

OCTOBER 2006 ARRC Meeting

Summary of Issues

ADMINISTRATIVE RULES REVIEW COMMITTEE

October 10, 2006

Chairperson: Representative George Eichhorn

Vice Chairperson: Senator Jack Kibbie

HUMAN SERVICES DEPARTMENT, Remedial Services/Child Welfare Services: Revisions to the Medicaid Program 8/30/06 IAB, ARC 5368B, ARC 5372B NOTICE.

Background. These proposals were initially reviewed by the committee at its' September meeting, both filings are part of the overall re-write of the state Medicaid plan; these changes will impact adults with mental illness who are receiving adult rehabilitation option (ARO) services and children in foster care who are receiving rehabilitative treatment services (RTS). At issue with these proposals is the effort is to limit Medicaid coverage to rehabilitative services; i.e., services which will restore or improve the mental health of the client. Under these revisions the provision of service will be based on a medical model and some current services, which are not deemed to be rehabilitative, can no longer be paid for using federal Medicaid funds. After lengthy discussion at the committee's September meeting members decided to continue the review in October.

Commentary. Department representatives presented an overview of the steps that are being taken to minimize any disruption of service caused by these changes. Training in the new plan is underway with some 300 persons already attending. When the new plan is implemented, a "safety net" will be in place to guarantee services to current recipients through June 30, 2007. A new plan is under development to serve the chronically mentally ill.

Public comment was supported the department's efforts but concerns remained over the details of the changes to the plan and their implementation. Department representatives stated that the department would continue working with all of the stakeholders to resolve problems as they develop. Representatives of county government questioned whether counties could discontinue services that are not funded under the new plan. In response to those concerns the committee voted to refer this issue to the General Assembly for further study.

Following lengthy discussion committee members determined that the rulemaking should proceed, with an "emergency" implementation date of November 1st. Members requested monthly updates concerning the implementation of the program and any issues that arise concerning that implementation.

Action: GENERAL REFERRAL: additional review possible.

IOWA FINANCE AUTHORITY, Special Review--Wastewater Treatment Financial Assistance Program, 08/30/06 IAB, ARC 5346B NOTICE.

Background. At its September meeting the committee reviewed rules noticed by the Iowa Finance Authority (IFA) implementing the Wastewater Treatment Financial Assistance Program. This program was established under 2006 Iowa Acts, House File 2782, section 63 to assist "disadvantaged communities" with populations less than 3000, by providing grants to these communities for the enhancement of water quality and to assist communities to comply with water quality standards adopted by the Department of

Natural Resources (DNR). The General Assembly appropriated \$4 million to provide this assistance. The IFA rules provide that the DNR will certify wastewater treatment projects needed to meet water quality standards. The estimated cost to reduce effluents from treatment facilities is roughly \$800,000,000 to one billion dollars.

The committee reviewed DNR rule filings in October 2005 and March 2006 amending the state's water quality standards to comply with the federal Environmental Protection Agency mandate for "fishable and swimmable" waters. (ARC 4895B and ARC 4897B) No formal committee action was taken.

The General Assembly later enacted 2006 Iowa Acts, Senate File 2363, to address the state's water quality standards. Under the Act the DNR is required to designate stream segments pursuant to designated uses, e.g., agriculture, aquatic, or recreational use. For each designated use, the DNR is required to adopt water quality standards. The DNR must determine whether a designated use is attainable, and prior to any change in a national pollutant discharge elimination system (NPDES) permit, a use attainability analysis is required. The Act requires that all new or revised stream segment use designations be adopted through the rulemaking process. The DNR will bring each specific designation before this committee for its review.

Commentary. Representatives of both IFA and the DNR appeared before the committee. DNR presented a timeline for its work-- starting with field work that has been conducted, making recommendations for stream use designations, with rulemaking in the spring/summer of 2007, then EPA approval, and NPDES permit renewed. Once the affected community has been through this process, DNR will determine what wastewater treatment projects are necessary to meet the change in water quality. An eligible community would then apply for a grant needed to comply with the new water standards; however, only the incremental cost attributable to the changed water standard would be grant eligible.

DNR explained that all of the field work will be done and the stream use designations completed in December 2007. The field work is done by location.

Representatives of the League of Cities and Rural Water Districts, raised some issues regarding the language of the rules; however, they voiced support for the rules over all.

Action. No action taken.

DEPARTMENT OF NATURAL RESOURCES, Special Review--River otter trapping season, 06/07/06 IAB, ARC 5144B FILED.

