



IOWA GENERAL ASSEMBLY

Administrative Rules Review Committee

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THE RULES DIGEST

April 2009

Scheduled for committee review
Friday, April 3rd, 2009.
Senate Committee Room #116

Reference
XXXI IAB No. 19(03/11/09)
XXXI IAB No. 20(03/25/09)

HIGHLIGHTS IN THIS ISSUE:

COMMUNITY ACTION AGENCIES, Individual retirement accounts,.....1
VETERANS AFFAIRS DEPARTMENT, County commissioner funding and training .....1
EDUCATION DEPARTMENT, Senior year plus .....2
EPC, Stream designations .....3
HUMAN SERVICES DEPARTMENT, Ticket to hope program .....5
PUBLIC SAFETY DEPARTMENT, Sustainable building standards .....6

COMMUNITY ACTION AGENCIES
DIVISION

8:15

Individual development accounts, IAB XXXI No. 19, ARC 7614B, Notice; ARC 7613B, FILED EMERGENCY.

Iowa Code chapter 541A establishes a financial instrument known as an individual development account (IDA). The IDA is a tax-benefited means for an individual whose annual household income does not exceed 200 percent of the federal poverty level to accumulate assets and earnings on assets for long-term purposes that lead to self-sufficiency. Contributions of up to \$2,000 are eligible for state match payments at a 1:1 ratio. Withdrawal of funds from an IDA is intended to be used for certain purposes, including expenses related to higher education, purchase or improvement of a primary residence, job training, emergency medical costs, capitalization of a small business start-up, purchase of an automobile, or purchase of assistive technology for a household member with a disability.

2008 Iowa Acts, chapter 1178, directed the division to administer IDAs in accordance with the administrative rules pertaining to the accounts in

441 IAC ch. 10, in place of the Department of Human Services until replacement administrative rules are adopted. The division will administer the IDA program in partnership with local community organizations. Accordingly, the division will issue RFPs for organizations to design and operate local IDA projects. According to the division, local organizations are best suited to develop projects for each community. The rules specify criteria for selecting the local IDA organizations. The rules also address the determination of an individual's eligibility for the program, authorized withdrawals, procedures relating to unauthorized withdrawals, and requirements for the transfer of assets.

The rules became effective February 16, 2008 as the result of the emergency rules authorized in the legislation.

VETERANS AFFAIRS DEPARTMENT

8:20

County commissions of veteran affairs fund and training program, IAB XXXI No. 20, ARC 7660B, NOTICE.

2008 Iowa Acts, chapter 1130, §2, created the county commissions of veteran affairs fund to assist county commissions in employing a county

## THE RULES DIGEST

-2-

veteran service officer who is nationally accredited through the National Association of County Veterans Service Officers (NACVSO).

The department will annually allocate \$10,000 to each county from the fund for the administration and maintenance of the county commission of veteran affairs office and staff. Counties receiving these funds are required to maintain their own current level of support; counties not maintaining their spending levels will be considered to have supplanted county funding with state funds. Counties not complying with their maintenance of effort will be required to return the supplanted portion to the state.

Any remaining funds will be used by the department to provide for a county commission of veteran affairs training program. A county veteran service officer and support staff shall attend an annual school of instruction provided by the department or a national school of accreditation provided by NACVSO and shall ensure that each officer and support staff are proficient in the use of electronic mail, computers, and the Internet in order to access information regarding facilities, benefits, and services available to veterans and their families. After attending the annual training, the county veteran service officer must present to the department a certificate of satisfactory completion of the training.

### EDUCATION DEPARTMENT

8:40

Statewide voluntary preschool program, IAB XXXI No. 19, ARC 7608B, Notice.

This rulemaking implements the changes to the statewide voluntary preschool program enacted in 2008 Iowa Acts, chapter 1181. A school district's continued participation in the program is contingent upon compliance with certain accountability provisions. The rulemaking provides a process for the department and school districts to address noncompliance by school districts.

Under the proposed rules, a school district's participation in the preschool program for a second or subsequent years is subject to approval of the department based upon compliance with accountability standards and the department's on-site review of the school district's implementation

of the preschool program. If a school district is found to be noncompliant, the department is required to inform the school district of the actions necessary to become compliant. In response, the school district is required to submit an action plan, subject to approval by the department, for coming into compliance. The rules direct the department to facilitate technical assistance if requested by the school district and authorize the department to terminate the school district's contract if the school district is not taking the necessary actions in a timely manner.

