

AUGUST 2006 ARRC Meeting

Summary of Issues

Chairperson: Representative George Eichhorn

Vice Chairperson: Senator Jack Kibbie

ENVIRONMENTAL PROTECTION COMMISSION (EPC), Animal feeding operations: department evaluations, 07/19/06 IAB, ARC 5243B, ADOPTED.

Background: Animal feeding operations fall into two separate categories: confinement feeding operations regulated through Iowa Code. Chapters 459 and open feedlot-operations regulated through chapter 459A. Both facilities are also regulated by 567 Iowa Administrative Code (IAC) Chapter 65 of the Environmental Protection Commission's rules. This adopted rule empowers the department to evaluate proposed animal feeding operation sites, prior to the issuance of a permit, based on a number of factors that are set out in the rule.

Commentary: Under the prior rules, compliance with the requirements of IAC Chapter 65 and the statutory provisions resulted in the issuance of a permit; any subsequent violation of either the permit, the statutes, or the rules was then subject to remedial or punitive action by the EPC. This rule allows the department to consider the likelihood of future environmental damage as part of the initial permitting process.

A number of groups spoke in favor of the rule; some contended that existing rules did not adequately protect Iowa's tourist and recreation areas, others contended that the evaluations are needed to effectively control feeding operations.

Committee opinion was split on this additional regulatory procedure. Some members supported the new rules, stating that additional review is needed to restore balance to the permitting process, serving as an alternative to local control of the permitting process and providing additional safeguards against the improper location of these facilities. These members felt that adequate safeguards are present in this rule.

Other members were concerned this rule concentrates too much power in the department and would put pressure on the department to condition or even deny permit applications that would otherwise meet the existing standards and receive a permit. These members stated that this review process is beyond the authority of the department, noting that over the last decade detailed statutes and rules, including master matrix guidelines, have been enacted to provide for the safe design, construction, and operation of these facilities. These members felt that a legislative intent had been clearly established that the procedures and standards for feedlot regulation are to come from legislation.

Committee members also noted that this very significant rulemaking was never listed in the departments 2005 regulatory plan as required by Executive Order Number 9, relating to agency rulemaking requirements, nor did it appear that the department had considered less intrusive alternatives to this rule.

Action: Objection. The committee objected to this filing on the grounds that it exceeded the authority of the department. This objection does not delay the implementation of the rule; instead it removes the "presumption of validity" that is normally accorded an administrative rule when challenged in court. The actual text of the objection document itself will be reviewed at the September meeting.

HUMAN SERVICES DEPARTMENT, State Payment Program (SSP), 07/19/06 IAB, ARC 5160B, FILED WITHOUT NOTICE.

Background: There are a variety of social services that are not paid for by the state; instead, the county of residence of the service recipient must pay for the service. A "state" case is a person who has been provided services but who has not acquired legal settlement in any Iowa county. Under the provisions of 2006 Iowa Acts H.F. 2780, section 19, most of the state payment program (SSP) appropriation will be allocated to counties. Commencing October 1, 2006, the county central point of coordination administrators (CPC) will assume management of the SSP cases residing in their county; each county administrator will pay providers directly for these cases and the department will pay the county based upon negotiated rates and historical data. The Act contains an escape clause that will prevent implementation of the program if it appears its cost will exceed appropriated funding.

Commentary: Committee members were concerned that the procedure for implementing these rules, as established in H.F. 2780, had not been followed. That procedure called on the Mental Health, Mental Retardation, Developmental Disabilities, And Brain Injury Commission to adopt emergency rules, "as necessary to implement the provisions", subject to prior review by the Administrative Rules Review Committee (ARRC). Instead the Human Services Council itself adopted the rules on an "emergency" basis, while still providing an opportunity for ARRC review. Department representatives noted that the special rulemaking process applied only to rules relating to the methodology for determining payments and contended this rulemaking was not part of the requirement. After discussion it was generally agreed that to resolve these procedural disputes the rules going through the notice process would be reviewed and approved by the commission and on final adoption these would replace the temporary emergency filing.

Action: No action, additional review when the notice of intended action is adopted.

HUMAN SERVICES DEPARTMENT, Personal needs allowance: nursing facility residents, 07/05/06 IAB, ARC 5211B, EMERGENCY.

Background: A personal needs allowance is the amount of income a Medicaid resident is allowed to retain for clothing, toiletries, and other personal expenses; the remainder or any money available to the resident is applied to the cost of care. The current \$30 amount has not been changed since July 1988; this revision increases the allowance to \$50.

