ARC 6206A..... 1/31/96
 Iowa state plumbing code, ch 25, Notice ARC 5741A Terminated ARC 6210A 1/31/96
 Radiation, fees, 38.8(1), 38.8(2), 38.8(2)"c," 41.1(3)"a," 41.1(3)"a"(1), Notice ARC 6207A 1/31/96
 Radiation, 38.9(1)"b," 41.1(12)"c"(2)"1," 41.2(19)"b," 42.1(1), 45.2(6)"b"(1), 46.3(3),
Filed ARC 6205A 1/31/96
 Special supplemental nutrition program for women, infants, and children(WIC), ch 73,
Filed ARC 6201A 1/31/96
 Family planning services, ch 74, Filed ARC 6202A 1/31/96
 Maternal and child health program, ch 76, Filed ARC 6203A, see text IAB 11/8/95, page 764..... 1/31/96
 Volunteer health care provider program, ch 88, Filed ARC 6199A, see text IAB 11/8/95, page 770 1/31/96
 Iowa child death review team, ch 90, Notice ARC 6200A 1/31/96
 Advisory bodies of the department, 191.1, 191.5(3), Filed ARC 6204A 1/31/96
 Child support noncompliance, ch 192, Filed Emergency After Notice ARC 6208A 1/31/96

1.2 No questions on 1.2 and 1.2(1)"a."

1.2(1)"d" Daggett asked why it was necessary to file subrule 1.2(1), paragraph "d," pertaining to agriculturally related injuries Emergency. Adams stated it was to extend the reporting period from December 31, 1995, to December 31, 1996.

Responding to Daggett regarding comments, Adams recalled the Department received support from local hospitals and negotiated with the Iowa Hospital Association.

Ch 25 Because an agreement could not be reached between the Iowa Association of Building Officials and the Iowa Fire Marshal on the state plumbing code, the rule was terminated and would be renoticed later this year.

38.8(1) et al. No questions on 38.8(1) et al.

38.9(1)"b" et al. No questions on 38.9(1)"b" et al.

Ch 73 Adams noted that public hearings regarding WIC were held through ICN sites and that there were four changes from the Notice. "Administrative law judge" was changed to read "hearing officer" to avoid confusion.

Metcalf approved of the format in the IAB which listed comments of those who spoke at the hearing and what the response was. She wondered if anything controversial was not addressed. Adams responded there was some confusion in terms of the competitive grant application process for NCH, WIC and family planning. The Department assured this was covered under another chapter, but terms of criteria for review of grants and awards, this would be included under Chapter 76.

In response to Metcalf, Adams stated the Department tried to use ICN as often as possible and believed it worked well. She stated it provided a way for the Department to make these hearings as accessible as possible, although attendance varied.

Adams informed Metcalf these rules were not only published in the IAB but the Department also provided a copy of the rules to all contractors.

PUBLIC HEALTH
(Cont.)

Additional approval for the comment and response format was voiced by Daggett and Royce.

Ch 74 No questions on Chapter 74.

Ch 76 No questions on Chapter 76.

Ch 88 No questions on Chapter 88.

191.1 and 191.5(3) No questions on 191.1 and 191.5(3).
Ch 90 Priebe referred to subrule 90.4(1) paragraph "m" and asked if a representative of the health insurance industry was included on the Iowa child death review team in the Code. Priebe noted the insurance representative was the only one that came from a for-profit business. Adams replied this was in the statute.

Ch 192 No questions on Chapter 192.

AGRICULTURE Ron Rowland and Walter Felker represented the Department for the following:

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Child support collection procedures, licensing information, 6.17, ch 7, Notice ARC 6218A 1/31/96

Livestock importation, 65.4(3), Notice ARC 6166A 1/17/96

Dairy — cooling of milk contained in bulk milk tanks on Grade A farms in Iowa, 68.12,

Filed ARC 6219A 1/31/96

6.17 and Ch 7 No questions on 6.17 and Chapter 7.

65.4(3) In discussing importation of cattle, Priebe asked if there were any states that were not modified clean on tuberculosis. Felker responded that every state was currently at least modified accredited.

