October 2003 ARRC Meeting

Summary of Issues

The November meeting of the Administrative Rules Review Committee will be on Monday, October 10th 2003 in Statehouse Room #116. Special reviews now include:

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DENTAL EXAMINERS BOARD, Public health supervision, 9-17-03 IAB, ARC 2783B, NOTICE.

BACKGROUND: This proposal continues an issue begun in March, 2003, when the board published a notice allowing a hygienist to provide certain preventive services to a patient who had never seen the supervising dentist. That notice is now terminated and a revised proposal is offered.

COMMENT: This notice differs from the March version: it offers the concept of public health supervision. Under this concept a supervising dentist may enter into an agreement with a dental hygienist to perform hygienist services as specified in the agreement; the agreement must contain standing orders relating to the services to be provided and must contain provisions for consultation between the dentist and the hygienist. The participating hygienist must have at least three years experience. The rule specifically delineates the sites where these services may be provided: schools; head start programs; federally qualified health centers; public health dental vans; free clinics; nonprofit community health centers; and federal, state, or local public health programs.

The rules remain controversial. Unlike the March version, this proposal does require that the patient have visited a dentist in the previous year in some situations; however, there are exceptions to this requirement such as assessments or fluoride applications. Representatives from the dental association remain concerned that patients would never actually see the supervising dentist. More specifically they are concerned that the improper application of a sealant could result in a more serious dental problem. It was also noted that while the rules require written agreements and protocols, there is no provision for the board to approve or even review those documents. The Department of Human Services has voiced support for this change, stating that the application of sealants could significantly reduce dental costs for Medicaid-eligible children.

ARRC members did determine that more information was needed relative to the fiscal impact of the proposal and more generally to the workings and goals of the proposal. However, the members did not wish to delay the adoption of this filing, so an "informal" regulatory analysis was requested to obtain additional information, but without the publication and adoption delays imposed by the formal process.

ACTION: Request for an "informal" regulatory analysis. This request does not delay the adoption of this rule. Further review of the analysis and rule will take place on final adoption.

EDUCATION DEPARTMENT, Charter schools, 10-01-03 IAB, ARC 2808, EMERGENCY.

BACKGROUND: A similar proposal had been terminated last year when federal funding was denied. $1,000,000 has now been made available and the program is now

being implemented. In the second year $1.3 million is available and $1.8 in the third year.

COMMENTARY: Charter schools are authorized under federal law by Pub.L. No. 107-110, Title V. Part B; that statute provides funding for the creation and evaluation of these innovative school programs. These grants may be for up to three years. The department has adopted a review process using a series of weighted criteria to evaluate proposals. A charter school program allows the school to waive many of the legal requirements imposed on traditional schools. Charter schools must still meet health and safety requirements and provide special education; they cannot impose tuition of other fees not authorized by law. Under the program up to ten pilot projects may be approved—at the present time only one application has been received..

ACTION: No action taken.

EDUCATION DEPARTMENT, Funding for children in state mental health institutions, 10-01-03 IAB, ARC 2740B, NOTICE.

BACKGROUND: Senate File 453 provides funding for the education of children residing in the Mental Health Institute; the State Training School; and the Iowa Juvenile Home. Each such institution is required to submit a program and budget request to both the Departments of Education and Human Services.

COMMENTARY: Under this program the cost of providing an appropriate education to these children has been transferred to the state foundation aid. Fiscal analysis indicates some 3.4 million will be transferred to these institutions. For budgeting purposes there are three weighting levels depending on the degree of assistance a student requires. Committee members expressed some concern that a student who was counted for aid purposes in a school district might later be counted for aid purposes in one of these institutions. Department representatives noted that the count was for overall budgeting purposes and not individual students.

ACTION: No action taken.

ENVIRONMENTAL PROTECTION COMMISSION, Drinking water revisions, 9-17-03 IAB, ARC 2779B, NOTICE.

BACKGROUND: In response to a federal rulemaking pertaining to drinking water the EPC must revise many of its rules in that area. Six chapters are affected by these revisions and each contain numerous amendments.

COMMENT: The significant issue with this proposal is the revision of Chapter 83. Starting at item 150, a series of fees imposed on testing laboratories are being revised and increased. The fees have not been raised in ten years. Under Iowa law laboratories which analyze samples for waters supplies, underground storage tanks or wastewater treatment must be certified by the EPC. As part of this certification process a laboratory must demonstrate *"...to the satisfaction of the department its ability to consistently produce valid data..."* Chapter 83 sets out a series of fees and expenses which vary according to the analyses performed by the lab; the cost is cumulative. The proposal now sets out a chart listing the analyses and the required fees; the chart is new and does not match the existing framework, making line-by-line comparison difficult, but the average seems to

be between 25% and 33%. There are examples: inorganic analysis is raised from a flat $1200 to a maximum of $1600, depending on the number of analytes; dioxin analysis is raised from $600 to $800; effluent toxicity is raised from $600 to $800; asbestos from $300 to $400; radio nuclides from $300 to $400. Opponents contend this increase is excessive, while EPC representatives respond that the fees are necessary to pay the contractors who perform the actual inspections; those representatives also state the fee are less than those charged in Minnesota or Wisconsin. Committee members voiced concern this fee increase would make Iowa laboratories non-competitive with those in other states. Noting that Iowa also imposed a six or seven percent sales tax on lab services, members felt the fee increase might force labs to relocate in lower cost states.

ACTION: No action taken.

ENVIRONMENTAL PROTECTION COMMISSION, Water quality standards, 9-17-03 IAB, ARC 2776B, NOTICE.

BACKGROUND: The EPC proposes numerous changes to rules relating to water quality standard and effluent treatment standards.

