



IOWA GENERAL ASSEMBLY

Administrative Rules Review Committee

STATEHOUSE * ROOM 116 * DES MOINES, IOWA 50319 * (515) 281-3084/3355/4800
FAX (515) 281-4424 * E-MAIL jroyce@legis.state.ia.us; mduster@legis.state.ia.us

THE RULES DIGEST

June 2009

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Supreme Court Chamber

Reference
XXXI IAB No. 23(05/06/09)
XXXI IAB No. 24(05/20/09)
XXXI IAB No. 25(06/03/09)

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EDUCATION DEPARTMENT

10:05

Nutrition standards , IAB Vol. XXXI, No. 24, ARC 7782B, ADOPTED.

2008 Iowa Acts, Senate File 2425, §§140 and 141 mandated the development of nutritional content standards for foods and beverages sold or provided on school grounds during the school day. The Act also created a nutrition advisory panel to make findings and recommendations, based on the dietary guidelines for Americans published by the federal government. The Department is to consider these findings and recommendations when establishing or amending the nutritional content standards.

Generally speaking, the nutritional standards apply to ala carte items or "snack food" sales in vending machines; the rules do not apply to the nutritional content of food or beverages provided through a school breakfast program or school lunch program, sold for fundraising purposes, sold at concession stands, provided by parents, other volunteers, or students for class events, or provided by staff for the consumption by staff or students.

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The standards are set out in the form of a grid, setting limits for calories, total and saturated fats, trans fat, sugar, dietary fiber and sodium. Carbonated beverages and coffee are banned. There are fewer restrictions for secondary students than for elementary students; secondary students are allowed caffeinated beverages and sports drinks. The standards take effect July 1, 2010; however, some specific standards relating to sodium are delayed until 2014, while others relating to sugar are phased in between 2014 and 2020.

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Physical activity requirement, IAB Vol. XXXI, No. 24, ARC 7783B, ADOPTED.

2008 Iowa Acts, Senate File 2425, requires that all physically able students in grades K through 5 engage in a physical activity for a minimum of thirty minutes per school day. The Department is required to establish a working group comprised of education and fitness professionals, along with stakeholders to assist in the creation of daily physical activity opportunities and requirements and developing physical activity models. All physically able students in grades 6 through 12 are required to engage in a physical activity for a minimum of one hundred twenty minutes per week. In addition, by the end of grade 12 every student must complete a certification course for CPR. A student is not required to meet the physical activity or the CPR requirements if the student's parent or guardian files a written statement with the school principal that the requirement conflicts with the pupil's religious beliefs.

These requirements may be met by a variety of activities, including: Interscholastic athletics; School-sponsored marching band, show choir, dance, drill, cheer, or other similar activities; Non-school gymnastics, dance, team sports, individual sports; or similar endeavors that involve movement, manipulation, or exertion of the body. Non-school activities must be separately documented. Regular instructional time may not be reduced to meet these requirements.

A public hearing was on February 3, 2009, and was attended by approximately 50 people. Additionally, 21 written comments were received. In response to concerns raised by school officials about the accountability for the physical activity requirement, the Department has developed a sample agreement for schools and school districts to use to track compliance. According to the Department, the remainder of the public comments related to the underlying legislation and not specifically to the rules. As the result of public comment regarding accountability for the physical activity requirement, the duration of the agreement has been increased from no more than one semester to no

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more than one school year. Additionally, to avoid any confusion regarding what is meant by “spirit” activities, that term has been replaced with the word “similar.”

These amendments will become effective June 24, 2009.

* * *

Financial management of categorical funding, IAB Vol. XXXI, No. 24, ARC 7781B, ADOPTED.

