



Iowa General Assembly

2009 Committee Briefings

Legislative Services Agency – Legal Services Division

<http://www.legis.state.ia.us/asp/Committees/Committee.aspx?id=53>

ADMINISTRATIVE RULES REVIEW COMMITTEE

Meeting Dates: [December 8, 2009](#) | [November 10, 2009](#) | [October 13, 2009](#) | [September 8, 2009](#)
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Purpose. This compilation of briefings on legislative interim committee meetings and other meetings and topics of interest to the Iowa General Assembly, written by the Legal Services Division staff of the nonpartisan Legislative Services Agency, describes committee activities or topics. The briefings were originally distributed in the Iowa Legislative Interim Calendar and Briefing. Official minutes, reports, and other detailed information concerning the committee or topic addressed by a briefing can be obtained from the committee's Internet page listed above, from the Iowa General Assembly's Internet page at <http://www.legis.state.ia.us/>, or from the agency connected with the meeting or topic described.

ADMINISTRATIVE RULES REVIEW COMMITTEE

December 8, 2009

Chairperson: Representative Marcella Frevert

Vice Chairperson: Senator Wally Horn

ATTORNEY GENERAL, *Forfeited Property*, 11/04/09 IAB, NOTICE, ARC 8257B.

Background. Iowa Code § 809A.17 provides that forfeited property may be used by the Attorney General's office in the enforcement of criminal law or the Attorney General may give, sell, or trade such property to any other state agency or to any other law enforcement agency within the state if, in the opinion of the Attorney General, it will enhance law enforcement. Currently, 90 percent of forfeited property is returned to the local jurisdiction.

Commentary. In response to the current state budget shortfall, the Attorney General proposes to increase the amount of forfeited funds retained by the department from 10 percent to 20 percent and decrease the amount of forfeited funds given to local law enforcement agencies from 90 percent to 80 percent. The proposal also increases the fee charged for transfer of title of forfeited vehicles from \$100 to \$200. In addition, the proposed amendments set aside 20 percent the amount of proceeds from the sale of forfeited real estate to be retained by the Attorney General. Department of Justice representatives noted that the money is essential to continue providing assistance to local prosecutors.

Representatives of local law enforcement agencies stated that a successful forfeiture requires a large investment in both time and money, and reducing the amount returned to the local jurisdiction would result in fewer forfeitures. The local law enforcement representatives asserted that this rule shifts the budget shortfall to local government.

Action. No action taken. Additional review when the rule is adopted in final form.

EDUCATION DEPARTMENT, *Financial Management of Categorical Funding*, Rule 98.12, 8/26/09 IAB, FILED, ARC 8054B.

Background. This filing was initially delayed by the Committee at its September meeting and again reviewed at the November meeting. Rule 98.12 provides information concerning proper use of home school assistance program funding by school districts. The rule limits the use of funding to instruction, student support services, and staff support services and excludes items, such as indirect costs or use charges, operational or maintenance costs, capital expenditures, student transportation, and administrative costs.

Commentary. Representatives of several home school assistance programs expressed concern that if money provided under the funding scheme is restricted in the manner currently provided for in the rules, there will be many expenses that will not be reimbursed, which will eventually lead to services being limited or eliminated. Concerns were raised about the ability of school districts to continue home school assistance programs under the limitations contained in the rules. The department also cited concerns over the potential for reimbursing certain expenditures that might, in effect, create a situation where homeschooling could be viewed as a "private" school being funded with public money.

Committee members noted that no compromise or resolution has been achieved over the last several months and

determined that the rule should be delayed pending legislative review.

Action. Session Delay.

INSPECTIONS AND APPEALS DEPARTMENT, *Dependent Adult Abuse in Health Care Facilities and Programs*, 11/18/09 IAB, FILED, ARC 8294B.

Background. Iowa Code Chapter 235E was enacted in 2008 and requires the department to receive and evaluate reports of dependent adult abuse in facilities and programs. This filing establishes a full regulatory program for handling those allegations.

Commentary. Numerous stakeholder groups addressed the Committee about the rules. Proponents contended the rules are essential to effectively combat elder abuse in the institutional setting. Opponents to adoption of the rules raised three main contentions and requested a session delay of this filing:

1. The definition of gross negligence. Opponents believe the term, as defined in the rules, is too broad and imprecise. Opponents advocated for the use of a definition established by the Iowa Supreme Court through case law. Opponents argued that the department's definition would result in too many caregivers being branded as abusers and stated that gross negligence requires a willful, deliberate effort to harm a patient.
Department representatives responded that the definition contained in the rules was also taken from case law and legal treatises.
2. Mandatory reporters of abuse. Opponents contended that the definition of mandatory reporter included personnel with little or no contact with the residents, such as "administration, dietary, laundry, and maintenance" personnel. Supporters of this definition contended these persons often have contact or observe facility residents and may provide reports of abuse that would otherwise go unreported.
3. Review of past files as part of an investigation. Opponents raised concerns over the use of investigation files from previous incidents because such information would not have a bearing on a current issue. Department representatives responded that as part of a thorough investigation it is appropriate to examine all records and contact residents, employees, former employees, or any other persons who might have knowledge about the alleged abuse.

Committee members declined to delay the implementation of these rules but approved action to bring the matter to the attention of the General Assembly.

Action. General Referral.

HUMAN SERVICES DEPARTMENT, *Medicaid Budget Reductions*, 12/02/09 IAB, EMERGENCY, ARC 88344B.

Background. The Governor's Executive Order 19 mandated a "uniform modification of allotment requests . . . to achieve an annual ten percent budget reduction . . ." Iowa Code § 8.31(5) authorizes the Governor to take this action if estimated budget resources are insufficient to pay all appropriations in full.

Commentary. The Department of Human Services' emergency rulemaking implements reductions to a variety of Medicaid reimbursement rates. Many of those reimbursement rates were specifically established in 2009 Iowa Acts, House File 811, § 32. Concerns were raised that the rulemaking, through such reductions, improperly nullifies the plain language of a statute. No rule may be "[b]eyond the authority delegated to the agency by any provision of law or in violation of any provision of law." Iowa Code § 17A.19(10)(b).

Department representatives solicited informal advice from the Attorney General's office. The Attorney General opined that the action was lawful, given the gubernatorial action under Iowa Code § 8.31, reducing the underlying appropriation.

Action. No action taken.

PUBLIC SAFETY DEPARTMENT, *Sprinklers Required in New Home Construction*, 11/18/09 IAB, FILED, ARC 8305B.

Background. Iowa Code § 103A.7 requires the Building Code Commissioner to adopt the state building code. A national code and the international residential code have been adopted by reference. These codes must be updated periodically.

Commentary. The 2009 update to the international residential code contains a requirement for the installation of sprinklers in new construction for one and two-family dwellings and townhomes. Fire safety advocates contend this requirement would save lives, at a cost of about \$1.00 per square foot. Representatives of the construction industry responded that the cost is over \$3.00 per square foot and that adequate fire safety is currently provided by the fire detector and alarm requirements.

