

**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 and Wednesday, July 11 and 12, 1995, in Room 22, State Capitol, Des Moines, Iowa.

Members present: Representative Janet Metcalf and Senator Berl E. Priebe, Co-chairs; Senators H. Kay Hedge, John P. Kibbie, William Palmer and Sheldon Rittmer; Representatives Horace Daggett, Minnette Doderer, Roger Halvorson, and Keith Weigel. All members had been reappointed for 4-year terms ending April 30, 1999.

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

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

HUMAN SERVICES

Attending from the Department were Mary Ann Walker, Darlene Clark, Gloria Conrad, L. Mechaela Funaro, Kathy Ellithorpe, David Peret, Sally Nadolsky, Lucinda Wonderlich, P. C. Keen, Barb Bosch, Rosemary Norlin and Mary Nelson. Also in attendance were Marne Woods, Assistant Attorney General, Lyn C. Lienhard, Lutheran Social Services, Roberta Feller, Alternative Services, and Ann Thompson, Coalition for Family and Children Services. The following agenda items were reviewed:

HUMAN SERVICES DEPARTMENT[441]

Individual development accounts, ch 10, Filed ARC 5616A, see text IAB 3/29/95, page 1491 6/7/95

Transitional child care, 49.7(2), 49.9(4), 49.27(2), 49.29(4), Notice ARC 5671A 6/21/95

Estate recovery program, 76.12(7)"a," 76.12(7)"b"(2) and (3), 76.12(7)"f" and "g,"
Notice ARC 5670A 6/21/95

Medicaid reimbursement to home health agencies, EPSDT and care coordination, elderly waiver program, vaccines for children program, 77.33(6)"f," 77.33(12) to 77.33(14), 78.1(2)"e," 78.1(3), 78.1(3)"f," 78.1(23), 78.3(5), 78.9(11), 78.18(1), 78.18(6), 78.21 to 78.23, 78.25, 78.29(9), 78.30, 78.31(2)"h," 78.37(4)"e," 78.37(5), 78.37(8), 78.37(12) to 78.37(14), 78.39, 78.40, 79.1(2), 79.1(8)"d," 83.22(1)"b," 83.22(2)"a," 83.26, 84.3(3), Filed ARC 5615A 6/7/95

Medically needy, 86.14(2)"d," Filed Emergency After Notice ARC 5614A 6/7/95

PROMISE JOBS program, ch 93 division I preamble, 93.3, 93.6(1), 93.9(1)"d," 93.11, 93.11(1)"a"(2), 93.11(1)"b"(2), 93.14(3)"d," "e," and "f," 93.14(9), 93.14(11)"a," 93.22(1), 93.22(2), 93.22(5), 93.23, ch 93 division II preamble, 93.103, 93.106(1), 93.109(2)"a"(1), 93.111, 93.111(1)"a"(2), 93.111(1)"b"(2), 93.114(3)"d," "e," and "f," 93.114(9), 93.114(11)"a," 93.122(1), 93.122(2), 93.122(5), 93.123, Notice ARC 5646A 6/7/95

Child care centers, 109.1(4), 109.1(6) to 109.1(10), 109.1(12), 109.1(13), 109.2(1), 109.2(2), 109.2(5), 109.2(7), 109.2(7)"d," 109.3(1) to 109.3(3), 109.3(5) to 109.3(14), 109.4, 109.4(1), 109.4(1)"d," 109.4(2), 109.4(2)"b" and "h," 109.4(3), 109.4(4), 109.4(4)"a," "b," "d," "e," and "f," 109.4(5), 109.4(7), 109.4(8), 109.4(8)"c" and "d," 109.5(2), 109.5(4), 109.5(4)"e," "h," and "i," 109.5(6), 109.5(8) to 109.5(10), 109.6(1) to 109.6(3), 109.6(3)"b," "c," and "f," 109.6(4)"a," "c," "f," "h," and "i," 109.6(5)"a," "c," and "e" to "g," 109.6(6)"a" and "b," 109.6(7), 109.6(8), 109.7(1), 109.7(2)"b," "e," and "f," 109.7(3) to 109.7(5), 109.8(1), 109.9(1)"a" and "b," 109.9(4)"d," 109.9(5)"d," 109.9(6)"b," 109.11, 109.11(5)"b," 109.13, Notice ARC 5672A 6/21/95

Rehabilitative treatment services, 185.5(4), 185.5(6)"c," 185.5(7)"b," 185.5(8), 185.10(1)"b"(6), 185.10(8)"b" and "e," 185.11(2)"a"(9), 185.11(2)"e" and "h," 185.12(2)"h" and "i," 185.22(1)"d," 185.22(2)"d," 185.22(3)"d," 185.42(3), 185.62(1)"d," 185.62(2)"d," 185.62(3)"d," 185.82, Filed ARC 5613A 6/7/95

Ch 10; 49.7(2) et al.; No questions on Chapter 10, 49.7(2) et al., and 76.12(7)"a" et al. and 76.12(7)"a" et al.

DHS (Cont.)
77.33(6)"f" et al.

Doderer referred to 79.1(2) and wondered if minimum wage was followed for senior companions. Clark was unclear but explained this program was handled through federal guidelines. No Committee action.

86.14(2)"d"

Daggett asked about drugs not covered by Medicaid and Walker suspected this would be "over-the-counter." Walker requested Daggett to provide the name of the person involved and the Department would investigate. Clark recalled an instance of this on an ill and handicapped waiver. The doctor prescribed a similar drug with a different name and it was paid for under Medicaid.

In response to Kibbie, Walker replied that nothing under the class action lawsuit would be retroactive. Woods further explained that there was no retroactivity as to the class but the plaintiff in the lawsuit was asking for retroactivity.

Ch 93 et al.

No questions on Chapter 93 et al.

109.1(4) et al.

In review of amendments governing child care centers, Doderer wondered about inspections and Bosch replied that the providers performed their own inspections. Priebe requested clarification of the word "disciplinary" policies in 109.1(6). Bosch replied that discipline was very clear in program requirements. The policy for a particular center must be written and given to the parents and general public.

Doderer felt the program restriction in 109.1(7) was too broad. Bosch explained that some programs attempted to take children from a school environment and continue on with this environment in the program but the Department did not believe this was appropriate. The program could aid with homework but not continue with the same teachings. Bosch stated that revisions were made on the recommendation of the State Child Day Care Advisory Council and a subcommittee. Halvorson favored the stricken wording in 109.1(7). Metcalf opined the word "complement" should not have been stricken.

Rittmer and Doderer questioned why the words "kindergarten through 12" were included in 109.1(7) and Bosch was unsure.

Metcalf suggested referral of the Committee's recommendations to the Council on Human Services. Bosch assured Kibbie the rules would neither increase costs nor make it more difficult to obtain a license. She explained that these rules were taken from the Child Developed Care Food Program.

185.5(4) et al.

Walker summarized revisions in rehabilitative services intended to clarify procedures for Medicaid children's services.

Lienhard stated he had been a part of the social service system for over 31 years. He felt the flexibility of the program allowed it to be child centered and enabled agencies to serve rural Iowa. He was concerned that the amendments would adversely affect children and their families and discriminate against rural Iowans. Lienhard added that Lutheran Social Services would lose money because all costs could not be passed on and his agency would probably discontinue transportation activities. He cited many examples of services being provided while transporting children in a motor vehicle.

DHS (Cont.)

Ellithorpe explained that rehabilitative treatment services were typically Medicaid funded and supportive services were state-funded. She added the Health Care Financing Administration (HCFA) was preparing for a review of the rehabilitation treatment services. Although no federal regulation precluded service during transportation, Ellithorpe said there was no federal regulation for every possible situation. In her opinion, the services were indirectly reimbursed in that the indirect costs of transportation and staff time were in the indirect costs. They were not a billable unit but have impact on the rate of reimbursement for billable costs which amounted to \$30 million in federal fiscal year 1994.

