June 2004 ARRC Meeting

Summary of Issues

The July meeting will be held on Thursday, July 8th and possibly Friday, July 9th, 2004, in room #116.

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ADMINISTRATIVE SERVICES DEPARTMENT, Insurance for state employees, 05/26/04 IAB, ARC 3365B, NOTICE.

BACKGROUND: House File 2262 requires that state employee payroll deductions be established whenever 500 or more state employees request the deduction, in order to purchase insurance from the same company. This legislation reinstates a program that was eliminated in 2002, although employees already enrolled in programs were allowed to continue under Department of Revenue and Finance rules.

COMMENTARY: Under this reconstituted program, the state will collect the premiums on behalf of the company. Participation is limited to insurance coverage that is not otherwise offered through the state, such as: health and dental; term life; and long-term sickness or disability.

ACTION: No action.

EDUCATION DEPARTMENT, Open enrollment and district de-segregation plans, 05/12/04 IAB, ARC 3331B, NOTICE.

BACKGROUND: For many years the department has maintained informal guidelines relating to minority enrollment and de-segregation in public schools; these guidelines merely provided advise to local school districts, they had no legal standing.

COMMENTARY: 2003 Acts, Ch. 130, §35 requires the department to adopt criteria and standards that school districts must follow when developing a voluntary desegregation plan, as well as a review process. This legislation allows the department to promulgate rules with the force of law. A key part of this proposal relates to the handling of open enrollment requests when a district has a voluntary desegregation plan. Generally, under open enrollment the receiving district determines whether the transfer may be made. Under the proposed rules, when a district has a voluntary de-segregation plan, the sending district may restrict open enrollment as part of an overall desegregation plan. Currently Iowa has five districts with a voluntary desegregation plans.

Under this proposal a school district may adopt a voluntary desegregation plan that affects open enrollments if the total student population has at least 20 percent minority students; or if the percentage of minority students in one or more attendance centers exceeds the percentage of minority students in the district as a whole by at least 20 percentage points. A desegregation plan cannot simply restrict open enrollment; such a restriction may only be used as one component of a broader plan to increase integration. The open enrollment component may only be used while minority enrollment exceeds 15 per cent.

ACTION: No action.

EDUCATION DEPARTMENT, Homeless assistance, 05/12/04 IAB, ARC 3330B, NOTICE.

BACKGROUND: For over fifteen years the department has had rules relating to the education of homeless children. The rules required local districts to "encourage"

homeless youth to enroll in school. With the enactment of the federal No Child Left Behind Act additional requirements have been put in place requiring local districts to *ensure* that homeless children have equal access to the same free, appropriate public education, including a public preschool education, as provided to other children and youths.

COMMENTARY: The proposal adds detail to the definition of "homeless" by providing examples of living or sleeping arrangements that constitute being homeless. There was concern that under the federal interpretation of the term a very significant increase in the eligible population would be possible. It was cautioned that the modest $220,000 fiscal estimate could be very low, depending on how expansively the term "homeless" is interpreted. It was suggested that additional transportation costs alone could use up most of the federal money available under the Act.

There was some concern that a rather expansive interpretation of the term would include a broad range of living situations. A department representative stated that the traditional definition of the term would remain in place; the definition states that a homeless child lacks "a fixed, regular, nighttime abode."

Each district must appoint a coordinator to oversee the services provided under the federal Act. All districts have complied with this requirement.

ACTION: No action.

ENVIRONMENTAL PROTECTION COMMISSION, Water quality standards: total dissolved solids, 05/12/04 IAB, ARC 3360B, ADOPTED.

BACKGROUND: Under the previous rule total dissolved solids (TDS) could not exceed 750 mg/l in any lake or impoundment or in any stream with a flow rate equal to or greater than three times the flow rate of upstream point source discharges. That standard is low, but it was never practical to enforce; in essence, there was no effective standard for TDS prior to this rulemaking.

COMMENTARY: In a notice of intended action published in September, 2003, the EPC in part proposed a site specific approach would first consider a guideline value of 1000 mg/l (TDS). Sources that discharge levels of TDS that may potentially elevate a receiving stream above the specified level would be required, upon application for a discharge permit or permit renewal, to demonstrate that their discharge will not result in toxicity to the receiving stream. That specific standard was very controversial because it was thought to be more stringent than the interpretations of the previous 750mg/l standard. Many Iowa cities already have TDS levels in excess of 1000mg/l.

On final adoption the final 1000mg/l ceiling was dropped. The final rule provides that the TDS level will be determined on a site specific basis, using a formula set out in manual form ("Supporting Document for Iowa Water Quality Management Plans," Chapter IV, July 1976, as revised on June 16, 2004). Under this concept the EPC would look at each facility and each discharge and decide on an ad hoc basis where the limit would be set, as determined through the manual process. The actual limit for a particular facility would be based on the concentration that they tested for toxicity.