Committee members expressed great concern over the cost of such a sprinkler requirement and noted there was little evidence documenting the added safety benefits that would be provided. The Committee determined this specific requirement should be delayed and sent that portion of the rulemaking to the General Assembly for additional study and action.

Action. Session Delay.

Next Meeting. The next Committee meeting will be held in Room 116, Statehouse Main Floor, on Tuesday, January 5,

2010, at 9:00 a.m.

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Internet Page: <http://www.legis.state.ia.us/asp/Committees/Committee.aspx?id=53>

ADMINISTRATIVE RULES REVIEW COMMITTEE

November 10, 2009

Chairperson: Representative Marcella Frevert

Vice Chairperson: Senator Wally Horn

EDUCATION DEPARTMENT, *Financial Management of Categorical Funding, 8/26/09 IAB, FILED, ARC 8054B.*

Background. This filing was delayed by the Committee at its September meeting. These rules provide information concerning the financial management of funding for school districts and area education agencies. At the September meeting, representatives of the home school assistance programs expressed concerns that if money provided under the funding scheme is treated like supplemental funding, there will be many expenses that will not be reimbursed, which will eventually lead to services being limited or cut altogether. Those representatives also questioned the inequity in not treating other programs, like "four-year-old preschool," "limited English proficiency," and "talented and gifted," similarly to the home school assistance program as it relates to funding. Department representatives contended that the change assists home school assistance programs because certain school districts are using home school assistance funding for nonhome school-related expenditures and the new rules would halt this practice. The department also cited concerns over the potential for reimbursing certain expenditures that might, in effect, create a situation where homeschooling would be like a "private" school being funded with public money. In September, the Committee imposed a 70-day delay on a portion of the rulemaking.

Commentary. Representatives of several home school assistance programs and homeschooling parents provided testimony to the Committee and expressed concerns that if money provided under the funding scheme is restricted in the manner currently provided for in the rules, there will be many expenses that will not be reimbursed, which will eventually lead to services being limited or eliminated. Concerns were raised about the continued ability of school districts to adequately support the home school assistance programs under the limitations of these rules. The home school assistance program representatives also stressed that certain work, including maintenance of student records, will not be completed if funding and positions are cut. The Committee agreed to hear additional testimony at its December 2009 meeting.

Action. No action taken. The 70-day delay for the portions of the rules relating to home school assistance program funding (98.12) and the equalization levy fund (98.112) remains in effect until December 9, 2009. The Committee will review this rulemaking at its December 8, 2009, meeting.

ENVIRONMENTAL PROTECTION COMMISSION (EPC), *Removal of EPA Clean Air Mercury Rule (CAMR) Provisions, 8/26/09 IAB, FILED, ARC 8216B.*

Background. This rulemaking removes from the state air quality rules EPA's Clean Air Mercury Rule (CAMR) provisions that were vacated by the United States Court of Appeals for the District of Columbia Circuit. The rulemaking also adds new mercury monitoring provisions to the state air quality rules. At the request of EPA Region VII, the commission extended the public comment period. Seven written comments were received prior to the close of the extended public comment period.

Commentary. A representative from MidAmerican Energy expressed support for the portion of the final rules that removed the EPA's vacated rules, but also requested a session delay for the portion of the rules that impose new mercury monitoring requirements. The MidAmerican representative argued that waiting for new federal regulations is a more prudent approach. The Department of Natural Resources indicated that the additional data collected will allow for more current and accurate emissions estimates to support emissions inventory reporting and the development of appropriate federal and state air quality standards for mercury. The department also addressed some concerns over the cost of the new monitoring requirements and whether such costs would affect consumers.

Action. No action taken.

ENVIRONMENTAL PROTECTION COMMISSION, *Regulatory Analysis: High Quality Water, 10/21/09, IAB, SPECIAL REVIEW.*

Background. At its September 2009 meeting, the Committee requested a formal regulatory analysis concerning ARC 8038B, relating to the water antidegradation implementation procedure contained in that proposal. That notice of intended action was published in the 08/12/09 issue of the Iowa Administrative Bulletin and relates to the designation of "outstanding Iowa waters." The Committee was concerned about the impact these restrictions would have on the growth

and economies of neighboring rural communities. Iowa's antidegradation policy is intended to protect existing uses of surface waters and to specify how the EPC will determine whether and to what extent existing water quality may be lowered in a surface water. This policy is required by federal law.

Commentary. The Department of Natural Resources indicated that federal law requires that the Outstanding National Resource Waters category (Tier 3) to be included in any state's antidegradation policy and implementation procedures. By implementing the proposed rules, a tier 2.5 would be created and allow more flexibility for the state. The department's regulatory analysis states that inclusion of a stream in the Outstanding Iowa Waters (OIW) antidegradation category could have an economic impact in a given watershed. The department stressed that these rules would not impact existing systems and only impact situations where there is an increased degradation in water quality.

Members of the Committee expressed concern about the potential economic cost to property owners if federal requirements would change in the future. Additionally, certain Committee members questioned the economic assumptions used in the regulatory analysis and raised concerns over the validity of the economic costs included in the analysis.

Representatives of several environmental groups and associations spoke in favor of the rulemaking. Those representatives provided testimony about the potential economic benefits of improved water quality and noted the inherent economic cost in allowing pollutants to be deposited in the state's surface waters.

Action. No action taken. Additional review will occur when rule adopted in final form.

Next Meeting. The next Committee meeting will be held in Room 116, Statehouse, on Tuesday, December 8, 2009, at 9:00 a.m.

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ADMINISTRATIVE RULES REVIEW COMMITTEE

October 13, 2009

Chairperson: Representative Marcella Frevert

Vice Chairperson: Senator Wally Horn

IOWA DEPARTMENT OF ECONOMIC DEVELOPMENT (IDED), *Targeted Jobs Withholding Tax Credit Program*, 9/23/09 IAB, FILED, ARC 8147B.

Background. The IDED Board adopted previous amendments to the Targeted Jobs Withholding Tax Credit Program (TJWTC) on January 15, 2009. However, at its March 6, 2009, meeting, the Committee imposed a 70-day delay to allow the department to work through the legislative process. 2009 Iowa Acts, S.F. 304, made substantive changes to TJWTC. This rulemaking brings the rules into compliance with the statutory changes.

A public hearing was held on July 7, 2009, where the department received comments from each of the five "pilot project" cities. In response to the comments received, the department revised the definition of "local financial support" to clarify that in-kind contributions must be directly related to the project and clarified the local match requirement and provided an example. The adopted amendment also clarifies that the intent of the local match requirement is to require pilot project cities to contribute to projects that result in an increase in a city's tax collections. The IDED Board adopted these amendments on August 20, 2009.