68.12 No questions on 68.12.

EPC Anne Preziosi, Catharine Fitzsimmons, David Warnson and Keith Bridson were present from the Commission for the following:

ENVIRONMENTAL PROTECTION COMMISSION[567]

NATURAL RESOURCES DEPARTMENT[561]"umbrella"

Air quality, 20.2, 22.1(2)"i," 22.8(1)"b," "c," and "e," 22.101(1), 22.202, 22.203(1)"a," 22.300,

23.1(4)"r" and "x," 23.1(4)"ac" and "ag," 23.3(2)"d," 29.1, Notice ARC 6188A 1/17/96

Registration of groundwater professionals — certification, 134.2 to 134.5, Notice ARC 6189A 1/17/96

20.2 et al. Preziosi noted the Commission was currently participating in a modeling task force which would review the rules regarding air quality dispersion modeling. She also stated the Commission received one comment in support of these rules. No Committee action.

134.2 to 134.5 Warnson stated some written comments had been received pertaining to requirements for certification of groundwater professionals in Chapter 134. These comments stated professionals could qualify only if they were members of certain national trade associations.

EPC (Cont.) Doderer asked if this was required by statute and Wornson replied it was and could be found in Iowa Code section 455G.18. Doderer recommended this be sent to the legislature. Wornson added a provision in the statute provided for an exemption for professional engineers. He believed that due to legislative oversight, some of the language intended to be stricken from the statute originally proposed last year had been missed. That portion dealt with the UST board.

Motion to Refer Doderer made a motion to refer these rules to the President of the Senate and the Speaker of the House. The motion carried.

Daggett inquired about costs. Wornson stated previously there had been a \$200 registration fee with a two-year certification. The fee currently set by the Commission is \$200 plus costs associated with taking the course of instruction and examination required, the fees established on a cost basis. In response to Daggett, Wornson stated he did not feel this was made part of the Commission's legislative package.

NATURAL RESOURCES

Richard Bishop represented the Commission for the following:

NATURAL RESOURCE COMMISSION[571]

NATURAL RESOURCES DEPARTMENT[561]"umbrella"

Nonresident deer hunting, 94.2, 94.6, 94.8, Notice ARC 6154A 1/3/96

94.2, 94.6, 94.8

Bishop stated the only significant change to the nonresident deer hunting amendments to Chapter 94 from a year ago was the increase in the number of deer hunting licenses. Based on demand of licenses, the Commission created a resident Zone 1 for buck only first season and any sex second season and a Zone 2 for any sex season. Resident licenses were also managed on a per county basis. Maintaining the old Zones 1 through 10 for nonresidents ensured there would not be a heavy concentration of nonresident hunters in a certain area of the state.

Metcalf asked if the words "current hunting season" could be substituted for the date of 1995 in the second sentence of rule 94.8. Bishop responded this would be done in future filings.

HUMAN SERVICES

Mary Ann Walker, Harold Templeman and Marno Cook represented the Department and Rik Shannon was present from the Arc of Iowa for the following:

HUMAN SERVICES DEPARTMENT[441]

Governor's developmental disabilities council and state grant program, 1.7, ch 38 preamble, 38.1 to 38.3, 38.4(1), 38.4(2)"a"(2), 38.4(2)"b," 38.4(3), 38.5, 38.5(2), 38.6, 38.11, 38.12,

Filed ARC 6191A, see text IAB 11/22/95, page 820 1/31/96

Family investment program's limited benefit plan, 7.5(8), 41.24(2)"a," 41.24(8), 41.24(11), 41.27(11), 41.28(1), 93.109(1)"b" to "f," 93.133(1)"f," 93.138(2), 93.138(3), 93.138(3)"a"(3), 93.138(3)"d," 93.138(4), 93.140(2), Filed Emergency After Notice ARC 6192A,

also Filed ARC 6193A, see text IAB 10/11/95, page 524 1/31/96

Disability services management, ch 25 division II preamble, 25.11 to 25.28, Filed ARC 6194A 1/31/96

SSI cost-of-living, community spouse resources and maintenance needs, personal needs allowance for RCF residents, 51.4(1), 51.7, 52.1(1), 52.1(2), 52.1(3)"a"(2), 75.5(3)"d," 75.16(2)"d"(3),