\* \* \*

Senior year plus, IAB XXXI No. 19, ARC 7612B, NOTICE.

The Iowa Code, chapter 261E, created the "Senior Year Plus Program." This program provides high school students more access to advanced placement coursework and postsecondary credit. Programs include postsecondary enrollment, concurrent enrollment in community college courses for both secondary and postsecondary credit, career academies, and courses delivered via the ICN or Internet.

Admission to an advanced placement program is by examination, with prerequisite coursework for each advanced placement course. Courses are taught by licensed teachers who meet the minimum certification requirements of the national organization that administers the advanced placement program.

The concurrent enrollment program allows high school students to enroll part-time in eligible courses at or through community colleges, if comparable courses are not offered by the school.

A school shall annually approve courses to be made available for high school credit using locally developed criteria to ensure academic rigor and preparation of the student to a postsecondary institution.

The postsecondary enrollment options program allows high school students to obtain credit for courses taken at institutions. Eligible courses are limited to:

- nonsectarian courses;
- courses that are not offered by the school district ; credit-bearing courses that lead to an educational degree;

## THE RULES DIGEST

-3-

- courses in mathematics, science, social sciences, humanities, and vocational-technical education;
- courses in career option programs offered by area schools.

A school district must pay tuition to a postsecondary institution that has enrolled its resident eligible students. The amount of tuition reimbursement for each separate course is the lesser of the actual and customary costs of tuition, textbooks, materials, and fees or \$250.

A regional academy is a program established by a school district to which multiple school districts send high school students. An academy shall offer advanced level courses and may include in its curriculum career and technical courses.

### MANAGEMENT DEPARTMENT

9:00

First-Years-First grant program, IAB XXXI No. 20, ARC 7640B, NOTICE.

The Iowa empowerment fund created the first years first account in Code §28.9(5), consisting of gift or grant moneys obtained from any source. The funds are used to advance quality early childhood programs and services to help prepare children from birth through five years of age for school. Eligible applicants include community empowerment areas or tax exempt organizations must be providers of early childhood programs and services that fit within the areas of early care or education services; family support programming; health; or science and technology.

### ENVIRONMENTAL PROTECTION COMMISSION

9:10

Stream designations, IAB XXXI No. 19, ARC 7624B, NOTICE.

In 2006 the EPC implemented rules providing that all 26,000 miles of Iowa's perennial streams, and intermittent streams with perennial pools, be designated as Class A1, B(WW-1).

This is the highest rating, protecting the designated stream for recreational and aquatic life uses. The federal Clean Water Act (CWA) established a goal that perennial streams and pools be "fishable/swimmable."

At that time it was stated that a series of rulemakings would follow, where each particular stream would be examined and given its' own

designation, based on its actual quality and use. Use assessment and use attainability analysis (UA/UAA) is being applied by the EPC as a step-by-step process to gather site-specific field data on stream features and uses. This proposal reclassifies some 138 streams and will:

- Revise 33 segments as class A2 secondary contact recreational use;
- Revise 83 as class A2 secondary contact recreational use and class B(WW-2) warm water-type 2 designated waters;
- Revise four stream segments as class A2 secondary contact recreational use and class B(WW-3) warm water-type 3 designated waters;
- Revise and list six river and stream segments as class A3 children's recreational use and class B(WW-2) warm water-type 2 designated waters;
- Revise 11 segments as class A3 Children's recreational use designated waters;
- Revise one stream segment as class HH human health designated water.

Six public hearings are scheduled throughout the state.

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Wastewater disposal, IAB XXXI No. 19, ARC 7625B, ADOPTED.

This highly detailed rulemaking revises several chapters of rules relating to wastewater disposal. Some changes provide additional detail to the NPDES permitting process and adds three classes of facilities that will be exempted from obtaining operation permits.

Other changes relate to prohibited discharges, listing pollutants that cannot be discharged to public or private domestic sewage. New language on effluent limits includes requirements for the reuse of treated effluent on golf courses and the calculations used to determine the secondary treatment standard requirement for 85% removal. The proposal also revises and expands monitoring requirements.

