



Iowa General Assembly

2006 Committee Briefings

Legislative Services Agency – Legal Services Division

<http://www.legis.state.ia.us/Current/Interim/arc.htm>

ADMINISTRATIVE RULES REVIEW COMMITTEE

Meeting Dates: [December 12-13, 2006](#) | [November 20-21, 2006](#) | [October 10, 2006](#) | [September 12-13, 2006](#)
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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 12 and 13, 2006

Chairperson: Representative George Eichhorn

Vice Chairperson: Senator Jack Kibbie

HUMAN SERVICES DEPARTMENT, Smoking Cessation: Medicaid Coverage, 11/08/06 IAB, ARC 5536B, ADOPTED.

Background. 2005 Iowa Acts, House File 825, expanded the Medicaid program to include smoking cessation drugs. These rules identify some specific prescription-only medications, along with the nicotine patch and gum, as the only Medicaid-eligible items. Counseling is also a component of this program. Under the rules, Medicaid recipients may enroll in one 12-week course every year.

Commentary. The Committee received public comment encouraging an expansion of the available treatments. It was noted that the \$2 million cost for medication would only be increased several hundred thousand dollars by expanding the available treatments to include lozenges or other alternatives. Comment was also made that even motivated individuals require several attempts before quitting smoking.

Department representatives noted they have not ruled out expanding available treatments, but would follow the standard practice it currently uses to evaluate new Medicaid treatments. Committee members encourage expansion of the program, noting the modest increase in cost and the potential health savings if more clients quit smoking.

Action. No action taken, additional review is possible.

NATURAL RESOURCES DEPARTMENT, Dock Fees and Regulation, 11/08/06 IAB, ARC 5532B, NOTICE.

Background. The department regulates the placement and construction of docks, hoists, and other structures adjacent to Iowa's public waterways. This proposal revises certain fees for the maintenance of a dock or a hoist and regulates their number and placement.

Commentary. Department representatives noted that shoreline property has exploded in value, now being priced in dollars per inch. They stated the rules attempt to balance the public right to enjoy these public waterways with the riparian owners right to utilize their own property. In a previous proposal the key issue was the increase in fees; in this renounce the fee issue has largely been resolved, but discussion continues concerning limits on the placement of docks and hoists. Docks must be located "to limit their adverse impacts on the aquatic ecosystem" and may extend into the water only the distance necessary for reasonable access to the water, and must be removed from public water not later than December 15. A density threshold of one hoist or slip per 12.5 feet of shoreline is proposed for new permits, although exceptions for good cause are available.

Action. No action taken, additional review is anticipated on final adoption of these rules.

PROFESSIONAL LICENSURE DIVISION, Physician Assistants, 11/08/06 IAB, ARC 5522B, NOTICE.

Background. A physician assistant works under the general supervision of a physician. Both the Board of Physician

Assistant Examiners and the Board of Medical Examiners have regulatory authority. The physician assistant board regulates the practice of the assistant while the medical board regulates the supervising physician.

Commentary. The Board of Physician Assistant Examiners proposes several revisions to its licensure rules; two relate directly to the physician supervision requirements of the physician assistant. These changes were generally opposed by representatives of physicians, who contended these changes breach informal agreements that had earlier been reached by the professions. The revisions were supported by physician assistants who contended the rules are intended to streamline paperwork, thus making it easier for an assistant to practice, and to conform the rules to actual practice.

Under the current rules, a physician assistant must report any addition or replacement of a supervising physician to the board within 90 days of that change. Under this revision, the report must be made at the time of license renewal.

The second change allows the supervising physician to train the assistant in a new medical procedure without being physically present. Board representatives noted that medical procedures change constantly and that this change allows the physician and the assistant to determine which training method, such as telemedicine or similar remote learning technique, would be the most effective. Opponents at the time of this change protested that the supervising physician is responsible for the actions of the assistant and should directly provide any needed training.

The third change eliminates a current requirement that the physician assistant notify the supervising physician at the time when the physician is listed as a supervising physician. The change places the burden on both the physician and assistant to be aware of their respective responsibilities. Opponents contended that supervision responsibilities are critical, noting that in some organizations a number of physicians share supervisory responsibilities. They cited a case is pending where a particular physician was unaware that he was the supervising physician when the assistant provided incorrect treatment.

Committee members noted this is a notice of intended action and requested that the interested persons meet privately with the hope that compromises can be reached prior to the final adoption of the rule.

Action. No action taken, additional review is anticipated on final adoption.

PUBLIC HEALTH DEPARTMENT, Prescription Drug Donation Program, 11/08/06 IAB, ARC 5563B, NOTICE.