Notice ARC 6132A, also Filed Emergency ARC 6133A 1/3/96

SSA and RCF reimbursement rates, 52.1(3), Filed ARC 6195A 1/31/96

Food stamp standard deduction, 65.8(9), 65.108(9), Filed ARC 6196A 1/31/96

Food stamp program disqualifications, 65.46, 65.145, Notice ARC 6197A, also

Filed Emergency ARC 6198A 1/31/96

Health insurance premium payment program, 75.21(1), 75.21(3)"a" and "d," 75.21(5)"j," 75.21(11),

Filed ARC 6134A 1/3/95

Day treatment or partial hospitalization services to persons 20 years of age and under provided by community mental health centers, hospitals, or psychiatric medical institutions for children,

78.16(7)"b"(4), 78.16(7)"d"(4), 78.28(8), 78.32, Filed ARC 6135A 1/3/96

DHS (Cont.)

Family and group day care homes, 110.1, 110.2, 110.4, 110.5, 110.5(1) to 110.5(3), 110.5(3)"e," 110.5(5), 110.5(5)"b" and "c," 110.5(6) to 110.5(8), 110.5(13), 110.6, 110.7(4), 110.7(5), 110.9(2)"c," 110.10, Filed ARC 6136A, see text IAB 10/25/95, page 611 1/3/96
 Forms — foster care of children who have AIDS, test HIV positive, or who are at risk of HIV infection, 113.10(1)"d," 202.6(1), 202.10(4), Filed ARC 6137A 1/3/96
 In-home health program, 177.3, 177.4(1)"d," 177.4(9)"c," Notice ARC 6182A 1/17/96
 Child abuse, chapter 175, division I title and preamble, new division II — 175.21 to 175.37, Filed ARC 6076A, 70-Day Delay, 715.25(4)"d" 12/6/95

It was the consensus of the Committee to review only the controversial rules of the Human Services Department. Royce listed the controversial rules as disability services management, Chapter 25 and child abuse, chapter 175, the 70-day delay.

Ch 25

Walker stated 140 persons attended the public hearings on disability services management across the state. Templeman stated that many of the comments dealt with the provisions in Senate File 69. Some commented they preferred the term "individualized services" over the Department term of "services and supports."

The rules provided that if a person was currently employed by the county in performing the functions of a CPC administrator but did not meet the minimum education and experience requirements, that person could continue in the performance of duties. Only those persons who were hired after the effective date of the rules had to meet the education and experience requirements. It was requested the grandfather clause be removed. One county asked that the prohibition against using elected officials as the CPC administrator be eliminated.

Concerns were expressed about the scope of services. It was preferable to use a person's level of functioning, rather than a diagnosis, as an eligibility basis. The Department point out that could not be, since the statute specifically referred to compilation groups. It was intended that Senate File 69 give counties flexibility to determine which services would be provided and which individuals would be served.

Templeman stated the Department received no comments from Johnson County government but did receive some from Linn County involving the legal settlement provision. Because of the federal laws, the state could not make the requested changes.

Templeman said a fiscal impact statement had been requested but the Department believed it was not needed since the county could not spend above what was spent in the baseline year.

It was recommended to eliminate utilization management, a phrase from managed care. Additionally, there was concern that the rules did not provide specific time frames in which the counties had to authorize services.

Concerns were evinced regarding the appeals process. The final authority remained with the Board of Supervisors, which approved the plan and made the decision concerning who would be served and what would be provided. Concerns were expressed on how the plan development process would go. Consumers wanted more input into the plan and it was recommended that consumers and families make up the majority of those individuals in the planning process. A recommendation asking that rules be changed to require the plan reflect how comments were responded to was accepted.

DHS (Cont.)

A number of comments about the review process, once the plan came to the Department for approval by the director, were received. There were recommendations that the director give notice of receipt of the county plan to consumers and advocates and give them the opportunity to comment and that the consumer should have an opportunity to challenge the county plan with the director. The Department did not change the rule in this regard. Included in the rules was a request of the consumers asking that there be at least one public hearing at the county level in developing the plan.

Concerns were expressed about the lack of uniformity with plans and sets of services in 99 counties, increased administrative costs, and a class action lawsuit filed against the state and the two state hospital schools.

