



IOWA GENERAL ASSEMBLY

Administrative Rules Review Committee

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THE RULES DIGEST

May 2009

Scheduled for committee review
Tuesday, May 12, 2009.
Senate Committee Room #116

Reference
XXXI IAB No. 21(04/08/09)
XXXI IAB No. 22(04/22/09)

HIGHLIGHTS IN THIS ISSUE:

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MEDICAL BOARD

9:05

Policy on chronic intervention pain management, Selective review.

For several years the board has been considering what level of training and licensing is required to provide chronic interventional pain management. There is neither law or rule on this subject, thus local hospitals and clinics set policy on an individual basis. The policy itself is not at issue at the present time; the policy has not been developed, nor has the board taken action. The substance of the policy should be addressed as part of a later rulemaking process.

The issue before the committee is procedural: whether a rulemaking process is necessary before any final policy can be implemented. Board representatives have not rejected a rulemaking proceeding to develop policy, noting that at present the issue is still in the discussion stage. The purpose of this meeting is to discuss whether rulemaking is required; the definition of a rule, set out in §17A.2, is extremely broad: "...each agency statement of general applicability that implements, interprets, or prescribes law or policy..." Pre-rulemaking discussions are appropriate and commonplace; but before the policy is adopted a rulemaking process is necessary. Even though the policy does not have the force and effect of law, it is a rule.

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NURSING BOARD

9:40

Supervision of fluoroscopy, IAB XXXI No. 24, ARC 7714B, NOTICE.

This proposal allows an the advanced registered nurse practitioner to provide direct supervision in the use of fluoroscopic X-ray equipment. Fluoroscopy is a type of X ray imaging that can display motion, using a continuous series of images produced at a maximum rate of 25-30 complete images per second. This is similar to the way conventional television or video transmits images. Crude versions of this devise were used in shoe stores in the 1950's to determine proper fit.

To provide supervision an advanced registered nurse practitioner must complete an educational course including content in radiation physics, radiobiology, radiological safety and radiation management applicable to the use of fluoroscopy. An annual radiological safety course is also required, which includes: time, dose, distance, shielding and the effects of radiation. The nurse must collaborate "as needed" with a physician.

IOWA FINANCE AUTHORITY

10:00

Qualified Midwestern disaster area bond allocation, IAB Vol. XXXI, No. 23 ARC 7511B, ADOPTED.

These provisions were initially published as an emergency filing in January; they create a process to issue and sell Midwestern disaster area bonds, as permitted by the federal Heartland Disaster Tax Relief Act of 2008. That Act is intended to assist with the recovery from the severe weather that affected the Iowa during the summer of 2008 by providing temporary tax relief to assist with the recovery from the severe storms, tornadoes, and flooding. The Act allows IFA to issue \$2,000,000,000 in tax-exempt bonds to finance qualified activities involving residential rental projects, nonresidential real property, and public utility property located in the disaster area; and below-market-rate mortgages for Iowa and moderate-income homebuyers whose principal residences were damaged by the flood. Each Iowa county is allocated a portion of these funds based on disaster-related need.

* * *

Council on homelessness, IAB Vol. XXXI, No. 23, ARC 7704B, ADOPTED.

These provisions were initially published as an emergency filing in January; they implement 2008 Iowa Acts, Senate File 2161. That Act creates a 38 person advisory council, with a membership that represents: homeless individuals and their family members, youth shelters, faith-based organizations, local homeless service providers, emergency shelters, transitional housing providers, family and domestic violence shelters, private business, local government, and community-based organizations. Membership also includes 12 ex officio voting members from various agencies.

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The council is staffed by IFA and will meet at least six times per year. The council is tasked with a long list of responsibilities, all of which revolve around defining the scope and nature of the homeless problem and finding solutions to that problem. The council is required to make annual recommendations to the governor regarding homelessness issues prepare a biennial report on homelessness in Iowa.

ECONOMIC DEVELOPMENT DEPARTMENT

10:30

Grayfield sites, IAB XXXI No. 23, ARC 7706B, NOTICE.

