



Administrative Rules Review Committee

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THE RULES DIGEST

February, 2007

Scheduled for committee review
FRIDAY, February 2nd 2007 Committee Room #116

Reference
XXVIX IAB No. 14(01/03/07)
XXVIX IAB No. 15(01/19/07)
XXVIX IAB No. 16(02/01/07)

HIGHLIGHTS IN THIS ISSUE:

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HUMAN SERVICES DEPARTMENT

8:25

Home and community based habilitation services, IAB Vol. XXVIV No. 14, ARC 5650B, EMERGENCY.

In 2006 a variety of Medicaid programs were retooled to limit services to rehabilitative services, i.e.: services which restore the health of the client. This change was the result of concerns that the federal program might demand re-payment of funds used for maintenance-type services. At that time the department promised that programs were being finalized to provide needed ongoing services. A revision in federal law allows the departments to cover home and community based long-term care services (HCBS) for Medicaid members with mental health disabilities or chronic conditions. This is significantly broader interpretation than the current program; as the name implies, long-term care services are intended to maintain the current health status of the client.

Home based services are provided in the client's home, "home" includes a residential care facility of 16 or fewer persons. Eligibility is limited to persons with incomes below 150 percent of the federal poverty level. The services are not an entitlement and are capped by limiting slots, units

of service and reimbursement amounts. Eligibility is subject to a yearly total of clients to be served. The total is set by the department based on available funds.

A variety of services are available. Case management services are provided to establish access to the appropriate HCBS services, based on a comprehensive review of the client's needs. home-based habilitation, day habilitation, prevocational habilitation, and supported employment services are available. Home-based habilitation provides support services for clients who need assistance with daily living; it includes such things as oversight, personal care and transportation. Day habilitation provides assistance to clients needing help with social or adaptive skills such as appropriate behavior, independence and personal choices. with acquisition, retention, or improvement of self-help, socialization, and adaptive skills. Prevocational habilitation provides the client with some basic skills needed for obtaining employment. These services include teaching concepts such as compliance, attendance, task completion, problem solving, and safety.

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HUMAN SERVICES DEPARTMENT

8:25

Family-centered child welfare services, IAB Vol. XXIV No. 16, ARC 5699B, NOTICE.

This proposal is again the result of earlier program changes limiting Medicaid programs to rehabilitative services. This new program combines several existing services which provide assistance to victims of child abuse and children who have been adjudicated in need of assistance. Services available under this program include:

Safety monitoring and evaluation services. These services are designed to maintain children safely in their own families by providing safety monitoring and evaluation services during the assessment process. The monitor must be available to provide needed services on an around-the-clock basis.

Family safety, risk, and permanency services. These services are intended to achieve safety and permanency for children, regardless of the setting in which the children reside. The outcome may be to maintain children safely within their own families or with relatives, to reunite children safely to the homes of their parents or other relatives, or to achieve alternative permanent family connections for the child.

Drug testing services. Service providers must provide all of the following activities: collection of samples or installation of sweat patches or other drug testing devices, purchasing of supplies and devices, preservation and documentation of the chain of evidence for collected samples, laboratory testing and analysis fees, reporting of test results to the referring worker; and provision of court testimony if requested concerning testing results.

Family team meeting facilitation. This service involves the planning, preparation, arranging, facilitating, and reporting on a family team meeting on a child welfare case. This meeting consists of family members, friends, providers, the department worker, community professionals, and other interested people who develop a case permanency plan for the safety, permanency, and well-being of a child or family.

Legal fees for permanency. This includes payments to an attorney for legal services associated with achieving greater permanency for

children through either: modification of a child custody order, or creation of a guardianship or adoptive relationship for children who are residing with a relative or another suitable caretaker; and related legal fees, such as filing costs and reporting fees.

ECONOMIC DEVELOPMENT DEPARTMENT

9:00

Renewable fuel infrastructure program, IAB Vol. XXIX, No. 15, ARC 5663B, EMERGENCY.

This emergency filing was informally reviewed by the committee in January. The renewable fuel infrastructure program provides financial incentives for gas stations to install the necessary tanks and equipment to store and dispense E-85 gasoline or biodiesel. Initial rules were adopted in June, 2006, with a revisions implemented in November.

This new filing relates to the length of contracts requiring the grant recipient to operate an E-85 or biodiesel pump, and the availability of waivers excusing a recipient from compliance. The initial rules required a three year contract; opponents contended this period was too short, considering the investment made from the infrastructure fund; persons favoring the limit responded that if the product did not sell well the dealer needed to free the pumps for other uses. This filing raises the three year contract to five years.

A second issue is the waiver procedure allowing a retailing to cease marketing the product without repaying the grant back to the program; Section 30 of the Act (2006 Iowa Acts, chapter 1142, Division III) specifically provides for a waiver., but neither the statute nor the rules establish any procedures or criteria for the handling of a waiver. At the January meeting Committee members expressed concern that the lack of criteria gave the board broad discretion to excuse retailers from their obligations under the grant agreement. At that time board representative responded that waiver criteria would be developed and speculated that waivers could be based on the number of years that the applicant had already been in the program along with proof of an economic hardship.