Metcalf wondered about another solution. Daggett suspected the issue would become more complicated if not addressed. Ellithorpe replied that the concern was whether counseling while in a vehicle was a medical treatment service that should be billed to the Medicaid program.

Ellithorpe stated the definition of "rehabilitation" in the Code of Federal Regulations stated it was medical or remedial services to resolve the best possible potential of an individual. She added that many services were more remedial than medical.

Motion to Object

Kibbie recognized two problems in the rural areas—reimbursement and rehabilitation. He opined that the reimbursement problem should not interfere with the rehabilitation problem and moved to object to the rules dealing with services in an automobile.

Dierenfeld opined the Department had been creative and innovative in its uses for federal funding. She saw the issue as accessing federal dollars and providing this funding for a source not used previously. Dierenfeld cautioned if the issue were pushed too far, much funding would be at risk. She suggested revision to allow that service to be provided but without request for reimbursement.

In response to Metcalf, Ellithorpe noted that state funding could reimburse for supervision. Lienhard interjected that this differed from treatment. In response to Weigel, Ellithorpe emphasized if the federal government decided to disallow this reimbursement, the portion of funding for it would be cut off and other program funding would not be at risk.

Metcalf asked about the impact of a 70-day delay of the rules and Nelson saw no problem since a review would be completed by that time.

Motion for 70-day
Delay

Halvorson moved a 70-day delay of Items 5 through 8 of ARC 5613A relating to services provided while operating a motor vehicle. Kibbie and Priebe could see no benefit of a 70-day delay.

Kibbie withdrew his motion to object in preference of a 70-day delay so that at the end of the delay, the Committee had option to object if the issue was not resolved. Metcalf noted that an objection could be imposed at any time.

Motion carried

The motion for a 70-day delay of Items 5 to 8 carried.

EPC

Anne Preziosi and Michael Murphy were present from the Commission for the following:

ENVIRONMENTAL PROTECTION COMMISSION[567]
 NATURAL RESOURCES DEPARTMENT[561]"umbrella"
 Voluntary operating permit, 12-month rolling period defined, 20.2, 22.100, 22.200, 22.201(1)"a" and "b,"
 22.201(2)"a," 22.206(2)"c." Notice ARC 5655A 6/7/95
 Air quality — update of federal regulations, corrections to insignificant activities, Title V operating permit
 program, acid rain program, compliance sampling manual, 20.2, 22.4(1), 22.100, 22.101(1), 22.102, 22.103,
 22.105(1)"a"(5), 22.105(3), 22.107(1)"c," 22.107(5), 22.108(19), 22.110(1)"c" and "d," 22.120, 22.123(3)"a,"
 22.124(3)"a," 22.124(4)"c," 22.125(7)"g," 22.130(2), 22.132(6)"b," 22.132(7)"a"(1), 22.134, 22.139(1),
 22.141(1), 22.141(3)"c," 22.142(1)"a," 22.146(2), 22.147(3), 23.1(2), 23.1(3), 25.1(9), 25.2,
Filed ARC 5660A 6/7/95
 Air construction permit exemptions, 22.1(1), 22.1(2), 22.3(6), 22.8, Filed ARC 5659A 6/7/95
 Adoption of federal standards for hazardous air pollutants for source categories, 22.5(2)"a" and "b,"
 22.100, 22.103(1)"a," 22.105(3), 22.107(1)"c," 22.107(5), 23.1(4), 23.1(5), Notice ARC 5658A 6/7/95
 Water quality standards — Section 401 certification for regional permit, 61.2(2)"h,"
Notice ARC 5657A 6/7/95
 Water quality standards — protected flows for selected stream segments, 61.2(5), 61.3(5)"e,"
Filed ARC 5656A, see text IAB 2/15/95, page 1227 6/7/95
 Financial assurance requirements for municipal solid waste landfills, 111.6(1)"e," 111.6(2)"a," 111.6(3)"a,"
 111.6(4)"a," 111.6(5)"a," 111.6(6)"a," 111.6(7)"e," 111.6(8)"c," 111.6(11)"c,"
Filed Emergency ARC 5661A 6/7/95

20.2 et al.

Doderer asked what was meant by the definition of "12-month rolling period" in 20.2 and 22.100. Preziosi replied that this was to distinguish from a calendar year and at any given time, the 12-month period would start close to an incident and there would be flexibility. No Committee action.

20.2 et al.;
 22.1(1) et al.;
 22.5(2)"a" et al.;
 61.2(2)"h"; 61.2(5)
 and 61.3(5)"e";
 111.6(1)"e" et al.

No questions on 20.2 et al., 22.1(1) et al., 22.5(2)"a" et al., 61.2(2)"h," 61.2(5) and 61.3(5)"e" or 111.6(1)"e".

NATURAL RESOURCES

Attending from the Department were Don Paulin, Gaye Wiekierak, Nancy Exline-Downing, Arnie Sohn, Janet Gastineau, Jack Ressen, Steve Dermand, Don Cummings, Daryl Howell and Lavoy Haage. Also in attendance were Jocelyn Regner and Susan Osborn, Iowa Student Environmental Coalition, Deborah Neustadt and Helene Mahler, Sierra Club, and Thomas Mathews, Sarah Dirks, Paul Engler, Jane Magers-Fionof, Marty Hock, Sharon Bird, Bridie Roberts and Danielle LeJeune, Save the Trees Committee. The following agenda items were reviewed:

NATURAL RESOURCE COMMISSION[571]
 NATURAL RESOURCES DEPARTMENT[561]"umbrella"
 Termination of license depositary, 15.2(5)"e"(10), Filed ARC 5621A 6/7/95
 Snowmobile and all-terrain vehicle registration revenue cost-share program, ch 28, Filed ARC 5622A 6/7/95
 Boating safety equipment — lights on vessels, 37.6, Notice ARC 5623A 6/7/95
 Boating speed and distance zoning, 40.28, 40.31, 40.32, 40.38 to 40.43, Notice ARC 5624A 6/7/95
 Speed restrictions on Brown's Lake and Snyder Bend Lake in Woodbury County, 40.29, 40.30,
Filed ARC 5625A 6/7/95
 Removal of trees from lands under the jurisdiction of the commission and the department, 54.4,
Notice ARC 5626A 6/7/95
 State parks and recreation areas, 61.2, 61.6(4)"b" and "c," 61.22(15), Filed ARC 5627A 6/7/95
 Ginseng harvest and sale, 78.5(1), Filed Emergency ARC 5628A 6/7/95
 Migratory game birds, 92.3(3), Notice ARC 5629A 6/7/95
 Common snipe, Virginia rail and sora, woodcock and ruffed grouse hunting seasons, 97.1 to 97.4,
Filed ARC 5630A 6/7/95
 Wild turkey fall hunting, ch 99, Filed ARC 5631A 6/7/95
 Deer population management areas, 105.4(2)"e," 105.4(4), Filed ARC 5633A 6/7/95
 F.W. Kent Park deer management unit, Johnson County, 105.4(5), Notice ARC 5632A 6/7/95
 Deer hunting, 106.2, 106.5(1), 106.5(2), 106.6, 106.8, 106.10(1), 106.10(2), 106.10(6), Filed ARC 5636A 6/7/95

NRC (Cont.)

Deer hunting — eligibility for free landowner/tenant deer licenses, 106.12, Notice ARC 5634A, also
Filed Emergency ARC 5635A 6/7/95
Rabbit and squirrel hunting, 107.1 to 107.3, Filed ARC 5637A 6/7/95
Mink, muskrat, raccoon, badger, opossum, weasel, striped skunk, fox (red and gray), beaver, coyote, otter and
spotted skunk seasons, 108.1 to 108.4, 108.5(2), Filed ARC 5638A 6/7/95

Priebe in chair.

15.2(5)"e"(10);
Ch 28; 37.6

No questions on 15.2(5)"e"(10), Chapter 28 or 37.6.

Metcalf in chair.

40.28 et al.;
40.29 and 40.30

No questions on 40.28 et al., 40.29 or 40.30.