Commentary. Members of the Committee expressed concern over the approval and verification procedures for the credits; particularly in light of the recent controversy over the actions of the Iowa Film Office. The department provided an overview of the verification process. The department explained the program's oversight procedures, including information about the required quarterly reports and how certain data is reviewed to determine whether jobs are being created or retained.

Members of the Committee also questioned the overall effectiveness of the program. The representative of Sioux City indicated that this program has been a vital tool to encourage new businesses and the retention of businesses in the Sioux City area and other border areas.

Action. No action taken.

IOWA FINANCE AUTHORITY, *Disaster Recovery Housing Project Tax Credits*, 9/23/09 IAB, NOTICE, ARC 8181B.

Background. This rulemaking implements 2009 Iowa Acts, S.F. 457, division IV, by creating a disaster recovery housing project tax credit program to assist in the construction or rehabilitation of housing in areas which were declared to be disaster areas between May 1, 2008, and August 31, 2008. The tax credit may not exceed 75 percent of the taxpayer's qualifying investment in a disaster recovery housing project. The proposed rules set the requirements for eligibility of projects and taxpayers, the application and review process, and the amount of the available tax credits. The proposed rules also establish a nonrefundable application fee in the amount of one percent of the total five-year tax credit amount.

Commentary. The authority's representative explained the process of approving these tax credits and noted how they "piggyback" on certain federal programs. Members of the Committee expressed concern over the approval and verification procedures for the program; particularly in light of the recent controversy over the actions of the Iowa Film Office. The authority provided an overview of the verification process and also explained the various reports and information that is provided to the authority for each project. The authority also noted that these tax credits were, by statute, nontransferable.

Action. No action taken.

HUMAN SERVICES DEPARTMENT, *hawk-i Program, Dental Coverage, 9/09/09 IAB, NOTICE, ARC 8112B.*

Background. The department proposes a new program to provide dental coverage to children who would be eligible for hawk-i benefits except that they have health insurance. Under current policy, children must be uninsured to obtain dental coverage through the hawk-i program. Coverage includes diagnostic and many other services.

Commentary. The additional coverage provided in this proposal was not controversial. However, item 15 of this notice eliminates a current requirement that all participating insurance providers must offer a dental benefit as part of the package. Representatives of the Iowa Dental Association state that elimination of this coverage requirement has nothing in common with the rest of the notice, which expanded coverage to an additional group. They also contend that eliminating the insurance requirement would reduce competition and allow a single insurer to dominate the market and impose unfavorable contracts on participating dentists.

Action. No action taken. There will be additional review and opportunity for public comment when this rule is adopted in final form.

COMMERCE DEPARTMENT—PROFESSIONAL LICENSING AND REGULATION DIVISION, *Social Work Practice, 9/09/09 IAB, NOTICE, ARC 8112B.*

Background. Iowa law defines the practice of independent social work as providing "diagnosis and treatment of mental and emotional disorders or conditions." This proposed rule attempts to define that term by adopting by reference the Diagnostic and Statistical Manual of Mental Disorders of the American Psychiatric Association fourth edition (DSM-IV).

Commentary. This adoption by reference is controversial with many licensees, who state that social workers work with all ages and in various practice settings using various assessment procedures for determining the underlying causes of mental and emotional disorders or conditions. They contend that the DSM-IV is a diagnostic tool developed by psychiatrists to use in a medical model setting and that most social work does not practice in a medical model setting.

Proponents contend that an independent social work practice means a clinical practice, and the licensee must be able to use and apply diagnoses based on the DSM-IV criteria.

Action. No action taken. Committee members urged the board to meet with stakeholders to resolve this issue. There will be additional review and opportunity for public comment when this rule is adopted in final form.

PUBLIC HEALTH DEPARTMENT, *Supervision of Fluoroscopic Equipment, 9/23/09 IAB, NOTICE, ARC 8161B.*

Background. Fluoroscopy is a type of X-ray imaging that can display motion, using a continuous series of images. It is often used in chronic interventional pain management. The department has the general regulatory authority to establish requirements for the proper use of X-ray equipment and imaging systems.

In part, this proposal states that the use of fluoroscopy can be supervised by an advanced registered nurse practitioner (ARNP). This rulemaking is part of a complex and controversial professional practice issue which also involves rulemaking by the Nursing Board and the Medical Board. The rule promulgated by the Nursing Board was not delayed by the Committee, but it was referred to the General Assembly for further study.

The underlying issue is whether it is lawful and appropriate for an ARNP to supervise the use of this equipment.

Commentary. This proposal recognizes the rule adopted by the Nursing Board which provided that an ARNP, with specific training, could provide direct supervision in the use of fluoroscopic equipment; the nurse must collaborate "as needed" with a physician. Essentially the department rule is needed to implement the rules promulgated by the Nursing Board.

Both rulemaking efforts are opposed by physicians who contend that ARNPs are not formally educated to interpret the images generated by a fluoroscope or to supervise use of the equipment. They noted that both the Nursing Board rules and the Public Health rules allow an ARNP to supervise any fluoroscopic procedure, regardless of its complexity. The opponents stated that most states restricted supervision to physicians; they also noted that expert medical chronic pain management is within a 90-mile radius of all Iowans.

The rule was supported by nurses who contend that ARNPs have been supervising the use of fluoroscopes, without incident, for years. Supporters also noted that recently both the states of Wisconsin and Nebraska have allowed ARNP supervision. The rules were also supported by the Iowa Hospital Association.

Committee members discussed the risks posed by allowing ARNP supervision; there appeared to be no data indicating an increased risk of malpractice. Members noted that all hospitals have a credentialing process to evaluate the skills of medical practitioners. The members generally express a desire to have additional data concerning injuries that have

resulted from misuse of a fluoroscope.

Action. No action taken. There will be additional review and opportunity for public comment when this rule is adopted in final form.

PUBLIC SAFETY DEPARTMENT, *Electrical Inspections and Regulation: Farms, 8/26/09 IAB, NOTICE, ARC 8160B.*

Background. 2009 Iowa Acts, S.F. 159, and 2009 Iowa Acts, S.F. 4781, revise Iowa's recently enacted electrician and electrical contractor licensing program. The rules include a variety of licensing requirements and provisions relating to permits and inspections.

Commentary. At issue in this proposal is item 14, which in part states that:

An electrical installation on a farm which is located outside the corporate limits of any municipal corporation (city) shall not be inspected by a political subdivision, shall require a state electrical permit, and may be subject to a state electrical inspection, unless the installation is subject to Exception 2 or Exception 3.

Department representatives contend that farm installations are subject to regulation and inspection under §103.23, as "commercial" applications. Representatives of the Iowa Farm Bureau and Committee members objected to this interpretation, contending that the term commercial should be interpreted similarly to property tax usage, where residential, commercial, and farm property are treated separately. Opponents noted that amendments in S.F. 478 establish other exceptions for farm installations, showing a legislative intent that farm operations are to be treated differently than other applications.