Background. 2005 Iowa Acts, chapter 97 (Code chapter 135M) created the Prescription Drug Donation Repository. This new program, now implemented by the department in consultation with the Board of Pharmacy Examiners, allows medical facilities and pharmacies to accept and dispense donated prescription drugs and supplies, and sets out the eligibility criteria for individuals to receive those prescription drugs and supplies.

Commentary. Committee members met with a private contractor who will manage the distribution process. It was noted that only sealed medications can be recycled, because of the possibility of contamination of open containers.

Action. No action taken.

Next Meeting. The next Committee meeting will be held in Senate Committee Room 116, in the Statehouse on Wednesday, January 3, 2007, at 9:00 a.m.

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

Contact Persons: Joe Royce, LSA Counsel, (515) 281-3084; Emily Gardyasz, LSA Counsel, (515) 281-4800

ADMINISTRATIVE RULES REVIEW COMMITTEE

November 20 and 21, 2006

Chairperson: Representative George Eichhorn

Vice Chairperson: Senator Jack Kibbie

EDUCATIONAL EXAMINERS BOARD, Open Enrollment Appeals, 10/11/06 IAB, ARC 5415B, NOTICE.

Background. Under current law, once the March 1 deadline for open enrollment has passed the receiving district may only accept a transferring student for "good cause." The resident (sending) district has no formal appeal right to contest whether that good cause actually exists.

Commentary. Code §282.18(4)(c) empowers the Department of Education to take "appropriate action" relating to the "good cause" open enrollment exception. This proposal would allow the sending district to appeal a transfer to the director of the department. The director will first attempt to mediate the dispute. If that fails, the director will hold either a telephonic or in-person hearing. That hearing would be a contested case proceeding, providing a trial-like hearing followed by a formal decision. Following the directors' decision, the "aggrieved" party may appeal the decision to the State Board of Education.

Action. No action; additional review is likely when the rule is adopted in final form.

ENVIRONMENTAL PROTECTION DIVISION, Landfill Manual, SELECTIVE REVIEW.

Background. In response to concerns that the permitting process was too lengthy, in 2004 the Environmental Protection Commission conducted a "Kaizen" (process evaluation and improvement) process, resulting in new "guidelines" for how landfills in Iowa must file for a new operating permit, a permit renewal, or a permit modification.

These guidelines were not adopted through the rulemaking process.

Commentary. Landfill operators contended that under the new guidelines, a complete set of all documents and studies pertaining to that facility (some 18 attachments, in hard copy form) must be submitted with every permit application. The operators contended this paperwork burden is excessive and raised the cost in preparing applications up to several thousand dollars. They also stated that the manual is unlawful because it had not been adopted through the rulemaking process. Department of Natural Resources (DNR) representatives stated that the guidelines are not themselves rules; they reference and restate administrative rules and statutory provisions that apply to various sanitary disposal and landfill permit applications and renewals. They also disputed that the manual places a burden on the operators. They contended that an applicant needs to submit only current versions of its documents at the time of application and that additional copy costs incurred are justified by the 75 percent reduction in turn-around time. DNR representatives conceded that "hard" copies are required because the state archives does not allow computer storage of actual documents due to potential retrieval problems.

Committee members noted that the rulemaking issue would soon be moot, as DNR is preparing new landfill rules to be published as a notice of intended action in December. Members stated that an open process with notice and wide public participation would have muted many of these concerns. They also expressed concern over the amount of paperwork required in the application process and the cost of providing those documents.

Action. No action taken; additional review in January of proposed 567 IAC 113.

HUMAN SERVICES DEPARTMENT, Elderly Waiver: Case Management Services, 10/11/06 IAB, ARC 5417B, EMERGENCY.

Background. The Medicaid Home and Community-Based Services Elderly (HCBS Elderly) Waiver provides case management services to assist individuals in gaining access to medical, social, and other services needed to maintain those individuals in their own homes. 2006 Iowa Acts, House File 2734, §1, appropriated funds for reimbursement of case management services provided under the HCBS elderly waiver. That section specifically provides that "[t]he monthly cost per client for case management for the frail elderly services provided shall not exceed an average of \$70 [emphasis added]."

Commentary. Under these "emergency rules" the *maximum* monthly cost per client for case management under the elderly waiver is set at \$70. The main issue with this filing is that the rule applies a payment cap of \$70 per client, while the legislation calls for an average cost of \$70. Opponents of the cap contended that the fee does not cover the actual costs of service. Department representatives stated actual case management costs had run as high as \$144, and that establishing a fixed \$70 payment insured that the statutory cost limit would be met and the program would stay within the funds appropriated to this program. It was noted that while H. F. 2734 does not provide full reimbursement, it does provide a significant increase over the previous fiscal year. In the prior fiscal year, reimbursement amounted to roughly \$46.

