January 2004 ARRC Meeting

Summary of Issues

The February, 2004 meeting of the Administrative Rules Review Committee will be on Monday, February 9th 2004 in Statehouse Room #116.

For more information contact Joe Royce at 281-3084; e-mail: joe.royce@legis.state.ia.us.

COMMITTEE BUSINESS. The committee formally welcomed two new members. Representative Geri Huser replaces Representative Mark Kuhn and Senator Mary Lundby replaces Senator Jeff Angelo. These new members will complete the unexpired portion of their predecessors' term. Senator Paul McKinley was then elected Vice-Chair of the committee, replacing Senator Angelo.

SPECIAL REVIEW FOR FEBRUARY MEETING. Due to scheduling problems, review of the following rules is postponed until February:

ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351] 12/24/03 IAB
- Exception from reporting requirement—voluntary reports, 4.11, Notice **ARC 3048B**
- Candidate debate—media organization; debate structure and funding; contribution reporting inapplicable, 4.51, Notice **ARC 3046B**
- Use of public resources for a political purpose, adopt ch 5, Notice **ARC 3047B**

LAW ENFORCEMENT ACADEMY[501] 11/26/03 IAB
- Reserve officer personal standards, ch 10, Notice **ARC 2978B**

DENTAL BOARD OF EXAMINERS, Supervision of dental hygienists in a public health setting, 12/24/03 IAB, ARC 3041B, FILED.

BACKGROUND: The concept of allowing a dental hygienist to provide certain preventive services to a patient who had never seen the supervising dentist first appeared in early 2003, in response to a petition for rulemaking. The initial proposal was withdrawn and a second version commenced the rulemaking process in September.

COMMENTARY: These rules establish the concept of "public health supervision". This would allow a supervising dentist to enter into a written agreement with a dental hygienist to perform hygienist services as detailed in the agreement. Under this concept a patient would not be required to actually be seen by the supervising dentist. 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.

At the October meeting committee members requested an informal regulatory analysis from the board, detailing the effect of this program. That analysis was distributed in December. In essence the analysis concluded that a dental access problem exists in Iowa, with 72 counties, and one urban area, designated as dental health profession shortage areas. It stated that dental caries was one of the most common problem with school age children (57%), and that only 1/3rd of the Medicaid recipients received dental care. The report concluded the rules would broaden access to basic preventative services; more specifically, it stated that the applicant of a sealant was an effective means to combat decay. Opponents of the program state that the improper application of a sealant can

actually worsen a decay problem. They contend that it is imperative that a patient be seen by a dentist as part of the program.

ACTION: NO ACTION.

ELDER AFFAIRS, Adult day care/assisted living programs, ARC 3000B through 3002B, 12/24/03 IAB

BACKGROUND: The regulation of assisted living programs has been contentious for several years, culminating with the enactment of 2003 Acts, Chapter 166, regulating elder family and group homes, along with assisted living programs; and the enactment of 2003 Acts Chapter 165, relating to adult day services.

COMMENTARY: Three proposals were considered concurrently, but discussion centered around assisted living facilities. Department representatives stated the current rules had been modified, in response to a popular desire to allow program residents to "age in place"; i.e.: remain in assisted living through increasing dependence and fragility. To that end, the transfer criteria have been relaxed. These criteria are used to determine the point where a resident becomes so frail that the individual must move to a care facility. Discussion centered around the need for flexibility in regulating these programs. Department representatives cited several examples; such as not specifying any requirements for the program administrator and not requiring showers in every room. The representatives did maintain that the intent of assisted living was to provide a home-like environment and that things like a kitchenette and a bathroom were integral to that goal.

The committee took testimony from an individual wishing to establish a dementia-specific facility. The individual contended that for dementia victims a more dorm-like setting was appropriate, both for the residents well-being and comfort. Such a program would feature more communal type living, with smaller rooms and no toilet in each room. Department representatives were concerned this concept crossed the regulatory line into care facility regulation. Some committee members urged the use of a waiver to authorize these development of dementia-specific homes. Department representatives were unsure that Iowa Code Chapter 231C gave them authority to create a special category of assisted living facility. The administrative rules coordinator echoed this concern and generally opposed the use of a waiver. Some committee members also questioned the desirability of a dorm-like setting.

ACTION: No action taken, additional review on final adoption.

MEDICAL BOARD, Supervision of physician assistants, ARC 3042B, ADOPTED.

BACKGROUND: The supervisory role of physicians in regards to physician's assistants (PA) has always been a contentious issue. This revision implements a number of licensure changes set out in 2003 Acts, Chapter 93. Those changes were not controversial, but provided an opportunity to review current provisions relating to Physician assistant supervision.

COMMENTARY: The Board of Medical examiners is authorized in Code §148.13 to adopt standards detailing a physicians' inability to supervise a physicians' assistant. Note that the physician assistant is not necessarily an employee of the supervising physician. Often the physician assistant is self-employed and contracts with a physician to provide the needed supervision. Under the rules the supervising physician may be licensed in Iowa, Have an active Iowa practice (part-time volunteer work does qualify) and be quality in the area of medical practice where the physician assistant serves.

Representatives of the physician assistants argue these rules are an improper infringement of the physician assistant practice. Generally they contend that the supervision of a physician assistant goes to the very heart of the practice and should be specified by the physician assistant board of examiners. Specifically, they contend that the Iowa practice restriction unfairly penalizes border practices; they also contend that the two assistant limit is unfair since other groups, such as nurses, are not subject to similar limits. Board representatives responded that any border problem could be resolved by an individual waiver; the board was concerned only in those situations where the supervising physician was too remote from the physician assistant to effectively supervises or collaborate. The representatives defended the two physician assistant supervision limit, stating that unlike physician assistants nurses were not supervised by a physician; they collaborated with a physician, playing a more independent role.

The committee determined that the "supervision" portions of this filing, item 5 should be delayed for seventy days in the expectation that a resolution or the border practice issue could be reached. Board representatives responded that issue had been fully discussed and no compromise was likely.

ACTION: 70 day delay, additional review in March, 2004.

HUMAN SERVICES DEPARTMENT, Preferred drug list, ARC 3030B, EMERGENCY.

BACKGROUND: Prescription drugs cost the Medicaid program over $300,000,000; 2003 Acts Chapter 112 attempts to control this cost by establishing a preferred drug list (PDL). Drugs not on this list will require prior authorization.

COMMENTARY: Under this concept the department will develop a preferred drug list, considering the effectiveness, safety of each drug. In each therapeutic class of drug the department will designate the most cost-effective as the preferred drug; the prescription of other drugs is not prohibited, but prior authorization is required. This process is not required for Aids or mental health medications. Implementation of this program has been temporarily postponed due to problems relating to the initial administrative of this program. Implementation is now expected in the next several months. Until that time the prior payment procedures will remain in effect.