Action. No action taken. There will be additional review and opportunity for public comment when this rule is adopted in final form.

PUBLIC SAFETY DEPARTMENT, *Disaster Recovery Housing Project Tax Credits, 9/23/09 IAB, NOTICE, ARC 8150B.*

Background. The State Fire Marshal has the authority to regulate the required smoke detectors used in residences. Last year, the State Fire Marshal adopted a requirement that smoke detectors installed on or after October 1, 2008, would be required to be dual sensor smoke detectors. The effective date of this requirement has twice been delayed and is now set at October 1, 2009. Based on the low availability of the dual sensor smoke detectors, this rulemaking is being undertaken to delay the effective date again, until April 1, 2010. The rulemaking also changes references to the national electrical code to the 2009 edition. These provisions are also being adopted through an emergency rulemaking, published as ARC 8151B, which became effective September 1, 2009. The notice of intended action containing language regarding the circumstances under which the dual sensor smoke detector requirement will apply, as well as language regarding the required locations of dual sensor smoke detectors.

Commentary. Members of the smoke detector manufacturing community expressed opposition to the rules and advocated for providing more flexibility and choices to the consumer. The representatives of the manufacturing community insisted that one technology alone will not meet the needs of all residences and would not be the best option for all circumstances. The department indicated that they would continue to work with the interested party on this issue.

Action. No action taken.

Next Meeting. The next Committee meeting will be held in Room 103, Supreme Court Chamber, Statehouse, on Tuesday, November 10, 2009, at 9:00 a.m.

LSA Staff: Kathie West, Administrative Code Editor, (515) 281-3355.

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Internet Page: <http://www.legis.state.ia.us/asp/Committees/Committee.aspx?id=53>

ADMINISTRATIVE RULES REVIEW COMMITTEE

September 8, 2009

Chairperson: Representative Marcella Frevert

Vice Chairperson: Senator Wally Horn

EDUCATION DEPARTMENT, *Financial Management of Categorical Funding, 8/26/09 IAB, ARC 8054B, ADOPTED.*

Background. This rulemaking adopts a new Chapter 98, titled "Financial Management of Categorical Funding." This chapter is intended to provide guidance in a single document for school districts and area education agencies on financial management of funding and for auditors examining the financial condition and transactions of school districts and area education agencies. During the public comment period, persons associated with home school assistance programs requested that home school assistance programs be treated as a public school program for funding purposes, similar to the statewide voluntary four-year-old preschool program. The department's position, however, is that the preschool program is a public school program, and a home school assistance program is not dual enrollment into a public school program, but rather is a program that is home-based with assistance given by the public school to that home-based

instructional program. Accordingly, the department stated that the requested changes would conflict with the intent of the program as home-based and would contradict appropriate accounting procedures.

A few minor changes were made to the rules and one additional rule change relating to the equalization levy fund was added to the rulemaking after it was inadvertently omitted from the originally noticed rules.

Commentary. Representatives of the home school assistance programs expressed concerns that if money provided under the funding scheme is treated like supplemental funding, there will be many expenses that will not be reimbursed, which will eventually lead to services being limited or cut altogether. Those representatives also questioned the inequity in not treating other programs, like "four-year-old preschool," "limited English proficiency," and "talented and gifted," similarly to the home school assistance programs as it relates to funding. Concerns were also raised about how the new rules would impact home school assistance programs, particularly following other funding reductions in recent years.

According to the department, the rule change was actually initiated to assist home school assistance programs because the department had identified certain school districts that were using home school assistance funding for non-home school-related expenditures.

The department also cited concerns over the potential for reimbursing certain expenditures that might, in effect, create a situation where homeschooling was a "private" school being funded with public money. The department also explained the potential problems with a broad scope of home school assistance program expenditures that may be reimbursed due to the fact that Iowa is a Blaine amendment state (forbidding direct government aid to educational institutions that have any religious affiliation). The department noted that nothing in the statute indicates the program is to do anything but provide parents with assistance to meet the educational needs of the student. The department stated that the new rules align with that statute.

Some Committee members expressed a desire to allow local school districts to retain the discretion in expenditures relating to home school assistance programs. A concern was also raised regarding the addition of the previously omitted rule relating to the equalization levy fund to this rulemaking.

Action. A 70-day delay was imposed for the portions of the rules relating to home school assistance program funding (98.12) and the equalization levy fund (98.112). The remainder of the rules will become effective on September 30, 2009.

ENVIRONMENTAL PROTECTION COMMISSION (EPC), *Iowa Antidegradation Implementation Procedure*, 8/12/09, IAB, ARC 8037B, RE-NOTICE.

Background. These provisions were initially published as a notice of intended action in November 2008. Following that initial rulemaking, the proposal has been redrafted and a new notice has been published.

Iowa's antidegradation policy is intended to protect existing uses of surface waters (e.g.: fishing, boating, etc.) and to specify how the EPC will determine whether and to what extent existing water quality standards or designations may be lowered in a surface water. This policy is required by federal law; under federal regulation water quality standards or designations may be lowered only as "necessary to accommodate important economic or social development in the area."

Commentary. Federal requirements mandate a three tier approach to antidegradation designations: Tier 1 designations protect the existing uses of waters; Tier 2 designations for high quality waters allows some degradation under certain conditions but never below the level necessary to fully protect the "fishable/swimmable" standard and other existing uses; and Tier 3 designations protect outstanding resource waters from any degradation. There are no Tier 3 waters in Iowa; for that reason the EPC established an "outstanding Iowa waters" category. Referred to as Tier 2 and 1/2, outstanding Iowa waters protection prohibits any lowering of water quality standards or designations in unique waters as identified in the water quality standards unless the lowering is temporary and limited or serves to maintain or enhance the value, quality, or use of the water. These provisions are opposed by associations representing rural water organizations and Iowa cities.

The Committee voted to request a formal regulatory analysis to estimate the impact this rule would have on the growth and economies of rural communities.

Action. Formal regulatory analysis was requested. This request delays final adoption of these rules until the analysis is completed.

ENVIRONMENTAL PROTECTION COMMISSION, *Sanitary Landfill Tonnage Fee*, 8/12/09, IAB, ARC 8037 B, ADOPTED.

Background. Iowa Code Section 455B.310 specifies that a sanitary landfill shall pay a tonnage fee to the department for each ton of solid waste received and disposed of at a sanitary landfill. This filing in part eliminates a specific exemption from the tonnage fee requirement, impacting four sanitary landfills.

Commentary. Department representatives stated that Iowa Code Section 455B.310(5) provides an exemption from that fee for sites which are limited to the disposal of only construction and demolition wastes, and properly applies to a facility only where the entire site is dedicated to the disposal of construction and demolition waste. The representatives stated that the now rescinded rule improperly expanded that fee exemption to individual disposal areas within municipal solid waste landfills.