Committee members noted that while the rule did not follow the letter of the statute, it did appear to be a good faith effort to fairly apportion the available funding. Members felt that the program should remain in place while the General Assembly reviews these issues in the upcoming session.

Action. General referral.

INSPECTIONS AND APPEALS DEPARTMENT, Veterans in Nursing Facilities, 10/11/06 IAB, ARC 5430B, ADOPTED.

Background. 2006 Iowa Acts, House File 2363, eliminated a requirement that care facilities submit to the Department of Veterans Affairs (DVA) the names of all new residents for the purpose of identifying residents' eligibility or potential eligibility for veterans benefits, as a means of reducing demands on the Medicaid system. The Act requires these facilities to request information from a resident or the resident's personal representative regarding the resident's veteran status, and then to report to DVA *only* the names of residents identified as potential veterans along with the names of their spouses and any dependents.

Commentary. This change was made at the request of DVA, which had been inundated with raw information about virtually all persons admitted to a care facility. Essentially, facilities must now winnow down that information and eliminate those persons who are not eligible for benefits. It was noted that a loophole remains in the statute. The surviving spouse of a deceased veteran may well be entitled to benefits, but care facilities are not required to report these residents, although many facilities do so voluntarily.

Action. General referral with the recommendation that the General Assembly consider adding surviving spouses to the reporting requirement.

PUBLIC SAFETY DEPARTMENT, Amber Alerts, 09/27/06 IAB, ARC 5393B, NOTICE.

Background. The Amber Alert is a nationwide effort named after a young abductee from a decade ago. The program is a cooperative effort of state and local authorities and the broadcast media. It provides a public alert program when a child has gone missing under suspicious circumstances. The alert is issued by the state patrol upon receipt of a request from a participating law enforcement agency.

Commentary. These proposed rules attempt to strike a balance between the need to promptly issue an alert and the need to avoid false alarms. This balance is reflected in four criteria which must be met to issue an Amber Alert. To ensure quick response, these criteria are to be interpreted broadly to protect the safety of the abducted child. These criteria are as follows:

- Law enforcement has confirmed that a person has been abducted.
- The person who has been abducted is under the age of 18.
- Law enforcement believes the circumstances surrounding the abduction indicate that the child is in danger of serious bodily injury or death.
- There is enough descriptive information about the child, abductor, or suspect's vehicle to believe that an immediate broadcast alert will help.

Action. No action taken.

UTILITIES DIVISION, Authority to Issue Procedural Orders, 09/27/06 IAB, ARC 5380B, ADOPTED.

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

Commentary. This filing was reviewed by the Committee in October. Committee members questioned whether the board could lawfully delegate any authority to a single board member or board staff and were also concerned that the situations allowing the exercise of this discretion were too broad. For these reasons, the Committee believed that additional discussion was necessary and imposed a 70-day delay on this filing. Board representatives stated that the delegation of authority was similar to provisions found in Code §17A.11, and emphasized that it would not be used if it would significantly impact any person's rights under the process. Board representatives provided several examples where this approval process could be used, noting that the full board could always reverse the decision. Committee members were satisfied that the process would not adversely affect any parties and took no further action.

Action. No action taken.

Next Meeting. The next Committee meeting will be held in Senate Committee Room 116, on Tuesday, December 12, 2006, at 1:00 p.m., and Wednesday, December 13, 2006, at 8:30 a.m.

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

Contact Persons: Joe Royce, LSA Counsel, (515) 281-3084; Emily Gardyas, LSA Counsel, (515) 281-4800

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

ADMINISTRATIVE RULES REVIEW COMMITTEE

October 10, 2006

Chairperson: Representative George Eichhorn

Vice Chairperson: Senator Jack Kibbie

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

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

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

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

Following lengthy discussion, Committee members determined that the rulemaking should proceed with an "emergency"

implementation date of November 1, 2006. Members requested monthly updates concerning the implementation of the program and any issues that arise concerning that implementation.

Action. General referral, additional review possible.

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

Background. At its September meeting, the Committee reviewed rules noticed by the Iowa Finance Authority (IFA) implementing the Wastewater Treatment Financial Assistance Program. This program was established under 2006 Iowa Acts, House File 2782, section 63, to assist "disadvantaged communities" with populations of less than 3,000 by providing grants to these communities for the enhancement of water quality and to assist communities in complying with water quality standards adopted by the Department of Natural Resources (DNR). The General Assembly appropriated \$4 million to provide this assistance. The IFA rules provide that the DNR will certify wastewater treatment projects needed to meet water quality standards. The estimated cost to reduce effluents from treatment facilities is roughly \$800 million to \$1 billion dollars.

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

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

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

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

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

Action. No action taken.

DEPARTMENT OF NATURAL RESOURCES, Special Review—River Otter Trapping Season, 06/07/06 IAB, ARC 5144B, FILED.

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

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

Action. No action was taken.

