



IOWA GENERAL ASSEMBLY

Administrative Rules Review Committee

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THE RULES DIGEST

January, 2007

Scheduled for committee review
January 3rd and 4th 2007 Senate Committee Room #116

Reference
XXVIX IAB No. 12(12/06/06)
XXVIX IAB No. 13(12/20/06)

HIGHLIGHTS IN THIS ISSUE:

PREPARATION FOR ADULT LIVING, Human Services Department.....1
ANIMAL FOSTER CARE, Agriculture Department.....2
WAGE PAYMENT COLLECTION, Labor Division.....2
LANDFILLS, Environmental Protection Commission.....2
EMERGENCY RESPONSE TEAMS, Homeland Security.....4
E-10 & E-85 INFRASTRUCTURE, Economic Development Department.....4

HUMAN SERVICES DEPARTMENT

9:10

Preparation for adult living, IAB Vol. XXVIV No. 12, ARC 5582B, EMERGENCY AFTER NOTICE.

These rules were placed in emergency effect in July. The federal Foster Care Independence Act of 1999 (P.L. 106-169) has reformed and expanded the independent living program; the program is designed to help children in foster care prepare to become independent once they transition out of foster care at age 18.

The first part of this new program provides aftercare services, based on an individual self-sufficiency plan which has been developed through an assessment of the client's strengths and needs. The goal is to provide "life skills to enable youth to maintain a safe, healthy, and stable home."

The second part of the program is preparation for adult living (PAL), which provides financial support for clients receiving aftercare services. Clients must be either:

- Enrolled in a postsecondary educational training program or work training;
•Employed for an average of 30 hours or more per week; or

- Enrolled in a school or program attendance leading to a high school diploma or GED.

Each client receives a monthly stipend as determined by the client's self sufficiency plan. Clients must have been in state foster care for at least 6 of the last 12 months before the youth left foster care, and currently be in a stable living arrangement (apartment, dormitory, etc.).

HUMAN SERVICES DEPARTMENT

9:10

Personal needs allowance: nursing facility residents, IAB Vol. XXVIV, No. 12, ARC 5579, ADOPTED.

This filing was placed in emergency effect in July, 2006. 2006 Iowa Acts, House File 2319 directed the department to increase the personal needs allowance for residents in nursing facilities; that needs allowance is the amount of income a Medicaid resident is allowed to retain for clothing, toiletries, and other personal expenses. The current \$30 amount has not been changed since July 1988; this revision increases the allowance to \$50.

When this filing was initially reviewed in July, concern was expressed that the increase did not include care facilities for the mentally retarded. However, the language of the statute itself

THE RULES DIGEST

-2-

excludes a care facility for the mentally retarded from the definition of a nursing facility. Moreover, if the increase was expanded to include facilities for the mentally retarded there would be a cost increase of \$342,000 to the state and \$68,000 to counties.

INSPECTIONS & APPEALS DEPARTMENT

9:30

Long-term acute care hospital located within a general hospital, IAB Vol. XXIX, No. 12, ARC 5585B, ADOPTED.

Previously, a single hospital building may hold only a single type of license. This filing details the types of licensures, but more importantly authorizes the licensure of a "long-term acute care hospital located within a general hospital." This facility provides medical and rehabilitative care services for an extended period (more than 25 days); services can include comprehensive rehabilitation, respiratory therapy, head trauma treatment, and pain management.

This rulemaking also details the types of licenses that are available. A "general hospital" provides medical care for two or more individuals for more than 24 hours. A "specialized hospital" provides specialized care to persons with chronic or long term illness, injury, or infirmity. A "critical access hospital" must be located in a rural area and be certified by the Iowa department of public health as a necessary provider of health care services to residents of the area. A critical access hospital makes available 24-hour emergency care.

INSPECTIONS & APPEALS DEPARTMENT

9:30

Identification of veterans in care facilities, IAB Vol. XXIX, No. 12, ARC 5586B, ADOPTED.

2006 Acts, House File 2363 eliminates a current requirement that care facilities submit to the Iowa department of veterans affairs 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 veterans affairs *only* the names of residents

identified as potential veterans along with the names of their spouses and any dependents.

This change was made at the request of veterans affairs, 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. When this provision was initially reviewed in November 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 by law to report these residents, although many facilities do so voluntarily. The committee has referred this rule to the legislature to resolve the issue of identifying veterans spouses.

AGRICULTURE DEPARTMENT

9:45

Animal foster care, IAB Vol. XXIX No. 13, ARC 5623B, NOTICE.

Under this proposal a licensed animal shelter or a licensed pound (essentially a government-owned shelter) may also be licensed to be a "fostering oversight organization" allowing the shelter or pound to utilize foster care homes as part of its program for caring for abandoned animals. An organization may authorize up to ten foster care homes per species; that number may be reduced by the department. A foster care home is a private residence providing temporary shelter, often for a particular type of animal.