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ENVIRONMENTAL PROTECTION COMMISSION

9:15

Landfills: financial assurance, IAB Vol. XXIX, No. 14, ARC 5633B, NOTICE.

Iowa Code §455B.304(8) states: *"The commission shall adopt rules which establish closure, postclosure, leachate control and treatment, and financial assurance standards and requirements and which establish minimum levels of financial responsibility for sanitary disposal projects."*

The EPC updates existing rules relating to financial responsibility for cleaning up landfills. Rules are currently establish financial assurance requirements for municipal solid waste landfills, compost facilities and transfer stations. The EPC now proposes financial requirements for a variety of solid waste facilities; these include: coal combustion residue landfills, solid waste processing facilities, construction and demolition waste landfills, appliance demanufacturing facilities, persons applying solid wastes and petroleum-contaminated soils to land areas, cathode ray tube collection facilities, and household hazardous waste regional collection centers.

Every landfill must maintain an updated estimate of the cost to properly close the landfill; the steps required to close a landfill are detailed in the rule. Chapter 111 specifies a series of financial mechanisms that can be used to meet the closure requirements. Landfills must also maintain financial assurance for *postclosure* work. The format is similar to that used for the closure regulations for landfills. With this rulemaking all regulated waste facilities will be subject to specific financial requirements.

Detailed financial requirements are set out for coal ash landfills, bio-solid monofills and construction landfills. All facilities must estimate, and certify by an Iowa-licensed professional engineer, the costs of closure for the landfill, which must be based on the most expensive costs of postclosure. The facilities must also provide financial assurance in an amount equal to or greater than the amount needed for closure; actual requirements vary depending on the type of facility.

The required financial assurance may be provided by a trust fund, surety bond, letter of credit, insurance or other evidence detailing adequate financial responsibility.

A solid waste processing facility, a composting facility, a collection facility and a transfer station have less detailed requirements, since there is no permanent storage of waste. The facility must maintain a closure account as financial assurance. The account must contain an amount at least equal to the current cost estimates for closure of all sanitary disposal project activities. Appliance demanufacturing, land application projects and landfarms must maintain a surety bond.

Cathode ray tube collection or re-cycling facilities both have specific requirements, based on the volume of material.

ENVIRONMENTAL PROTECTION COMMISSION

9:15

Discarded appliance demanufacturing, IAB Vol. XXIX, No. 14, ARC 5634B, ADOPTED.

In 2001 the EPC replaced an old set of rules, *"removal and disposal of polychlorinated biphenyls (pcbs) from white goods prior to processing,"* with the current regulatory program, which is now revised for the forth time. The program ensures that oils, gasses, refrigerants and other hazardous materials are removed from discarded appliances before they are crushed, bailed or shredded for recycling. These pollutants include polychlorinated biphenyls (PCB) and elemental mercury; they are commonly found in such things as refrigerators, freezers, air conditioners, furnaces or ballasts.

The regulatory program is essentially a permitting process for the "demanufacture" {scrapping} of discarded appliances; anyone wishing to enter this business must obtain the permit prior to starting operation. Individual permits may contain specific conditions that are "necessary to ensure the appliance demanufacturing facility can be operated in a safe and effective manner." At least one owner or employee must have a training certificate from a department-approved training course. A person who has completed the training must be on site at all times

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when discarded appliances are being demanufactured.

Generally, discarded appliances must be collected and stored so as to prevent electrical capacitors, refrigerant lines and compressors, and components containing mercury from being damaged and allowing a release into the environment. No more than 1,000 appliances may be stored at a location prior to demanufacturing; appliances may be stored for only 270 days. Specific requirements are set out for refrigerant removal, disposing of mercury containing items (Note: this includes fluorescent tubes and bulbs, both mercury containing items and capacitors must be processed following strict procedures as set out in the rules), and capacitor removal.

Annual reports are required that detail the type and number of items process in the facility, and document the transfer or shipment of any refrigerant, mercury switches, or PCB-containing materials.

PUBLIC HEATH DEPARTMENT

9:50

Prescription drug donation program, IAB Vol. XXIX, No. 16, ARC 5675B, ADOPTED.

2005 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, 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.

Participating facilities include a doctor's office, a hospital, a health clinic or a charitable organization.

Any person who is 18 years of age or older may donate prescription drugs or supplies to a repository; drugs must be in the original packaging and controlled substances cannot be accepted. A pharmacist must inspect donated prescription drugs and supplies to determine, "to the extent reasonably possible" that the drugs and supplies are not adulterated or misbranded, are safe and suitable for dispensing, and are not ineligible drugs or supplies.

To receive drugs or supplies an individual must "certify" that the individual is an indigent Iowa resident with no third-party prescription drug reimbursement coverage for the drug prescribed.

PUBLIC HEATH DEPARTMENT

9:50.

Public health response teams, IAB Vol. XXIX, No. 16, ARC 5679B, ADOPTED.