54.4

Metcalf recognized Sohn who stated rule 54.4 was controversial and had been through a lengthy public scrutiny process.

Many people from the audience spoke against this rule and many handouts were distributed.

Engler felt the "Forest Ecosystem Management Guide" was trying to combine the old ways of forestry with the environmental consciousness to preserve the integrity of the forest. He stated the guide provided for the impossible which was to provide for many resources without damaging the forests. The trees used for timber by DNR were the same trees the forest needed for habitat. Engler pointed out the guide stated DNR would seek out and use knowledge of biologists, park rangers and foresters. However, the Department only sought out knowledge of foresters who believed in logging the forest. Engler cited several opinions by professional botanists that the DNR's policies were harmful. He suspected the Department was more concerned with the economic importance of trees in public forests. Engler noted that the guide referred to the public forest as a resource 14 times.

Hock distributed pictures of cut trees in Walnut Woods Park and spoke about the extent of cutting and the type of trees being cut. In this instance, the trees three feet in diameter, were not diseased or damaged and were sold to Kimball Piano and Organ Company. Hock considered this a regrettable act since parks belong to the people and are protected by the public trust doctrine. She had canvassed other states and reported on her findings. She urged Iowa to take the lead in preserving their trees.

Mathews referred to a handout entitled "A Win-Win Solution to the State Lands Logging Problem" which stated his position on this rule. He concurred with statements made previously. He reminded that these trees were for all people including future generations of Iowans.

Priebe inquired if the group had recommendations for the harvest of trees. Mathews responded that the group distinguished different types of land—preserves should be absolutely off-limits to logging and should be managed according to the concept of wilderness. He contended that trees in state parks and recreation and wildlife areas should not be harvested. He pointed out that clear cutting was occurring currently in a wildlife area.

NRC (Cont.)

Priebe opposed clear cutting but disagreed in preserving dead trees. Mathews favored preserved, intact forest ecosystems and added dead and dying trees were a significant part.

Sohn stated it was important to note the goals of a state park or state preserve were different. He was convinced these areas could be managed responsibly.

Neustadt stated that the Sierra Club had submitted comments on the guide which the Department had considered when rewriting the documents. She believed Iowa should have permanent protection of at least some of its small percent of forested lands. She cited 93 percent of timberland in Iowa was privately owned and, therefore, available for commercial exploitation with little or no ability on the part of the state to regulate its use for other purposes. She believed that since only 7 percent of Iowa timberland was publicly owned, the land should be managed for noncommercial purposes. The club was most concerned that the guide lacked no classification of state land upon which logging was prohibited.

Roberts commented that state parks preserve wildlife and the processes of nature which were essential to the well-being of all living things in Iowa. They were established to ensure the continuation of the natural order free from human destruction or obstruction. They were not developed as potential harvest land for cheap commercial timber.

Dirks felt that the trees should be left alone because if everyone took one home, there would be none left.

Magers-Fionof distributed copies of an article in the Des Moines Register which expressed sentiments of the Save the Trees Committee. She also referred to another handout entitled "Whose Woods Are These" relative to national forests. She stated the group opposed logging in the state forests. Magers-Fionof expressed frustration with DNR, e.g. the group had attended several DNR meetings where no minutes were taken and no record was made of comments. Although the group was on several mailing lists from the Department, no one received notice of the public hearing on the rules.

In response to Magers-Fionof, Sohn explained the use of the term "clear cutting" in Walnut Woods was misleading. There was nothing in the cleared portions of the park except large walnut trees before the Department cut and replanted. No regeneration was occurring and when the older trees would die nothing would replace them. The Department had used small clear cuts to produce regeneration which enhanced wildlife habitat. Sohn continued that clearly with state park classification there was only a secondary interest in forestry demonstration and an incidental interest in forest products. The primary purposes would be aesthetics, natural areas, recreation and wildlife.

Bird believed logging programs on these parks were inappropriate. She pointed out that only 55,000 acres were state lands and 33 million acres were farmland. She urged conservation in tree cutting.

Kibbie reasoned the policy was too broad—there shouldn't be only one "tree policy." He requested the Department review the issue before adopting the rule. Daggett favored a common sense approach.

Priebe in chair.

61.2 et al.

No questions on 61.2 et al.

NRC (Cont.) 78.5(1) In review of 78.5(1), Howell said that four district park offices and a fish hatchery at Manchester had been set up to weigh the majority of ginseng prior to shipment outside Iowa. Wisconsin was the only other state having self-certification similar to Iowa. The Department had received a Federal Register notice last fall and both Iowa and Wisconsin protested. Howell noted there were approximately 1,100 harvesters in the state.

According to Howell, 1,100 producers have a volume ranging from 1,800 pounds to 2,600 pounds per year.

Metcalf in chair.

92.3(3); 97.1 to 97.4; Ch 99

No questions on 92.3(3), 97.1 to 97.4 or Chapter 99.

105.4(2)"e" and 105.4(4)

Doderer expressed concern that public hearings were not held in the area that these rules affected. She believed a rule should be made strongly suggesting that public hearings be held where the problem was. Cummings replied that a hearing was held and it was published in local papers.

Priebe agreed with Doderer that public hearings should be held in places other than Des Moines. Kibbie suggested using the ICN system.

105.4(5)

Doderer expressed concern that the amendment relative to deer population management would become ongoing rather than just a one-year hunt. She requested that another public hearing be held in the area affected by the rule.

106.2 et al.
Motion to Object

Priebe moved to object to 106.5(1)"b" because he felt deer could be better controlled if ~~antlerless~~ deer were included in the season. Cummings did not believe this could be changed at this time because the deer applications were already out. Motion carried.

106.12

Cummings explained that this rule was filed Emergency because applications for free landowner/tenant licenses were being taken and the rules needed to be in effect.

107.1 to 107.3 and 108.1 et al.

No questions on 107.1 to 107.3 or 108.1 et al.

ETHICS

Kay Williams and Lynette Donner were present from the Board for the following:

ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]
 Legitimate expenditures of campaign funds, 4.6, Notice ARC 5677A 6/21/95
 Types of administrative costs which can be provided to a political committee by a corporate sponsor, 4.31(3),
Notice ARC 5676A 6/21/95

4.6

Daggett referred to 4.6(2)"b," the last sentence and pointed out that at most conferences there was one fee for the conference and it included some meals. Donner explained that the meals would then be a part of the conference. She explained that a meal, which was separate from the conference, would not be an allowable expense.

ETHICS (Cont.)

Weigel asked if a seminar was attended and there was a luncheon and the luncheon involved a separate fee, could campaign funds be used. Williams replied that campaign funds could not be used in this case. Donner added that some instances could be considered for campaign-related purposes and that would be where meals could be considered campaign-related.

Williams informed the Committee that opposition had been voiced to the words "...50 miles away from the candidate's residence ..." in 4.6(1)"p" and she agreed 50 miles was unreasonable.

Halvorson and Weigel felt there was a fine line between campaigning and constituent meetings and they were treated very differently. Halvorson believed this could result in candidates tailoring the event to fit the rules rather than having a rule to prevent misuse. Williams reminded for the most part, the rules essentially clarified the statute. She noted that complaints from the public indicated a consensus that legislators have an advantage over candidates.

Motion to Refer

Priebe moved to refer ARC 5677A [4.6] to the Speaker of the House and the President of the Senate for review by the appropriate committee. Daggett was doubtful this would resolve the problem. Motion carried. (See also page 9)

4.31(3)

No questions on 4.31(3).