\* \* \*

Corrective action: underground storage tanks, IAB XXXI No. 19, ARC 7621B, ADOPTED.

This adopted rule resolve issues raised in an earlier rulemaking, which established procedures relating to detection, prevention and correction of releases from underground storage tanks. The

## THE RULES DIGEST

-4-

2008 filing imposed new requirements relating to testing and monitoring near a "sensitive area", which is essentially an area near a public water supply.

That rulemaking was considered by the Committee in March, May, July and October of 2008. A seventy day delay was imposed at the July ARRC meeting and a session delay was imposed on portions of the filing in October. The EPC agreed to the delay for selected portions of the filing and agreed to seek additional rulemaking from the Environmental Protection Commission to resolve the issues.

The rulemaking generally was supported by representatives of public water supplies. Opponents included petroleum marketers and storage tank insurance interests, who contended that cost for the new program was prohibitive.

This issue now appears to be resolved with a new rulemaking which rescinds the controversial portions of the earlier rulemaking. Additionally, the EPC and the UST Fund will enter into a 28E agreement to jointly develop and implement a study of the risk to public water supply wells from underground storage tank (UST) petroleum releases, funded by public funds under the control of the UST Fund. In the event the study reveals an "unreasonable risk" to a well, with some limitations, the UST Fund will provide funding for corrective action.

### NATURAL RESOURCES DEPARTMENT

9:45

Special nonresident deer and turkey licenses, IAB XXXI No. 20, ARC 7652B, NOTICE.

This rulemaking establishes procedures and requirements for the issuance of special nonresident deer and turkey licenses authorized in Iowa Code section 483A.24. The proposed rules require the internal committee to review and rank the summaries of the applications that are prepared by the program coordinator. The legislative committee considers the applications and makes final selection of the special license recipients. Selections are based on which conservation organizations and hunters are best qualified to promote the state and its natural resources. The proposed rules provide several examples of the

types of requests that legislative committee may consider.

The proposed rules establish ranking criteria for the applicants. Points are awarded based on criteria such as the relative size of the hunter's potential audience, the hunter's proposal to promote the state and its natural resources, and a hunter's previous use of a special license. Certain conservation organizations and hunters are automatically forwarded to the legislative committee for consideration.

The proposed rules also establish the length of term for special licenses, reporting requirements for each recipient of a special license, special license costs, and hunter safety requirements.

### PROFESSIONAL LICENSURE DIVISION

10:00

Licensure of occupational therapists and occupational therapy assistants, IAB XXXI No. 20, ARC 7644B, FILED.

The Division's rules as filed under notice sought to update practice requirements for physical and occupational therapy licensure. The noticed rules also prohibited a physical therapist from accepting professional employment or receiving compensation from a prescriber or a business in which a prescriber of physical therapy has a proprietary or beneficial interest. The noticed rules also prohibited a physical therapist from leasing space from a prescriber of physical therapy. The noticed rules also amended the definition of "occupational therapy screening."

The rules were reviewed by the Committee at its January 9, 2009 meeting. During that meeting, concerns were raised about the need for these proposed rules, the indirect impact the rules would have on physicians, who are not regulated by these provisions, and the possibility that the rules would cause fragmentation in the provision of physical therapy services. The Committee approved a general referral to the General Assembly for review.

Since publication of the notice, changes have been made as a result of the public comments received. The Board did not adopt the new rules that had been proposed for Chapters 201 and 208 in Items 1 and 3, respectively. The remaining

## THE RULES DIGEST

-5-

amendment to the rules is the changed to the definition of "occupational therapy screening," which modifies the number of short-term interventions allowed in preschool or school settings.

The remaining amendment was adopted by the Iowa Board of Physical and Occupational Therapy on February 20, 2009, and will become effective April 29, 2009.

### HUMAN SERVICES DEPARTMENT

10:30

Hawk-I program expansion, IAB XXXI No. 19, ARC 7624B, NOTICE.

As provided in 2008 Iowa Acts, chapter 1188, the department proposes to increase the HAWK-I income limits from 200 to 300 percent of the federal poverty level, bringing income limits to \$5,513 per month for a family of four. The proposal would also increase monthly cost sharing for children with gross family income between 250 and 300 percent of the federal poverty level from \$20 per month per child up to a maximum of \$40 per family. Under the program no premium is charged if the family's gross countable income is less than 150 percent of the federal poverty level.