UTILITIES DIVISION, Wind and Renewable Energy Tax Credits, 09/27/06 IAB, ARC 5400B, NOTICE.

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

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

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

Action. No action taken.

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

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

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

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

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

Action. Seventy-day delay.

DEPARTMENT OF VETERANS AFFAIRS, Injured Veterans Grant Program, 07/05/06 IAB, ARC 5179B, EMERGENCY.

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

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

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

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

Action. General referral and letter to Iowa's Congressional delegation.

Next Meeting. The next Committee meeting will be held in Senate Committee Room 22 on Monday, November 20, 2006, at 1:00 p.m. and Tuesday, November 21, 2006, at 9:00 a.m. The following special reviews have been added:

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

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

Contact Persons: Joe Royce, LSA Counsel, (515) 281-3084; Emily Gardyasz, LSA Counsel, (515) 281-4800

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 non-remedial 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.

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

Contact Persons: Joe Royce, LSA Counsel, (515) 281-3084; Emily Gardyas, LSA Counsel, (515) 281-4800

ADMINISTRATIVE RULES REVIEW COMMITTEE

August 8, 2006

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 chapter 459 and open feedlot operations regulated through Code 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 of Natural Resources (DNR) 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 DNR 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 rule 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 that this rule concentrates too much power in the DNR and would put pressure on the DNR 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 DNR, 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 and 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 DNR's 2005 Regulatory Plan as required by Executive Order Number 9, relating to agency rulemaking requirements, nor did it appear that the DNR 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 DNR. 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 (SPP), 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 (SPP) appropriation will be allocated to counties. Commencing October 1, 2006, the county central point of coordination administrators (CPC) will assume management of the SPP 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 taken, 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 of 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 medications, 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, and 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 constitute 70 percent of the credits and contended that no more than 50 percent 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 Code section 272C.4(6) is broad, covering acts or omissions that are grounds for revocation or suspension of a license under Code section 153.34 and acts or omissions that constitute negligence, careless acts, or omissions under Code section 272C.3(2)(b).

There was general discussion as to how broad the reporting requirement is, 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 taken, 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 State 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.

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

Contact Persons: Joe Royce, LSA Counsel, (515) 281-3084; Emily Gardyas, LSA Counsel, (515) 281-4800

ADMINISTRATIVE RULES REVIEW COMMITTEE

July 11, 2006

Chairperson: Representative George Eichhorn

Vice Chairperson: Senator Jack Kibbie

ECONOMIC DEVELOPMENT DEPARTMENT, Renewable fuel infrastructure board, 06/21/06 IAB, ARC 5160B, EMERGENCY.

Background. 2006 Iowa Acts, House File 2754, Division III, creates the Renewable Fuel Infrastructure Program and section 29 of the Act creates an 11-member Renewable Fuel Infrastructure Board; the board is responsible for providing financial incentives for gas stations to install the necessary tanks and equipment to store and dispense E-85 gasoline or biodiesel.

Commentary. Department representatives explained the unusual circumstance where board rules were put in place before the board itself was even appointed. Section 34 of the Act mandates that the Department of Economic Development adopt emergency rules to begin this program, with an effective date no later than June 1, 2006. Committee members had no questions concerning the rules themselves, but there was discussion concerning the statutory provisions relating to the makeup of the board itself. Some members expressed concern that E-85 gasoline or biodiesel users are not adequately represented on the board. Department representatives responded that House File 2754 specifically enumerated the groups represented on the board. Committee members also noted that the board contains no ex officio, nonvoting legislative members. Members felt that the development and promotion of an infrastructure for E-85 is so important that some legislative representation on the board is important.

Action. The Committee voted two actions: first, to send an informal letter to the board encouraging the board to involve E-85 gasoline or biodiesel users in the policy development process. Second, the Committee voted to refer both the statute and the rule to the General Assembly, with the recommendation that the Legislature consider adding nonvoting legislative members to the board. This action will be further considered in August.

EDUCATIONAL BOARD OF EXAMINERS, Statement of professional recognition, 06/07/06 IAB, ARC 5157B, NOTICE.

Background. Iowa school districts may employ registered nurses to provide nursing services in the school setting. A school nurse endorsement is available for nurses who hold a baccalaureate degree, a license from the nursing board, and complete the education core curriculum. The board proposes a new category: a statement of professional recognition.

Commentary. This proposed category is actually being resurrected from earlier rules; it had been rescinded a number of years ago. The statement is basically a practice authorization, and requires only that the applicant be licensed as a registered nurse. Board representatives stated that the proposal came at the request of the Association of School Nurses. A representative of that association noted that the initial request would have provided this formal recognition for a baccalaureate degree nurse only in order to provide a credential which would allow for greater compensation in recognition of the nurse's higher education. Board representatives responded that it was not within their authority to differentiate the credential based on education, when the criteria for licensure did not require a baccalaureate degree and all applicants must pass the same examination.