Commentary: It was noted that under the provisions of 2006 Iowa Acts, H.F. 2319 this increase was made applicable only to residents in a nursing home, thus excluding the residents of other types of care facilities, specifically those who serve the needs of those suffering from mental illness. Department representatives stated this exclusion is specific in the statutory definition and that it would not be appropriate to expand coverage by rule; the representatives noted that not enough money was appropriated for this increase to support an expansion. There was also discussion concerning permitted uses for the personal needs allowance. Department representatives noted that with few exceptions the allowance comes from the resident's own income and that they could do whatever they chose with those funds.

Action: No action taken.

HUMAN SERVICES DEPARTMENT, Smoking cessation programs, 07/05/06 IAB, ARC 5211B, EMERGENCY.

Background: House File 825, enacted in 2005, expanded the Medicaid program to include smoking cessation drugs.

Commentary: The proposed rules identify some specific prescription-only medication along with the nicotine patch and gum as Medicaid-eligible. Opponents of this rule noted that effective treatment requires a support program as well as the medications. Department representatives responded that the Act requires only medication and that the addition of counseling would be a major additional expense. Those representatives noted that the drug plan alone could cost almost two million dollars per year.

Action: No action taken..

IOWA FINANCE AUTHORITY, Low-income housing tax credits, 07/05/06 IAB, ARC 5228B, NOTICE.

Background: Iowa law authorizes the authority to issue tax credits as an incentive to developers for construction or rehabilitation of low income housing. Each year the authority updates the program for the current fiscal year.

Commentary: The 2007 amendments make minor, technical changes to the current program. The program contains several earmarked projects; this was the only issue in the 2007 revisions. Earmarked projects include rural projects, assisted living projects, projects for persons with disabilities. Developers argued that the primary purpose of the program was to provide affordable housing for families, and that set-asides eroded this goal. Developers noted that earmarks now constitutes 70percent of the credits and contended that no more that 50percent of the credits should be earmarked. Agency representatives disputed that funding for family projects is being eroded, they noted that with the exception of assisted living, all projects are available for families.

Action: No action taken.

MEDICAL EXAMINING BOARD, Reporting "acts or omissions", 07/19/06 IAB, ARC 5236B, ADOPTED.

Background: The board rewrites existing procedures relating to licensee investigation and discipline. One of those revisions contains a requirement, relating to mandatory reporting of acts and omissions. An identical requirement, implemented by the Board of Dental Examiners, was nullified by the General Assembly in 2006.

Commentary: The issue relates to the requirement that a board licensee report the acts or omissions of other licensees "that may constitute a basis for disciplinary action". The rule implements Iowa Code section 272C.9(2) which requires a licensee to report "acts or omissions specified by rule of the board pursuant to section 272C.4, subsection 6" committed by another licensee. Board representatives responded that section 272C.4(6) is broad, covering acts or omissions that are grounds for revocation or suspension of a license under section 153.34 and acts or omissions that constitute negligence, careless acts, or omissions under section 272C.3(2)"b".

There was general discussion as to how broad the reporting requirement, as set out in the rule, when compared to the statutory provisions. Some committee members felt this provision is overbroad by requiring the reporting of virtually all acts and omissions while the statute appears to limit the requirement to more serious infractions. Other committee members supported the rule, contending that a broad reporting requirement is essential to protect the public from incompetent or negligent treatment.

Action: No action, additional review possible.

PUBLIC SAFETY DEPARTMENT, Regional emergency response training center program, 07/19/06 IAB, ARC 5256B, EMERGENCY.

Background: As specified in 2006 Iowa Acts H.F. 2782, the department adopts rules relating to the creation of regional emergency response training centers; the "lead public agency" for the training centers are the community colleges, which are partnered with local service providers.

Commentary: This emergency rule identifies the specific state appropriation allocated for the establishment of each center. The funding levels were set in the Act itself, which allocates \$300,000 for the planning, design, and construction of regional emergency response training centers. The funding is not automatic, each lead agency must file an application which justifies the proposed location of the regional emergency response training center. Each application is then reviewed by the Emergency Response Council or by a subcommittee of the council, which can recommend funding, partial funding, or denial of each application to the State Fire Marshal. The fire marshal will make a determination as to whether funding will be awarded in whole or in part for each application or whether the application will be denied. An appeal process is provided and applicants will have an opportunity to correct any error or omission in the application.

Action: No action taken.

Next Meeting. The September committee meeting will be held on Tuesday, September 12, 2006, 9:00 a.m. in the Statehouse, Room 22.

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