Categorical funding is provided by the state or federal government; its use is limited to particular categories of students, special programs, or special purposes. This proposal provides general standards governing the use of these funds by local districts and area education agencies. Categorical funding is in addition to general purpose revenues and cannot be used to replace those funds. General purpose revenues shall not be diverted for other purposes because of the availability of categorical funding. Expenditures from categorical funding are limited to direct costs of providing the intended program or service and do not include costs that are allocated costs or that are considered indirect costs or overhead. Categorical funding can not be commingled with other funding and must be accounted for separately from other funding.

The rules detail the appropriate use of categorical funding, including grants-in-aid, for a variety of programs; examples include: the home school assistance program, the four-year-old preschool program, limited English proficiency weighting, special education weighting and the talented and gifted program.

The rules also establish standards for the use of tax levies or funds that are required by law to be expended only for the specific items set out in statute. The rules set out a long list of appropriate uses for the general fund, including salaries, employee benefits, purchased services, supplies, and expenditures for instructional equipment. The rules also detail inappropriate uses, such as purchasing land, construction or other uses that are not operating or current expenditures for public education and are not expressly authorized in the Iowa Code. Standards for other funds are set out as well, detailing uses and prohibited uses for a plethora of funds, including: the public educational and recreational levy (PERL) fund, the district support trust fund, the debt service fund, the capital projects fund, and the student activity fund.

EDUCATIONAL EXAMINERS BOARD

10:30

Issuance of professional services licenses, IAB XXXI No. 23, ARC 7743B, NOTICE.

This rulemaking proposes to adopt a new chapter 27 relating to professional service licenses. According to the educational examiners board, there is currently confusion

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about what each of the licensed individuals are authorized to do. By licensing school audiologists, school psychologists, school social workers, speech-language pathologists, supervisors of special education, directors of special education, and school counselors separately, the Board is attempting to clarify each professional's authority and duties.

For each of the licenses in new chapter 27, the initial license is valid for two years and is issued to an applicant who has a master's degree in a recognized professional education service area, has completed a state-approved program which meets the requirements for an endorsement in a professional education service area, has completed other requirements for the professional education service area, and meets the specified requirement. Under the proposed rules, the standard professional service license is valid for five years and is issued to an applicant who completes the requirements of the initial license and completes a state-approved mentoring and induction program or has three years of experience in a nonpublic school or out-of-state educational setting. The proposed rules also provide content specific requirements for each of the professional service license endorsements.

ECONOMIC DEVELOPMENT DEPARTMENT

10:50

Community microenterprise development organization grant program, IAB XXXI No. 23, ARC 7765B, Notice; ARC 7764B, FILED EMERGENCY.

This rulemaking implements and supports the microenterprise development organization grants authorized under Code section 15.240 (enacted in 2008). The program provides financial assistance in the form of competitive grants to eligible community microenterprise development organizations not to exceed \$80,000 per organization. An eligible organization includes those that serve a rural or urban community and that provide services to low-income and moderate-moderate income individuals and underserved communities. The rules specify the number of grants that the Department must award in rural and urban areas.

Applications are submitted to the Department and are required to contain information related to the geographic service area, the organization's ability to provide services, the scope of services offered, ability to monitor progress and coordinate resources, a plan for reporting, and financial resources. The rules also specify the procedure for awarding the grants and contracting with the grant recipients.

The rules require award recipients to match at least 20 percent of the funds to be awarded. The matching funds may be from a number of sources, including private foundations, federal or local government funds, financial institutions, or individuals.

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In addition to being filed under notice, the rules were adopted through emergency rulemaking and became effective on April 17, 2009.

INSURANCE DIVISION

11:45

Medicare supplement policies, IAB XXXI No. 23, ARC 7795B, NOTICE.

The division re-writes existing rules setting out the minimum coverage for Medicare supplement insurance policies; the rules are based on model regulation issued by the National Association of Insurance Commissioners (NAIC). A Medicare supplement provides benefits that cover cost-sharing amounts under Medicare; these amount change automatically to coincide with any changes in the applicable Medicare deductible. The updated standards are applicable to all Medicare supplement policies delivered or issued coverage on or after June 1, 2010.