Background. In July, the Committee reviewed ruled adopted to implement a river otter trapping season. Upon request, the Committee again reviewed these rules.

Commentary. Representatives from the Department discussed the process which was used to determine that a sufficient biological balance to support a river otter trapping season, describing the scientific rigors required to obtain federal approval of the season. The Department testified that both state and federal requirements were met, and a biological basis was established, for the season to be implemented. The Department provided growth and harvest rates to the Committee and discussed complaints that have been received about fish depredation in ponds due to river otters.

Action. No action was taken.

UTILITIES DIVISION, Wind and renewable energy tax credits, 09/27/06 IAB, ARC 5400B. NOTICE.

Background. The proposed rule amendments implement statutory changes enacted in Iowa Acts 2006, Senate File 2399, and also implements procedures for accepting and reviewing wind energy tax credit applications.

Commentary. The amendments implement the new statutory ownership limitation under Iowa Code chapter 476C. The rules did not present any issues; however, two individuals testified before the Committee who are seeking to obtain final approval for their wind project from the Iowa Utilities Board for Chapter 476C Renewable Energy Tax Credits. As farmers the individuals would be eligible for credits under the program, but due to the individuals' financing arrangement for the project, it was unclear whether those individuals would be legally considered the "owners" of the project. They noted that with the growing popularity of wind projects, it is increasingly difficult to find construction companies willing to construct a single turbine, and for that reason, greater financing is required to fund larger projects.

It was generally agreed that the statutory scheme precludes the use of this type of arrangement. Members of the Committee suggested that the parties work with the General Assembly to effect needed changes.

Action. No action taken.

UTILITIES DIVISION, Authority to issue procedural orders, 09/27/06 IAB, ARC 5400B. NOTICE.

Background. Under current procedure all board orders must be approved by a quorum of the three-member board. This rule would allow procedural motions to be approved by a single member of the board "upon the showing of good cause and when the prejudice to a nonmoving party is not great." If a board member was not available this authority could be delegated to an administrative law judge or the executive secretary of the board.

Commentary. Board representatives stated this provision would resolve an ongoing problem where minor procedural motions could not be speedily handled when two board members were not available. The example was cited where a motion to delay a hearing was supported by all the parties, but approval was delayed because two board members were not available. The representatives noted this provision is based on a similar procedure used by the Iowa Supreme Court.

Committee members raised three issues with this process. First, some members questioned whether the board could lawfully delegate any authority to a single board member or board staff. Second members were concerned that the situations allowing the exercise of this discretion were too broad. They included both emergency situations or any other situation "for the efficient and reasonable conduct of proceedings". Committee members felt these provisions are too broad. Third, members were concerned about the requirement for a showing of "of good cause and when the prejudice to a nonmoving party is not great." Members felt this language is vague.

For these reasons the committee believed that additional discussion is necessary and imposed a 70 day delay on this filing, with additional review at the Committee's November meeting.

Action. Seventy day delay.

DEPARTMENT OF VETERANS AFFAIRS, Injured veterans grant program, 07/05/06 IAB, ARC 5179B. EMERGENCY.

Background. 2006 Iowa Acts Senate File 2312 created the Injured Veterans Grant Program. This program provides immediate financial assistance to the veteran so that family members may be with the veteran during recovery and rehabilitation from an injury or illness received in the line of duty in a combat zone or in a designated hostile fire zone. The veteran must be an Iowa resident and the injury or illness must be so severe that the resident was evacuated from the combat zone.

Commentary. In a general review of this program agency representatives noted that the term "veteran" includes active duty servicemen and women. To date the program has assisted over 70 individuals and has paid out over \$400,000.

Discussion revealed that the process to identify eligible applicants and obtain documentation of the injury or illness is complicated and requires a vast amount of paperwork. It appears that the Federal Veterans Affairs Administration and the Department of Defense do not routinely share information with each other. This complicates the verification process further.

As a result of this discussion, the committee voted two actions: first, to send an informal letter to Iowa's United States Senators and members of the House of Representatives, requesting their assistance in resolving the documentation problem. Second, the committee voted to refer this issue to the General Assembly, for the members information and further review.

Action. General Referral and letter to Iowa's congressional delegation.

Next Meeting. The next Committee meeting will be held in Senate Committee Room 22 on Monday November 13 at 1:00 p.m. and Tuesday November 14, 2006, at 9:00 a.m. The following special reviews have been added:

1. Environmental Protection Commission — Boone County landfill.
2. Department of Economic Development — overview of Iowa Values Fund.
3. Department of Public Safety---Fire code and building code.
4. Administrative Services Department---Procurement policies.

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