This change impacts four landfills and will raise an additional \$700,000. The Committee did not delay the implementation

of this filing, but the members felt that it would be appropriate to bring the department's reinterpretation of the fee exemption to the attention of the General Assembly.

Action. The Committee voted to make a general referral of the rule to the General Assembly.

Next Meeting. The next Committee meeting will be held in Senate Committee Room 22 on Tuesday, October 13, 2009, at 9:00 a.m.

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ADMINISTRATIVE RULES REVIEW COMMITTEE

August 7, 2009

Chairperson: Representative Marcella Frevert

Vice Chairperson: Senator Wally Horn

ECONOMIC DEVELOPMENT DEPARTMENT, *Film, Television, and Video Project Promotion Program, 3/11/09 IAB, ARC 7955B, NOTICE also ARC 7956B, FILED EMERGENCY.*

Background. This rulemaking implements 2009 Iowa Acts, Senate File 480, which makes several changes to the Film, Television, and Video Project Promotion Program. Senate File 480 imposes a cap on the amount of tax credits for a variety of programs administered by the department.

These amendments establish application deadlines and notice requirements for such deadlines, require a minimum amount of funding prior to application approval, authorize the department to charge a registration fee, allow the department to negotiate the percentage used to calculate the benefit (the percentage may be less than the full amount possible), and allow portions of compensation paid to the principal producer, principal director, and principal cast members to become eligible expenditures (previously ineligible expenditures) if the producer, director, or cast members are Iowa taxpayers. The rules also limit the qualifying amount of compensation paid to all other labor and personnel, allow the department and the Department of Revenue to establish a list of negotiable expenditure items, and amend rules relating to required documentation.

The vendor benefit, the income exclusion, may be spread out over four years. Under the existing program, qualified vendors were allowed to exclude all qualified income from their Iowa income tax liability in the year that it was earned. The change will spread the exclusion over four years at 25 percent per year.

These amendments became effective on July 1, 2009.

Commentary. Members of the Committee asked the department's representatives to provide an example of how the tax credit program is administered and how credits are calculated. Committee members also discussed the costs and benefits of providing such tax credits during the current state budget situation. The department explained that in many instances zero expenditures would be made without these tax credits. Therefore, despite providing a larger-than-average tax credit percentage, the state is ultimately collecting additional tax revenues.

Many of the comments made by representatives of the industry and the public related to SF 480. Film and production industry members within the state cautioned that they are already seeing a loss of projects based on the changes to the program. According to several members of the public, uncertainty of the percentage of the tax credits is one of the primary concerns for the revised program. It was explained that potential clients are reluctant to commit when they do not know the amount of credits they would be receiving.

The industry representatives also warned against paring down the program too much because they claim that the state is just now seeing the impact of the program due to the development timeline of most projects. Committee members explained that most of the concerns related to the legislative actions taken during last session. However, one issue that is properly examined at the departmental level is the allocation of the statutory cap by the Board. Under the new legislation, the department has authority to make such allocations.

Action. No action taken.

ENVIRONMENTAL PROTECTION COMMISSION, *Water Well Drilling: Wastewater Discharge, 7/15/09 IAB, ARC 7945B, NOTICE.*

Background. This issue was reviewed by the Committee in May 2009. Legislation enacted in 2008, codified as Code Section 455B.198, required the Environmental Protection Commission to adopt rules, in consultation with an advisory committee including representatives of the Iowa Water Well Association, to regulate the discharge of wastewater from water well drilling sites. The legislation also authorized the agency to issue general permits and to establish a fee sufficient to recover the costs, not exceeding \$50. At issue is the large volume of water and mud generated during a well-digging operation.

Commentary. This proposal allows the use of a new wastewater construction and operation general permit to authorize discharge using best management practices (BMPs), requiring the monitoring of the wastewater effluent to determine compliance with these practices, and taking enforcement action against dischargers that fail to establish or maintain the required BMPs or meet the water quality standards. Stakeholders had no comments at this initial presentation.

Action. No action taken.

PUBLIC SAFETY DEPARTMENT, Senate File 340: Sex Offender Registry, 7/29/09 IAB, ARC 7974B, EMERGENCY.

Background. Major revisions to the law addressing the tracking and treatment of sex offenders in Iowa were enacted in 2009 Iowa Acts, Senate File 340. Known from federal law as the Adam Walsh Child Safety & Protection Act, this new law increases the tracking requirements for some sex offenders; establishes new exclusion zones for child sex offenders to keep them away from schools, child care facilities, and parks; and new work and volunteer restrictions for child sex offenders at places with children.

Commentary. Under the Act all individuals required to register are classified as a tier 1, tier 2, or tier 3 offender. Juvenile offenders are required to register, but a court may waive the requirement for good cause. The tier system determines how often the individual must go into the county sheriff's office to update their information on the sex offender registry website. Those in the lowest tier, tier 1, will report annually. Those in tier 2 report every six months, and in tier 3, which includes offenses against minors, individuals must report every three months.

Individuals who commit an offense against a minor are subject to new exclusionary zones and employment restrictions. These individuals are prohibited from loitering within 300 feet of an elementary or secondary school, child care facility, or playgrounds and recreational areas. These individuals cannot work or volunteer at any school or child care facility, at any children's arcade, or facilities that provide programs or services intended primarily for minors. No sex offender will be able to work at a facility that supplies services to dependant adults.

An individual convicted of an "aggravated offense against a minor" cannot reside within 2,000 feet of the real property comprising a school or child care facility. That term means a conviction for sexual abuse in the first degree, sexual abuse in the second degree, or sexual abuse in the third degree, except for a conviction for statutory rape.

Violation of these new requirements is an aggravated misdemeanor for a first offense and a class "D" felony for a second or subsequent offense.

Action. No action taken.

UTILITIES DIVISION, Electric Load Service Limiters, 7/29/09 IAB, ARC 7976B, ADOPTED.

Background. The Utilities Board adopts rules relating to the use of electric load service limiters for residential customers. These provisions were controversial when initially reviewed by the Committee in January 2009, with the changes supported by service providers and opposed by consumer groups.

Commentary. The rules provide that when a customer has defaulted on a first payment agreement and could be disconnected or is eligible for a second payment agreement, the utility may offer the customer a service limiter in conjunction with a subsequent payment agreement as an alternative to disconnection. The minimum usage set by the rule is 3,600 watts, allowing most residential customers to heat their homes and run a couple of appliances at the same time, but it will not allow full normal usage. The Consumer Advocate requested a higher minimum level, the board did not make such a change. However, the rules do provide that for electric heated homes, the limit must be high enough to heat. The amendments also clarify current disconnection practice, which is that disconnection can be after a 24-hour notice if the disconnection is for failure to comply with the terms of a payment agreement.

The board made one change in the initial proposal, that was requested by the Consumer Advocate, providing that a service limiter cannot be used until a customer has defaulted on all payment plans the customer is entitled to under the rules.