2008 Iowa Acts, Chapter 1173 expanded the Brownfield redevelopment program to include vacated or blighted property; traditional the Brownfield program redeveloped contaminated properties. A grayfield site is defined in the statute as developed property, *"...but the property's current use is outdated or prevents a better or more efficient use of the property. Such property includes vacant, blighted, obsolete, or otherwise underutilized property."*

A re-development tax credit is allowed against state income tax and the moneys and credit tax; the credit is transferable. The credit amounts to 12% of the investment in a grayfield site or 15% of the investment in a grayfield site if the qualifying redevelopment project meets the requirements of a green development. a green development is a development which meets or exceeds the "sustainable design standards" established by the state building code commissioner (see: Sustainable design standards, ch. 310 Notice ARC 7657B, 3/25/09 IAB). The department is limited to \$1 million in credits annuals; no single project may receive more than 10% of the annual credit allotment.

* * *

Neighborhood stabilization program, IAB XXXI No. 23, ARC 7709B, EMERGENCY.

The program is intended to prevent or reduce the decline of neighborhoods caused by abandoned and foreclosed homes by providing assistance for the redevelopment of the abandoned and foreclosed properties. activities under the program include: financing assistance, purchase and rehabilitation of abandoned and foreclosed residential property homes and residential properties, establishment and operation of land banks, demolition, and redevelopment. Eligible communities are ranked by need, according to the following criteria: the greatest percentage of home foreclosures, highest percentage of homes financed by a subprime mortgage-related loan, and areas likely to face a significant rise in the rate of home foreclosures.

Eligible communities are divided into two categories: entitlement and non-entitlement. An entitlement community includes the principal cities of metropolitan

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statistical areas, other metropolitan cities with populations of at least 50,000, and qualified urban counties with populations of at least 200,000, excluding entitled cities. A plan from an entitlement community is automatically approved if the proposed activities are eligible activities and that the plan conforms with federal law and regulations. Plans that meet both tests will be approved. A plan from a non-entitlement area is evaluated based on the:

- Need for assistance;
- Impact of the proposed activities;
- Degree of targeting of the activities within the community;
- Timeliness of the proposed project;
- Degree to which green development concepts are incorporated into the proposal.

* * *

Disaster recovery business rental assistance program, IAB XXXI No. 23, ARC 7709B, EMERGENCY.

This program provides financial assistance to a business located in or planning to locate in a business rental space that was physically damaged by the 2008 natural disaster. Assistance will be in the form of rental assistance to help offset building rental lease payments for a maximum of six months, not to exceed a total award amount of \$50,000. An eligible business may apply for rental assistance payments for a maximum of six months. The maximum amount of program funds available for rental assistance per business is the equivalent of six months' rent up to a maximum of \$50,000. A business may receive a forgivable loan to a business that has entered into a minimum one-year, market-rate lease agreement. The loan is a loan that will be forgiven if the business remains open for the duration of the six-month period for which rental assistance is awarded.

ENVIRONMENTAL PROTECTION COMMISSION

11:00

Air emissions reduction assistance program, IAB XXXI No. 23, ARC 7679B, EMERGENCY.

These rules establish a financial assistance program to reduce emissions from diesel vehicles and equipment currently used for on-road applications, such as buses and heavy-duty diesel trucks, and non-road applications, such as construction, agriculture, or mining. The program is funded by the American Recovery and Reinvestment Act of 2009. Funds may be used for the:

- Purchase and installation of air pollution reduction equipment;
- Replacement or modification of air pollution control equipment, or process and equipment, including labor for installation;
- Development, printing and distribution of educational materials;
- Planning and implementation of educational forums including, but not limited to, workshops;
- Expenses directly related to implementation and operation of the eligible project;
- Research, laboratory analysis costs, engineering, or consulting fees.

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Water well drilling site wastewater discharge, 2008 Acts, Chapter Ch. 1165.

2008 Iowa Acts, Chapter 1165 required the EPC to adopt rules, in consultation with an advisory committee including representatives of the Iowa water well association, to regulate the discharge of wastewater from water well drilling sites. The legislation also authorized the agency to issue general permits and to establish a fee sufficient to recover the costs, not exceeding fifty dollars. At issue is the large volume of water and mud generated during a well-digging operation. Current rules state:

567—49.11(455B) Disposal of drilling mud. Drilling fluid and mud remaining after construction of a well shall not be disposed of in a stream or storm sewer nor shall these materials be discharged into a sanitary sewer without permission of the owner and operator of the wastewater treatment facility.

* * *

62.1(1) The discharge of any pollutant from a point source into a navigable water is prohibited unless authorized by an NPDES permit. For purposes of this subrule, an NPDES permit includes an NPDES permit issued by the administrator prior to approval of the Iowa NPDES program.

