



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

August
2009

Scheduled for committee review
Friday, August 7th, 2009.
Senate Committee Room #22

Reference
XXXII IAB No. 02(07/15/09)
XXXII IAB No. 03(07/30/09)

HIGHLIGHTS IN THIS ISSUE:

<i>GROW IOWA VALUES ASSISTANCE PROGRAM, Economic Development Department</i>	2
<i>ELDER GROUP HOMES AND DAY SERVICES, Inspections and Appeals Department</i>	6
<i>I-JOBS, Iowa Finance Authority</i>	8
<i>SENATE FILE 340: SEX OFFENDER REGISTRY, Public Safety Department</i>	9
<i>SAFETY STANDARDS FOR CHILDREN'S CENTERS, Human Services Department</i>	10

ECONOMIC DEVELOPMENT DEPARTMENT

9:15

Community microenterprise development organization grant program, IAB Vol. XXXII, No. 02, ARC 7960B, ADOPTED.

These provisions were initially reviewed by the Committee as an emergency filing in June. 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 DIGEST

-2-

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.

* * *

Financial assistance programs, IAB XXXII No. 02, ARC 7971B, NOTICE, ARC 7970B, FILED EMERGENCY.

The Department initiated this rulemaking to implement changes to various programs administered by the Department as the result of 2009 Iowa Acts, Senate File 344. Those programs include four financial assistance programs, three funding sources, and two tax credit programs. The rules amend 15 existing chapters and adopt two new chapters.

According to the Department, the amendments accomplish the following:

- Provide that awards will be based on the creation or retention of high-quality jobs;
- Provide that award amounts will be based on the Fiscal Impact Ratio (FIR);
- Provide that awards are negotiable and tied to the Fiscal Impact Ratio (FIR);
- Establish standard qualifying wage thresholds;
- Establish a standard benefit package requirement that companies must pay and for which the company will receive a 10 percent credit toward its wage threshold calculation;
- Establish a standard project completion period and project maintenance period;
- Provide that all requests for assistance will be acted upon by the IDED Board; and
- Provide that businesses receiving more than one type of financial assistance will contract for and be measured on the highest wage requirement of the program components awarded.

According to the Department, the changes will make it easier to report on program results, easier for the public to evaluate performance, easier to administer the programs, and easier for the participants to understand each program's requirements.

Among the many amendments to the rules are changes to the organization of the Iowa Department of Economic Development Board, changes to the organization and operation of the Grow Iowa Values Fund and the programs funded with moneys appropriated to it, and related changes to the high quality job creation program and the enterprise zone program.

One of the new chapters created by the rules implements the new "Opportunities and Threats Program." The purpose of this program is to "fund projects that present a unique opportunity for economic development in the state of Iowa or projects that address a situation constituting a threat to continued economic prosperity in Iowa." The rules provide requirements and criteria for eligible applicants, the evaluation criteria, and award criteria.

These rules were filed emergency became effective on July 1, 2009 to coincide with the effectiveness of the legislation. However, the rules have also been filed under notice.

* * *

THE RULES DIGEST

-3-

Grow Iowa Values assistance program, IAB Vol. XXXII, No. 03, ARC 7960B, EMERGENCY.

This emergency filing allows businesses affected by the 2008 disasters to apply for assistance under the disaster recovery component through the end of July 2009. An eligible business must:

- be located in a federally declared a disaster area before July 1, 2009;
- document that it has sustained physical damage, equal or exceed 50 percent of the market value of the structure, related to the natural disaster;
- commit to bring its employment level up, within six months, to at least 90 percent of its base employment;
- commit to paying wages, within six months that are no less than the wages paid prior to the closure of the business.

The business must apply for assistance by July 31, 2009. The board has discretion whether to require a local match.

ENVIRONMENTAL PROTECTION COMMISSION

9:40

Air emissions reduction assistance program, IAB XXXII No. 02, ARC 7944B, ADOPTED.

These rules were initially reviewed by the Committee in May, 2009, as an emergency filing; they 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.

* * *

Water well drilling: wastewater discharge, IAB XXXII No. 02, ARC 7945B, NOTICE.

This issue was reviewed by the Committee in May, 2009. 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.

This proposal allows the use of a new wastewater construction and operation general permit to authorize discharge using best management practices (BMPs), requiring the

THE RULES DIGEST

-4-

monitoring of the wastewater effluent to determine compliance with these practices, and taking enforcement action against dischargers that fail to establish or maintain the required BMPs or meet the water quality standards.

PUBLIC HEALTH DEPARTMENT

10:30

Reportable diseases, quarantines and isolation, IAB Vol. XXXII, No. 02, ARC 7966B, NOTICE.

The Department proposes to edit and update rules relating to communicable and infectious diseases, poisonings and conditions, investigation, isolation and quarantine. The rules identify diseases, poisonings and conditions, and incidents that are required by law to be reported to the Department and set out what information to report, how and when to report, and who is to report. The rules provide for disease control through quarantine and isolation. Health care providers, hospitals, clinical laboratories, other health care facilities, schools and medical examiners all have varied reporting responsibilities. Certain highly contagious diseases must be reported within 24 hours, other reports may take up to a week.