Action. No action taken. No comment was received by the Committee and these provisions were not formally reviewed.

Next Meeting. The next Committee meeting will be held in Senate Committee Room 22 on Tuesday, September 8, 2009, at 9:00 a.m.

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Internet Page: <http://www.legis.state.ia.us/asp/Committees/Committee.aspx?id=53>

ADMINISTRATIVE RULES REVIEW COMMITTEE

July 14, 2009

Chairperson: Representative Marcella Frevert

Vice Chairperson: Senator Wally Horn

NURSING BOARD, *Supervision of Fluoroscopy*, 7/1/09 IAB, ARC 7888B, FILED.

Background. The Board of Nursing approved a rule to define fluoroscopy supervision as part of the practice of nursing. Fluoroscopy is a form of X-ray that can display motion using a "real time" continuous series of images. It is often used in chronic interventional pain management. Under the rule an advanced registered nurse practitioner (ARNP) may provide direct supervision in the use of fluoroscopic X-ray equipment. To provide supervision, ARNP must complete an educational course including content in radiation physics, radiobiology, radiological safety, and radiation management applicable to the use of fluoroscopy. An annual radiological safety course is also required, which includes: time, dose, distance, shielding, and the effects of radiation. The ARNP must collaborate "as needed" with a physician.

Commentary. Representatives of various medical groups contend the rules are contrary to national standards for supervising fluoroscopy and would pose a risk to patient safety. Opponents also contend that there is no need to expand the ARNP scope of practice to supervise fluoroscopy, raised concerns over the lack of specificity in the training standards and method of ensuring competency, and contend that physicians have the proper training and competency to provide appropriate oversight of this procedure. Supporters of the rule assert that ARNPs have the necessary training to provide this supervision.

Members of the Committee expressed disappointment over the lack of consensus between the interested parties despite the two and a half years working on the issue. The Committee also commented on the potential impact of this rule in both rural and urban areas of the state. Various interested parties stated that the concerns over this rule do not extend to certain procedures, such as epidural use during child birth. Instead, the primary concern relates to the use of fluoroscopy during intervention pain management, including the injection of steroids.

Opponents questioned the need or desirability of expanding the ARNPs scope of practice. Conversely, supporters of the rule asserted that ARNPs in Minnesota currently have similar authority to do what is encompassed within the Board's rule. Several supporters of the rule believe that patient safety will be compromised if nurses are performing certain procedures without the assistance of fluoroscopy.

A motion to impose a session delay on the rule failed; however, the Committee approved a general referral to the General Assembly.

Action. General referral.

HUMAN SERVICES DEPARTMENT, *Case Management Services*, 3/11/09 IAB, ARC 7631B, NOTICE, SPECIAL REVIEW.

Background. This rulemaking makes several changes related to the provision of case management services under the Medicaid program, including changing the basis of reimbursement for case management as required by federal regulations. According to the interested parties, the issues that remain unresolved in this filing are the proposed 24-hour call system for case managers, and the initial proposal of 15-minute units for reimbursement. Department representatives contend the 24-hour call system is necessary so that the consumer or family member can contact the agency in the case of an emergency. The Committee imposed a 70-day delay during a special telephone meeting on June 25, 2009.

Commentary. Since the June 25, 2009 meeting, the interested parties have continued to work with case management providers to reach a consensus on the billing unit issue. Letters were sent to the case management provider organizations asking them to submit proposal for alternate billing/reimbursement methods, including a description of how each proposal would be implemented. Follow-up meetings have begun with these provider organizations to discuss their proposals.

The federal government has published their final version of the case management regulations. The 15-minute unit was rescinded from those regulations. The federal government has specified that units of 15 minutes or less will be allowed, as well as hourly, daily, or weekly, but monthly rates will not be allowed. Many of the proposals received from providers are for the 15-minute unit or a daily unit.

Action. No action taken.

Next Meeting. The next Committee meeting will be held in Senate Committee Room 22 on Friday, August 7, 2009 at 9:00 a.m.

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ADMINISTRATIVE RULES REVIEW COMMITTEE

June 25, 2009—Teleconference Meeting

Chairperson: Representative Marcella Frevert

Vice Chairperson: Senator Wally Horn

HUMAN SERVICES DEPARTMENT, *Case management services*, FILED EMERGENCY AFTER NOTICE, HELD OVER FROM APRIL AND JUNE.

Background. This rulemaking makes several changes related to the provision of case management services under the Medicaid program, including changing the basis of reimbursement for case management from a monthly unit to a 15-minute unit, changing assessment procedures, and implementing a requirement for a 24-hour call system for case managers. The Human Services Council adopted this filing with a July 1, 2009, effective date; provisions relating to the 24-hour call system were delayed until October 1, 2009.

Commentary. Department representatives stated that the current practice of monthly charging is unacceptable to the federal government, and that failure to implement the change by July 1 carried a risk that the federal government could later demand repayment of over \$3,000,000 for each month that the rules are not in compliance. The representatives disputed stakeholder complaints that alternatives to the 15-minute UNIT were not discussed

Committee members expressed concern over the possibility of a federal penalty and discussed the likelihood of federal action. Members also challenged the stakeholders to offer alternatives to the 15-minute unit requirement, because the current monthly period will no longer be an option.

Following discussion the Committee voted to impose a 70-day delay on those specific provisions relating to the 15-minute unit for reimbursement and the new assessment procedures. Committee members also requested that the department continue working with stakeholders concerning the 15-minute unit provisions, the 24/7 on-call coverage requirements, and the new assessment requirements. If a resolution would have been reached prior to July 1, the Committee could have held another conference call to lift the delay. If a resolution was not reached, the department was requested to present a contingency plan at the July 14 meeting in order to keep the program in compliance with the federal government requirements until a resolution can be reached.

Action. A 70-day delay was imposed on certain provisions; additional review slated July 14.

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ADMINISTRATIVE RULES REVIEW COMMITTEE

June 9, 2009

Chairperson: Representative Marcella Frevert

Vice Chairperson: Senator Wally Horn

EDUCATION DEPARTMENT, *Nutrition and physical activity standards in schools*, 5/20/09 IAB, ARC 7782B and 7883B, ADOPTED.

Background. 2008 Iowa Acts, S.F. 2425, the "Healthy Kids Act," in part mandates minimum time periods of physical activity for elementary and secondary students and sets nutritional content standards for foods and beverages sold or provided on school grounds during the school day.

Commentary. The physical activity requirements are in addition to the physical education requirements. The new activity requirements are documented for each student and may be met by a variety of activities, including: interscholastic athletics; school-sponsored marching band, show choir, dance, drill, cheer, or spirit activities; nonschool gymnastics, dance, team sports, or individual sports; or similar physical activities. After a brief review of the physical activity standards, discussion centered on the nutritional content standards. Department representatives noted that the final rules do allow caffeinated beverages in high schools, and that the rules do not apply to teachers and school staff or to concession stands operated by school booster groups. Students remain free to purchase snacks off-campus or bring snacks onto the campus. The representatives emphasized that the rules were a work in progress, initially designed to eliminate foods containing only nonnutritive calories, and they would be revised over time.