The purpose of the legislation was to create a regulatory program specifically designed for the regulation of wastewater from well-drilling operations. The rules are to be based on the following statutory factors:

- The size of the well as measured by the flow of water in gallons per minute.
- The best management practices to address wastewater discharge.
- Requirements for notification to the department prior to the commencement of drilling operations.
- Requirements for retention of records for a well.
- Reasonable and appropriate limitations on wastewater discharge that take into consideration the need for the well.
- Reasonable and appropriate limitations on wastewater discharge that take into consideration the need to conserve soil and protect water quality.

The purpose of the review is to discuss implementation of this requirement. The Act required that the rules be adopted no later than July 31, 2009; at this point in May it is possible to place rules under notice by July 31st, but final adoption by that date would be difficult.

HUMAN SERVICES DEPARTMENT

11:20

Foster care program, IAB XXXI No. 23, ARC 7712B, NOTICE.

The department proposes a general re-write of its' foster care regulations. Many of these changes are procedural and many contain restrictions and requirements on the foster parents; some of these include:

- added physical standards for bedrooms and sleeping arrangements;
- a prohibition on smoking in the home when foster children are present;
- requirements for lead paint assessment;
- window requirements to ensure fire safety;
- smoke and carbon monoxide detector requirements;
- child supervision requirements;

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- pet health requirements;
- foster parent training requirements including child abuse, medication management, first aid and CPC;
- recordkeeping requirements;
- annual 6 hour foster parent training requirements.

PHARMACY BOARD

1:30

Iowa prescription monitoring program, IAB XXXI No. 23, ARC 7676B, NOTICE.

This proposal creates a central database program of prescriptions for Schedule II, III, and IV controlled substances prescriptions dispensed in Iowa. Database information is privileged and strictly confidential and not subject to public or open records laws. Patients may review their own file. Regulatory or law enforcement agencies can access the database by order, subpoena, or other means of legal compulsion relating to a specific investigation of a specific individual and supported by a determination of probable cause. The database may provide summary, statistical, or aggregate data to public or private entities for statistical, research, or educational purposes, ensuring that all personally identifiable information has been deleted.

Iowa Code §124.551 provides that:

"The information collected shall be *used by prescribing practitioners and pharmacists on a need-to-know basis* [emphasis added] for purposes of improving patient health care by facilitating early identification of patients who may be at risk for addiction, or who may be using, abusing, or diverting drugs for unlawful or otherwise unauthorized purposes at risk to themselves and others, or who may be appropriately using controlled substances lawfully prescribed for them but unknown to the practitioner."

Essentially the database allows prescribers and providers to determine whether a patient is obtaining multiple prescriptions from multiple sources. Under this program each dispenser is required to report each reportable prescription dispensed during a reporting period. The reports contain detailed information concerning the prescription, the patient, the prescriber and the dispenser. The reporting requirement does not apply to hospital patients, nursing home or hospice patients. It does not apply to wholesale distributions or the providing of samples.

PUBLIC HEALTH DEPARTMENT

1:50

Oral health-definition of dental home, IAB XXXI No. 23, ARC 7672B, EMERGENCY.

In 2008 the Department created the Oral Health Bureau, administering a variety of federal, state, and local initiatives. The only issue in this new program was the possibility of non-dental professionals performing dental treatment under these rules.

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Iowa Dental Association requested additional language that details the persons authorized to conduct certain screening and treatment functions. The Committee imposed a session delay on the rules. This new filing resolves that issue by eliminating a reference to non-dental public and private health care professionals.

* * *

Breast and cervical cancer early detection program, IAB Vol. XXXI, No. 23, ARC 7670B, ADOPTED.

Screening and early detection for breast and cervical cancer are funded through a federal program; Iowa has participated since 1993. A variety of clinical procedures are provided through the program. Participation is limited to women with incomes less than 250 percent of the federal poverty level; under the program:

- Women 50 through 64 years of age shall be the priority population to receive annual breast and cervical cancer screening.
- Women 40 through 49 years of age shall receive annual breast and cervical cancer screening.
- If symptomatic for breast cancer, women under 40 years of age shall receive services.

Women 65 years of age and older shall be eligible to receive annual breast and cervical cancer screening if they do not have Medicare Part B coverage.

* * *

Swimming pool and spa drain safety, IAB Vol. XXXI, No. 23, ARC 7675B, NOTICE.

The federal "Virginia Graeme Baker Pool and Spa Safety Act" requires that the main drains and other outlets of public swimming pools and spas be modified within one year to prevent entrapment incidents. Virginia Graeme Baker was a 7 year old child trapped and drowned by the massive suction force of a spa drain; the drain itself has to be broken to release the body. As set out in the Act each public pool and spa in the United States must be equipped with anti-entrapment devices or systems that comply with specified ASME/ANSI standards.

