



IOWA GENERAL ASSEMBLY

Administrative Rules Review Committee

STATEHOUSE * ROOM 312 * 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

September 2009

Scheduled for committee review Tuesday, September 8th, 2009. Senate Committee Room #22

Reference XXXII IAB No. 04(08/12/09) XXXII IAB No. 05(08/26/09)

HIGHLIGHTS IN THIS ISSUE:

MORTGAGE LOAN ORIGINATORS, Banking Division1
BOARDING HOMES, Inspections and Appeals Department4
STREAM DESIGNATIONS, Environmental Protection Commission6
NURSING FACILITY QUALITY ASSURANCE ASSESSMENT, Human Services Department.....6
TEMPORARY RESTRICTED LICENSE, Department of Transportation7

BANKING DIVISION

9:15

Mortgage loan originators, IAB Vol. XXXII, No. 05 ARC 8065B, NOTICE

The 2009 Iowa Acts, Senate File 355, the Iowa Secure and Fair Enforcement for Mortgage Licensing Act (SAFE), requires individuals who take residential mortgage loan applications or offer or negotiate terms of residential mortgage loans, to be licensed by the division. Failure to obtain the license is a class "D" felony. These individuals are referred to as "mortgage loan originators". The requirements do not apply to attorneys acting on behalf of a client or private transactions.

Applicants for licensure must complete a background check, pass a national-level test, and complete twenty hours of prelicensing education which includes: three hours of federal laws and regulations pertaining to residential mortgage loan origination, three hours of ethics, and two hours of training related to lending standards for the nontraditional mortgage product marketplace. The required education may be obtained in a classroom, online, or by any other means approved by the nationwide mortgage licensing system and registry.

All licenses expire on the next December 31 after issuance; however, licenses issued on or after November 1 but before January 1 will not expire until December 31 of the following year.

THE RULES DIGEST

-2-

Licensees must annually obtain eight hours of continuing education and maintain a surety bond based on the dollar amount of loans originated, processed, or underwritten on an annual basis.

IOWA FINANCE AUTHORITY

9:30

Water quality financial assistance, IAB Vol. XXXII, No. 05, ARC 8080B, ADOPTED.

2009 Iowa Acts, Senate File 376, §13(4) provides financial assistance to communities for water quality and wastewater improvement projects, funded through appropriations from the revenue bonds capital fund created in 2009 Iowa Acts, Senate File 376, §2. From these appropriations \$35 million shall be allocated to the small community (population of ten thousand or less) assistance fund and \$20 million shall be allocated to the large community assistance fund.

Under the small community assistance fund, priority is given to communities that have the greatest financial need. For all wastewater projects, priority is given to projects that will provide significant improvement to water quality; for all drinking water projects, priority is determined by the project priority system used for the drinking water state revolving fund.

* * *

Affordable housing assistance grant fund, IAB Vol. XXXII, No. 05, ARC 8076B, ADOPTED.

2009 Iowa Acts, Senate File 376, §30 established the affordable housing assistance grant fund; The fund assists government and private non-profit entities to provide housing for elderly, disabled, and low-income persons. Projects can include both new construction and the acquisition and rehabilitation of existing property. A grant may provide up to 50 percent of the total project cost, up to a maximum of \$50,000. Recipients have two years in which to expend all moneys received from the fund and complete all work activities identified in the project.

* * *

Public service shelter grant fund, IAB Vol. XXXII, No. 05, ARC 8077B, ADOPTED.

2009 Iowa Acts, Senate File 376, §28 established the public service shelter grant fund, to be used for construction, renovations, or improvements of homeless shelters, emergency shelters, and family and domestic violence shelters, to assist communities in providing certain essential social services including supportive services and other kinds

THE RULES DIGEST

-3-

of assistance to individuals in need of temporary housing necessary to improve their living situations. Projects can include both new construction and the acquisition and rehabilitation of existing property. For new construction, grants can range from \$100,000 to \$4 million dollars, not to exceed 50% of the project costs. For renovations or improvements, grants range from \$50,000 to \$3 million dollars. There is no local match requirement for the first \$250,000 of project costs, and 50% local match for any amounts in excess of \$250,000. Recipients have two years in which to expend all moneys received from the fund and complete all work activities identified in the project.

ECONOMIC DEVELOPMENT DEPARTMENT

10:00

Community attraction and tourism development programs, IAB Vol. XXXII, No. 04, ARC 8033B, NOTICE, ARC 8034B, FILED EMERGENCY.

The department adopted these amendments as the result of changes made in 2009 Iowa Acts, House 822 and SF 336, relating to the Vision Iowa Board committees that review applications and the authorization of a waiver of the local or private matching requirement "if the applicant is located in an area declared a disaster area by the governor or by a federal official."