The Committee took testimony from the Iowa Beverage Association, which contended that the rules were overly restrictive and urged consideration of the national standards developed by the industry itself. Discussion revealed that skim milk, chocolate milk, water, and enhanced water (vitamin water and sports drinks) were allowed under the rules while sugared and carbonated beverages were prohibited. Committee members generally supported allowing some carbonated beverages.

Action. General referral to the General Assembly.

ENVIRONMENTAL PROTECTION COMMISSION, *Effluent limits; nutrient monitoring*, 6/3/09 IAB, ARC 7813B, NOTICE.

Background. The Commission published amendments to its rules relating to certain effluent limits and monitoring and

reporting requirements in the March 11, 2009, Iowa Administrative Bulletin (see ARC 7625B). The Committee placed a 70-day delay on portions of that rulemaking. According to the Commission, this rulemaking seeks to address some of the issues that prompted the 70-day delay. The Department of Natural Resources has determined that based upon public comment and review of this rulemaking, revisions are appropriate. The department also received technical data from the Environmental Protection Agency indicating that the department's current methodology, as revised in 2004, is not supported by the technical data upon which the methodology is intended to be based.

Commentary. The Commission's representative explained that the proposed amendment to the requirements is intended to reduce the burden on smaller cities relating to nutrient monitoring requirements. Additionally, the proposed amendments would affect most of the concerned communities. A representative from the Iowa League of Cities expressed support for the proposed rulemaking.

Action. No action taken.

HUMAN SERVICES DEPARTMENT, *Case management services, 3/11/09 IAB, ARC 7631B, NOTICE, HELD OVER FROM APRIL.*

Background. This rulemaking makes several changes related to the provision of case management services under the Medicaid program, including changing the basis of reimbursement for case management from a monthly unit to a 15-minute unit as required by federal regulations.

Commentary. Two issues remain unresolved in this filing: the proposed 24-hour call system for case managers, and the 15-minute unit for reimbursement. Department representatives contend the 24-hour call system is necessary so that the consumer or family member can contact the agency in the case of an emergency.

Case managers continued opposition to the 15-minute unit for reimbursement, stating that it turned case managers into recordkeepers instead of service managers and diverted critical time away from client needs. Department representatives responded that contacts with federal officials have not revealed any flexibility on the 15-minute unit issue.

Committee members determined that additional review of this issue is necessary before the rules go into effect. The department intends to file these rules on an emergency basis after notice, with a July 1, 2009, effective date. The Committee will review these rules, using a telephone conference, following adoption by the department.

Action. No action taken; additional review by the Committee in late June.

INSPECTIONS AND APPEALS DEPARTMENT, *Dependent adult abuse in facilities and programs, 6/3/09 IAB, ARC 7828B, NOTICE.*

Background. Code Chapter 235E was enacted in 2008 and requires the department to receive and evaluate reports of dependent adult abuse in facilities and programs. This rulemaking establishes a full regulatory program for handling those allegations. As required by statute, the proposed rules were developed in consultation with the Dependent Adult Protective Advisory Council, industry representatives, professional groups, and consumer groups.

The proposed rules relate to civil findings of dependent adult abuse. The rules establish definitions for several terms such as willful misconduct and gross negligence.

The rules define dependent adult abuse as the willful misconduct or gross negligence or reckless act or omission of a caretaker resulting in physical injury, unreasonable confinement, unreasonable punishment, assault, sexual offense, sexual exploitation, exploitation, or neglect.

Mandatory reporters include persons who provide direct or indirect treatment or services or employees who examine, attend, counsel, or treat a dependent adult in a facility or program and reasonably believe the dependent adult has been abused. Reports must be filed within 24 hours. As provided in Code Chapter 235E, a person required to report suspected abuse who willfully fails to do so within 24 hours commits a simple misdemeanor and is civilly liable for damages.

The rules also establish requirements for reporting of suspected financial exploitation, specify requirements for reports that are "minor, isolated, and unlikely to reoccur," and establish procedures for protocols to be followed upon receiving a claim of abuse. The rules also provide that an inspector of the department may enter any facility or program without a warrant and may examine all records and may contact or interview any resident, employee, former employee, or any other person who might have knowledge about the alleged abuse.

Commentary. The Committee heard comments from various members of the regulated community, including the Iowa Health Care Association, the Iowa Center for Assisted Living, the Iowa Hospital Association, the Iowa Caregivers Association, and individual nurses and caretakers. Many of the public comments received by the Committee addressed the standards and definitions associated with finding dependent adult abuse and specifying persons as mandatory reporters. Additional concerns were raised about the department's access to records and documents as part of an investigation, procedures for conducting interviews of an alleged abuser, and consideration of prior abuse allegations and disciplinary actions.

Action. No action taken.

DEPARTMENT OF REVENUE, *Responsibility of assessor, 5/20/09 IAB, ARC 7788B, NOTICE.*

Background. This rulemaking amends the department's rules relating to property taxation. The proposed rules require the local assessor to classify property, but not value property, according to its present use and not its highest and best use. Furthermore, the proposed rules also provide that a property's value shall not be based on speculative highest and best use not supported by current comparable sales. According to the department, the proposed amendments will not necessitate additional expenditures by political subdivisions or agencies.

Commentary. According to the department, this rulemaking is the result of a recent court ruling that found the Department's rules to be noncompliant with statute.

Farm Bureau and the Iowa State Association of Assessors addressed the Committee and expressed concern about the use of the term "speculative," and indicated that if such term remains a part of the rules, that further guidance as to its meaning is needed from the department. Concerns were also raised about potential conflicts with the guidelines and publications of certain industry organizations. Mr. Dick Thornton, a representative of several golf course owners, also opposed the rulemaking, questioned the statutory authority for a rulemaking based on highest and best use, and expressed concern over use of the term "speculative."

Action. No action taken.

Next Meeting. The next Committee meeting will be held in Senate Committee Room 22 on Tuesday, July 14, 2009, at 10:00 a.m.

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ADMINISTRATIVE RULES REVIEW COMMITTEE

May 12, 2009

Chairperson: Representative Marcella Frevert

Vice Chairperson: Senator Wally Horn

COMMITTEE BUSINESS. Representative Marcella Frevert was elected to a two-year term as chairperson of the Committee. Chairperson Wally Horn, who was filling the unexpired term of Senator Michael Connolly, was elected as vice-chairperson.