The standards impose a variety of requirements, including restrictions on preexisting conditions, and exclusions from coverage. The standards require guaranteed renewability of the policy. The standards detail each Medicare supplement insurance benefit plan: A, B, C, D, F, F with high deductible, G, M and N. A provider may offer any or all of the plans, but must offer the basic package---plan A. The standards specify coverage for each plan. A series of charts are provided to show the levels of coverage for each plan; all plans are based on the basic plan "A", offering a variety of enhancements.

The rules also prohibit an insurer from requiring or even requesting an individual or a family member of the individual to undergo a genetic test. An insurer may not deny or condition the issuance or effectiveness of the policy, or modify the cost of the policy of an individual on the basis of the genetic information.

The rules impose restrictions on the advertisement of Medicare supplement insurance to "assure the clear and truthful disclosure of the benefits, limitations and exclusions". The insurer must clearly identify a Medicare supplement insurance policy as an insurance policy. The insurer must retain all pertinent information supporting any individual testimonials concerning the policy. Any statistic that is used must identify the specific type of policy that relates to the statistic.

An advertisement shall not imply that approval, endorsement or accreditation of policy forms or advertising has been granted by the division or agency of this state or of the United States government. An advertisement may not use any slogan, logo or other devise that implies or suggests a connection with a government agency.

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The rule has a variety of additional truth-in-advertising requirements. An advertisement cannot offer "special awards" or falsely claim that a policy is an introductory, initial or special offer.

INSPECTIONS AND APPEALS DEPARTMENT

1:30

Dependent adult abuse in health care facilities and programs, IAB XXXI No. 25, ARC 7828B, NOTICE.

Iowa Code chapter 235E was enacted in 2008 and provides that the department shall receive and evaluate reports of dependent adult abuse in facilities and programs. This proposal establishes a full regulatory program for handling those allegations. That term is defined as willful misconduct, gross negligence, or reckless act or omission of a caretaker which results in: physical injury, unreasonable confinement, unreasonable punishment, assault, sexual offense, sexual exploitation, exploitation, or neglect. Mandatory reporters include persons who provide direct or indirect treatment or services or employees who examine, attend, counsel, or treat a dependent adult in a facility or program and reasonably believe the dependent adult has been abused. The term does not include part-time volunteers, building contractors, repair workers or others who are in a facility or program for a very limited purpose, are not in the facility or program on a regular basis, or do not provide any treatment or services to the residents of the facility or program.

Reports must be filed within 24 hours. Under certain circumstances, set out in the rule, failure to provide medical care is not abuse (eg: express wish of the person). As provided in Chapter 235E a person required to report suspected abuse and willfully fails to do so within twenty-four hours commits a simple misdemeanor and is civilly liable for damages.

An employee of a financial institution *may* report suspected financial exploitation of a dependent adult to the department.

A report which is "minor, isolated, and unlikely to reoccur" will be maintained by the department of human services for a five-year period, but will not be included in the central registry, and will not be considered founded dependent adult abuse. A second report within the five year period concerning the same caretaker *may* also be considered minor, depending on the totality of circumstances.

Upon receiving a claim of abuse the facility or program shall separate the victim and the alleged abuser immediately and shall maintain that separation until the abuse investigation is completed and the abuse determination is made. Facilities that

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participate in the federal Medicare or Medicaid program may be subject to additional federal requirements regarding separation.

An inspector of the department may enter any facility or program without a warrant and may examine all records and may contact or interview any resident, employee, former employee, or any other person who might have knowledge about the alleged abuse.

REVENUE DEPARTMENT

2:00

Assessment practices and equalization, IAB XXXI No. 24, ARC 7788B, NOTICE.

This rulemaking amends several rules relating to property taxation. The proposed rules require the local assessor to classify property, but not value property, according to its present use and not its highest and best use. Furthermore, the proposed rules also provide that a property's value shall not be based on speculative highest and best use not supported by current comparable sales.