COMMENTARY: Committee members noted that many of the changes came with a significant price, as outlined in the fiscal statement. A chloride standard to protect aquatic life would cost six municipal and industrial sites from $800,000 to $4.3 million. Another significant change would upgrade the quality designations of a number of streams. This would require some 168 facilities to spend $28 million for disinfection equipment. EPC representatives note this will provide cleaner water; some committee members were concerned that the cost of compliance would outweigh the value of the incremental improvement of water quality.

ACTION: No action taken.

INSPECTIONS & APPEALS, Dispensing medication in care facilities, 10-01-03 IAB, ARC 28261B, NOTICE.

BACKGROUND: This proposal would prohibit long–term care facilities from limiting the means of dispensing resident medication. It short, it prohibits the mandatory use of unit dose medications. It is a companion to a June proposal, containing a similar prohibition but applying only to bulk medications provided by the federal Veterans Administration to eligible veterans.

COMMENT: At issue is safety versus economy in the dispensing of medication to care facility residents. As a safety and quality control measure care facilities often use unit dose medication to provide a single, pre-packaged dose direct from the container to the patient. The problem with unit dose is that some resident have insurance or other programs that will provide the needed medication in bulk at a reduced price. Care facilities prefer such a unit system because it is easier to administer and less prone to error. A unit dose system is more expensive for those residents who have an alternative source for prescription drugs. This source may be more affordable for the resident, but it is more difficult for the facility to dispense. Care facility representatives stated that the cost of dispensing multiple medications to multiple patients will greatly increase the staff time needed to dispense, increase facility costs and increase the risk of error. The

representatives questioned whether any cost savings would actually occur, given the increased staff time needed to prepare, document and administer the dosages; they suggested that increased costs of monitoring and dispensing bulk drugs could amount to $32 million. It was stated the better solution would be to allow pharmacists to receive the bulk medications and allow those medications to be repackaged for facilities in unit dose. Nurses also expressed concern that the supervisory nurse in a care facility would face increase liability, perhaps even licensing sanctions due to medication errors. Nursing representatives stated that 75% of all nursing errors involved medications.

Department representatives stated that the proposal was an effort to obtain public comment on the broad concept, and that the actual language of the rule could well be modified as part of the rulemaking. They noted there was general support for this concept when applied to veterans; they suggested that residents who had an insurance drug benefit should be entitled to the same opportunity as a veteran. They also disputed that the requirement would displace the unit dose system, contending that only those few residents who had a private insurance drug benefit would opt out of the unit dose system. Department representatives also stated they had been in contact with representatives of the Department of Human Services, who had no problem with this change.

Committee members had a mixed reaction to this proposal. The concept of making better use of alternative sources for medication was considered sound; the concept itself was not controversial when earlier proposed for veterans; but the impact of that particular change would have been small, since facilities generally housed very few veterans who had such a drug benefit. When applied more broadly there was concern about the fiscal impact and whether any savings to the individual resident would be offset by additional costs to the facility and by increased risk of error. Members were concerned that no fiscal analysis had been done to estimate and weigh all of these costs. Department representatives responded they would provide more information when they had reviewed the public comment.

ACTION: No action taken: This proposal has now been terminated.

HUMAN SERVICES DEPARTMENT Advanced registered nurse practitioners (ARNP'S) as Medicaid providers, SPECIAL REVIEW.

BACKGROUND: The ARRC has held three meetings relating to the role of advanced registered nurse practitioners as Medicaid providers. The Department has now adopted revisions, effective in December that will allow all ARNP's to obtain a Medicaid billing number.

COMMENT: This revision, now adopted in final form, first eliminates references to the term "independent"; use of that term had earlier raised the question whether ARNPs who were employees of another entity could obtain a billing number. The filing also eliminates reference to specific types of ARNP's; this allows any ARNP recognized by the Board of Nursing Examiners to participate in the Medicaid program by allowing all ARNP's to obtain a Medicaid billing number, thus allowing them to bill directly for their services. The one remaining restriction relates to Medipass patient managers. Only those ARNP's who are primary care providers (six categories) may serve as patient managers; this same restriction is imposed on physicians.

Some controversy remains. Commentators argue that every ARNP should have a billing number; they contend that it is fraudulent for physician to bill for work actually performed by an ARNP. They contend that physicians may simply characterize ARNP services as simply "incident" to their own and bill at the higher rate. They also state that direct billing by ARNPs will save the Medicaid program a significant amount of money because ARNPs are reimbursed at 85% of the physician's rate. Department representatives declined to speculate on the amount of savings, but agreed to collect data to determine the actual level.

The department declined to require that all ARNP's obtain a billing number; stating that it was appropriate for a physician to bill for the services of an ARNP who function as auxiliary under the supervision of the physician and performing service "incident to" the practice. However, department representatives have sent an informational letter to physicians and ARNP's providing detail to the term "incident to".

ACTION: No action taken; additional review in November.

IOWA FINANCE AUTHORITY, State housing trust fund, 10-01-03 IAB, ARC 28261B, NOTICE.

BACKGROUND: Senate File 458, §101 creates a "housing trust fund" within the IFA. Available funds are to be used for the development and preservation of affordable housing for low-income people.

COMMENT: There are two separate programs under this new fund. two programs: the local housing trust fund, consisting of 60% of the fund ($480,000) and the project based program consisting of 40% of the fund. For each program applications are evaluated based on a series of weighted criteria, set out in the program.

40% of the local hosing trust must serve extremely low-income people (30% of the median income. The program finances local housing projects. The projects based program serves low income persons (80% of the median); it finances single family and multi-family housing.

ACTION: No action taken