The proposed rules relating to reportable communicable and infectious diseases, list all reportable diseases in an appendix, identify eight categories of persons required to report, specify all of the information to be reported, and describe the method for reporting. Similar rules are provided for reportable noncommunicable poisonings and conditions and agriculturally related injuries. The rules specify the confidentiality requirements for the information received by the Department or other local board of health.

The proposed rules specify the procedures for investigations conducted by the Department, a local board of health, or a local department. Under the proposed rules, health care providers and public, private, or hospital clinical laboratories are required to assist in such an investigation. The proposed rules also outline the subpoena powers related to an investigation.

The rules establish procedures for the examination and possible quarantine of any individual with a suspected or active quarantinable disease. That term means any communicable disease which presents a risk of serious harm to public health and which may require isolation or quarantine to prevent its spread. It includes cholera, diphtheria, infectious tuberculosis and SARS. The Department may order an individual with a suspected or active quarantinable disease to avoid the workplace or school and any other public place until the individual receives the approval of the department or a local board

THE RULES DIGEST

-5-

of health. Under the rule any isolation or quarantine shall be by the least restrictive means necessary to prevent the spread of a communicable disease to others and may include, confinement to private homes, other private premises, or public premises. An appeal process is provided.

The department may file a civil action in Polk County district court or in the district court for the county in which the individual resides or is located to enforce a department order for isolation or quarantine.

* * *

Tattooing requirements, IAB Vol. XXXII, No. 03, ARC 7530B, ADOPTED.

The department completes a general re-write of existing rules governing the licensure and practice of tattooing, current rules have been in place since 1989. the practice has grown significantly, there are now 532 license tattoo artists in Iowa, up from fewer than 150 a decade ago.

While much of the revision is simply updating current language, the proposal does present several significant changes. Current rules allow for in-home shops, completely separated from living quarters; beginning January 1, 2010, all new tattoo establishments must be in a building that is zoned commercial. The proposed rules require a completely separate establishment.

A waiver shall be granted to any tattoo establishment which is in a residential dwelling and which has been granted a permit prior to that date.

These changes raise annual fees for shop owners; increase inspection fees; and require training on how to prevent infectious disease and perform first aid. Department representatives note that the fees have not been revised since 1989.

* * *

Early childhood Iowa council, IAB Vol. XXXII, No. 03, ARC 7985B, ADOPTED.

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.

THE RULES DIGEST

-6-

- 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.

INSPECTIONS AND APPEALS DEPARTMENT

10:40

Elder group homes, IAB Vol. XXXII, No. 02, ARC 7960B, NOTICE.

2007 Iowa Acts, Senate File 601 transferred the regulatory authority for elder group homes, assisted living programs, and adult day services from the Department of Elder Affairs to the Department of Inspections and Appeals. In June the Department proposed a set of general rules relating to elder group homes, assisted living programs, and adult day services. This proposal sets out the certification process for elder group homes. An *elder group home* is a single-family residence providing room, board, personal care and health-related services to three through five persons. The home is staffed by an on-site manager 24 hours per day seven days per week. Each elder group home must be certified by the department.

Included in this process is a requirement that a program evaluate each prospective tenant's "functional, cognitive and health status" prior to occupancy and then at least annually. An individualized service plan shall be developed for each tenant by a health care professional or human service professional in consultation with the tenant and other individuals based on the evaluations. At any time significant change in a tenant's condition occurs, and the tenant does not currently receive personal or health-related care a nurse review shall be conducted.

A program cannot admit or retain a tenant who:

- Is bed-bound;
- Requires routine, one-person assistance with standing, transfer or evacuation;
- Is dangerous to self or other tenants or staff;
- Is in an acute stage of alcoholism, drug addiction, or uncontrolled mental illness;
- Is under the age of 18;
- Requires more than part-time or intermittent health-related care;
- Has unmanageable incontinence on a routine basis;
- Is medically unstable;
- Requires maximal assistance with activities of daily living;

THE RULES DIGEST

-7-

- Is physically or mentally unable to immediately and without aid of another travel a normal path to safety, including the ascent and descent of stairs from the tenant's bedroom or bathroom.

The rules establish standards for life safety and for the physical facility. Each bedroom must have at least 70 square feet of usable floor space; for construction after 2005, each bedroom must have at least 100 square feet. There must be at least one toilet and one sink for every four occupants and one tub or shower for each six occupants. For construction after 2005 there must be at least one toilet and one sink for every two occupants and at least one tub or one shower for every four occupants.

* * *

Adult day services, IAB Vol. XXXII, No. 02, ARC 7959B, NOTICE.

This is another program transferred from the Department of Elder Affairs to the Department of Inspections and Appeals. An *adult day services program* or "*program*" provides a variety of health-related care, social services, and other related support services for 16 hours or less in a 24-hour period to two or more persons with a functional impairment on a regularly scheduled, contractual basis.

The rules set out the criteria for the certification of these programs, including standards for the physical facility. Admission and discharge standards are similar for those set out for elder group homes. Two staff members must be on duty at all times.