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Disability services management, IAB XXXI No. 19, ARC 7626B, NOTICE.

This rulemaking amends the role of the "county of residence" for purposes of the central point of coordination process for services to persons with mental illness, chronic mental illness, mental retardation, developmental disabilities, or brain injuries. Under current rules, a person must apply to the central point of coordination for the person's county of legal settlement, regardless of where the person is living, and may be eligible only for services listed in the management plan of the county of legal settlement. According to the department, this situation leads to confusion and may inhibit a person from applying for services.

Under the proposed rules, all new applications for services would be directed to a person's county of residence rather than the county of legal settlement. As a result, the person may be eligible for the services in the management plan of the

county of residence and these services would be purchased according to the contracted rates of the county of residence. The proposed rules may result in a county paying for services that are not in its county management plan or paying a different rate than the county pays for persons living in the county.

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Emergency assistance, IAB XXXI No. 19, ARC 7604B, Notice; ARC 7603B, FILED EMERGENCY.

This rulemaking implements the Iowa Unmet Needs Disaster Grant Program (IUNDGP). IUNDGP provides state assistance to address unmet disaster-related expenses that cannot be met by other financial assistance. IUNDGP provides reimbursement for items such as the repair or replacement of personal property, home repair, mental health services, food assistance, child care, and temporary housing based on certain income limitations. IUNDGP limits assistance to \$2,500 per household.

The rules require each household to complete an application and submit the application to the local long-term recovery committee. To be eligible for assistance, an applicant household must be located in a presidentially-declared disaster area, include only citizens or legal residents, have annual income that is equal to or less than 300 percent of the federal poverty level, have disaster-related expenses not covered by insurance, and not have received assistance from this program or another program for the same loss. The rules specify the duties of the long-term recovery committee in determining eligibility, the duties of the disaster case management office, and the duties of the department. The rules also provide procedures to hear and decide contested cases relating to the administration of the program. The rules also specify that the program is discontinued upon exhaustion of all the allocated funds or on June 30, 2010, whichever occurs first.

These rules were adopted by the department without notice and public participation according to the enacting legislation, 2009 Iowa Acts, House File 64.

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Ticket to hope program, IAB XXXI No. 20, ARC 7642B, Notice; ARC 7641B, FILED EMERGENCY.

## THE RULES DIGEST

-6-

The state was awarded \$11,157,944 under the federal Consolidated Security, Disaster Assistance, and Continuing Appropriations Act of 2009, Pub. L. No. 110-329. Of those funds \$3,330,627 will be used to fund a new mental health counseling program for persons affected by the weather-related disasters of 2008. This rulemaking implements the program, which is called the Ticket to Hope Program.

Under the program, persons in need of mental health services may receive up to eight authorized psychotherapy sessions with an approved mental health provider, each session lasting between 45-50 minutes. Access to the program will be through the Iowa Concern Hotline. The hotline will determine eligibility, authorize services, and submit claims to the Department for payment. To be eligible for the program, a person living in Iowa must report that the impact of the 2008 disasters has impaired the person's ability to carry out normal daily functions to some extent and that the person has no insurance for coverage of mental health services or the person's insurance has a deductible that will deter the person from accessing the services. The services provided will be at no cost to the person receiving counseling.

The rules establish participation requirements for mental health service providers and specify procedures for reconsideration of a denial of access to services, procedures for appeal of a reconsideration, and procedures for the reimbursement of claims.

The rules became effective March 1, 2009.

### **PUBLIC SAFETY DEPARTMENT**

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Sustainable building standards, IAB XXXI No. 20, ARC 7657B, NOTICE.

2008 Iowa Acts, chapter 1126, §8, requires the Department, in consultation with the Department of Natural Resources and the Office of Energy Independence, to adopt rules specifying standards and requirements for sustainable design and construction. Sustainable design standards are intended to minimize the adverse environmental impacts of construction and the built environment.

To be approved as a sustainably designed project construction plans for the project must be

approved by the building code commissioner by a local building department. The set out several criteria for residential and commercial sustainable design.