

# SEPTEMBER 2006 ARRC Meeting

## Summary of Issues

### **ADMINISTRATIVE RULES REVIEW COMMITTEE**

September 12 and 13, 2006

**Chairperson:** Representative George Eichhorn

**Vice Chairperson:** Senator Jack Kibbie

**IOWA FINANCE AUTHORITY (IFA), Wastewater Treatment Financial Assistance Program, 08/30/06 IAB, ARC 5346B, NOTICE.**

**Background.** 2006 Iowa Acts, House File 2782, section 63, established a Wastewater Treatment Financial Assistance Program for disadvantaged communities with populations less than 3,000 in order to provide 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). In March 2006, the DNR implemented rules designating all perennial streams and intermittent streams with perennial pools as "Class A1, B(WW-1)" waters for protection of recreational and aquatic life uses. This is the so-called "fishable-swimmable" standard. Attaining this standard will require the upgrading of many Iowa water treatment facilities. The twenty-year cost to achieve this reduction is estimated to be roughly \$800 million to \$1 billion.

**Commentary.** This assistance program is intended to meet a small part of these costs by providing grants to communities serving populations having 51 percent of low to moderate income (LMI) persons; low to moderate income is defined as 80 percent of the median household income. For fiscal years 2007 to 2016, the Act calls for a "minimum" of \$4 million to be appropriated each fiscal year to the Wastewater Treatment Financial Assistance Fund.

Assistance may be used to install or upgrade wastewater treatment facilities and systems, and for engineering or technical assistance for facility planning and design. Committee members were very concerned that eligibility criteria seemed to provide funding on a first-come, first-served basis. Members felt that once the statutory criteria for meeting the needs of disadvantaged communities had been met, the limited amount of assistance should go to projects which would have the greatest impact on water quality. Members noted that a meaningful review of this program will require greater knowledge of the DNR program to review and classify Iowa's streams. The Committee decided to hold this proposal over for additional review at the Committee's October meeting, where the DNR representatives would be requested to attend and provide information and background concerning their review process and timetable for these reviews.

**Action.** No action taken, additional review in October.

**HUMAN SERVICES DEPARTMENT, Medicaid HCBS Waiver — Consumer Choices Option, 08/30/06 IAB, ARC 5334B, FILED EMERGENCY AFTER NOTICE.**

**Background.** The rules allow a person referred to as a "consumer" that receives a Medicaid home and community-based service waiver (i.e., the ill and handicapped, elderly, mentally retarded, AIDS/HIV, brain injured, and physically disabled waivers) to "cash out" the value of certain services. The cash value of these services becomes an "individual budget" which the consumer can use to hire people to provide services, equipment, or supplies, such as home delivered meals, that the Medicaid program would not otherwise fund.

**Commentary.** To participate in the "consumer choices option" the consumer must choose an "independent support broker" to help plan and carry out the consumer's individual budget for services. The broker cannot be the consumer's guardian or conservator, or hold the consumer's power of attorney. If the consumer consents, the rules permit a person to be a broker even if the person has a record of dependent adult abuse. However, the Department of Human Services (DHS) assured the Committee that it will weigh in on the consumer's decision or even override the consumer's decision to hire a broker with such a record. Committee members were uncertain about allowing the use of these people as caregivers, even with the client's consent.

**Action.** No action taken, additional review is likely in October.

**HUMAN SERVICES DEPARTMENT, Remedial Services, 8/30/06 IAB, ARC 5368B NOTICE, and Child Welfare Services—Medicaid Program Requirements, 8/30/06 IAB, ARC 5372B, NOTICE.**

**Background.** ARC 5368B relates to Medicaid Program payment for remedial services that are designed to minimize or eliminate the symptoms or causes of a psychological disorder. The

revisions remove non-remedial treatment services, known as rehabilitative services, as covered Medicaid services and substitute a new remedial services category. This change is significant because it clearly eliminates payment for any service that is not medically necessary to restore the health of the client. To receive these remedial services, Medicaid recipients must have an assessment by a "licensed practitioner of the healing arts" LPHA, which establishes the medical necessity. ARC 5872B also relates to remedial services. Children who need remedial services will be served through the Medicaid program under the new remedial services category. DHS plans to implement these changes effective November 1, 2006.

**Commentary.** A number of issues were presented in regard to these two proposals, including:

- The disruption of services to persons with chronic mental illness and the increased cost to counties to pay for services not covered by Medicaid. Committee members were concerned that non-remedial services cannot be funded with federal dollars. Members asked to know what options are available to assist people who need nonremedial services and what might be done to avoid fragmented services.
- The need for DHS communication with all of the stakeholders affected by these proposals. Committee members requested a report on efforts to hold meetings with all interested parties to explain the state and federal requirements. More specifically, members asked DHS to meet with county representatives to specifically determine the impact on county budgets and determine whether counties can opt out of providing a particular service and under what conditions that could occur.
- Concerns that the November 1, 2006, implementation date is too rushed. DHS representatives noted that the federal government could audit this program at any time and demand repayment for any services that were not deemed to be remedial. The Committee requested an actual timeline for the implementation of rules and the transition to the new program.
- The need to define the term "LPHA"; i.e., the licensed professional who is authorized to determine the need for remedial services. Members requested that DHS consult with representatives of the Department of Public Health (DPH) and representatives of the Professional Licensure Division in determining the meaning of the term "LPHA". The members also requested that representatives of these agencies attend the October 10, 2006, meeting. In a related issue, Committee members were concerned about the role of the program contractor Magellan in designating which individuals are authorized to determine the need for services. Members felt it would be good to have a representative from Magellan at the meeting.
- Concerns that the rules do not clearly delineate when certain services can only be provided by a licensed professional.

**Action.** After a lengthy discussion, the Committee members determined that further discussion is needed and called for additional review at the next meeting. The members identified a number of steps that need to be taken prior to that meeting. Members want assurances that education and training is being provided for service providers and that meetings will be held over the next month with all stakeholders in this process. The Committee will again formally review proposed rules set out in ARC 5368B and ARC 5372B on October 10, 2006.

**HUMAN SERVICES DEPARTMENT, Medicaid: Adequate Documentation of Services, 08/30/06 IAB, ARC 4890B, ADOPTED.**

**Background.** Adequate provider documentation for Medicaid services has been an issue for several years. The issue has been reviewed by the Committee a number of times and has been in litigation. The basic provider requirement is set out in 441 IAC rule 77.44, which requires that eligible Medicaid services must be rendered by appropriately licensed practitioners who must carefully document the services provided as well as the need for those services.

**Commentary.** This filing adds much needed specificity to the reporting requirement. It requires that fiscal and clinical records be maintained for a minimum of five years from the date when a charge was made to the Medicaid program and specifically states that failure to maintain supporting fiscal and clinical records may result in claim denials or recoupment. The rule sets out very specific standards for fiscal and clinical records. The proposal maintains the current policy towards recordkeeping and claim recoupment and clearly establishes the importance of adequate documentation, stating: "*Failure to maintain records or failure to make records available to the department or to its authorized representative timely upon request may result in claim denial or recoupment.*"

**Action.** No action taken.

**Next Meeting.** The next Committee meeting will be held in Senate Committee Room 22 on Tuesday, October 10,

2006, at 9:00 a.m. The following special reviews have been added:

1. Department of Human Services — Medicaid, held over from September.
2. Environmental Protection Commission — Boone County landfill.
3. Department of Natural Resources — Otter Season
4. Iowa Finance Authority/Environmental Protection Commission — general review concerning funding for wastewater treatment plants.
5. Department of Economic Development — overview of Iowa Values Fund. This review is moved to November.

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