Priebe noted the legislature appropriated \$6.5 million to return to the counties for mental health. Auditors believed this was a direct appropriation and were attempting to finalize budgets when each received a letter from Gretchen Tegler stating the \$6.5 million would not be sent to the counties this week. Templeman explained that the appropriation did not go to the counties but stayed in the Department as part of the Title XIX appropriation to directly pay the state costs.

Rittmer asked how parity could be established if each county had a different plan. Templeman replied the state and county management committee held discussions on this issue but had not yet developed a plan.

Daggett referred to the definitions of "full-risk contract" and "county management plan," in rule 441—25.11(331) and noted the Department did not refer to this contract again. He asked why the rules included "plan" but not "contract." Templeman responded the reason for the contract in the rules was that a county plan did not have to conform with this. The Department wanted to know if a county contracted for a full-risk contract or for a not-for-risk contract. Templeman was aware of only Cerro Gordo County entering into a contract with a managed care provider. It was not a risk-based contract and the contractor was not assuming the risk for the county. In response to Daggett, Templeman stated the full-risk contract was not necessary. Daggett asked if multicounty groups could enter into a contract and Templeman replied they could.

Shannon stated he was appearing on behalf of a coalition of 18 provider, advocacy and consumer groups. He stated the coalition sent a letter to the committee requesting the ARRC ask for an economic impact statement on Senate File 69 and the implications for people with disabilities but, at this time, the coalition would like to request the Committee delay adoption of these rules.

Motion for Delay

Kibbie made a motion for a 70-day delay on ARC 6194A.

Daggett felt that any action by the ARRC would impact the counties and their budgets. Responding to Daggett, Templeman stated that beginning this year the counties could not spend any money out of the new fund that was created unless they had an approved plan. If these rules were delayed and the counties were not able to submit plans and obtain an approved plan, Templeman was uncertain what effect this would have.

Rittmer noted the counties were to have the paperwork filed by April 1 and that the time lines created a problem.

- DHS (Cont.) Kibbie asked if everything but the plan could be delayed. Royce stated that since the rules were not effective until April 1, the Committee could postpone action until a later meeting. Royce added this was an unusual case because the Department did not put these rules into effect the normal time of 35 days after adoption. Priebe suggested imposing the delay and then lifting it if the Department made some changes. Rittmer requested that this topic be put on the March agenda and make the decision then.
- Withdraw motion Kibbie withdrew the motion for the 70-day delay.
- Weigel understood the Department did not do an economic impact statement because the counties were limited on what could be spent. He asked if there was a need for an economic impact statement on the liability issue. Templeman responded that at this time it was an unanswerable question. The assumption behind Senate File 69 was that counties, given a reasonable amount of money, would be able to manage.
- When a person moved from one county to another, liability was increased in one and decreased in the other. Templeman pointed out there was no change in the overall amount of money spent for the state, but it became difficult to move the money between the two counties. Rittmer stated this would be a problem in the smaller counties and Priebe felt it would be very difficult to manage.
- Templeman stated that to deal with the liability issue a number of counties would have to band together and pool their liability. Weigel wondered about asking to have the economic impact statement based on the state having the liability over and above the county level. An aggregate guess could be made for the costs statewide and would eliminate the problems that were raised when people moved from one county to another. Royce explained a regular economic impact statement had to be asked for when the rules were under Notice since it would be published in the IAB and 15 days had to pass before it could be adopted. This time frame had passed so it would be voluntary for the Department to issue the statement at this point.
- Kibbie believed the state should check the reasons for people moving from county to county and he felt they moved to be closer to services and that the sending county would have to pick up the costs. Templeman responded that one family moved away from the services from a larger county to a smaller county and after a year, the financial responsibility transferred to the new county. He noted this was a frequent occurrence.
- March agenda Priebe suggested these rules be added to the March agenda. This would allow Senate File 2030 to be moved further along in the process. It was Committee consensus these rules be placed on the March agenda.
- Ch 175 Royce conversed with Ralph Rosenberg of Child Protection and Advocacy on the 70-day delay. Following negotiations, his group withdrew its objections to the rules and, along with the Department, intend to seek statutory remedies regarding concerns over the rules.
- Motion to Lift Delay Metcalf made a motion to lift the 70-day delay, which subsequently carried.
- DOT Jody Johnson, Dennis Ehlert, Jay Hardy and Terry Fitzpatrick were present from the Department and Martha Martell, Iowa Auto Dealers, and Joe Kelly, Iowa Manufactured Housing Association, were present for the following:

DOT (CONT.)