Recess

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

INSPECTIONS

Mary Oliver and Nancy Ruzicka represented the Department and there were no questions on the following:

INSPECTIONS AND APPEALS DEPARTMENT[481]

Care facilities, 41.15, 57.12(3), 57.19(3)"a," 57.39(6), 57.51, 58.11(3), 58.21(6), 58.43(11), 58.56, 59.3(2)"a," 59.13(1)"h," 59.13(3), 59.26(6), 59.48(11), 60.3(5)"f," 61.3(5), 62.9(5), 62.15(2), 62.23(25), 63.11(3), 63.18(3)"a," 63.37(6), 64.4(9), 64.34, 65.1, 65.9(5), 65.17(1), 65.25(5), Filed ARC 5640A 6/7/95
Hospitals — nursing services, 51.9, Filed ARC 5639A 6/7/95
Nursing facilities, rescind chs 58 and 59; new ch 58, Notice ARC 5570A Terminated ARC 5669A 6/21/95

RACING

Karyl Jones represented the Commission and there were no questions on the following:

RACING AND GAMING COMMISSION[491]

INSPECTIONS AND APPEALS DEPARTMENT[481]"umbrella"

Applications for track licenses and racing dates, occupational and vendor licensing, manufacturers and distributors, riverboat operation, keno, 5.16(12), 13.6(8)"j" and "k," 13.11, 22.14(2), 25.18(7), 25.19(5), 26.22,
Filed ARC 5648A 6/7/95

PUBLIC HEALTH

Carolyn Adams, Gary Ireland, Donald Flater, Patricia Quinlisk, M.D., State Epidemiologist, and John Katz were present from the Department for the following:

PUBLIC HEALTH DEPARTMENT[641]

Birth defects institute, ch 4, Notice ARC 5665A 6/7/95
Radiation, 38.1, 38.8(8)"c," 38.8(9)"b," 38.8(10)"c," 39.1(3), 40.1(5), 40.16(3), 40.16(4), 40.17(1), 40.18(1) to 40.18(4), 40.18(7), 40.18(7)"a," 40.26(1), 40.32(1), 40.32(1)"a," 40.32(2), 40.32(2)"f," 40.32(6), 40.42(5), 40.42(6), 40.44(1), 40.44(2)"c" and "d," 40.48, 40.49, 40.50(1) to 40.50(4), 40.56(1), 40.56(2), 40.60(2), 40.61(4), 40.61(5), 40.63(1), 40.63(2), 40.64, 40.65(1) to 40.65(6), 40.70(1), 40.70(2), 40.71, 40.72(1), 40.72(2), 40.73, 40.74(1) to 40.74(3), 40.82(3), 40.84(2), 40.85(3), 40.87, 40.88(1), 40.88(2), 40.95(1), 40.96(4), 40.102, 40.105, 41.1(1), 41.1(12)"a" to "f," 41.1(12) appendix I, 41.2(20)"b" and "c," 42.1(1), 42.1(4)"a," 42.1(2)"c," 42.1(5)"a" and "b," 42.1(6)"c," 42.1(11)"a," 42.2(3)"c," 42.2(5)"b," 42.2(7)"a," 42.3(3)"c," 42.3(5)"b," 45.1(1), 45.1(10)"b"(1)"2," 45.1(10)"h"(3), 45.1(10)"i," 45.1(17)"e,"
Filed ARC 5620A, see text IAB 3/29/95, page 1508 6/7/95
Vital records, 96.4, 96.4(2), 96.4(6), Filed Emergency ARC 5619A 6/7/95
Emergency medical services training and equipment grants, ch 130 title, 130.1, 130.2(1), 130.2(2), 130.4, 130.5, 130.6(1), 130.6(2), 130.7, Notice ARC 5649A 6/7/95
HIV general overview, Special Review

**PUBLIC HEALTH
(Cont.) Chapter 4**

In response to Metcalf, Adams stated that fees referred to in 4.6(10) were not set because they had not been set in previous rules. Typically the health insurance paid the fee for newborn screening. Metcalf asked the Department to consider including the fee in the rules.

38.1 et al. and
96.4 et al.

No questions on 38.1 et al. or 96.4 et al.

130.1 et al.

In response to Daggett, Ireland replied that no written or oral comments had been received on proposed amendments to emergency medical services training rules.

**Special Review
HIV**

Royce explained the special review was requested when the Committee was discussing a blind study conducted about HIV infants. Priebe understood that the Supreme Court had ruled against any notification when an infant tested HIV positive.

Quinlisk explained that the blind studies were not conducted for diagnosis purposes, they were done as a surveillance tool to determine the prevalence of HIV in pregnant women. This testing was done in a blind fashion so that permission would not be necessary. This did not preclude parents from requesting testing to find out the results.

In response to Doderer, Quinlisk stated that a child from an HIV positive mother had a 15 to 30 percent chance of being infected. If the AZT pretreatment was used for the mother and the infant at birth, this lowered the risk by two-thirds.

In response to Hedge, Quinlisk indicated the handout from the Department referred to the person's residence at the time of diagnosis.

ETHICS MOTION

Metcalf noted that the vote on the referral of ARC 5677A required a majority of the Committee which would be six votes rather than a simple majority and she called for a revote.

Motion to Reconsider

Priebe moved to reconsider the motion to refer ARC 5677A. Motion carried. Priebe moved to refer ARC 5677A to the Speaker of the House and President of the Senate. Motion carried with six affirmative votes.

EDUCATION

Attending from the Department were Dave Tilly, Chief of the Bureau of Special Education Jeananne Hagen, Jim Reese, Sandy Schmitz, Dennis Dykstra, Jim Clark, Ann Marie Brick, Tammie Adkins and Ted Stilwill. In attendance from various Area Education Agencies were Damon Lamb, Kristi Flugum, Barry Monson, Gary Boswell, Harold Connolly, Karen Christiansen, Michael Juskelis, Jerry Stremil, James Stumme, Fritz Krueger and Larry Gile. Also in attendance were Brad Clement and Peggy Lynch, Marshalltown Schools; Dr. James Sutton, ISEA; Jamie Ferrare, School Administrators of Iowa, Rita Audlehelm, Central Decatur Community School District; Barb Van Sickle, Learning Disabilities Association; John Balk, Iowa School for the Deaf; Curt Sytsma, Iowa Protection and Advocacy; Lynnette Jensen and Cathy Smelser, parents; and other interested persons. The following agenda item was reviewed:

EDUCATION DEPARTMENT[281]

Special education, ch 41, Filed ARC 5617A 6/7/95

EDUCATION
(Cont.) Ch 41

Hagen explained that these rules have been in process since 1993 and have been rewritten twice. Over 100 meetings with interested groups across the state and 11 formal public hearings were held. The Department had received over 500 written comments and had worked with major education groups in the state to arrive at a consensus.

Hagen explained the Department implemented these rules for several reasons among which: Since 1986, persons in the field have indicated to the Department there was a need to reorganize services and requested some rules be waived on an experimental basis to see if there were better ways to do things; state rule language differed from federal rule language; to provide flexibility at local school district level which was important for school reform. Hagen stressed the rule changes were optional for school districts. Schools may choose not to label students with a specific disability if it was determined this was the best way to serve those students and may choose to do away with the class models and class sizes in current regulations. The Department did not change the funding for special education nor will the funding be affected by the rules.

Jensen spoke about her son who was learning disabled and was not diagnosed as such for 18 months. She favored a faster problem-solving approach and parents having the option to ask for an evaluation and, if dissatisfied, an independent evaluation. She opposed the parts of the new rules that dealt with no specific learning disability and with parental notification when the child entered the system.

Stremel of Northern Trails AEA expressed support for these rules tempered by concern about the impact of the rules on children, families and support programs. He believed a scope of service options was provided that previously had been unavailable under existing rules. As a result of six years of experience and working with alternative service delivery models, it was his belief the efforts have produced positive results and that the results are verifiable through the research on the OSDS initiative. It provided the opportunity for more focused and more immediate interventions on behalf of students and parents more actively engaged in developing intervention programs for their children.

Krueger, special education director of arrowhead AEA, stated he favored less restriction under the proposed rules giving more control to the local districts to help identify children and serve children in the regular program so they would not have to be identified as learning disabled.