According to the Department, the proposed amendments will not necessitate additional expenditures by political subdivisions or agencies.

PUBLIC HEALTH DEPARTMENT

2:20

Swimming pool and spa drain safety, IAB Vol. XXXI, No. 25, ARC 7839B, ADOPTED

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.

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Early childhood Iowa council, IAB Vol. XXXI, No. 24, ARC 7839B, NOTICE.

The early childhood Iowa council was created in 2008 Iowa Acts, Chapter 1187 as the advisory body for the development and implementation of a comprehensive early care, health and education system for children five years and younger. These rules establish the general organization and operation of this new advisory council. The council must meet at least three times annually; duties of the council include:

- Conducting a statewide needs assessment at least every five years concerning the quality and availability of early care, health, education programs and including an assessment of infrastructure needs.
- Coordinating the development and implementation of an early childhood Iowa strategic plan.

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- Facilitating collaboration and coordination among federally funded and state-funded early care, health, and education programs and services.
- Working with the Iowa empowerment board in developing public/private partnerships to support the early childhood system through the first years first account in the Iowa empowerment fund and other efforts for expanding investment of private funding in the early childhood system.
- Developing recommendations to increase overall participation of children in early education services, and for the establishment of a unified data collection system for early childhood development programs, and for professional development systems for early care, health, and education providers.
- Assessing the capacity and effectiveness of two- and four-year public and private institutions of higher education in the state for supporting the development of early childhood educators.
- Making recommendations for the implementation and advancement of the state's early learning standards.
- Reporting annually to the governor and general assembly.

HUMAN SERVICES DEPARTMENT

2:45

Foster group care re-write, IAB XXXI No. 23, ARC 7741B, ADOPTED.

These rules largely centralize existing provisions into one chapter, establishing the contracting requirements for foster group care, the chapter includes standards for rate-setting, payment mechanisms, and provider monitoring, audits, and sanctions. Group care includes community-level group care, comprehensive-level group care, and enhanced comprehensive-level group care. All facilities must be appropriately licensed. The rules set out staffing, financial and statistical, client recordkeeping and other administrative requirements. The department may review any provider at its discretion at any time. Failure to meet the requirements relevant to provider contracting, financial record keeping, billing and payment, and client record keeping may subject providers to sanctions, as detailed in the rules.

The rules set out detailed provisions for rate determinations. Service rates are negotiated, based on the historical payment rate negotiated between the provider and the department, as limited by any rate ceiling established or authorized by the legislature. No other items, such as changes in staff qualifications, required components, allowable costs or any licensing or other contractual requirements, can be negotiated. Any change in the level of care or increase in the number of units or duration of foster group care services must be authorized by the department.

The department must authorize foster group care services before any payments will be made. However, if a child has been referred to the department and services have been ordered by the juvenile court, the department will make payment subject to availability of funds.

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Safety standards for children's centers, IAB XXXI No. 24, ARC 7769B, NOTICE.

The department is proposing to adopt a new chapter 106 that would establish safety and facility standards for children's centers; such rules are required pursuant to Code chapter 237B. Code section 237B.1 defines a "children's center" to be a privately funded facility designed to serve seven or more children at any one time who are not under the custody or authority of the department of human services, juvenile court, or another governmental agency, and that offers one or more of the following services: child care, child care for children with a chronic illness, respite care, family support services, medical equipment, therapeutic day programming, educational enrichment, or housing. According to the department, the Code requires these rules; however, neither the department or any other state agency is given enforcement authority.

The proposed rules require each center to meet the basic needs of children in the care of the center, prohibit discipline that amounts to child abuse, require each center to have written policies relating to abuse, and require record checks for employees, contractors, and residents of the center who are 14 years of age or older. The proposed rules also establish criteria and limitations on the use of seclusion and restraints, require certain emergency plans and procedures, promulgate certain facility requirements, and establish rules relating to the health and safety of children residing at a children's center.