The oversight organization must screen a prospective foster care home to ensure that the person who will be operating foster care home is capable of caring for the animals. The oversight organization must periodically inspect the foster home. At its discretion department representatives may also inspect the foster home.

LABOR DIVISION

10:25

Wage payment collection, IAB Vol. XXIX, No. 12, ARC 5583B, NOTICE.

Code Chapter 91A provides a collection process, administered by the division, to be followed when an employer has *intentionally* failed to pay an employee wages or reimburse expenses. In these cases the employer is liable for any wages or expenses that the employer intentionally failed to

THE RULES DIGEST

-3-

pay, plus liquidated damages, court costs and any attorney's fees. In addition, the division may assess a civil penalty of not more than one hundred dollars for each violation; that penalty is assessed on a per-person, per-day basis, thus the gross amount of that penalty can be very significant.

These proposed rules set out a procedure to determine the amount of that penalty. They establish a framework of factors to be considered in establishing the amount which could well be used as a model for other agencies. The statute delegates discretion to the commissioner to determine the amount of the fine and these criteria set out objective factors for the reduction of the penalty, based on the nature of the employer and the nature of the violation. The size of the workforce, the gravity of the offense, the good-faith of the employer and past history are taken into account; specific percentage reductions are established for each of these factors. Under this system a penalty could be discounted as much as 70%.

A contest case proceeding, followed by judicial review is available to any person wishing to contest the assessment of this penalty.

NATURAL RESOURCES COMMISSION

10:40

Taking of mussels, IAB Vol. XXIX, No. 12, ARC 5604B, NOTICE.

In the 19th and early 20th centuries the commercial harvest of mussels in Iowa waters was a big business, with a major button making industry located on the Mississippi river. Commercial harvest declined, but a market for the shell remained with the Japanese cultured pearl industry.

Pollution and over-harvest forced tighter regulation over the last 30 years and now the commission proposes a further reduction of the commercial harvest. Under the current rules, the commercial harvest is limited from April 1 to August 31, with both a size and species limitation. Under this proposal the separate commercial designation is eliminated, a continuous open season is allowed, but a possession limit is set at 24 whole mussels or 48 shell halves. Harvest continues to be limited to the Mississippi and connected backwaters.

ENVIRONMENTAL PROTECTION COMMISSION

11:00

Municipal landfills, IAB Vol. XXIX, No. 12. ARC 5597B, NOTICE.

The department proposes revised rules which in part are intended to curtail groundwater contamination from municipal solid waste (MSW) landfills. This new proposed chapter 113 contains many new requirements; it should be noted that variances for "alternative methods" are available so long as the same goals of monitoring environmental impacts are met. The rules are intended to implement the federal Resource Conservation and Recovery Act (RCRA) and the federal rules implementing that Act.

The rules require a quality control and assurance program for all new construction, to ensure that the landfills are constructed as well or better than the detailed construction requirements specified in the rules. There are detailed site evaluation and construction requirements set out, as well as operational requirements for the day-to-day management of the facility.

There are new restrictions relating to the siting of a new or expanded landfill. A number of restrictions relate to nature of the site itself, such as a floodplain, a wetland or a fault, or the presence of an endangered species or cultural site. Other restrictions relate to neighboring facilities, such as airports or private residences. A new or expanded landfill, or the down gradient plume from a landfill, cannot be located within 1,000 feet of any well or community water system. The landfill must be set back 50 feet from the property line and 500 feet of "sensitive populations" (eg: existing occupied residences, recreational areas, child care facilities, educational facilities, or health care facilities).

A number of waste materials are banned from landfills; these include certain hazardous wastes that are easily flammable, reactive, corrosive or toxic. More specific examples include: PCB's in specified concentrations, free liquids, septage, radioactive material, asbestos, yard waste and appliances.

The rules set out a monitoring program to prevent contamination of the surface and

THE RULES DIGEST

-4-

groundwater. Detection groundwater monitoring is required throughout the active life of the landfill and the postclosure care period of 30 years. A surface water monitoring program may be required if there is reason to believe that surface water has been impacted as a result of seepage or other type of contamination. If detection monitoring reveals contamination assessment monitoring, involving periodic analysis and remediation may be required. The owner of the facility must provide financial assurance for the cost of remediation.

The rules conclude with closure and post closure requirements. Following closure of the facility a 30 year monitoring and maintenance program is required. The owner or operator of the facility must establish financial assurance for the costs of postclosure care. Financial assurance can include a trust fund, surety bond, irrevocable letter of credit, insurance or other financial instruments.

ENVIRONMENTAL PROTECTION COMMISSION

11:00

Mercury-added switch recovery, IAB Vol. XXIX, No. 12, ARC 5600B, ADOPTED.