There was a general discussion concerning the various educational levels of nursing education and nursing specialties.

Action. No action taken.

ENVIRONMENTAL PROTECTION COMMISSION, Clean Air Interstate Rule (CAIR), 06/07/06 IAB, ARC 5139B, ADOPTED.

Background. Over the next 10 years the "Clean Air Interstate Rule" (CAIR), issued by the federal EPA, will require large reductions of sulphur dioxide (SO₂) and nitrogen oxide (N₂O) emissions in 28 states, including Iowa.

Commentary. These rules implement a "cap and trade" approach to the reduction of these emissions. The federal EPA allocates emission "allowances" for SO₂ and N₂O and Iowa will allocate those allowances to those emission sources (29 electric utilities). The allowances can be traded like a commodity; thus an emission source could opt to install pollution control devices or could buy allowances from other sources that did not need the full allotment. The cap and trade approach is estimated to cost some \$140 million annually. The concept is currently used for the acid rain program. To ensure compliance, automatic and punitive penalties on sources that do not hold the required number of allowances are imposed at the end of each year. Committee members agreed that the cap and trade approach is an effective mechanism for implementing this program.

Action. No action taken.

NATURAL RESOURCE COMMISSION, Otter season, 06/07/06 IAB, ARC 5144B, ADOPTED.

Background. Under the previous rules there was a continuously closed season on the taking of otters. The Commission now implements a trapping season allowing the taking of two otters per trapper, with a 400-otter statewide limit.

Commentary. The Commission estimates that there are some 7,000 otters scattered throughout the state, with a growth rate of 16 percent. There has been both support and opposition to this rule change. Opponents contended that the studies were not scientific and that is unreasonable to have an otter season. DNR representatives stated that public comment generally supported a trapping season.

Action. No action taken.

PHARMACY BOARD, Collaborative drug therapy management, 06/07/06 IAB, ARC 5151B, ADOPTED.

Background. This new program allows a supervising physician to delegate, with the consent of the patient, aspects of drug therapy management to an authorized pharmacist pursuant to a detailed written protocol with that pharmacist. These rules will be complemented by a similar set promulgated by the Board of Medical Examiners; a notice was published in May 2006.

Commentary. Commenters generally voiced support for this program; however, it was noted that in other states this program was created by statute, not rule. One commenter stated that while there may be adequate legal authority for the program, its legitimacy would be increased by a specific statute. It was noted that collaborative drug therapy management had already been practiced in hospitals, but is a new concept in a community setting.

One specific issue was discussed—allowing the pharmacist to obtain or to conduct specific laboratory tests. Commenters expressed some concern over the delegation of this authority, but expressed hope that further discussion would resolve the issue.

Action. Committee members did not want to delay the implementation of this program but felt that the issue of statutory authority for this program should be addressed by the Legislature and voted a general referral of that issue.

Next Meeting. The next Committee meeting will be held on Tuesday, August 8, 2006, at 9:00 a.m. in the Statehouse, room 22.

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

Contact Persons: Joe Royce, LSA Counsel, (515) 281-3084; Emily Gardyasz, LSA Counsel, (515) 281-4800

ADMINISTRATIVE RULES REVIEW COMMITTEE

June 8, 2006

Chairperson: Representative George Eichhorn

Vice Chairperson: Senator Jack Kibbie

AGRICULTURE AND LAND STEWARDSHIP, Grape and wine development, 05/24/06 IAB, ARC 5118B, NOTICE.

Background. Code Chapter 175A establishes a program assisting the Iowa wine industry in establishing, improving, and expanding wineries, vineyards, and winemaking operations. Services are provided by the department, with oversight by the Grape and Wine Development Commission. There are approximately 58 wineries in Iowa.

Commentary. Department representatives stated that Iowa is far behind Missouri, which has had a promotional program for decades; however, it was noted that Iowa has recruited a number of skilled experts to provide technical assistance. Technical assistance includes improving the quality and the productivity of vineyards and assistance with the winemaking process itself.

Under this new program, financial assistance is also available from a state fund of \$250,000. Assistance is limited to \$10,000; however, this amount can be increased to \$25,000, with the mutual consent of the commission and the department. This assistance can be a loan, forgivable loan, cost share, indemnification of costs, or any combination. Assistance is available, for use in Iowa, for persons beginning or engaged in grape growing or winemaking. A business plan is required to demonstrate the viability of the proposed business. The rules set out criteria both for the approval or rejection of an application for assistance. Financial assistance is also available to help offset losses resulting from fire, damaging weather, natural occurrence, or a related condition.

Action. No action taken.