Balk, assistant superintendent for the Iowa School for the Deaf in Council Bluffs, referred to rules adopted in 1988 concerning evaluation and placement and noted those rules required a comprehensive educational evaluation be conducted prior to identification and programming services for children in need of special education. One of the evaluations was, at minimum, a screening of hearing. Balk expressed concern about the words "if appropriate" in 41.48(3)"a"(4) and stated that if the minimum screening of hearing requirement was eliminated, hearing loss could go undetected. He encouraged the Committee to look at the 1988 rules, endorsed the requirement of a minimum hearing screening by a qualified AEA audiologist to rule out the possibility of a hearing loss and found the proposed rules acceptable because they allowed for creative programming.

EDUCATION
(Cont.)

Boswell, AEA 14 in Creston, a certified teacher of the hearing impaired, audiologist and supervisor of the program, expressed concern with the absence of vision screening and hearing screening as required components of a full and complete evaluation. He felt problems inherent in local decisions were teachers intimidated by the process and not feeling they could complain if there were too many children in the classroom.

Connolly, director of special education in AEA 14 in Creston, expressed concern and opposition to the rules. He believed the rules would allow special education services to be used by children who were not disabled.

Sytsma, acting director of Development Disabilities Division of Iowa Protection and Advocacy Services, was convinced the new rules allowed individuals with disabilities and parents of children to have more local input and more knowledge about what rules are followed locally, but opposed delegation to local AEAs. He believed it was important to note that children with "hidden disabilities" would not be taken out of the normal classroom setting and hidden away as done in the past to children with visible disabilities. He pointed out that parents had several rights as outlined by the rules. In response to Doderer, Sytsma stated hearing and vision testing should be included.

Hagen explained these rules were not intended to discourage hearing screening and were consistent with the federal regulations, although not mandatory. The Department commissioned a statewide study to review files, interview and determine if change was needed. Doderer opined the study should have been done long ago and was surprised this data was not available. In response to Doderer, Hagen stated that Iowa received funding from the federal government which accounted for 7 percent of the expenditures in special education.

Weigel wondered if detecting and correcting a hearing loss would prevent special education, thereby decreasing costs. Balk replied this would be a possibility.

Audlehelm, school nurse at Central Decatur, although in favor of the new rules, was concerned that hearing and vision screening were no longer mandated.

Christiansen, special education supervisor for AEA 6 in Marshalltown, expressed support of the rules because of the flexibility, use of resources and efficiency.

Clement, principal at Miller Middle School in Marshalltown, expressed support of the rules. Clement explained time that used to be spent doing testing to determine a label was now more efficiently used on direct interventions with students and parents and more students were served. He reported the students exhibited increased self-esteem when no labels were applied. Parents were always apprised of their rights and nothing was done without their input, and he found greater parental support as a result of the changes in the delivery system.

Lynch, educator at Miller Middle School in Marshalltown, expressed support for the rules.

Smelser felt the rules should incorporate all the federal language for learning disabilities and the definition of evaluations procedures as well. She supported that services should be made available to all children. She recommended the Department develop a manual per disability of a variety of assessments so there are some standard procedures within each AEA and LDA. She pointed out the rules do not explicitly state each parent would be notified when their child was assessed for general education interventions.

EDUCATION
(Cont.)

Juskelis supported the rules because of the flexibility they allow and explained that he varied what he did by district and enjoyed having local control.

Monson, director of special education in AEA 4 in the northwest corner of Iowa, was concerned about class size, training teachers and funding. Monson stated he would like the Department to take a slower approach with these rules.

Flugum, school psychologist, stated that the Iowa School Psychologists Association (ISPA) Executive Board supported the new rules' emphasis on services rather than program models and placements and advocated services be provided based on need and not on categorical disability label or service availability. ISPA also supported an increased emphasis on the least restrictive environment or LRE. It supported the adoption of federal disability definitions for agencies that elect to determine disabilities by category, providing that guidelines for the definitions of mental disabilities and learning disabilities are developed. ISPA supported increased local responsibility and accountability for the provision of appropriate services to students with disabilities.

Gile, supervisor of school psychological services and field school psychologist for Green Valley AEA 14, felt Iowa had good programs and good services for children, but evinced concern local control might be used to balance special education budgets, not all districts would notify parents, and inequity would increase.

Stumme, director of special education for Heartland, expressed strong support for the rules as written and praised the flexibility. He felt these rules were better for the children and believed there were several checks and balances in place that would prevent problems. Heartland instituted a pilot program that focused not on what the disability was but what could be done to help the student and noted the parents were integrally involved. He explained that students were screened for vision and hearing on a routine basis.

Sutton stated the ISEA had no position on these rules because the membership was divided on the issue. He raised the point of whether there would be some professional development costs and noted that finance was not a part of these rules.

Halvorson stated it appeared there was support for the rules but the mandatory versus the permissive seemed to cause concern. This could allow children with problems to be overlooked.

In response to Halvorson, Hagen stated that more information on the screenings would be available in a year.

Kibbie believed these rules should be allowed to go into effect and the state should fund special education the same as regular education.

Daggett noted that those who supported the rules and those who did not were evenly divided. In response to why the Department had promulgated new rules, Hagen explained that in 1986 people in the field had requested a new delivery system. Many requested waivers to experiment and the Department decided two years ago that new rules should be initiated to reflect the practice in the field and made the rules as consistent with federal rules as possible.

EDUCATION
(Cont.)

Daggett pointed out he had received several letters about mainstreaming and how students felt intimidated because of the lack of staff to handle situations. He stated there was concern about class size and handling of children.

Motion to Delay

Daggett made a motion to delay the rules until the end of the 1996 legislative session. Kibbie did not support the motion because he felt nothing would be gained by having the rules go to the legislature. He supported allowing them to go into effect and if there was a need for change, that could be made separately.

Rittmer did not support the motion because he believed there was support for the rules. He felt the key was in the Department not mandating a change but permitting a change.

Priebe wondered why these rules were not taken to the education committee of the legislature and that an undue burden had been placed on this Committee to make a decision. If the Committee supported Daggett's motion, Priebe believed it appeared they were against helping the handicapped. He inquired if a fiscal impact was done and noted under these rules, districts would have to provide translators in schools per federal requirements. He felt this would be costly, in addition to having nothing to do with handicapped students.

Hagen said the state was obliged by the federal government to provide a free appropriate education through age 21 and in special circumstances until age 24. Approximately six, between the ages of 21 and 24, are currently being educated in Iowa.

Priebe stated he did not support the motion and felt there was a need for a fiscal impact statement.

In response to Priebe, Stilwill stated the legislature had been kept informed as the Department proceeded through the process. The Department did not recommend to the legislative education committees that this issue be placed on their agendas.

Halvorson believed the fiscal impact would play a large part in what was done. He supported referring the rules to the legislature but did not support the motion to delay. Stilwill pointed out the legislature funded a study regarding fiscal impact and the economic impact study was carried out. The results of the rules and how they had already been implemented through a waiver process were neutral in terms of impact.

Doderer did not support Daggett's motion, believing it was time to find out if hearing and vision screenings were cost effective and beneficial for the children.

Substitute Motion

Priebe made a substitute motion to refer the rules to the President of the Senate and the Speaker of the House.

Motion Withdrawn

Daggett withdrew his motion for a session delay and accepted Priebe's substitute motion.

Metcalf wondered if hearing and vision screening was limited to special education students. Hagen replied it only referred to special education referrals or those already in special education. In response to Metcalf, Hagen stated schools routinely conducted hearing and vision screening for all students but there was no law requiring it.

EDUCATION
(Cont.)
Amended Motion

Weigel asked to amend the motion to delay the part of the rules dealing with vision and hearing screening. Metcalf took an informal vote and there was little support for the amendment.

Motion to Refer

The motion to refer the rules to the President of the Senate and the Speaker of the House carried. Priebe explained that the rules would go into effect and then would be referred to the appropriate legislative committees. Priebe asked for a further fiscal impact.

Doderer suggested to the audience that they contact Senator Connolly, Education Chair in the Senate and Representative Grubbs, House Chair for further information.