The rules specify the composition of the Vision Iowa program review committee and define the circumstances under which an applicant may request a waiver. The Department's rules allow the board to provide the waiver for good cause shown. The rules state that good cause "includes but is not limited to" documentation that the area of the proposed project is within a disaster area.

EDUCATION DEPARTMENT

10:40

Special education, IAB XXXII No. 05, ARC 8050B, Notice.

According to the department, this rulemaking makes "technical corrections" resulting from state and federal changes, and makes "clarifying changes" regarding the role of general education and concerning child find and eligibility determinations.

The proposed rules add a provision to the definition of "child with a disability" to specify the meaning of "disability in obtaining an education." The proposed rules specify that a child's education records are not required to be amended following the revocation of a parent's consent for a child to receive special education services and specify what the

THE RULES DIGEST

-4-

public agency may do following revocation of consent. The proposed rules also amend provisions relating to the determination of a child's district of residence, establish requirements for providing high-quality general education instruction, and establish rules for evaluation of a child suspected to be a child with a disability.

The rulemaking also provides that recipients of funding under Part B of the Individuals with Disabilities Education Act must make positive efforts to employ, and advance in employment, qualified individuals with disabilities in programs assisted under Part B. The proposed rules modify language relating to general education interventions, establish rules for progress monitoring and data collection, adopt provisions relating to Braille instruction within a student's IEP, amend various rules relating to the delivery of instructional services, and modify rules relating to the state's role in correcting noncompliance of a local education agency.

Finally, the proposed rules clarify provisions relating to the destruction of information within a student's records, amend rules relating to subgrants provided to AEAs and reallocation of AEA funds to coincide with federal regulations, clarify rules relating to the responsibility for providing special education to children living in a foster care facility or treatment facility, and require notice of preappeal conferences to be mailed to the AEA and LEA in addition to the Department.

The department will hold a public hearing on these rules on October 13, 2009, including fifteen ICN sites.

INSPECTIONS AND APPEALS DEPARTMENT

11:00

Boarding homes, IAB XXXII No. 05, ARC 8047B, NOTICE.

This rulemaking implements 2009 Iowa Acts, Senate File 484, which establishes regulatory requirements involving boarding homes and dependent adults. Senate File 484 creates new Code chapter 135O and requires regulation of boarding homes by the department. This legislation was enacted in response to news reports concerning a "bunkhouse" in Atalissa use to house mentally-challenged workers. The Act requires annual registration of boarding homes, establishes regulatory requirements for boarding homes and dependent adults, and mandates improved record keeping of abuse allegations. Failure to register carries a civil penalty of not more than five hundred dollars.

THE RULES DIGEST

-5-

Under the Act a boarding home rents rooms to three or more unrelated persons and providing supervision or assistance with activities of daily living to those persons. The term does not include a facility that is otherwise licensed by the state. Any allegation of a violation of this chapter or an allegation regarding the care or safety of an individual living in a boarding home will be investigated by a multi-agency team.

The proposed rules require each boarding home to file a statement of registration with the department. The statement of registration must contain certain information, including the names of the owner, lessee, and manager, the number of rooms available, the maximum number of tenants for the home, location of the home, and occupant loads. Each boarding home is also required to file an annual occupancy report. The occupancy report must include information relating to the number of rooms and tenants, the number of tenants receiving certain types of public assistance, types of services provided by the owner, lessee, or manager, and certain fire inspection information.

The proposed rules establish the procedures and requirements for complaints regarding the operation of a boarding home. Those proposed rules include the content of complaint reports, timeframes for investigations, the role of the core multidisciplinary agencies, standards for determining whether a complaint is substantiated, and the criteria to consider when deciding whether to impose a penalty. The proposed rules also designate which records are open and available for public inspection and which are confidential.

Senate File 484 directs the department and other agencies involved with assessing a dependent adult's degree of dependency and whether dependent adult abuse has occurred, to adopt rules and take other steps necessary to implement the uniform assessment instrument and process on or before July 1, 2010. The department will hold a public hearing on these rules on September 18, 2009, including nine ICN sites.

The rulemaking also rescinds an existing chapter relating to "quality-based inspection" because, according to the department, the chapter has never been implemented and no facilities participate in the program.

THE RULES DIGEST

-6-

ENVIRONMENTAL PROTECTION COMMISSION

11:10

Stream designations, IAB XXXII No. 04, ARC 8039B, ADOPTED.

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.

HUMAN SERVICES DEPARTMENT

11:30

Nursing facility quality assurance assessment, IAB XXXII No. 05, ARC 8086B, NOTICE.