INSURANCE DIVISION

11:00

Medicare supplement policies, IAB XXXII No. 02, ARC 7795B, ADOPTED.

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 DIGEST

-8-

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.

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.

IOWA FINANCE AUTHORITY

11:10

I-jobs program, IAB Vol. XXXII, No. 02, ARC 7941B, EMERGENCY.

These provisions were informally reviewed at the committees' July meeting. 2007 Iowa Acts, Senate File 376 created the Iowa Jobs Program; that program supports construction projects relating to disaster relief and mitigation and to local infrastructure. The program is open to local governments and private nonprofit organizations financial assistance, in the form of a grant. The grant may finance up to 75% of the total cost of replacing or rebuilding existing disaster-related damaged property, or up to 60% of the total cost for all other projects. A project must be a public construction project with a "demonstrated substantial local, regional, or statewide economic impact." An applicant for a competitive grant cannot receive more than \$50 million in financial assistance. Applicants will be evaluated according to the following criteria:

- The total number and quality of jobs to be created and the benefits likely to accrue to areas distressed by high unemployment. (0-40 points)
- Financial feasibility. (0-40 points)
- Sustainability and energy efficiency. (0-20 points)
- Benefits for disaster recovery. (0-40 points)
- The project's readiness to proceed. (0-40 points)

THE RULES DIGEST

-9-

To be eligible for a grant, a proposed project must receive a minimum score of at least 100 points. Each of these criteria are explained in detail in the rules.

The program also provides for \$46,500,000 for disaster relief and mitigation and local infrastructure grants for renovation and construction projects in flood ravaged areas. Those projects are specifically delineated in the rule.

PUBLIC SAFETY DEPARTMENT

12:00

Senate File 340: Sex Offender Registry, IAB XXXII No. 03, ARC 7974B, EMERGENCY.

sex offender registry

Major revisions to the and to the treatment of sex offenders in Iowa were enacted in 2009 Iowa Acts, Senate File 340. Known as the Adam Walsh Child Safety & Protection Act, this new law increases the tracking requirements for some sex offenders; establishes new exclusion zones for child sex offenders to keep them away from schools, day cares and parks; and new work and volunteer restrictions for child sex offenders at places with

children.

Under the Act all individuals required to register shall be classified as a tier I, tier II, or tier III offender. Juvenile offenders are required to register, but a court may waive the requirement for good cause.

The tier system determines how often the individual must go into the county sheriff's office to update their information on the sex offender registry website. Those in the lowest tier, tier 1, will report annually. Those in tier 2 report in every 6 months, and in tier 3, which includes offenses against minors, individuals must report every three months.

Individuals who commit an offense against a minor are subject to new exclusionary zones and employment restrictions. These individuals are prohibited from loitering within 300 feet of an elementary or secondary school, child care facility, or playgrounds and recreational areas. These individuals can not work or volunteer at any school or child care facility, at any children's arcade, or facilities that provide programs or services intended primarily for minors. No sex offender will be able to work at a facility that supplies services to dependant adults.

An individual convicted of an "aggravated offense against a minor" cannot reside within 2,000-feet of the real property comprising a school or child care facility. That

THE RULES DIGEST

-10-

term means a conviction for sexual abuse in the 1st degree, sexual abuse in the 2nd degree, or sexual abuse in the 3rd degree, except for a conviction for statutory rape.

Violation of these new requirements is an aggravated misdemeanor for a first offense and a class "D" felony for a second or subsequent offense.

* * *

Flammable and combustible liquids, IAB XXXII No. 03, ARC 7977B, ADOPTED.

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 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.

HUMAN SERVICES DEPARTMENT

12:30

Safety standards for children's centers, IAB XXXII No. 03, ARC 8009B, ADOPTED.

These provisions establish new safety and facility standards for children's centers, as 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 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.

THE RULES DIGEST

-11-

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

* * *

Emergency assistance, IAB XXXII No. 03, ARC 8007B, ADOPTED.

This rulemaking implements 2009 Iowa Acts, House File 64, which in turn was amended by 2009 Iowa Acts, Senate File 478, §176. It was initially reviewed by the Committee in April, 2009, as an emergency filing. The rules implement the Iowa Unmet Needs Disaster Grant Program (IUNDGP), which 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.

* * *

Foster care program, IAB XXXII No. 03, ARC 8010B, ADOPTED.

The department implements 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;

THE RULES DIGEST

-12-

- safety requirements related to combustion hazards, safety plans, medications and poisonous substances, weapons and firearms, transporting and supervising foster children, and pets or outdoor animals;
- foster parent training requirements including child abuse, medication management, first aid and CPC;
- recordkeeping requirements;
- annual 6 hour foster parent training requirements.

EDUCATIONAL EXAMINERS BOARD

No Rep.

Issuance of professional services licenses, IAB XXXII No. 03, ARC 7743B, ADOPTED.

This filing was initially reviewed by the Committee in June; there was no public comment. This rulemaking implements a new chapter 27 relating to professional service licenses. According to the educational examiners board, there is currently confusion 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 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 rules also provide content specific requirements for each of the professional service license endorsements.