Recess

Metcalf recessed the meeting at 4:15 p.m. until 9 a.m. Wednesday, July 12, 1995.

7-12-95

Reconvened

Metcalf reconvened the meeting at 9 a.m.

AGRICULTURE

Jake Wakefield, John Hinshaw and John Whipple represented the Department for the following:

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]
Iowa-whelped dog requirements, procedures for registration, 62.40, 62.41, Notice ARC 5673A 6/21/95
Milk standards, 68.12, Notice ARC 5674A 6/21/95
Dairy — update of federal documents used in inspections of dairy farms and approval of dairy laboratories, 68.13(2)"1," 68.14, 68.36(11), Filed ARC 5675A 6/21/95

62.40 and 62.41

No questions on 62.40 and 62.41.

68.12

Whipple explained that this rule would be significantly changed before it was adopted. Doderer requested that hearings be held in other areas of the state or that the ICN be used.

In response to Hedge, Wakefield explained that these rules were promulgated because an Amish farmer applied for Grade A status and did not have automatic cooling. This rule, patterned after a Pennsylvania provision, would allow another option.

Doderer asked if the issue of a dairy in her district that sold raw milk had been settled. Wakefield replied that the matter had been forwarded to the Attorney General.

68.13(2)"1" et al.

No questions on 68.13(2)"1" et al.

ECONOMIC DEVELOPMENT

Mike Doyle, Joe Jones and Mike Miller were present from the Department for the following:

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]
Value-added agricultural products and processes financial assistance program, 29.2, 29.5(5), 29.6(1), 29.6(2)"a," Notice ARC 5662A 6/7/95
Iowa export trade assistance program — per diem, 61.4(1)"f," 61.4(2)"b," Filed Emergency ARC 5663A 6/7/95

29.2 et al.

In review of Chapter 29, Miller cited examples of operations which would not qualify for financial assistance—traditional farming such as livestock and production of grain or hog confinement. The product must be new, unique and different.

DED (Cont.)

Halvorson wondered if a process for deodorizing hog manure would qualify and Miller thought it would.

Priebe asked why the word "generally" was included in the last sentence of 29.6(2)"a." Miller replied that rules gave the authority for the Department to waive this when it was absolutely required.

In response to Priebe, Miller stated that more than 200,000 could be waived but would have to be a specific action by the director. This action would be taken if the award in this form would cause the company to be unsuccessful financially and the company would not be able to afford the debt repayment.

Miller advised Doderer that "people" in 29.6(1) was used in the corporate or business sense. If a project failed to meet expectations, the loan was forgiven. Miller explained that the Department had concern about some startup loans of less than \$100,000 where the entire amount could be a forgivable loan. The time between submission of application and the decision of the Department was typically 20 to 30 days.

61.4(1)"f" and 61.4(2)"b"

In review of amendment to 61.4, Metcalf inquired if there were a limit as to how many times a company could use the program and Miller cited specific markets and specific activities. It could be used twice for a particular activity such as a trade show. Miller stated that 60 percent of the companies were using the program for new markets and about 30 percent were new program applicants.

High Technology Council

Barry explained that Melanie Johnson, Economic Development, had informed Barry that the High Technology Council rules were no longer in effect because the enabling legislation had been repealed. Barry requested to exercise her authority under Iowa Code section 17A.6(6) to delete the rules from the Iowa Administrative Code. The statute required approval by the ARRC as well as the Governor's office.

Motion to Approve

Kibbie moved to approve the deletion of the rules of High Technology Council[267] from the Administrative Code and the motion carried. Miller agreed to inform Johnson of this action.

Priebe in chair.

GENERAL SERVICES

Kathy Miller and Tim Brand were present from the Department for the following:

- GENERAL SERVICES DEPARTMENT[401]
- Inventory guidelines for state of Iowa personal and real property, 10.2, 10.3, 10.5(1), 10.5(2), 10.6, 10.7.
- Notice ARC 5667A 6/21/95
- State employee driving guidelines, ch 11, Filed ARC 5668A 6/21/95

10.2 et al.

Priebe asked if it were unusual to include freight and installation expense in personal property as referred to in 10.2(4). Brand replied that from an accounting standpoint anything that was involved with the movement from factory to the place regarding freight and installation were included as part of the cost of that piece of equipment. Priebe argued that this should not be included.

In response to Halvorson, Brand stated that the issue surrounding freight was the current practice. No Committee action.

Ch 11

No questions on Chapter 11.

INDUSTRIAL SERVICES

Clair Cramer represented the Division for the following:

INDUSTRIAL SERVICES DIVISION[343]
 EMPLOYMENT SERVICES DEPARTMENT[341]"umbrella"
 Substantive and interpretive rules — allowable charge for duplication of medical records, 8.9,
Filed Emergency ARC 5612A 6/7/95

- 8.9 Cramer explained that this rule came before the Committee in March and a 70-day delay was imposed at that time. Since that time language modification was received from the Iowa Hospital Association and the Division incorporated that change.

Metcalf in chair.

PHARMACY

Attending from the Board were Lloyd Jessen, Phyllis Olson, Mary Pat Mitchell, Marian Roberts, Phyllis Miller, Lindy Pearson, Jay Cayner and Matt Osterhaus. Also in attendance were Pat Staub, Systemed Pharmacy Inc., Marjorie Powell, Kim Haus and Cal Huston, Pharmaceutical Research and Manufacturers of American (PhRMA), Gary Pedersen, Bayer, Jeanine Gazzo, Iowa Academy of Family Physicians, Mary Beth Gross, Mercy Hospital Medical Center/Drake University, Norman Pawlewski and Kevin deRegnier, Iowa Osteopathic Medical Association, Becky Roorda, Iowa Medical Society, Susan Ganet, William E. Fassett and Janelle Sobotka, Iowa Pharmacists Association, and other interested persons. The following items were reviewed:

PHARMACY EXAMINERS BOARD[657]
 PUBLIC HEALTH DEPARTMENT[641]"umbrella"
 Reexamination applications and fees, 2.4, Notice ARC 5642A 6/7/95
 Returned check fee, 3.6, Notice ARC 5643A 6/7/95
 Hospital pharmacy, 7.3 to 7.11, 7.13(4), Notice ARC 5644A 6/7/95
 Minimum standards for the practice of pharmacy, 8.1, 8.9(3)"c," 8.13(3)"b," 8.25, 8.26, 8.31,
Notice ARC 5645A 6/7/95

- 2.4 In response to Daggett, Jessen stated that no comments had been received. Kibbie asked about surplus from the fees last year and Jessen replied that revenues exceeded expenditures. Kibbie voiced opposition to increased fees when a surplus existed. Jessen would refer the issue to the Board.

Economic Impact Kibbie moved that the Board be requested to prepare an Economic Impact Statement on rule 2.4 and the motion carried.

- 3.6 *rule terminated 10/25/95* Jessen noted that the returned check fee would be lowered to \$20 in response to an Iowa Code section which set it at \$20.

7.3 et al. Jessen reported that significant changes would be made in the proposal for Chapter 7 so the Notice would be terminated and rewritten.

8.1 et al. There was discussion of proposed revisions of Chapter 8. Dr. deRegnier expressed concern about the rules particularly from the standpoint of safety of the public. These rules were a major shift in the duties of a pharmacist. Dr. deRegnier opposed allowing a pharmacist to initiate drug therapy without a prescription from a physician. He contended pharmacists were not qualified to make diagnoses and prescribe medication and the rules seemed to be a direct violation of several Iowa Code sections; e.g. the Code did not allow therapeutic interchange. He believed the Board had exceeded its regulatory authority.

**PHARMACY
(Cont.)**

Jessen viewed the rules as an improvement of the current situation in providing better safeguards to the public. The Board believed a collaboration where doctors and pharmacists could agree in advance would allow pharmacists to serve more efficiently.

Staub expressed support for the rules and believed they would improve patient safety. A review of a written protocol would act as a check on the pharmacist and the physician because they had collaborated to develop guidelines for therapeutic interchange.