TRANSPORTATION DEPARTMENT[761]

Motor vehicle, mobile home and travel trailer dealers, manufacturers, distributors and wholesalers
rescind chs 420 to 422; new ch 425, Notice ARC 6174A 1/17/96

Ch 420 et al.

Ehlert stated rescinding Chapters 420, 421, and 422 and the incorporation of a new Chapter 425 resulted when the Department combined three similar sets of rules. The Department received comments from the Manufactured Housing Association and the mobile Home Dealers over combining these rules. Some comments addressed the reference to "engaged in the business." This phrase referred to someone who was in the business to sell vehicles and who must be licensed. If someone incidentally sold six vehicles, that person was presumed to be a dealer and must be licensed as a car dealer. These rules also added the presumption of six to the mobile home dealers and travel trailer dealers. Travel trailer dealers' current threshold was three.

Ehlert said a person applied for a dealer license and also wanted to sell weapons at the same location. The Department attempted to deny the application but was unsuccessful. These rules proposed that other items could be sold at a dealership with the exception of firearms, alcoholic beverages or dangerous weapons.

Priebe voiced concern with subrule 425.12(3) concerning the display of motor vehicles and wondered if the Department acted outside the scope of its authority. Royce was uncertain, stating an Agency was empowered to institute reasonable standards necessary to protect the public health, safety and welfare. This rule, however, seemed to overstep that limit.

Kibbie was concerned with the type and space parameters used in displaying motor vehicles. Kibbie felt that when a new car dealer was required to maintain a hard surface, 18 feet by 30 feet display area that could not be grass or dirt, the "little guy" might be eliminated.

Priebe stated he had been contacted by car dealers and mobile home dealers and neither group wished to be combined in these rules.

Martell noted Ehlert met with approximately 300 dealers about the substantive changes in these rules and the dealers were positive in their responses. It was not her preference to put all three groups in the same rules, however, she noted the Department had taken some care to put distinctions in among the various businesses.

Daggett referred to 425.3 and the definition of "regular business hours" and asked if the weekly 40 hours minimum would put some smaller businesses out of business. Martell did not know how many small businesses existed that were open less than 40 hours per week. She stated the Department attempted to address the problem of thousands of dealers licenses issued to those who claimed to be car dealers, but which were used for the express purpose of obtaining inexpensive dealer plates and not paying the use tax.

Priebe asked if an individual with a car dealers license who sold cars at auction would have to have the hard surface display area. Martell replied there was an exemption for an auction sale. Ehlert agreed and added the Department was also providing an exemption for those vehicles auctioned as part of an estate.

In response to Priebe, Ehlert stated a license was required if a person was intending to resell vehicles, whether that number was one or three. If someone had more than six incidental sales over a 12-month period, this was considered evidence that person was a dealer and a dealers license would have to be obtained.

DOT (Cont.)

Kelly believed the definition "engaged in the business" needed further clarification. His organization did not want these rules combined because of the perceived image problem in the manufactured housing industry and preferred to be thought of as housing. It was their belief that combining the manufactured homes with auto dealers and recreational vehicles would be detrimental and that better enforcement existed under DOT.

Daggett wondered if the Department was willing to remove manufactured housing from these rules.

Kirkpatrick stated he spoke at several conferences with used car dealers, who had approved of these rules.

Kelly, in referring to the definition of "regular business hours," stated that manufactured housing was more like housing which did not maintain hours beginning at 8 a.m. If these rules remained as they were Noticed, the hours could be a problem for his industry. Ehlert stated the Department would consider these comments.

Motion

Halvorson made a motion to refer these rules to the Speaker of the House and the President of the Senate. Motion carried.

Junked Vehicles

In a topic not formally before the Committee, Daggett asked about obtaining a title on a vehicle that had been junked. Ehlert stated that any vehicle that had been junked could not obtain a title unless it was 25 years old or older.

Adjourned

Priebe adjourned the meeting at 11:30 a.m.

Respectfully submitted,



Cathy Kelly, Acting Secretary
Assisted by Kimberly McKnight

APPROVED:



Senator Berl Priebe, Co-chair