In response to a committee question department representatives noted that any change in the manual formula would require a public rulemaking. The EPC will collect data from the testing, with the intention of developing a standard by April 1, 2007.

ACTION: No action.

NATURAL RESOURCES COMMISSION, The nature store, 05/12/04 IAB, ARC 3357B, NOTICE.

BACKGROUND: In an effort to promote the activity of the commission and nature conservancy in general, the commission proposes to make commission related merchandise available to the public.

COMMENTARY: Under this proposal the commission will use funds from the state conservation fund for the design, manufacture, or purchase of conservation related merchandise for resale to the public. The merchandise would be available through an internet website and directly marketed at special events. The commission is considering a contract with a private vendor to market and distribute the merchandise. Committee members were ambivalent towards this proposal. Some members supported at least the concept, while others question the legal authority for the commission to engage in merchandising, while still others questioned the viability of the marketing plan. It was noted that a similar project by the Department of Economic Development did not succeed.

A representative from the Iowa Federation of Independent Business also opposed the concept, noting that an attempt to authorize this merchandising proposal by statute failed in the legislative process. Senate Study Bill 3159, §§18 and 19 would have provided that: "The department of natural resources may offer for sale goods or services to the public as authorized pursuant to section 455A.4". It was noted that neither of these provisions was enacted into law. The representative questioned whether it was appropriate to propose a rule to implement a concept that failed the legislative process.

ACTION: No action. Additional review likely if the proposal is adopted.

PHYSICIAN ASSISTANT EXAMINERS, Physician assistant practice, 05/12/04 IAB, ARC 3345B, ADOPTED.

BACKGROUND: House File 628 revised the regulatory scheme for the physician assistants; §12 provided that:

> *"...rules shall be designed to encourage the utilization of physician assistants in a manner that is consistent with the provision of quality health care and medical services for the citizens of Iowa through better utilization of available physicians and the development of sound programs for the education and training of skilled physician assistants well qualified to assist physicians in providing health care and medical services."*

COMMENTARY: The physician assistant board completes action on a series of revisions to existing rules generally relating to the scope of the physician assistant's practice and the relationship with the supervising physician. The board representative stated these rules followed the statutory direction to write rules that encourage the utilization of physician assistants to help physicians provide quality care. Representatives of the medical and nursing professions contended the rules expanded the scope of physician assistant practice and requested that the rules be delayed into the 2005 legislative session and that a formal objection be placed on the filing. The board representative responded that the rules did not expand the scope of practice, but simply recognized the functioned already being performed by the assistant.

The revisions present three areas of major controversy. The first relates to the delegation of duties by the supervising physician. The prior rule provided that "diagnostic

and therapeutic medical tasks common to the physician's practice" could be delegated to the physician assistant; under the new language the delegated tasks do not need to be common to the physician's practice as long as the physician assistant demonstrates "proficiency and competence" in that area, as determined by the supervising physician. A board representative noted that section nine of House File 628 eliminated current statutory language relating to scope of practice. Opponents of this revision contended that the legal requirement of physician supervision requires that the physician and the physician assistant have a common area of practice to ensure that the physician can exercise a meaningful level of oversight..

A second change relates to the types of surgical procedures that could be performed by a physician assistant; current language limiting surgery to "office" procedures has been eliminated. The board representative stated that surgical procedures should not be limited to only the office; the representative contended that surgical procedures could be properly performed in a hospital setting, a care facility or an emergency room. Opponents contended that not all surgical procedures may properly be delegated to a physician assistant, but they did concede that procedures need not to be limited to the office setting. One suggestion was to add the phrase "surgical procedures commonly performed in an office setting."

A third significant change dealt with obstetrical care. The previous rule stated that the physician assistant provided prenatal and postnatal care and assisted a physician in obstetrical care. The reference to assisting the physician has been deleted, thus allowing the assistant to provide obstetrical care as delegated by the supervising physician. Representatives of the nursing profession contended that a high level of specialized training was required before any individual could provide obstetrical care. They stated that any delegation of obstetrical care to a physician assistant should also require specialized training in the area.

The Governor's Administrative Rules Coordinator expressed concern that the revisions were not supported by any consensus among the health care professions and stated that the board needed to meet with these health care professionals and resolve these issues before any revision to the rules could be implemented. Committee members echoed these sentiments, and suggested that the rules did exceed the scope of the physician assistant practice. With the concurrence of the Administrative Rules Coordinator the committee imposed a seventy day delay on this filing, with the direction that the physician assistant board meet with representatives from other health-care professions and develop a new set of rules based on a consensus with those professions.

ACTION: Seventy day delay. Additional review tentatively set for August meeting.