Halvorson asked Staub if these rules would allow the organization or any pharmacist to deviate from the doctor's original prescription without contacting the doctor. Staub replied that this would not allow deviation without previous consent of the doctor. She explained that a pharmacy and therapeutics committee in a hospital would select the criteria for a therapeutic switch and would consider the clinical outcomes. The group would develop a written protocol which would have to be signed by the practitioner so this would not be an independent prescribing authority.

Halvorson was concerned that a pharmacist could deviate from the physician's prescription. Staub stressed this was not possible without the physician's authority.

Jessen reminded that hospitals had followed this procedure for nearly 20 years and managed care situations were also currently doing this. Prescribing physicians were always in control of the situation.

Royce commented that the key issue was delegation of authority by a physician to a pharmacist. As long as it was done on a case-by-case basis, there could be no question. A protocol does not provide for individual contact each time a change was made. Royce asked about the scope of a protocol, how it was entered into, details of the protocol and how long it was in effect. Jessen stated all of those issues would be addressed in a written agreement. The Board gave a basic outline of what the agreement should state and it was not all inclusive.

Royce wondered if the agreement should be in existence for each individual statement or if it were a generic agreement. Jessen replied that it could be any of those situations. A protocol could be made for patients on a certain drug or for a certain group of patients.

Royce agreed to the issue and made recommendation to the Committee. He suggested seeking an Attorney General's opinion which would take at least 90 days.

Mitchell saw these rules as a coordination between the doctor and the pharmacist. She believed this would enhance health care and did not feel it would be a public danger.

Roorda stated that the members of the Iowa Medical Society were concerned with these rules. She believed it was positive when a pharmacist and physician worked together on these issues. The rules did not require a pharmacy and therapeutics committee and this was a serious concern of the Society. Within hospitals there were quality assurance mechanisms for this type of approach but this did not exist outside the hospital setting. Roorda was concerned that protocols did not have to be patient specific. The Society did not believe there was statutory authority for a physician or other practitioner to delegate therapeutic interchange to a pharmacist.

**PHARMACY
(Cont.)**

There was specific statutory requirements related to generic substitution. Roorda requested the Board to withdraw Items 4 and 5 of these rules. The Society had no problem with the other changes.

Powell stated that PhRMA objected to Items 3, 4 and 5. She agreed with previous comments against Item 4 and emphasized from the manufacturer's perspective, pharmacists have an important role in health care, in particular, in patient counseling and drug use review. Powell was of the opinion these protocol guidelines did not require involvement of the doctor beyond the initial indications set out in the protocol which could be very general or very specific. It did not require a specific limitation of time or that the doctor be notified. This vastly expanded the responsibilities of pharmacists and could pose legal implications. Powell urged the Board to reconsider and withdraw these rules. Powell believed that Item 5 created very serious implications and implied that drugs for the same condition were equivalent and could be interchangeable. Powell considered Item 3 [8.13(3)"b"] to be confusing to allow dual labeling (generic and brand name).

Priebe was sympathetic with many of Powell's statements but pointed out the shortage of doctors in his area where pharmacists needed some authority delegated to them.

Powell pointed out that generic drugs were allowed when they were equivalent to the brand name product. However, Item 5—therapeutic exchange—would allow the pharmacist to select an entirely different drug. Priebe pointed out the words "with a written guideline or protocol previously established." Powell contended there was no requirement for informing the doctor that a particular patient had been switched from one category of drugs to another.

Halvorson commented on legal liability. If a pharmacist exceeded the parameters of prescribing, there could be a question of any liability coverage. Jessen stated that the primary insurer for Iowa pharmacists, Pharmacists Mutual Insurance Company, was on record as covering drug therapy management and therapeutic interchange if it were authorized by statute or rule. Halvorson was doubtful an insurance company would cover an intentional act.

Palmer did not believe insurers would extend medical malpractice coverage to pharmacists who had been delegated the authority. Palmer envisioned the rule making as "writing a statute by rule." He could foresee problems with protocols and their jurisdiction. Palmer declared that pharmacists in a hospital setting were vastly different from pharmacists outside of a hospital where contact was not maintained on a day-to-day basis.

Powell agreed to provide Metcalf information on the number of states that allowed dual labeling.

Priebe had been contacted by the largest insurer of pharmacies in the world who expressed support for the rules.

Gazzo stated that all physicians were united in their desire to treat patients in the best possible manner. It was the opinion of family physicians that these rules could interfere with good patient care and she referred to a letter written by the President of the Iowa Academy of Family Physicians.

PHARMACY
(Cont.)

Sobotka, a strong supporter for these rules, was disappointed there was misinterpretation by organized medicine. She maintained the rules were intended to force voluntary collaborative arrangements between pharmacists and physicians. The scope of the arrangements was left to the parties involved and they could be very complex or simple agreements. Sobotka explained that these rules supported current activities. She cited the example of prenatal vitamins without generic equivalents. If the physician had an agreement with the pharmacist, one brand could be interchanged with another brand without calling the physician. She pointed out that many physicians delegate to secretaries and other staff the authority to call pharmacists. Sobotka concluded that pharmacists were not trying to encroach upon physicians' turf.

Fassett spoke of his experience in the state of Washington with similar rules. Approximately one-sixth of Washington's pharmacists and physicians had entered into protocol agreements which had not caused any abuse of protocols. Physicians have found this relationship greatly reduced the costs and provided a written rather than verbal record. In the state of Washington, the maximum length of a protocol was two years and was not an open-ended commitment.

Pawlewski interpreted these rules as a major expansion of pharmacists' responsibilities and authority without commensurate education, training and consultation with others involved. It was his opinion they would also include anyone with prescriptive authority, such as physician assistants, nurse practitioners, dentists, podiatrists and veterinarians. He questioned the Board's failure to notify the Iowa Osteopathic Medical Association, the Iowa Medical Society, the Iowa Academy of Family Practice, the American College of Osteopathic Family Physicians or any other prescriptive groups about the proposed rules on this complex issue. He urged withdrawal of the rules.

Kibbie asked if all the opponents of these rules were present at the June 27 hearing or had they conveyed their concerns previously. Jessen replied that some written comments had been received before and after the hearing. Kibbie urged compromise.

Daggett wondered if protocols would include allergies and Jessen replied that protocols would include types of diseases and pointed out 8.25(3)"b"(1).

Royce advised the issue was whether the Board had authority for these rules and to what extent could a physician delegate their authority to others. A protocol was a delegation of authority in writing that had an indefinite lifespan.

Motion for Opinion Priebe moved that the ARRC seek an Attorney General's opinion and the motion carried.

PUBLIC SAFETY Michael Coveyou and Sam Knowles attended from the Department and other interested persons were present for the following:

PUBLIC SAFETY DEPARTMENT[661]
Private investigation and private security businesses, 2.1, 2.2, 2.3(9) to 2.3(14), 2.4(1), Notice ARC 5618A . 6/7/95

2.1 et al. No questions on 2.1 et al.

REGENTS

Ted Williams, Marcia Brunson, Richard Tiegs and Louise Houseworth were present from the Board for the following:

REGENTS BOARD[681]
 Rescission of parietal rule at University of Iowa and University of Northern Iowa, 2.2, 2.36.
Filed ARC 5653A 6/7/95
 Updating and corrective amendments, 3.3, 7.1(2)"a," 7.6(2)"f," "g" and "h," 8.1(1)"e," 8.3(1), 8.3(2), 8.3(2)"b," 8.5, 8.6(1), 8.6(2)"b," 8.8(1)"a" and "d," 8.9(1), 8.9(2), 8.9(5), 8.9(8), 9.4(8)"b," "c" and "d," 10.3, 11.1(2) to 11.1(4), 11.1(6), 11.2(2), 11.3(1), 11.3(2), 11.4, 11.5(1), 11.5(3), 11.5(4), 12.1(4), 12.10(5), 13.1(4), 15.1(4), 16.1(4), 16.6, 17.1, 17.3(1).
Filed ARC 5654A, see text IAB 4/12/95, page 1548 6/7/95
 Regents merit system, 3.3(2), 3.3(5), 3.14, 3.39(7)"f," 3.39(12), 3.39(13), 3.39(18), 3.50, 3.52(4), 3.53, 3.53(2), 3.55"2" and "6" to "8," 3.67(3), 3.70, 3.89, 3.90(2), 3.102(1), 3.102(2), 3.104(3), 3.104(4)"c" and "e," 3.127, 3.145, Notice ARC 5652A 6/7/95

2.2 and 2.36;
 3.3 et al.