ENVIRONMENTAL PROTECTION COMMISSION, Clean air permits, SPECIAL REVIEW.

Background. 567 IAC chapter 22 provides for the permitting of major sources of air pollution. The rules provide an exception to this requirement for *"an internal combustion engine with a brake horsepower rating of less than 400..."*. An issue was raised that permits may be required for implement dealers who repair large tractor and other farm implement engines.

Commentary. Modern farm equipment increasingly uses engines with more than 400 horsepower, raising the possibility that dealer repair facilities which work on those larger farm implement engines (such as a tractor) might be required to

obtain an air quality permit for the vent stack they use to vent the exhaust. Committee members noted that the intention of the permitting program is to regulate stationary sources of pollutants, and that these same engines, when operating in the field, were not required to have a permit. EPC officials agreed that the permitting program is not intended to cover situations where engines are being repaired and briefly tested. It was agreed that the EPC would continue discussions with the affected groups and resolve this issue.

Action. No action, further review when additional rules are prepared.

HUMAN SERVICES DEPARTMENT, Personal needs allowance for care facility residents, SPECIAL REVIEW.

Background. Periodically the department amends the state Medicaid plan to reflect statutory and other changes that impact the program. Such changes must be approved by the federal government; that process can be lengthy and significantly delay the implementation of the changes.

House File 2734 contains a mandate that *"beginning July 1, 2006, the department shall increase the personal needs allowance under the medical assistance program which may be retained by a resident of a nursing facility to fifty dollars."* This allowance, currently \$30, is the sum of money Medicaid care facility residents may keep for their personal needs. The cost of this change is projected \$1million state and \$2 million federal.

Commentary. Department representatives told the Committee that the state Medicaid plan must be amended if federal dollars are to be used for this change and that the amendment process will make it impossible to implement the change on July 1, because the overall revision to the Medicaid plan is not yet complete and federal approval will take additional time.

Committee members and department representatives discussed alternatives to speed the implementation process. One alternative is to file the special needs allowance as a completely separate amendment to the Medicaid plan; that proposal was deemed impractical because federal approval would still be required prior to implementation. At best federal approval might take up to 90 days, and questions raised by federal administrators could extend this date even further. A second alternative is to immediately fund the change, using 100 percent state funds, and then repay the state funds when the plan is approved. Department representatives agreed to consider alternatives that would allow a July 1 implementation date for the personal needs allowance increase.

Action. No formal action—subsequent to the meeting department representatives determined that it would be feasible to implement the increase using state funds, with later reimbursement when the Medicaid plan is approved. Further action pending.

HUMAN SERVICES DEPARTMENT, Proof of legal presence, 05/10/06 IAB, ARC 5101B, FILED WITHOUT NOTICE.

Background. The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 USC 1621, §411) provides that only citizens or persons who have "national" status (lawfully admitted aliens) may obtain public benefits.

Commentary. These rules set out a variety of documents that can be used; for example, a birth certificate in combination with some other identification, such as a driver's license. Committee members questioned how fraudulent documentation is handled. Department representatives stated that the department is not required to ascertain the validity of the documents themselves, and that in some cases, particularly with children, clients have no documentation of any type. Cases of obvious fraud would be turned over to the fraud unit.

Action. No action taken.

MEDICAL EXAMINERS BOARD, Collaborative practice with pharmacists, 05/24/06 IAB, ARC 5097B, NOTICE.

Background. By written agreement between a physician and an authorized pharmacist a drug therapy management plan may be established for one or more of the physician's patients. Using this "protocol" a supervising physician may delegate aspects of drug therapy management to an authorized pharmacist.

Commentary. The rules set out 17 specific items that must be addressed in a community practice protocol; in part these items specifically list the activities which the pharmacist may perform under the protocol. These rules will be complemented by a similar set promulgated by the Board of Pharmacy Examiners; a notice of that proposal was published in February 2006, with final action still pending.

Next Meeting. The July committee meeting will be held on Tuesday, July 11, 2006, at 9:00 a.m. in the Statehouse, Room 24.

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

Contact Persons: Joe Royce, LSA Counsel, (515) 281-3084; Emily Gardyas, LSA Counsel, (515) 281-4800

ADMINISTRATIVE RULES REVIEW COMMITTEE

May 9, 2006

Chairperson: Representative George Eichhorn

Vice Chairperson: Senator Jack Kibbie

EDUCATION DEPARTMENT, Pupil transportation, 04/26/06 IAB, ARC 5054B, NOTICE.

Background. School bus safety requires a school bus inspection after each trip to ensure that no sleeping children are left on the bus. School bus safety also requires that each school bus have a two-way communications system or cellular telephone for emergency communications between the bus driver and the school's transportation department.

Commentary. The cost of the communications equipment is borne by the individual school district, not the General Fund. The estimated fiscal impact is \$113,000. Some districts already have such equipment.