2003 Acts, ch 33 (Code §135.143) created public health response teams and now the department proposes to establish the program to designate those teams, which will include five disaster medical assistance teams and an environmental health response team to assist local medical and public health personnel, hospitals in the event of a disaster. A hospital, public health agency, health care organization, licensed health care entity, or other entity may sponsor a team, with the approval of the department.

A disaster medical assistance team consists of at least 35 members who are specially trained to operate in a variety of disaster situations. An environmental health response team consists of 20 environmental health professionals. A team member is considered a state employee for purposes of workers' compensation, disability, and death benefits. The state will also defend and indemnify a team member in the event of litigation.

PUBLIC HEATH DEPARTMENT

9:50

Level II regional neonatology centers, IAB Vol. XXIX, No. 16, ARC 5681B, ADOPTED.

The departments approves an advance level of neonatal care: level II regional neonatology centers. These facilities will have a neonatal intensive care unit and will manage high-risk pregnancies and infants born at less than 34 weeks' gestation or weighing less than 1500 grams. It is anticipated that four of these facilities will be established.

PUBLIC HEATH DEPARTMENT

9:50

Local public health services, IAB Vol. XXIX, No. 16, ARC - 5683B, NOTICE.

The department proposes to combine three separate programs into one chapter; public health nursing, the Iowa senior health program, and the

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home care aide rules will be replaced with a single, more generic program: "Local Public Health Services." The overall purpose is to promote the public health, deliver essential public health services and to increase the capacity of local boards of health to promote healthy people and healthy communities. This grant program serves all population groups with a priority to serve "vulnerable populations". The program is locally administered by the local board of health or the county board of supervisors, and services can be provided by private, non-profit or a governmental organization.

Services are fee based; the service provide must establish a charge for services based on a sliding fee schedule based on the resources and income of the consumer. A fee shall be charged to consumer with resources and income at or above two hundred percent of federal poverty guidelines. No fee shall be charged to consumers with resources and income at or below seventy five percent of federal poverty guidelines.

Local public health services are intended to increase local public health capacity by providing such things as the assessment of the health of the community, community health needs, personal health services, epidemiologic and other studies of health problems. A variety of essential public health services are also available. Of the funds appropriated for this program 40% is divided equally for use in each county and 60% is divided to each county according to the county's population.

Case management services provide assistance and guidance to clients in gaining access to needed medical, social, and other services. The case manager does not provide services directly; following an assessment of the clients' needs and the formation of a service plan the case manager coordinates the efforts of the actual service providers. The case manager must meet with the client at least four times per year. A case manager can be a register nurse, a licensed practical nurse, a person holding a degree in family and consumer science, education, social work or other health or human service field or a home care aide with an equivalent of two year's supervised experience.

Public health nursing services promote the health of the community, providing both individual and community wide services. A sliding fee for certain nursing services, disease and disability health maintenance is required.

Home health-aide services are designed to prevent or delay institutionalization of consumers and to preserve families by providing supportive services through supervised direct care workers. There are five levels of service that can be provided, based on the training level of the worker. A sliding fee or full fee for home care aide (personal care); home care aide (homemaker), home care aide (home helper) and home care aide (chore); is require.

Appropriations for this program are distributed based on a formula: 60% according to the number of elderly persons living in the county, 20% percent according to the number of persons below the federal poverty level living in the county, and 20% according to the number of substantiated cases of child abuse in the county.

PUBLIC HEATH DEPARTMENT

9:50

Licensure standards for problem gambling treatment programs, IAB Vol. XXIX, No. 16, ARC 5684B, NOTICE.

For the first time in nine years the department revises its licensure standards for gambling treatment programs. An initial license, similar to a probation period, may be issued for 270 days and cannot be renewed. A license may be renewed for one, two or three years. The length of the renewal depends on the level of compliance with the department's standards.

The rules establish detailed organization and operation requirements; they relate to the governance of the organization, staffing requirements, general standards for the treatment program and for the facility itself. The department inspects all programs as part of the licensure program. When the inspection finds problems with a program that program must develop and implement a correction plan within 60 days.

**DEPARTMENT OF
TRANSPORTATION**

No Rep

Public transit infrastructure grant program, IAB Vol. XXIX,
No. 14, ARC 5640B, ADOPTED.

This new grant program was created by 2006 Iowa Acts, House File 2782; it is designed to provide funding for improvement of the "vertical infrastructure" of Iowa's public transit systems. Vertical infrastructure is a term specifically defined in Code §8.57, subsection 6 as: "...only land acquisition and construction, major renovation and major repair of buildings, all appurtenant structures, utilities, site development, and recreational trails."

The program is available only to regional and urban transit systems. To be eligible a project must already be part of a locally approved transportation improvement program and in the statewide transportation improvement program; a local match of at least 20% must be available; and the project must be eligible for completion in 18 months. Priority in funding will go to:

- Enhancement of the life of the transit vehicle fleet;
- Enhancement to transit services; and
- Increased ridership.