PUBLIC SAFETY DEPARTMENT

2:10

Closed circuit surveillance systems, IAB XXXI No. 22, ARC 7720B, Adopted and Filed Emergency After Notice.

Iowa Code section 99F.4 and administrative rules of the Iowa Racing and Gaming Commission authorize the Department to adopt administrative rules establishing requirements for video surveillance systems in gaming establishments. Amendments to these rules were proposed in 2008. Those amendments were delayed by the Administrative Rules Review Committee (see IAB 3/26/08 and IAB 7/2/08).

Following consultation with representatives of the gaming industry, the Iowa Racing and Gaming Commission, and legal counsel, changes in the rules regarding video surveillance were made. This rulemaking intended to make the rules more consistent

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with the rules of the Iowa Racing and Gaming Commission and with the statutory authority afforded the Department in Iowa Code section 99F.4.

The Department conducted a public hearing on March 10, 2009, and comments were received from representatives of the Iowa Gaming Association. The comments noted inconsistencies in the definitions contained in the rules and expressed uncertainty as to whether surveillance requirements extend only to entrances and exits available to the public. As a result, the Department has made changes to the definition of “gambling activities” and to subrule 141.10(6) in to clarify that video surveillance is required for public entrances and public exits, but not for other entrances and exits.

Pursuant to Iowa Code section 17A.5, the Department found that the normal effective date of these amendments should be waived and the amendments were made effective April 1, 2009. Amendments to chapter 141 previously adopted in 2008 were under a session delay imposed by the Administrative Rules Review Committee. The Department made the amendments effective before the conclusion of the 2009 legislative session to avoid confusion that would have resulted if the previously delayed amendments are allowed to take effect.

REVENUE DEPARTMENT

2:20

Sales tax increment financing district, IAB Vol. XXXI, No. 23, ARC 7666B, ADOPTED.

The 2008 Iowa Acts, chapter 1191, §§65 through 68 authorizes a city with a local option sales and services tax to enact an ordinance creating a sales tax increment financing district funding urban renewal projects. This district may be created without an election. All or part of the local sales and services tax may be dedicated to the district. Once the city enacts an ordinance creating the district the department of revenue will identify sales tax permit holders within the specified urban renewal area. An ordinance under is repealed when the plan for the urban renewal area expires or terminates or 20 years after adoption of the ordinance, whichever is the earlier.

* * *

Agricultural rules, IAB XXXI No. 22, ARC 7725B, Notice.

The Department proposes a new chapter to implement Iowa Code chapter 423, otherwise known as the Streamlined Sales and Use Tax Act. Iowa participates in the Streamlined Sales Tax Project (SSTP), an initiative to encourage businesses to collect and remit sales tax in every state in which they make taxable sales. The proposed rules specify many products and services, including but not limited to the sale or rental of farm machinery and equipment, that are exempt from sales and use tax.

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According to the Department, the proposed rules are intended to accomplish three things: (1) Explain the changes to Iowa sales and use tax law made by the Streamlined Sales and Use Tax Act; (2) Preserve the existing interpretation of portions of Iowa sales and use tax law which the Streamlined Sales and Use Tax Act does not change; and (3) Remove from the new rules as many references as possible to sales and use tax law as it existed prior to the effective date of the Streamlined Sales and Use Tax Act. The proposed rules also incorporate changes to Iowa sales and use tax law as a result of 2008 Iowa Acts, Senate File 2400, sections 55 and 56, which pertain to the sales and use tax exemption for replacement parts used in the repair or reconstruction of farm machinery used in certain activities related to agricultural production.

The Department has determined that these proposed rules may have an impact on small business. The Department will issue a regulatory analysis as provided in Iowa Code section 17A.4A if a written request is filed according to the statutory requirements.

REGENTS BOARD

No Rep.

Traffic and parking at universities, IAB XXXI No. 22, ARC 7713B, Notice.

The Board of Regents proposes amendments to its rules relating to monetary sanctions for certain parking offenses at Iowa State University. The proposed rules increase the sanction for altering, forging, or counterfeiting a parking permit and for unauthorized possession and use of a parking permit from \$80 to \$150. The proposed rules increase the sanction for improper parking from \$15 to \$30. The proposed rules increase the sanction for overtime parking at meters and for failure to purchase a parking receipt from \$7.50 to \$10.