Action. No action taken.

EMPOWERMENT BOARD, Community empowerment, 04/26/06 IAB, ADOPTED.

Background. Community empowerment is established in Code chapter 28 as a program of cooperation between state government and local communities, creating community empowerment areas to improve the well-being of children and their families through early care, education, health, and human services.

Commentary. Discussion centered around the "school ready children" grant funding component contained in Code §28.8 as amended by 2005 Iowa Acts, chapter 148. Grants are awarded to a community board for a three-year period; continued funding requires the submission of an annual report and the community board using "performance and results indicators" which indicate progress toward and achievement of the desired results identified in the grant plan. Committee members requested information on these indicators, to ensure they provide a valid and reliable assessment tool to determine progress.

Action. No action taken.

ENVIRONMENTAL PROTECTION COMMISSION, Commercial septic tanks, 04/12/06 IAB, ARC 5042B, NOTICE.

Background. In 2005, the General Assembly enacted 2005 Iowa Acts, chapter 153 (House File 834), amending the provisions of Code §455B.172, relating to the regulation of servicing for septic tanks. Under that section, as amended, the Department of Natural Resources is exclusively responsible for adopting the standards and issuing licenses. However, county boards of health are required to enforce the standards and licensing requirements established by the department. The department is empowered to delegate the authority for inspection of land application sites, record reviews, and equipment inspections to a county board of health.

Commentary. As a condition of licensure the Act requires that "septic disposal management plans" be submitted to the department and approved annually, and also be filed annually with the county board of health in the county where a proposed septage application site is located. Fines were raised from \$25 to \$250. Under the previous statute, the annual license or license renewal fee was set at \$25.

Under the Act, the fee is established by the department based on the volume of septage that is applied to land. Under that authority the annual fee is raised to \$150 per year for the first registered vehicle and \$50 for each additional vehicle. In addition, for the land application of waste there is an additional fee of \$7 per 1,000 gallons of waste. Department representatives stated this would raise some \$80,000 which could be used for inspections.

Committee members were supportive of this new regulation, but were concerned about the impact on counties, which have the responsibility of enforcing the application and licensing standards. Members noted these responsibilities have greatly increased with the enactment of House File 834 and were concerned about the cost to the counties in enforcing this expanded regulation. For that reason the committee requested a regulatory analysis to determine the impact on county government. When an analysis is requested the rule cannot be adopted in final form until 20 days after a summary of the analysis is published in the Iowa Administrative Bulletin (IAB). More specifically, for that additional period the agency must continue to accept written comments and accept requests for oral presentation. The summary in the IAB must identify the means available for persons who wish to comment on that analysis.

Action. Regulatory analysis request. Additional review is anticipated when the analysis is complete.

ENVIRONMENTAL PROTECTION COMMISSION (EPC), Underground storage tanks—compliance inspectors, 04/12/06 IAB, ARC 5044B, ADOPTED.

Background. Under the previous rules, underground storage tanks are inspected by EPC staff, with inspections occurring every three to five years. The EPC implements a hybrid system using department trained private inspectors, with the goal of annual inspections.

Commentary. This creates a certification program for compliance inspectors; the certification process is similar to a license and sets out minimum qualifications for education and experience, training requirements, and provisions for certification suspension and revocation.

When initially proposed, the rules prohibited a company from employing their own inspector; reasoning that inspectors should be completely independent. This restriction has been eliminated, with the thought that an employee familiar with the system would be best able to detect problems. A second change from the proposal dropped inspections from one year to two.

Members raised concerns relating to the conversion of underground storage tanks to "E-85" tanks. Representatives of the Department responded that "E-85" tanks are inspected like any other tank; this rule has no particular effect on the conversion to "E-85" tanks.

Action. No action taken.

ETHICS AND CAMPAIGN DISCLOSURE BOARD, Use of corporate property, 04/26/06 IAB, NOTICE.

Background. Iowa Code §68A.503 prohibits the use of resources belonging to a financial institution, insurance company, or corporation to advocate for or against candidates except under certain circumstances which are specified in the statute itself. Current board rules allow the "occasional, isolated, or incidental use" of corporate property for campaign purposes.

Commentary. The current rules are more lenient than the statute itself, which basically allows the use of corporate property for issue-only advocacy. The proposed rule mirrors the statutory scheme but offers little flexibility for any political activity for an individual in the corporate workplace who may have an unplanned campaign related problem or issue arise; that person must leave their workstation or deal with the situation at a later time.

Action. No action taken.

HUMAN SERVICES DEPARTMENT, Medicaid eligibility for nursing home care: transfer of assets, SPECIAL REVIEW; EMERGENCY.