No questions on 2.2, 2.36 or 3.3 et al.

3.3(2) et al.

In review of amendments to the Regents Merit System rules, Williams stated the Board had received criticism from AFSCME because they had not been consulted. Hedge wondered if any major changes had been made and Williams replied that the changes were clarification only and the Board planned no further changes for the final rules.

REVENUE AND FINANCE

Carl Castelda, Deputy Director and Coadministrator of the Compliance Division, represented the Department for the following:

REVENUE AND FINANCE DEPARTMENT[701]
 Compensation of nonresident professional athletic team member, 40.46, 45.4, 46.1(1)"g," 48.1 to 48.4, 48.6, 48.7, Notice ARC 5647A 6/7/95

40.46 et al.

In response to Rittmer, the Department assumed that individuals involved would not meet the Iowa filing requirements for filing tax returns.

Twine

In a topic not on the agenda, Priebe asked about tax on twine. Castelda replied twine used to bale hay for sale would be a deductible expense. If the twine were used to bale hay for your own use, it would be taxable. Halvorson believed that twine was an integral part of the product whether it was used by the individual or sold. Daggett wondered how a large quantity for personal use and some for sale as product would be divided for taxes. Castelda was unsure.

SOIL CONSERVATION

Ken Tow and Bill McGill were present from the Division for the following:

SOIL CONSERVATION DIVISION[27]
 AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]"umbrella"
 Iowa financial incentive program for soil erosion control, 10.41, 10.41(1), 10.41(2), 10.41(7).
Notice ARC 5678A 6/21/95

10.41 et al.

Halvorson questioned Tow regarding the status of a siltation study and Tow agreed to refer the matter to Jim Gulliford for response.

SUBSTANCE ABUSE

G. Dean Austin represented the Commission for the following:

SUBSTANCE ABUSE COMMISSION[643]
 PUBLIC HEALTH DEPARTMENT[641]"umbrella"
 Standards for the use of methadone, 3.35(1) to 3.35(14), Notice ARC 5664A 6/7/95

3.35(1) to 3.35(14)

Austin gave a brief overview of the rules and stated that the Commission had worked with the private methadone clinic physician who had opposed previous rules. This physician agreed with ARC 5664A.

**SUBSTANCE
ABUSE (Cont.)**

Metcalf believed 3.35(5) was redundant and asked that it be made more specific as to what kind of patient assessment was needed.

Austin referred to a comparison document on Chapter 3 that had been requested by the Committee which would be copied and distributed at a later date.

Minutes

Priebe moved to approve the minutes of the June meeting as submitted and the motion carried.

REAL ESTATE

Susan Griffel, Theresa Loffredo and Roger Hansen were present from the Commission and Pamela Griebel, Assistant Attorney General, was present for the following:

REAL ESTATE COMMISSION[193e]
Professional Licensing and Regulation Division[193]
COMMERCE DEPARTMENT[181]"umbrella"
Trust Funds, Special ReviewIAC

Special Review

Doderer distributed copies of a letter from a constituent who had owned and operated a small property management firm in Iowa City for the past 15 years. The letter described in detail the process the management firm had followed over the years without problems. Each renter wrote a check to the property owner, sent it to the property manager who deposited it in the owner's bank account. At the end of each month the property manager was given a check by the owner for management costs.

The Real Estate Commission conducted an audit and found fault with this operation contending a trust account must be established. It was noted that professional farm managers were not required to have trust accounts. Doderer suggested a recommendation to the legislature to allow property managers an exemption from trust accounts.

Rittmer asked if the property manager was required to be bonded and Hansen replied that licensees were not required to be bonded but they were required to have errors and omissions insurance.

Priebe reasoned that the law regulating professional farm managers should be reviewed also.

Daggett asked when trusts were required to be reported to the court and Hansen explained that when brokers opened trust accounts, they receive a consent to examine signed by the bank and a copy was sent to the Real Estate Commission. The auditor would select an area or a broker to audit, then would send a list or questionnaire requesting a list of the trust account locations.

Rittmer asked if a person must be a licensed real estate broker in order to manager property. Hansen replied that according to the definition of broker, a person would have to be licensed.

Doderer favored language to protect the owners so that trust accounts would not be required for rooming houses and one trust account could be used.

Loffredo explained the rule was intended for large property management operations. Loffredo informed Hedge there was no minimum number of properties a person could manage.

REAL ESTATE
(Cont.)
Motion to Refer

Doderer moved to refer the issue of property management to the President of the Senate and the Speaker of the House for review by the appropriate Committee.
The motion carried.

August Meeting

Priebe moved to hold the next meeting on August 15 and 16, one week later than the statutory date. Motion carried.

Royce advised that filed rules which would go into effect before the next meeting were noncontroversial. Priebe suggested a 70-day delay for those rules and Daggett so moved. There was discussion of printing costs involved and Daggett withdrew the motion.

Priebe stressed the importance of reviewing all the rules. No formal action.

Royce Travel

Barry requested approval for costs resulting from Royce's use of a state car for travel to Iowa City each month for an Administrative Law Study Committee meeting. Kibbie moved to approve the expenditure for a state car and the motion carried.

Priebe Travel

Priebe requested approval for his expenses to attend the NAAS meeting in Rapid City, South Dakota, in August. Doderer made a motion to approve and the motion carried.

NO REPS.

No agency representative was requested to appear for the following:

HISTORICAL DIVISION[223]
CULTURAL AFFAIRS DEPARTMENT[221]"umbrella"
Historical resources development program, 49.2 to 49.7, 49.8(1),
Filed ARC 5651A, see text IAB 12/21/94, page 962 6/7/95

PERSONNEL DEPARTMENT[581]
IPERS, 21.5(1)"a"(37) to (41), Notice ARC 5564A Amended ARC 5666A 6/21/95

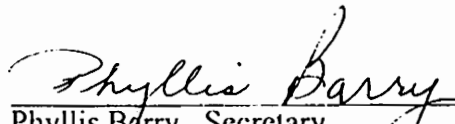
PROFESSIONAL LICENSURE DIVISION[645]
PUBLIC HEALTH DEPARTMENT[641]"umbrella"
Mortuary science, 101.103(1), 101.106, Filed ARC 5650A 6/7/95

TRANSPORTATION DEPARTMENT[761]
Primary road access control, 112.2(5), 112.2(8), 112.2(15), 112.2(17) to 112.2(20), 112.2(23), 112.2(28), 112.4(1),
112.4(5) to 112.4(7), 112.4(8)"b," 112.4(9)"b," 112.5(1)"c" and "d," 112.5(2)"a"(7), 112.6(3)"a," 112.6(4), 112.8,
112.9(1) to 112.9(3), 112.9(4)"d," 112.9(5), 112.9(6), 112.11(3) to 112.11(8), 112.12(3) to 112.12(5), 112.13(2),
Filed ARC 5641A, see text IAB 4/12/95, page 1549 6/7/95

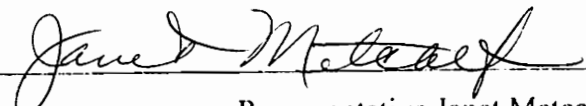
Adjournment

The meeting was adjourned at 12:00 noon.

Respectfully submitted,


Phyllis Barry, Secretary
Assisted by Kimberly McKnight and Cathy Kelly

APPROVED:


Representative Janet Metcalf, Co-chair