Other requirements of law or rules that are applicable to a children's center take precedence over these proposed rules.

HOMELAND SECURITY AND EMERGENCY MANAGEMENT DIVISION

Community disaster grants, IAB XXXI No. 23, ARC 7752B, ADOPTED.

The rules were initially published on February 25, on an "emergency" basis; they went into effect on February 2, 2009. 2009 Iowa Acts, House File 64, appropriated \$22 million to the Homeland Security and Emergency Management Division for the fiscal year ending June 30, 2009 to be used to provide community disaster grants to cities and counties. The bill requires eligible recipients to submit written applications. The bill requires every city or county in a disaster area that submits an application to receive at least two thousand dollars. The grants awarded to cities and counties are on their pro-rata share of damage costs associated with the presidential disaster declaration. The grants awarded must be used for specified disaster-related costs not otherwise funded by federal or nonfederal sources. The bill authorizes the division to undertake emergency rulemaking to implement the program.

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PAROLE BOARD

Certificate of employability, IAB XXXI No. 23, ARC 7742B, ADOPTED.

2008 Iowa Acts, House File 2660, §24 requires the Board to develop a certificate of employability program which is to provide opportunities for rehabilitation and employability of a criminal offender, provide protection of the community, and consider the needs of potential employers. Offenders will be issued a certificate of employability if the offender obtains a positive recommendation from the department of corrections or community-based corrections.

A certificate may be revoked for violation of the conditions of release or new arrest. A formal contested case hearing is not required.

If a person holds a certificate a government licensing agency or board cannot deny a license based on the persons' felony conviction or based on a lack of good moral character, unless the agency or board finds that there is a direct relationship between the offense and the license sought or that the issuance of the license involves unreasonable risk to property or the safety and welfare of specific individuals or the general public.

PUBLIC SAFETY DEPARTMENT

Sustainable building standards, IAB XXXI No. 24, ARC 7773B, ADOPTED.

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 rules set out several criteria for residential and commercial sustainable design.

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Flammable and combustible liquids, IAB XXXI No. 24, ARC 7772B, Notice.

The state fire marshal is authorized to establish standards for dispensing flammable liquids. Generally, dispensing is only allowed using dispensers listed by an independent testing laboratory for use with the liquid being dispensed. Iowa Code section 455G.31 provides an specific exception to this practice has been made for blends of ethanol for which no listed dispensers exist if certain requirements are satisfied. Despite the

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statutory provision only relating to blends of ethanol, the proposed rules provide a parallel exception for blends of biodiesel and petroleum diesel fuel containing up to 20 percent biodiesel.

RACING AND GAMING COMMISSION

Organization; contested cases; licensure; gambling games; accounting and cash control, IAB XXXI No. 23, ARC 7758B, NOTICE.

This rulemaking proposes changes to several chapters relating to racing and gaming. The proposed rules set forth criteria for the commission to consider when deciding whether to issue a license to conduct racing or gaming in Iowa. Those criteria include but are not limited to compliance, gaming integrity, economic impact and development, efficient and safe operation, community support, and nurture of the racing industry.

The proposed rules also amend rules relating to gambling setoffs required under Code chapters 99D and 99F, requirements for the photographing and fingerprinting of license applicants, and criteria for the denial, suspension, or revocation of a license or issuance of a fine. The proposed rules also amend rules relating to the movement of gambling games and implements of gambling, requirements for slot machines, and transfer of jackpots.

The proposed rules rescind current chapter 12, relating to accounting and cash control, and adopts a new chapter 12. New chapter 12 specifies requirements for accounting records, facility internal controls, accounting controls within the cashier's cage, gaming table containers, the acceptance of currency at gaming tables, procedures for moving gaming chips to and from gaming tables, slot machine keys, dropping or opening a gaming table, payout accounting, computer recording and monitoring of slot machines, transportation and accounting of containers, and count rooms.