Background. The Medicaid program pays for nursing home care when a resident has largely exhausted their resources and income. For decades there have been restrictions on a client's ability to transfer assets to another person instead of retaining those assets to fund nursing home care. This rulemaking brings the Iowa Medicaid rules into compliance with the provisions of the federal Deficit Reduction Act of 2005, relating to Medicaid eligibility for people receiving various types of long-term care services. The Department emergency adopts three revisions to the current rules which further restrict the ability to transfer assets.

Commentary. These rules implement three significant changes. In apportioning resources between an "at-home" spouse and an institutionalized spouse, in addition to considering the income of the spouse at home, the income that the spouse in the institution has available to give to spouse at home will also be considered before allocating a higher amount of resources to the at-home spouse. A second change provides that entrance fees paid on admission to a continuing care retirement community or an equity interest in a home that exceeds \$500,000 (unless the at-home spouse or a disabled child resides in the home) will be considered a resource. The third change relates to the transfer of asset rules for any transfer for less than fair market value that occurs on or after February 8, 2006. The look-back is increased from 36 to 60 months for all asset transfers.

The penalty for asset transfers is changed to begin on the first day of the month in which the assets were transferred or the date the person is otherwise eligible for Medicaid long-term care, whichever is later. Pursuant to the federal Act, partial months of penalty will no longer be rounded down or dropped.

Department representatives noted these provisions are federal mandates which required an emergency filing. The representatives stated that roughly one third of the couples who file appeals for protection of a higher amount of resources for the at-home spouse may be affected by being required to pay for several more months of care before becoming eligible.

Action. No action taken, additional review in June.

HUMAN SERVICES DEPARTMENT, Medicaid eligibility for limited services to aliens, 04/12/06 IAB, ARC 5047B, NOTICE.

Background. Iowa Medicaid coverage is available to undocumented aliens for treatment of emergency medical conditions, including labor and delivery of a newborn. Currently, eligibility for this coverage is based on a series of diagnosis codes which denote specific diseases or conditions. The proposal provides that eligibility is based upon the severity of the medical condition, as determined by the physician.

Commentary. Department representatives stated this proposal is not an expansion of services. It was also noted that the issue is not whether emergency services were provided, since hospitals are required to provide emergency services. Instead the issue is whether the hospitals will be paid by Medicaid for the services. Questions were raised relating to the amount of and the geographic regions within the state where Medicaid money is spent for this coverage. Questions were also raised regarding "green card" or residency eligibility for medical treatment.

Action. No action taken.

LOTTERY AUTHORITY, Monitor vending machines, 04/26/06 IAB, ARC 5069B, ADOPTED.

Background. The issues surrounding the development of "monitor vending machines" (MVMs) (also referred to as touch play machines) has come before the committee several times since 2002. In December, the Lottery Authority proposed a number of rules relating to the number and placement of MVMs in retail establishments. The general issue of the use of MVMs had been referred to the General Assembly in August 2005.

Commentary. The initial proposal was necessary because of the growing placement of MVMs in retail establishments, beginning with the initial placement of some 400 MVMs to around 5,000 MVMs in place by January 2005. This proposal was rendered moot when the General Assembly, in 2006 Iowa Acts, Senate File 2330, prohibited the continued use of these machines. For that reason the adopted rules removed any reference to these machines.

Action. No action taken.

PHARMACY BOARD, Patient counseling on new prescriptions, 04/12/06 IAB, ARC 5033B, ADOPTED.

Background. The board completes action on a rulemaking which requires that a pharmacist advise a patient on the proper use of any new prescription being filled.

Commentary. The revision makes clear that a mere offer to provide counseling is not adequate; the pharmacist must personally discuss the new prescription with the patient. It was noted that Iowa pharmacists already do this routinely, but problems occur with mail-order pharmacies which make no effort to speak to the patient and simply provide an information sheet along with the prescription.

Action. No action taken.

SECRETARY OF STATE, Voter registration file (I-VOTERS) management, 04/26/06 IAB, ARC 5056B, NOTICE.

Background. The State Registrar is responsible for the implementation of a statewide voter registration file of registered voters in the state, known as I-VOTERS. The rules provide for access to voter registration information and fees, procedures to eliminate duplicate or multiple voter registrations, and procedures for the cancellation and restoration of voting rights for convicted felons.

Commentary. The Committee discussed the State Registrar's responsibility relating to duplicate or multiple interstate voter registrations. The Secretary of State is working with four surrounding states to address this issue of duplicate or multiple interstate voter registrations.

Action. No action taken.

Next Meeting. The June 2006 Committee meeting will be held on Thursday, June 8, 2006, 9:00 a.m., in the Statehouse, Committee Room 22.

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

Contact Persons: Joe Royce, LSA Counsel, (515) 281-3084; Emily Gardyasz, LSA Counsel, (515) 281-4800