ENVIRONMENTAL PROTECTION COMMISSION, *Air emissions reduction assistance program, 4/8/09 IAB, ARC 7678B, NOTICE, ARC 7679B, FILED WITHOUT NOTICE.*

Background. This rulemaking establishes a financial assistance program to distribute funds appropriated to the state through the federal American Recovery and Reinvestment Act of 2009. Funds are distributed to eligible applicants through grants or a combination of grants and loans. The program addresses emission from diesel vehicles and equipment currently used for on-road applications. Eligible projects include engine idling reduction and retrofit technologies, engine replacement, vehicle replacement, and use of clean diesel emerging technologies. The program is required to have an expedited implementation under the federal Act.

Commentary. According to the commission, the program includes \$1.73 million to be used for the reimbursement of expenses incurred by applicants.

Committee members asked about public outreach and other efforts to notify the public about the program. The commission noted that a portion of the funding received may be used for public education and outreach. Members of the Committee suggested several ideas for public outreach, including providing notice through relevant trade publications.

Action. No action taken.

ENVIRONMENTAL PROTECTION COMMISSION, *Water well drilling site wastewater discharge, SPECIAL REVIEW.*

Background. This special review resulted from forthcoming rulemaking relating to 2008 Iowa Acts, ch. 1165 (Code § 455B.198), which directs the Environmental Protection Commission to develop rules for water well drilling and requires the rules to incorporate certain considerations, including best management practices to address wastewater discharged and reasonable and appropriate limitations on wastewater discharge that take into consideration the need to conserve soil and protect water quality. The Act also directed the commission to convene an advisory committee of representatives from the Iowa Water Well Association to assist in development of the rules. The rules are required to be adopted no later than July 31, 2009.

Commentary. The association asserted that the commission's rulemaking proposal is not economically viable based on current enforcement. The association has suggested an approach that is currently being implemented in North Carolina; however, the commission is not supportive of such an approach. The association's representative showed the Committee water samples with varying sediment levels and explained that getting to the sediment levels requested by the commission would require a system similar to a full-scale water treatment plant.

Committee members expressed concern over the current proposal because it has been estimated that as many as 90 percent of the wells in Iowa could not be drilled legally based on the proposal.

The proposed rules are scheduled to be presented to the commission on May 19 and such rulemaking is scheduled to be reviewed by the Committee in July.

Action. No action taken.

BOARD OF MEDICINE, *Policy on chronic interventional pain management*, SELECTIVE REVIEW.

Background. For several years, the board has been considering what level of training and licensing is required to provide chronic interventional pain management. At issue is whether chronic interventional pain management constitutes the practice of medicine, limited to physicians, or whether that function may be performed by a certified registered nurse anesthetist (CRNA). The policy under consideration defines pain management as the practice of medicine, which may not be performed by a CRNA.

This issue is being considered by medical boards around the nation and has resulted in court determinations in several states. In April 2009 the Louisiana Supreme Court denied a request for an order to allow the practice of interventional pain techniques by nonphysicians.

Commentary. The actual issue before the Committee was procedural, not substantive; the question was whether this policy is a rule that must be adopted through the rulemaking process. The board's position is that the statement is not a rule. Board representatives contended the policy statement is not legally binding, representing only the board's opinion. Some stakeholders supported the board position, contending that policy statements are too narrow in their application to qualify as rules. In response to a Committee question, representatives of the board noted this issue is under consideration around the nation, and that that the discussion in Iowa was at the request of the Iowa Medical Society.

There was also general discussion on the substance of the policy. Representatives of the nursing profession contended that the policy is unlawful because it would necessarily restrict the practice of nurse anesthetists. The opponents contended that nurse anesthetists have been providing chronic interventional pain management services for decades, and questioned the number of physicians who are specifically trained in this area. They noted that in rural areas chronic interventional pain management is provided by nurse anesthetists.

Representatives of various medical groups responded that the technology and complexity of chronic interventional pain management had grown significantly in the last two decades, requiring highly trained specialists. They contended that nurse anesthetists did not have any dedicated course of study in this area.

Action. The Committee did not specifically address the substance of this policy; however, there was general agreement by Committee members that this policy is actually a rule, even if it is not legally binding, and must be adopted through the rulemaking process. The Committee adopted a motion requesting that any further development of this policy be done through rulemaking. This action is a request and is not binding on the board.

BOARD OF NURSING, *Fluoroscopy supervision*, 4/22/09 IAB, ARC 7714B, NOTICE.

Background. This proposal is the reverse image of the issue presented in the Board of Medicine selective review. The Board of Nursing proposes, in rule, to define fluoroscopy supervision as part of the practice of nursing. The issue is whether the substance of the rule is appropriate. Fluoroscopy is a form of X ray that provides a "real time" image. It is often used in chronic interventional pain management.

Commentary. In this rulemaking, the board attempts to adopt a rule allowing an advanced registered nurse practitioner (ARNP) to provide direct supervision in the use of a fluoroscope. The nurse must complete an educational course including content in radiation physics, radiobiology, radiological safety, and radiation management applicable to the use of fluoroscopy. An annual radiological safety course is also required.

Representatives of various medical groups, including the College of Medicine at the University of Iowa, opposed this rulemaking, contending that the supervision of fluoroscopy requires highly specialized training. As an example, the opponents cited the need to determine the level of radiation exposure a patient receives over time. Opponents also noted the complexity of reading a "real time" fluoroscope image.

Action. Committee members noted that ample opportunity remained for all stakeholders to work together to resolve these issues, prior to final adoption.

PROFESSIONAL LICENSING, *Licensing of signers for the deaf*, Code Chapter 154E.

Background. Iowa law requires that all persons providing interpreting services must be tested and licensed. The issue presented to the Committee was that many signers used by deaf students are not licensed and would be unable to continue with their student after July 1, 2009.

Commentary. Board representatives noted that, under a 2007 law, persons were eligible for a temporary license, allowing them an opportunity to prepare for the licensing examination. The representatives conceded that the temporary licenses will be terminating, but they noted that, especially in the K-12 educational setting, accurate interpreting is critical. The representatives also defended the use of the "Educational Interpreter Performance Assessment (EIPA)" as the required test. They stated that a score of 4.0 out of 5 on the test is generally considered as competent, while the board requires only a passing score of 3.5. At this level of competency, the interpreter is working at a 40 to 60 percent accuracy

rate.

Opponents noted the high rate of failure for the EIPA test and the looming shortage of licensed interpreters. Concerned parents commented about the lack of available interpreters, noting the unavailability of stand-in interpreters when the regular interpreter is absent. They also stated that graduates of interpreter classes are few and insufficient to fill the need, and that the graduates are also struggling to pass the test.

Committee members and the Governor's Administrative Rules Coordinator expressed concern over this issue. The coordinator offered to meet privately with the stakeholders in an attempt to craft a solution that both provides a road to licensure and ensures quality signing.

Action. No formal action; the Committee will again review this issue at the June meeting.

Next Meeting. The next Committee meeting will be held in Room 103, Supreme Court Chamber, on Tuesday, June 9, 2009, at 10:00 a.m.

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