2009 Iowa Acts, Senate File 476 created the nursing facility quality assurance assessment. Under the Act all nursing facilities that are free-standing facilities or are operated by a hospital shall pay a quarterly assessment to the department. The assessment is determined as follows:

- Nursing facilities with 50 or fewer licensed beds pay \$1 per non-Medicare patient day.
- Continuing care retirement centers pay \$1 per non-Medicare patient day.
- Nursing facilities with annual Iowa Medicaid patient days of 26,500 or more pay \$1 per non-Medicare patient day.
- All other nursing facilities are required to pay \$5.26 per non-Medicare patient day.

A facility that fails to timely pay the quality assurance assessment will be assessed a penalty in the amount of 1.5 percent of the quality assurance assessment amount owed for each month or portion of a month that the payment is overdue. For Medicaid participants the assessment will be deducted from Medicaid payments if the department has not received the amount due by the last day of the month. The department will also withhold an amount equal to the penalty owed from any payment due.

As part of this program a pass-through is added to the Medicaid per diem reimbursement rate, equal to the per-patient-day assessment. Also, an add-on of \$10

THE RULES DIGEST

-7-

per patient day is added to the Medicaid per diem reimbursement rate. Each nursing facility shall submit information to the department demonstrating compliance with the requirements for use of the pass-through and add-on.

If the sum of the pass-through and the assessment rate add-on is greater than the total cost incurred by payment of the initial assessment:

- no less than 35 percent of the difference shall be used to increase compensation and costs of employment for direct care workers;
- no less than 60 percent of the difference shall be used to increase compensation and costs of employment for all nursing facility staff.

DEPARTMENT OF TRANSPORTATION

12:00

Temporary restricted license, IAB XXXII No. 04, ARC 8024B, EMERGENCY.

2009 Iowa Acts, Senate File 419, §13 amended Iowa Code section 321J.4(2) to reduce the minimum period of ineligibility from one year to 45 days for a temporary restricted license (TRL) for a person convicted of operating while intoxicated (OWI) who has had a previous conviction or revocation under chapter 321J. These new provisions apply to revocations arising from convictions entered on or after July 1, 2009.

The rule reconciles this legislation with 2008 federal legislation, Public Law No. 110-244, § 115. The federal legislation amended current federal highway law relating to penalties imposed on repeat intoxicated drivers. It mandates that state law provide as a minimum penalty that an individual convicted of a second or subsequent offense for driving while intoxicated or driving under the influence after a previous conviction for that offense shall receive either: (1) a driver's license suspension for not less than one year (as under current law); or (2) a combination of suspension of all driving privileges for the first 45 days of the suspension period followed by a reinstatement of limited driving privileges for the purpose of getting to and from work, school, or an alcohol treatment program, if an ignition interlock device is installed on the motor vehicles the individual owns or operates.

The rule implements this second option. It provides that a temporary restricted license issued to a person whose licensed is privilege is revoked under Iowa Code section 321J.4(2) is limited during the first year of the two-year revocation period solely to driving to and from work when necessary to maintain the person's present employment and not be allowed for any other purpose. After the first year the restricted license may permit the person to drive to and from work as well as for any other work purpose when

THE RULES DIGEST

-8-

necessary to maintain the person's present employment, and may include permission for the person to transport dependent children to and from a location for child care when that activity is essential to continuation of the person's employment.

DENTAL BOARD

No Rep

Practice of dentistry: teeth whitening, IAB Vol. XXXII, No. 04, ARC 8044B, NOTICE

The board proposes a variety of revisions to its existing rules. The most significant of these revisions defines the practice of teeth whitening as part of the practice of dentistry. This means that any whitening service must be provided by a dentist or by other licensed personnel working under the supervision of a dentist.

CULTURAL AFFAIRS DEPARTMENT

No Rep

Iowa cultural trust fund, IAB XXXII No. 05, ARC 7925B, ADOPTED.

This rulemaking was published as a notice of intended action on July 1, 2007; no comment has been received. The rules establish requirements for the grant-making function and the establishment of trust credits under the Iowa Cultural Trust that was established in Code chapter 303A in 2002. The trust was established to assist certain nonprofit arts, cultural, and historical organizations.

The rules establish procedures for certification of annual trust fund credits gained by each organization, establish eligibility criteria for the cultural trust fund grant program, specify the types of projects that may utilize stability grants, and establish application, review, and appeal procedures for the grant programs. Under the general stability grant program, an applicant may request up to 50 percent of the project cost, to a maximum of \$2,500, must show a dollar-for-dollar cash match, must be incorporated in their community for at least three years, must meet the certain training requirements, and may not receive multiple grants in a single year.