House File 2362 mandates that all accessible mercury switches be removed from a motor vehicle before it is scrapped. The manufacturers of vehicles which utilize these switches are required to develop and publish a plan for the implementation of a system to remove, collect, and recover the switches from those vehicles when the vehicles are scrapped. All *accessible* mercury switches must be collected; switches that can only be accessed with significant damage to the surrounding area are excluded. The total cost of the removal, collection, and recovery system for the switches must be paid by the manufacturer.

The plan must contain:

- an educational component to inform the public about the program, including detailed information about what vehicles contain mercury switches, their location and methods to remove them;
- a method for implementing, operating, maintaining, and monitoring the collection system;
- a method to arrange and pay for the transportation of collected switches to permitted facilities and for their recycling;
- a method to track participation in the system including a database of recyclers;

- a targeted capture rate of not less than 90% and an alternative if the target is not met.

HOMELAND SECURITY AND EMERGENCY RESPONSE

1:15

Emergency response teams, IAB Vol. XXIX No. 13, ARC 5624B, NOTICE.

2006 Iowa Acts, House File 2797 revised existing law relating to urban search and rescue teams. The Act re-styles them as homeland security and emergency response teams *"to be deployed as a resource to supplement and enhance disrupted or overburdened local emergency and disaster operations."*

The administrator of the homeland security and emergency management division will issue requests to create these teams based on identified needs, on recommendations from the first responder advisory committee, and at the request of the governor. In these situations a team member is considered to be an employee of the state for disability, workers' compensation, and death benefits.

At its discretion, a homeland security and emergency response team may deploy at the direct request of a political subdivision without a directive from the administrator or without a governor's disaster proclamation.

ECONOMIC DEVELOPMENT DEPARTMENT

1:45

Renewable fuel infrastructure board, IAB Vol. XXIV, No. 13, ARC 5608B, EMERGENCY.

Initial rules of organization and operation were both noticed and filed on an emergency basis in June, 2006. House File 2754, Division III creates the renewable fuel infrastructure program and §34 of the Act calls for emergency rules. §29 of the Act creates a renewable fuel infrastructure board is established within the department of economic development, which is required to provide logistical support to the board.

The board is responsible for directing the renewable fuel infrastructure program. The program provides financial incentives for gas stations to install the necessary tanks and equipment to store and dispense E-85 gasoline or biodiesel. Applications for assistance are first

THE RULES DIGEST

-5-

reviewed by the underground storage tank fund board, which forwards its comments to the infrastructure board for final action.

The board will use the boundaries of the state's five congressional districts, and prorate and equally distribute the amount available each fiscal year for each district. In addition, the board has discretion to distribute up to \$500,000 to any congressional district. For retail motor fuel site grants the maximum award per project is \$30,000 or 50 percent of the actual cost of making the improvements, whichever is less. In the case of biodiesel terminal grants, the limit is \$50,000 or 50 percent of the actual cost of making the improvements, whichever is less.

The board may approve multiple awards for projects at a single site provided the total amount of the awards at that site does not exceed the limits set out above. Similarly, multiple grants for *different* motor fuel sites may be approved. *"However, the board shall make awards fairly and properly among applicants and geographic areas."*

This \$30,000/50 percent and \$50,000/50 percent cap limit cannot be evaded by obtaining additional funding from the infrastructure program.

EDUCATION DEPARTMENT

No Rep.

Open enrollment, appeals, IAB Vol. XXIX No. 12, ARC 5605B, ADOPTED.

Once the March first deadline for open enrollment has passed the district receiving the transferring student may only accept the student for "good cause." Numerous examples of good cause are set out in the existing rules and include such things as a change in the *family* residence, a parental divorce, a change in guardianship or in cases where the student is the victim of repeated acts of harassment or if the student has a serious health condition that the current district cannot deal with appropriately.

Under the current rules, the resident (sending) district really has no appeal right to contest whether good cause actually existed; Iowa Code §282.18(4)"c" empowers the department to take "appropriate action", but existing rules only allow the sending district to complain to the department, which can *"counsel the receiving district that its approval was unreasonable."* There is no

significant remedy for abuse of the good cause exception.

This revision allows 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. Following the directors' decision, the "aggrieved" board may appeal the decision to the state board of education and ultimately may seek judicial review of the final decision.

RECORDS COMMISSION

No Rep.

State records, IAB Vol. XXIX, No. 13, ARC 5611B, ADOPTED.

Records retention is a perennial problem in state government—deciding what is to be kept and for how long. Code §305.2 basically defines a record as any item containing information *"produced, executed, or received pursuant to law in connection with the transaction of official business of state government."*

The commission filing offers additional detail clarifying what is *not* a record; these non-records include: library and museum material used as reference material or for exhibition, stocks of publications and unprocessed forms, and extra copies of documents made, acquired or received only for convenience or reference purposes. The rule also defines the "office of record"; i.e.: the entity responsible for maintenance and disposition of the record. It is defined as the agency where the record is *"created, produced, executed or received in connection with official business of that agency."*